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COLORADO SUPREME COURT Ralph L. Carr Judicial Center 2 East 14th Avenue Denver, Colorado 80203	
CERTIORARI TO THE COURT OF APPEALS Case No. 2024CA774	
DISTRICT COURT, WELD COUNTY Honorable Todd L. Taylor Case No. 2023CV30834	**COURT USE ONLY**
Petitioners: LEAGUE OF WOMEN VOTERS OF GREELEY, WELD COUNTY, INC., ET AL. v. **Respondent:** BOARD OF COUNTY COMMISSIONERS OF WELD COUNTY.	Case No.: 2024SC394
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	

REPLY BRIEF

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 3,047 words (no more than 3,150 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

Table of Contents

Table of Authorities

Cases

Statutes

Rules

Other Authorities

Introduction

This case raises novel questions of state law this Court is uniquely well-qualified to answer. It presents important questions about statutory interpretation, voting rights, and the relationship between the General Assembly and home rule counties. This case will impact the right of hundreds of thousands of Coloradans living in Weld County to vote on county commissioners. And if this Court does not grant the Petition, the Board's delay tactics may permit it to avoid a statutorily compliant redistricting process not only for this year's elections, but for 2026.

The Board disputes none of these facts. Instead, the Board asserts it is correct on the merits. Based on that assumption, the Board argues it can wait until 2033 to address its flagrant non-compliance with the Redistricting Statutes.

The Board's arguments fundamentally misunderstand the Petition. Voters do not ask this Court to resolve this case on its merits at this stage. Voters ask simply that this Court elevate this case from the court of appeals to more expediently address and resolve these merits. Voters have shown each of the three considerations in C.A.R. 50 are present, granting this Court the discretion to do so. This Court should therefore grant the Petition to promptly resolve this important

case, ensuring the boundaries used in future elections result from a fair and transparent redistricting process that meaningfully involves Weld County voters.

Argument

I. The Board's arguments regarding standing and justiciability are not reasons to deny the Petition.

A. The Board conflates C.A.R. 50 considerations regarding this Court's discretion to review this case with substantive arguments as to how the case should be decided.

The Board's claim that its standing and justiciability arguments "foreclose C.A.R. 50 review" lacks authority and merit. Opp'n at 5–9. C.A.R. 50 permits this Court to grant a petition for certiorari if any of three considerations are shown. By the plain language of the rule, the decision to grant a petition does not depend on the likelihood of success on the merits and does not contemplate an analysis of standing, justiciability, or any other substantive issue. *People v. Maes*, 2024 CO 15, ¶ 11 (stating that in interpreting a court rule, this Court "employ[s] the same interpretative rules applicable to statutory construction" and interprets the rule "consistently with its plain and ordinary meaning").

The Board's Opposition does not suggest otherwise. It identifies no reason the standing and justiciability questions should be viewed differently than any other substantive argument in determining a C.A.R. 50 petition. *See* Opp'n at 5–9. If the

Board's reasoning were accepted, a party could claim C.A.R. 50 review should be denied simply by identifying any substantive issue on which it believes it will prevail and claiming the court of appeals should be permitted the first opportunity to decide the issue. But C.A.R. 50 expressly recognizes certain considerations justify this Court's immediate review rather than awaiting briefing, argument, and judgment on the merits in the court of appeals. As discussed in Sections II–IV below, those considerations are present here.

Moreover, the Board's speculation that a decision by the court of appeals may resolve the case without involving this Court, Opp'n at 7, is unexplained and without foundation. Of course, the party that does not prevail in the court of appeals can always petition this Court for certiorari. The only way this Court becomes uninvolved, at least at the petition for certiorari stage, is if the party aggrieved in the court of appeals elects not to seek review from this Court. The Board gives no reason why this would occur.

B. The Board's standing and justiciability arguments are without merit and provide no basis to deny the Petition.

i. Voters have standing.

This Court cannot resolve the issue of Voters' standing, which is not relevant to the Petition and cannot be adequately presented for the Court's

consideration given the limited space available in this reply. But the Board's standing argument, which it raised and lost three times in the district court, is wrong. *See* App. at 113–17, 408–11, 650–53.

Contrary to the Board's single-sentence assertion, the Redistricting Statutes provide a private right of action. *See* Opp'n at 6. Even where a statute does not create an express private right of action, an implied right of action may exist. *Gerrity Oil & Gas Corp. v. Magness*, 946 P.2d 913, 923 (Colo. 1997). In considering whether a private right of action exists, courts consider "(1) whether the plaintiff is within the class of persons the statute intended to benefit; (2) whether the legislature intended to implicitly create a private right of action; and (3) whether an implied civil remedy would be consistent with the legislative purposes." *Id.* Each factor is satisfied here.

Voters Suniga and Whinery are citizens of Colorado, and Weld County voters. They are within the class of people intended to benefit from HB 1047. Because the Redistricting States are silent as to any enforcement mechanism, a private right of action is the only means of enforcement. Indeed, the General Assembly's goals "would be substantially frustrated" without a private right to an enforcement action. *Accord Allstate Ins. Co. v. Parfrey*, 830 P.2d 905, 911 (Colo.

1992). The Redistricting Statutes therefore reflect the legislature's intent to implicitly create a private right of action, and an implied civil remedy would follow the purpose of the Redistricting Statutes.

Nor are Voters' alleged grievances too generalized to support standing. *Contra* Opp'n at 6–7. Voters allege they had specific, personal rights to participate in the redistricting process, and the Board's actions prevented them from exercising those rights. *See* App. 42–44. That injury, though intangible, is real, specific, and cognizable under Colorado law. *Ainscough v. Owens*, 90 P.3d 851, 853 (Colo. 2004) (recognizing Colorado confers standing "to a wide class of plaintiffs" including in cases "challenging the legality of government activities and other cases involving tangible harm").

The Board's claim that Voters' grievances are "generalized" because the Board inflicted the same injury on every voter living in Weld County is incorrect. The Board cites no authority for the proposition, implicit in its argument, that **no** person has standing to sue regarding illegal government action if the government perpetrates the same wrong on a large enough number of people.

The Board's claim that Voters have identified only "procedural" harms fares no better. *See* Opp'n at 6–7. No case the Board cites holds that procedural

injuries, as a category, cannot confer standing under Colorado law. *See Weld Cnty. Colorado Bd. of Cnty. Comm'rs v. Ryan*, 2023 CO 54, ¶¶ 19–24; *State, Dep't of Pers. v. Colorado State Pers. Bd.*, 722 P.2d 1012, 1017 (Colo. 1986). And the Board's labeling of the right to participate in the redistricting process as 'procedural' begs the question. The General Assembly determined meaningful participation in the redistricting process was itself valuable and granted Colorado voters a right to such participation. The right does not lose its statutory protection simply because the Board thinks it is unimportant.

ii. Voters' claims are justiciable.

The political question doctrine "recognizes that certain issues are best left for resolution by other branches of government." *Colo. Common Cause v. Bledsoe*, 810 P.2d 201, 205 (Colo. 1991) (citing *Baker v. Carr*, 369 U.S. 186, 217 (1969)). But "[w]hen a dispute arises concerning the constitutional functions of different branches of government, the courts have a duty to say what the law is, and this duty may not be avoided simply because one or both parties are coordinate branches of government." *Colo. Gen. Assembly v. Lamm*, 704 P.2d 1371, 1378 (Colo. 1985). This case concerns such a dispute, and the judiciary has the power and duty to resolve it.

The Board claims that because it made only de minimis changes to county commissioner boundaries it was not required to engage in a redistricting process that complied with the statutory safeguards and procedures in the Redistricting Statutes. Opp'n at 7. Voters disagree and argue the plain language of section 30-10-306.1(1), C.R.S., provides that in a redistricting year the Board "must designate a county commissioner district redistricting commission … in order to adopt a plan to divide the relevant county[.]" The separate authority to make de minimis changes does not nullify the mandatory statutory requirement to engage in the full process the Redistricting Statutes require every redistricting year. *See Berthold v. Indus. Claim Appeals Off.*, 2017 COA 145, ¶ 30. (rejecting interpretation that did not harmonize all provisions of statute).

Even if the Board were correct on the substance—it is not—the issue is not one of justiciability. Whether the Redistricting Statutes permitted the Board to make de minimis revisions to boundaries **instead** of following the procedures and criteria in sections 30-10-306.2 through -306.4, C.R.S., is a pure question of statutory interpretation solely within the purview of the judiciary. *Bledsoe*, 810 P.2d at 205. The Opposition does not show otherwise. Instead, the Board merely invokes the term "justiciability" and then argues summary judgment was

inappropriate based on the Board's (incorrect) interpretation of the statute. Opp'n at 7–9.

None of the Board's arguments are meritorious, much less provide a reason this Court should forego exercising its discretion under C.A.R. 50. The Petition should be granted for the foregoing reasons.

II. The Board concedes this case presents issues of first impression, justifying C.A.R. 50 review.

As Voters argued in their Petition, this case raises several issues of first impression related to the Redistricting Statutes and the relationship between the General Assembly and home rule counties under the Colorado Constitution. Pet. at 4–5, 7. The Board concedes this point, but argues the issues of first impression are irrelevant because there is no immediate need for this Court to resolve these issues. Opp'n at 13–14. The Board's argument misapplies C.A.R. 50.

A showing that the case involves a matter of first impression is a reason by itself for grating certiorari under C.A.R. 50. The rule states that a petition for review by this Court before judgment in the court of appeals "may be granted upon a showing" of three considerations. Each consideration is separated from the others by a semicolon and the disjunctive "or," allowing this Court to grant a C.A.R. 50 petition based on a showing of **any** of the three. *Khelik v. City & Cnty. of*

Denver, 2016 COA 55, ¶ 16 (stating that "Colorado courts have consistently interpreted subsections delineated by semicolons and the word 'or' as disjunctive and alternative ways" of meeting a single requirement); *People v. Valenzuela*, 216 P.3d 588, 592 (Colo. 2009) ("Use of the word 'or' is ordinarily 'assumed to demarcate different categories.'" (quoting *Garcia v. United States*, 469 U.S. 70, 73 (1985))).

An issue of first impression not yet determined by this Court is a consideration permitting this Court's review under C.A.R. 50(a)(1), separate from whether the case "require[s] immediate determination" under C.A.R. 50(a)(3). This Court should grant the Petition, which indisputably raises questions of first impression.

III. The case raises important state questions which should be determined by this Court.

As described in the Petition, the Board's conduct raises important issues of voting rights, rooted in the "checkered history" and "tumultuous, politically fraught, and notoriously litigious affair" that is redistricting. *In re Colo. Independent Cong. Redistricting Comm'n*, 2021 CO 73, ¶ 2 (quoting *People ex rel. Salazar v. Davidson*, 79 P.3d 1221, 1225 (Colo. 2003)). The importance of the substantive issues and this Court's role in overseeing redistricting under Amendments Y and Z

(which the Redistricting Statues are modeled after) supports C.A.R. 50 review. *See* Pet. at 7–9.

The Board's argument that "no public importance is implicated" because this case "only" implicates the voting rights of Weld County residents and the legal significance of Weld County's home rule status, is shocking and denigrates the rights of hundreds of thousands of Coloradans. *See* Opp'n at 15–16. Over 328,000 Coloradans live in Weld County. *See* United States Census Bureau, Weld County Colo. data, available at: https://data.census.gov/profile/Weld_County,_Colorado%20%C2%AC?g=050XX00US08123 (last visited Jun. 22, 2024).[1] Many of them will participate in elections using the county commissioner district maps, and all of them will be affected by the Board's composition and powers it wields. The Board's position that the process underlying its own elections is not sufficiently important to warrant this Court's time is consistent with its view that the Board itself, rather than Weld County

[1] The Court may "properly take judicial notice of United States Census Bureau Data." *People v. Luong*, 2016 COA 13M, ¶ 17 n.3 *as modified on denial of reh'g* (Mar. 24, 2016) (quoting *United States v. Dreyer,* 767 F.3d 826, 834 n.12 (9th Cir. 2014)); *see also* C.R.E. 201(d).

citizens, is the only party with legitimate interests in the Redistricting process. *See*, *e.g.,* App. 112 (stating, in motion to dismiss, that adjustment of district boundaries "ultimately and directly impacts only the three districted Commissioners").

The public importance of this case is undeniable. The Redistricting Statutes were enacted based on the General Assembly's determination they would advance the "statewide interests" of providing "inclusive and meaningful" participation in the redistricting process. The Board cites no authority for the proposition that a county-wide issue that will materially affect an upcoming election is not a matter of public importance. And this Court's history of granting C.A.R. 50 review belies that proposition. *See Colo. State Bd. of Educ. v. Adams Cnty. Sch. Dist. 14*, 2023 CO 52, ¶ 17, (granting C.A.R. 50 review in part because it was "particularly important" to determine accreditation status of individual school district serving 6,000 students); *Hall v. Moreno*, 2012 CO 14, ¶ 6 (granting C.A.R. 50 review due to "importance and time sensitive nature" of case concerning legality of district boundaries).

IV. Immediate determination in this Court is required.

As explained in Voters' Petition, the typical appellate process may not permit resolution of this case in time for a compliant redistricting process to be

completed before the next county commissioner elections in 2026. Pet. 12–13. This case therefore "require[es] immediate determination in the supreme court." C.A.R. 50(a)(3).

The Board does not dispute this analysis. Opp'n at 10–15. Instead, the Board notes that the September 30, 2023 deadline for submitting a redistricting process elapsed. *Id.* at 12–13. The Board claims it is therefore legally impossible to conduct a compliant redistricting process until 2033, and there is therefore no pressing need to resolve this case. *Id.* at 11–14. The Board's interpretation of the statute is wrong, and its argument conflates the merits of the case with considerations permitting C.A.R. 50 review.

The issue presented by Voters' cross-appeal is "[w]hether the Board must be directed to engage in a county commissioner redistricting process that complies with the Redistricting Statutes for future elections." Pet. at 3. The Board cannot sidestep the need to resolve this question by simply assuming the question will be resolved in the Board's favor.

The Board is also wrong on the merits. The express purpose of the deadlines in the Redistricting Statutes is "to ensure that the board of county commissioners shall adopt a plan for the redrawing of county commissioner districts no later than

September 30 of the redistricting year." § 30-10-306.4, C.R.S. Allowing the Board's refusal to complete the required redistricting process within the statutory deadlines to permit it to avoid **ever** having to complete the process would directly undermine the intent of not only section 30-10-306.4, C.R.S., but the Redistricting Statutes as a whole. *See Whitaker v. People*, 48 P.3d 555, 558 (Colo. 2002) ("We must read the statute as a whole, construing each provision consistently and in harmony with the overall statutory design."). This Court's decision in an analogous case shows that passage of a statutory deadline for redistricting is not an absolute bar to completing the process. *See Cong. Redistricting*, ¶ 33 (finding that deviation from the deadline for adopting a final plan for legislative and congressional districts "was permissible—indeed, necessary—to effectuate the will of the voters and allow the Commission to fulfill its substantive obligations"); *see also Hoffman v. New York State Indep. Redistricting Commn, No. 90*, 41 N.Y.3d 341, 370–71 (N.Y. App. 2023) (requiring independent redistricting commission to complete redistricting process out of time because a contrary holding would "encourage[] gamesmanship and defeat[] the popular will").

V. The Board's remaining arguments are unpersuasive.

A. Voters were not required to seek relief under C.R.C.P. 59 or C.A.R. 21 before filing the Petition.

The Board characterizes Voters' decision not to seek reconsideration under C.R.C.P. 59 or an original proceeding under C.A.R. 21 as "failures" and claims those decisions weigh "heavily" against granting the Petition. Opp'n at 12. The Board cites no authority for the proposition that Voters had to exhaust those avenues of relief before seeking C.A.R. 50 review. *Id.* None exists. Indeed, those remedies are unrelated to the factors justifying review here.

A post-trial motion is not a prerequisite to an appeal. C.R.C.P. 59(b). And the motion the Board claims Voters should have filed would merely have asked the same court to reconsider the same questions of law and reach different conclusions. Such motions have little prospect of success and would likely have served only to delay the start of appellate proceedings and the ultimate resolution. *See*, *e.g.,* App. at 28 (denying Board's motion to reconsider and noting such a motion "is not simply an opportunity to reargue facts and theories upon which a court has already ruled").

Nor would it have been appropriate for Voters to seek original jurisdiction under C.A.R. 21, which is available "only when no other adequate remedy is

available, including relief by appeal." C.A.R. 21(a)(2). Relief by appeal is available, rendering C.A.R. 21 inapplicable. The Petition is Voters' proper and timely request that this Court take up that appeal as quickly as possible.

B. C.A.R. 50 does not include a "good cause" requirement.

The Board's claim that "good cause" must exist for this Court to exercise C.A.R. 50 review is baseless. *See* Opp'n at 15. C.A.R. 2 permits an appellate court to suspend the requirements or provisions of the Colorado Rules of Appellate Procedure for "good cause shown." Voters do not ask this Court to suspend the appellate rules, but rather apply C.A.R. 50 to grant certiorari.

Conclusion

This Court should grant the Petition and elevate this case from the court of appeals.

Dated: June 22, 2024

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s/ Kendra N. Beckwith
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Certificate of Service

I hereby certify on June 22, 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