

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

2 **Opinion Number:** _____

3 **Filing Date:** August 17, 2017

4 **NO. S-1-SC-35148**

5 **EL CASTILLO RETIREMENT**
6 **RESIDENCES,**

7 Petitioner-Respondent,

8 v.

9 **DOMINGO MARTINEZ, ASSESSOR,**
10 **SANTA FE COUNTY,**

11 Respondent-Petitioner.

12 **ORIGINAL PROCEEDING ON CERTIORARI**

13 **Barbara J. Vigil, District Judge**

14 Bridget Jacober

15 Santa Fe, NM

16 for Petitioner

17 Jones, Snead, Wertheim & Clifford, P.A.

18 Carol A. Clifford

19 Jerry Todd Wertheim

20 Santa Fe, NM

21 for Respondent

1 Betzer, Roybal & Eisenberg, P.C.

2 Gary D. Eisenberg

3 Albuquerque, NM

4 for Amicus Curiae

5 New Mexico Health Care Association

1 **OPINION**

2 **DANIELS, Justice.**

3 {1} Article VIII, Section 1(A) of the New Mexico Constitution sets forth a general
4 mandate that all property of the same class must be taxed in an “equal and uniform”
5 manner, while Section 3 exempts from taxation property that is, among other exempt
6 categories, “used for . . . charitable purposes.” In 2008, the New Mexico Legislature
7 created a new tax exemption for a continuing care community defined under the
8 Continuing Care Act, NMSA 1978, §§ 24-17-1 to -18 (1985, as amended through
9 2010), that “donates or renders gratuitously a portion of its services or facilities” and
10 “uses all funds remaining after payment of its . . . expenses of operation . . . to further
11 its charitable purpose, including the maintenance, improvement or expansion of its
12 facilities,” among other qualifications. NMSA 1978, § 7-36-7(B)(1)(d) (2008); *see*
13 § 24-17-3(B)-(C) (defining “community” and “continuing care”).

14 {2} Respondent El Castillo Retirement Residences is a self-sustaining retirement
15 and continuing care community, funded entirely by admission and monthly fees paid
16 by residents who have met El Castillo’s requirements for sufficient financial
17 resources, including a minimum net worth, and have satisfied specific health criteria.
18 It does not accept residents who are Medicare-dependent, Medicaid-dependent, or
19 charity-dependent or any residents who cannot afford to buy their way into the

1 community. It neither donates any significant services or property to charitable causes
2 nor uses its property primarily and substantially for a charitable purpose. While we
3 agree with the Court of Appeals that El Castillo does not use its property for
4 charitable purposes and is therefore not exempt from the constitutional requirement
5 of equal taxation, we write to clarify that Section 7-36-7(B)(1)(d) must be read in
6 harmony with controlling constitutional requirements. Accordingly, we hold that El
7 Castillo is not entitled to property-tax exemptions under either Section 7-36-
8 7(B)(1)(d) or Article VIII, Section 3 of the New Mexico Constitution because El
9 Castillo does not use its property primarily for substantial public benefit furthering
10 charitable purposes.

11 **I. BACKGROUND**

12 {3} El Castillo Retirement Residences, located in Santa Fe County, provides
13 graduated levels of care to its accepted residents, all of whom must pay an entry fee
14 upon admission and monthly fees thereafter in return for living quarters, the use of
15 shared facilities, access to coordinated social and recreational activities, and the
16 assurance that El Castillo will provide any level of care that accepted residents may
17 need as they age.

18 {4} El Castillo is funded primarily by resident fees calculated at the time of

1 admission and based on each resident's life expectancy and projected level of
2 required care. Fees are calculated to cover all of the operating costs of the facility and
3 to provide additional reserves that can be drawn on to make up deficits. It is possible
4 that particular residents will outlive their predicted life spans or require more
5 expensive medical care than anticipated so that the fees they pay would not be enough
6 to cover the entire cost of their lifetime care. Other residents may live fewer years
7 than expected, and the entry fee and monthly fees they pay to El Castillo will exceed
8 the total cost of their lifetime care.

9 {5} To minimize the facility's exposure to financial risk from this flat-fee
10 arrangement, prospective residents must meet physical, mental, and financial
11 requirements to be accepted for admission. El Castillo does not accept applicants who
12 depend solely on Medicare or Medicaid, individuals whose net worth is less than
13 \$300,000 independent of social security benefits, or those whose health issues likely
14 will require a high level of care.

15 {6} El Castillo's property was valued at \$9,860,000 for 2009 property-tax purposes
16 by the petitioner, the Santa Fe County Assessor. After receiving the notice of
17 valuation, El Castillo filed a claim for exemption of property used for charitable
18 purposes under Article VIII, Section 3 of the New Mexico Constitution and Section

1 7-36-7(B)(1)(d) of the New Mexico Property Tax Code. The Assessor denied the
2 claim because “El Castillo’s donation of services or facilities is minimal.” The
3 Assessor acknowledged that the Legislature did not textually set forth a minimum
4 level of charitable donation in Section 7-36-7(B)(1)(d) but concluded that “because
5 the constitutional grant of exemption requires primary and substantial charitable use
6 of the property, so must the statute.”

7 {7} El Castillo protested the Assessor’s denial to the Santa Fe County Valuation
8 Protests Board. The Board upheld the Assessor’s denial of the property-tax exemption
9 after finding that El Castillo had not “donate[d] or render[ed] gratuitously a portion
10 of its services or facilities” as the terms of Section 7-36-7(B)(1)(d) require. The Board
11 did not purport to address the constitutional issue separately because El Castillo did
12 not argue for an exemption under Article VIII, Section 3 separate from the statutory
13 grounds, and the parties agreed that the Board did not have jurisdiction to address the
14 “constitutional issue with regard to the statute itself.”

15 {8} El Castillo appealed the Board’s decision to the district court pursuant to the
16 district court’s appellate jurisdiction. El Castillo asked the district court to review the
17 Board’s decision which denied the exemption on statutory grounds. El Castillo argued
18 that the Board’s decision “was not supported by substantial evidence and was reached

1 in an arbitrary and capricious manner.” Additionally, El Castillo asked the district
2 court to exercise its original jurisdiction and decide whether El Castillo was exempt
3 from property valuation under Article VIII, Section 3 of the New Mexico
4 Constitution.

5 {9} El Castillo argued that by enacting Section 7-36-7(B)(1)(d) the Legislature had
6 made a policy decision within its purview, giving “new depth and meaning to Article
7 VIII, Section 3” in “acknowledg[ing] the great public benefit provided by nonprofit
8 continuing care retirement communities” and by “helping assure [their] financial
9 viability,” noting that the exemption is available to such communities that meet the
10 other requirements of Section 7-36-7(B)(1)(d) “so long as a portion of services and
11 facilities are donated or rendered gratuitously.” In addition, El Castillo argued that
12 satisfaction of the statutory claim necessarily satisfied the constitutional claim in
13 “alleviating a burden on the government by sustaining its members to a significant
14 degree, certainly far more than the tax burden that it is seeking to relieve itself of.”

15 {10} The district court did not exercise its appellate jurisdiction over the Board’s
16 decision interpreting Section 7-36-7(B)(1)(d) but instead exercised its original
17 jurisdiction over both El Castillo’s statutory and constitutional claims. Without
18 addressing any of the Board’s findings of fact, the district court issued new findings

1 of fact which contradicted the findings of the Board. The district court concluded that
2 Article VIII, Section 3 was not self-executing and that by enacting Section 7-36-
3 7(B)(1)(d), the Legislature had “spelled out how the constitutional provision ‘used
4 for charitable purposes’ is to be interpreted.” Consequently the district court declined
5 to “read into the statute a requirement that El Castillo render a ‘primary or substantial’
6 public benefit” and held that, by meeting the plain language requirements of Section
7 7-36-7(B)(1)(d), El Castillo had also fulfilled the charitable use requirements for tax
8 exemption under Article VIII, Section 3 of the New Mexico Constitution.

9 {11} The Santa Fe County Assessor appealed the district court’s decision to the
10 Court of Appeals as an appeal of right pursuant to Rule 12-201 NMRA and Rule 12-
11 202 NMRA. *El Castillo Ret. Residences v. Martinez*, 2015-NMCA-041, ¶ 7, 346 P.3d
12 1164. The Assessor argued that an appeal of right was the proper procedure because
13 the district court utilized only its original jurisdiction and not its appellate jurisdiction
14 when making its determination.

15 {12} The Court of Appeals determined it only had jurisdiction to review whether El
16 Castillo met the constitutional requirements for the tax exemption, not whether El
17 Castillo was entitled to a tax exemption under the statute. It held that the notice of
18 appeal and docketing statement “were sufficient to perfect the appeal of the

1 constitutional issue . . . [but that] the Assessor failed to file a petition for writ of
2 certiorari to perfect his appeal as to the statutory issue first decided by the Protest
3 Board and reviewed by the district court in its appellate jurisdiction.” *Id.* ¶ 8.

4 {13} The Court of Appeals reversed the district court’s conclusion that El Castillo
5 was constitutionally exempt from property taxation and held that “El Castillo did not
6 directly and immediately use its property primarily and substantially for a charitable
7 purpose recognized under Article VIII, Section 3 of the New Mexico Constitution
8 because it does not confer a substantial benefit of real worth and importance to an
9 indefinite class of persons who are members of the general public.” *El Castillo*,
10 2015-NMCA-041, ¶¶ 44-45. Because the Court of Appeals refused jurisdiction to
11 review whether El Castillo was eligible for tax exemption under the statute, it did not
12 discuss the relationship between Article VIII, Section 3 and Section 7-36-7(B)(1)(d)
13 or specify whether its reversal of the district court on constitutional grounds left intact
14 the district court’s ruling that El Castillo was entitled to exemption under the statute.
15 *See El Castillo*, 2015-NMCA-041 ¶ 12.

16 {14} We granted certiorari to consider the constitutional and statutory provisions
17 that govern permissible exemptions from equal taxation of real property in New
18 Mexico and to clarify the subject matter appropriate for appellate review in

1 circumstances such as these.

2 **II. DISCUSSION**

3 {15} Article VIII, Section 3 of the New Mexico Constitution provides no specifics
4 in its exemption of “all property used for . . . charitable purposes” from property
5 taxation. The Legislature, which previously had recognized in Section 7-36-7(B)(1)
6 that taxes may not be imposed on “property exempt from property taxation under the
7 federal or state constitution, federal law, the Property Tax Code or other laws,” added
8 Subsection (B)(1)(d) in a 2008 amendment, providing that

9 this includes property that is operated either as a community to which
10 the Continuing Care Act . . . applies or as a facility licensed by the
11 department of health to operate as a nursing facility, a skilled nursing
12 facility, an adult residential care facility, an intermediate care facility or
13 an intermediate care facility for the developmentally disabled; and is
14 owned by a charitable nursing, retirement or long-term care organization
15 that: 1) has been granted exemption from the federal income tax by the
16 United States commissioner of internal revenue as an organization
17 described in Section 501(c)(3) of the Internal Revenue Code of 1986, as
18 amended or renumbered; 2) donates or renders gratuitously a portion of
19 its services or facilities; and 3) uses all funds remaining after payment
20 of its usual and necessary expenses of operation, including the payment
21 of liens and encumbrances upon its property, to further its charitable
22 purpose, including the maintenance, improvement or expansion of its
23 facilities.

24 The statute provides no guidelines for determining what level of charitable donations
25 will satisfy the requirement of donating or rendering gratuitously “a portion of its

1 services or facilities.” *Id.*

2 {16} El Castillo asserts that it is entitled to be exempt from taxation because it has
3 met the terms of the statute but does not challenge the Court of Appeals holding that
4 it is not exempt under Article VIII, Section 3 of the New Mexico Constitution. The
5 Assessor argues that El Castillo’s failure to meet the requirements of Article VIII,
6 Section 3 necessarily means that Section 7-36-7(B)(1)(d) cannot be constitutionally
7 applied to grant El Castillo an exemption. For the reasons that follow, we agree with
8 the Assessor.

9 **A. The Assessor Has Standing to Challenge the Constitutionality of Section**
10 **7-36-7(B)(1)(d) as It Applies to El Castillo**

11 {17} As a preliminary matter, El Castillo challenges the Assessor’s standing to raise
12 the constitutionality of Section 7-36-7(B)(1)(d), relying on *State ex rel. Overton v.*
13 *N.M. State Tax Comm’n*, 1969-NMSC-140, ¶¶ 8, 19-20, 81 N.M. 28, 462 P.2d 613.
14 Although El Castillo raises the issue for the first time in this Court, “the lack of
15 [standing] is a potential jurisdictional defect, which may not be waived and may be
16 raised at any stage of the proceedings.” *Gunaji v. Macias*, 2001-NMSC-028, ¶ 20,
17 130 N.M. 734, 31 P.3d 1008 (internal quotation marks and citations omitted).
18 “[S]tanding in our courts is not derived from the state constitution, and is not
19 jurisdictional” unless the cause of action is created by statute. *Deutsche Bank Nat’l*

1 *Trust Co. v. Johnston*, 2016-NMSC-013, ¶ 11, 369 P.3d 1046 (internal quotation
2 marks and citation omitted). Nevertheless, “as a matter of judicial policy if not of
3 jurisdictional necessity, our courts have generally required that a litigant demonstrate
4 injury in fact, causation, and redressability to invoke the court’s authority to decide
5 the merits of a case.” *Id.* ¶ 13 (internal quotation marks and citation omitted).

6 {18} In *Overton*, this Court held that a county assessor did not have standing to
7 bring a declaratory judgment action challenging the constitutionality of a tax-
8 exemption statute because no justiciable controversy was present. *See* 1969-NMSC-
9 140, ¶¶ 1, 9, 19. *Overton* is not applicable to the standing analysis in this case because
10 asking this Court to decide the constitutionality of Section 7-36-7(B)(1)(d) as it
11 applies to El Castillo is not a request for a declaratory judgment. Here, a justiciable
12 controversy exists with regard to El Castillo’s claim of entitlement to a tax
13 exemption. This is not a theoretical question, and the Assessor does have an interest
14 in the outcome. *See* NMSA 1978, § 7-36-2(A) (1995) (“The county assessor is
15 responsible and has the authority for the valuation of all property subject to valuation
16 for property taxation purposes.”); NMSA 1978, § 7-38-17(G) (2011) (“A county
17 assessor or the assessor’s employee who knowingly permits a claimant for an
18 exemption to receive the benefit of an exemption to which the claimant is not entitled

1 is guilty of a misdemeanor and shall be punished by a fine of not more than one
2 thousand dollars (\$1,000) and shall also be automatically removed from office or
3 dismissed from employment upon conviction under this subsection.”). When El
4 Castillo filed the appeal from the Board’s decision, the district court properly joined
5 the Assessor as an appellee. There is no party more appropriate than the Assessor to
6 appeal the decision of the district court.

7 {19} We conclude that the Assessor has standing to bring before the appellate courts
8 the statutory and constitutional issues relating to whether El Castillo is entitled to an
9 exemption from real property taxation.

10 **B. Both the District Court and the Court of Appeals Erred in Their Exercise**
11 **of Appellate Jurisdiction**

12 {20} It is incumbent on this Court to address the jurisdictional errors which occurred
13 in the exercise of appellate jurisdiction in both the district court and the Court of
14 Appeals. Jurisdictional questions are questions of law which this Court reviews de
15 novo. *Smith v. City of Santa Fe*, 2007-NMSC-055, ¶ 10, 142 N.M. 786, 171 P.3d 300.
16 “A jurisdictional defect may not be waived and may be raised at any stage of the
17 proceedings, even sua sponte by the appellate court.” *Armijo v. Save ‘N Gain*,
18 1989-NMCA-014, ¶ 4, 108 N.M. 281, 771 P.2d 989; *see* Rule 12-216(B) NMRA.

19 **1. The District Court Erred When It Did Not Exercise Its Appellate**

Jurisdiction over the Board's Determination

{21} The Legislature conferred power in the district court to review, as a court of first appeal, a final decision of the Board. *See* NMSA 1978, § 7-38-28(A) (2015); NMSA 1978, § 39-3-1.1 (1999). When acting in its appellate role, the district court may reverse an agency decision if it determines that “(1) the agency acted fraudulently, arbitrarily, or capriciously; (2) the final decision was not supported by substantial evidence; or (3) the agency did not act in accordance with law.” Section 39-3-1.1(D). The district court, in its appellate capacity, “is limited in the same manner as any other appellate body . . . and must defer to the agency’s factual determinations if supported by substantial evidence.” *N.M. Bd. of Psychologist Exam’rs v. Land*, 2003-NMCA-034, ¶ 5, 133 N.M. 362, 62 P.3d 1244.

{22} In addition to its appellate jurisdiction, the district court has “original jurisdiction in all matters and causes not excepted in this constitution.” N.M. Const. art. VI, § 13. The district court is a court of general jurisdiction and has the authority to consider all matters not exclusive to other courts, including constitutional claims in the first instance. *Maso v. N.M. Tax’n & Revenue Dep’t*, 2004-NMCA-025, ¶ 14, 135 N.M. 152, 85 P.3d 276 (“[T]he district court has the authority to consider constitutional claims in the first instance.”).

1 {23} A “district court can simultaneously exercise its appellate and original
2 jurisdiction.” *Id.* ¶ 17. On appeal to a district court of claims first considered by an
3 agency, where the appeal also asserts constitutional and other claims in the district
4 court that were beyond the scope of the agency’s adjudicative authority, “the district
5 court should consider each claim according to its appropriate standard of review and
6 maintain the distinction between the court’s appellate and original jurisdiction in
7 rendering its decision.” *Id.*

8 {24} The district court should have exercised its appellate jurisdiction over the
9 Board’s determination regarding the applicability of Section 7-36-7(B)(1)(d) to El
10 Castillo and reviewed whether the Board’s decision was arbitrary and capricious,
11 unsupported by substantial evidence, or otherwise contrary to law as required under
12 Section 39-3-1.1(D). Exercising its original jurisdiction over the statutory claim and
13 issuing new findings of fact which contradicted the findings of the Board was error.
14 In issuing new findings of fact, the district court acted outside its proper appellate
15 jurisdiction. *See, e.g., Cadena v. Bernalillo Cty. Bd. of Cty. Comm’rs*, 2006-NMCA-
16 036, ¶ 3, 139 N.M. 300, 131 P.3d 687 (concluding that “the district court acted
17 outside of its capacity as an appellate court by engaging in fact-finding”);
18 *VanderVossen v. City of Espanola*, 2001-NMCA-016, ¶ 26, 130 N.M. 287, 24 P.3d

1 319 (“[T]he district court exercising appellate jurisdiction under Section 39-1-1.1[]
2 is not a fact-determining body.”); *Hahn v. Cty. Assessor for Bernalillo Cty. (In re*
3 *Miller)*, 1975-NMCA-116, ¶ 52, 88 N.M. 492, 542 P.2d 1182 (“If there is substantial
4 evidence in the record to support a decision of a county valuation protests board, [an
5 appellate court is] bound thereby.”), *rev’d on other grounds*, 1976-NMSC-039, 89
6 N.M. 547, 555 P.2d 142. Had the district court reviewed the Board’s determination
7 under the proper standard of review, it is likely the district court’s determination
8 would have been different.

9 **2. The Court of Appeals Erred When It Refused Jurisdiction to Review the**
10 **Constitutionality of the Section 7-36-7(B)(1)(d) Exemption as Applied to**
11 **El Castillo**

12 {25} In addition to the district court’s jurisdictional error, the Court of Appeals erred
13 when it reviewed the constitutional question apart from the statutory question. The
14 Court of Appeals took the position that it did “not have jurisdiction to review the
15 question of whether El Castillo is entitled to a charitable property-tax exemption
16 under Section 7-36-7(B).” *El Castillo*, 2015-NMCA-041, ¶ 12. This determination by
17 the Court of Appeals improperly disregards the relationship between the New Mexico
18 Constitution and the statutes enacted by the Legislature. A statute must be interpreted
19 and applied in harmony with constitutionally imposed limitations. *See* NMSA 1978,

1 § 12-2A-18(A)(3) (1997) (“A statute or rule is construed . . . [to] avoid an
2 unconstitutional . . . result.”); *Wells v. Cty. of Valencia*, 1982-NMSC-048, ¶ 11, 98
3 N.M. 3, 644 P.2d 517 (“[T]he Legislature is presumed to have enacted the statute
4 within the bounds of the constitution, and, to that end, we must so construe the
5 statute.”). The constitutional and statutory claims as argued by the parties, considered
6 and decided by the district court, and raised on appeal to the Court of Appeals were
7 intertwined and inseparable. The Court of Appeals erred when it did not decide
8 whether El Castillo could be exempt from property taxation under Section 7-36-
9 7(B)(1)(d) despite its constitutional ineligibility for exemption. Accordingly, we
10 granted certiorari to address this issue.

11 **C. Legislation Granting Tax Exemptions Must Be Interpreted in Light of**
12 **Restrictions Set Forth in Article VIII of the New Mexico Constitution**

13 {26} Whether Section 7-36-7(B)(1)(d) can grant a tax exemption to El Castillo raises
14 issues of constitutional interpretation that we review de novo. *Pinghua Zhao v.*
15 *Montoya*, 2014-NMSC-025, ¶ 11, 329 P.3d 676. “The Legislature’s inherent authority
16 and discretion to exercise the State’s power of taxation is plenary ‘except in so far as
17 limited by the Constitution.’” *Id.* ¶ 14 (citation omitted).

18 “[S]tate constitutions are not grants of power to the legislative, to the
19 executive and to the judiciary, but are limitations on the powers of each.
20 No branch of the state may add to, nor detract from its clear mandate. It

1 is a function of the judiciary when its jurisdiction is properly invoked to
2 measure the acts of the executive and the legislative branch solely by the
3 yardstick of the constitution.”

4 *State ex rel. Clark v. Johnson*, 1995-NMSC-048, ¶ 20, 120 N.M. 562, 904 P.2d 11
5 (citation omitted).

6 {27} We presume that enactments of the Legislature are within constitutional
7 boundaries, and we “give effect to the legislative intent unless it clearly appears to be
8 in conflict with the Constitution.” *Bounds v. State ex rel. D’Antonio*, 2013-NMSC-
9 037, ¶ 11, 306 P.3d 457 (internal quotation marks and citation omitted). “[I]t is the
10 particular domain of the legislature, as the voice of the people, to make public
11 policy.” *Hartford Ins. Co. v. Cline*, 2006-NMSC-033, ¶ 8, 140 N.M. 16, 139 P.3d 176
12 (alteration in original) (internal quotation marks and citation omitted).

13 {28} *El Castillo* relies heavily on *La Vida Llena v. Montoya*, 2013-NMCA-048, ¶¶
14 5-6, 20, 299 P.3d 456, for the proposition that constitutional standards have no
15 bearing on the application of Section 7-36-7(B)(1)(d). In *La Vida Llena* the Court of
16 Appeals looked only at the facial text of Section 7-36-7(B)(1)(d) to reach its holding
17 that the statutory requirement that the facility “donates or renders gratuitously a
18 portion of its facilities or services” imposed no threshold on the amount of the
19 donation. *Id.* ¶ 1. The Court of Appeals did not consider whether Section 7-36-

1 7(B)(1)(d) was limited by Article VIII or whether the facility in question would have
2 qualified for exemption under that constitutional limitation. Because we hold that
3 Section 7-36-7(B)(1)(d) must be read in light of Article VIII, Section 3 of the New
4 Mexico Constitution, we overrule *La Vida Llena* to the extent that it may be read to
5 indicate otherwise.

6 {29} New Mexico law is clear in concluding that Article VIII, Section 3 is self-
7 executing and does not require statutory enactment. *See CAVU Co. v. Martinez*, 2014-
8 NMSC-029, ¶ 15, 332 P.3d 287 (“Unlike most constitutional exemptions, [Article
9 VIII, Section 3] does not merely define a field of exemption, within which the
10 legislative power may operate from time to time at its discretion. It is affirmative and
11 self-executing. It creates exemptions. It invests citizens with constitutional rights,
12 which administrative officers or Legislature may not impair, and which courts must
13 protect.” (quoting *Temple Lodge No. 6, A.F. & A.M. v. Tierney*, 1933-NMSC-013,
14 ¶ 29, 37 N.M. 178, 20 P.2d 280)). Article VIII, Section 3 operates as a limit on the
15 Legislature’s power to redefine categories of property which will be exempt from
16 taxation. *See Clark*, 1995-NMSC-048, ¶ 20; *see also Dillard v. N.M. Tax Comm’n*,
17 1948-NMSC-069, ¶¶ 5-9, 53 N.M. 12, 201 P.2d 345 (interpreting Article VIII,
18 Sections 1, 3, and 5 and concluding that “[t]he property of the wife of a soldier or

1 sailor is not exempt from taxation, nor can the legislature enact a statute that will have
2 that effect without [a constitutional] amendment authorizing it”); *Sims v. Vosburg*,
3 1939-NMSC-026, ¶ 4, 43 N.M. 255, 91 P.2d 434 (relying on Article VIII, Sections
4 1, 3, and 5 in stating that “[a]ll tangible property in New Mexico is subject to taxation
5 in proportion to value, and should be taxed, unless specifically exempted by the
6 constitution or by its authority”); *State ex rel. Att’y Gen. v. State Tax Comm’n*, 1936-
7 NMSC-029, ¶ 8, 40 N.M. 299, 58 P.2d 1204 (“By the terms of section 3 of article 8,
8 certain specific property is exempt from taxation, and by section 5 thereof the
9 Legislature is authorized to exempt from taxation certain other specific property; and
10 no other property is or can be exempted. The Constitution, in effect, classes tangible
11 property into that exempt from taxation, that which may be exempted, and that which
12 must be taxed.”); *Albuquerque Alumnae Ass’n of Kappa Kappa Gamma Fraternity*
13 *v. Tierney*, 1933-NMSC-011, ¶¶ 3, 9-10, 26, 37 N.M. 156, 20 P.2d 267 (rejecting a
14 statute-based claim of tax exemption for a college sorority property and holding that
15 “the Constitution makers intended to cover the whole field of exemption,” that
16 “[Article VIII,] Section 3 is affirmative and self-executing,” that “[i]t creates
17 exemptions,” and that “[t]here is a strong presumption against an intent to permit the
18 Legislature to create others”).

1 {30} The people always have the power to amend constitutional restrictions by
2 expressly and lawfully doing so. For example, New Mexico voters have amended
3 Article VIII, Section 3 to give a supermajority of the Legislature the limited authority
4 to exempt personal property from taxation. *See, e.g.*, 1972 N.M. Laws, Constitutional
5 Amendment 2, at 703-04 (proposing the 1972 constitutional amendment to Article
6 VIII, Section 3 that granted the Legislature authority to exempt personal property by
7 statute upon passage by a three-fourths majority vote of all members). But no
8 constitutional authority has been granted for the Legislature to exempt real property
9 by statute. Consequently, Section 7-36-7(B)(1)(d) may not be interpreted or applied
10 to grant exemptions that are not authorized by Article VIII, Section 3.

11 **D. El Castillo Does Not Qualify for Tax Exemption Under Article VIII,**
12 **Section 3 or Section 7-36-7(B)(1)(d) Because Its Property Does Not Create**
13 **Substantial Public Benefit Through Primary Use That Furthers a**
14 **Constitutionally Authorized Exempt Purpose**

15 {31} Controlling New Mexico precedent has consistently interpreted Article VIII,
16 Section 3 to exempt only property that creates substantial public benefit through use
17 that directly, immediately, primarily, and substantially furthers its exempt purpose.
18 *See, e.g.*, *CAVU*, 2014-NMSC-029, ¶¶ 21-23, 29-30 (applying this framework in
19 analyzing whether use of a property furthers exempt purposes). This is not a
20 mechanical test of eligibility for exemption but instead requires a flexible inquiry

1 allowing fact-specific determinations informed by history and policy considerations.
2 *Id.* ¶¶ 13, 20. Accordingly, the interpretation of these limits may vary depending upon
3 the particular property and use at issue. *See, e.g., Pecos River Open Spaces, Inc. v.*
4 *Cty. of San Miguel*, 2013-NMCA-029, ¶¶ 22-25, ___ P.3d ___ (allowing an
5 exemption for vacant, undeveloped, and unimproved land when it provided
6 substantial public benefit in its idle state and where such use furthered its charitable
7 purpose of conservation); *Georgia O’Keeffe Museum v. Cty. of Santa Fe*, 2003-
8 NMCA-003, ¶ 56, 133 N.M. 297, 62 P.3d 754 (interpreting the requirement of direct
9 and immediate use for educational purposes broadly to permit consideration of the
10 intrinsic educational value of a museum and of off-site educational programs and
11 activities closely related to the museum collection).

12 {32} Despite the flexible nature of our analysis, “[t]he exemption granted [to]
13 educational and charitable institutions proceeds upon the theory of the public good
14 accomplished by them and the peculiar benefits derived by the public in general from
15 their conduct.” *Pecos River Open Spaces*, 2013-NMCA-029, ¶ 9 (internal quotation
16 marks and citation omitted). The rationale for exemption depends upon an “implicit
17 quid pro quo between the State and an exempt organization.” *CAVU*, 2014-NMSC-
18 029, ¶ 30. “Property which is exempt from taxation does not share in the burden [of

1 paying for the cost of government]. Therefore, in exchange for its exempt status, [the
2 use of] such property must confer a substitute substantial benefit on the public.” *Id.*
3 (quoting *NRA Special Contribution Fund v. Bd. of Cty. Comm’rs*, 1978-NMCA-096,
4 ¶ 38, 92 N.M. 541, 591 P.2d 672). A substantial public benefit is “[a] benefit of real
5 worth and importance to an indefinite class of persons who are a part of the public.”
6 *NRA*, 1978-NMCA-096, ¶ 45.

7 {33} Applying these standards, the Court of Appeals correctly determined that El
8 Castillo’s use of its property did not create any substantial public benefit. *See El*
9 *Castillo*, 2015-NMCA-041, ¶¶ 30-32, 44. A facility that cares for the elderly might
10 be entitled to a charitable use exemption if, in doing so, it benefits the general public.
11 *See Ret. Ranch, Inc. v. Curry Cty. Valuation Protest Bd.*, 1976-NMCA-010, ¶¶ 6, 9-
12 10, 89 N.M. 42, 546 P.2d 1199 (allowing exemption based on charitable use where
13 a facility cared for an aged “sick and largely indigent” population dependent on
14 Medicare and Medicaid). But El Castillo is a self-sustaining community that accepts
15 and benefits only financially and medically screened residents based on requirements
16 calculated in the interests of financial security for El Castillo. These residents
17 collectively pay for all the services El Castillo provides, and if the care they need
18 eventually exhausts the resources provided by particular residents’ admission and

1 monthly fees, any additional care they receive is paid for by the surplus fees collected
2 from other residents. While El Castillo claims it has not yet forced relocation of a
3 resident for inability to pay monthly fees, the express contractual language gives El
4 Castillo the sole discretion to terminate the resident agreement for that reason.

5 {34} A self-sustaining community does not qualify as a charity merely because it
6 does not profit from its enterprise. *See Mountain View Homes, Inc. v. State Tax*
7 *Comm'n*, 1967-NMSC-092, ¶ 15, 77 N.M. 649, 427 P.2d 13 (holding that a nonprofit
8 housing development built for low and moderate income workers was not charitable
9 because the “tenants [were] required to pay for the premises occupied by them with
10 the rentals being fixed so as to return the amount estimated as being necessary to pay
11 out the project”). Even the possibility that El Castillo will subsidize some residents
12 is not charitable when those subsidies are paid for by the fees collected from residents
13 who did not require subsidization. In a business-economics sense, El Castillo
14 functions as a nonprofit provider of long-term care insurance, and like any insurance
15 company it may pay out more to a particular individual than that person has paid in.
16 But just as with private health or disability or other insurance that avoids dependence
17 on public assistance for the policyholders or beneficiaries, providing for its own
18 paying participants cannot be characterized as charitable.

1 {35} Other jurisdictions have likewise concluded that continuing care retirement
2 facilities with similar admission requirements and financial structures are ineligible
3 for a charitable purpose tax exemption. *See, e.g., Cape Ret. Cmty., Inc. v. Kuehle*, 798
4 S.W.2d 201, 202-04 (Mo. Ct. App. 1990) (holding that a nonprofit, life care,
5 retirement, housing, and nursing facility admitting only those with financial resources
6 sufficient to meet the facility costs was not entitled to exemption from property
7 taxation despite assuming obligations for residents who became insolvent, reasoning
8 that “[i]t is not enough that Cape Retirement regularly underwrites some of the costs
9 of qualified residents and agrees to fully support selected residents *if* such residents
10 suffer financial reverses because its retirement home is not equally available to both
11 rich and poor” and therefore “is not operated to benefit society generally” as required
12 of a charity); *Presbyterian Homes of Synod of N.J. v. Div. of Tax Appeals*, 261 A.2d
13 143, 149-50 (N.J. 1970) (holding that a nonprofit continuing care retirement
14 community in which residents paid for services received did not qualify for the
15 charitable purpose tax exemption based on several “persuasive factors” including its
16 contractual right to terminate a resident agreement for inability to pay); *Christian*
17 *Home for the Aged, Inc. v. Tenn. Assessment Appeals Comm’n*, 790 S.W.2d 288, 292-
18 93 (Tenn. Ct. App. 1990) (holding that a retirement community admitting only

1 individuals meeting financial and physical requirements was not eligible for the
2 charitable use tax exemption because, “though the benefits of the [community] are
3 significant, only those who are financially and physically well off can receive them
4 [while t]hose less healthy and wealthy are not benefited”).

5 {36} Under the facts presented in this record, El Castillo does not provide any
6 benefit to an indefinite class of persons who are members of the general public. We
7 hold that it cannot be entitled to exemption from taxation under Section 7-36-
8 7(B)(1)(d) simply by being a continuing care facility without also creating a
9 substantial public benefit that would entitle it to exemption from equal taxation as
10 authorized by Article VIII, Section 3 of the New Mexico Constitution.

11 **III. CONCLUSION**

12 {37} We hold that El Castillo is not entitled to property-tax exemptions under either
13 Section 7-36-7(B)(1)(d) or Article VIII, Section 3 of the New Mexico Constitution.
14 We reverse the district court and remand for entry of a judgment in conformity with
15 this opinion.

16 {38} **IT IS SO ORDERED.**

17
18

CHARLES W. DANIELS, Justice

1 **WE CONCUR:**

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3 _____
3 **JUDITH K. NAKAMURA, Chief Justice**

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5 _____
5 **PETRA JIMENEZ MAES, Justice**

6

7 _____
7 **EDWARD L. CHÁVEZ, Justice**

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9 _____
9 **KAREN L. TOWNSEND, Judge, sitting by designation**