COLORADO SUPREME COURT Ralph L. Carr Judicial Complex 2 East 14th Avenue Denver, CO 80203	DATE FILED October 8, 2024 4:28 PM FILING ID: BC285717B6717 CASE NUMBER: 2024SC394
COLORADO COURT OF APPEALS Case No. 2024CA0774	
WELD COUNTY DISTRICT COURT Case No. 2023CV30834 The Honorable Todd L. Taylor	
Petitioners: LEAGUE OF WOMEN VOTERS OF GREELEY, WELD COUNTY, INC.; LATINO COALITION OF WELD COUNTY; BARBARA WHINERY; and STACY SUNIGA, **v.** **Respondent:** WELD COUNTY BOARD OF COUNTY COMMISSIONERS.	**▲ COURT USE ONLY ▲**
Attorneys for Respondent Weld County Board of County Commissioners Matthew J. Hegarty, #42478 Alexandra L. Bell, #49527 HALL & EVANS, L.L.C. 1001 17th Street, Suite 300 Denver, CO 80202 T: 303-628-3300 hegartym@hallevans.com bella@hallevans.com	**Case No.: 2024SC394**
ANSWER BRIEF	

CERTIFICATE OF COMPLIANCE

I hereby certify that this Answer Brief complies with all requirements of C.A.R. 32 and 53, including all formatting requirements in those rules. Specifically, the undersigned certifies that:

The brief contains 9,495 words.

I acknowledge my Answer Brief may be stricken if it fails to comply with the requirements of C.A.R. 32 and 53.

s/ Alexandria L. Bell

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INTRODUCTION

This case is about imposition of statutory duties on a home-rule county beyond those in its Charter while trying to remove its self-governance on an issue of local concern. Since 1972, the Colorado Constitution afforded local self-government to counties of this State via home-rule charters adopted under Article XIV, Section 16. In 1976, "vested with the power", Weld County voters adopted their Home Rule Charter ("Charter"), a local governing document, to establish "the organization and structure of county government" and to provide for all home-rule mandatory and permissive functions and exercise of powers, which in its Preamble proclaims:

> We, the people of Weld County, Colorado, in order to avail ourselves of self-determination in county affairs to the fullest extent permissible under the Constitution and laws of the State of Colorado, and in order to provide uncomplicated, unburdensome government responsive to the people, and in order to provide for the most efficient and effective county government possible, do hereby ordain, establish and adopt this Home Rule Charter for Weld County, Colorado.

[CF, p 350]. To accomplish "the most efficient and effective county government" that's "responsive to the people," for almost 50 years, the Charter required the Board:

> to review the boundaries of the [three commissioner] 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 353 §3-2]. Over a span of almost a half-century, the Charter evolved but this

commissioner redistricting provision remained intact.

Petitioners ask this Court to sanction the evisceration of the Board's historical powers and duties to administer an "efficient and effective" biennial commissioner redistricting process authorized by all Weld County voters. But the legislature lacks authority to deny a right the Constitution grants or to eliminate the Charter provision for which the people voted. Plus, Petitioners lack standing to seek declaration that C.R.S. §§30-10-306 to -306.7 ("Redistricting Statutes") apply to and were violated by Weld County. Thus, this Court should reverse the grant of summary judgment to Petitioners and conclude: the Redistricting Statutes don't apply to home-rule counties with conflicting charters; that includes Weld County's Charter; even if the Redistricting Statutes can be forced on Weld County, Petitioners lacked standing to sue the Board over application thereof; and the commissioner redistricting map the Board adopted in its March 1, 2023 Resolution ("2023 Map") should be reinstated.

ISSUES PRESENTED FOR REVIEW

This Court accepted the following issues for C.A.R. 50 certiorari review:

A. Whether the trial court erred in concluding as a matter of law that C.R.S. §§ 30-10-306, *et seq.*, applies to a home rule county with a conflicting charter.

B. Whether the trial court erred in determining there is no conflict between the provisions of C.R.S. §§ 30-10-306, *et seq.*, and the Weld County home rule charter.

C. Whether the trial court erred in concluding C.R.S. §§ 30-10-306, *et seq.*, implies a private right of action.

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

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

STATEMENT OF THE CASE

A. Nature of the Case.

The Constitution enshrines the right of home rule for Colorado's counties if their populace chooses it. *See* Colo. Const. art. XIV, §16. Weld County's voters did. Grounded in the Colorado Constitution and in its Charter "establishing the organization and structure of county government", since 1976, the Weld County Board of County Commissioners ("Board") has had the singular duty and authority from Weld County's people to administer at least biennial review and revising of commissioner district boundaries as nearly equal in population as possible per the Board Procedures. [CF, pp 353 §3-2; 702-715 Art. I Board Procedures]. No petitions to amend or implement different commissioner redistricting criteria and procedures or to deny the Board's power to draw commissioner district boundaries were ever

made. [CF, p 539 ¶¶4-7]. Even after the Redistricting Statutes passed in 2021, neither Petitioners nor any Weld County resident petitioned for change. *See id.*; HB21-1047, 73rd Gen. Assemb., 1st Reg. Sess.; C.R.S. §§30-10-306, *et seq.* (as amended after HB21-1047).

The answer is simple: the Charter's commissioner redistricting process is constitutional, legally reasonable, efficient, and practical. The Redistricting Statutes, in contrast, are cumbersome and will increase the County's "legal, administrative, and operating costs" while increasing state revenue. [CF, p 447]. And if Petitioners wanted a more complicated commissioner redistricting process, they had almost 50 years to amend the Charter and seek "approv[al] by a majority of registered electors" to implement criteria and processes similar to those in the Redistricting Statutes. *See* Colo. Const. art. XIV, §16 (2), (3); C.R.S. §30-11-506 (1). Thus, as a constitutional law matter, how and when to draw commissioner districts in Weld County belongs exclusively to the County's electorate. And Petitioners lack standing to impose on a home-rule county's voters the legislature's whim to close the loop on Amendments Y and Z, which has been already solved by county home rule, using a nonexistent implied private right of action.

B. Statement of Relevant Facts.

The Colorado Constitution authorized Weld County voters to establish "the

organization and structure of county government" to enable the County to provide and exercise all mandatory and permissible functions and powers, and they did so in 1976. Colo. Const. art. XIV, §16 (1); ***Bd. of Cnty. Comm'rs v. Andrews***, 687 P.2d 457 (Colo. App. 1984). Since the time of its approval by Weld County's voters, pursuant to this constitutional authority and implementing legislation (*e.g.*, C.R.S. §30-11-511), the Charter stated the Board's function and power to review commissioner district boundaries no more than every two years, and then revise and alter those boundaries to ensure equality of population as nearly as possible. [CF, pp 350, 353]. Despite almost twenty intervening amendments to the Charter, including the 2001 and 2007 comprehensive review of the Charter by an independent Ad Hoc Home Review Study Committee, no changes or revisions to Section 3-2 were ever proposed. [CF, p 539 ¶¶4-5].

Grounded in the Charter and in the Weld County Code ("Code"), the processes and criteria for review, revision, and alteration of boundaries for Weld County's local commissioner districts have been always the same:

i. the County Clerk and Recorder would prepare one or more proposed plans for revising and altering the district boundaries so that districts are as nearly equal in population as possible;
ii. the proposed plan(s) would be presented to the Board;
iii. public notices would be published to solicit any input on or objections to the proposed plan(s);
iv. one or more public hearing(s) would be held to allow for further commenting on the plan(s); and

v. by Resolution, the Board would approve the final plan changing the boundaries of the districts to be as nearly equal in population as possible.

[*See id.*, ¶6; CF, pp 702-715]. Given Weld County's rapid population growth, pursuant to the Charter's mandate, and following the same decades-long process (*i.e.*, three proposed plans, multiple public notices, extensive commenting, and public hearings where Petitioners' and others' voices were heard), on March 1, 2023, the Board approved the 2023 Map. [CF, pp 505-06 ¶¶7-18]. More than two years after the Redistricting Statutes' passage (effective July 11, 2021), more than eight months after the Board's March 1, 2023 Resolution, and almost a month after the statutory-county redistricting deadline, *see* C.R.S. §30-10-306 (4), Petitioners sued the Board asking the district court to swoop in, erase clear historical precedent, and restart the redistricting process pursuant to the Redistricting Statutes, all in view of the upcoming 2024 elections. [CF, pp 75-93].

However, the Redistricting Statutes not only impose excessively burdensome duties that trample Weld County voters' desire for "uncomplicated, unburdensome government responsive to the people" as the Charter establishes, but also remove the County's ability for biennial redistricting. *See* C.R.S. §30-10-306 (4). What's more, while the Charter and Code allow for new commissioner districts in 2025 and for establishment of a commission, if needed [CF, pp 355-356, §3-8(4)(h)], and sets

criteria for adequate notice and hearings [*id.*, pp 386, §16-6; 504 n.2 (Code, §§2-1-180, 21-1-210, 21-1-220)[1]], Petitioners and *amici* would mandate judicial enforcement of the legislature's edict in 2033 with a categorical prohibition before then.

C. Relevant Procedural History.

Petitioners' Complaint claimed the Board failed to follow procedures outlined in the Redistricting Statutes when drawing and adopting the 2023 Map, and thus "denied their right to fully participate in the redistricting process" and their right to "free and fair elections." [CF, pp 75-94 ¶¶6, 118-119]. After the Board moved to dismiss, Petitioners sought summary judgment, and the Court resolved both motions concurrently. [*Id*., pp 120-778]. After wrongly holding the legislature had "plenary authority over elections," Petitioners had standing, the Redistricting Statutes didn't conflict with the Charter and applied to Weld County, the district court ruled the Board violated the Redistricting Statutes and rejected the 2023 Map, although it did correctly dismiss Petitioners' procedural due process claim. [*Id*., pp 753-778]. Significantly, the court declined to order the Board to restart the redistricting

[1] The Code is available at https://library.municode.com/co/weld_county/codes/charter_and_county_code. This Court can take judicial notice of publicly available local enactments like the Code. *See* CRE 201, 902(2), (6), (8); ***Walker v. Van Laningham***, 148 P.3d 391, 397-98 (Colo. App. 2008).

process, instead leaving compliance to the Board by ordering it:

> to begin a redistricting process in compliance with §§ 30-10-306.1 through 30-10-306.4, if possible, and if not possible, the Board is ordered to use the commissioner district maps in effect before the March 1 Resolution was adopted.

[*Id.*, p 912]. The Board complied as ordered and used the commissioner district map adopted in 2015, while seeking review of the court's orders in the court of appeals. [*Id.*, pp 779-933]. This Court then accepted C.A.R. 50 review.

SUMMARY OF THE ARGUMENT

The grant of summary judgment to Petitioners should be reversed, except for that portion declining to force immediate redistricting.

First, the Redistricting Statutes don't apply to a home-rule county with a conflicting charter. The County Home-Rule Amendment, Colo. Const. Art. XIV, §16, and its implementing legislation – all of which predate the Redistricting Statutes and Amendments Y and Z by between 40-50 years – must be construed together. When they are construed together, the ineluctable conclusion is that home-rule counties are entitled, within the charter their voters enact in electing the self-governance right which home-rule status provides, to address the structural and organizational issue of procedural and substantive requirements for voting for the elected officials comprising their governing body. This right of self-governance is

constitutionally granted and can't be stripped by legislative enactment or judicial pronouncement. The separation-of-powers doctrine likewise establishes this issue is committed to home-rule counties.

Second, the Charter irreconcilably conflicts with the Redistricting Statutes. The procedural and substantive requirements for voting for Weld County's governing-body elected officials are structural and organizational, and not just administrative or ministerial. While the Charter and the Code together address several procedural aspects of commissioner redistricting similarly to the Redistricting Statutes, those Statutes well exceed the bounds of what the Charter authorizes and requires, as the political-question doctrine confirms. Further, no balancing of state and local interests is needed, and even if it was, all such interests heavily favor the Board.

Third, Petitioners lack standing to seek a pre-enforcement declaration that the Redistricting Statutes apply to the County. No such testing-statutory-application right of action exists. Neither do they have standing for statutory enforcement, as Petitioners didn't suffer a concrete injury-in-fact to a legally protected right. The harm they claim – denial of robust and meaningful participation in the commissioner redistricting process – is to the generalized procedural interests of all County residents with no statutory private right of action implied.

Fourth, Petitioners' requested relief – immediate commissioner redistricting compliant with the Redistricting Statutes – would be in direct violation of C.R.S. §30-10-306, which doesn't permit a redistricting process to occur but once every ten years following the federal decennial census, thus in 2033. Thus, provided there is standing and the Redistricting Statutes apply, this Court is not at liberty to cherry-pick provisions of a statute Petitioners and *amici* wish to apply while ignoring others, and such invitation should be declined. As such, no remand to conduct an immediate redistricting process pursuant to the Redistricting Statutes is required.

ARGUMENT

A. The Redistricting Statutes Don't Apply To A Home-Rule County With A Conflicting Charter.

The corpus of home-rule-county law in Colorado, beginning with the County Home-Rule Amendment and continuing into its implementing legislation, unabashedly confirms the primacy of a home-rule county's charter which addresses subjects it is authorized to address over any contrary statute.

Standard of Review and Preservation: The Board agrees de novo review governs the Court's evaluation of whether the Redistricting Statutes apply to a home-rule county with a conflicting charter, and agrees both parties preserved the issue.

1. *Governing Law on Home-Rule Counties Confirms Self-Determination and Discretion of County's Citizens Acting as a Whole to Govern Their Affairs.*

Effective January 1972, Colorado's electorate enshrined into our State's Constitution the right of counties to attain home-rule status should the majority of the county's registered electors so decide. *See* Colo. Const. Art. XIV, §16. More specifically, that section of the Constitution provides:

> Notwithstanding the provisions of sections 6, 8, 9, 10, 12, and 15 of this article, the registered electors of each county of the state are hereby vested with the power to adopt a home rule charter establishing the organization and structure of county government consistent with this article and statutes enacted pursuant hereto.
>
> 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.
>
> A home rule county shall be empowered to provide such permissive functions, services, and facilities and 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 this constitution.
>
> The provisions of sections 6, 8, 9, 10, 12, and 15 of article XIV of this constitution shall apply to counties adopting a home rule charter only to such extent as may be provided in said charter.

Colo. Const. Art. XIV, §16 (1), (3)-(5).[2]

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[2] Contrary to the AG's view, there's no material distinction between county-wide elections of Board officials and the redistricting process, as the districts actually used are central to (and inextricable from) the election itself. [COAG Amicus Br., pp 11-12].

Colorado's home-rule-county statutes reiterate these principles:

(1) Chapter 105 establishes parameters for home-rule-county charters, Ch. 105, secs. 1-3, 1971 Colo. Sess. Laws 349-353; *see* C.R.S. §§30-11-501 *et seq.*; Ch. 138, secs. 1-3, 1976 Colo. Sess. Laws 693; C.R.S. §30-11-501 (requiring majority vote of county's then-registered electors to approve home-rule status);

(2) C.R.S. §30-11-511 (echoes Art. XIV, §16 (3)-(4)); C.R.S. §30-11-513 ("Officers of a home rule county shall be appointed or elected as provided for in the charter," and "the terms of office and qualifications of such officers shall also be provided for in the charter");[3] C.R.S. §30-11-506 (home-rule-county citizens desiring to amend charter submit question to all county voters); and

(3) via the Colorado County Home Rule Powers Act, Ch. 370, secs. 1-3, 1981 Colo. Sess. Laws 1461-1487; C.R.S. §30-35-103 (1) (citing C.R.S. §§30-11-501 *et seq.*), -103(4) (echoing Art. XIV, §16(3)-(4)), which must be "liberally construed" to support home-rule counties' powers, C.R.S. §30-35-102.

Article XIV, §16 affords a home-rule county's citizens (the citizens acting as a majority, not just one or two) "broad discretion" in establishing their county government's organization and structure – "creating of a frame of government, designating county officials, and establishing their relative duties within the county government" – limited "only by the requirement that the organization and structure be consistent with the constitution and statutes enacted pursuant to it." ***Andrews***, 687

[3] This section alone makes plain that the fields of a home-rule county's governance aren't limited to those explicitly listed in C.R.S. §30-35-201(1)-(46).

P.2d at 458-59 (quotations omitted). Sections 6, 8-10, 12, and 15 of Article XIV "set forth the officers who shall be elected in each county and how they shall be chosen and compensated." ***Id.*** (quotations omitted). But if a given subject addressed in a home-rule-county charter "relates to" the county government's structure and organization, and if when the charter was adopted nothing in Colorado's Constitution or statutes prohibited or was inconsistent with the charter's system, then the charter's system for that subject prevails. *See* ***id.*** at 459.

More fundamentally, though, "no analysis of competing state and local interests is necessary where a statute purports to take away home rule powers granted by the constitution." ***Town of Telluride v. San Miguel Valley Corp.***, 185 P.3d 161, 169 (Colo. 2008) (statute which did so was unconstitutional); *see* ***id.*** at 170 ("The legislature cannot prohibit the exercise of constitutional home rule powers, regardless of the state interests which may be implicated by the exercise of those powers."). Indeed, where "a specific constitutional power" granted to a home-rule public entity is involved, and despite any potential statewide concern implicated, "the General Assembly has no power to enact any law that denies a right specifically granted by the Colorado Constitution." ***City of Thornton v. Farmer's Reservoir & Irrigation Co.***, 575 P.2d 382, 389 (1978).

2. *Under Separation-of-Powers Principles, Redistricting Statutes Don't Apply to a Home-Rule-County Charter Which Addresses Commissioner Elections.*

The phrase "mandatory county functions", appearing in both Article XIV, §16 and the home-rule-county statutes cited above, hasn't been interpreted by any court. Logically, the phrase (whatever it means) cannot be construed apart from its exceptions' plain language within Article XIV, §16. *See* ***People v. Herrera***, 2014 COA 20, ¶11. That is, to the extent statutory counties must address the constitutional exceptions – election of county board members (maybe commissioners, maybe not), election of county officers apart from board members, vacancies of county commissioners, residence requirements, other types of county officers, and county officer compensation – Article XIV, §16 expressly gives home-rule counties and their citizens the right to decide in their charter how those subjects will be addressed.

Commissioner redistricting for home-rule counties is inextricable from the election of county board members which Article XIV, §16 recognizes is related to "structure and organization" of home-rule-county government, such that (meaning no disrespect) the legislature has no authority to dictate how it's done if the charter addresses it. *See* ***Andrews***, 687 P.2d at 459. For a home-rule county, how the county

is divided up into districts[4], whether to have commissioners in the first place, and the method and means of their election[5] (*i.e.*, at-large or districted, and what factors influence how districts are drawn) are inherently under the ambit of home rule, determined by the county electorate as a whole via their duly-enacted charter, as part of their constitutionally-secured ability to control such local matters – flexibility which statutory counties lack.

Concomitantly, Article III of the Colorado Constitution provides:

> The powers of the government of this state are divided into three distinct departments, –the legislative, executive and judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.

This provision enshrines the separation-of-powers doctrine into Colorado law. *See* ***Meyer v. Lamm***, 846 P.2d 862, 872 (Colo. 1993). The doctrine, fundamentally, means "the three branches of government are separate, coordinate, and equal." ***Pena***

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[4] *See e.g. Pitkin County Home Rule Charter*, art. II, §§ 2.1, 2.3.1 *at* www.pitkincounty.com, which since 1978 had five districts despite C.R.S. §30-10-306 (1) mandating three districts for a county with population less than 70,000 (C.R.S. §30-10-306(2)). Pitkin's 2023 population was roughly 17,000 (*see* www.census.gov/quickfacts/fact/table/pitkincountycolorado,CO,US/PST045223). Pitkin is another example the Redistricting Statutes don't apply to home rule counties; otherwise, its charter has been unlawful since 1978. [CF, pp 523-24, n. 15].

[5] *See* Charter, §§ 3-2, 3-4, 18-4.

v. Dist. Court, 681 P.2d 953, 955-56 (Colo. 1984). Even if a court otherwise has jurisdiction over a dispute's subject matter, an order is void where the court exceeds its jurisdiction by intruding into areas within the provenance of another branch of government. *See* ***Kort v. Hufnagel***, 729 P.2d 370, 373 (Colo. 1986). The doctrine "operates to prohibit the judiciary from preempting an executive agency from exercising powers properly within its own sphere." ***Id.*** Neither can courts, under the pretense of deciding a case," seize power vested in other branches. ***People v. Zapotocky***, 869 P.2d 1234, 1244 (Colo. 1994).

Specifically relating to the relationship between state government and local government, if an act involves or requires the exercise of some degree of official discretion or exercise of judgment, a court possesses no power to compel a local official to do it. *See* ***People v. Cnty. Comm'rs***, 127 P. 960, 960 (Colo. 1912). This makes sense as counties aren't arms of the state, but separate political subdivisions with distinct responsibilities. *E.g.*, ***Nat'l Advertising Co. v. Dep't of Hwys.***, 718 P.2d 1038, 1043-44 (Colo. 1986). And even more specifically focusing on home-rule municipalities, the Colorado Supreme Court previously reasoned:

> If in fact the home rule provision of the constitution is obsolete the remedy is to bring about its repeal or amendment. It would indeed be a "black day" for Denver as well as for the entire state of Colorado if this court were to presume to amend or repeal this provision of the constitution by judicial fiat. Only by the vote of all the people of the State of Colorado may such result be accomplished, and their votes

> must first be recorded and the majority thereof one way or another determine the result. Under the separation of powers of government, a basic cornerstone in our way of life, it is not the function of the judiciary to destroy constitutional provisions by judicial decision.

Four-County Metro. Capital Improvement Dist. v. Bd. of Cnty. Comm'rs, 369 P.2d 67, 79 (Colo. 1962)(on petition for rehearing). These separation-of-powers notions are replete within the County Home Rule Powers Act. *E.g.*, C.R.S. §30-35-103(1) (home-rule counties have "all the powers of any county not adopting a home rule charter,[6] except as otherwise provided in this article or in the charter or in the state constitution" (emphasis added)); C.R.S. §30-35-201 (Board has such duties, authority, responsibilities, and powers "as provided by law for governing bodies of counties not adopting a home rule charter"[7] along with "all of the following powers that have been included in the county's home rule charter". (emphasis added)).

In addition, any analogy to Amendments Y and Z rings hollow, because ***In re Interrogatories on Senate Bill 21-247 Submitted by Colo. Gen. Assembly***, 2021 CO 37, ¶¶44-54, this Court held "[t]he limited role assigned to the General Assembly in

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[6] *See* C.R.S. §30-11-101 (detailing powers of counties generally, including "[t]o exercise such other and further powers as may be especially conferred by law").

[7] *See* C.R.S. §30-11-107 (detailing certain powers of Board including "[t]o set off, organize, and change the boundaries [and to designate number] of precincts … in accordance with section 1-5-101," including -101(7) by which the county clerk and recorder "alter[s] the precinct boundaries when necessary" to ensure no precinct is located in more than one county commissioner district).

Amendments Y and Z" is only for "appropriate[ing] funds for the redistricting process." The legislature cannot substantively "extend" anything related to Amendments Y and Z, especially because those amendments were completely silent on purely local elections, and this Court cannot force the "how" of the commissioner redistricting process in the Redistricting Statutes on a home-rule county's electors.

Finally, the legislature knows how to indicate, textually, that a statute expressly applies to a home-rule county given its constitutional obligation to do so. *E.g.*, C.R.S. §§1-45-116, 8-3.3-105, 30-2-103, 24-4.2-109, 25-1-508, 29-1-301 [CF, pp 523, n. 14]. But the Redistricting Statutes lack any textually explicit application to home-rule counties.[8] If the legislature really wanted to make these redistricting processes mandatory for home-rule counties, it would've referenced section 30-10-306 within sections 30-11-501 *et seq.*, or even within sections 30-35-101 *et seq.*, but it didn't.

B. Weld County's Charter Was Enacted Pursuant To Constitutional Home-Rule Powers, And It Can't Be Harmonized With The Redistricting Statutes.

The conflict between the Charter and the Redistricting Statutes is one of

[8] The AG's reliance on Colo. Att'y Gen. Op. No. 03-1 (Jan. 13, 2003), is fundamentally at odds with the actual reasoning: "Nevertheless, for the reasons that follow I conclude that home rule counties also are empowered to decide upon their own election rules, and that home rule county powers in this regard are similar in scope to those of home rule cities and towns." ***Id.*** at 6.

constitutional dimension. Specifically, the Home-Rule-County Amendment and its implementing legislation, in existence decades before the Redistricting Statutes were even conceived, already committed to the Board the constitutional duty to address commissioner elections in the Charter, and the Board did so. Under long-standing precedent, neither the legislature nor this Court can strip that constitutional right from Weld County and its electorate acting as a whole, and, in any event, all factors relevant to the state vs. local question heavily favor the Board.

Standard of Review and Preservation: The Board agrees de novo review applies to this Court's assessment of whether the constitutionally-sanctioned Charter conflicts with the Redistricting Statutes, and agrees both parties preserved the issue.

1. The Charter's Text and Structure Confirm Commissioner Elections in Weld County Are Structural and Not Merely Procedural.

The Charter, effective since January 1, 1976, ***Andrews***, 687 P.2d at 459, confirms Weld County's citizens' intent for "self-determination in county affairs to the fullest extent permissible under the Constitution and laws of the State of Colorado, and in order to provide uncomplicated, unburdensome government responsive to the people, and in order to provide for the most efficient and effective county government possible". Charter, Preamble. Regarding voting districts for commissioners, the Charter states:

(1) There are hereby established three geographic commissioner

districts numbered district 1, 2 and 3 which shall, initially, correspond to the three commissioner districts in existence on the effective date of this Charter.

(2) The 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.

(3) Any change in the boundaries of a County Commissioner's district which shall cause a duly elected or appointed Commissioner to be no longer a resident of the district which he represents shall not disqualify him from holding office during the remainder of the term for which he was elected or appointed.

Charter, §3-2. This section has been the same since its inception.

Other sections of Charter's Article III address the number of commissioners and their residence qualifications, terms of office, chair, departments, Clerk to the Board, compensation, rules of procedure, official meetings, quorum, majority-vote requirement, ordinance process, and vacancies. *See generally* Charter, art. III. When read as a whole (with the exception of Section 3-8 relating to "powers and duties"), Charter Article III plainly relates only to Weld County's governmental structure and organization. *See* ***Andrews***, 687 P.2d at 459; ***Herrera***, ¶11 (under canon of construction *in pari materia*, subparts of same provision are read together to ensure drafters' intent is fulfilled and to avoid inconsistency).

Hence, in Weld County, voting for County commissioners goes to the County government's organization and structure which is reserved to the people of the

County acting as a whole, and isn't a merely administrative or ministerial function. This is so because Colorado's statutory scheme, pursuant to which the Charter was enacted, plainly states, "Officers of a home rule county shall be appointed or elected as provided for in the charter," and "the terms of office and qualifications of such officers shall also be provided for in the charter[.]" C.R.S. §30-11-513. "Officers" includes members of the home-rule county's governing body, whether designated as county commissioners or something else. *E.g.*, C.R.S. §30-11-511 ("Any power, function, service, or facility vested by statute in a particular county officer, agency, or board, including a board of county commissioners, may be exercised or performed within a home rule county by such county officer, agency, or board or by any other county officer, agency, or board designated in the home rule charter.").[9]

2. Charter and Redistricting Statutes Are Contradictory, Not Complementary.

A rudimentary comparison of the Charter with the Redistricting Statutes confirms the two provisions of law neither complement nor supplement each other.

Concerning commissioner district criteria, the County's citizens in the Charter require the Board to consider only equality of population and to do so biennially.

[9] Home-rule counties needn't have elected county commissioners. Typically, Colorado counties are required to have commissioners, Colo. Const. Art. XIV §6; but this requirement doesn't apply to a home-rule-county charter unless and to the extent the charter says so, Colo. Const. Art. XIV §16(5).

Charter, §3-2(2). Technically, the Charter also allows the Board to serve as its own redistricting commission, *id.*, §3-8(h), and sets criteria for adequate notice and hearings (*id.*, §16-6; *see also* Code §§2-1-180, 21-1-210, 21-1-220). The canon of construction *expressio unius est exclusio alterius* (expression of one is exclusion of another), which means courts may not read additional material into an existing list of specific items, directs the Redistricting Statutes' mandates cannot be engrafted onto the Charter. *E.g.*, ***Cain v. People***, 2014 CO 49M, ¶13. The Court "cannot adopt an interpretation which would invalidate a large section of [the Weld County] charter." ***Andrews***, 687 P.2d at 461 (alteration in original).

In contrast, the Redistricting Statutes heap a huge helping of administrative hurdles onto the Board regarding the commissioner district alteration process, which the County's citizens to date haven't seen fit to introduce into the Charter, including but not limited to: convene an independent redistricting commission, which prepares and submits at least three different plans for redistricting which both impose a numerical limit on population variance among districts and comply with 52 U.S.C. §10301, as amended; hold at least three hearings with county citizens to provide, permit, and solicit various types of feedback and testimony on at least three different redistricting plans; permit and publish further feedback via a specially-maintained website; and then divide the county into districts per the final redistricting plan. *See*

C.R.S. §§30-10-306, -306.1, -306.2, -306.3, -306.4.

Historical events further elucidate the conflict: (a) county home-rule status was constitutionalized in 1972, *see* Colo. Const. art. XIV, §16; (b) in 1971, Chapter 105 was enacted, *see* Ch. 105, secs. 1-3, 1971 Colo. Sess. Laws 349-353; (c) in 1976, Weld County's citizens passed the Charter, *see* ***Andrews***, 687 P.2d at 459; and (d) in 1981, the County Home Rule Powers Act's passage merely validated (rather than ratified) the Charter's contents. Art. XIV, §16(2)'s enactment, along with (but not subordinate to) home-rule-county statutory schemes in place since 1981 and earlier [C.R.S. §§30-11-501 *et seq.*, §§30-35-101 *et seq.*], authorized the legislature to dictate only basic elements of what the Charter must contain. The Charter must be read as the predecessor to Amendments Y and Z, not that Amendments Y and Z are suddenly fixing problems on which the legislature decided it should close the loop.

More fundamentally, it's not that Weld County cavalierly believes it can "opt out" of compliance with the Redistricting Statutes. Rather, Weld County simply can't comply with the Redistricting Statutes while still being faithful to its voters' chosen county-government structure and organization, as the Constitution enabled those voters to choose back in 1976. *See* ***Town of Telluride***, 185 P.3d at 169-70.

3. The General Assembly's Interests Don't Outweigh Those of Weld County and its Citizens Acting as a Whole, Which Derive from the Constitution.

What's more, even if the legislature had plenary power over all purely local

elections in Colorado generally, which the Board denies, the legislature must exercise that power in a specific way as to home-rule counties for its exercise of that power to be valid – but the legislature didn't validly exercise any such power here given the constitutional rights of Weld County and its citizens which are at stake.

Again, if the Constitution reserves to a home-rule county a specific power and the right to address that power in its charter, "no analysis of competing state and local interests is necessary" and "the General Assembly has no power to enact any law" that denies that constitutionally-granted right. ***Town of Telluride***, 185 P.3d at 169-70. But even if balancing of state and local interests is needed, which the Board denies, various factors drive the analysis: (1) whether statewide uniformity of regulation of the matter is needed; (2) whether the home-rule county's treatment of the matter will impact persons living outside the county; (3) whether the specific matter historically was governed by state or local government; and (4) whether the Colorado Constitution specifically commits the matter to state or local regulation. *See* ***Town of Telluride v. Lot Thirty-Four Venture, L.L.C.***, 3 P.3d 30, 37 (Colo. 2000).[10]

[10] ***Town of Telluride*** and other cases express a doctrine that, if an issue is of mixed state and local concern which both the state and local public entity regulate, then the state law supersedes the local law if they conflict. *E.g.*, ***Telluride***, 3 P.3d at 37. But this doctrine should be considered dicta because it originates, as far as the Board can tell, from ***DeLong v. City & Cnty. of Denver***, 576 P.2d 537, 540 (Colo.

The balance of all four factors favors the Board, to wit: (a) although HB21-1047 contains a legislative declaration of statewide interest, it isn't binding, *see* ***City & Cnty. of Denver v. State***, 788 P.2d 764, 768 n.6 (Colo. 1990),[11] and in any event the County-Home-Rule Amendment voluntarily granted home-rule powers to all registered electors in every county who adopt a home-rule charter establishing their county government's organization and structure, *see* Colo. Const. art. XIV, §16(1); (b) the Charter's procedures for commissioner redistricting don't reference any tangible impact on communities outside the County and there's no record evidence confirming any such impact, *but cf.* ***Town of Telluride***, 3 P.3d at 38 (municipal ordinance admitted its terms would impact other communities); (c) historically, commissioner redistricting was Weld County's local-affairs duty accompanied by the Board's powers to implement commissioner district boundary changes for decades, as required by the federal Constitution, *e.g.*, ***Avery v. Midland Cnty.***, 390

1978), which baldly stated this doctrine without any support. Given the wide constitutionally-sanctioned discretion afforded home-rule counties in their affairs under art. XIV, §16 and related statutes, including C.R.S. §30-11-513 which reserves to a home-rule county's citizens the ability to determine how their county-wide elected officials will be elected, the Court should not apply this doctrine to home-rule counties.

[11] Tellingly, despite a declaration of interest as amicus, the Attorney General neither brought an action against the County nor moved to intervene in this case.

U.S. 474 (1968);[12] and (d) no particular constitutional provision specifically claims a statewide interest in purely local elections, as contrasted with Colo. Const. art. XIV, §§6, 16, which when read together clearly commit the issue of county-wide elections to a home-rule county's discretion as its charter provides. *Cf.* ***Gray v. Golden***, 89 So.2d 785, 791 (Fla. 1956)(fixing boundaries of county commissioner districts was among things authorized in home-rule charter).

The political-question-doctrine factors identified in ***Colo. Common Cause v. Bledsoe***, 810 P.2d 201, 205 (Colo. 1991)(quoting ***Baker v. Carr***, 369 U.S. 186, 217 (1962)), and reaffirmed in ***Markwell v. Cooke***, 2021 CO 27, ¶¶23-26 & n.7, support the Board's position and strongly suggest this matter isn't justiciable, to wit: (a) facially, the Constitution's Home-Rule-County Amendment commits commissioner elections to the people of the County (via the Charter's language) and its Board, the governing body of a constitutional home-rule county exercising its own decision-making powers under an existing constitutional and statutory framework, *see* Colo.

[12] *See* ***Baldwin v. City of Buffalo***, 160 N.E.2d 443, 446 (N.Y. 1959)("alteration of ward boundaries is properly an affair of the municipality. A contrary construction of the Constitution – that the State Legislature may change district lines for local elections in every city of the State – leaves the citizens of these communities with virtually no redress or remedy where these boundaries are altered against their will. However, with this power properly residing in the local government, the citizens have an immediate and effective remedy, since they may remove those local officials who tamper with district lines contrary to their will in the next succeeding election").

Const. art. XIV, §16(3); C.R.S. §§30-11-506(1), 30-11-513; (b) though it's unclear whether there are judicially discoverable and manageable standards for resolving any conflict between the Home-Rule-County Amendment and its implementing legislation, and the Redistricting Statutes, the Board and the people of Weld County have constitutional powers over which neither the courts nor the legislature prevail, *see* ***Town of Telluride***, 185 P.3d at 169-70; (c) no commissioner district redistricting decision can be made without the initial policy determination of Clerk and Recorder Koppes to exercise due diligence in an effort to balance a diverse population, while keeping the districts equitable in size, and then submitting recommendation to the Board which has a duty outlined in its authority to "keep the three districts within 5% of population and anticipated growth", a kind of determination clearly for nonjudicial discretion; (d) given existing constitutional restrictions on contravening the Charter and the authority it gives the Board, *see* ***Town of Telluride***, 185 P.3d at 169-70; ***Andrews***, 687 P.2d at 459, it would be impossible for this Court to resolve the case without exhibiting a prohibited lack of respect for the Board's home-rule powers; (e) in light of the constitutional mandate to respect the Board's home-rule powers, there's an unusual need for unquestioning adherence to the Board deciding commissioner redistricting pursuant to its Charter; and (f) the substantial likelihood of multifarious pronouncements by transgressing the Board's constitutionally-

granted and -empowered authority. *See* ***Bledsoe***, 810 P.2d at 205.

Ultimately, though, Colorado's electorate already resolved the state- v. local-concern issue via the County-Home-Rule Amendment by constitutionalizing a home-rule county's authority to address commissioner redistricting by its citizens acting as a whole in their charter. As Weld County's democratically-elected officials, the Board must protect the interests of all Weld County citizens.[13]

C. No Standing Exists To Seek Judicial Imposition of Inapplicable State Statutes On Weld County On This Local Issue Covered By Its Charter.

No standing exists to seek pre-enforcement declaration that the Redistricting Statutes apply to Weld County. Petitioners can't demonstrate they suffered concrete harm to any procedural rights they claim beyond generalized grievances (especially because their procedural-due-process claim was dismissed completely), and they can't establish the Redistricting Statutes, even if held applicable to Weld County (which is denied), impliedly authorize them to seek declaratory and injunctive relief against the Board. Thus, they lack standing, and the Court should reverse.

Standard of Review and Preservation: The Board agrees de novo review applies to this Court's analysis of the district court's holdings Petitioners had a

[13] As such, calling the Board's decision to defend its Charter enacted via referendum of all County voters and pursuant to constitutional home-rule powers, an "unveiled and intentional usurpation of power from Weld County citizens", is comical.

private right of action and standing, and agrees both parties preserved these issues.

1. Under Colorado's Statutory Standing Doctrine, Generalized Grievances and Lack of a Private Right of Action Don't Confer Standing.

To establish standing, Petitioners must satisfy a two-prong test: (1) injury-in-fact, (2) to a legally protected interest. ***Bd. of Cnty. Comm'rs v. Ryan***, 2023 CO 54, ¶10; *accord* ***Town of Erie v. Town of Frederick***, 251 P.3d 500, 504 (Colo. App. 2010)("Colorado's standing case law regarding statutes requires" two-prong test).

The first prong requires an individualized injury, and generalized grievances about government conduct won't do. ***Reeves-Toney v. Sch. Dist. No. 1***, 2019 CO 40, ¶22 ("only injured parties – not the public in general – [can] seek redress in the courts"); ***Town of Erie***, 251 P.3d at 504 (quoting ***City of Greenwood Vill. v. Petitioners for Proposed City of Centennial***, 3 P.3d 427, 439 (Colo. 2000)(third-party standing rule "prevents a party from asserting the claims of third parties who are not involved in the lawsuit"); *see also* ***Lance v. Coffman***, 549 U.S. 437, 441-42 (2007)(four Colorado voters lacked standing, as their injury was "the law [] has not been followed" which was "precisely the kind of undifferentiated, generalized grievance about the conduct of government that we have refused to countenance in the past"); ***Tyler v. Judges of Court of Registration***, 179 U.S. 405, 406 (1900)("[E]ven in a proceeding which he prosecutes for the benefit of the public ...

[the plaintiff] must generally aver an injury peculiar to himself, as distinguished from the great body of his follow citizens.").

And under the second prong, for an interest to be legally protected it must derive from "the constitution, the common law, a statute, or a rule or regulation." ***Ryan***, 2023 CO 54, ¶11 (quoting ***Ainscough v. Owens***, 90 P.3d 851, 856 (Colo. 2004)). Whether a plaintiff has a legally protected interest under a statute not expressly authorizing them to sue, for purposes of standing, is resolved by whether a private right of action can be implied. ***Taxpayers for Pub. Educ. v. Douglas Cnty. Sch. Dist.***, 2015 CO 50, ¶15, *vacated on other grounds*, 582 U.S. 951 (2017).

2. Petitioners Fail to Satisfy All Prerequisites for a Private Right of Action and, Therefore, Don't Have Any Legally Protected Interest.

Petitioners' statutory standing framework is twofold: (1) standing to seek pre-enforcement declaration as to the Redistricting Statutes' applicability against a home-rule County with a conflicting Charter; then (2) standing to enforce violation of the Redistricting Statutes against Weld County, if such are deemed applicable. The Redistricting Statutes don't provide for either private pre-enforcement action for declaratory or injunctive relief against the Board to test their application, or enforcement action for violation of their provisions. *See* C.R.S. §§30-10-306 to 306.7. In fact, the Redistricting Statutes are completely silent on who and how should test their applicability, if such is contested, or enforce their provisions if such

are violated. ***Id.***

Petitioners and *amici* ask this Court to create a private pre-enforcement declaratory cause of action as to the Statutes' applicability, and then infer the same as to their enforcement. But they don't provide a legal framework that mandates, absent clearly-expressed legislative intent in the Redistricting Statutes' text to impose governmental liability for contesting applicability or for violating them, this Court must create a private remedy against the County. Petitioners and *amici* argue such private right of action is implied. [*E.g.*, OB, pp 16-17]. But assuming *arguendo* the Redistricting Statutes govern Weld County, and further assuming *arguendo* the statutory scheme's reference to "county residents" is broad enough to include Petitioners, Petitioners are wrong because they can't satisfy clear expression of legislative intent and consistency with overall statutory scheme. *See* ***City of Arvada v. Denver Health & Hosp. Auth.***, 2017 CO 97, ¶27 (quoting ***Allstate Ins. Co. v. Parfrey***, 830 P.2d 905, 911 (Colo. 1992)).

First, there is no "clear expression" of legislative intent to imply any private right of action against the government here, as required per ***City of Arvada***, ¶22. For such expression to exist, the text of the particular statute or related statutes must contain some "other indicia of intent to create a private right of action," *see* ***id.***, ¶30. However, neither ***Parfrey*** (implied private tort remedy against nongovernment

defendant), nor any case since ***Parfrey***, authorized consideration of extra-statutory legislative sources like a bill's unenacted text, and no other related statutes support the existence of a private right of action either. *See* ***Wibby v. Bd. of Cnty. Comm'rs***, 2016 COA 104, ¶24 ("we look to the statutory language to determine whether an implied right exists" (emphasis added)).

Here, the legislature's silence regarding a home-rule county's duties to its citizens above and beyond its charter's existing mandates, coupled with the express constitutional and statutory warrant for such county to exercise structural self-determinism in how its governing board is elected, strongly suggests no private right of action was intended. *See* Colo. Const. art. XIV, §16; C.R.S. §§30-11-511, -513; ***Trudgian v. LM Gen. Ins. Co.***, 2024 COA 87, ¶25 ("clear legislative intent is what we must have before finding an implied private right of action"). This makes sense because of this Court's increasing "reluctance" to divine a private right of action in the face of legislative taciturnity. *See* ***City of Arvada***, ¶21. There's simply no indication the Redistricting Statutes would authorize home-rule county residents to seek declaratory or injunctive relief against their county to challenge (1) the county's position regarding non-applicability, or (2) even if applicable, the county's alleged

noncompliance with any statutory provisions.[14]

Second, implying a private right would be "redundant" of existing remedies. ***Trudgian***, ¶26. Namely: the Attorney General's own pre-enforcement action (which he hasn't seen fit to advance); and the other remedies Petitioners didn't bother to attempt, *see* Colo. Const. art. XIV, §16(2) (petition to amend charter); C.R.S. §30-11-506(1) (same); Code §2-1-130 (same); Charter, §15-4 (referendum); *see also* C.R.C.P. 106(a)(4). At no point prior to filing suit did Petitioners attempt to effect a change in the Charter's redistricting procedures via the County-wide electoral process, as they could have done under the law. C.R.S. §30-11-506 relays the procedures by which citizens can endeavor, via the ballot box, to amend a home-rule-county's charter: (a) obtaining signatures of 5% of the County's registered voters (a low bar) and then holding an election in which a majority of the County's registered voters must approve the amendment; or else (b) convince three of five commissioners on the Board to adopt a resolution which then is presented to the County's voters in the aforementioned election. C.R.S. §30-11-506(1), (3). This statute is authorized by Colorado's Constitution, which directed the legislature to promulgate "procedures under which the registered electors of any county may

[14] ***Weisfield v. City of Arvada***, 2015 COA 43, ¶22, is inapposite because it expressly "provides a legal remedy whereby private citizens may enforce its provisions."

adopt, amend, and repeal a county home rule charter" and then indicates charter amendments "become effective [when] approved by a majority of the registered electors of such county." Colo. Const. art. XIV, §16(2). Nor did Petitioners attempt to initiate a County-wide referendum. *See* Charter, §15-4. Petitioners just don't lack the ability to propose and pursue amendments to the Charter which would give the commissioner redistricting process the additional structure they seek.

Third, as a threshold standing matter, this isn't a statutory enforcement or compliance action. The issue, as framed by Petitioners and *amici*, isn't of statutory enforcement due to Weld County's purported noncompliance, but of pre-enforcement statutory application to a county contesting such application in the first instance. Petitioners and their *amici* put the cart before the horse by assuming the Redistricting Statutes apply to Weld County, and by further assuming a private cause of action "to enforce" or to redress "statutory violations" – or put differently, for some breach of a statutory duty – is implied due to the legislative intent to benefit "the public". [OB, pp 16-23, COAG Br., pp 6-10]. But compliance or the County's claimed breach of its statutory duties isn't the issue here, because if the Redistricting Statutes don't apply to Weld County, then there's nothing to enforce or remedy.

At bottom, this Court should refuse to infer or create a private cause of action to further Petitioners' apparent desire to meddle with how to draw commissioner

district boundaries in Weld County. Where the Board has all powers within the Charter (C.R.S. §30-35-201) and took an oath to "support ... this Charter ... and [to] faithfully perform [their] dut[y]" [CF, p 368 §6-2] to adjust commissioner district boundary lines "as nearly equal in population as possible" [*id*., p 353], there's no place for judicial imposition.

3. Petitioners Don't Establish Any More Than a Generalized Grievance.

Nor can Petitioners establish injury-in-fact even if they had a legally-protected interest. Petitioners repeatedly couch their alleged injury as "the loss of their statutory right to participate in a robust redistricting process with meaningful and substantial public participation as [in] the Redistricting Statutes", or the Board "depriving these Voters of the robust participation to which they were entitled in the county commissioner redistricting process" by "refusing to follow the law." [OB, pp 12-14, 16-18, 21-22]. Such alleged harm is not an individualized injury – apart from others in the county – that is required for standing to sue the government.

First, no loss or deprivation of any concrete right occurred. The County offers alternative criteria and processes to participate in commissioner redistricting than the Redistricting Statutes. Evidently, all County residents (save two) trust the Board to uphold its oath to "support ... this Charter ... and [to] faithfully perform the duties of this office", including commissioner redistricting duties it faithfully performed

for almost 50 years. [CF, p 368]. Given these alternative procedures were followed as proven below [*id.*, pp 538-542], Petitioners can't claim the denial of rigid adherence to the Redistricting Statutes was sufficient under ***Ryan***, ¶¶21-24, where this Court rejected a nearly identical argument structure from the County.

Second, Petitioners' claimed injury-in-fact is exactly the sort of "generalized grievance," ***Town of Erie***, 251 P.3d at 504, about the conduct of the government which all Weld County voters theoretically may share. However, actual harm to Petitioners' own legally-protected interest, instead of the County's general electorate, is required. Apart from asserting the County's position of declining to follow a different commissioner redistricting process was harming all County voters, Petitioners can't claim they allegedly lost or were deprived of anything in particular.

Ultimately, the discussion circles back to the question of pre-existing local control authority: whether a couple of Weld County residents have standing to wield the cudgel of litigation to pummel the entire County (more than 350,000 residents) into submission to the Redistricting Statutes despite the arguable inapplicability of the same to the County given the comprehensiveness of its Charter and existing procedures. What if other Weld County citizens (all but two of whom didn't see fit to affix their names to a Complaint) don't want Petitioners to interfere on their behalf or are perfectly satisfied with the commissioner redistricting criteria and processes

currently in place? The Board didn't find any adequate legal support to corroborate standing in these circumstances, and neither Petitioners nor *amici* offered any in their briefs. Absence of such legal support especially makes sense given the Colorado Constitution's existing political process, Colo. Const. art. XIV, §16(3); C.R.S. §30-11-506, to ensure Weld County's citizens "avail [them]selves of self-determination in county affairs to the fullest extent permissible" [CF, p 350], by referendum or ordinance[15] to demand different processes for changing commissioner district boundaries, which (it bears repeating) are remedies Petitioners never pursued.

Moreover, because Petitioners Suniga and Whinery lack standing, associational standing of the two entity Petitioners doesn't exist either. ***Colo. Union of Taxpayers Found. v. City of Aspen***, 2018 CO 36, ¶10 (members' standing to sue in their own right is required for declaratory relief sought by association).

D. The Board Can't Be Compelled to Commence a Commissioner Redistricting Process Pursuant to the Redistricting Statutes Until After the Next Census.

Finally, under the plain language of the Redistricting Statutes, specifically C.R.S. §30-10-306, and assuming they apply and further assuming Petitioners have standing to advance their pre-enforcement action against the Board, there's no

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[15] *E.g.*, C.R.S. §1-45-116 (regarding fair campaign practices)("Any home rule county may adopt ordinances or charter provisions with respect to its local elections that are more stringent than any of the provisions contained in this act.").

statutory warrant for compelling any commissioner redistricting process which strictly adheres to the Redistricting Statutes in any calendar year before 2033.

Standard of Review and Preservation: The Board agrees de novo review governs the Court's evaluation of whether the Board must be directed to redistrict pursuant to Redistricting Statutes before 2033. The Board disagrees Petitioners preserved the issue, as Petitioners never sought reconsideration of this ruling under C.R.C.P. 59 or C.A.R. 21 extraordinary review.

1. Fundamentally, Section 30-10-306 Is Part of the Redistricting Statutes, and Petitioners' Assertions Otherwise Aren't Credible.

Initially, Petitioners now allege they don't include section 30-10-306 "as part [of] their definition of Redistricting Statutes." [OB at 2 n.1]. Any "disparity" on this point between what Petitioners argued in the district court and sought in their C.A.R. 50 petition, and what they apparently argue now, isn't due to "quoting of the Board's notice of appeal" but to their intentional omission despite prior reliance on and widespread citation of C.R.S. §30-10-306, which nullifies their argument that HB21-1047 applies to home-rule counties. [*See, e.g.*, CF, pp 75-94 ¶35 ("House Bill 21-1047 was ... codified at sections 30-10-306 through 30-10-306.7"), ¶37, "First Claim for Relief", ¶99, ¶102, ¶104, ¶109, ¶112, ¶113, ¶114, 117, "Prayer for Relief" §§(A), (B), (D); CF, p 190 ("House Bill 21-1047 was signed into law and codified at sections 30-10-306 to -306.4, C.R.S. (2023) (Redistricting Statutes)"; Forthwith Pet.

for Writ of Cert. Under C.A.R. 50 at 1, Intro. (Board adopted map without following "sections 30-10-306 to -306.4, C.R.S. (2023) (Redistricting Statutes)"]. Moreover, section 30-10-306 inarguably was amended at the same time sections 30-10-306.1 to -306.7 were added, as such is an integral, foundational part of the overall statutory scheme, and isn't severable from the remainder of the statutory scheme. This merely illustrates the principle that when a litigant "speaks out of both sides of its mouth, no one should be surprised if its latest utterance isn't the most convincing one." ***Bittner v. U.S.***, 598 U.S. 85, 97 n.5 (2023).

2. The Redistricting Statutes' Text Forbids Compliance Before 2033.

The statutory framework for why the Board cannot be forced to perform commissioner redistricting before 2033 is as follows:

- "redistricting year" is defined in C.R.S. §30-10-306(6)(h) as "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 record establishes that well before the Redistricting Statutes were effective, Weld County chose to have three of its county commissioners not elected by the voters of the whole county [*e.g.*, CF, pp 21-23], meaning that for purposes of this case, the "redistricting year" is only "the second odd-numbered year following the year in which the federal decennial census is taken";

- C.R.S. §30-10-306.4(1) states a board of county commissioners "shall adopt a plan for redrawing county commissioner districts no later than September 30 of the redistricting year." No exceptions are permitted;

- C.R.S. §30-10-306.1(3) forbids a board of county commissioners from

"revis[ing] or alter[ing] county commissioner districts, beyond making de minimis revisions or alterations, unless the board of county commissioners makes such revisions or alterations during a redistricting year in accordance with a final redistricting plan pursuant to section 30-10-306.4"; and

- in turn, after each "federal census", "[t]he establishment, revision, or alteration of districts required by this subsection (4) must be completed by September 30 of the second odd-numbered year following such census." C.R.S. §30-10-306(4).

Thus, the statutory scheme's plain terms mandate redistricting in the third year after the next census, or 2033, and C.R.S. §30-10-306.1 specifically and expressly forbids the course of action Petitioners and *amicus* are asking for.[16]

And Petitioners' and *amicus*' insistence that ***In re Colo. Indep. Cong. Redistricting Comm'n***, 2021 CO 73, ¶¶31-36, sanctions ignoring the redistricting deadline is just wrong, as this Court "compressed" its own time for review prior to the actual final deadline within the amendment due to exigent and unique circumstances outside of the commission's control (i.e. COVID-19 pandemic) and didn't completely ignore the final deadline. Thus, the relief the Petitioners and *amici* seek contravenes the Redistricting Statutes, and as such, the Court cannot compel Weld County to act in violation of these statutes.

[16] And reinforces the conflict between the Charter and the Redistricting Statutes.

CONCLUSION

The Court should reverse the grant of summary judgment to Petitioners, except insofar as the Board wasn't forced to undertake a redistricting process immediately, and reinstate the 2023 Map[17].

Dated and respectfully submitted this 8th day of October, 2024.

s/ Alexandria L. Bell
Matthew J. Hegarty, #42478
Alexandria L. Bell, #49527
of HALL & EVANS, L.L.C.
Attorneys for Respondent Weld County Board of County Commissioners

[17] The 2023 map, which met equal protection requirements as explained in ***Avery,*** 390 U.S. 474, and wasn't challenged until after the statutory deadline in C.R.S. 30-10-306 had passed, needs to be presumed lawful. There is nothing in the Redistricting Statute to allow a retroactive invalidation of a map after the deadline has passed, and retrospectively rendering the 2023 Map's prior version unlawful will itself be unlawful. *See* C.R.S. §2-4-202 (statutes presumed prospective); Colo. Const. art. II, §11 (retrospective laws prohibited); *cf.* ***City of Golden v. Parker***, 138 P.3d 285, 290 (Colo. 2006)(no retrospectivity when party's "reasonable expectations and substantial reliance" vested earlier); ***Colo. Pool Sys. v. Scottsdale Ins. Co.***, 2012 COA 178, ¶38 (statute cannot "retroactively alter the reasonableness" of actions).

CERTIFICATE OF SERVICE

I certify on this 8th day of October, 2024, a true and correct copy of the foregoing **ANSWER BRIEF** was e-filed with the Court via the Colorado Courts E-Filing System and thereby served upon the following counsel of record noted below:

Kenneth F. Rossman, IV
Kendra N. Beckwith
Elizabeth Michaels
Joseph Hykan
LEWIS ROCA ROTHGERBER CHRISTIE LLP
krossman@lewisroca.com
kbeckwith@lewisroca.com
emichaels@lewisroca.com
jhykan@lewisroca.com
ATTORNEYS FOR PETITIONERS

Jennifer L. Sullivan
Kurtis T. Morrison
Alex J. Acerra
Joshua J. Luna
Cata A. Cuneo
COLORADO DEPARTMENT OF LAW
jen.sullivan@coag.gov
ATTORNEYS FOR AMICUS CURIAE COLORADO ATTORNEY GENERAL

Timothy R. Macdonald
Sara R. Neel
Lindsey M. Floyd
ACLU FOUNDATION OF COLORADO
tmacdonald@aclu-co.org
sneel@aclu-co.org
lfloyd@aclu-co.org
ATTORNEYS FOR AMICI CURIAE AMERICAN CIVIL LIBERTIES UNION and AMERICAN CIVIL LIBERTIES UNION OF COLORADO

s/ Celeste Albiez
Celeste Albiez, Legal Assistant