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COLORADO SUPREME COURT Ralph L. Carr Judicial Complex 2 East 14th Avenue Denver, CO 80203	
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**

BRIEF IN OPPOSITION

CERTIFICATE OF COMPLIANCE

I hereby certify that this Brief in Opposition 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 3,464 words.

I acknowledge that my 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

In view of the impending 2024 elections and after the applicable redistricting deadline, Petitioners asked the district court forthwith to compel the Weld County Board of County Commissioners ("Board") to comply with the new commissioner redistricting procedures set forth in H.B. 21-1047 as codified in C.R.S. §§ 30-10-306 to -306.7 ("Redistricting Statutes"). Instead of preserving the integrity of the election process, the district court opted for changing the rules of the road by finding the Redistricting Statutes apply rather than the Weld County Home Rule Charter ("Charter"). Significantly, however, it declined Petitioners' request to force the Board to start a new redistricting process now, but instead afforded the Board an option to use the prior commissioner district map until the next redistricting cycle (2033). The Board complied while reserving all rights and seeking appellate review.

The status quo precludes the Board from drawing any district lines for county commissioner districts until 2033. C.R.S. § 30-10-306.1(3). Thus, nothing in this case presents issues of immediate or statewide importance. A host of threshold issues will have to be resolved by the court of appeals prior to, if ever, addressing the issue of applicability of the Redistricting Statutes to Weld County. For the following reasons, the Forthwith Petition for Writ of Certiorari does not

satisfy the requirements of C.A.R. 50 and should be denied.

CASE AND ISSUES PRESENTED FOR REVIEW

For almost 50 years, the Charter required the Board:

> to 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.

Charter, Art. III, § 3-2 (Districts)[1]. Given Weld County's rapid population growth and pursuant to the Charter's mandate, on March 1, 2023, the Board approved a new redistricting map for electing county commissioners in the County ("2023 Map"). In doing so, the Board followed the same decades-long procedures and criteria for who should be involved, when it should occur, and how to draw the lines of the commissioner districts. More than eight months after the Board's resolution and almost a month after the redistricting deadline, Petitioners sued the Board asking the district court to swoop in, erase clear historical precedent, and restart the redistricting process in compliance with the Redistricting Statutes, all in view of the upcoming 2024 elections. The court entered an order granting Petitioners some of their requested relief, granting the Board some of its requested

[1] The Charter is subject to judicial notice and is publicly available at: *https://library.municode.com/co/weld_county/codes/charter_and_county_code*. *See* CRE 201; ***Dallasta v. Dep't of Hwys.***, 153 Colo. 519, 522 (1963).

relief, and sidestepping other issues ("March 1 Order").

The Board presented the following advisory issues for review to the court of appeals:

A. Whether Petitioners had and have standing to sue the Board:

-- when C.R.S. §§ 30-10-306, *et seq*. doesn't provide for a private right of action;
-- based on nothing more than generalized grievances;
-- based on pure procedural irregularities.

B. Whether filing this action past the redistricting deadline divested the court of jurisdiction with the 2024 election close at hand.

C. Whether political question and separation of powers doctrines prevented judicial intervention.

D. Whether granting summary judgment was improper with genuine issues of fact and law as to whether the Board's changes to the 2023 Map were "de minimis revisions or alterations," thus exempting compliance with the Redistricting Statutes.

E. Whether the General Assembly has the plenary authority to regulate the commissioner redistricting in a home rule charter county.

F. Whether the Redistricting Statutes conflict with the Weld County home rule charter.

G. Whether the Redistricting Statutes apply to a home rule county with conflicting charter.

See App. at 697-98.

STATEMENT OF FACTS

The deadline for redistricting came and went on September 30, 2023 – more than a month before Petitioners sued the Board.[2] C.R.S. § 30-10-306.1(3); App. at 29-102. Petitioners claimed the Board failed to follow the procedures outlined in the Redistricting Statutes when drawing and adopting the 2023 Map, thus "denying [them] the right to participate in the redistricting process and to vote in free and fair election." App. at 31 (¶7), 42 (¶101), 46(¶¶118-19), 666. Grounded in the Colorado Constitution and its Charter, for almost 50 years, the Board has been given the singular responsibility and authority by the People of Weld County for administering at least biennial review and revising of the district boundaries as nearly equal in population as possible according to the Board Procedures in the Charter. App. at 434-35 (¶¶2-6).

Following the Board's fully-briefed motion to dismiss, Petitioners sought summary judgment. After finding Petitioners had standing, the Redistricting Statutes didn't conflict with the Charter, the General Assembly had "plenary authority over elections," and the Redistricting Statutes applied to Weld County,

[2] And almost eight months after the Board "approv[ed] and establish[ed] the boundary lines and division of precincts in the respective County Commissioner Districts, as shown on the map labeled Exhibit 'A'". App. at 49.

the district court ruled the Board violated the Redistricting Statutes and rejected the 2023 Map. App. at 2-24. Despite Petitioners' request, however, the court didn't order the Board to restart the redistricting process. *Id.* at 26-27. Instead, it left compliance to the Board by ordering it:

> [T]o 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. at 27. 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. App. at 693-728, 737-38.

REASONS WHY PETITION SHOULD BE DENIED

No special or compelling reasons exist for exercise of C.A.R. 50 review.

A. Threshold Absences of Standing and Justiciability Preclude Rule 50 Review.

Initially, as the Board presented to the district court, preserved in the court of appeals, and continues to press before this Court, Petitioners' lack of standing to bring their lawsuit and the Redistricting Statutes' exemption of de minimis modifications to commissioner districts, both foreclose C.A.R. 50 review.

1. NO STANDING: Petitioners lack standing to advance their claims.

For two fundamental reasons, Petitioners lacked (and still lack) standing to bring their claims against the Board.

First, the Redistricting Statutes don't provide for a private cause of action. *See* C.R.S. §§ 30-10-306, *et seq.*

Second, neither "generalized grievances", nor alleged violations of purely procedural rights, can establish the injury-in-fact required to confer standing on Petitioners. ***Town of Erie v. Town of Frederick***, 251 P.3d 500, 504 (Colo. App. 2010); ***City of Greenwood Vill. v. Petitioners for Proposed City of Centennial***, 3 P.3d 427, 437 (Colo. 2000); *see* ***Bd. of Cnty. Comm'rs v. Ryan***, 2023 CO 54, ¶¶21-24; ***Reeves-Toney v. Sch. Dist.***, 2019 CO 40, ¶22; *see also* ***Lance v. Coffman***, 549 U.S. 437, 441-42 (2007); ***Tyler v. Judges of Court of Registration***, 179 U.S. 405, 406 (1900). The district court created an implied right of action and gave short shrift to the contrast between an undifferentiated, generalized grievance about the conduct of government, and an injury peculiar to Petitioners, required before any legal right to sue can be exercised. Petitioners didn't identify any personal loss traceable to alleged violation of the Redistricting Statutes that was peculiar to them, but only a complaint common and generalized to all Weld County registered voters. Finally, Petitioners identifying purely procedural problems or irregularities in adoption of the 2023 Map (they didn't challenge the map itself) without pinpointing how any deviations adversely affected them isn't enough for standing. They have no special interest in the subject matter which

would be different from a general interest theoretically shared by hundreds of thousands of other residents in Weld County.

This Court should give the court of appeals first opportunity to address the standing inquiry in the normal course of appellate proceedings, which might dispose of this lawsuit short of this Court's intervention.

2. NO JUSTICIABILITY: Changes to the 2023 Map were de minimis, thus non-justiciable under the Redistricting Statutes' plain language.

Even if the Redistricting Statutes applied and Petitioners had standing (neither of which the Board concedes), the Board's de minimis shifts to commissioner district boundaries in the 2023 Map were non-actionable because they didn't go "beyond making de minimis revisions or alterations" pursuant to C.R.S. § 30-10-306.1(3). At the very least the district court should've either ruled in the Board's favor on this issue in the March 1 Order, denied summary judgment, or set an evidentiary hearing to receive facts to enable it to decide this issue, and by doing none of these three, reversibly erred.

<u>*Board entitled to judgment*</u>: Petitioners attached to their Complaint undisputed evidence that Commissioner District 1 was never changed in the 2023 Map and Commissioner District 3 received three precincts – only three out of hundreds – from the southwest corner of Commissioner District 2. *See* App. at 48-

51; ***Norton v. Rocky Mtn. Planned Parenthood, Inc.***, 2018 CO 3, ¶ 7. These negligible boundary changes reflecting District 2's recent population growth couldn't be viewed, either reasonably or legitimately, as other than "de minimis." *See also* App. at 436 (¶13), 437 (¶¶14-15). Since C.R.S. § 30-10-306.1(3) didn't define "de minimis," dictionary definitions became relevant, *see* ***A Child's Touch v. Indus. Claim Appeals Office***, 2015 COA 182, ¶32, and an accepted compendium of legal terms defines "de minimis" as "trifling", "negligible", or "so insignificant that a court may overlook it in deciding an issue or case," ***Black's Law Dict.***, p. 524 (10th ed. 2014). The district court ignored this issue altogether. Thus, the court of appeals should address whether the district court erred by failing to enter judgment in the Board's favor, as the Board could have dispensed with C.R.S. §§ 30-10-306.2 and -306.4 compliance (provisions the court found the Board violated, *see* App. at 7-8, 22, 26) because the changes to the boundary lines of the County commissioner districts were non-actionable "de minimis revisions or alterations" within the meaning of C.R.S. § 30-10-306.1(3).

If not, then disputed issue requiring remand: If, instead, the issue whether the boundary changes in the 2023 Map were "de minimis" was a disputed fact, then at minimum, the case should be remanded and the district court directed either to find undisputed facts on this issue and then rule, or else to hold an evidentiary

hearing to establish a factual record, and then rule on this issue.

Bottom line, the court of appeals should be afforded the opportunity to rule on the issue of "de minimis" alterations pursuant to C.R.S. § 30-10-306.1(3) first.

B. C.A.R. 50 Review Is Inappropriate and Unwarranted.

C.A.R. 50 proceedings are rare exceptions to normal appellate proceedings and must be strictly justified under limited circumstances. *See* Gregory J. Hobbs, ***Protocols of the Colorado Supreme Court***, 27 Colo. Law. 21, 22 (Mar. 1998) (C.A.R. 50 discretionary review is "rarely exercised" power)(emphasis added). Specifically, this Court cannot accept certiorari review before judgment in the court of appeals except upon showing that:

> (1) "the case involves a matter of substance not yet determined by" this Court or "the case if decided according to the relief sought on appeal involves the overruling of a previous decision of the supreme court"; or
> (2) "the court of appeals is being asked to decide an important state question which has not been, but should be, determined by the supreme court"; or
> (3) "the case is of such imperative public importance as to justify the deviation from normal appellate process and to require immediate determination in the supreme court."

C.A.R. 50(a)(1)-(3). In reality, no such factor exists here. But even proving up these factors doesn't automatically warrant review. *See* C.A.R. 50(a) ("petition … may be granted upon a showing")(emphasis added); *accord* Hobbs at 22. And nothing Petitioners assert carries the substantial and statewide importance of other

cases where this Court exercised C.A.R. 50 jurisdiction. In short, no reason justifies suspending normal appellate rules and accepting this case on C.A.R. 50 review, particularly when there's no need for rapid resolution and when doing so would provide an additional, unwarranted round of appellate challenges.

1. ***NO IMMEDIACY: No important question is implicated which hasn't been but should be decided by this Court before the court of appeals can assess it, and certainly none requiring rapid resolution.***

This Court accepts vanishingly few cases for C.A.R. 50 review. Each involves clear case-specific considerations either carrying immediate statewide implications for numerous cases already underway or likelihood of very-frequent appearance requiring immediate direction. This case bears none of those hallmarks.

●In ***Polis v. Ritchie***, 2020 CO 69, a rapid answer was necessary to a challenge to an executive order suspending constitutional minimum-signature requirements for a candidate's ballot appearance during the COVID-19 pandemic.

●In ***Pineda-Liberato v. People***, 2017 CO 95, the State Court Administrator wrote directly to the Court of Appeals' Chief Judge asking the case be transferred to this Court to address outstanding restitution and court costs for dismissed deferred judgments – a statewide issue impacting hundreds of cases.

●In ***Markwell v. Cooke***, 2021 CO 17, state lawmakers allegedly violated the constitution by using computers to speed-read bills aloud, incomprehensibly, to

prevent delay in considering bills – an issue at the legislative process' very heart, hence implicating an "imperative public importance." *See* ***Colo. Gen. Assembly v. Owens***, 36 P.3d 262, 264 (Colo. 2006)(accepting C.A.R. 50 review due to "great public importance" in dispute between Governor and General Assembly).

●In ***Aurora Pub. Schs. v. A.S.***, 2023 CO 39, whether the Child Sexual Abuse Accountability Act was unconstitutionally retrospective was raised in three other cases, a statutory deadline for filing suit was looming, and the court of appeals lacked jurisdiction to decide whether the CSAAA was facially unconstitutional.

●In ***Bd. of Educ. v. Sch. Dist.***, 2023 CO 52, whether political subdivisions had different requirements for standing to sue was raised in other pending cases, and uncertainty existed about where the affected children would be sent to school.

But this case implicates none of these concerns. There's been no intervening U.S. Supreme Court case. There's no need for rapid resolution. Petitioners' single-case issues fall far short of implicating even a few, let alone dozens or hundreds, of cases. Indeed, Petitioners didn't identify even one other case that'd be impacted.

Rather, Petitioners' actions since the March 1 Order negate any alleged urgency. The district court clearly ruled:

> [T]he court will assume that it is true that there is insufficient time for the Board to comply. But the answer is simple: the 2024 Weld County

> Commissioner election will be conducted using the districts established before the new redistricting map was improperly approved.
> ....
> The Board is ordered 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 726-27. That is, the court denied Petitioners' request to compel the Board to begin a new redistricting process in compliance with the statutes, and expressly left the method of compliance to be determined by the Board. Petitioners didn't seek reconsideration of this ruling under C.R.C.P. 59, at no point sought C.A.R. 21 extraordinary review, and did not bother attempting C.A.R. 50 review until almost a month after filing their cross-appeal below. The Court should weigh these failures heavily in denying Petitioners' present C.A.R. 50 efforts.

Significantly, the Redistricting Statutes' plain language precludes the result Petitioners (and amicus) urge:

> The [Board] … may not revise or alter county commissioner districts, beyond making de minimis revisions or alterations, unless the [Board] makes such revisions or alterations during a redistricting year in accordance with a final redistricting plan pursuant to section 30-10-306.4.

C.R.S. § 30-10-306.1(3). But a final redistricting plan for redrawing county commissioner districts isn't legally authorized to be created unless it's on or before September 30 of the "redistricting year". C.R.S. § 30-10-306.4(1). Here, that was

September 30, 2023 (a deadline Petitioners let expire almost one month before they filed their Complaint), or is September 30, 2033, given the definition of "redistricting year" is "the second odd-numbered year following the year in which the federal decennial census is taken". C.R.S. § 30-10-306(6)(h).

So even assuming *arguendo* the Redistricting Statutes apply, the Board is specifically forbidden from starting a commissioner redistricting process before 2033. Consequently, Petitioners' C.A.R. 50 gambit poses neither important questions evading this Court's review nor questions that haven't, at least generally, been before this Court. Certainly, there's nothing about this case, nor its posture, that requires shelving normal appellate rules for expedited resolution.

2. ISSUES OF FIRST IMPRESSION IRRELEVANT FOR PRESENT PURPOSES: No matters of substance are implicated justifying immediate review, nor is overruling a prior decision at stake.

The Board agrees appellate courts haven't construed the Redistricting Statutes and this case has novel issues possibly warranting certiorari proceedings eventually. But certiorari needn't be granted now. There is a host of procedural and substantive issues the court of appeals will need to decide prior to addressing any constitutional issues raised by Petitioners and amicus. By denying Petitioners' request to order the Board to begin a new redistricting process, the district court implicitly recognized the Redistricting Statutes don't mandate any redistricting

process until the next "second odd-numbered year following the year in which the federal decennial census is taken". C.R.S. § 30-10-306(6)(h). As such, the Board isn't flouting the March 1 Order (as amicus claims) but faithfully adhering to it by implementing the prior map given the express statutory language, which both Petitioners and amicus overlook, thus making any first-impression matters irrelevant for present purposes. Likewise irrelevant are amicus' contemplations on how long a redistricting process may take, since there's no statutory authority for commencing a redistricting process before the next redistricting year, 2033. Reality is, no racially or politically fraught contentions exist – just a home rule county relying on a 50-year-long constitutional entitlement to self-governance as stipulated in its Charter, *see* Colo. Const. art. XIV, § 16, and preexisting constitutional duty to redistrict to ensure relative equality of population, *e.g.*, ***Avery v. Midland Cnty.***, 390 U.S. 474, 478-81 (1968).

And as Petitioners admit, the Redistricting Statutes don't grant this Court exclusive jurisdiction over their interpretation, which alone counsels in favor of giving the court of appeals first review. *E.g.*, ***Welch v. Colo. State Plumbing Bd.***, 2020 COA 130, ¶36. To say nothing of Petitioners allowing assorted deadlines to pass and thereby implicating various justiciability issues.

As such, this Court should let the court of appeals opine on those matters and

then review such opinion for any error it believes Petitioners properly identify.

3. NO IMPACT OUTSIDE WELD COUNTY: No public importance is implicated justifying deviation from normal appellate rules.

C.A.R. 50's ability to suspend appellate procedural rules derives from C.A.R. 2, allowing suspension for "good cause shown." But Petitioners haven't shown good cause, and none exists. As Weld County is Colorado's only home rule county with at least 70,000 residents plus commissioner districts, *see* C.R.S. § 30-10-306(2), the Board is aware of no other cases, or counties, the petition would impact directly – any contention other counties or district courts will be fretting in the meantime is pure, unadorned speculation. Any alleged statewide interest H.B. 21-1047 cited is neutered by the Redistricting Statutes' unambiguous language not reiterating that interest. *E.g.*, ***Anschutz v. Dep't of Revenue***, 2022 COA 132, ¶23-32 ("[H]aving concluded that the statutory language is unambiguous, we do not resort to external aids to determine the meaning of the statute." (not considering fiscal note)); C.R.S. § 2-4-203 (legislative declaration not interpretive aid unless statute ambiguous). And to the extent Petitioners press the notion all state citizens have a generalized interest in alleged uniform application of the laws – that smells like a generalized grievance Colorado courts routinely deem nonjusticiable. *See* ***Town of Erie***, 251 P.3d at 504.

Consequently, immediate resolution to provide time-sensitive guidance or

because of overwhelming public importance due to several pending cases (or due to a bill's declaration the legislature failed to include in the statute) isn't at issue. And periodic, decades-long intervals between cases (e.g., cases addressing the interplay between state statutes and county home rule status) isn't a reason to circumvent appellate procedures, either; it certainly isn't good cause for doing so. On the contrary, the existence of pauses between cases weighs heavily in favor of honoring normal appellate procedures to allow the law to develop and, only if need be, have this Court weigh in to exercise its normal power of review. Simply, normal appellate procedures provide precisely the right avenue for well-considered relief, and the Board opposes the C.A.R. 50 petition because no compelling reasons justify circumventing normal appellate processes in this case.

CONCLUSION

The Court should deny Petitioners' C.A.R. 50 petition.

Dated and respectfully submitted this 17th day of June, 2024.

s/ Alexandria L. Bell
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CERTIFICATE OF SERVICE

I hereby certify on this 17th day of June, 2024, I filed the foregoing **BRIEF IN OPPOSITION** with the Colorado Supreme Court and served true and correct copies via the Colorado Courts E-Filing System on all counsel of record, including attorneys for putative amicus curiae Colorado Attorney General.

s/ Alexandria L. Bell