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<tr><td>DISTRICT COURT, WELD COUNTY
Honorable Todd L. Taylor
Case No. 2023CV30834</td></tr>
<tr><td>Petitioners: LEAGUE OF WOMEN VOTERS OF GREELEY, WELD COUNTY, INC., ET AL.

v.

Respondent: BOARD OF COUNTY COMMISSIONERS OF WELD COUNTY.</td><td rowspan="2">Case No.: 2024SC394</td></tr>
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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 5,699 (no more than 5,700 words).

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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Introduction

Nearly every argument in the Board's answer brief is steeped in hostility to a democratic way of government. The Board belittles a county commissioner redistricting process requiring robust public participation and attacks the county citizens who bring this lawsuit. The need for this lawsuit is therefore self-evident: absent court intervention, the Board will continue its unveiled and intentional usurpation of power from Weld County citizens for itself. Colorado law sanctions no such outcome.

Nothing in the Colorado Constitution or statutes authorizes home rule counties like Weld to ignore duly enacted legislation requiring counties to use a redistricting commission for county commissioner redistricting. This Court should reject the Board's attempt to contort the constitution's home rule provisions to support the Board's bold position that it has the power to choose its voters, rather than the other way around. These arguments meritless and reject the very idea of constitutional government and rule of law.

The Court should affirm the district court's Order and require the Board to immediately undertake a compliant redistricting process.

Argument

I. The district court correctly ruled there is an implied private right of action.

The Board agrees the Redistricting Statutes are "silent" as to enforcement actions, meaning any enforcement action must be implied. Ans. Br. at 30. The Board does not dispute the three-factor test for determining whether an implied private right of action exists applies. Ans. Br. at 31; *see Allstate Ins. Co. v. Parfrey*, 830 P.2d 905, 911 (Colo. 1992). Nor does it dispute the first factor is satisfied—that Voters are within the class of persons the Redistricting Statutes are intended to benefit. Ans. Br. at 31. The Board disputes the two remaining factors: whether the General Assembly intended to create a private right of action and whether an implied civil remedy is consistent with the legislative scheme. *Id*. Both factors are satisfied, and a private right of action exists.

A. The General Assembly intended a private right of action and an implied civil remedy is consistent with the legislative scheme.

Citing to *City of Arvada v. Denver Health and Hospital Authority*, 403 P.3d 609, 615 (Colo. 2017), the Board argues a statute's text must contain a "clear expression" of intent to imply a private right of action. Ans. Br. at 31. This reading contorts the decision. *City of Arvada* merely observed that courts apply the *Parfey* test to determine whether "the legislature clearly expressed its intent to create a

cause of action." *City of Arvada*, 403 P.3d at 614–15. There is no additional "clear expression" requirement beyond this test.

In *City of Arvada*, this Court found the absence of any statutory duties owed to the plaintiff by the defendant was dispositive of the ability assert a private civil remedy. *Id*. at 615. Here, the Redistricting Statutes unambiguously impose a duty on applicable counties to use a commission and certain procedures and criteria when drawing county commissioner districts for the benefit citizens, like Voters. The Board "must" form a redistricting commission. § 30-10-306.1(1), C.R.S. (2024).

This duty is owed to and benefits the county's voters to ensure the commissioner districts are drawn by those reflective of the county's population and in accordance with equal distribution principles. *See* § 30-10-306.1–306.4, C.R.S. (2024); *McCoy v. People*, 442 P.3d 379, 389 (Colo. 2019) (holding statutes must be interpreted as a whole and give effect to legislative intent); *see also B.G.'s, Inc. v. Gross*, 23 P.3d 691, 696 (Colo. 2001) (considering "legislative history surrounding the statute's enactment" to discern the General Assembly's intent).

The Board ignores the Redistricting Statute's language and scheme altogether. Ans. Br. at 32. This Court cannot do so. *McCoy*, 442 P.3d at 389. This

statutory scheme and language provide the necessary "indica" lacking in *City of Arvada*. *City of Arvada*, 403 P.3d at 615 (concluding lack of any suggestion the General Assembly intended to create a duty to benefit the plaintiff was dispositive of *Parfrey*'s second factor).

The existence of this duty is dispositive of Voters' implied right to redress its breach. *Id.* (concluding the need to find a private right of action was unnecessary to ensure statutory duty was fulfilled); *see Parfrey*, 830 P.2d at 911. This duty answers the "critical" second factor necessary to find an implied cause of action exists. *Gerrity Oil & Gas Corp. v. Magness*, 946 P.2d 913, 923 (Colo. 1997).

The Redistricting Statutes provide no express remedy for a board's breach of this duty. A private right of action must be available to the party to whom the duty is owed. Otherwise there is no "effective incentive" for compliance, and the General Assembly's goals would be "substantially frustrated." *Parfrey*, 830 P.2d at 911; *see also* Op. Br. at 16–17.

B. A private right of action is not redundant.

Citing a recent court of appeals case, *Trudgian v. LM General Insurance Co.*, 2024 CO 87, the Board argues a private right of action cannot exist because other existing remedies make it "redundant." Ans. Br. at 33–34 (citing *Trudgian*, ¶ 26).

The Board's alternative "remedies" are not remedies at all. They are ways Voters could theoretically create **new** substantive laws through the political process. For instance, the Board suggests Voters could simply amend the Charter or "convince" a majority of the Board to adopt the Redistricting Statutes' requirements. *Id.* at 33. None of the Board's political process suggestions constitute a legal remedy for the Board's violation statutory duty it violated. *Trudgian* does not suggest otherwise. *See Trudgian*, ¶¶ 19, 26 (finding implied right of action under a statute would be redundant of an express right of action provided in separate provision of same statutory scheme).

C. The Board's "pre-enforcement" point merely reiterates its home rule arguments and is irrelevant to the private right of action question.

The Board argues Voters must show (1) standing to seek a "pre-enforcement declaration" that the Redistricting Statutes apply to the Board as well as (2) standing to seek a declaration the Board has violated these statutes. Ans. Br. at 9, 28, 30–31, 33. At bottom, this is nothing more than an argument that "if the Redistricting Statutes don't apply to Weld County, then there's nothing to enforce or remedy." *Id.* at 34.

The Court should not consider its home rule arguments in this context. The Board's circular pre-enforcement argument misunderstands the showing required for standing to bring a declaratory judgment action. All a plaintiff must allege is an injury in fact to a legally protected or cognizable interest. *Ainscough v. Owens*, 90 P.3d 851, 855 (Colo. 2004).

Voters have a legally protected interest in participating in the process the Redistricting Statutes requires and voting in districts drawn following this process. Because Voters have interests that the Redistricting Statutes protect, the Declaratory Judgment Act permits them to "have determined any question of construction or validity arising under the … statute[s]." § 13-51-106, C.R.S. (2024).

II. Voters demonstrated an injury in fact to their legally protected interest in the Redistricting Statutes.

The Board's argument that Voters have not established an injury in fact also fails.[1] Ans. Br. at 35–37.

[1] Section I, above, addresses the Board's challenges to the second prong. *City of Arvada*, 403 P.3d at 613–14 (holding existence of an implied right of action demonstrates requisite legal interest).

A. The Board's damage to Voters' civil liberties demonstrates an injury in fact.

The district court concluded, and Voters demonstrated, "an actual, intangible injury based on the deprivation of civil liberties." CF, p 765; Op. Br. at 21–22, 24. The Board contends *Weld County Colorado Board of County Commissioners v. Ryan*, 536 P.3d 1254 (Colo. 2023), instructs otherwise because this Court "rejected a nearly identical argument structure" there. Ans. Br. at 36. Not so.

In *Ryan*, the Board alleged "two supposed injuries" arising from the Colorado Air Quality Control Commission's APA rule-making process. 536 P.3d at 1259. First, the Board claimed the Commission violated the Colorado Air Pollution Prevention and Control Act by not giving the Board's concerns "adequate priority" and denying it more testifying time at the rulemaking hearing. *Id.* The Court rejected these arguments because the statute did not "dictate a particular allocation of time during a hearing or mean that Weld County will always get its way." *Id.*

Second, the Board complained that the Commission's late acceptance of another party's submission violated the Administrative Procedure Act (APA), truncating the Board's response time. *Id.* at 1259–60. The Court held that "[u]nder

the APA, 'any person adversely affected or aggrieved'" by agency action had standing to seek judicial review. *Id.* at 1258 (quoting § 24-4-106, C.R.S.). However, the Board's allegations did not "establish standing to challenge an agency action" under this standard because the Board had not alleged it was "adversely affected or aggrieved" by the Commission's procedures. *Id.* at 1259–60.

Ryan is inapposite. The plaintiff there claimed violations of statutory obligations that did not exist. 536 P.3d at 1259–60. Here, the Board breached the clear requirements of the Redistricting Statutes. Op. Br. at 6–10. And the Court's conclusion in *Ryan* that a decreased amount of time to respond to a submission did not satisfy the APA's "adversely affected or aggrieved" standard has no application here. Voters do not invoke the APA and do not challenge an agency action. *Id.* Instead, they alleged and proved a systematic and willful disregard of **all** the Redistricting Statutes processes that deprived Voters of any meaningful participation in the process. Op. Br. at 6–10; CF 759.

The Board's contention that Voters are uninjured because the Board employed "alternative procedures" instead of following the procedures required by law is unsupported. Ans. Br. at 35–36. No authority permits this Court to determine whether a violation of a statutorily protected interest is significant

enough to constitute an injury in fact. This analysis would infringe upon the legislature's prerogative to determine what interests are entitled to legal protection. *Kallenberger v. Buchanan*, 649 P.2d 314, 318 (Colo. 1982) ("One of the fundamental tenets of our constitutional system is that courts do not approve or disapprove the wisdom of legislative decisions or the desirability of legislative acts.").

B. The fact the Board inflicted similar injuries on all Weld County citizens does not make Voters' grievances generalized.

The Board argues Voters' injuries are "generalized grievances" all Weld County voters share. Ans. Br. at 36. The Board is wrong.

Voters were directly and individually harmed when they were denied the right to participate in the redistricting process provided by the redistricting statutes. Op. Br. at 21–22. While it is true the Board inflicted similar injuries on vast numbers of Weld County citizens, "[t]he fact that an injury may be suffered by a large number of people does not of itself make that injury a nonjusticiable generalized grievance." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016), *as revised* (May 24, 2016).[2]

[2] While this Court is not subject to Article III standing requirements, "similar considerations operate to require state courts to apply the standing doctrine." *Wimberly v. Ettenberg*, 194 Colo. 163, 167, 570 P.2d 535, 538 (1977).

Moreover, the Board's cited authority, *Town of Erie v. Town of Frederick*, 251 P.3d 500 (Colo. App. 2010), is inapposite. *Id*. at 504 (concluding Erie had standing to pursue its own injuries "to the extent actually aggrieved" but not third parties' injuries).

Finally, the Board accuses Voters of attempting to "wield the cudgel of litigation to pummel the entire county into submission" and proclaims that "other Weld County citizens (all but two of whom didn't see fit to affix their names to a Complaint) don't want [Voters] to interfere on their behalf." Ans. Br. at 36–37. This argument infers that every Weld County citizen who did not sue the Board supports the Board's illegal and arbitrary redistricting process. The inference is unwarranted. No Weld County citizen (or anyone else) supports the Board as amici. And Colorado law dictates this Court must analyze standing of the two brave citizens who **did** act to thwart the Board's unveiled and intentional usurpation of power on their own merits. Op. Br. at 19–20.

III. The Redistricting Statutes unambiguously apply to Weld County.

The plain language of the Redistricting Statutes is clear: "each county" that has "any number of their county commissioners not elected by the voters of the whole county" must appoint a redistricting commission and follow the process the

statutes mandate. § 30-10-306.1. Commissioner redistricting is therefore a county function, whether the county is home rule or statutory.

The Redistricting Statutes impose mandatory functions, services, and powers on counties electing any commissioner by less than the whole county. These counties "must designate a county commissioner redistricting commission," § 30-10-306.1(a), and the Redistricting Statutes then provide mandatory procedures the commission must follow in adopting a redistricting plan, § 30-10-306.2, C.R.S. (2024). The county's board must also adopt applicable deadlines. § 30-10-306.4, C.R.S. (2024).

It is indisputable Weld County elects three county commissioners by district. *See* Ans. Br. at 11–18. And because county commissioner redistricting is a mandatory county function, service, or power, the Board must comply with the Redistricting Statutes. Colo. Const. art. XIV, § 16(3) (requiring home rule counties to provide "all mandatory" county functions and services and to "exercise all mandatory powers as may be required by statute"); § 30-35-103(4), C.R.S. (2024) (same); *see also* § 30-35-201, C.R.S. (2024) (imposing on home rule county's

governing body "all" responsibilities as provided by law for governing bodies of statutory counties).

The Board does not rebut this argument. Instead, the Board equivocally argues "whatever" the phrase "mandatory county functions" means, it must be read in the context of the other Section 16 provisions. Ans. Br. at 14. The novelty of the phrase does not hide its plain meaning. *Bruce v. City of Colo. Springs*, 129 P.3d 988, 992–93 (Colo. 2006) (holding interpretation of a constitutional provision is a legal question and courts give provision's language "plain and ordinary meaning"). Mandatory means "required by law or rules," *Mandatory*, *New Oxford Am. Dictionary* (3d ed. 2010), making mandatory county functions those required by statute. Nothing in this plain meaning is inconsistent with Section 16 as a whole.

The Redistricting Statutes therefore apply to Weld County, and this Court's analysis ends there. *Nieto v. Clark's Mkt., Inc.*, 488 P.3d 1140, 1143 (Colo. 2021) (holding this Court must apply statutes as written). The Board's contrary arguments fail.

A. The Redistricting Statutes do not need to expressly reference home rule counties for them to bind Weld County.

The Board argues the Redistricting Statutes do not apply to home rule counties because they do not contain an express statement to that effect. Ans. Br. at 18. The Board's argument is contrary to basic principles of statutory interpretation.

This Court gives statutes their "plain and ordinary meanings" and does not "add or subtract words from a statute." *Nieto*, 488 P.3d at 1143. The plain and ordinary meaning of "each county" as used in section 30-10-306.1 is unequivocal: every county satisfying the specified criteria, namely, electing any commissioner by less than the whole county. *See each*, *New Oxford Am. Dictionary* (3d ed. 2010) ("used to refer to every one of two or more people or things, regarded and identified separately"). Adopting the Board's interpretation would require this Court to impermissibly rewrite the statute to read "each county that has not adopted a home rule charter."

Nothing in Colorado's Constitution suggests the General Assembly must expressly state when it intends to bind home rule counties by laws of general application. Article XIV expressly recognizes the General Assembly's role in defining mandatory county functions, services, facilities, and powers and is clear

these statutes bind home rule counties. Colo. Const. art. XIV, § 16(3); *see also* §§ 30-35-103(4), 30-25-201, C.R.S. (2024).

The Board is wrong that the General Assembly, in practice, expressly states when a statute applies to home rule counties. Ans. Br. at 18. The Board's cited examples show the opposite is true: the General Assembly expressly states when a statute does not apply. *See, e.g.,* § 1-45-116, C.R.S. (2024) (excluding from the Fair Campaign Practices Act home rule counties with charters requiring more stringent requirements); § 8-3.3-105, C.R.S. (2024) (stating collective bargaining agreement statutory provisions do not "restrict, duplicate, or usurp" any power granted to county commissioners by home rule charters); § 25-1-508(d), C.R.S. (2024) (requiring, notwithstanding statutory provisions related to county or district public boards of health, a home rule county board of health to comply with its charter requirements). The **absence** of a statutory exemption for home rule counties in the Redistricting Statutes therefore demonstrates the General Assembly's intent that they apply to all applicable counties, including home rule.

B. Applying the Redistricting Statutes to Weld County does not violate Colorado's Constitution.

1. The drawing of county commissioner district boundaries does not establish county government organization or structure.

The Board argues that application of the Redistricting Statutes is unconstitutional because how it draws county commissioner district boundaries "relates only to Weld County's governmental structure and organization," making it an exclusive home rule power reserved to its Charter.[3] Ans. Br. at 12–15, 19–21. The Board is wrong.

Section 16(1) of Article XIV grants home rule counties the power to adopt a charter "establishing the organization and structure of county government consistent with [Article XIV] and statutes enacted pursuant hereto." Colo. Const. art. XIV § 16(1). This section affords "broad discretion in the area of structure—creating of a frame of government, designating county officials, and establishing their relative duties within the county government." *Bd. of Cnty. Comm'rs of Weld Cnty. v. Andrews*, 687 P.2d 457, 459 (Colo. App. 1984). Home rule counties "are

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[3] The Board improperly advances this justification for its actions for the first time in its answer brief. *See Est. of Stevenson v. Hollywood Bar & Cafe, Inc.,* 832 P.2d 718, 721 (Colo. 1992) (holding arguments "may not be raised for the first time on appeal").

given much less freedom in determining what functions they may choose to have their county government perform." *Id.*; Colo. Const. art. XIV § 16(3); § 30-11-511, C.R.S. (2024) (requiring a home rule county to provide the functions and exercise the powers "required by statute" but permitting the county to choose the county, officer, agency, or board responsible for providing or exercising them); § 30-11-513, C.R.S. (2024) (similar).

Defining the parts of county government and allocating powers among them is different from determining what powers and functions a county is required to exercise and provide at the outset. The plain and ordinary meaning of the terms "organization" and "structure" are instructive. *Bruce*, 129 P.3d at 992–93 (giving constitutional language its plain meaning). "Organization" means "the structure or arrangement of related or connected items." *Organization*, *New Am. Oxford Dictionary* (3d ed. 2010). "Structure" means "the arrangement of and relations between the parts or elements of something complex." *Structure*, *New Am. Oxford Dictionary* (3d ed. 2010).

Andrews is also instructive. At issue was whether statutory provisions related to appointment and dismissal of sheriff's deputies could override provisions in the Weld County Charter regarding appointment of county personnel by different

means. 687 P.2d at 459. The court found the charter controlled because the "establishment of a personnel system governing the selection, tenure and dismissal of county employees relates to the structure and organization of county government, not to the functions of the government." *Id.* In contrast, charter provisions stating that the sheriff shall exercise all powers and perform all acts and duties required by state law "do not relate to the structural or organizational aspects of county government" but to "the area of mandatory and permissive services." *Id.* at 460.

County commissioner redistricting is a mandatory county function and power. It does not relate to the organization or structure of Weld County's government. This means the Board lacks authority to decide **if** Weld County must follow the Redistricting Statutes.

The Board does not—and cannot—offer any different credible interpretation. Ans. Br. at 12 (quoting *Andrews*, 687 P.2d at 458–59). It does not dispute the Redistricting Statutes sets forth duties a county must perform. *Id*. at 12–15. Thus, because redistricting does not relate to a county's government structure and organization, it is irrelevant that the Redistricting Statutes were not enacted when the Charter was adopted. Ans. Br. at 13 (citing *Andrews*, 687 P.2d at

459).[4] Weld County's constitutional authority to establish the organization and structure of county government **never** included the power to determine how to conduct commissioner redistricting. Colo. Const. art. XIV § 16(1). Weld County must provide all mandatory functions and powers "as may be required by statute," whenever that statute was enacted. *Id.* § 16(3). Finally, the Board's argument that the Charter's redistricting provisions concern the structure and organization of county government because other provisions of Charter Article III do so is unpersuasive. Ans. Br. at 19–21. Article III is entitled "Board of County Commissioners." CF, p 353. Its sections are grouped together because they relate to the Board, not because they relate to the organization and structure of county government. Many Charter provisions related to the organization and structure of county government are outside Article III. *See e.g.*, CF, pp 359–66 (Article IV: creating departments of county government); 368–69 (Article VI: regarding elected officers).

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[4] The Board's suggestion that the Charter's redistricting process is lawful so long as its redistricting process was lawful when the Charter adopted it misreads *Andrews*. The case's reference to that fact that the personnel system was lawful at the time the Charter was adopted refers only to the fact it was "consistent with statutes enacted" under Section 16(1). *Andrews*, 687 P.2d at 459. It does not permit Weld County to grandfather in its Charter's redistricting process.

2. Colorado's Constitution does not grant home rule counties plenary power over county-level elections.

The Board claims home rule counties have complete authority to control county commissioner redistricting because Section 16(4) exempts home rule counties from complying with Article XIV sections 6, 8–10, 12, 15. Ans. Br. at 14–15. This argument is meritless.

None of the constitutional provisions from which home rule counties are exempt concern redistricting. *See* Colo. Const. art. XIV, §§ 6, 8–10, 12, 15. Article XIV, Section 6 provides the number of county commissioners that shall serve on county board of commissioners in statutory counties, sets term limits for these commissioners, and identifies the years in which commissioners shall be elected. Colo. Const. art. XIV, § 6. Under Section 16(4), Weld County may adopt a charter deviating from these requirements. But the Board's argument that this express exemption creates an implied power to control **all issues** involving county elections is baseless. *See Reale v. Bd. of Real Est. Appraisers*, 880 P.2d 1205, 1207 (Colo. 1994) (applying principal of interpretation that "the expression of one thing is the exclusion of another" to Colorado Constitution); *City & Cnty. of Denver v. People*, 88 P.2d 89, 94 (Colo. 1939) (holding that courts interpreting constitutional

provision may not "add words which substantially add to or take from the constitution").

A constitutional grant of power to control elections looks different than the provisions on which the Board relies. *See* Colo. Const. art. XX, § 6 (giving home rule cities and towns the power "to legislate upon, provide, regulate, conduct and control … **"[a]ll matters pertaining to municipal elections** in such city or town" (emphasis added)). If Article XIV, Section 16(4) were intended to confer the same exclusive control over elections in home rule counties, it would state so. It does not. *Pearce v. People*, 53 Colo. 399, 403, 127 P. 224, 226 (1912) (holding that if framers of constitution had intended a result "it would have been easy to say so in no uncertain terms").

Because the Colorado Constitution does not give plenary authority to home rule counties concerning redistricting or elections, the Board's separation of powers argument similarly fails. Ans. Br. at 13, 15–16. This Court will not—and cannot—seize power the Board never had in resolving this dispute. *Cf. Colo. Gen. Assembly v. Lamm*, 700 P.2d 508, 516–17 (Colo. 1985) (holding separation of powers doctrine prevents one branch from exercising power reserved to another branch).

Because redistricting is a mandatory county function and power, it was **always** outside the control of home rule counties under the constitution.

3. Home rule counties lack constitutional power to control local matters.

Finally, the Board claims county commissioner redistricting is inherently within a home rule county's "constitutionally-secured ability to control … local matters." Ans. Br. at 15, 23–25. This ability does not exist.

The powers granted to home rule counties are delineated in Article XIV, Section 16. The power to control local matters is not among them. In contrast, Article XX, Section 6 provides that home rule cities and towns have all "powers necessary, requisite, or proper for the government and administration of its local and municipal matters." Colo Const. art. XX § 6. If home rule counties possessed the same power, Article XIV, Section 16 would say so. *Pearce*, 127 P. at 226.

The cases the Board cites in support of its argument concern home rule cities and towns. *See Town of Telluride v. Lot Thirty-Four Venture, L.L.C.*, 3 P.3d 30, 37 (Colo. 2000) (interpreting Colo. Const. art. XX, § 6); *Town of Telluride v. San*

Miguel Valley Corp., 185 P.3d 161, 169 (Colo. 2008) (same). These cases have no application here.

IV. There is no conflict between the Charter and the Redistricting Statutes.

A. Nothing in the Charter permits the Board to disregard the Redistricting Statutes.

The Charter contains few provisions regarding county commissioner districts. It provides that there shall be three districts, and that the Board shall review the boundaries of the districts "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 (Charter, § 3-2(2)).

Nothing in the redistricting statutes requires otherwise. Op. Br. at 37. As the district court explained, the Redistricting Statutes provide "additional procedures," none of which conflict with the criteria set out in the Charter. *See* Op. Br. at 37.

The Board's complaint that the Redistricting Statutes add additional administrative and procedural steps to the process does not change the analysis. Ans. Br. at 22. The Charter's redistricting provisions say nothing about the administrative steps to be taken in drawing new district boundaries. CF, p 353. But, as the Board points out, the redistricting process the Board used for decades has

included proposed plans, public notices, opportunities to comment, and hearings. Ans. Br. 6. It is not credible to suggest that the additional procedures required by the Redistricting Statutes conflict with the Charter, but that the procedures instituted by the Board do not.

The Board's argument to the contrary reads requirements into the Charter that simply are not there. *Compare* CF, p. 353 (Charter, § 3-2), *with* Ans. Br. at 21 (claiming that the charter requires the board to consider **only** population, and to draw new districts **every** two years). The Court should reject such an interpretation. *Nieto*, 488 P.3d at 1143.

B. Section 30-11-513, C.R.S., does not make the Redistricting Statutes inapplicable to home rule counties.

The Board argues section 30-11-513, C.R.S., which provides that "[o]fficers of a home rule county shall be appointed or elected as provided for in the charter," permits home rule counties to control the county commissioner redistricting process and precludes application of the Redistricting Statutes. Ans. Br. at 21, 25–27. Not so.

Statutory language "must be read in the context of the statute as a whole and the context of the entire statutory scheme." *Jefferson Cnty. Bd. of Equalization v. Gerganoff*, 241 P.3d 932, 935 (Colo. 2010). Section 30-11-513 provides that officers

of home rule counties "shall be elected or appointed as provided for in the charter" and that the "duties of such officers shall be as provided by statute."

Section 30-11-513 mirrors Section 16 and provides that a home rule county may adopt a charter establishing its organization and structure, but the General Assembly may implement statutes defining the duties a home rule county must perform. That elections or appointments shall occur "as provided for in the charter" cannot reasonably be read as an creating a substantive power to control the redistricting process. This is confirmed by the fact that the unique powers of home rule counties in section 30-35-201, C.R.S., do not include the authority to administer elections or manage county commissioner district boundaries. Adopting the Board's interpretation would create a conflict with not only the Redistricting Statutes, but a litany of other election-related statutes. *See e.g.,* § 30-11-107, C.R.S. (2024) (concerning board of county commissioners' power to adjust precinct lines and establish voting places); § 1-1-110, C.R.S. (2024) (concerning powers of county clerk under election code). This Court should not throw the applicability of all election-related statutes to home rule counties in doubt by adopting the Board's strained argument. *City of Florence v. Pepper*, 145 P.3d 654, 657 (Colo. 2006)

("Where possible, we interpret conflicting statutes in a manner that harmonizes the statutes and gives meaning to other potentially conflicting statutes.").

C. The Board is not immune from this Court's review.

The Board argues this Court cannot resolve whether the Redistricting Statutes apply because this case presents non-justiciable political questions. Ans. Br. at 26–28. The issue was not certified and is not before this Court. *See Vigoda v. Denver Urb. Renewal Auth.*, 646 P.2d 900, 907 (Colo. 1982). Even if it was, the argument is baseless.

"It is the province and duty of the judiciary to interpret the Colorado Constitution and say what the law is." *Lobato v. State*, 218 P.3d 358, 372 (Colo. 2009). The questions this case presents concern what the Redistricting Statutes and Colorado Constitution require of the Board, and whether the Board has fulfilled those requirements. This Court has the power and the duty to answer those questions.

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

A. This issue is preserved.

The Board claims Voters did not preserve the issue because they did not seek reconsideration or C.A.R. 21 review. Ans. Br. at 37–38. This is not required. *People*

v. Melendez, 102 P.3d 315, 322 (Colo. 2004) (holding an issue is preserved if district court is "presented with an adequate opportunity to make findings of fact and conclusions of law on [the] issue."); *see also* C.R.C.P. 59(b) (stating post-trial relief is not a condition precedent to appeal); C.A.R. 21(a)(2) (stating review is discretionary). Voters preserved the issue. CF, pp 212, 730–32.

B. The Board's refusal to adopt a final redistricting plan in 2023 does not entitle the Board to ignore its statutory obligations until 2033.

The Redistricting Statutes require the Board to "establish deadlines to ensure that [it] shall adopt a plan for the redrawing of county commissioner districts no later than September 30 of a redistricting year." § 30-10-306.4(1). In the most recent redistricting year, the Board made no effort to comply with this deadline or with any other Redistricting Statute requirement. CF, pp 222–24, 778. The Redistricting Statutes also prohibit a board of county commissioners from making more than de minimis revisions to county commissioner districts except in

accordance with a final redistricting plan adopted in a redistricting year. § 30-10-306.1(3).

The Board reads those provisions together to mean that because it ignored its statutory obligations in 2023 it may continue to do so until the next redistricting year in 2033. Ans. Br. at Ans. Br. at 39–40. The Board is wrong.

The Redistricting Statutes do not support the Board's interpretation. *See Gerganoff*, 241 P.3d at 935. The Redistricting Statutes require that a final redistricting plan, promulgated in accordance with the statutes, be adopted in every redistricting year. § 30-10-306.4. Section 30-10-306.1(4) assumes this requirement is followed and prohibits a board of county commissioners from adopting a compliant plan in a redistricting year before immediately disregarding that plan in favor of whatever district boundaries the board prefers.

Reading section 30-10-306.4(1) to prohibit a remedial and court-ordered redistricting process when the Board refused to adopt a compliant map in a redistricting year would lead to an absurd result that is inconsistent with the purposes of the Redistricting Statutes. *See Town of Erie v. Eason*, 18 P.3d 1271, 1276 (Colo. 2001). The Board does not, and cannot, substantively defend the results of its interpretation, which would permit any county that does not wish to comply

with the Redistricting Statutes to delay adoption of a plan in a redistricting year and declare itself powerless to follow the statutes for the next ten years. Ans. Br. at 39–40.

Moreover, this Court, and others, avoid interpretations of deadlines in redistricting statutes that would create absurd results and thwart the substantive obligations these statutes impose. Op. Br. at 43 (citing *In re Colo. Indep. Cong. Redistricting Comm'n*, 497 P.3d 493, 503–04 (Colo. 2021));[5] *Hoffman v. N.Y. State Indep. Redistricting Comm'n*, 234 N.E.3d 1002, 1018 (N.Y. 2023)).

Because the Redistricting Statutes do not permit the Board to continue to ignore its obligations until 2033, it was an abuse of discretion for the district court not to order the Board to begin a compliant redistricting process. Especially where the district court believed it had the authority to order a redistricting process in a non-redistricting year, but ordered the Board to complete such a process only "if possible." CF, p 778 (requiring, in order issued March 1, 2024, that the Board

[5] The Board claims *Independent Congressional Redistricting Commission* is inapposite because this case concerns deviation from a "final" rather than interim deadline. Ans. Br. at 40. The distinction makes no difference. This Court found a deviation from the deadline was in *Independent Congressional Redistricting Commission* was necessary to fulfill the "substantive obligations" imposed by the redistricting law. 497 P.3d at 504. The same is true here.

"begin a redistricting process in compliance with [the Redistricting Statutes], if possible").

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: November 5, 2024

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Certificate of Service

I hereby certify on November 5, 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