IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

TODD LOPEZ, as Personal Representative of the Wrongful Death Estate of Richard Paiz and LORETTA PAIZ, individually,

Plaintiffs-Respondents,

vs. No. S-1-SC-40416

PRESBYTERIAN HEALTHCARE SERVICES, HOSPITALIST MEDICINE PHYSICIANS OF TEXAS, PLLC d/b/a/ SOUND PHYSICIANS HOLDINGS, LLC, KENNETH DALE, and KARAN MAHAJAN,

Defendants-Petitioners,

DEFENDANTS-PETITIONERS HOSPITALIST MEDICINE PHYSICIANS OF TEXAS, PLLC d/b/a SOUND PHYSICIANS HOLDINGS, LLC AND KARAN MAHAJAN, M.D.'S BRIEF-IN-CHIEF

ORAL ARGUMENT REQUESTED

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Pursuant to Rule 12-318(A)(1)(b) NMRA, references to the digitally-recorded transcript are noted by date of the proceedings and the time stamp(s) provided by the FTR software.

STATEMENT OF COMPLIANCE

I hereby certify that this Brief-in-Chief complies with the page limitations set forth in Rule 12-318(F)(2) NMRA. The brief was prepared using Times New Roman 14-point print, and the body of this Brief-in-Chief does not exceed thirty-five (35) pages.

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Defendants-Petitioners Hospitalist Medicine Physicians of Texas, PLLC d/b/a Sound Physicians of New Mexico II, LLC and Karan Mahajan, M.D. (collectively "Sound Physicians"), by and through their counsel of record, Miller Stratvert, P.A. (Jennifer D. Hall and Kelsey D. Green), hereby respectfully request that this Court reverse the Court of Appeals' decision reversing the District Court's dismissal of Plaintiffs' claims brought pursuant to the Wrongful Death Act ("WDA"), NMSA 1978, §§ 41-2-1 to -4 (1882, as amended through 2001), for want of subject matter jurisdiction. *See Lopez v. Presbyterian Health Servs.*, 2024-NMCA-055, 553 P.3d 481. The Court of Appeals considered the same question presented to this Court: Does a district court lack subject matter jurisdiction to hear a wrongful death action when a plaintiff fails to comply with Rule 1-017(B) NMRA and seek appointment of a personal representative ("PR") to bring that wrongful death action by filing the petition for such appointment before the wrongful death action is filed and/or with the wrongful death action itself? Presented with this same question, the Court of Appeals reversed the District Court.

Reversal is appropriate. The Court of Appeals strayed from the plain language of the statute and failed to even consider the impact of Rule 1-017(B). Although mindful that the WDA is a statutory cause of action, and mindful of this Court's conclusions that standing for statutory causes of action is interwoven with subject matter jurisdiction, the Court of Appeals applied an inapposite analysis and reversed

the District Court. The Court of Appeals concluded that only the decedent held the cause of action and had standing under the WDA and that the PR, or lack thereof, had no effect on any standing analysis. *Lopez*, 2024-NMCA-055, ¶¶ 1, 18. The Court of Appeals also declined to consider Rule 1-017(B) NMRA in its decision. *See id.* ¶ 22. Accordingly, whether a plaintiff sought appointment of a PR pursuant to Rule 1-017(B) had no effect on the District Court's jurisdiction.

No one disputes that the WDA is a statutory cause of action, and, accordingly, standing is a jurisdictional prerequisite for this Court to hear any claims pursuant to its terms. *See Deutsche Bank Nat'l Trust Co. v. Johnston*, 2016-NMSC-013, ¶¶ 11-12, 369 P.3d 1046; *Chavez v. Regents of the Univ. of N.M.*, 1985-NMSC-114, ¶ 7, 103 N.M. 606, 711 P.2d 883 ("At common law there was no right of action for wrongful death."); *see also Lopez*, 2024-NMCA-055, ¶¶ 13, 16-17. No one disputes that the WDA mandates that any action for wrongful death be brought in the name of the PR and that Rule 1-017(B) requires that the "petition to appoint a [PR] . . . be brought before the wrongful death action is filed or with the wrongful death action itself." Section 41-2-3 ("Every action mentioned in Section 41-2-1 NMSA 1978 shall be brought by and in the name of the [PR] of the deceased person. . ."). No one disputes that Plaintiffs did not seek appointment of a PR until six (6) months after the filing of the initial Complaint and the beginning of discovery.

The District Court properly raised the question of its own subject matter jurisdiction to hear Plaintiffs' cause, applied *Johnston*, determined that the WDA was a statutory cause of action, and because Plaintiffs had not timely sought appointment of a PR, dismissed the WDA action. The District Court did not err.

I. SUMMARY OF PROCEEDINGS

On April 21, 2019, Richard Paiz died at University of New Mexico Hospital in Albuquerque, New Mexico. **[1 RP 8 ¶ 34]** Plaintiffs filed their Complaint for Wrongful Death ("Complaint") on April 21, 2022. **[*See id.* 1-10]** Plaintiffs' Complaint indicated that Todd Lopez was the PR of the Wrongful Death Estate of Richard Paiz pursuant to the WDA. **[*See id.* Introductory paragraph]** Three months later on July 14, 2022, Plaintiffs filed their First Amended Complaint, again naming Mr. Lopez as PR of the Wrongful Death Estate of Richard Paiz. **[*See id.* 11-21 Introductory paragraph]** Despite these assertions, no Court had appointed Mr. Lopez as PR of the Wrongful Death Estate of Richard Paiz at the time Plaintiffs filed the Complaint and First Amended Complaint. Nor had Plaintiffs filed any petition seeking his appointment as PR with either Complaint.

Plaintiffs served Dr. Mahajan and Sound Physicians on July 22, 2022, and July 25, 2022, respectively. **[*See id.* 26-33]** Sound Physicians answered on August 26, 2022, and served discovery upon Mr. Lopez as PR of the Wrongful Death Estate of Richard Paiz. **[*See id.* 61-73, 76-77]** On October 14, 2022, Mr. Lopez as PR of

the Wrongful Death Estate of Richard Paiz answered that discovery, despite not actually being the Estate's PR. **[*See id.* 112-13]** In a verified answer to an interrogatory regarding proceedings leading to Mr. Lopez's status as PR, Mr. Lopez stated incorrectly that the petition for his appointment as PR was filed with the wrongful death action. **[*See id.* 154-56 ("Without waiving objection, Plaintiff states that the petition for appointment as [PR] of the wrongful death estate was filed with the wrongful death action, all parties had notice in the original complaint, and formal court appointment is pending.")]**

Three days later, and six (6) months after filing their initial Complaint, Plaintiffs filed their Motion for Appointment of Todd Lopez as PR of the Wrongful Death Estate of Richard Paiz. **[*See id.* 115-22]** Mr. Lopez then served discovery upon Sound Physicians. **[*See id.* 123-28]** Sound Physicians responded to the Motion for Appointment, other Defendants joined, and Plaintiffs replied. **[*See id.* 145-56, 162-63, 180-81, 185-202]**

At the January 24, 2023, hearing on Plaintiffs' Motion for Appointment, the District Court *sua sponte* raised the question of its jurisdiction to hear Plaintiffs' cause of action because of their failure to seek a PR before or at the filing of their lawsuit. **[1-24-23 Tr. 3:19:12-3:21:34]** Relying on *Johnston*, the District Court noted the Supreme Court's observation that "when a statute creates a cause of action and designates who may sue, the issue of standing becomes interwoven with that of

subject matter jurisdiction [and] becomes a jurisdictional prerequisite to an action." **[*Id.*]** The District Court ordered supplemental briefing on the question of its jurisdiction. **[*See id.*; *see also* 2 RP 252-65, 364-87, 412-18]**

Plaintiffs filed a Motion for Leave to File Second Amended Complaint on February 15, 2023, seeking leave to amend pursuant to Rule 1-015(C) NMRA and Rule 1-017(A) NMRA. **[*See id.* 344-63]** Appellees responded, and Plaintiffs replied. **[*See id.* 388-409, 438-58]**

The District Court heard argument on the jurisdictional question on April 27, 2023, and concluded that it did not have jurisdiction to proceed with Plaintiffs' wrongful death action based on *Johnston* and Rule 1-017(B). **[4-27-23 Tr. 9:53:22-9:54:41, 9:59:17-22]** The District Court noted that *Chavez* involved a natural parent who had an interest in the wrongful death action, unlike this case that involved a stranger to Plaintiffs' action. **[*See id.* 9:15:56-9:17:00]** The District Court also distinguished *Chavez* because it did not consider Rule 1-017(B), which would not become part of the Rules of Civil Procedure for almost thirty (30) years. **[*See id.*]** The District Court observed that prejudice might exist because if the action proceeded without the proper party, any representations made in discovery could later be potentially disavowed. **[*See id.* 9:52:22-9:53:17]** The District Court also concluded that since it had no jurisdiction to proceed, Plaintiffs' Motion for Leave to File Second Amended Complaint was moot. **[*See id.* 9:57:26-9:58:23]**

The District Court then entered its Order denying Plaintiffs' Motion for Appointment of Mr. Lopez as PR and dismissed with prejudice the wrongful death portion of the lawsuit for want of subject matter jurisdiction. **[3 RP 525-28]** The District Court declined to include in that Order any reference to *Chavez* as requested by Plaintiffs as it "wasn't controlling with respect to this particular case." **[5-26-23 Tr. 10:19:50-10:20:02]** Plaintiffs' Application for Interlocutory Appeal to the Court of Appeals followed. **[3 RP 530-63]**

The Court of Appeals granted Respondents' Application for Interlocutory Appeal on August 29, 2023, and, after oral argument, issued its formal opinion on April 10, 2024. *Lopez*, 2024-NMCA-055, ¶ 1. The Court of Appeals reversed the District Court and concluded that "failure to petition for appointment of a PR before or simultaneously with the filing of the original complaint brought under the WDA [as required by the express language of Rule 1-017(B)] is [not] a jurisdictional defect that requires dismissal of the action." *Id.* The Court of Appeals began its reasoning by acknowledging that this Court had stated that "when a statute creates a cause of action and designates who may sue, the issue of standing becomes interwoven with that of subject matter jurisdiction[, and s]tanding then becomes a jurisdictional prerequisite to an action." *Id.* ¶ 13 (internal quotation marks and quoted authority omitted). However, to determine who had standing under the WDA, the Court of Appeals looked to *Gandydancer, LLC v. Rock House CGM, LLC*, 2019-NMSC-021,

453 P.3d 434, and *Key v. Chrysler Motors Corp.*, 1996-NMSC-038, 121 N.M. 764, 918 P.2d 350, cases that evaluated whether a *cause of action existed* under the Unfair Practices Act ("UPA"), NMSA 1978, §§ 57-12-1 to -26 (1967, as amended through 2019), and the Motor Vehicle Dealers Franchising Act, NMSA 1978, §§ 57-16-1 to -16 (1973, as amended through 2018), respectively, to determine whether the plaintiff could proceed.

The Court of Appeals first determined that Section 41-2-1 created a cause of action in the deceased person and distinguished ordinary parties from "representatives" for purposes of standing. *Lopez*, 2024-NMCA-055, ¶¶ 15-16. The Court applied the inapposite analysis of *Gandydancer, LLC* and concluded that the deceased person, not the PR, has standing to pursue an action under the WDA because the WDA protects the "injured deceased person's interests." *Id.* ¶¶ 16-18. The Court concluded that the PR has the capacity to sue but not standing because the "WDA grants the PR no cause of action, the PR has no injury in fact, and no interest of the PR's is protected by the WDA." *Id.* ¶ 19. The Court concluded "that the appointment or request for appointment of a PR is not a jurisdictional prerequisite to establish statutory standing or a cause of action under the WDA" and that Rules 1-015 and 1-017 permitted relation back and correction of any appointment errors. *Id.* ¶¶ 21-22. The Court declined "under these circumstances to definitively construe Rule 1-017(B)'s requirements." *Id.* ¶ 22. This Court granted

Sound Physicians and Presbyterian Healthcare Services' respective Petitions for Writ of Certiorari on July 23, 2024. [Writ, entered July 23, 2024]

II. ARGUMENT

A. STANDARD OF REVIEW

"Whether the district court is possessed of jurisdiction over the subject matter of a case is a question of law that [the appellate court] review[s] de novo." *Ottino v. Ottino*, 2001-NMCA-012, ¶ 6, 130 N.M. 168, 21 P.3d 37; *see also Martinez v. Segovia*, 2003-NMCA-023, ¶ 9, 133 N.M. 240, 62 P.3d 331 ("The issues of lack of jurisdiction and interpretation and application of law and procedure are legal issues we review de novo.").

B. STATEMENT OF PRESERVATION

Sound Physicans preserved their arguments below in the District Court as contained in the filings referenced above, in the Court of Appeals in their Answer Brief and at oral argument on February 27, 2024, by the Court of Appeals' opinion, and in their Petition for Writ of Certiorari to this Court. **[*See, e.g.*, 1 RP 145-56; 1-24-23 Tr.; 2 RP 364-73; 4-27-23 Tr.; 5-26-23 Tr.; COA AB, filed December 7, 2023; Petition for Writ of Certiorari, filed May 10, 2024]**

C. REVERSAL OF THE COURT OF APPEALS' DECISION IS APPROPRIATE.

1. The Court of Appeals erred by applying the analysis of whether a statutory scheme contemplates the existence of a certain cause of action instead of applying the plain language of the WDA to determine who has standing to bring that cause of action.

In construing statutory standing, New Mexico courts have confined their analysis to the statutory language itself to determine who has standing to proceed with the articulated cause of action. *See, e.g., San Juan Agric. Water Users Ass'n v. KNME-TV,* 2011-NMSC-011, 150 N.M. 64, 257 P.3d 884; *Disabled Am. Veterans v. Lakeside Veterans Club, Inc.*, 2011-NMCA-099, 150 N.M. 569, 263 P.3d 911; *French-Hesch v. French-Williams*, 2010-NMCA-008, 147 N.M. 620, 277 P.3d 110; *Protection & Advocacy Sys., Inc. v. Presbyterian Healthcare Servs.,* 1999-NMCA-122, 128 N.M. 73, 989 P.2d 880. As this Court has stated:

> When evaluating standing to sue under a statutory cause of action, we must look to the Legislature's intent as expressed in the Act or other relevant authority. Where the Legislature has granted specific persons a cause of action by statute, the statute governs who has standing to sue.

San Juan Agric. Water Users Ass'n , 2011-NMSC-011, ¶ 8 (internal quotation marks, quoted authority, and citation omitted). Thus, for example, "[t]o determine whether Plaintiffs have standing to enforce the records request . . ., we must begin with the language of IPRA. *Id.* ¶ 9*; see also Protection & Advocacy Sys., Inc.*, 1999-NMCA-122, ¶¶ 21-26 (reviewing NMSA 1978, § 24-7A-14 (1997) and determining that statutory language only contemplated that certain human beings and not artificial

persons, such as organizational entities, could bring petition in district court). Indeed, where standing is governed by specific statutory language, the Court does not conduct its own analysis of prudential considerations. *See id.* ¶ 21.

In *Disabled American Veterans*, the Court of Appeals reviewed the standing of two non-members to bring a cause of action for liquidation of Lakeside Veterans Club, Inc., a nonprofit corporation. 2011-NMCA-099, ¶ 1. The Court began by stating that "[w]ithout statutory standing to pursue a cause of action, our Supreme Court has recognized that the district court is without subject matter jurisdiction to proceed." *Id.* ¶¶ 1, 7 The Court started with the applicable statute, NMSA 1978, § 53-8-55(A)(1) (1975), which provided that liquidation of a nonprofit corporation could be initiated by the individual members of the organization. *See id.* ¶ 7 ("Under the present circumstances, standing is a jurisdictional question because Section 53-8-55(A)(1) creates a cause of action and explicitly designates who is entitled to bring an action under that provision."). After concluding that substantial evidence supported the district court's finding that Lakeside had no members, the Court looked to the plain language of the statute requiring that any action be brought by a member. *See id.* ¶¶ 13-15. The Court stated: "When a statute contains language that is clear and unambiguous, we must give effect to that language and refrain from further statutory interpretation." *Id.* ¶ 13 (internal quotation marks, quoted authority, and alterations omitted). The Court then reasoned:

> Here, statutory standing under Section 53–8–55(A)(1)(e) was premised upon the allegations of Plaintiffs Semrau and Diggs that they were members of Lakeside. As previously discussed, the district court ultimately found that Lakeside had no members after September 2007. As a result, we conclude that Plaintiffs Semrau and Diggs had no standing to initiate an action to liquidate Lakeside under Section 53–8–55(A)(1)(e) in December 2007. Because of Plaintiffs' lack of standing, the district court did not have subject matter jurisdiction to proceed with the liquidation action under Section 53–8–55(A)(1)(e).

Id. ¶ 14.

While the District Court in this case relied on *Johnston*, *Johnston* merely restated a principle well-acknowledged in New Mexico law for over a decade. "'When a statute creates a cause of action and designates who may sue, the issue of standing becomes interwoven with that of subject matter jurisdiction.'" *Johnston*, 2016-NMSC-013, ¶ 11 (quoting *ACLU of N.M. v. City of Albuquerque*, 2008-NMSC-045, ¶ 9 n.1, 144 N.M. 471, 188 P.3d 1222 and alterations omitted). And, although the Court of Appeals acknowledged that *Johnston* stated that standing is a jurisdictional prerequisite when a statute creates a cause of action and designates who may sue, the Court of Appeals viewed the WDA "broadly," contrary to the tenet of statutory construction that statutes, including the WDA, in derogation of the common law require a strict construction. *Lopez*, 2024-NMCA-055, ¶ 19; *see also Estate of Krahmer ex rel. Peck v. Laurel Healthcare Providers, LLC*, 2014-NMCA-001, ¶ 6, 315 P.3d 298 ("[The WDA a]s a statute in derogation of the common law .

. . is to be afforded a strict, rather than expansive construction.") (Internal quotation marks, quoted authority, and alterations omitted.)).

Setting aside the express statutory language that any cause of action under the WDA shall be brought by the PR and departing from the Court's previous analytical construct, the Court of Appeals applied the reasoning of *Gandydancer, LLC*, in which this Court determined whether a cause of action for competitive injury existed under the UPA. *Lopez*, 2024-NMSC-055, ¶¶ 14-21; *Gandydancer, LLC*, 2019-NMSC-021, ¶¶ 1, 8 ("[The parties] argue over whether the UPA contemplates *competitor standing*. However, a more precise framing of the issue is whether the UPA creates a cause of action to recover lost profits damages from a competitor." (Emphasis in original.)).

Gandydancer, LLC is inapposite and cannot support the Court of Appeals' rejection of the plain language of the WDA, Rule 1-017(B), and *Johnston*. Indeed, in *Gandydancer, LLC*, no question existed whether the plaintiff was a "person" who could pursue a private right of action under the UPA. *See id.* ¶ 18. Rather, the question was whether an action for competitive business injury existed under the UPA. *See id.* To do so, "[a] plaintiff must demonstrate that the interest sought to be protected is arguably within the zone of interests to be protected or regulated by the statute." *Id.* ¶ 8 (internal quotation marks and quoted authority omitted). This Court thus looked to the "zone of interests" the UPA sought to protect, those of innocent

consumers, and determined that the Legislature excluded competitive injury from causes of action permitted under that statute. *See id.* ¶¶ 1, 18, 20, 27-28.

The Court of Appeals applied the *Gandydancer, LLC* analysis as to whether the UPA contemplated a certain cause of action to the WDA and determined that "the injured deceased person, and not the PR, has standing to establish an action under the WDA" because the WDA "protects the injured deceased person's interests." *Lopez*, 2024-NMCA-055, ¶¶ 16, 18. The Court also stated that "although the deceased person suffered the injury that created the cause of action, a PR must stand in their place to bring the action and distribute any proceeds to the statutorily identified beneficiaries." *Id.* ¶ 7.

The Court concluded that Section 41-2-1 permitted the deceased person "to maintain an action" against whomever caused the death. *See id.* ¶ 18. However, review of the WDA indicates that the plain language of Section 41-2-1 does not create an action per se in the deceased person, and cannot, as a deceased person has no capacity to sue. *Id.* ¶ 19; *see also* Rule 1-025(A)(1) NMRA (stating action cannot proceed if party is deceased and that without proper substitution dismissal is appropriate). Section 41-2-1 only states that whoever caused the death "shall be liable to an action for damages, notwithstanding the death of the person injured." Such language creates a cause of action for wrongful death.

And Section 41-2-3 expressly provides who can bring that cause of action: the PR. Section 41-2-3 states that "[e]very action mentioned in Section 41-2-1 NMSA 1978 shall be brought by and in the name of the [PR] of the deceased person." *See also* NMSA 1978, § 12-2A-4(A) (1997) ("A. 'Shall' and 'must' express a duty, obligation, requirement or condition precedent."). The Court of Appeals recognized that "New Mexico courts have characterized the [WDA] as a statute that transmits the decedent's rights to file a claim to the representative of the wrongful death estate." *Lopez*, 2024-NMCA-055, ¶ 19 (internal quotation marks and quoted authority omitted). Thus, the PR holds the rights of the decedent and has been designated by the Legislature as the person with the right to pursue the wrongful death action. *Id.* ¶ 7 ("Thus, although the deceased suffered the injury that created the cause of action, a PR must stand in their place to bring the action and distribute any proceeds to the statutorily identified beneficiaries."). The PR has standing.

Nonetheless, the Court of Appeals concluded that the appointment of a PR to bring the action cannot establish standing because the PR has "no cause of action, the PR has no injury in fact, and no interest of the PR's is protected by the WDA." *Id.* ¶¶ 18-19. Essentially, and contrary to *Protection & Advocacy Sys., Inc.*, 1999-NMCA-122, ¶ 21, the Court of Appeals applied prudential standing considerations to the WDA, a statutory cause of action that specifically designates who can sue under its rubric and concluded that the decedent had suffered an injury in fact and

such injury causing death was within the zone of interests protected by the WDA. *Lopez*, 2024-NMCA-055, ¶ 18. The Court of Appeals concluded that this Court's jurisdictional requirements for statutory causes of action in *Johnston* did not apply to the WDA, because the person designated to bring suit by the Legislature and to pursue the cause of action on behalf of the statutory beneficiaries as their fiduciary, the PR, does not have standing to do so.

Sound Physicians notes that the Court of Appeals appears to have also relied on the fact that WDA requires a "representative" as opposed to the decedent to further support its conclusion that a PR is unnecessary to establish jurisdiction in the district court. *Lopez*, 2024-NMCA-055, ¶ 15. The Court of Appeals cited no authority for this distinction. In fact, the standing analysis set out in *Protection & Advocacy Sys. Inc.* would belie such a consideration. In *Protection & Advocacy Sys. Inc.*, the Court of Appeals considered standing under Section 24-7A-14, which provides:

> On petition of a patient, the patient's agent, guardian or surrogate, a health-care provider or health-care institution involved with the patient's care, [or] an individual described in Subsection B or C of Section 24-7A-5 NMSA 1978, the district court may enjoin or direct a health-care decision or order other equitable relief.

The Court applied the plain language of the statute and determined that only the persons named in that statute could bring a petition. *See id* ¶¶ 21-26. The plain language of the statute grants standing to bring a petition to not only the patient, but

also the patient's representatives, his agents, guardians, and/or surrogates, among others. *See also Estate of Swift v. Bullington*, 2013-NMCA-090, ¶¶ 1-2, 309 P.3d 102 (concluding that probate personal representative had standing to seek paternity test).

Moreover, Rule 1-017(A) NMRA confirms that a representative can be the real party in interest. Rule 1-017(A) provides in pertinent part: "Every action shall be prosecuted in the name of the real party in interest; but an executor, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, *or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought*; . . ." "A real party in interest is one who is the owner of the right being enforced and is in a position to discharge the defendant from the liability being asserted in the suit." *Crumpacker v. DeNaples*, 1998-NMCA-169, ¶ 19, 126 N.M. 288, 968 P.2d 799 (internal quotation marks and quoted authority omitted).

Under the WDA, the PR is the real party in interest. As recognized by the Court of Appeals, the PR holds all the decedent's rights, and the PR is the only person who can discharge the defendant from any liability asserted. The PR's "representative" status can have no effect on the analysis of statutory standing and statutory jurisdiction under the WDA.

The Legislature enacted the WDA to create a cause of action for wrongful death for the benefit of the statutory beneficiaries. The Legislature designated the PR as the person to pursue such an action and to act as a fiduciary to those same statutory beneficiaries. Statutory standing under the WDA lies in the PR, and to apply the Court of Appeals' reasoning not only carves out an exception for the WDA, but also potentially changes the construct of statutory standing for all statutes, which could lead to unpredictable results and inconsistent application by this state's courts. The courts only have the jurisdiction the Constitution and the Legislature confer. By the WDA's express language, the Legislature has chosen the PR to hold and pursue the cause of action for wrongful death. And while our courts have termed the PR as merely a "nominal" or "incidental" party, the PR is the Legislatively-selected person who holds the decedent's right to an action for wrongful death. *See Lopez*, 2024-NMCA-055, ¶¶ 8, 21. Without a PR, the action cannot proceed. The Court of Appeals erred.

2. The Court of Appeals did not consider Rule 1-017(B) and its requirements in its analysis.

Although the Court of Appeals framed the question presented as "whether a failure to petition for appointment of a PR before or simultaneously with the filing of the original complaint brought under the WDA is a jurisdictional defect that requires dismissal of the action" and acknowledging that the District Court relied upon Rule 1-017(B) in its decision, the Court of Appeals declined to evaluate how

Rule 1-017(B) might affect the conclusion in this case. *Id.* ¶¶ 1, 3, 22. Rule 1-017(B) is integral to the question presented as it relates to the timing for the request for the PR. The fact that the Legislature did not include any specific requirements in the WDA to appoint the PR does not change this conclusion. The procedure to seek such appointment lies with this Court. *See Ammerman v. Hubbard Broad., Inc.*, 1976-NMSC-031, ¶ 10, 89 N.M. 307, 551 P.2d 1354.

In 2014, the Supreme Court amended Rule 1-017 to add subsection B, which expressly addressed the WDA and the necessity for a PR and when a petition to appoint a PR may be brought. Rule 1-017(B) provides:

> **B. Wrongful death actions; [PR.]** An action for wrongful death brought under Section 41-2-1 NMSA 1978 shall be brought by the [PR] appointed by the district court for that purpose under Section 41-2-3 NMSA 1978. *A petition to appoint a [PR] may be brought before the wrongful death action is filed or with the wrongful death action itself.*

(Emphasis added.) Rule 1-017(B) mirrors Section 41-2-3 that the wrongful death action *shall* be brought by the PR. *Id.* The Rule then states that "[a] petition to appoint a [PR] may be brought before the wrongful death action is filed or with the wrongful death action itself." *Id.* The Rule presents two options. Neither occurred in this case. Rule 1-017(B) also reiterates the necessity of having a PR requested and in place at the outset of the litigation. Standing must be established at the outset of suit. *See Bank of New York v. Romero*, 2014-NMSC-007, ¶ 17, 320 P.3d 1. And application of Rule 1-017(B) requires it.

Although the Court of Appeals declined to consider Rule 1-017(B), it indicated that the Committee Commentary could be "helpful in understanding this rule." *Lopez*, 2024-NMCA-055, ¶ 10. The Committee Commentary and any reference to *Chavez* in that Commentary does not control this Court's construction of its own rule. *See Albuquerque Redi-Mix, Inc. v. Scottsdale Ins. Co.*, 2007-NMSC-051, ¶ 13, 142 N.M. 527, 168 P.3d 99. Sound Physicians notes that the Commentary states that "[f]ailure to *appoint* a [PR] before the filing of a wrongful death action is not a jurisdictional defect and, under proper circumstances, may be accomplished after the action is filed." Rule 1-017 Committee Commentary (emphasis added). No one has argued that Plaintiffs' failure to get a court order appointing a PR prior to the filing of their Complaint was an issue. Rule 1-017(B) does not require appointment. Although the Commentary also states that an appointment of a PR after the filing of a wrongful death action may be accomplished "under proper circumstances," the Commentary does not elaborate on what those circumstances may be, but any analysis would need to consider *Johnston's* reasoning as applied to the WDA and jurisdiction. *Id.*

D. THE DISTRICT COURT APPLIED THE CORRECT ANALYSIS, AND ITS DECISION IS PROPERLY AFFIRMED.

The Court of Appeals erred by straying from the express language of the WDA. "When a statute's plain language is clear and unambiguous, we must give effect to that language and refrain from further statutory interpretation." *San Juan*

Agric. Water Users Ass'n, 2011-NMSC-011, ¶ 17. The Court of Appeals concluded that under the WDA the deceased person was the real party in interest and concluded the plain language of *Johnston* did not apply to the WDA because the PR is merely a representative of the deceased person. To reach its conclusion, the Court of Appeals grafted onto the WDA the analysis applied to evaluate whether a statute contemplates a particular cause of action. No such question exists in this case. No one disputes that the WDA provides a cause of action for wrongful death. No one disputes that the WDA designates who may sue, the PR.

Article VI, Section 13 of the New Mexico Constitution states: "The district court shall have original jurisdiction in all matters and causes not excepted in this constitution, and such jurisdiction of special cases and proceedings as provided by law . . ." The district court has two forms of jurisdiction: original and statutory. *Ottino*, 2001-NMCA-012, ¶ 7. Statutory jurisdiction includes "statutory proceedings to enforce rights and remedies created by statute and which were unknown to the common law. . ." *In re Forest*, 1941-NMSC-019, ¶ 10, 45 N.M 204, 113 P.2d 582.

In *Johnston,* the Supreme Court reiterated that New Mexico's "jurisprudence has previously recognized that standing is jurisdictional in the context of statutory causes of action rather than all causes of action." 2016-NMSC-013, ¶ 10. Where a cause of action existed at common law and was not created by statute, standing is

not a jurisdictional prerequisite for the district court to adjudicate the matter. *Id.* The Supreme Court stated: "When a statute creates a cause of action and designates who may sue, the issue of standing becomes interwoven with that of subject matter jurisdiction. Standing then becomes a jurisdictional prerequisite to an action." *Id.* ¶ 11 (internal quotation marks, quoted authority, and alterations omitted).

The District Court had an obligation and duty to assure that it had jurisdiction to consider the cause of action before it. *See N.M. Dep't of Health v. Maestas*, 2023-NMCA-075, ¶ 10, 536 P.3d 506 ("A jurisdictional defect may not be waived and may be raised at any stage of the proceedings, even sua sponte by the appellate court." (Internal quotation marks and quoted authority omitted.)). The District Court did not err in applying *Johnston* to consider whether it had jurisdiction to proceed. The District Court did not err in concluding that the WDA was a statutory cause of action pursuant to well-established New Mexico law. The District Court did not err in applying the plain and express language of the WDA that the action "shall be brought by and in the name of the personal representative of the deceased person," concluding that it was without jurisdiction to proceed, and dismissing Plaintiffs' wrongful death action with prejudice. Section 41-2-3. And the District Court did not err in concluding *Chavez* did not change this result.

In *Chavez*, this Court rejected previous caselaw that appointment of a PR under the WDA was jurisdictional. 1985-NMSC-114, ¶ 11. Although Plaintiffs

have argued throughout this action that *Chavez* controls, the Supreme Court decided *Chavez* thirty (30) years before the amendment to Rule 1-017(B) requiring that any petition to appoint a personal representative occur before or with the filing of the complaint and more than thirty (30) years before the Supreme Court re-affirmed its jurisdictional analysis for statutory causes of action in *Johnston*. Plaintiffs' position in the District Court essentially asked the District Court to ignore the holding in *Johnston*, decline to apply well-established jurisdictional analysis regarding statutory causes of action to the WDA, and find that it had jurisdiction despite the fact that the required personal representative did not pursue the case.

In *Chavez*, the natural parents of a deceased girl brought a wrongful death action under the Tort Claims Act ("TCA") against a hospital. 1985-NMSC-114, ¶ 1. At the time the case was brought, the law was not clear under the TCA or the WDA as to who had the capacity to sue for wrongful death. *Id.* ¶¶ 5-11. The defense moved for dismissal after the mother was appointed as personal representative after the suit had already commenced and after the statute of limitations had run. *Id.* ¶ 3. The parties had been litigating the matter for over two (2) years before the defendants challenged the plaintiffs' capacity to sue. Holding in favor of the mother, the Court reasoned that

> under Civ.P.Rule 17(a), when due to an honest mistake, a suit is not prosecuted in the name of the real party in interest the court may allow a reasonable time for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification,

> joinder or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

Id. ¶ 16 (internal quotation marks and quoted authority omitted). The Supreme Court in *Chavez* also rejected that appointment of a personal representative was jurisdictional, overruling *Mackey v. Burke*, 1984-NMCA-028 102 N.M. 294, 694 P.2d 1358 (concluding that lack of appointment of personal representative rendered action a "nullity" and not allowing relation back). *Chavez*, 1985-NMSC-114, ¶ 5.

Chavez is inapposite. The Supreme Court decided it prior to the 2014 amendment to Rule 1-017 which makes clear that a party must seek appointment of a personal representative either before or with the action itself. Rule 1-017(B). *Chavez* was decided in 1985 before the 2014 amendment of Rule 1-017 adding subsection B setting out the procedural requirements to secure a personal representative. The *Chavez* decision also pre-dated *Johnston* by thirty years and its analysis of standing, jurisdiction, and statutory causes of action and pre-dated the above-cited authorities analyzing standing under various statutes and statutory jurisdiction in the district courts.

Unlike *Chavez*, and prior to the Court of Appeals' opinion, no ambiguity existed in the law. This Court has made clear that standing for a statutory cause of action required compliance with the statutory prerequisites to sustain jurisdiction to hear the matter. To the extent that *Chavez* rejected that appointment of a personal representative was jurisdictional, *Johnston* has clarified that analysis. Indeed, while

the Supreme Court stated that the WDA is a statutory cause of action in *Chavez*, the reasoning did not address jurisdiction specifically for statutory causes of action. Cases cannot stand for propositions not considered. *See Fernandez v. Farmers Ins. Co. of Ariz.*, 1993-NMSC-035, ¶ 15, 115 N.M. 622, 857 P.2d 22.

III. CONCLUSION

WHEREFORE, for the above-stated reasons, Sound Physicians respectfully requests that this Court reverse the Court of Appeals and affirm the Order of the District Court dismissing Plaintiffs' wrongful death action for lack of jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing pleading was e-filed and successfully served by electronic means on the following this 3rd day of September, 2024, to the following parties and counsel of record:

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