

COLORADO SUPREME COURT Ralph L. Carr Judicial Center 2 East 14th Avenue Denver, Colorado 80203		DATE FILED: June 7, 2024 12:43 PM FILING ID: AED77DF37298F CASE NUMBER: 2024SC394
CERTIORARI TO THE COURT OF APPEALS Case No. 2024CA774		COURT USE ONLY
DISTRICT COURT, WELD COUNTY Honorable Todd L. Taylor Case No. 2023CV30834		
Petitioners: LEAGUE OF WOMEN VOTERS OF GREELEY, WELD COUNTY, INC.; LATINO COALITION OF WELD COUNTY; BARBARA WHINERY; and STACY SUNIGA v. Respondent: BOARD OF COUNTY COMMISSIONERS OF WELD COUNTY.		Case No.:
Attorneys for Petitioners: Lewis Roca Rothgerber Christie LLP Kenneth F. Rossman, IV, No. 29249 Kendra N. Beckwith, No. 40154 Elizabeth Michaels, No. 50200 Joseph Hykan, No. 52865 1601 Nineteenth Street, Suite 1000 Denver, Colorado 80202 303.623.9000 krossman@lewisroca.com kbeckwith@lewisroca.com emichaels@lewisroca.com jhykan@lewisroca.com		
FORTHWITH PETITION FOR WRIT OF CERTIORARI UNDER C.A.R. 50		

Certificate of Compliance

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

The brief contains 2,552 words (no more than 3,800 words).

I acknowledge that my brief may be stricken if it fails to comply with the requirements of C.A.R. 32 or 53.

s/ Kendra N. Beckwith

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Introduction

In 2023, the Weld County Board of County Commissioners (Board) adopted a new map for county commissioner elections without following the process or requirements set out under Colorado law, sections 30-10-306 to -306.4, C.R.S. (2023) (Redistricting Statutes). Petitioners—two voter rights organizations, League of Women Voters of Greeley, Weld County, Inc. and Latino Coalition of Weld County, and two individual Weld County voters, Barbara Whinery and Stacy Suniga (collectively Voters)—sued to invalidate the map and compel the Board to restart the redistricting process. The district court granted summary judgment for Voters, enjoined the Board from using the map, and directed it to redo the redistricting process “if possible.” The Board appealed on several grounds, including that the Redistricting Statutes cannot apply because Weld County is a home rule county. Voters cross-appealed to confirm redistricting is possible and should be completed for the next election cycle going forward.

This case presents novel and important questions of state law concerning (1) the General Assembly’s power to pass laws governing home rule counties, (2) Colorado courts’ jurisdiction to interpret and apply state laws to home rule counties, and (3) the rights of Colorado voters to transparency and participation in

setting county commissioner election districts. Given the imperative public importance of the issues raised in this case, their time-sensitive nature, and this Court’s exclusive and unique experience in addressing redistricting issues, this Court should grant certiorari and hear this appeal before judgment enters in the appellate court.

Case and Issues Presented for Review

This Court may grant a petition for certiorari to review a case “newly filed or pending in the court of appeals, before judgment.” C.A.R. 50(a). Key issues the Board intends to raise on appeal are:

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

E. Did the trial court err in concluding that Plaintiffs-Appellants had standing to sue the Board based on nothing more than generalized grievance constituting pure procedural irregularities?

F. Did the trial court err in concluding as a matter of law C.R.S. § 30-10-306 *et seq.* apply to a home rule county with a conflicting charter?

G. Did the trial court err in concluding as a matter of law sections 30-10-306, C.R.S., *et seq.* apply to a home rule county with conflicting charter?

App.¹ at 697–98.

¹ “App.” refers to the Appendix. The record has not yet been certified, so Petitioners provide for this Court’s reference the filings below.

Voters identify the following issue for cross-appeal:

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

App. at 733.

Jurisdiction

The Board seeks review of the district court’s March 1, 2024 Order Granting Plaintiffs’ Motion for Summary Judgment as to Their Declaratory Relief and Injunctive Relief Claims Related to the Board, But Dismissing Their Procedural Due Process Claim and All Claims Against Individual Commissioners (Order) and its Order Denying Defendant’s C.R.C.P. 59 Motion to Reconsider dated April 1, 2024 (Reconsideration Order). App. at 2, 28. These orders are final, appealable orders over which the court of appeals has jurisdiction. *See* § 13-4-102(1), C.R.S. The notices of appeal and cross-appeal were timely filed. App. at 693, 729.

This Court may take jurisdiction under C.A.R. 50. *See* C.A.R. 50(a) (setting forth considerations for granting petition “before judgment is given in” court of appeals); *see also* § 13-4-108(3), C.R.S. (providing for supreme court review as prescribed by rule).

Statement of Facts

To protect the integrity of elections, Colorado has sought to end the practice of political gerrymandering. In 2018, voters passed Amendments Y and Z to the Colorado Constitution, which created independent redistricting commissions to establish congressional and legislative election districts in Colorado. Colo. Const. art. V, §§ 44–44.6, 46–48.4. The amendments created an “inclusive and meaningful” redistricting process that gives the public “the ability to be heard as redistricting maps are drawn,” to “watch the witnesses who deliver testimony and the redistricting commissioners’ deliberations,” and to “have their written comments considered before any proposed map is voted upon by the commission as the final map.” Colo. Const. art. V, §§ 44(1), 46(1).

The only partisan offices not included in Amendments Y and Z were county commissioner districts—until 2021. At that time, House Bill 21-1047 was signed into law and codified at sections 30-10-306 to -306.4, C.R.S. (2023). The Redistricting Statutes apply the same “inclusive and meaningful” redistricting process to county commissioner redistricting to counties that have “any number of their county commissioners not elected by the voters of the whole county.” § 30-10-306.1(1)(a), C.R.S.

Weld County is governed by a board of five commissioners—two elected “at large” by voters of the entire county, and three elected by separate geographic districts. On March 1, 2023, without following the process or requirements of the Redistricting Statutes, the Board approved a resolution adopting a new map for county commissioner elections (the March 1 Map). The Board claims it has no obligation to comply with the Redistricting Statutes because it is a home rule county subject only to its home rule charter. The Board further contends the General Assembly lacks authority to enact legislation applying to home rule counties related to elections and that Colorado courts lack jurisdiction to determine that state statutes apply to Weld County due to its home rule status: “the Court lacks jurisdiction to impose the Redistricting Statutes on a home rule county by judicial fiat (nor can the legislature overrule a constitutional provision by legislative fiat), because such would contravene the constitutional mandate of a majority of that county’s registered electors amending its charter to do so.” App. at 116.

Voters sued to bar the Board from using the March 1 Map for 2024 elections and compel the Board to begin a new redistricting process in compliance with the Redistricting Statutes.

The district court entered summary judgment for Voters, enjoined use of the March 1, 2023 map, and ordered the Board 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.” App. at 27.

The Board moved to reconsider, which the district court promptly rejected. App. at The Board then filed a Notice of Appeal with the Colorado Court of Appeals, and Voters filed a Notice of Cross Appeal. App. at 693, 729. Pending appeal, the Board has refused to begin a statutorily compliant redistricting process, asserting that it has no obligation to do so until after the next federal census in 2033. *See* App. at 737.

Voters ask this Court to issue a writ of certiorari under Rule 50 because this case presents novel and important questions of state law the Colorado Supreme Court should decide immediately.

Reasons Why the Petition Should Be Granted

C.A.R. 50 allows a party to file a petition for writ of certiorari to review a “case newly filed or pending in the court of appeals, before judgment is given.” The petition may be granted when the case (a) involves a matter of substance not yet

decided by the supreme court; (b) raises “an important state question which has not been, but should be, determined by the supreme court;” or (c) “is of such imperative public importance as to justify deviation from normal appellate processes and to require immediate determination in the supreme court.” C.A.R. 50(a)(1)–(3); *see also* C.A.R. 49 (identifying similar considerations). Satisfaction of any one basis would be sufficient—this case satisfies all three.

I. The Redistricting Statutes, and their applicability to home rule counties, present issues of first impression undecided by any appellate court.

This appeal raises several issues of first impression. Among them is the proper interpretation and application of the Redistricting Statutes. Given their recent passing, no appellate court has interpreted or applied these statutes, or addressed their specific applicability to home rule counties like Weld County. Encompassed within these issues are several ancillary issues it appears Weld County intends to raise. *See* App. at 697–98. These would also be issues of first impression.

II. The Redistricting Statutes present important questions of state law this Court should decide.

The Redistricting Statutes are modeled after Amendments Y and Z to Colorado’s Constitution. Those amendments provide for this Court’s review of

proposed redistricting plans, and any issues arising from their adoption. *See* Colo. Const., art. V, §§ 44.5, 48.3. The court of appeals is not given intermediate review. Because of this Court’s exclusive jurisdiction, this Court is intimately aware and knowledgeable of the issues underlying this appeal. *See generally In re Colo. Independent Cong. Redistricting Comm’n*, 2021 CO 73; *In re Colo. Independent Legis. Redistricting Comm’n*, 2021 CO 76.

Further, this Court understands the “checkered history” and “tumultuous, politically fraught, and notoriously litigious affair” redistricting can become. *Cong. Redistricting*, ¶ 2 (quoting *People ex rel. Salazar v. Davidson*, 79 P.3d 1221, 1225 (Colo. 2003), and *In re Interrog. on Senate Bill 21-247 Submitted by Colo. Gen. Assembly*, 2021 CO 37, ¶ 1). Stated simply, this Court’s expertise in the topic of this appeal is exclusive and unique.

Here, unlike those amendments, the Redistricting Statutes do not provide for a specific judicial review process and appeals related to the statutes are not immediately elevated to this Court.² The same checkered history and litigious nature of redistricting is playing out at the county level, however, raising the same

² Indeed, this is one of the issues Weld County raises—whether C.R.C.P. 106 applies to provide the judicial review process. App. at 697.

types of arguments in resistance to objective redistricting criteria intended to create fair elections. Given the Redistricting Statutes were born out of Amendments Y and Z, and this Court’s exclusive and unique expertise in redistricting and addressing these issues, this Court should decide the issues in this case.

III. Redistricting issues present a question of imperative public importance justifying an immediate determination by this Court.

A question is of “imperative public importance” when it has the potential to impact many Coloradans. *See Aurora Pub. Schs. v. A.S.*, 2023 CO 39, ¶ 21 (granting writ for C.A.R. 50 review where issue raised had potential to affect multiple cases and resolution would provide “necessary guidance to lower courts on an issue that affects numerous current and prospective litigants throughout the state”); *Colo. State Bd. of Edu. v. Adams Cnty. Sch. Dist. 14*, 2023 CO 52, ¶ 17 (granting C.A.R. 50 petition address important issues of political importance).

This Court’s immediate determination of an issue is justified where “swift resolution” of an issue is necessary. *See A.S.*, ¶ 21 (granting C.A.R. 50 petition where “swift resolution” of statute’s constitutionality was particularly important given statutory timeframe to sue); *Adams Cnty.*, ¶ 17 (granting C.A.R. 50 petition where “swift resolution” was important to provide public certainty as to school’s

future); *Ritchie v. Polis*, 2020 CO 69, ¶ 4 (granting C.A.R. 50 petition because of rapidly approaching statutory deadline).

This Court routinely grants C.A.R. 50 petitions in cases involving redistricting and election issues. *See Hall v. Moreno*, 2012 CO 14, ¶¶ 6–7 (granting petition under C.A.R. 50 to review district court order adopting election district map); *City of Aurora v. Acosta*, 892 P.2d 264, 265 (Colo. 1995) (granting petition under C.A.R. 50 to determine whether certain ballot questions were constitutional).

The reason for granting petitions in these kinds of cases is evident: questions of Colorado law that impact elections are of imperative public importance, time sensitive, and appropriate for immediate determination by this Court. *See Campaign Integrity Watchdog v. All. for Safe & Independent Woodmen Hills*, 2018 CO 7, ¶ 3 (granting writ of certiorari under C.A.R. 50 on questions related to campaign finance that would affect upcoming elections).

This case therefore amply satisfies this factor. The General Assembly made plain the public importance and statewide impact of the Redistricting Statutes. The General Assembly declared “it is of statewide interest that voters in every Colorado county are empowered to elect commissioners who will reflect the communities

within the county and who will be responsive and accountable to them.” H.B. 21-1047, 73rd Gen. Assembly, 1st Reg. Sess. § 1(1)(i) (2021). The General Assembly intended to incorporate at the county commissioner level the “inclusive and meaningful” redistricting process provided for under Colorado’s Constitution. *See* Colo. Const. art. V, §§ 44-48.4.

The issues raised in this case therefore impact Coloradans statewide, regardless of whether the county in which they reside falls within the Redistricting Statutes’ purview. All Coloradans have an interest in ensuring the same process they codified into Colorado’s Constitution is applied at every political level. Whether a county, like Weld, is free to self-select out of that process simply because of its home rule status therefore presents an issue of imperative public importance worthy of this Court’s attention. Indeed, Weld County argued below that “[n]either the General Assembly nor [the district court] can foist the Redistricting Statutes on a home rule county like Weld.” App. at 116. It is of imperative statewide interest that this Court directly settle the Redistricting Statutes’ applicability.

For similar reasons, this Court’s prompt determination is necessary. Left to the normal appellate process, it may take several years for this appeal to work its way to this Court. Meanwhile, other counties and district courts will be left without

needed guidance on the statutes' applicability. More concerning, Weld County's disdain for and self-selection out of them may become contagious, leading to greater dissent from and refusal to follow constitutionally enacted statutes. This Court, as the final arbiter of Colorado law, should conclusively determine these issues now to mitigate these circumstances.

Timing is also a practical concern. Even assuming Voters' success on the merits, Weld County claims it need not complete a compliant redistricting process until **2033**. *See* App. at 737. Several elections to which the Redistricting Statutes should apply will pass between now and 2033. Most immediately, the term for the District 2 Weld County Commissioner will expire in 2026—less than two years from now. *See*, <https://www.weld.gov/Government/Elected-Officials/County-Commissioners/Scott-James>.³ Compliance with the normal appellate process will likely yield an appellate opinion sometime in late 2025 or early 2026—casting doubts on whether redistricting could be completed in time for the 2026 elections,

³ This Court may take judicial notice of the date on which the term will expire. C.R.E. 201(b),(f); *Quintana v. City of Westminster*, 56 P.3d 1193, 1199 (Colo. App. 2002) (judicial notice may be taken “when the facts are of such common knowledge that they cannot reasonably be disputed.”); *see also Shook v. Pitkin Cnty. Bd. of Cnty. Comm’rs*, 2015 COA 84, ¶ 12 n.4 (taking judicial notice of information posted on county attorney’s website).

especially if the Board continues delay compliance with its statutory obligations. *See* Statistics Update – Colorado Appeals Courts, Geoffrey C. Klingsporn, CBA-CLE, App. at 747 (stating average time between docketing and decision in civil appeal with oral argument is 576 days). Review from this Court may take an additional twelve to eighteen months, further depriving Coloradans of the meaningful and inclusive elections to which they are entitled. Review now is therefore appropriate and necessary.

Conclusion

For these reasons, this Court should grant this Petition and elevate this case from the court of appeals.

June 7, 2024

Respectfully submitted,

Lewis Roca Rothgerber Christie LLP

s/ Kendra N. Beckwith

Kendra N. Beckwith

Kenneth R. Rossman, IV

Elizabeth Michaels

Joseph Hykan

Attorneys for Appellees-Petitioners

Appendix

Orders on Appeal

1. Order Granting Plaintiff's Motion for Summary Judgment as to Their Declaratory Relief and Injunctive Relief Claims Related to the Board, But Dismissing Their Procedural Due Process Claim and All Claims Against Individual Commissioners (March 1, 2024)
2. Order Denying Defendant's C.R.C.P. 59 Motion to Reconsider (April 1, 2024)

Other Documents

3. Complaint (October 23, 2023)
4. Motion to Dismiss Plaintiffs' Complaint (December 7, 2023)
5. Plaintiffs' Response to Defendants' Motion to Dismiss (January 2, 2024)
6. Reply in Support of Motion to Dismiss Plaintiffs' Complaint (January 23, 2024)
7. Motion for Summary Judgment (January 23, 2024)
8. Response in Opposition to Plaintiffs' Motion for Summary Judgment (February 6, 2024)
9. Reply in Support of Motion for Summary Judgment (February 13, 2024)
10. Defendant's C.R.C.P. 59 Motion to Reconsider in Part the Court's March 1, 2024 Order (March 15, 2024)
11. Response to Defendant's Motion for Reconsideration (March 22, 2024)
12. Defendant's Reply to Plaintiffs' Response to C.R.C.P. 59 Motion to Reconsider in Part the Court's March 1, 2024 Order (March 29, 2024)

13. Notice of Appeal (May 1, 2024)
14. Notice of Cross-Appeal (May 7, 2024)
15. Apr. 17, 2024 Letter
16. Geoffrey C. Klingsporn, *Statistics Update—Colorado Appeals Courts* (Colorado Bar Association Continuing Legal Education 2024)

Certificate of Service

I hereby certify on March 29, 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