

COPY

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO *ex rel.*
VILLAGE OF LOS LUNAS and
VILLAGE OF LOS LUNAS COUNCIL,

Plaintiffs-Appellants,

v.

No. 33,903

COUNTY OF VALENCIA; BOARD OF
VALENCIA COUNTY COMMISSIONERS;
CITY OF BELEN; and CITY OF BELEN COUNCIL,

Defendants-Appellees.

COURT OF APPEALS OF NEW MEXICO
FILED

JAN 02 2015



BRIEF IN CHIEF

APPEAL FROM THE DISTRICT COURT OF VALENCIA COUNTY
VALERIE A. HULING, District Judge

Stephen S. Hamilton
Andrew S. Montgomery
MONTGOMERY & ANDREWS, P.A.
Post Office Box 2307
Santa Fe, New Mexico 87504-2307
(505) 982-3873

Laurence P. Guggino, Jr.
GRIEGO & GUGGINO
Post Office Box 2430
Los Lunas, New Mexico 87031
(505) 865-5000

Attorneys for Plaintiffs-Appellants

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
SUMMARY OF PROCEEDINGS	1
I. NATURE OF THE CASE	1
II. SUMMARY OF FACTS AND COURSE OF PROCEEDINGS.....	1
III. DISPOSITION BELOW.....	3
ARGUMENT	4
I. THE DISTRICT COURT ERRED IN RULING THAT LOS LUNAS LACKS STANDING	4
A. Standard of Review and Preservation of Error.....	4
B. The Law of Standing	4
C. Los Lunas Has Alleged Standing	6
II. THE DISTRICT COURT ERRED IN RULING THAT THIS CASE PRESENTS NO ACTUAL CONTROVERSY	14
A. Standard of Review and Preservation of Error.....	14
B. The Requirement of an Actual Controversy	14
C. Los Lunas Has Alleged an Actual Controversy	16
CONCLUSION	18

Statement of Compliance: I certify in accordance with Rule 12-213 NMRA and Miscellaneous Order No. 1-46 that this brief is proportionally spaced, that its body contains 4,072 words, and that it was prepared using Microsoft Word 2010.

TABLE OF AUTHORITIES

	<u>Page</u>
 <u>New Mexico Cases</u>	
<i>ACLU v. City of Albuquerque</i> , 2008-NMSC-045, 144 N.M. 471	4, 5, 9, 12
<i>Asplund v. Hannett</i> , 1926-NMSC-040, 31 N.M. 641	9
<i>Baca v. N.M. Dep't of Pub. Safety</i> , 2002-NMSC-017, 132 N.M. 282	5
<i>Cobb v. State Canvassing Bd.</i> , 2006-NMSC-034, 140 N.M. 77	15, 17
<i>Cordova v. Bd. of County Comm'rs</i> , 2010-NMCA-039, 148 N.M. 460	2
<i>De Vargas Sav. & Loan Ass'n v. Campbell</i> , 1975-NMSC-026, 87 N.M. 469	4
<i>Forest Guardians v. Powell</i> , 2001-NMCA-028, 130 N.M. 368.....	5
<i>Gunaji v. Macias</i> , 2001-NMSC-028, 130 N.M. 734	6, 9, 10, 11, 15, 17
<i>Harriett v. Lusk</i> , 1958-NMSC-006, 63 N.M. 383.....	17
<i>Johnson v. Lally</i> , 1994-NMCA-135, 118 N.M. 795	16
<i>Morningstar Water Users Ass'n, Inc. v. Farmington Mun. Sch. Dist. No. 5</i> , 1995-NMSC-052, 120 N.M. 307	7, 8
<i>New Energy Econ., Inc. v. Shoobridge</i> , 2010-NMSC-049, 149 N.M. 42 (per curiam)	15
<i>Piedra, Inc. v. N.M. Transp. Comm'n</i> , 2008-NMCA-089, 144 N.M. 382	6, 13
<i>Protection & Advocacy Sys. v. City of Albuquerque</i> , 2008-NMCA-149, 145 N.M. 156.....	4, 5, 11, 14
<i>Sanchez v. City of Santa Fe</i> , 1971-NMSC-012, 82 N.M. 322	15
<i>Shipley v. Smith</i> , 1940-NMSC-074, 45 N.M. 23	8, 10

	<u>Page</u>
<i>State ex rel. Coll v. Johnson</i> , 1999-NMSC-036, 128 N.M. 154	6
<i>State ex rel. Hanosh v. N.M. Env'tl. Improvement Bd.</i> , 2008-NMCA-156, 145 N.M. 269, <i>aff'd in relevant part</i> , 2009-NMSC-047, 147 N.M. 87.....	14
<i>State ex rel. League of Women Voters v. Herrera</i> , 2009-NMSC-003, 145 N.M. 563	6, 12
<i>State ex rel. Maloney v. Sierra</i> , 1970-NMSC-144, 82 N.M. 125	17
<i>Taos Cnty. Bd. of Educ. v. Sedillo</i> , 1940-NMSC-026, 44 N.M. 300.....	17
<i>Town of Mesilla v. City of Las Cruces</i> , 1995-NMCA-058, 120 N.M. 69.....	7
<i>Ward v. City of Roswell</i> , 1929-NMSC-074, 34 N.M. 326.....	9

Cases from Other Jurisdictions

<i>City of E. Liverpool v. Columbiana County Budget Comm'n</i> , 2007-Ohio-3759, 870 N.E.2d 705.....	11
---	----

Constitutional Provisions, Statutes and Rules

N.M. Const. art. II, § 8	10, 17
N.M. Const. art. X, § 7	13
NMSA 1978, § 3-17-1 (1993).....	8
NMSA 1978, § 3-18-1 (1972).....	7, 8, 9, 10, 16
NMSA 1978, § 4-38-1 (1876).....	2
NMSA 1978, § 4-38-3 (2002).....	2, 13
Declaratory Judgment Act, NMSA 1978, §§ 44-6-1 to 44-6-15 (1975)	14

Page

NMSA 1978, § 44-6-2 (1975).....14

Other Authorities

David McCullough, *John Adams* (2001)13

SUMMARY OF PROCEEDINGS

I. NATURE OF THE CASE

The County of Valencia approved a contract committing it to transfer public money to a third party to operate a hospital in Belen. The money was paid as taxes by citizens of the Village of Los Lunas among other Valencia County residents. Los Lunas brought this action to invalidate the County's action on the ground that the county commissioner who cast the deciding vote was not qualified for office. The district court dismissed the action for lack of standing among other grounds. The principal question for review is whether Los Lunas has alleged standing to sue in a matter implicating the right to representative government in Valencia County.

II. SUMMARY OF FACTS AND COURSE OF PROCEEDINGS

This action was brought by the State of New Mexico on the relation of the Village of Los Lunas and the Los Lunas Village Council (collectively Los Lunas) against the County of Valencia and the Board of Valencia County Commissioners (collectively Valencia County) and the City of Belen and the City of Belen Council (collectively Belen) to invalidate a contract entered into by Valencia County and Belen. [RP 2 (¶¶ 11-12), 8-14].

Pursuant to the contract, Belen solicited proposals from third party providers to operate and maintain a new hospital in Belen. [RP 2 (¶¶ 11-13), 4 (¶¶ 27-28), 9-10 (¶¶ 2-4)]. Valencia County committed itself, on stated conditions, to execute

a healthcare facilities contract with the provider selected by Belen, and to transfer public money to it from a mill levy imposed on residents of Valencia County. [RP 2 (¶¶ 11-13), 4 (¶ 28), 6 (¶¶ 41-43), 9-10 (¶¶ 2, 4-5)]; cf. *Cordova v. Bd. of County Comm'rs*, 2010-NMCA-039, ¶¶ 2-4, 148 N.M. 460 (describing mill levy in context of challenge of prior contracts approved by Valencia County).

Los Lunas alleged that the contract between Valencia County and Belen was unlawful in two respects. First, Los Lunas alleged that the approval by Valencia County's governing body failed for lack of a majority of qualified votes because one commissioner, Donald Holliday, did not reside in Valencia County or New Mexico at the time of the vote and, under NMSA 1978, Section 4-38-3 (2002), he was therefore unqualified. [RP 2-5 (¶¶ 13, 23-26, 34-36)]. Second, Los Lunas alleged that the contract between Valencia County and Belen was unauthorized by New Mexico statutes and impermissibly delegated the County's power to contract, contrary to NMSA 1978, Section 4-38-1 (1876). [RP 3-6 (¶¶ 14-22, 30-33, 40-43)]. Los Lunas alleged that as a consequence of the County's unlawful approval of the contract, Los Lunas's citizens will be subjected to having their mill levy monies committed to an unauthorized third party. [RP 6 (¶¶ 41-43)].

Counts I and III of Los Lunas's complaint seek declaratory and injunctive relief invalidating the contract between Valencia County and Belen on the grounds summarized above and enjoining Valencia County from entering into a contract

with Belen's chosen provider. [RP 4-6 (¶¶ 29-36, 39-44 & prayer for relief ¶¶ 1-4)]. (Count II, a claim in quo warranto, is not at issue on appeal. [RP 5 (¶¶ 37-38)].)

Valencia County and Belen moved to dismiss the complaint on the grounds, among others, that Los Lunas lacked standing and had not presented a case of actual controversy. [RP 56, 58-61, 65-69, 94-102]. In opposition to the motions, Los Lunas argued that it had alleged standing based on (1) harm in the form of loss of public money for a proposed hospital in Los Lunas and (2) the great public importance of the questions presented. [RP 83-90; Tr. 17-22]. It also argued that it had presented an actual controversy capable of resolution by a declaratory judgment. [RP 87-88; Tr. 21-22].

III. DISPOSITION BELOW

The district court dismissed the action. [RP 183-86]. It determined in regard to the claims for declaratory and injunctive relief that Los Lunas lacked standing on two grounds. [RP 183-84 (¶¶ 1, 3, 6)]. It ruled that the complaint failed "for allegation and proof of injury-in-fact" resulting from Valencia County's approval of the contract. [RP 184 (¶ 3)]. It further ruled that no question of great public importance is presented because the vote by Donald Holliday did not involve a clear threat to the essential nature of government guaranteed to New Mexico citizens by the Constitution. [*Id.*]. (It dismissed the quo warranto claim on separate

grounds, which Los Lunas does not challenge on appeal. [RP 183-84 (¶¶ 2, 4-6)].)

Los Lunas filed a timely notice of appeal from the order of dismissal. [RP 187-92].

ARGUMENT

I. THE DISTRICT COURT ERRED IN RULING THAT LOS LUNAS LACKS STANDING

A. Standard of Review and Preservation of Error

A party's allegations of standing present a question of law which this Court reviews de novo. *Protection & Advocacy Sys. v. City of Albuquerque*, 2008-NMCA-149, ¶ 17, 145 N.M. 156. In deciding the question, the Court accepts as true all material allegations in the complaint and construes them in favor of the pleader. *Id.*

Los Lunas preserved the question of standing by the allegations of its complaint [RP 2-6 (¶¶ 11-36, 39-44), 8-14], its written response to the motions to dismiss [RP 83-88], and its oral argument on the motions [Tr. 17-22].

B. The Law of Standing

“Standing is a judicially created doctrine designed to ‘insure that only those with a genuine and legitimate interest can participate in a proceeding.’” *Protection & Advocacy Sys.*, 2008-NMCA-149, ¶ 18 (quoting *De Vargas Sav. & Loan Ass'n v. Campbell*, 1975-NMSC-026, ¶ 8, 87 N.M. 469). As a general matter, the requirement of standing is neither constitutionally based nor jurisdictional. *ACLU v. City of Albuquerque*, 2008-NMSC-045, ¶ 9, 144 N.M. 471 (“We agree with

Plaintiffs that standing in our courts is not derived from the state constitution, and is not jurisdictional.”) (footnote omitted).

“[A]s a matter of judicial policy if not of jurisdictional necessity,” however, New Mexico courts generally require litigants to allege three basic elements of standing: “(1) an injury in fact, (2) a causal relationship between the injury and the challenged conduct, and (3) a likelihood that the injury will be redressed by a favorable decision.” *ACLU*, 2008-NMSC-045, ¶¶ 1, 7, 10 (citation and internal quotation marks omitted). The courts have sometimes added that “the interest sought to be protected must be arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.” *Protection & Advocacy Sys.*, 2008-NMCA-149, ¶ 18 (quoting *Forest Guardians v. Powell*, 2001-NMCA-028, ¶ 16, 130 N.M. 368).

These general requirements notwithstanding, an exception to traditional standing requirements has consistently been recognized in cases involving questions of great public importance: “It is clear that this Court can ‘confer’ standing and reach the merits of a case regardless of whether a plaintiff meets the traditional standing requirements, based on a conclusion that the questions raised involved matters of great public importance.” *ACLU*, 2008-NMSC-045, ¶ 33; *see, e.g., Baca v. N.M. Dep’t of Pub. Safety*, 2002-NMSC-017, ¶ 3, 132 N.M. 282 (“[I]t has been clearly and firmly established that even though a private party may not

have standing to invoke the power of this Court to resolve constitutional questions and enforce constitutional compliance, this Court, in its discretion, may grant standing to private parties to vindicate the public interest in cases presenting issues of great public importance.”) (citation and indentation omitted); *Piedra, Inc. v. N.M. Transp. Comm’n*, 2008-NMCA-089, ¶ 44, 144 N.M. 382 (“Denial of standing under the [traditional] guidelines may not prevent enforceability of a claim that involves a question of great public importance.”). Questions of great public importance have “generally involved clear threats to the essential nature of state government guaranteed to New Mexico citizens under their [c]onstitution.” *Piedra, Inc.*, 2008-NMCA-089, ¶ 44 (quoting *State ex rel. Coll v. Johnson*, 1999-NMSC-036, ¶ 21, 128 N.M. 154).

In particular, questions of great public importance have arisen in cases involving claims of voter disenfranchisement or other claims of abridgment of the right of citizens to participate in self-government through their duly qualified representatives. *State ex rel. League of Women Voters v. Herrera*, 2009-NMSC-003, ¶ 11, 145 N.M. 563; *Gunaji v. Macias*, 2001-NMSC-028, ¶¶ 17-20, 130 N.M. 734.

C. Los Lunas Has Alleged Standing

The district court erred in its conclusion that Los Lunas lacks standing. Los Lunas has express statutory authority to “sue or be sued” and to “protect generally

the property of its municipality and its inhabitants.” NMSA 1978, §§ 3-18-1(A), (F) (1972). Taken together, these statutory powers give Los Lunas standing to challenge Defendants’ appropriation of property in the form of money paid as taxes by its inhabitants for the benefit of themselves and their municipality. Moreover, the particular conduct challenged in this case goes beyond simple commercial or economic injury. Los Lunas’s allegations go to the core of democratic self-government. They raise the question of whether Valencia County acted democratically on behalf of the citizens of Los Lunas when it committed their tax monies to a third party not chosen by them. The allegations in Los Lunas’s complaint present a question of great public importance.

A municipality such as Los Lunas is not a private entity asserting merely private interests. Some of its functions, such as entering into contracts and holding property, have been described as corporate or proprietary in nature. *See, e.g., Morningstar Water Users Ass’n, Inc. v. Farmington Mun. Sch. Dist. No. 5*, 1995-NMSC-052, ¶¶ 15-16, 120 N.M. 307; *see* §§ 3-18-1(B), (C). Thus, the prospect that a municipality will sustain economic or other injury “in its corporate capacity” has been deemed a sufficient basis for its standing to challenge a zoning ordinance enacted by another municipality. *Town of Mesilla v. City of Las Cruces*, 1995-NMCA-058, ¶¶ 13-14, 120 N.M. 69 (citation and internal quotation marks omitted). *But cf. Morningstar Water Users Ass’n*, 1995-NMSC-052, ¶ 40

(declaring that “the differentiation between the governmental and proprietary roles of a municipality is of no decisive legal value”).

Fundamentally, however, “[a] municipality never—in any capacity, at any time—ceases to be a government entity; nor does it ever forego the rights and responsibilities of a government entity.” *Morningstar Water Users Ass’n*, 1995-NMSC-052, ¶ 35. Los Lunas’s rights and responsibilities as a government entity include “providing for the safety, preserving the health, promoting the prosperity and improving the morals, order, comfort and convenience of the municipality and its inhabitants.” NMSA 1978, § 3-17-1(B) (1993); *see Morningstar Water Users Ass’n*, 1995-NMSC-052, ¶ 37 (recognizing that, regardless of function in which it is engaged, a “municipality is still a public entity, exercising public powers and acting to the benefit of the members of the public that form its citizenry”). More specifically, as noted above, Los Lunas has the right and responsibility to protect “the property of its municipality and its inhabitants.” § 3-18-1(F). That power and duty would amount to very little if Los Lunas could not bring suit to enjoin the misappropriation of tax money paid by its residents for the benefit of themselves and their municipality.

It is settled that individual taxpayers have standing to sue county and municipal governments to enjoin the misappropriation or mismanagement of local government money collected as taxes. *Shipley v. Smith*, 1940-NMSC-074, ¶¶ 1-3,

9, 45 N.M. 23 (holding that resident taxpayer of Otero County had standing to sue board of county commissioners to enjoin transfer of public funds to third-party provider); *Ward v. City of Roswell*, 1929-NMSC-074, ¶¶ 1, 6, 34 N.M. 326 (holding that taxpayer had well-established right to sue City of Roswell to enjoin threatened mismanagement of municipal funds or property stemming from illegal action by city council). Taxpayer standing to sue local governments contrasts with a lack of standing to sue the state for mismanagement of state funds; in the latter instance, the taxpayer's interest is deemed too attenuated to support standing. *Asplund v. Hannett*, 1926-NMSC-040, ¶¶ 16, 50-52, 31 N.M. 641 (recognizing "settled" right of taxpayers to sue local governments to restrain mismanagement of municipal funds, but rejecting claim of taxpayer's right to sue state officials to enjoin expenditure of state funds), *cited by ACLU*, 2008-NMSC-045, ¶ 10.

Given that Los Lunas residents may bring suit individually to enjoin a misappropriation of tax money held by Valencia County, the Court need only consider whether Los Lunas may take similar action for their benefit and for its own benefit, in furtherance of its authority to protect the property of its municipality and its inhabitants. *See* §§ 3-18-1(A), (F). Our Supreme Court's decision in *Gunaji*, 2001-NMSC-028, is informative. There, two unsuccessful election candidates contested vote counts on the ground that an error in the ballots used by 66 voters had deprived those voters of the free and open elections

guaranteed by Article II, Section 8 of the New Mexico Constitution. *Gunaji*, 2001-NMSC-028, ¶¶ 2-7, 12-14. The Supreme Court remarked that, whereas Article II, Section 8 protects the rights of qualified voters, it does not by itself allow unsuccessful election candidates “to proceed ‘in the name of the right to vote.’” *Gunaji*, 2001-NMSC-028, ¶ 19. “Generally,” the Court noted, “one may not assert the constitutional rights of another.” *Id.* ¶ 20. The Court determined, however, that the unsuccessful candidates had standing to assert the rights of the voters whose votes were incorrectly tabulated because the candidates were “after all working against the impairment of the rights of voters, whose organization into a body of plaintiffs would not be as feasible or effective as allowing their interests, or possible interests at least, to be represented by contestants.” *Id.*

Los Lunas’s standing to bring the present action is clearer and more direct than that of the plaintiffs in *Gunaji*. Whereas the *Gunaji* plaintiffs did “not enjoy directly as political candidates the protection” of the constitutional provision they sued to enforce, 2001-NMSC-028, ¶ 20, Los Lunas has a direct interest and responsibility of its own, expressly imposed upon it by statute, to protect “the property of its municipality and its inhabitants.” § 3-18-1(F). Although taxpayers in Los Lunas might themselves have brought suit to protect their individual interests, *e.g.*, *Shiple*y, 1940-NMSC-074, ¶ 9, Los Lunas has standing to protect their property as well as its own because it is “after all working against the

impairment of the rights of [its resident taxpayers], whose organization into a body of plaintiffs would not be as feasible or effective as allowing their interests . . . to be represented by [Los Lunas].” *Gunaji*, 2001-NMSC-028, ¶ 20; accord *City of E. Liverpool v. Columbiana County Budget Comm’n*, 2007-Ohio-3759, ¶¶ 21-26, 870 N.E.2d 705 (holding that municipality had standing where its alleged injury was “intertwined with the injury claimed by its citizens,” its claim was closely related to its citizens’ claim, its citizens’ efforts to assert individual claims had been hindered, and it had “statutory authority to represent and act on behalf of its citizens” in such matters).

Los Lunas meets the traditional requirements of standing: The alleged misappropriation of public money paid as taxes by Los Lunas residents is an “injury in fact” to Los Lunas itself as well as to its inhabitants; there is indisputably a “causal relationship” between Valencia County’s allegedly unlawful commitment to transfer tax monies to an unauthorized third party and the resultant injury to the municipality and inhabitants of Los Lunas; a favorable decision invalidating the contract will likely redress the injury; and the interests of Los Lunas and its inhabitants are within the “zone of interests” to be protected in that the funds raised by the mill levy were paid by and for Los Lunas citizens as well as other residents of Valencia County. See *Protection & Advocacy Sys.*, 2008-NMCA-149, ¶ 18 (citation and internal quotation marks omitted).

Moreover, any doubt about whether Los Lunas meets the traditional elements of standing should be resolved in favor of recognizing its standing to raise a question of great public importance. *ACLU*, 2008-NMSC-045, ¶ 33. Our Supreme Court has reiterated “the longstanding and fundamental principle that the right to vote is of paramount importance.” *League of Women Voters*, 2009-NMSC-003, ¶ 8. “[I]f a government fails to accurately identify and record a voter’s choice, it has failed to carry out the fundamental transaction which sustains our representative democracy.” *Id.* ¶ 9 (emphasis added).

The same must be said of a government which fails to act through qualified representatives of the people: When a government acts upon the vote of an official who is *no longer* qualified to represent the people by whom he or she was elected, it fails “to carry out the fundamental transaction which sustains our representative democracy” just as surely as if it had installed in office a candidate not qualified and elected by the people in the first place. *See League of Women Voters*, 2009-NMSC-003, ¶ 9.

Los Lunas has alleged that Valencia County’s vote to approve the contract and transfer public money to a third party provider was invalid because Donald Holliday did not reside in Valencia County and was not qualified to represent the County’s citizens. [RP 2-5 (¶¶ 13, 23-26, 34-36)]. Under the New Mexico Constitution and statutory law, each county commissioner “shall reside within” the

district that he or she is elected to represent. N.M. Const. art. X, § 7; *see* § 4-38-3(A) (requiring that county commissioner “shall be a resident of the district from which he is elected”). “Change of residence to a place outside the district from which a county commissioner was elected shall automatically terminate the service of that commissioner and the office shall be declared vacant.” N.M. Const. art. X, § 7; *see* § 4-38-3(A) (providing that commissioner who maintains no residence in district from which he or she was elected “shall be deemed to have resigned”).

An act by a government body that fails to represent its electors is not, as the district court appeared to believe, a mere technicality. [RP 184 (¶ 3)]. It is instead a clear threat to “the essential nature of state government guaranteed to New Mexico citizens under their [c]onstitution.” *Piedra, Inc.*, 2008-NMCA-089, ¶ 44 (citation and internal punctuation omitted).

“No taxation without representation.” Those words catalyzed the American Revolution, David McCullough, *John Adams* 61 (2001), and they remain relevant today. Los Lunas alleges that its citizens’ taxes have been unlawfully appropriated without representation. [RP 2-6 (¶¶ 11-28, 34-36, 41-43), 10 (¶¶ 4-5)]. The complaint puts into question whether the core value of democratic self-government will be upheld in this case. That is a question of great public importance which Los Lunas has standing to raise in the courts of New Mexico.

II. THE DISTRICT COURT ERRED IN RULING THAT THIS CASE PRESENTS NO ACTUAL CONTROVERSY

A. Standard of Review and Preservation of Error

A district court's order in an action under the Declaratory Judgment Act, NMSA 1978, §§ 44-6-1 to 44-6-15 (1975), generally is reviewed for abuse of discretion, with the proviso that a district court's "misapprehension of the law constitutes an abuse of discretion." *State ex rel. Hanosh v. N.M. Env'tl. Improvement Bd.*, 2008-NMCA-156, ¶ 3, 145 N.M. 269, *aff'd in relevant part*, 2009-NMSC-047, 147 N.M. 87. At issue in this appeal is whether Los Lunas's complaint alleges an "actual controversy" for purposes of the Act. Insofar as that issue depends on whether Los Lunas had standing to bring suit on a claim for declaratory judgment, it presents a question of law to be reviewed de novo. *Protection & Advocacy Sys.*, 2008-NMCA-149, ¶ 17. The Court accepts as true all material allegations in the complaint and construes them in Los Lunas's favor. *Id.*

Los Lunas preserved the question of whether it has alleged an "actual controversy" by the allegations of its complaint [RP 2-5 (¶¶ 11-36), 8-14], its written response to the motions to dismiss brought by Belen and Valencia County [RP 83-88], and its oral argument on the motions [Tr. 17-22].

B. The Requirement of an Actual Controversy

The Declaratory Judgment Act authorizes the district court to declare rights, status, and other legal relations in cases of "actual controversy." § 44-6-2. To

determine whether a case presents an actual controversy, the Court applies “‘prudential rules’ of judicial self-governance,” including standing, ripeness, and mootness. *New Energy Econ., Inc. v. Shoobridge*, 2010-NMSC-049, ¶¶ 16-17, 149 N.M. 42 (per curiam) (citations and internal quotation marks omitted); *see also Sanchez v. City of Santa Fe*, 1971-NMSC-012, ¶ 7, 82 N.M. 322 (“The prerequisites of ‘actual controversy’ warranting consideration in a declaratory judgment action are: a controversy involving rights or other legal relations of the parties seeking declaratory relief; a claim of right or other legal interest asserted against one who has an interest in contesting the claim; interests of the parties must be real and adverse; and the issue involved must be ripe for judicial determination.”).

Courts have often held that an actual controversy exists in cases implicating the right of democratic self-government although such cases might otherwise be moot, much as they have addressed questions of great public importance although traditional elements of standing might be absent. *E.g., Cobb v. State Canvassing Bd.*, 2006-NMSC-034, ¶¶ 22-32, 140 N.M. 77 (reaching merits of moot appeal where questions for review raised “concerns regarding how recounts will be handled in future elections and are of substantial public interest”); *Gunaji*, 2001-NMSC-028, ¶¶ 9-11 (reaching merits of moot appeal where, *inter alia*, alleged

denial of voters' right to free and open elections presented issues of substantial public interest).

C. Los Lunas Has Alleged an Actual Controversy

Los Lunas's complaint alleges a case of "actual controversy" within the meaning of the Declaratory Judgment Act. As elaborated in Point I above, Los Lunas has a direct interest in challenging Valencia County's approval of the contract at issue, an interest stemming from Los Lunas's statutory responsibility to bring suit to protect the property of its municipality and its inhabitants. §§ 3-18-1(A), (F). Just as Los Lunas has standing to sue by virtue of its citizens' and its own interests in the outcome of the suit, so too its lawsuit presents an actual controversy.

The controversy between the parties is ongoing. Los Lunas alleges that, as a result of the conduct challenged in the complaint, its citizens will be subjected to having their tax monies impermissibly committed to an unauthorized third party. [RP 6 (¶ 43)]. The continuing consequences of Defendants' alleged unlawful acts reflect the existence of a live controversy. *Johnson v. Lally*, 1994-NMCA-135, ¶ 16, 118 N.M. 795 ("The presence of continuing consequences from a past event may be decisive in favor of declaratory judgment.").

Moreover, the questions presented in this case are particularly amenable to resolution by the declaratory and injunctive relief that Los Lunas seeks. Those

questions are of substantial public interest in that the right to representative government for all of the citizens of Valencia County is at issue. *See Cobb*, 2006-NMSC-034, ¶ 28 (“With this background of close and contentious elections, it is undeniable that clarification of the recount and recheck provisions of the Election Code is a matter of substantial public interest.”); *Gunaji*, 2001-NMSC-028, ¶ 10 (“Contestants argue that the mistakes on the ballot face resulted in an election that was not ‘free and open’ as required by article II, § 8 of the New Mexico Constitution and that the proper remedy is a new election. This argument raises issues of substantial public interest.”).

A declaratory judgment is also an apt means of resolving the dispute in this case between governmental subdivisions. *See State ex rel. Maloney v. Sierra*, 1970-NMSC-144, ¶¶ 14-15, 82 N.M. 125 (recognizing that administrative stalemate between governmental officers gave rise to “[a] real, actual concrete controversy” and appellate resolution “will be productive and meaningful by terminating the controversy”); *Harriett v. Lusk*, 1958-NMSC-006, ¶¶ 1, 10, 63 N.M. 383 (holding that Socorro County Board of Education had standing to bring action against state and county officials for declaratory judgment and injunctive relief including restoration of funds); *Taos Cnty. Bd. of Educ. v. Sedillo*, 1940-NMSC-026, ¶¶ 1, 26-27, 44 N.M. 300 (holding actual controversy existed in suit

by Taos County Board of Education for declaratory judgment to test merits of attorney general's refusal to approve Board's issuance of school bonds).

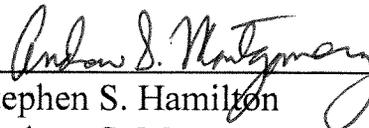
For all of these reasons, Los Lunas's complaint presents an actual controversy that should be resolved by a declaratory judgment and injunctive relief.

CONCLUSION

The district court's order of dismissal should be reversed, and the case should be remanded to the district court for further proceedings on Los Lunas's claims for declaratory and injunctive relief.

Respectfully submitted,

MONTGOMERY & ANDREWS, P.A.



Stephen S. Hamilton
Andrew S. Montgomery
Post Office Box 2307
Santa Fe, New Mexico 87504-2307
(505) 982-3873

Laurence P. Guggino, Jr.
GRIEGO & GUGGINO
Post Office Box 2430
Los Lunas, New Mexico 87031
(505) 865-5000

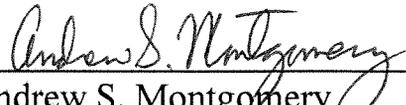
Attorneys for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

I certify that on January 2, 2015, I caused true and correct copies of this *Brief in Chief* to be served by first-class United States mail, postage prepaid, on the following:

Marcus J. Rael, Jr., Esq.
Charles Rennick, Esq.
Robles, Rael & Anaya, P.C.
500 Marquette Ave. NW, Suite 700
Albuquerque, NM 87102

Desiree D. Gurulé, Esq.
Kevin M. Brown, Esq.
Brown Law Firm
Brown & Gurulé
3777 The American Rd. NW, Suite 100
Albuquerque, NM 87114



Andrew S. Montgomery