

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: June 29, 2026



Mark Reynolds

4 **No. A-1-CA-42344**

5 **STATE OF NEW MEXICO ex rel.**
6 **THOMAS MCGILL,**

7 Plaintiff,

8 v.

9 **JOHN BASSETT, Individually,**
10 **and JOHN BASSETT, in his capacity**
11 **as Mayor for the Town of Edgewood,**

12 Defendant,

13 and

14 **GOVERNING BODY for the**
15 **Town of Edgewood,**

16 Plaintiff/Intervenor-Appellee,

17 v.

18 **JOHN BASSETT, Individually,**
19 **and JOHN BASSETT, in his capacity**
20 **as Mayor for the Town of Edgewood,**

21 Defendant,

1 v.

2 **JOSEPHINE E. BASSETT, Individually;**
3 **JOSEPHINE C. BASSETT, or her successor-in-**
4 **office, as Trustee of the BASSETT TRUST, u/t/a**
5 **April 30, 2000; JOSEPHINE C. BASSETT,**
6 **or her successor-in-office, as Trustee of the**
7 **SURVIVOR'S TRUST, u/t/a January 30, 2005;**
8 **and EUGENE BASSETT,**

9 Defendants-Appellants.

10 **APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY**
11 **Maria Sanchez-Gagne, District Court Judge**

12 VanAmberg, Rogers, Yepa, Abeita,
13 Gomez & Wilkinson, LLP
14 Ronald J. VanAmberg
15 Santa Fe, NM

16 for Appellee

17 Patterson Real Bird & Rasmussen LLP
18 Frances C. Bassett
19 Louisville, CO

20 for Appellants

1 **OPINION**

2 **DUFFY, Judge.**

3 {1} Defendants Josephine Bassett¹ and Eugene Bassett filed this appeal pursuant
4 to NMSA 1978, Section 38-2-9.1 (2001), the New Mexico statute prohibiting
5 strategic litigation against public participation (Anti-SLAPP statute). Defendants
6 argue the district court erred by ruling that the Anti-SLAPP statute does not apply
7 and denying their motions for summary judgment.² Because we conclude
8 Defendants have not identified any protected “conduct or speech undertaken or made
9 in connection with a public hearing or public meeting,” *see* § 38-2-9.1(A), we
10 dismiss Defendants’ appeal as premature.

11 **BACKGROUND**

12 {2} Defendants’ appeal stems from a lawsuit filed in February 2020 by three
13 residents of Edgewood against the then-Mayor of the Town of Edgewood, John
14 Bassett, along with the Governing Body for the Town of Edgewood and Defendants
15 Josephine Bassett and Eugene Bassett, who are the mother and brother, respectively,

¹Defendants’ briefing states that Josephine passed away during the pendency of this appeal. The caption remains unchanged because no suggestion of death or motion under Rule 12-301 NMRA has been filed.

²Defendants also argue that the district court erred by denying their joint motion to strike and their request for attorney fees and costs. However, we do not address either of these issues within this opinion because our appellate jurisdiction under Section 38-2-9.1(C) is limited to the special motions described in Section 38-2-9.1(B). *See Valenzuela v. My Way Holdings, LLC*, 2024-NMCA-009, ¶ 23, 541 P.3d 191.

1 of John Bassett. The initial complaint alleged claims for quo warranto, declaratory
2 judgment, writ of mandamus, and fraud, and was later amended to include an unjust
3 enrichment claim against Defendants and a qui tam claim for violation of the state’s
4 Fraud Against Taxpayers Act (FATA), NMSA 1978, §§ 44-9-1 to -14 (2007, as
5 amended through 2015), against John Bassett and Josephine Bassett. Upon the entry
6 of a district court order for partial summary and default judgment in the action, John
7 Bassett was removed from office in November 2020. Plaintiffs then voluntarily
8 dismissed Defendants from the action in February 2022.

9 {3} However, in February 2023, this Court reversed the district court’s order on
10 the basis that the district court lacked personal jurisdiction over John Bassett and
11 remanded the case for further proceedings. *See State ex rel. McGill v. Bassett*, 2023-
12 NMCA-033, 528 P.3d 739. Upon remand and following a change in the Town’s
13 leadership, the Town became an intervening plaintiff in the action and filed a
14 complaint that included a claim for unjust enrichment against Defendants Josephine
15 Bassett and Eugene Bassett. The Town’s complaint also included a FATA claim
16 against John Bassett and Josephine Bassett. The Town acknowledged John Bassett
17 as the main actor in the alleged fraud and later stipulated to the dismissal of that
18 claim as against Josephine. As a result, the Town’s only remaining claim against
19 Josephine Bassett and Eugene Bassett—which sits at the center of this appeal—is an

1 unjust enrichment claim relating to the Town’s installation of a sewer collection line
2 extension in 2018-19 servicing properties owned by Defendants.

3 {4} The sewer line extension was installed near the northeast quadrant of the
4 Interstate 40 and N.M. State Road 344 interchange and runs through property owned
5 by Defendants. At a public meeting held on June 20, 2018, the town council voted
6 3-to-1 to approve construction of Phase 1 of the sewer line extension, which was
7 referred to at the time as the “sewer line construction on Church, Cactus, and Main,”
8 in reference to the roads located north, northeast, and east of the northeast quadrant
9 of the I-40/NM-344 interchange. Then-Mayor John Bassett was present at the
10 meeting but did not participate in the vote. Neither Josephine nor Eugene Bassett
11 claim to have been in attendance at the June 20, 2018, meeting. The Town’s
12 complaint asserted the following factual allegations to support its unjust enrichment
13 claim against Defendants:

14 Defendants Josephine, Eugene and John Bassett are property owners
15 along with the Bassett Trust of properties with the Town of
16 Edgewood[,] which would benefit significantly if sewer lines were
17 extended to some or all of their properties by opening up development
18 possibilities.

19 In around 2013, the Bassetts became aware of the Town’s efforts at
20 expanding the sewer system and began their own efforts to have the
21 Town locate the sewer lines so that they benefited Bassett property.

22 In 2016, [John] Bassett became the mayor and began efforts to
23 manipulate the Town process so that Bassett property could benefit
24 from the sewer line extensions.

1 [T]o aid in the effort to direct the sewer lines to Bassett property,
2 Josephine Bassett executed some 5 sewer line easements across Bassett
3 property in favor of the Town prepared by Smith Engineering [at] Town
4 expense. These easements were intended to accommodate sewer lines
5 that would service Bassett property.

6 [A]t Town expense, sewer lines were installed at a time and place not
7 authorized by the Town[.] Thus, at Town expense and as a result of
8 [John] Bassett’s fraud, deceit and misrepresentations, [John] Bassett
9 was able [to] maneuver[] the Town process for the financial benefit of
10 himself, Josephine Bassett, Eugene Bassett and the Bassett Trust.

11 After construction it was realized that Phase 1 sewer lines were placed
12 in the Bassett easements so that the lines were inside of Bassett property
13 and doubled the development capacity for the property. Further, the
14 Town lost the benefit of having the lines within a road right-of-way[,]
15 which would provide greater public access.

16 The foregoing are the only allegations in the complaint against Josephine or Eugene
17 Bassett relating to the location and installation of the sewer line extension.

18 {5} In response to the Town’s complaint, Josephine and Eugene each filed a
19 motion for summary judgment in which they raised the New Mexico Anti-SLAPP
20 statute. Defendants argued that the unjust enrichment claim should be dismissed
21 under the Anti-SLAPP statute because they were “being sued for constitutionally
22 protected speech and conduct,” which they “undertook in relation, or response, to
23 the Edgewood town council meeting on June 20, 2018”—the meeting at which the
24 council voted to approve the 2018-19 sewer line extension.

25 {6} At the hearing on the motions, the Town argued that it sued Defendants
26 Josephine and Eugene Bassett for unjust enrichment “because their brother or son

1 manipulated the process as relates to sewer line priority, funding, and location” to
2 benefit Bassett property. The Town suggested that Defendants received a benefit
3 from having access to public sewer lines because they planned to develop the
4 property, and “it’s a matter of common sense that if you have access to [a] public
5 sewer, you’re going to be benefitted much more than having to . . . dig septic
6 systems, particularly if you’re going to do a major development.” The Town alleged
7 that it had limited funding for sewer line development, and the town council created
8 location priorities. According to the Town, John overrode those priorities to have the
9 sewer line moved south through Bassett property to add additional sewer taps for the
10 property. The Town explained that it brought a claim for unjust enrichment to
11 recover its limited funds, and included Josephine, Eugene, and the Bassett trusts and
12 limited liability companies as parties because each was presumably a beneficiary of
13 John Bassett’s manipulation—though, since Defendants’ motions were filed before
14 discovery, the Town indicated it had yet to confirm who owned the benefitted
15 properties and would have liked to have gotten that information through discovery
16 before responding to the motions.

17 {7} Following the hearing, the district court denied Defendants’ motions. The
18 court found that the Anti-SLAPP statute was inapplicable because the Town’s claim
19 “is an equitable claim for [u]njust [e]nrichment relating to the placement of the sewer
20 line and does not relate to any claim for damages resulting from actions taken by

1 Josephine Bassett or Eugene Bassett at any [c]ouncil meeting.” Defendants then filed
2 this appeal, seeking an expedited interlocutory review under the Anti-SLAPP statute.
3 *See* § 38-2-9.1(C).

4 **DISCUSSION**

5 {8} On appeal, Defendants argue the district court erred in ruling that the Anti-
6 SLAPP statute was inapplicable and in denying their motions for summary
7 judgment. “[B]efore we reach the merits of Defendants’ appeal, we must determine
8 whether [Defendants engaged in conduct or speech that] fall[s] within the procedural
9 protections of the Anti-SLAPP statute granting any party the right to an expedited
10 appeal from a trial court order on a special motion.” *Chandler v. Advance N.M. Now*
11 *PAC*, 2021-NMCA-017, ¶ 6, 488 P.3d 691 (alterations, omission, internal quotation
12 marks, and citation omitted); § 38-2-9.1(C). If the claims do not fall within the
13 purview of the Anti-SLAPP statute, then this Court does not have jurisdiction to
14 consider the merits of the district court’s ruling. *See Chandler*, 2021-NMCA-017,
15 ¶ 20; *see also Ferebee v. Hume*, 2021-NMCA-012, ¶¶ 7, 28, 485 P.3d 778 (holding
16 that the defendants were not entitled to avail themselves of the expedited appeal right
17 provided by Section 38-2-9.1(C), and the appeal was therefore premature because
18 the order appealed from was otherwise nonfinal). “The question of jurisdiction is a
19 controlling consideration that must be resolved before going further.” *Ferebee*,

1 2021-NMCA-012, ¶ 7 (internal quotation marks, and citation omitted). “We review
2 jurisdictional questions de novo.” *Id.* (internal quotation marks and citation omitted).

3 ¶9) We begin our review of the jurisdictional question with an overview of the
4 Anti-SLAPP statute before turning to Defendants’ arguments about why it should
5 apply in this case. “The Legislature enacted the Anti-SLAPP statute with the policy
6 goal of protecting its citizens from lawsuits in retaliation for exercising their right to
7 petition and to participate in quasi-judicial proceedings.” *Cordova v. Cline*, 2017-
8 NMSC-020, ¶ 19, 396 P.3d 159; NMSA 1978, § 38-2-9.2 (2001). To accomplish
9 this goal, “[t]he Anti-SLAPP statute provides certain procedural protections to
10 persons who engage in conduct or speech made in connection with specified public
11 hearings or public meetings.” *Chandler*, 2021-NMCA-017, ¶ 7; § 38-2-9.1(A)-(C).
12 Those protections include an expedited ruling on special motions, costs and attorney
13 fees incurred in pursuing the dismissal, and a right to an expedited interlocutory
14 appeal:

15 A. Any action seeking money damages against a person for
16 *conduct or speech undertaken or made in connection with a public*
17 *hearing or public meeting in a quasi-judicial proceeding before a*
18 *tribunal or decision-making body of any political subdivision of the*
19 *state* is subject to a special motion to dismiss, motion for judgment on
20 the pleadings, or motion for summary judgment that shall be considered
21 by the court on a priority or expedited basis to ensure the early
22 consideration of the issues raised by the motion and to prevent the
23 unnecessary expense of litigation.

24 B. If the rights afforded by this section are raised as an
25 affirmative defense and if a court grants a motion to dismiss, a motion

1 for judgment on the pleadings or a motion for summary judgment filed
2 within ninety days of the filing of the moving party’s answer, the court
3 shall award reasonable attorney fees and costs incurred by the moving
4 party in defending the action. If the court finds that a special motion to
5 dismiss or motion for summary judgment is frivolous or solely intended
6 to cause unnecessary delay, the court shall award costs and reasonable
7 attorney fees to the party prevailing on the motion.

8 C. Any party shall have the right to an expedited appeal from
9 a trial court order on the special motions described in Subsection B of
10 this section or from a trial court’s failure to rule on the motion on an
11 expedited basis.

12 Section 38-2-9.1(A)-(C) (emphasis added).

13 {10} Because the Anti-SLAPP statute protects petitioning “conduct or speech
14 undertaken or made in connection with a public hearing or public meeting,” *see* § 38-
15 2-9.1(A), the starting point for our review is to “identify the challenged activities of
16 the target of the SLAPP suit in relation to their First Amendment protections.”
17 *Cordova*, 2017-NMSC-020, ¶ 18; *see also Chandler*, 2021-NMCA-017, ¶ 12
18 (observing that Section 32-8-9.1(A) protects “all activities related to the public
19 hearing or public meeting, even if they do not occur in the hearings or meetings
20 themselves” (internal quotation marks and citation omitted)). Then, to determine
21 whether the conduct or speech “is of the type the Legislature intended to protect with
22 the right to an expedited appeal when it passed the Anti-SLAPP statute, we consider
23 whether Defendants’ conduct or speech was ‘in connection with’ any of the
24 proceedings they identify for purposes of our Anti-SLAPP statute.” *Chandler*, 2021-
25 NMCA-017, ¶ 11 (quoting § 38-2-9.1(A)). “[T]o fall under the ‘in connection with’

1 definition of petitioning under the Anti-SLAPP statute, a communication must be
2 made to influence, inform, or at the very least, reach governmental bodies—either
3 directly or indirectly.” *Chandler*, 2021-NMCA-017, ¶ 14 (alterations, internal
4 quotation marks, and citation omitted). “The key requirement of this definition of
5 petitioning is the establishment of a plausible nexus between the statement and the
6 governmental proceeding.” *Id.* (internal quotation marks and citation omitted).

7 {11} Turning to the activities Defendants claim are challenged by the suit,
8 Defendants argue that “Josephine and Eugene both petitioned the Town of
9 Edgewood to extend sewer lines to an area of town that could service their
10 properties.” Defendants rely on the following conduct, which they contend is “in
11 connection with” the June 20, 2018 public meeting where the Edgewood town
12 council voted to approve construction of the 2018-19 sewer line extension:

13 (1) a November 19, 2007 joint letter to the Town of Edgewood signed by
14 Josephine Bassett and a neighbor seeking access to municipal sewer lines for
15 their properties and pledging to grant sewer line easements in return for access

16 (2) Josephine and Eugene Bassett’s signatures on a citizens’ petition presented
17 to the Town in 2014, urging the Town to seek funding for the extension of
18 municipal sewer lines to the northeast quadrant of the I-40/NM-344
19 interchange and Josephine Bassett’s signature on a similar citizens’ petition
20 presented to the Town in 2016;

21 (3) Eugene Bassett’s attendance at a 2014 town council meeting to advocate
22 in support of the sewer-line extension;

23 (4) Josephine Bassett’s communications with the staff and engineers for the
24 Town between 2017 and 2018 regarding municipal sewer line easements
25 across her property;

1 (5) Josephine Bassett’s donation of temporary and permanent easements
2 across her property to the Town in 2018; and

3 (6) Josephine and Eugene Bassett’s familial association with former Mayor
4 John Bassett.

5 Our task is to determine whether there is a link between these activities and the June
6 20, 2018 public meeting. *See Chandler, 2021-NMCA-017, ¶ 16.*

7 {12} The first three actions involve petitioning conduct that occurred many years
8 before the June 20, 2018 meeting, and “[w]e see no indication that [this] conduct . . .
9 was intended to influence, inform, or reach” the Town council in connection with
10 the June 20, 2018 meeting. *See id.* First, though Josephine cosigned a letter to the
11 Town on November 19, 2007, requesting sewer line access for properties owned by
12 her and a neighbor and offering to grant utility easements in return for access,
13 Defendants do not argue how this conduct related in any way to the public meeting
14 that occurred over a decade later. There is no indication that this letter initiated the
15 June 20, 2018 public meeting, *cf. Cordova, 2017-NMSC-020, ¶ 21*, and Defendants
16 have not asserted that this letter was intended to directly or indirectly influence,
17 inform, or reach the Town with respect to the vote that occurred at a public meeting
18 ten years later. *See Chandler, 2021-NMCA-017, ¶ 14.* Second, Josephine and
19 Eugene each signed citizens’ petitions in 2014 urging the Town to seek funding for
20 sewer line extensions to the northeast quadrant near the I-40/NM-344 interchange,
21 and Josephine also signed a similar citizens’ petition in 2016. But, as of the June 20,

1 2018 meeting, the Town had already sought and obtained funding for the wastewater
2 and sewer line extensions and was in the process of getting state environmental
3 agency approval of bids for the construction, and thus we can discern no “link or
4 association” between these petitions and the June 20, 2018 public hearing. *See id.*
5 ¶ 12 (“The plain language of the statute tells us that the conduct or speech at issue
6 must be linked to or associated with ‘a public hearing or public meeting in a quasi-
7 judicial proceeding’ in order to be ‘in connection with’ those proceedings.” (quoting
8 § 38-2-9.1(A))). Third, while Defendant Eugene Bassett attended an August 2014
9 town council meeting at which the subject of Edgewood’s wastewater system was
10 discussed, Defendants do not explain how this conduct can be said to relate to the
11 June 20, 2018, public meeting. *See Chandler*, 2021-NMCA-017, ¶ 14.
12 Consequently, while these actions may well be petitioning activity, we cannot
13 conclude that they were undertaken “in connection with” the June 20, 2018, meeting.
14 {13} Likewise, Defendants have not shown how the fourth and fifth activities, both
15 of which relate to easements, constitute petitioning conduct or speech made in
16 connection with the June 20, 2018 meeting. Defendants alleged that Josephine was
17 approached by engineers with a request for sewer line easements in 2017 and, in
18 response, she granted the easements as a donation to public use. Then, in January
19 2018, Josephine again donated an easement after receiving a letter from the Town
20 requesting the easement. Defendants argue that the easements constitute political

1 speech and “the First Amendment’s protection extends to Josephine’s generous
2 donation of public utility easements.” But this Court has previously held that “New
3 Mexico’s Anti-SLAPP statute does not expressly apply to the exercise of free
4 speech,” but rather, only to “petitioning, made for the purpose of directly or
5 indirectly influencing, informing, or reaching governmental bodies.” *See id.* ¶ 19;
6 *see also Cordova*, 2017-NMSC-020, ¶ 19 (explaining that the purpose of the Anti-
7 SLAPP statute is to protect citizens in exercising their right to petition and to
8 participate in quasi-judicial proceedings and public hearings). Like in *Chandler*,
9 Defendants have characterized their conduct not as petitioning, “but as an exercise
10 of constitutionally protected free speech.” *See Chandler*, 2021-NMCA-017, ¶ 19. As
11 with *Chandler*, we conclude that the Anti-SLAPP statute does not apply to such
12 conduct. *Id.*

13 {14} The sixth and final “activity” relied on by Defendants is their familial
14 association with former-Mayor John Bassett. Defendants argue their association is
15 protected by the First Amendment and federal case law establishing the right of
16 association. *See N.A.A.C.P. v. Claiborne Hardware Co.*, 458 U.S. 886, 918-19
17 (1982) (“The First Amendment . . . restricts the ability of the State to impose liability
18 on an individual solely because of [one’s] association with another.”). However, just
19 as with the general exercise of free speech discussed above, New Mexico’s Anti-
20 SLAPP statute does not expressly apply to the right of association, and “we decline

1 to add such language into the statute.” *See Chandler*, 2021-NMCA-017, ¶ 19; *see*
2 *also Cordova*, 2017-NMSC-020, ¶ 19.

3 {15} For all of these reasons, we conclude that none of the conduct or speech
4 identified by Defendants can be said to have been “undertaken or made in connection
5 with” the June 20, 2018 public meeting. Section 38-2-9.1(A). “As Defendants’
6 conduct or speech does not fall within the protections of the Anti-SLAPP statute, we
7 do not have jurisdiction to address the district court’s ruling” on the merits of
8 Plaintiffs’ motions for summary judgment. *See Chandler*, 2021-NMCA-017, ¶ 20.

9 {16} As a final matter, we pause to clarify that although we affirm the district
10 court’s conclusion that the Anti-SLAPP statute does not apply, the district court’s
11 framing of its conclusion—that the complaint does not “relate to any claim for
12 damages resulting from actions taken by [Defendants] *at any [c]ouncil meeting*”—
13 appears to conflict with *Cordova* and *Chandler*, which made clear that the Anti-
14 SLAPP statute “includes all activities related to the public hearing or public meeting,
15 *even if they do not occur in the hearings or meetings themselves.*” *Chandler*, 2021-
16 NMCA-017, ¶ 12 (emphasis added) (internal quotation marks and citation omitted);
17 *Cordova*, 2017-NMSC-020, ¶¶ 21-22.³ Even so, our review is *de novo* and, having

³Defendants devoted a portion of their briefing to argue why the conduct at issue in this case is immunized under the First Amendment of the U.S. Constitution and the *Noerr-Pennington* doctrine. Because we conclude Defendants’ conduct is not petitioning conduct within the procedural protections of the Anti-SLAPP statute, we need not proceed to a *Noerr-Pennington* analysis in this appeal. *See Cordova*,

1 reviewed the conduct identified by Defendants based on the standard articulated in
2 *Cordova* and *Chandler*, we have independently concluded that the Anti-SLAPP
3 statute is inapplicable. *See Strata Prod. Co. v. Mercury Expl. Co.*, 1996-NMSC-016,
4 ¶ 12, 121 N.M. 622, 916 P.2d 822 (“We are not bound, however, by the trial court’s
5 legal conclusions and may independently draw our own conclusions of law on
6 appeal.”); *C.R. Anthony Co. v. Loretto Mall Partners*, 1991-NMSC-070, ¶ 18, 112
7 N.M. 504, 817 P.2d 238 (stating that “an appellate court need not defer to the trial
8 court’s conclusions of law”).

9 **CONCLUSION**

10 {17} For the above reasons, we dismiss Defendants’ appeal of the district court’s
11 denial of their motions for summary judgment as premature, and remand to the
12 district court for further proceedings.

13 {18} **IT IS SO ORDERED.**

14 
15 MEGAN P. DUFFY, Judge

2017-NMSC-020, ¶ 24 (“While the Anti-SLAPP statute provides the procedural
protections [the p]etitioners require, the *Noerr-Pennington* doctrine is the
mechanism that offers [the p]etitioners the substantive First Amendment protections
they seek.”); *Ferebee*, 2021-NMCA-012, ¶ 26 (declining to proceed to a *Noerr-
Pennington* analysis after reaching a conclusion that the Anti-SLAPP statute did not
apply to the conduct at issue); *Valenzuela*, 2024-NMCA-009, ¶¶ 31-47.

1 **I CONCUR:**

2 

3 **SHAMMARA H. HENDERSON, Judge**

4 **KRISTOPHER N. HOUGHTON, Judge, specially concurring**

1 **HOUGHTON, Judge (specially concurring).**

2 {19} I concur in the result reached by the majority opinion. I write separately,
3 however, because I believe the majority’s rationale improperly limits the conduct
4 and speech protected by New Mexico’s Anti-SLAPP statute, as established by
5 *Cordova*, 2017-NMSC-020, ¶ 19. I would hold, instead, that Defendants failed to
6 show, as a matter of undisputed material fact, that their protected activity was the
7 target of the Town’s unjust enrichment action.

8 {20} The majority acknowledges that Defendants may have engaged in “petitioning
9 conduct” by sending letters, signing petitions, and attending a public hearing in an
10 effort to convince the Town to extend its sewer line to and through Defendants’
11 properties. *Maj. op.* ¶ 12. But the majority says it cannot conclude the conduct was
12 done “in connection with” the public town council meeting held on June 20, 2018,
13 because it “occurred many years before” and “Defendants do not explain how this
14 conduct can be said to relate to [it].” *Maj. op.* ¶ 12. Accordingly, the majority
15 concludes that “Defendants’ conduct or speech does not fall within the protections
16 of the Anti-SLAPP statute.” *Maj. op.* ¶ 15. This reasoning is inconsistent with our
17 precedent and sets too high a bar for litigants seeking the protection of the Anti-
18 SLAPP statute.

19 {21} We have previously been cautioned against narrowly construing the activities
20 protected by the Anti-SLAPP statute. In *Cordova*, our Supreme Court reversed this

1 Court for holding that the Anti-SLAPP statute did not apply because a recall
2 petitioning process under the Local School Board Member Recall Act triggered a
3 “sufficiency hearing before a district court,” which this Court held was “not a public
4 meeting or quasi-judicial proceeding as defined by the Anti-SLAPP statute.” 2017-
5 NMSC-020, ¶ 22 (internal quotation marks and citation omitted). Our Supreme
6 Court held that “[t]he Court of Appeals erred when it focused solely on the
7 sufficiency hearing before the district court.” *Id.* It explained that “[s]uch a narrow
8 interpretation of the language of the Anti-SLAPP statute is contrary to the
9 Legislature’s broad intent to protect citizens exercising their right to petition—here
10 the right to engage in the recall process—from SLAPP suits.” *Id.* Our Supreme Court
11 concluded: “[W]e hold that the Legislature intended the Anti-SLAPP statute to
12 protect individuals, like [the p]etitioners, from lawsuits intended to chill their
13 participation in recall proceedings.” *Id.* ¶ 23.

14 {22} Consistent with *Cordova*, this Court has further defined conduct made “in
15 connection with” as that which is “made to influence, inform, or at the very least,
16 reach governmental bodies—either directly or indirectly.” *Chandler*, 2021-NMCA-
17 017, ¶ 14 (internal quotation marks and citation omitted); *see id.* (“The key
18 requirement of this definition of petitioning is the establishment of a plausible nexus
19 between the statement and the governmental proceeding.” (internal quotation marks
20 and citation omitted)). This Court explained that “this expansive definition comports

1 with *Cordova*'s inclusion of activities that, although conducted outside the potential
2 sufficiency hearing's proceedings, sought to initiate a process by which an elected
3 official may [be] recalled." *Chandler*, 2021-NMCA-017, ¶ 14.

4 {23} In light of the broad interpretation of "in connection with," I do not see how
5 Defendants' lobbying and petitioning efforts, which were meant to convince the
6 Town to extend the sewer line, lack a plausible nexus to the June 20, 2018 town
7 council meeting, where that action was ultimately approved. I do not believe
8 Defendants needed to have requested a specific hearing, or that a specific hearing
9 needed to have been scheduled, for Defendants' activities to fall under the Anti-
10 SLAPP statute, as the majority suggests. The conduct merely needed to be "engaged
11 in for the purpose of petitioning or participating in proceedings before a local or state
12 governmental tribunal." *Id.* ¶ 15. There is no dispute that Defendants very much
13 intended "to influence, inform, or . . . reach" the Town and convince it to extend the
14 sewer line to and through their property. *See id.* ¶ 14.

15 {24} The majority's opinion has the potential to undermine protection for conduct
16 at the heart of the most classic of SLAPP suits. *See* Frederick M. Rowe & Leo M.
17 Romero, *Resolving Land-Use Disputes by Intimidation: SLAPP Suits in New*
18 *Mexico*, 32 N.M. L. Rev. 217, 218 (2002) ("The typical SLAPP suit involves citizens
19 opposed to a particular real estate development." (internal quotation marks and
20 citation omitted)). For example, the municipal approval process for a development

1 can take years and involve scores of public hearings and proceedings, and citizen
2 opposition can take many forms during that process. *See Cordova, 2017-NMSC-*
3 *020, ¶ 19* (“The specific protection in the Anti-SLAPP statute for participation in
4 public hearings before tribunals . . . [should] protect citizens’ testifying, debating,
5 complaining, campaigning, lobbying, litigating, appealing, demonstrating, and
6 otherwise invoking the law on public issues.” (internal quotation marks and citation
7 omitted)). The majority implies that New Mexico’s Anti-SLAPP statute does not
8 protect citizen opposition to a development project if it is not directed at a *specific*
9 public hearing or proceeding, rather than the process as a whole. *Maj. op. ¶ 15*. It
10 also suggests that the passage of time between the citizens’ activity and the
11 government’s ultimate decision diminishes the protections afforded by the Anti-
12 SLAPP statute. *Maj. op. ¶ 12*. Under the majority’s view, these citizens would not
13 be protected by the Anti-SLAPP statute from a retaliatory suit brought by the
14 developer to punish their previous opposition.

15 {25} Rather than unnecessarily narrowing our Supreme Court’s broad
16 interpretation of “in connection with” and undermining the Anti-SLAPP Act’s
17 important protections, I would instead focus on the lack of nexus, in this case,
18 between the Town’s suit for unjust enrichment and Defendants’ lobbying and
19 petitioning activity. I would hold that Defendants in this particular case—as a matter
20 of *undisputed* fact—have failed to show the Town targeted them *for* their petitioning

1 conduct. *See* § 38-2-9.1(A) (defining a SLAPP suit as “[a]ny action seeking money
2 damages against a person *for* conduct or speech undertaken or made in connection
3 with a public hearing or public meeting in a quasi-judicial proceeding” (emphasis
4 added)).

5 {26} As the majority explains, the only live claim the Town maintains against
6 Defendants is one for unjust enrichment. *Maj. op.* ¶ 3. But the elements of unjust
7 enrichment do not expressly target petitioning or lobbying activity, unlike claims
8 classically associated with SLAPP suits. *Compare Sloane v. Rehoboth McKinley*
9 *Christian Health Care Servs., Inc.*, 2018-NMCA-048, ¶ 25, 423 P.3d 18 (explaining
10 that “[t]he elements of unjust enrichment are: (1) another has been knowingly
11 benefitted at one’s expense (2) in a manner such that allowance of the other to retain
12 the benefit would be unjust” (internal quotation marks and citation omitted)), *with*
13 *Cordova*, 2017-NMSC-020, ¶ 26 (associating SLAPP suits with “tortious
14 interference with contract and with business relations/economic advantage,
15 defamation, violation of civil rights, abuse of process, and intentional infliction of
16 emotional distress” (internal quotation marks and citation omitted)). Unsurprisingly,
17 the Town’s unjust enrichment claim does not mention any of Defendants’ protected
18 activities.

19 {27} Lacking a claim that facially targets the protected activity, the only way
20 Defendants can show the Town’s unjust enrichment claim constitutes a SLAPP suit

1 is by showing it was filed *in retaliation for* Defendants’ protected activity. *See, e.g.,*
2 *Ferebee*, 2021-NMCA-012, ¶¶ 3-4 (involving claims for improper use of a credit
3 card, forgery, and failure to repay a loan made against an employee who argued
4 under the Anti-SLAPP statute that the claims “were made in retaliation for her
5 declarations to the Department of Commerce”). Because Defendants elected to
6 pursue this claim through summary judgment, Defendants concede they must make
7 that showing as a matter of undisputed fact. This they have not done.

8 {28} Defendants claimed the Town brought suit in retaliation for Defendants’
9 protected activity:

10 Although every single landowner along the route of the 2018-[]19
11 sewer extension had at one time or another petitioned the Town . . . for
12 construction of the sewer line extension between Cactus Road and Main
13 Street, my family and I alone have been singled out by the current
14 political leadership of the Town . . . for false and malicious allegations
15 of unjust enrichment.

16 But the Town refuted that motive in its response to Defendants’ motion for summary
17 judgment: “No one is retaliating against [Josephine] Bassett for writing letters or
18 signing petitions.” In support, the Town introduced an affidavit from its
19 commissioner, which stated in relevant part: “No petitions, written communications
20 or speech by Josephine or Eugene Bassett is in any way the basis for, or the subject
21 of, this legal action. . . . The Town . . . is not singling out the Bassett family in any
22 way.” The commissioner affirmed that the real motive for the suit was the fact that
23 former “Mayor [John] Bassett diverted the sewer priority onto Bassett lands” and

1 that “[m]ost of the Cactus/Main sewer extension borders on, or is built entirely on
2 Bassett property.” Furthermore, Defendants’ assertion that “every single landowner
3 along the route” petitioned for the sewer extension but they alone were sued, tends
4 to undermine Defendants’ claim that the Town retaliated for petitioning or other
5 protected activity.

6 {29} As a result, a genuine issue of material fact remains as to whether the Town’s
7 action was in *retaliation for* Defendants’ protected activity. Accordingly, I would
8 hold that Defendants have failed to make the requisite showing that the Town’s
9 action against them for unjust enrichment is a SLAPP suit as contemplated under
10 Section 38-2-9.1(A). Lacking appellate jurisdiction under the Anti-SLAPP statute at
11 this stage, I would dismiss the appeal as premature.

12
13 

KRISTOPHER N. HOUGHTON, Judge