COLORADO SUPREME COURT Ralph L. Carr Judicial Center 2 East 14th Avenue Denver, Colorado 80203	DATE FILED August 19, 2024 11:02 PM FILING ID: F1912442471FA CASE NUMBER: 2024SC394
CERTIORARI TO THE COURT OF APPEALS Case No. 2024CA774	
DISTRICT COURT, WELD COUNTY Honorable Todd L. Taylor Case No. 2023CV30834	**COURT USE ONLY**
Petitioners: LEAGUE OF WOMEN VOTERS OF GREELEY, WELD COUNTY, INC., ET AL. v. **Respondent:** BOARD OF COUNTY COMMISSIONERS OF WELD COUNTY.	Case No.: 2024SC394
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OPENING BRIEF	

Certificate of Compliance

I hereby certify that this brief complies with all requirements of C.A.R. 28, C.A.R. 32, and C.A.R. 57, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with 28(g) because it contains 8,915 words (no more than 9,500 words).

The brief complies with C.A.R. 28(k) because for the party raising the issue, the brief contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record, not to an entire document, where the issue was raised and rule on.

I acknowledge that my brief may be stricken if it fails to comply with the requirements of C.A.R. 28, C.A.R. 32, and C.A.R. 57.

s/ Kendra N. Beckwith

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Statement of Issues

Colorado law imposes mandatory procedures for redistricting county commissioner districts in counties electing any of their commissioners by district. §§ 30-10-306.1–306.4, C.R.S. (2024) (Redistricting Statutes). These statutes secure robust public participation and empower Colorado voters to elect commissioners who reflect the local community and will be responsive and accountable to their constituents. These statutes also ensure these counties are held to the same high standards Colorado voters have required for redistricting congressional and legislative districts.

It is **undisputed** the Board of the Weld County Commissioners (Board) refuses to comply with the Redistricting Statutes. The Board's refusal is staunch and its deviations extensive. As examples, instead of designating a commission to publicly complete the redistricting process, the Board did so on its own. Instead of proposing three maps for public input, the Board proposed only one. And instead of ensuring its proposed map complied with mandatory statutory criteria—including preserving communities of interest and maximizing politically competitive districts—the Board considered only whether the districts were as nearly equal in population as possible. The Board's unveiled and intentional usurpation of power

from Weld County citizens for itself is unprecedented. Its status as a home rule county is no excuse.

Plaintiffs—two Weld County citizens and two Weld County nonprofits interested in local government and fair elections (Voters)—sued the Board to compel compliance with the Redistricting Statutes. The district court declared the statutes binding on the Board, found it violated them, and ordered the Board to complete a compliant redistricting process. Instead of doing so, the Board appealed—and informed Voters it would not even consider compliance until 2033.

Against this backdrop, this Court granted certiorari on these issues:

I. Whether the trial court erred in concluding that section 30-10-306, et seq., C.R.S. (2023), implies a private right of action.[1]

II. Whether the trial court erred in concluding that Voters had standing to sue the Board based on nothing more than generalized grievance constituting pure procedural irregularities.

III. Whether the trial court erred in concluding as a matter of law that section 30-10-306, et seq., applies to a home rule county with a conflicting charter.

[1] Here, Voters do not include section 30-10-306, C.R.S., as part their definition of Redistricting Statutes. Voters' definition of Redistricting Statutes includes solely section 30-10-306.1 through section 30-10-306.4. The disparity appears to be the result of Voters' quoting of the Board's notice of appeal in their C.A.R. 50 petition.

IV. Whether the trial court erred in determining there is no conflict between the provisions of section 30-10-306, et seq., and the Weld County home rule charter.

V. Whether the Board must be directed to engage in a county commissioner redistricting process that complies with the redistricting statutes for future elections.

This Court should affirm the district court's conclusion that the Redistricting Statutes bind the Board and remand with directions that the Board immediately undertake a compliant redistricting process.

Factual Background

The genesis of this lawsuit is the Board's willful decision to ignore the Redistricting Statutes. The story, however, begins much earlier with Colorado's intentional efforts to end political gerrymandering and unfair voting practices.

A. Colorado voters amended the Colorado Constitution to create independent redistricting commissions that provide an inclusive and meaningful process.

To protect the integrity of elections, Colorado has sought to end the practice of political gerrymandering. In 2018, voters passed—by seventy-one percent—Amendments Y and Z to the Colorado Constitution, which created independent redistricting commissions to draw congressional and legislative election districts. Colo. Const. art. V, §§ 44–44.6, 46–48.4. The amendments created an "inclusive and meaningful" redistricting process that gives the public "the ability to be heard

as redistricting maps are drawn, to be able to watch the witnesses who deliver testimony and the redistricting commission's deliberations, and to have their written comments considered before any proposed map is voted upon by the commission as the final map." *Id.* art. V, §§ 44(1), 46(1).

B. The General Assembly enacted House Bill 21-1047 to end the practice of political gerrymandering in county commissioner redistricting.

County commissioner districts were the only partisan offices not included in Amendments Y and Z—until 2021. At that time, House Bill 21-1047 was passed, signed into law, and codified at sections 30-10-306.1 to -306.4 to fill the gap Amendments Y and Z left open. The Redistricting Statutes apply the "inclusive and meaningful" redistricting process from Amendments Y and Z to counties that have "any number of their county commissioners not elected by the voters of the whole county." § 30-10-306.1(1)(a). The reason was clear: "it is of statewide interest that voters in every Colorado county are empowered to elect commissioners who will reflect the communities within the county and who will be responsive and accountable to them." H.B. 21-1047, 73d Gen. Assemb., 1st Reg. Sess., § 1(1)(i) (Apr. 19, 2021) (attached in Appendix (App.) 1). The General Assembly intended for "robust public participation" in that process. *Id.*

Under these statutes:

- A board must "designate a county commissioner district redistricting commission and [is] encouraged to convene an independent county commissioner district redistricting commission[.]"[2] § 30-10-306.1(1).

- A board "may not revise or alter county commissioner districts" beyond de minimis revisions except in accordance with a final redistricting plan adopted by the redistricting commission. § 30-10-306.1(3).

- The redistricting plan must (a) make "a good-faith effort to achieve mathematical population equality between districts"; (b) comply with the federal Voting Rights Act of 1965; and (c) "[a]s much as is reasonably possible" preserve whole communities of interest and whole political subdivisions, such as cities and towns. § 30-10-306.3(1)-(3)(a).

- The districts shall be as compact as reasonably possible and "maximize the number of politically competitive districts." § 30-10-306.3(2)(b), (3)(a).

- In developing the plan, the commission must

    - hold at least three public hearings before approving a redistricting plan, each in a different third of the county, § 30-10-306.2(3)(b);

[2] In appointing commission members, boards must consider appointing persons who "accurately reflect" the political affiliations of the county's residents (including unaffiliated residents) and the county's "racial, ethnic, gender, and geographic diversity[.]" § 30-10-306.1(2)(a)–(b). Consideration should also be given to "[a]void conflicts of interest based on partisan alignments." § 30-10-306.1(2)(c).

- broadly promote throughout the county the public hearings about proposed redistricting plans, *id.*;
- establish a method of electronically participating in hearings about redistricting, § 30-10-306.2(3)(b);
- broadcast the hearings and maintain an archive of the hearings for online public review, § 30-10-306.2(3)(c);
- maintain a website where the public can submit comments or proposed plans and written comments can be published, § 30-10-306.2(3)(d);
- solicit, consider, and publish on the website public input on at least three proposed maps and on communities of interest that require representation in one or more specific areas of the county, §§ 30-10-306.2(3)(a), (d); 30-10-306.4(1)(d); and
- explain at public hearings how the plan was created, how it addressed public comments, and how it complied with the statutory criteria for redistricting, § 30-10-306.4(1)(e).

- A final plan cannot be approved until at least seventy-two hours after it was proposed in a public meeting. § 30-10-306.2(2). The board shall establish deadlines to ensure the plan is completed by September 30 of the redistricting year. § 30-10-306.4(1), (2).

C. The Board willfully and purposefully chose not to comply with the Redistricting Statutes.

Weld County is a Colorado county organized under a home rule charter effective January 1, 1976 (Charter). CF, pp 350–94, 755. Its Board consists of five members—two elected by the entire county, and three elected by the voters within each of the County's three commissioner districts. CF, p 755.

In January 2023, after receiving the results of the most recent census, the Board published notice of a January 23 hearing at the Weld County Administration office to "consider a plan to modify the boundary lines of Commissioner Districts in Weld County Colorado" and to "receive input from the public regarding the plan." CF, p 756. The notice stated the proposed map could be examined in the office of the Clerk to the Board and listed a physical address and email address to allow the public to submit written comments. CF, pp 395, 756. The notice did not provide a way to attend or access the hearing electronically. CF, pp 395, 756. The Board met on January 23 and approved hearing minutes regarding redistricting.[3] CF, pp 397, 756.

On January 29, the Board noticed a second public hearing for March 1. CF, pp 402, 756. This notice stated the Board would consider a resolution to adopt its proposed map and would consider public comments. CF, pp 402, 756. The notice stated where the proposed map could be examined and listed a physical address and an email address to allow the public to submit written comments. CF, pp 402, 756. It did not provide the hearing location. Although the Board's meetings are

[3] Based on Weld County's recording of this meeting, Voters alleged these proceedings were conducted to an empty room. *See* CF, p 76 (showing still images taken from meeting recording).

livestreamed for remote observation, the notice did not include information about how to connect to the livestream. CF, pp 402, 756.

The Clerk of the Board received over fifty comments related to the proposed map before the March 1 hearing, the majority of which either opposed the plan or objected to the Board's process in developing it. CF, pp 215, 245, 756. The hearing went forward at the Weld County Administration office and around thirty people attended. Plaintiff and Weld County voter Stacy Suniga (who is also Coalition president) and four other Greeley residents expressed their concerns with the proposed map. Suniga and Plaintiff and Weld County voter Barbara Whinery (who is also a League member) asked the Board to follow the Redistricting Statutes. CF, pp 238, 756–57.

The approved hearing minutes note "Bruce Barker, County Attorney, stated HB 21-1047 does not require Home Rule Charter counties to comply with its provisions," and "the Board must comply with the procedures of the Charter as it currently stands."[4] CF, pp 408, 757. The hearing minutes contain no statements

[4] The Charter provides "[t]he Board shall review the boundaries of the districts when necessary, but not more often than every two years, and then revise and alter the boundaries so that districts are as nearly equal in population as possible." CF, p 149 (§ 3-2(2)).

explaining how the proposed map complies with the Redistricting Statutes' criteria. CF, p 757. During the hearing, a Board member stated the boundary lines were "based on population only." CF, p 409.

After consideration of the evidence in the record and public comments, all five Commissioners stated their reasons for supporting the redistricting map. The Board then formally approved the map by resolution, with one Commissioner abstaining (Map). The redistricting map never changed from January 23 to its adoption Map. CF, p 757.

D. Weld County citizens were denied the inclusive and meaningful redistricting process to which they are entitled.

It is undisputed the Board did not create a county commissioner redistricting commission, much less an independent one, and willfully ignored the Redistricting Statutes' criteria for conducting the process. The Board's decision indisputably affects all Weld County residents. *See* § 30-10-306.2(3)(a),(b) (allowing "[a]ll county residents" to participate in the redistricting process and requiring the commission to "provide meaningful and substantial opportunities for county residents to present testimony"). Because no commission was created, no consideration was given to whether the decisionmakers conducting the redistricting accurately reflected Weld County's residents' political affiliations or racial, ethnic, gender, or

geographic diversity. Nor was any consideration given to forming a commission that avoided conflicts of interest based on partisan alignments. Instead—in direct contravention of the Redistricting Statutes—the Board itself drew the Map. *See* § 30-10-306.1(3).

Procedural Background

Voters are Weld County residents and voters Ms. Whinery and Ms. Suniga and Weld County-based nonprofit organizations League of Women Voters of Greeley, Weld County, Inc. (League) and Latino Coalition of Weld County (Coalition), which are "interested in local government and ensuring fair elections." CF, p 755. Voters sued the Board and each of the five individual Commissioners (collectively Defendants). CF, p 75. Voters asserted three claims: (1) declaratory relief that the Redistricting Statutes applied to Weld County and had been violated; (2) declaratory relief that Weld County violated Voters' procedural due process rights; and (3) permanent injunctive relief enjoining use of the Map. CF, pp 88–92. Voters asked the court to order Defendants to complete a new redistricting process in compliance with the statutory requirements. CF, p 92.

Defendants moved to dismiss, principally arguing Weld County's status as a home rule county superseded the General Assembly's plenary authority over

elections. CF, pp 120–46. With that motion pending, Voters moved for summary judgment as to all three claims. CF, pp 210–37.

The district court partially granted and denied each motion (Order). CF, pp 753–78. The district court dismissed the individual Commissioners and the due process claim. CF, pp 775–77. The district court granted judgment in Voters' favor as to their first and third claims, (1) declaring the Redistricting Statutes "apply to, and are binding upon" Weld County; (2) enjoining use of the Map "in any election"; and (3) ordering the Board to "begin a redistricting process in compliance with" the Redistricting Statutes "if possible" (and if not, requiring use of a map in effect before March 1). CF, p 778.

The Board moved to reconsider, which the district court promptly rejected. CF, pp 779–94, 836. In response to Voters' efforts to meet and confer following the orders, the Board refused to begin a statutorily compliant redistricting process, asserting it has no obligation to do so until after the next federal census in 2033.[5] 6.7.2024 Pet., App. at 737–38 (filing ID AED77DF37298F at PDF page 46–47).

[5] *People v. Linares-Guzman*, 195 P.3d 1130, 1135–36 (Colo. App. 2008) (holding court may take judicial notice of its own records).

Voters petitioned for certiorari under C.A.R. 50. *See* 6.7.2024 Pet. for Cert. This Court granted the Petition, taking four of the Board's issues along with Voters' issue and designating Voters as Petitioners and the Board as Respondent. 7.1.2024 Or.

Summary of the Argument

The Order's analysis should be affirmed, but the Order remanded with directions that the district court direct the Board to immediately undertake a compliant redistricting process.

First, the Redistricting Statutes imply a private right of action to Voters to enforce compliance. Voters are within the class of persons the Redistricting Statutes are intended to benefit: residents of Weld County. Absent Voters' ability to enforce these statutes against the Board, there would be no way to redress and prevent the Board's behavior. And implying a civil remedy to Voters here furthers the General Assembly's dual purpose of ensuring redistricting processes in Colorado are inclusive and meaningful and ending political gerrymandering.

Second, Voters have standing to pursue their declaratory and injunctive relief claims. Ms. Whinery and Ms. Suniga have suffered an injury in fact: the loss of their statutory right to participate in a robust redistricting process with meaningful

and substantial public participation as the Redistricting Statutes. This injury is to a legally protected interest: a private right of action to pursue enforcement of these statutes. The League and Coalition have associational standing because they have members with individual standing, the interests at issue here are germane to these organization's respective purposes, and individual participation is unnecessary.

Third, the Redistricting Statutes bind Weld County. Home rule counties, like Weld, are required to follow all statutes imposing mandatory responsibilities and functions on all counties. The county commissioner redistricting process required under the Redistricting Statues is a mandatory county responsibility and function for **any** county electing any number of commissioners by district. Indeed, in enacting these statutes, the General Assembly specifically intended them to bind Weld County.

Fourth, because home rule counties are not exempt from statutes imposing mandatory responsibilities and functions on all counties, whether there is a conflict between Weld County's Charter and the Redistricting Statutes is immaterial. And in any event, there can be no conflict as the Charter directs the Board to perform all the duties mandated in statutes like these.

Remand, however, is still required. The district court erred in not awarding Voters the full relief to which they are entitled. Allowing the Board to redistrict only if it decides it would be "possible" means the promise to Weld County residents of a meaningful and inclusive redistricting process with robust public participation will go unfulfilled for nearly a decade.

Argument

I. The Redistricting Statutes imply a private right of action to Voters to ensure the Board complies with the Redistricting Statutes.

A. Standard of review and preservation.

This Court reviews a district court's grant of summary judgment de novo. *Pierson v. Black Canyon Aggregates, Inc.*, 48 P.3d 1215, 1218 (Colo. 2002). Statutory interpretation is a question of law reviewed de novo. *Kulmann v. Salazar*, 521 P.3d 649, 653 (Colo. 2022). Whether a statutory scheme implies a private right of action is a legal question reviewed de novo. *Accord Gerrity Oil & Gas Corp. v. Magness*, 946 P.2d 913, 923 (Colo. 1997) (holding "critical question" in determining existence of implied private right of action is "whether legislature intended such a result" and interpreting statute).

This issue was raised and ruled on below. CF, pp 131, 433–34, 514–15, 763–67.

B. Voters satisfy the three factors necessary to imply a private right of action.

Where, as here, a statutory scheme does not provide an explicit private right of action, private civil actions are not necessarily foreclosed. A "particular plaintiff" may still have "available a private cause of action" implied in the scheme's legislative intent. *Magness*, 946 P.2d at 923. In determining whether a private remedy is implied, this Court considers three factors: (1) whether the plaintiff is "within the class of persons intended to benefit from the statutory enactment"; (2) whether the General Assembly "intended to create, albeit implicitly, a private right of action"; and (3) whether an implied civil remedy is consistent with the "purposes of the legislative scheme." *Allstate Ins. Co. v. Parfrey*, 830 P.2d 905, 911 (Colo. 1992); *Magness*, 946 P.2d at 923 (holding "*Parfrey* sets forth the appropriate test"). The second factor is the "critical question." *Magness*, 946 P.2d at 923. The district court correctly concluded each factor is satisfied here.

1. Voters are within the class of persons the Redistricting Statutes are intended to benefit.

Plaintiffs Ms. Suniga and Ms. Whinery are registered voters, citizens of Colorado, and residents of Weld County. CF, pp 238, 417. The League and Coalition, by nature of their membership, are as well. CF, pp 238, 417. The

Redistricting Statutes are intended to give county residents a meaningful opportunity for robust participation in the redistricting process and empower voters to elect commissioners who reflect the communities within the court and will be responsive and accountable. *See* § 30-10-306.2(3)(a),(b); *see also* HB 21-1047, § 1(1)(a),(i),(2) (App. 1) (stating "districts must be drawn such that the people have an opportunity to elect representatives who are reflective of and responsive and accountable to their constituents" and the process should encourage "robust public participation"). Voters are therefore expressly within the class of persons intended to benefit from the Redistricting Statutes.

2. The General Assembly intended to create a private right of action to enforce the Redistricting Statutes.

An implied private right of action exists when allowing one would "furnish[] an effective incentive" to comply with the statute, and, absent one, the General Assembly's goals "would be substantially frustrated" because there would be no other means of enforcement. *Parfrey*, 830 P.2d at 911 (holding that to require UM/UIM coverage be included in every policy, but then "foreclose the insured's right to relief for failure to provide this coverage, would, in all practicality, circumvent this statutorily imposed duty").

By contrast, there is no implied private right of action where a statute provides a means for enforcement. *See*, *e.g.*, *Magness*, 946 P.2d at 925 (holding no private right of action existed where statute reserved right to bring "any cause of action for damages"); *Parfrey*, 830 P.2d at 910 (acknowledging that when the legislature provides for administrative enforcement remedies, it demonstrates "legislative intent to preclude a private civil remedy for breach of the statutory duty"); *Bd. of Cnty. Comm'rs of Cnty. of La Plata v. Moreland*, 764 P.2d 812, 818 (Colo. 1988) (holding no private right of action to enforce building code exists because code provided penalties for violations).

The Redistricting Statutes are silent as to any enforcement mechanism. As in *Parfrey*, an inability to enforce the right to a robust and meaningful redistricting process would substantially frustrate the ability to exercise the right at all. A private right of action is necessary for enforcement. Absent a private right of action, Voters have no enforcement mechanism to prevent and redress calcitrant behavior like the Board's here.

3. An implied civil remedy is consistent with the General Assembly's intent to create an inclusive and meaningful redistricting process.

For similar reasons, implying a private right of action is necessary to further the General Assembly's legislative scheme. To conclude otherwise would mean the General Assembly provided a right to "robust public participation" but offered Weld County residents no way to enforce it. *See Parfrey*, 830 P.2d at 911 (holding availability of civil remedy "not only furnishes an effective incentive" but "furthers statutory goal"). Voters' right to a fair redistricting process would, as practical matter, be foreclosed. *See id.* (implying right of action where because otherwise "in all practicality" statutory duty could be circumvented).

An interpretation of the Redistricting Statutes that allows Voters' rights to be thwarted in this fashion must be avoided. *See* § 2-4-201(1)(d)–(e), C.R.S. (2024) (presuming that, in enacting a statute, a "result feasible of execution is intended" and "[p]ublic interest is favored over any private interest"); § 2-4-212 (2024), C.R.S. (requiring liberal construction).

II. Voters have standing to sue the Board.

A. Standard of review and preservation.

The district court's grant of summary judgment is reviewed de novo. *Pierson*, 48 P.3d at 1218. Standing is a question of law reviewed de novo. *Colo. Union of*

Taxpayers Found. v. City of Aspen, 418 P.3d 506, 510 (Colo. 2018); *see also State v. Hill*, 530 P.3d 632, 634 (Colo. 2023) (reviewing lower court's standing determination de novo).

This issue was raised and ruled on below. CF, pp 132, 433–34, 513–14, 763–67, 785–88, 836.

B. Ms. Whinery and Ms. Suniga have an injury-in-fact to a legally protected interest suffcient to demonstrate standing.

Standing is a threshold issue that must be satisfied to decide a case on the merits. *HealthONE v. Rodriguez ex rel. Rodriguez*, 50 P.3d 879, 892 (Colo. 2002). "Colorado has a tradition of conferring standing to a wide class of plaintiffs." *Ainscough v. Owens*, 90 P.3d 851, 853 (Colo. 2004).[6] "In Colorado, parties to lawsuits benefit from a relatively broad definition of standing." *Id.* at 855. This allows Colorado's district courts to decide not only "traditional legal controversies" but "general complaints challenging the legality of government activities and other cases involving intangible harm." *Id.* at 853.

[6] Colorado's standing doctrine has a different constitutional basis from and is not coextensive with the federal standing doctrine. *Maurer v. Young Life*, 779 P.2d 1317, 1324 n.10 (Colo. 1989); *see also Greenwood Vill.,* 3 P.3d at 437 n.8; *Wimberly v. Ettenberg*, 194 Colo. 163, 167, 570 P.2d 535, 538 (1977) (holding state courts are not subject to Article III of United States Constitution).

A plaintiff must satisfy a two-prong test to establish standing: first, the plaintiff "must have suffered an injury-in-fact" and second, this injury must be to "a legally protected interest." *Ainscough*, 90 P.3d at 855. This test in Colorado "has traditionally been relatively easy to satisfy." *Id.* at 856. The district court correctly determined Ms. Whinery and Ms. Suniga have standing to enforce the Redistricting Statutes.

1. Ms. Whinery and Ms. Suniga demonstrated an injury in fact under Colorado law.

The first prong requires "concrete adverseness which sharpens the presentation of issues that parties argue to the courts." *Ainscough*, 90 P.3d at 856 (quoting *City of Greenwood Vill. v. Pet'rs for Proposed City of Centennial*, 3 P.3d 427, 437 (Colo. 2000)). Intangible injuries, including "the deprivation of civil liberties" are sufficient. *Id.* "Deprivations of many legally created rights, although themselves intangible, are nevertheless injuries-in-fact." *Id.* These include deprivations that "may exist solely by virtue of 'statutes creating legal rights the invasion of which creates standing.'" *Cloverleaf Kennel Club, Inc. v. Colo. Racing Comm'n*, 620 P.2d 1051, 1058 (Colo. 1980) (quoting *Warth v. Seldin*, 442 U.S. 490, 501 (1975)); *see also Concerning Application for Water Rights of Turkey Caňon Ranch Ltd. Liab. Co.*, 937 P.2d 739, 747 (Colo. 1997) (concluding violation of statute for proposed

augmentation plan provided standing where statutory criteria were satisfied); *accord Friends of Chamber Music v. City & Cnty. of Denver*, 696 P.2d 309, 315 (Colo. 1985) (holding "a court first should look at the language of the statute in determining who has standing to challenge it"). Colorado law recognizes "parties actually protected by a statute . . . are generally best situated to vindicate their own rights." *Greenwood Vill.*, 3 P.3d at 437.

Here, Ms. Whinery and Ms. Suniga have suffered an injury in fact. As the district court found, they allege "an actual, intangible injury based on the deprivation of civil liberties"—the actual loss of the statutory right to participate in a robust redistricting process under the Redistricting Statutes. CF, p 765. The Redistricting Statutes were designed to "ensure representation for the various communities of interest and to maximize the number of competitive districts," and to result in "fair criteria for drawing of districts." HB 21-1047, § 1(1)(b),(2) (App. 1). It gives Voters the right to "robust public participation" in the commissioner redistricting process, HB 21-1047, § 1(2) (App. 1), and promises "meaningful and substantial opportunities for county residents to present testimony, § 30-10-306.2(3)(b). These include, among others, the right to have three maps developed based on public input and considered by a designated redistricting commission

during at least three public hearings. §§ 30-10-306.1(1); 30-10-306.4(1)(d); 30-10-306.2(3)(b).

The Board deprived Ms. Whinery and Ms. Suniga of these rights by disregarding the statutorily mandated redistricting process and refusing to follow the law. The Board's deprivation of these statutory rights establishes a concrete injury supporting standing.

Any characterization of Ms. Suniga's and Ms. Whinery's claims as a "generalized grievance constituting pure procedural irregularities" therefore finds no support in the record.[7] The grievance is specific: the Board willfully disregarded the Redistricting Statutes' mandatory procedures, depriving these Voters of the robust participation to which they were entitled in the county commissioner redistricting process.

Ms. Whinery and Ms. Suniga therefore have standing. *Hill*, 530 P.3d at 634 (holding a party seeking a declaratory judgment "must raise a claim that is based on an existing controversy, not speculation that a problem may arise in the future").

[7] This language was quoted directly from the Board's notice of appeal in Voters' Petition for Certiorari. The district court rejected this characterization. CF, p 765.

2. Ms. Whinery and Ms. Suniga have a legally protected interest in a compliant county commissioner redistricting process.

The second prong requires the plaintiff have a legal interest protecting against the alleged injury. *Ainscough*, 90 P.3d at 856. This requires a party assert "a legal basis on which a claim for relief can be grounded." *Hill*, 530 P.3d at 635. This can include a claim for relief under a statute. *Ainscough*, 90 P.3d at 856. This requirement applies with "full force" to declaratory judgment claims—with "some additional nuance." *Hill*, 530 P.3d at 634. A party seeking a declaratory judgment "must raise a claim that is based on an existing controversy, not speculation that a problem may arise in the future." *Id.* at 634–35.

Here, it is undisputed the Board willfully refused to comply with the Redistricting Statues. CF, p 757. For the reasons articulated in section I, above, the Redistricting Statutes provide Ms. Whinery and Ms. Suniga a private right of action to enforce them. Ms. Whinery's and Ms. Suniga's injuries in fact are therefore to a legally protected interest: their right to robust public participation in the commissioner redistricting process.

C. The League and Coalition have associational standing.

The League and Coalition have associational standing. Associational standing requires only that (1) an organization's members would "otherwise have standing to sue in their own right;" (2) the interests at issue are "germane to the organization's purpose;" and (3) the lawsuit does not require individual members' participation. *City of Aspen*, 418 P.3d at 510; *see also Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 342–43 (1977) (concluding associational standing exists even "in the absence of injury" to the association where three-factor test is satisfied). So long as some members have standing to sue, the first factor is met. *Id.* (holding that because two members could sue, first factor was satisfied).

Ms. Whinery's and Ms. Suniga's memberships in the Coalition and League, respectively, and standing to bring this lawsuit individually readily establish this first factor. *See* CF, pp 238, 417, 755, 767. The League and Coalition were formed to protect and encourage active participation in government and voting rights, CF, pp 238, 417, 755, confirming they have a "stake in the resolution of the dispute" that satisfies the second factor. *City of Aspen*, 418 P.3d at 511; *see also* CF, p 238 ("The league is a nonpartisian political organization that encourages informed and active participation in government through education and advocacy."), p 417 ("The

Coalition is a grassroots nonprofit organization that works to foster leadership, representation, and participation by the Latino community in civil life, including local government.").

Finally, because the relief in this case is declaratory, individual participation is unnecessary, satisfying the third factor. *City of Aspen*, 418 P.3d at 511; *see also Stancyk v. Poudre Sch. Dist. R-1*, 490 P.3d 582, 592 (Colo. App. 2020) (concluding third factor was satisfied as to declaratory judgment claim because compliance with statute would "impact all Association members" in plaintiff's position, not plaintiff alone).

III. The Redistricting Statutes bind home rule counties, including Weld County.

A. Standard of review and preservation.

The district court's grant of summary judgment is reviewed de novo. *Pierson*, 48 P.3d at 1218. Constitutional and statutory interpretation present questions of law this Court reviews de novo. *Kulmann*, 521 P.3d at 653.

This issue was raised and ruled on below. CF, pp 218–20, 768–71.

B. The Redistricting Statutes apply to all counties electing any commissioners by district, including home rule counties.

The central dispute between the Board and Voters is whether Weld County's home rule status excuses it from compliance with the Redistricting Statutes. CF, p

768. Throughout the underlying redistricting process and this lawsuit, the Board's position has been constant: it believes applying these statutes to Weld County will "eviscerate the Charter and, via judicial fiat, subjugate every detail of county home rule in Colorado to the whims of the General Assembly." CF, p 502; *see also* CF, p 507 (claiming application of Redistricting Statutes would result in "judicial neutering of Article XIV, Section 16"); CF, p 757 (finding it undisputed the Weld County attorney advised the Redistricting Statutes do "not require Home Rule Charter counties to comply with its provisions").

The district court flatly rejected the Board's position: "It is clear **beyond all reasonable doubt** that the General Assembly intended to regulate the redistricting process in counties such as Weld County." CF, p 768 (emphasis added). This Court should adamantly affirm this conclusion.

1. A home rule county must fulfill all mandatory responsibilities and functions required by statute of any rule county.

Home rule counties find their origin in Colorado's Constitution and the Colorado Home Rule Powers Act (section 30-25-101, C.R.S., *et seq.*). These authorities vest registered voters in each county "with the power to adopt a home rule charter establishing the organization and structure of county government

consistent with" article XIV of the Colorado Constitution and "statutes enacted pursuant hereto." Colo. Const. art. XIV, § 16(1); §§ 30-11-503–505; (detailing procedures for adopting charter); *Bd. of Cnty. Comm'rs v. Andrews*, 687 P.2d 457, 458 (Colo. 1984) (observing the Colorado Constitution and statutes "limit" home rule counties' authority).

The Colorado Constitution requires a home rule county to comply with mandatory state statutes in exercising its power. By constitution, a home rule county "**shall** provide all mandatory county functions, services and facilities and shall exercise all mandatory powers as may be required by statute." Colo. Const. art. XIV, § 16(3) (emphasis added). A home rule county may also choose to "exercise such permissive powers as may be authorized by statute applicable to all home rule counties, except as may be otherwise prohibited or limited by charter" or constitution. *Id.*, § 16(4).

Under the Home Rule Powers Act, a home rule county "shall have all the powers of any county not adopting a home rule charter," unless provided otherwise in the Act, county charter, or Colorado Constitution. § 30-35-103(1), C.R.S. (2024) The Act, like the constitution, requires home rule counties to provide "all mandatory county functions, services, and facilities [and] exercise all mandatory

powers as are required by law for counties not having home rule powers." § 30-35-103(4). A home rule county's governing body "shall have all powers and **responsibilities** as provided by law for governing bodies of counties not adopting a home rule charter." § 30-35-201, C.R.S. (2024) (emphasis added).

None of these powers allow a home rule county to "opt out" of providing mandatory county functions, responsibilities, and services simply because it dislikes them.

2. The Redistricting Statutes create mandatory responsibilities and functions for commissioner redistricting.

When interpreting a statute, a court's "primary aim is to effectuate the legislature's intent." *Nieto v. Clark's Mkt., Inc.*, 488 P.3d 1140, 1143 (Colo. 2021). Courts "look to the entire statutory scheme in order to give consistent, harmonious, and sensible effect to all of its parts, and … apply words and phrases in accordance with their plain and ordinary meanings." *Id.* (quoting *Bill Barrett Corp. v. Lembke*, 474 P.3d 46, 49 (Colo. 2020)); *see also* § 2-4-101, C.R.S. (2024) ("Words and phrases shall be read in context and construed according to the rules of grammar and common usage.").

The use of "shall" in a statute is usually interpreted to make the provision mandatory. § 2-4-401(13.7)(a), C.R.S. (2024) (stating "'shall' means that a person

has a duty"); *DiMarco v. Dep't of Rev., Motor Vehicle Div.*, 857 P.2d 1349, 1352 (Colo. App. 1993) (same). The use of "must" has a similar meaning. § 2-4-401(6.5)(a) (stating "'must' means that a person or thing is required to meet a condition for a consequence to apply"); *Silverview at Overlook, LLC v. Overlook at Mt. Crested Butte Liab. Co.*, 97 P.3d 252, 255 (Colo. App. 2004) ("Use of the word 'must' [in a statute] connotes a requirement that is mandatory and not subject to equivocation.").

Section 30-10-306.1(1)(a) applies to boards of county commissioners in counties "that have **any number** of their county commissioners not elected by the voters of the whole county[.]" (Emphasis added.) This language is unambiguous: if fewer than all of the voters in a county elect even one county commissioner, the Redistricting Statutes apply. *See Nieto*, 488 P.3d at 1143 (holding "where the plain language is unambiguous, we apply the statute as written").

The boards in counties to which the Redistricting Statutes apply "**must** designate a county commissioner redistricting commission … in order to adopt a plan to divide the relevant county into as many districts as there are county commissioners elected by voters of their district." § 30-10-306.1(a) (emphasis

added).[8] While the make-up and independence of this commission is discretionary,[9] *see* § 30-10-306.1(2)(a)-(b), appointment of a commission is not, § 30-10-306.1(a). Importantly, the board of county commissioners' participation in the redistricting process is extremely limited thereafter. § 30-10-306.1(3) (stating a board of county commissioners "may not revise or alter county commissioner districts" except in accordance with an adopted redistricting plan).

The Redistricting Statutes then provide mandatory procedures the commission must follow in adopting a redistricting plan, § 30-10-306.2, and require the board to adopt deadlines for preparation and approval of redistricting plans, § 30-10-306.4. These include, for example, presenting at least three proposed plans for public comment, holding three public hearings before approving a plan, and maintaining a website whether public comments can be submitted and proposed

[8] Ideally, this commission should be independent of the Board. *See* § 30-10-306.1(1) (stating boards of county commissioners "are encouraged to convene an independent county commissioner district redistricting commission").

[9] In appointing members to this commission, careful consideration should be given to appointing person who "accurately reflect" the political affiliations of the county's residents (including unaffiliated residents) and the county's "racial, ethnic, gender, and geographic diversity." § 30-10-306.1(2)(a)–(b). Careful consideration should also be given to "[a]void conflicts of interest based on partisan alignments." § 30-10-306.1(2)(c).

plans and written comments can be published. §§ 30-10-306.2(3)(b),(d); 30-10-306.4(1)(d). Further, the Redistricting Statutes define the mandatory criteria with which the plan must comply, § 30-10-306.3(1)–(3)(a), and require public explanation of how the proposed plans comply with these mandatory criteria, § 30-10-306.3(3)(c).

C. Weld County elects three commissioners by individual district, meaning the Redistricting Statutes impose mandatory responsibilities for redistricting.

It is beyond dispute the Board has five members, three of whom are elected by separate geographic districts and not by the whole county. Because some Weld County commissioners are elected by less than all the voters in the county, the responsibilities in the Redistricting Statutes unambiguously apply to the Board. Nowhere in section 30-10-306.1 are home rule counties exempted. *See Larimer Cnty. Bd. of Equalization v. 1303 Frontage Holdings LLC*, 531 P.3d 1012, 1023 (Colo. 2023) (prohibiting courts from adding words to statutes).

Further, a board's responsibility to form a redistricting commission and comply with the requirements under the Redistricting Statutes are mandatory. As a home rule county, Weld County "shall provide all mandatory functions, services, and facilities, and shall exercise all mandatory powers as may be required by

statute." Colo. Const. art. XIV, § 16(3). This constitutionally sanctioned role for statutes that impose mandatory powers and functions on home rule counties disproves the Board's repeated assertion it is excused from compliance with the Redistricting Statutes.

Nothing in section 30-10-306.1 makes the formation of a redistricting commission and compliance with the Redistricting Statutes requirements for this process "permissive" such that Weld County would have a constitutional or statutory excuse to decline to follow them. Colo. Const. art. XIV, § 16(4); § 30-35-201.

Because the Redistricting Statutes provide an essential, mandatory county function and power, and because some commissioners of Weld County are not elected by voters of the whole county, the Redistricting Statutes bind Weld County and the Board must follow them. *See* Colo. Const. art. XIV, § 16(3). The analysis ends there, and Weld County's home rule status does not excuse its failure to comply with the Redistricting Statutes.

D. The General Assembly intended the Redistricting Statutes to apply to Weld County.

While the Redistricting Statutes are unambiguous, this Court may consider legislative history in confirming its plain language interpretation is consistent with

the General Assembly's intent. *See Smith v. Exec. Custom Homes, Inc.*, 230 P.3d 1186, 1190 n.5 (Colo. 2010) (reviewing legislative history as part of plain language interpretation and finding "legislative history to be consistent with the plain meaning of the statute"); *People v. Rockwell*, 125 P.3d 410, 418–19 (Colo. 2005) (looking to legislative history where statute was plain and unambiguous "only to show that the legislative history does not contradict" interpretation); *see also United States v. Mo. Pac. R.R. Co.*, 278 U.S. 269, 278 (1929) (holding legislative history can be used to confirm a statute's plain meaning).

In enacting the Redistricting Statutes, the General Assembly declared "it is of statewide interest that voters in **every Colorado county** are empowered to elect commissioners who will reflect the communities within the county and who will be responsive and accountable to them." H.B. 21-1047, § 1(1)(i) (App. 1) (emphasis added). The Redistricting Statutes were enacted to "ensure that counties that elect some or all of their commissioners by the voters of individual districts are hold to the same high [redistricting] standards" as congressional and legislative districts. *Id.*, § 1(2) (App. 1). To fulfill this promise, the General Assembly adopted standard that include "fair criteria for drawing of districts, plans drawn by nonpartisian staff, robust public participation, and where practicable, independent commissions." *Id.*

Moreover, the final fiscal note attached to House Bill 21-1047 (which enacted the Redistricting Statutes) identified Weld County as one of three counties that would be affected by the Redistricting Statutes when they were passed. Final Fiscal Note, H.R. 73d Gen. Assem., 1st Reg. Sess., LLS 21-0131, HB 21-1047 (July 14, 2021) (attached in App. 1). This legislative history reinforces that the Redistricting Statutes apply to the Board.

E. It is undisputed the Board did not comply with the Redistricting Statutes, entitling Voters to injunctive and declaratory relief.

The Board's failure to designate a redistricting commission and adhere to the Redistricting Statutes' criteria is dispositive of Voters' claims. Voters are therefore entitled to judgment in their favor.

IV. There is no conflict between the Charter and Redistricting Statutes that excuses the Board's willful refusal to comply.

A. Standard of review and preservation.

The district court's grant of summary judgment is reviewed de novo. *Pierson*, 48 P.3d at 1218. Statutory interpretation is a question of law reviewed de novo. *Kulmann*, 521 P.3d at 653.

This issue was raised and ruled on. CF, pp 525, 768–71.

B. Nothing in the Charter permits the Board to simply disregard the Redistricting Statutes.

In its briefing below, the Board asked the district court to bless its willful refusal to comply with the Redistricting Statutes, citing a conflict between the Statutes and the Charter. CF, p 525. The district court found no conflict between the Redistricting Statutes "and the sparse redistricting provisions" in the Charter. CF, p 769. The district court was correct, and this Court can affirm its conclusion on any one of three grounds. *See People v. Aarness*, 150 P.3d 1271, 1277 (Colo. 2006) ("On appeal, a party may defend the trial court's judgment on any ground supported by the record, whether relied upon or even considered by the trial court.").

First, the conflict argument the Board manufactured to excuse its willful refusal to comply mischaracterizes Colorado law. CF, p 525. *Board of County Commissioners of Weld County v. Andrews* does not permit the Board to avoid its statutory obligations based on conflict between the Charter and the Redistricting Statutes. Rather, *Andrews* turns on a substantive analysis of the duty. Where the duty concerns the county's structure, "home rule counties are given broad discretion." *Andrews*, 687 P.2d at 458. Where the duty concerns a county function, home rule counties are given "less freedom in determining what functions they may

choose" to perform. *Id.*; *see also* Colo. Const. art. XIV, § 16(3) (requiring home rule counties "provide all mandatory county functions, services, and facilities and shall exercise all mandatory powers as may be required by statute").

In *Andrews*, the issue there was whether the Weld County Sheriff was entitled to hire and fire his deputies at will (as statute provided) or whether he had to comply with the Weld County personnel system (established under the Charter). *Andrews*, 687 P.2d at 459. Because the "establishment of a personnel system governing the selection, tenure and dismissal of county employees relates to structure and organization of county government, not the functions of that government," the Charter superseded any applicable state statute providing for a different process. *Id.*

Nothing in the manner in which county commissioner districts are drawn remotely resembles the personnel issue in *Andrews*. As established in section III, above, the Redistricting Statutes entitle Voters to meaningful participation in and a robust process surrounding county commissioner redistricting. This differs from determining what procedural mechanism applies to fire a county employee.

Second, the existence of any conflict is immaterial to the Board's obligation to comply with the Redistricting Statutes. The Charter requires the Board "exercise

all the powers and perform all the duties now required or permitted or that may hereafter be required or permitted by State law to be exercised or performed by County Commissioners in either home rule or non-home rule counties." CF, p 355 (Charter, § 3-8(1)). By its plain terms, the Charter requires the Board comply with the Redistricting Statutes. As a matter of pure logic, there can be no conflict because the Charter incorporates by reference the Board's duties under the Redistricting Statutes.

Finally, as the district court concluded, there is no material conflict. The Charter's requirement that the Board "revise and alter the boundaries so that districts are as nearly equal in population as possible" does not conflict with the Redistricting Statutes' requirement that a commission "[m]ake a good-faith effort to achieve mathematical equality between districts." CF, p 770. While the Redistricting Statutes require "additional procedures," they do not conflict with the Charter. *Id.*

For these reasons, the Board cannot be excused from compliance with the Redistricting Statutes.

V. The district court erred in not directing the Board to complete a compliant redistricting process before 2033.

A. Standard of review and preservation.

The district court's grant of summary judgment is reviewed de novo. *Pierson*, 48 P.3d at 1218. A district court's decision to grant or deny an injunction is reviewed for an abuse of discretion. *Phoenix Cap., Inc. v. Dowell*, 176 P.3d 835, 840 (Colo. App. 2007). Under this standard, the district court's ruling is examined to determine whether it is based on an erroneous application of the law, or is otherwise manifestly arbitrary, unreasonable, or unfair. *Id.* This Court defers to the factual findings underlying the injunction if the record supports them. *Rinker v. Colina-Lee*, 419 P.3d 161, 171–72 (Colo. App. 2019).

The Board argued Voters' claims were moot given the deadline for approval of redistricting plans under section 30-10-306.4 had passed. CF, p 512. Voters disagreed. CF, p 730. The district court concluded the claims were not moot, ordered the Board to "begin a redistricting process in compliance with [the Redistricting Statutes], if possible," and if not possible, ordered the Board "to use the commissioner district maps in effect before the March 1 Resolution was adopted." CF, pp 777–78.

B. Weld County does not intend to comply with the Redistricting Statutes until 2033.

For all the arguments the Board raised below, that it complied with the Redistricting Statutes' criteria was not one of them. Nor could the Board have even credibly argued as much. Its county attorney made clear during the redistricting process these statutes would not be followed in favor of the Charter's process. CF, p 757.

In its Order, the district court rejected the Board's contention that Voters' claims were moot because the compliance deadline had passed. CF, p 777. While assuming at the time (March) "there was insufficient time for the Board to comply," the court did not relieve the Board of compliance altogether. *Id.* Instead, it held the "simple answer" was the "2024 Weld County Commissioner election will be conducted using the districts established before the new redistricting map was improperly approved." *Id.* The force of its ruling was clear: "it would be improper for the court to allow the Board to use the new redistricting map that was improperly approved in violation of Colorado law." *Id.*

In post-trial conferrals, the Board made clear that—even given the Order—it had no intention of engaging in a compliant redistricting process until 2033. *See* Pet.

App. at 737.[10] This means a decade's worth of elections will pass in which Voters and the citizens of Weld County will elect county commissioners without using a compliant redistricting map. Most immediately, this harm will materialize when the term for the District 2 Weld County Commissioner expires in 2026—less than two years from now. *See* Cnty. Comm'r Webpage, Scott James, https://www.weld.gov/Government/Elected-Officials/County-Commissioners/Scott-James (last accessed Aug. 19, 2024) (stating District 2 commissioner term up for election in 2026).[11] This result is untenable.

C. Voters are entitled to a compliant redistricting process undertaken immediately on remand.

C.R.C.P. 65 empowers district courts to order injunctive relief as a "preventive and protective remedy, affording against future, rather than past, acts." *Bd. of Cnty. Comm'rs v. Pfeifer*, 190 Colo. 275, 279, 546 P.2d 946, 949 (1976); *see also Graham v. Hoyl*, 157 Colo. 338, 341, 402 P.2d 604, 606 (1965) (same). Accordingly,

[10] C.R.E. 201(b)(2) (providing a court may take judicial notice of a fact "no subject to reasonable dispute in that it is … capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned"); *see Linares-Guzman*, 195 P.3d at 1135–36.

[11] *See Shook v. Pitkin Cnty. Bd. of Cnty. Comm'rs*, 411 P.3d 158, 161 n.4 (Colo. App. 2015) (taking judicial notice of information posted on county attorney's website).

to afford complete relief, an injunction must effectively redress and prevent future harm. *Accord May Dep't Stores Co. v. State ex rel. Woodard*, 863 P.2d 967, 979 n.24 (Colo. 1993) (holding "cessation or modification of an unlawful practice does not obviate the need for injunctive relief to prevent future misconduct" (citing *Old Homestead Bread Co. v. Marx Baking Co.*, 108 Colo. 375, 380, 117 P.2d 1007, 1010 (1941))).

In their Complaint, Voters requested the Board be ordered to "complete a new redistricting process in compliance with" the Redistricting Statutes. CF, p 92. The district court's conclusion it would be "improper" to allow a redistricting map "improperly approved in violation of Colorado law" to be used is accurate, but affords Voters only partial relief. CF, p 777. The redistricting map in place before the Board's improperly approved map is **equally** improper—it was drawn and approved without using the process and safeguards the Redistricting Statutes require. Accordingly, it is equally necessary the district court compel the Board to engage in a compliant redistricting process as quickly as feasible. Otherwise, the promise to Voters and the citizens of Weld County of robust participation in county commissioner redistricting remains unfulfilled for nearly a decade. *Accord Ex parte Lennon*, 166 U.S. 548, 556 (1897) (holding "it was clearly not beyond the power of a

court of equity, which is not always limited to the restraint of a contemplated or threatened action, but may even require affirmative action, where the circumstances of the case demand it"); *Bowles v. Skaggs*, 151 F.2d 817, 820 (6th Cir. 1945) (holding it "is undoubtedly within the power of equity courts to mould [sic] their remedies to the need of particular situations" and "when equitable considerations have required restoration of the status quo, issued mandatory injunctions or granted other affirmative relief responsive to the needs of the parties invoke equity").

D. Nothing in the Redistricting Statutes prevents this relief.

The Redistricting Statutes contemplate the process will occur in "a redistricting year." § 30-10-306.4(1); *see also* § 30-10-306(h), C.R.S. (2024) ("'Redistricting year' means the second odd-numbered year following the year in which the federal decennial census is taken or the year following a county electing to have any number of its county commissioners not elected by the voters of the whole county."). The Board has argued its failure to comply with the statutes means it is excused from having to do so for the next decade. This leads to an absurd interpretation of the Redistricting Statutes that must be avoided. *See Town of Erie v. Eason*, 18 P.3d 1271, 1276 (Colo. 2001) (holding "courts must not follow statutory construction that leads to an absurd result").

Rather, this Court has flexibly interpreted similar deadlines in context of the congressional redistricting process. There, this Court determined deviation from the statutory deadline was necessary to "effectuate the will of the voters and allow the Commission to fulfill its substantive" redistricting obligations given unprecedented obstacles to timely compliance. *See In re Colo. Indep. Cong. Redistricting Comm'n*, 497 P.3d 493, 503–04 (Colo. 2021) (noting deviation from constitutional deadline was necessary to ensure the new redistricting process's "three key purposes" were served despite COVID 19).

Like Amendment Y there, deviation from the timing in section 30-10-306.4 here is necessary to ensure the Redistricting Statutes' substantive obligations and important purposes are not "thwarted." *Id*. at 504. And like the unprecedented COVID circumstances delaying the Amendment Y process, Weld County's willful, blatant refusal to comply with a state statutory scheme that plainly applies to the county is similarly unprecedented, warranting similar deviation from statutory deadlines. *See also Hoffman v. N.Y. State Indep. Redistricting Comm'n*, 234 N.E.3d 1002, 1018 (N.Y. 2023) (rejecting, in New York State redistricting process, argument that time for compliance had passed because "the untimeliness argument

is nothing more than a way to undo the constitutional [redistricting] requirement[s]" and "would cause" improperly drawn maps "to last a decade").

The district court should have ordered the Board to conduct a redistricting process in compliance with the Redistricting Statutes. By requiring a compliant redistricting only if the Board considers it "possible," the district court failed to order the full relief to which Voters were entitled. Remand with directions to immediately undertake a compliant redistricting process is appropriate for this reason.

Conclusion

This Court should affirm the district court's conclusion that the Redistricting Statutes bind the Board and remand with directions that the Board immediately undertake a compliant redistricting process.

Dated: August 19, 2024

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Certificate of Service

I hereby certify on August 19, 2024, I filed the foregoing with the Colorado Supreme Court and served true and correct copies of the foregoing via the Colorado E-File System on all counsel of record.

s/ Kendra N. Beckwith