

1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **ADRIAN QUINTANA and**
3 **TONITA ZAMORA,**

4 Plaintiffs-Appellants,

5 v.

6 **BOARD OF COUNTY COMMISSIONERS**
7 **OF SAN MIGUEL COUNTY,**

8 Defendant-Appellee.

9 **APPEAL FROM THE DISTRICT COURT OF SAN MIGUEL COUNTY**

10 **Abigail Aragon, District Judge**

11 Stalter Law LLC
12 Kenneth H. Stalter
13 Albuquerque, NM

14 for Appellants

15 New Mexico Association of Counties
16 Brandon Huss
17 Albuquerque, NM

18 for Appellee

19 **MEMORANDUM OPINION**

20 **HANISEE, Judge.**

21 {1} Plaintiffs appeal from a district court order dismissing their complaint for
22 failure to state a claim. We issued a calendar notice proposing to affirm. Plaintiffs
23 have filed a memorandum in opposition. We are not persuaded and we affirm the
24 district court.

Court of Appeals of New Mexico
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Mark Reynolds

No. A-1-CA-40539

1 {2} “A district court’s decision to dismiss a case for failure to state a claim under
2 Rule 1-012(B)(6) [NMRA] is reviewed de novo.” *Valdez v. State*, 2002-NMSC-028,
3 ¶ 4, 132 N.M. 667, 54 P.3d 71. “A Rule [1-0]12([B])(6) motion is *only* proper when
4 it appears that [the] plaintiff can neither recover nor obtain relief under any state of
5 facts provable under the claim.” *Id.* (internal quotation marks and citation omitted).
6 “In reviewing a district court’s decision to dismiss for failure to state a claim, we
7 accept all well-pleaded factual allegations in the complaint as true and resolve all
8 doubts in favor of the sufficiency of the complaint.” *Id.*

9 {3} Here, Plaintiffs filed a civil rights complaint, seeking declaratory relief and
10 damages under the New Mexico Civil Rights Act. [RP 1] Plaintiffs had a fireworks
11 license, and sold fireworks in San Miguel County in the weeks leading up to July 4,
12 2021. [RP 3] On June 21, 2021, after an elevated wildfire risk was declared by the
13 federal government, the County Board (the County) issued a proclamation restricting
14 the sale and use of certain types of fireworks. [RP 2; DS 3] Plaintiffs’ complaint
15 alleged that the County violated their due process rights by the issuance and
16 enforcement of this proclamation because the governing statute required that such a
17 restriction needed to be made no later than twenty days before the July 4th holiday.
18 [RP 22] *See* NMSA 1978, § 60-2C-8.1(G) (1999). In effect, Plaintiffs’ complaint
19 raised a procedural due process claim because they alleged that the County failed to

1 comply with the statutory time provisions before suspending the use and sale of
2 fireworks.

3 {4} As we observed in our calendar notice, the emergency restrictions, and the
4 threatened enforcement of these restrictions, constituted a legislative act that does
5 not trigger a due process deprivation. *See Pirtle v. Legis. Council Comm'n*, 2021-
6 NMSC-026, ¶ 41, 492 P.3d 586 (recognizing that a purely legislative act of broad
7 applicability is not subject to a due process challenge, but should instead be subject
8 to the democratic process); *Miles v. Bd. of Cnty. Comm'rs*, 1998-NMCA-118, ¶ 8,
9 125 N.M. 608, 964 P.2d 169 (recognizing that government policy that affects an
10 entire group of similarly situated individuals does not implicate due process
11 concerns, even where such concerns would exist if the policy was limited to any
12 single member of the affected group).

13 {5} Plaintiffs' memorandum in opposition attempts to distinguish *Pirtle* and *Miles*
14 by claiming that the attempted enforcement of the emergency restriction against
15 them amounted to an individualized impact and therefore not a matter of broad
16 applicability. [MIO 2-3] We disagree. For purposes of due process, the inquiry is on
17 the nature of the County's conduct, which in this case was the exercise of legislative
18 power. Otherwise, any legislative act could be challenged on procedural due process
19 grounds once that act is enforced at the individual level.

1 {6} To the extent that Plaintiffs are arguing that the County’s actions amounted to
2 a substantive due process violation, we conclude that the drought-driven emergency
3 fireworks restriction does not rise to the “shocks the conscience” bar for such a
4 showing. *See Bounds v. State ex rel. D’Antonio*, 2013-NMSC-037, ¶¶ 35-36, 306
5 P.3d 457 (discussing applicable tests under both state and federal constitutions). To
6 hold that due process is violated once the legislative act is enforced would have the
7 effect of nullifying the legislative act, a result in conflict with *Pirtle* and *Miles*.

8 {7} For the reasons set forth above, we affirm.

9 {8} **IT IS SO ORDERED.**

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11

 J. MILES HANISEE, Judge

12 **WE CONCUR:**

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14

 JENNIFER L. ATTREP, Chief Judge

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 GERALD E. BACA, Judge