

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT

NEW MEXICO PATRIOTS  
ADVOCACY COALITION,  
LISA BRENNER,

**Plaintiffs,**

v.

**D-202-CV-2019-07344**

TIM KELLER, Mayor,  
City of Albuquerque,

**Defendant.**

### **OPINION AND ORDER**

This matter concerns Plaintiffs' Complaint for Declaratory Judgment and Verified Petition for Injunctive Relief, challenging Defendant's executive directive that they allege caused his Chief Administrative Officer to issue an administrative order which provides that state statutes prohibiting firearms on school and university premises applies to the City of Albuquerque's community centers, multigenerational centers, senior centers, and health and social services centers. Defendant filed a motion to dismiss the complaint, arguing that Plaintiffs have not alleged facts establishing standing to bring this action. After reading the briefs and listening to arguments of counsel during the January 7, 2020 hearing, the Court agrees.

"Under the [Declaratory Judgment] Act, courts in New Mexico have jurisdiction to adjudicate and declare rights . . . only in cases of actual controversy. . . . If a party fails to meet [justiciability] requirements, then, under the Act, the district court lacks jurisdiction to decide the merits of the action." *Am. Fed. of State v. Bd. of Cnty Comm'rs*, 2016-NMSC-017, ¶ 15, 373 P.3d

989. Standing is a jurisdictional prerequisite. *Id.* ¶ 31. Plaintiffs must show that they are imminently threatened with injury, facing a real risk of future injury, as a result of Defendant’s actions. *Cf. id.* ¶ 32.

The New Mexico Supreme Court has explained that it is not necessary for plaintiffs to first expose themselves to actual arrest or prosecution in order to challenge the constitutionality of a criminal statute. *ACLU v. City of Albuquerque*, 1999-NMSC-044, ¶ 9, 128 N.M. 315, 992 P.2d 866.

When the plaintiff has alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder, he [or she] should not be required to await and undergo a criminal prosecution as the sole means of seeking relief.

*Id.* (quoting *Babbitt v. United Farm Workers Nat’l Union*, 442 U.S. 289, 298 (1979) (alteration in original)). In *ACLU*, the Court relied on allegations that the teenage plaintiffs’ “previously legitimate late-night activities” were curtailed by a municipal curfew ordinance and an initial detention “program demonstrat[ing] the City’s intention to apprehend individuals in violation of the Curfew.” *Id.* ¶ 9.

However, in the present matter, Plaintiffs have not alleged that they engaged in the conduct previously, or raised any allegations as to an intent to engage in a course of conduct, that would run afoul of the administrative order, and they have not alleged a credible threat of prosecution. “Requiring the party bringing suit to show a concrete injury or threat of injury ‘serves well-established goals of sound judicial policy[,]’” preventing this Court “from making unnecessary constitutional determinations and ensuring that the judiciary maintains a proper relationship with other branches of government.” *Am. Fed.*, 2016-NMSC-017, ¶ 32 (“Hypothetical possibilities of injury ‘will not suffice to establish the threat of direct injury required for standing.’”) (quoted

authorities omitted).

Because Plaintiffs make no allegations demonstrating standing, this Court has no jurisdiction to reach the merits of the action. As a result of this determination, the Court does not address other arguments made in the motion. The Court **GRANTS**, without prejudice, Defendant's motion to dismiss.

**IT IS SO ORDERED.**

  
NANCY J. FRANCHINI  
DISTRICT COURT JUDGE