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

2 Opinion Number: _____

Court of Appeals of New Mexico
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3 Filing Date: **October 31, 2022**

4 **No. A-1-CA-38176**



Mark Reynolds

5 **GRANT W. PRICE,**

6 Petitioner-Appellee,

7 v.

8 **NEW MEXICO SOIL AND WATER**
9 **CONSERVATION COMMISSION,**
10 **including its Commissioners, DUSTON**
11 **HUNT a/k/a DUDLEY HUNT, J. STEVEN**
12 **GLASS, JOSE VARELA-LOPEZ, GABE**
13 **ESTRADA, JOHN NORRIS, and JOHN**
14 **SANCHEZ, JR. a/k/a CHARLIE SANCHEZ,**
15 **JR.,**

16 Respondents-Appellants.

17 **APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY**
18 **James T. Martin, District Judge**

19 Peter Goodman
20 Mesilla Park, NM

21 Michael W. Lilley
22 Las Cruces, NM

23 Sanders & Westbrook, PC
24 Maureen A. Sanders
25 Albuquerque, NM

26 for Appellee

- 1 Hector H. Balderas, Attorney General
- 2 Nicholas M. Sydow, Civil Appellate Chief
- 3 Amye Green, Assistant Attorney General
- 4 Santa Fe, NM

- 5 for Appellants

1 **OPINION**

2 **YOHALEM, Judge.**

3 {1} The question in this appeal is whether the constitutional principle of “one
4 person, one vote”¹ applies to the election of supervisors to a soil and water
5 conservation district’s board of supervisors, the governing body of the district. Soil
6 and water conservation districts are governmental entities created by the New
7 Mexico Soil and Water Conservation District Act (the Act), NMSA 1978, Sections
8 73-20-25 to -48 (1965, as amended through 2019), to encourage the conservation
9 and development of New Mexico’s soil, water, and natural resources.

10 {2} Petitioner Grant Price filed a petition for writ of mandamus in the district court
11 in 2017 objecting to the adoption of geographic voting zones with significantly
12 unequal population for the election of the Doña Ana County Soil and Water
13 Conservation District’s (the District) board of supervisors. Petitioner initially named
14 both the District and the Soil and Water Conservation Commission (the
15 Commission), which had approved the voting map drawn by the District, as

¹The “one person, one vote” requirement arises from the Equal Protection Clause of the United States Constitution. *See Maestas v. Hall*, 2012-NMSC-006, ¶ 1, 274 P.3d 66 (“The idea that every voter must be equal to every other voter when casting a ballot has its genesis in the Equal Protection Clause, U.S. Const. amend. XIV, § 1 (Equal Protection Clause), and is commonly referred to as the ‘one person, one vote’ doctrine.”). Plaintiff relies on both the United States Constitution and the New Mexico Constitution but draws no distinction on the applicable principles of law. We therefore refer solely to the principles of law developed under the United States Constitution.

1 Respondents. Petitioner complained that the voting zones as drawn violated the
2 United States Constitution’s “one person, one vote” requirement, diluting the voting
3 power of Petitioner and the other residents of Zone 4, the zone that includes the City
4 of Las Cruces. The district court agreed, finding that the District’s voting zones
5 “impermissibly dilute and diminish the voting rights of Zone 4 residents.” The
6 significantly unequal distribution of the population among the voting zones found
7 by the district court resulted, for example, in a single vote cast in Zone 3 having
8 nearly four times the weight of a vote cast in Zone 4.

9 {3} Based on these findings of fact, the district court concluded that the
10 Commission’s approval of the voting zones was not authorized by the Legislature,
11 was inconsistent with the Commission’s statutory duty under Section 73-20-39 of
12 the Act to ensure proper and equitable representation of district voters, and was in
13 violation of the “one person, one vote” mandate of the United States Constitution as
14 well.

15 {4} We agree that Section 73-20-39 does not authorize the adoption of geographic
16 voting zones for the election of district supervisors, which deviate from the “one
17 person, one vote” requirement of the Equal Protection Clause. We therefore affirm
18 the district court’s grant of a writ of mandamus requiring the Commission to “rescind
19 its approval for the current geographic [electoral] zones within the . . . District.”

1 **BACKGROUND**

2 **I. The Soil and Water Conservation District Act**

3 {5} The Act was enacted by our Legislature in 1965. The Act creates a state
4 Commission charged with overseeing the creation of soil and water conservation
5 districts throughout the state. *See* §§ 73-20-28, -33. The stated purpose of the Act,
6 and the task assigned to the Commission and the districts, is to encourage and help
7 execute “appropriate corrective and conservation practices and programs,” § 73-20-
8 26(A)(3), and to “conserve and develop beneficially the soil, water and other natural
9 resources of the state,” *id.*, so as to “promote the health and general welfare of the
10 people of the state,” § 73-20-26(A)(1). Under the terms of the Act, the districts and
11 the Commission focus on preventing flooding and soil erosion, remediating excess
12 deposits of sediment, as well as on the conservation, beneficial application, and
13 development of water resources.

14 {6} The Act provides a process for the creation of districts throughout the state.
15 *See* § 73-20-33 (specifying the process for creating a district and determining the
16 boundaries of that district). Sections 73-20-26(B) and 73-20-44(A) provide that a
17 soil and water conservation district organized under the Act “is a governmental
18 subdivision of the state, a public body politic and corporate,” distinct from the
19 Commission. The process of creating a district is initiated by a request to the
20 Commission from a group of at least twenty-five landowners in the proposed district.

1 *See* § 73-20-33(A). The landowners propose geographic boundaries for the new
2 district, which the Commission reviews, and approves or rejects. *Id.* If the district
3 and its boundaries are approved by the Commission, there is a district-wide vote of
4 registered voters residing within the district boundaries. *See* § 73-20-33(A)(4). The
5 creation of the district requires the approval of the majority of those voters. *See*
6 §§ 73-20-33(A)(4)(b),(c), -34. Since 1965, when the Act became law, forty seven
7 soil and water conservation districts have been created.

8 {7} The governing body of each district is composed of between five and seven
9 supervisors. *See* § 73-20-37(A). Five are elected in accordance with the Local
10 Election Act, NMSA 1978, § 1-22-1 to -19 (1985, as amended through 2019). *See*
11 § 73-20-37(A). The Commission is allowed to appoint up to two additional
12 supervisors. *See id.* Of the five elected supervisors, four are required to be
13 landowners within the geographical area of the district. *Id.* The fifth supervisor need
14 not meet the landowner qualification. *Id.*

15 {8} The Commission is empowered by Section 73-20-39 to adopt rules for the
16 election of the board of supervisors in each district. Of central importance to this
17 case, Section 73-20-39 authorizes the Commission to approve geographic voting
18 zones for the election of supervisors “to ensure proper representation of district
19 voters and to facilitate district functions.” Section 73-20-39. Section 73-20-39 also

1 requires the Commission to “provide for the proper and equitable representation for
2 each faction geographically zoned in the district.” *Id.*

3 **II. The Proceedings in the District Court**

4 {9} Petitioner, a voter residing within the District, petitioned the district court for
5 a writ of mandamus requiring the District and the Commission to redraw the
6 geographic voting zones approved by the Commission for the election of District
7 supervisors to conform to the United States Constitution’s “one person, one vote”
8 requirement. Petitioner claimed that the Equal Protection Clause of the Fourteenth
9 Amendment to the United States Constitution requires that any geographic drawing
10 of zones take population into account “mak[ing] those districts or zones as equal in
11 population as feasible so that all voters within the [District’s] jurisdiction are equal.”

12 {10} The district court held an evidentiary hearing on the merits of the petition,
13 taking evidence from both the District and Commission witnesses on the factors they
14 considered in drawing the boundaries of the District’s voting zones; the functions
15 and authority exercised by the District, including the District’s authority to allocate
16 project funds, to tax, to take political positions, and to engage in government
17 activities; as well as on the number of voters in each of the four voting zones.

18 {11} The District was divided into voting zones in 2015. Before that, the District
19 voted at-large for the five elected supervisors. In order to obtain approval for its
20 division into geographic voting zones, the District submitted to the Commission a

1 proposed map showing four voting zones; the registered voters in each zone would
2 elect one supervisor to the governing board of supervisors. The fifth supervisor
3 would be elected at large, by a majority vote of the voters in all four zones. The
4 District witnesses admitted that the voting zone boundaries were drawn solely on the
5 basis of “watershed geography,” without regard to the population of each zone, and
6 without any attempt to equalize the number of voters residing in each of the zones.

7 {12} The district court found that the District voting zones were substantially
8 unequal in population; specifically, the court found that 17,556 registered voters
9 lived in Zone 1; 19,881 registered voters lived in Zone 2; 14,869 registered voters
10 lived in Zone 3; and 62,784 voters lived in Zone 4, where Petitioner resides. Based
11 on these figures, approximately 52,306 registered voters were collectively entitled
12 to elect three supervisors to the District’s governing board, while the remaining
13 62,784 voters (a majority of voters in the District) were entitled to elect only one
14 supervisor. In other words, the vote of a registered voter in the electoral zone with
15 the least population, Zone 3, carried more than four times the weight of a vote cast
16 in Zone 4.²

²The district court also found that the District’s board of supervisors took political positions, claiming to represent the views of the majority of voters living within the District, and that the board of supervisors voted on a state-wide land use plan, and allocated money between the respective zones for conservation and development.

1 {13} The district court found that “the citizens of Zone 4 [where Petitioner resides]
2 are not equitably represented.” Concluding that the Commission’s actions “violated
3 the ‘one person, one vote’ constitutional mandate, as well as [the Commission’s]
4 statutory duty to ensure proper and equitable representation for voters,” the district
5 court issued a writ of mandamus directing the Commission to “redraw the zone
6 boundaries in the . . . District to more equitably reflect the ‘one person, one vote’
7 constitutional mandate.”

8 {14} When the Commission argued at rehearing that it lacked the statutory
9 authority to redraw the voting zones without a District proposal, the district court
10 modified the writ to require the Commission to withdraw its approval of the District
11 voting zones, thereby returning the District to at-large voting where each vote would
12 count equally.³

13 **DISCUSSION**

14 {15} The Commission does not deny that the District’s voting zones do not contain
15 “as nearly . . . equal population as is practicable,” *see Maestas*, 2012-NMSC-006,
16 ¶ 1, or that Petitioner’s vote and the votes of others who happen to reside in Zone 4

³We note that the writ does not preclude the District from drawing, and the Commission from approving geographic electoral zones, so long as those zones contain “as nearly . . . equal population as is practicable,” in conformance with the Equal Protection Clause. *Maestas*, 2012-NMSC-006, ¶ 1 (internal quotation marks and citation omitted).

1 are significantly diluted solely because of the location of their residence. The
2 Commission instead asserts that Section 73-20-39 of the Act authorizes the
3 Commission to approve voting zones drawn based solely on geographic features,
4 without regard to population, and that such a departure from the norm of equal voting
5 is constitutional because the districts are “governmental entities created primarily
6 for limited purposes,” *Wilson v. Denver*, 1998-NMSC-016, ¶ 28, 125 N.M. 308, 961
7 P.2d. 153, a narrow exception to the “one person, one vote” requirement recognized
8 by both the United States Supreme Court and our Supreme Court. *Id.*; *see also Ball*
9 *v. James*, 451 U.S. 355, 364-68 (1981) (same).

10 {16} Petitioner responds by pointing out that the exception to the “one person, one
11 vote” requirement for limited-purpose entities applies only if our Legislature has
12 clearly provided that equal voting is not required. Our Supreme Court in *Wilson*
13 provides the analysis this Court applies when a government entity uses a voting
14 system that departs from the “one person, one vote” requirement. 1998-NMSC-016,
15 ¶ 31 (internal quotation marks and citation omitted). Consistent with Petitioner’s
16 argument, *Wilson* holds that a departure from the “one person, one vote” requirement
17 is permissible only when (1) the Legislature, by statute, has clearly stated its intent
18 to authorize such a departure, and (2) the legislative authorization is in compliance
19 with the Constitution. *See id.*

1 {17} We agree with Petitioner that Section 73-20-39 does not authorize a departure
2 from the principle of “one person, one vote” in electing district supervisors.
3 Although the Commission has focused in its appellate briefing almost entirely on
4 whether a deviation from the “one person, one vote” requirement would be
5 constitutional if authorized by our Legislature, we do not reach that question. We
6 construe Section 73-20-39 to require that any geographic voting zone boundaries for
7 the election of district supervisors comply with the “one person, one vote”
8 constitutional requirement.

9 **I. The Relevant Principles of Statutory Construction**

10 {18} The interpretation of a statute is an issue of law that is subject to de novo
11 review by our appellate courts. *Hovet v. Allstate Ins. Co.*, 2004-NMSC-010, ¶ 10,
12 135 N.M. 397, 89 P.3d 69. Our goal in construing a statute is to “ascertain and give
13 effect to the intent of the Legislature.” *State v. Smith*, 2004-NMSC-032, ¶ 8, 136
14 N.M. 372, 98 P.3d 1022 (internal quotation marks and citation omitted).

15 {19} “In construing a statute, we look first to the plain language of the statute as
16 the primary indicator of legislative intent, and we construe the words of a statute
17 according to their ordinary meaning absent evidence of legislative intent to the
18 contrary.” *Wilson*, 1998-NMSC-016, ¶ 16 (internal quotation marks and citation
19 omitted). We exercise caution, however, about applying a rigid, literal reading of
20 statutory language, aware that such a reading can easily result in a misunderstanding

1 of legislative policy and intent. *See Smith*, 2004-NMSC-032, ¶ 9. We do not read
2 statutes in a vacuum: in ascertaining legislative intent, we must read all provisions
3 of a statute together, and with other statutes in pari materia, presuming that the
4 Legislature acted with full knowledge of relevant statutory and common law. *See*
5 *Baker v. Hedstrom*, 2013-NMSC-043, ¶ 26, 309 P.3d 1047.

6 {20} Moreover, in cases where the statute at issue implicates the “one person, one
7 vote” requirement, we are directed by our Supreme Court to “strictly construe
8 statutes tending to limit the right to vote in favor of equal voting.” *Wilson*, 1998-
9 NMSC-016, ¶¶ 30-31. “We will not infer a limitation on the right to equal voting
10 absent clear legislative intent to the contrary.” *Id.*

11 **II. Section 73-20-39 Does Not Express Clear Legislative Intent to Limit the** 12 **Right to Equal Voting**

13 {21} We begin our analysis “by looking first to the words chosen by the Legislature
14 and the plain meaning of the Legislature’s language.” *State v. Davis*, 2003-NMSC-
15 022, ¶ 6, 134 N.M. 172, 74 P.3d 1064 (internal quotation marks and citation
16 omitted). Section 73-20-39 of the Act states, in relevant part, as follows:

17 In adopting and publishing rules for the election of supervisors and the
18 registration of district voters, the commission may, to ensure proper
19 representation of district voters and to facilitate district functions,
20 provide for the geographic zoning of a district. The commission shall
21 provide for the proper and equitable representation for each faction
22 geographically zoned in the district.

1 {22} The Commission relies on the Legislature’s grant of authority to the
2 Commission, in the first sentence of the section: “to provide for the geographic
3 zoning of a district.” *Id.* This language, the Commission argues, “giv[es the
4 Commission] the flexibility to zone based on geography, not population.”

5 {23} We do not agree. When the words used by the Legislature are read in context
6 and given their ordinary meaning, they support the construction advanced by
7 Petitioner, not the Commission’s construction. *See* NMSA 1978, § 12-2A-2 (1997)
8 (“Unless a word or phrase is defined in the statute or rule being construed, its
9 meaning is determined by its context, the rules of grammar and common usage.”).
10 Applying these principles, we note that, in the very sentence giving the Commission
11 authority to approve geographic zoning of a district, the Legislature states the
12 purposes that must guide the Commission’s use of this authority—“to ensure proper
13 representation of district voters and to facilitate district functions.” Section 73-20-
14 39. Neither purpose stands alone. “Proper representation of district voters” is the
15 first requirement. *Id.*

16 {24} The Legislature’s focus on “proper representation of district voters” in the
17 section governing elections is consistent with the Legislature’s statement of purpose
18 at the outset of the Act. *Id.* The Act’s statement of purpose focuses on protecting and
19 using the state’s natural resources to promote the health and welfare of all citizens.
20 It envisions a benefit and an interest shared by all citizens, not just a small group of

1 landowners. Section 73-20-26(A)(1) and (3) state, that the purpose of the Act is to
2 encourage “appropriate corrective and conservation practices and programs,” and to
3 “conserve and develop beneficially the soil, water and other natural resources of the
4 state,” so as to “promote the health and general welfare of the people of the state.”
5 *See State ex rel. Helman v. Gallegos*, 1994-NMSC-023, ¶ 23, 117 N.M. 346, 871
6 P.2d 1352 (“[I]t is part of the essence of judicial responsibility to search for and
7 effectuate the legislative intent—the purpose or object—underlying the statute.”).

8 {25} Even if some district functions or projects are based on the geography of a
9 particular area, the Legislature has addressed that by allowing the creation of
10 geographic voting zones. The Commission fails to present any reason justifying their
11 construction of the phrase “proper representation of district voters” to place
12 watershed boundaries above assigning equal weight to each vote. Section 73-20-39.
13 The Legislature has emphasized the requirement that any drawing of geographic
14 voting zones also ensure “proper representation of district voters” by repeating in
15 the following sentence of Section 73-20-39 the requirement that there be both
16 “proper and equitable representation.” *Id.*

17 {26} We note that many voting systems authorized by our Legislature, including
18 our system for electing state legislators, rely on geographic districting, while at the
19 same time requiring those districts to be drawn so as to protect the principle of “one
20 person, one vote.” Our Legislature must be presumed to have been aware of these

1 other statutes that take both geography and population into account. *Baker*, 2013-
2 NMSC-043, ¶ 26 (presuming “that the Legislature acted with full knowledge of
3 relevant statutory and common law” (alteration, internal quotation marks, and
4 citation omitted)).

5 {27} We fail to see in Section 73-20-39 the plain language that is required to
6 overcome the presumption that the Legislature intends to provide for equal voting,
7 absent clear legislative intent to the contrary. *Wilson*, 1998-NMSC-016, ¶ 31. “[W]e
8 should expect that a [L]egislature elected on the rule of one person, one vote will be
9 vigilant to prevent undue concentration of power in the hands of undemocratic
10 bodies.” *Ball*, 451 U.S. at 373 (Powell, J., concurring).


11 {28} We do not find merit in the Commission’s argument that had the Legislature
12 intended to require the districts to divide the population among the geographic zones
13 to ensure each vote would have equal or nearly equal weight, it could easily have
14 said so. Although this may be true, our responsibility is to carefully assess the words
15 actually used by the Legislature. *See Perea v. Baca*, 1980-NMSC-079, ¶ 22, 94 N.M.
16 624, 614 P.2d 54 (“A statute must be read and given effect as it is written by the
17 Legislature[.]” (internal quotation marks and citation omitted)). And, in this case, to
18 the extent there is any lack of clarity in the statutory language, we follow the
19 directive of our Supreme Court to “strictly construe statutes tending to limit the right
20 to vote in favor of equal voting.” *Wilson*, 1998-NMSC-016, ¶ 31.

1 {29} In sum, we do not construe Section 73-20-39 as revealing the clear legislative
2 intent necessary to justify departure from the “one person, one vote” requirement.
3 We therefore agree with the district court that the Commission exceeded its statutory
4 authority under Section 73-20-39, and therefore also violated the Equal Protection
5 Clause by approving the unequal voting zones at issue in this case.⁴

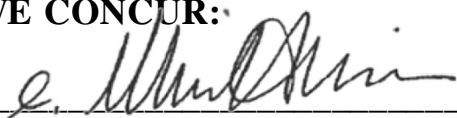
6 **CONCLUSION**

7 {30} We conclude that the district court appropriately granted a writ of mandamus
8 ordering the Commission to withdraw its approval of the District’s voting zones
9 because the inequality in population of the zones conflicts with both Section 73-20-
10 39, and with the Equal Protection Clause of the United States Constitution.

11 {31} **IT IS SO ORDERED.**

12 
13 _____
JANE B. YOHALEM, Judge

14 **WE CONCUR:**

15 
16 _____
J. MILES HANISEE, Chief Judge

17 
18 _____
SHAMMA H. HENDERSON, Judge

⁴Because we resolve this appeal on the ground that our Legislature has required compliance with the “one person, one vote” requirement of the Equal Protection Clause, we do not reach the parties’ hypothetical dispute about whether it would have been constitutional for the Legislature to have adopted or allowed the districts and Commission to adopt an unequal voting scheme.