DISTRICT COURT, WELD COUNTY, COLORADO 901 9th Avenue, P.O. Box 2038, Greeley, CO 80632 (970) 475-2400	DATE FILED: March 1, 2024 4:12 PM CASE NUMBER: 2023CV30834
Plaintiffs: **League of Women Voters of Greeley, Weld County, Inc.**; **Latino Coalition of Weld County**; **Barbara Whinery**; and **Stacy Suniga** *v.* *Defendants:* **The Board of County Commissioners of the County of Weld**; **Mike Freeman**; **Scott James**; **Lori Saine**; **Kevin Ross**; and **Perry Buck**	▲ COURT USE ONLY ▲ Case No. 2023 CV 30834 Division 4

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

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Introduction

The plaintiffs—the League of Women Voters of Greeley, Weld County, Inc., the Latino Coalition of Weld County, Barbara Whinery, and Stacy Suniga—seek summary judgment on their claims for declaratory and injunctive relief against the defendants—the Board of County Commissioners for Weld County and its individual commissioners: Mike Freeman, Scott James, Lori Saine, Kevin Ross, and Perry Buck.

This case arises from events in early 2023 leading to the Board of County Commissioners approving a new redistricting map for electing county commissioners in Weld County. The plaintiffs contend that the Board failed to comply with the statutory requirements before it can validly draw new voting districts. The plaintiffs request the court to (1) declare that §§ 30-10-306–30.6.4, C.R.S. 2023, apply to Weld County; (2) declare that the Board violated these statutes when it approved the new redistricting map; (3) enjoin the Board from using the map in any upcoming election; and (4) order the Board to complete a new redistricting process in compliance with the statutory authority.

The defendants seek to dismiss the plaintiffs' claims, raising questions about whether the status of Weld County as a home rule county supersedes the General Assembly's plenary authority over elections and whether the court lacks subject matter jurisdiction because that plaintiffs failed to challenge the redistricting plan within the time limit imposed by C.R.C.P. 106. As the substance of the plaintiffs' claims, both the plaintiffs and the defendants agree that the relevant material facts are not in dispute. Based on these undisputed facts, the court concludes that the plaintiffs are entitled to the relief they seek. Consequently, the court grants summary judgment in favor of the plaintiffs' claims as to their declaratory relief and injunctive relief.

But the court also concludes that the plaintiffs fail to state a valid claim based on a violation of their procedural due process rights. Consequently, the court dismisses that claim. Because the Board of County Commissioners can only act collectively and because no individual commissioner can act on behalf the Board, the court agrees that the plaintiffs' claims against the individual commissioners are either redundant or not proper. Thus, the court dismisses the individual commissioners from this case.

Undisputed Facts

The plaintiffs are either Weld County residents or Weld County-based nonprofit organizations that are primarily interested in local government and ensuring fair elections conducted in compliance with applicable laws. Weld County is a Colorado county organized under a home rule charter effective January 1, 1976. The Board consists of five members, two elected by the entire County (generally referred to as "at large" members) and three elected by the voters within each of the County's three county commissioner districts.

On January 11, 2023, the Board published notice of a hearing set for January 23, 2023. The hearing's stated purpose was for the Board to "consider a plan to modify the boundary lines of Commissioner Districts in Weld County Colorado" and to "receive input from the public regarding the plan." The notice states that the proposed map could be examined in the office of the Clerk to the Board and lists a physical address and an email address to allow the public to submit written comments. The notice stated that the hearing would be held at the Weld County Administration office in Greeley, Colorado. The notice did not provide a way to attend or access the hearing electronically. The Board proceeded to meet on January 23, 2023 and approved hearing minutes regarding redistricting.

On January 29, 2023, the Board noticed a second public hearing for March 1, 2023. The notice stated that the Board would consider a resolution to adopt their proposed plan and that public comments would be considered. The notice states where the proposed map could be examined and lists a physical address and an email address to allow the public to submit written comments. But the notice did not list the hearing location. The Board's meetings are livestreamed for remote observation, but the January 29 notice did not include information about how to connect to the livestream for the hearing.

The Clerk of the Board received over 50 comments related to the proposed plan before the March 1 hearing, the majority of which either opposed the plan itself or objected to the Board's process in developing it. The Board held the March 1 hearing at the Weld County Administration office in Greeley, Colorado, and around 30 people attended. Four Greeley residents and one of the plaintiffs, Stacy Suniga, who is also the president of the Latino Coalition of Weld County, expressed their concerns with the proposed plan. Two of the

plaintiffs, Suniga and Barbara Whinery, requested that the Board follow the redistricting statutes in developing a new redistricting plan.

After consideration of the evidence in the record and public comments, all five Commissioners stated their reasons for supporting the redistricting plan. The approved hearing minutes for the March 1 hearing state that "Bruce Barker, County Attorney, stated HB 21-1047 does not require Home Rule Charter counties to comply with its provisions," and "the Board must comply with the procedures of the Charter as it currently stands." The Weld County Charter provides that "[t]he Board shall review the boundaries of the districts when necessary, but not more often than every two years, and then revise and alter the boundaries so that districts are as nearly equal in population as possible." The approved hearing minutes do not contain any statements that explain how the adopted redistricting plan complies with the criteria prescribed in § 30-10-306.3, C.R.S. 2023.

The redistricting map was formally approved through a resolution adopted at the March 1 hearing, with Commissioner Saine abstaining from a vote and the other four commissioners voting in favor. The Board's resolution also does not explain how the adopted redistricting plan complies with the criteria prescribed in § 30-10-306.3. The redistricting map attached to the approved hearing minutes for January 23 is identical to the one the Board approved through its March 1 resolution. The plan results in a final map for use in the 2024 election for three Weld County commissioners. The March 1 resolution approved and established the reorganization of precincts 219, 220, and 262 within commissioner district 3, but did not otherwise change the district boundaries.

The plaintiffs allege in their complaint that the defendants did not follow the procedural requirements established H.B. 21-1047 for redistricting by, among other things, failing to:

- Hold at least three public hearings before approving a redistricting plan, each in a different third of the county, as required by § 30-10-306.2(3)(b), C.R.S. 2023;
- Broadly promote throughout the county the public hearings about proposed redistricting plans, id.;
- Establish a method of electronically participating in hearings about redistricting, in violation of § 30-10-306.2(3)(c);
- Broadcast the hearings and maintain an archive of the hearings for online public review, *id.*;
- Publish and solicit public input on at least three proposed maps, in violation of § 30-10-306.2(3)(d);
- Maintain a redistricting website where county residents could comment on proposed redistricting plans or submit proposed plans, *id.*;
- Provide meaningful and substantial opportunities for county residents to present testimony in person or electronically at the hearings, *id.* at (3)(a), (b), & (e); and
- Explain how the plan was created, how it addressed public comments, and how it complied with the statutory criteria for redistricting, as required § 30-10-306.4(1)(e).

The undisputed facts here show that the defendants did not comply with these statutory requirements in adopting a new redistricting map. The defendants posted only two public notices; made publicly available only one map (the same map eventually approved); allowed for inspection of that one map only at the office of the Clerk of the Board of Commissioners; and received public feedback about the proposed redistricting map at only one hearing (the same hearing at which the map was approved), rather than holding three hearings, one in each third of the county. Thus, the defendants failed to meet nearly every procedural requirement imposed by §§ 30-10-306 to -306.4, and insisted instead that they are governed only by the Weld County Charter and the Weld County Code rather than Colorado state law.

Summary Judgment Standards

Entry of summary judgment against a nonmoving party under C.R.C.P. 56 is appropriate only if the pleadings and supporting documentation clearly show that (1) no genuine issue of material fact exists and (2) the moving party is entitled to judgment as a matter of law. C.R.C.P. 56(c); *Cotter Corp. v. Am. Empire Surplus Lines Ins. Co.*, 90 P.3d 814, 819 (Colo. 2004).

Summary judgment allows a court to determine the necessity of trial. *People In Int. of S.N. v. S.N.*, 2014 CO 64, ¶14. When there is no real basis for relief or defense, and the weight of the evidence or credibility is not at issue, then a trial is unnecessary, and the court can decide the case strictly as a matter of law. *Id.*

But summary judgment is a "drastic remedy" because it eliminates a trial on the facts. *Ginter v. Palmer & Co.*, 196 Colo. 203, 205; 585 P.2d 583, 584 (1978). A court must only grant summary judgment when the moving party clearly establishes that no genuine issue of material fact is in dispute. *S.N.*, 329 P.3d at ¶15; *Smith v. Boyett*, 908 P.2d 508, 514 (Colo. 1995). "A material fact is one that

will affect the outcome of the case." *Western Innovations. v. Sonitrol*, 187 P.3d 1155, 1158 (Colo. App. 2008).

Application of the Standards

The plaintiffs seek a declaration that §§ 30-10-306–306.4, C.R.S. 2023, govern Weld County's redistricting process and that the Board violated these statutes when it approved a new map for commissioner districts. The plaintiffs also ask that the court enjoin the Board from using the map in any upcoming election and that it order the Board to complete a new redistricting process in compliance with the statutes.

The defendants raise several issues in response to the motion for summary judgment, all of which were also set forth in their motion to dismiss. The court examines each of these issues in turn.

1. The plaintiffs' challenge involves the application of Colorado's redistricting statutes rather than any quasi-judicial action by the Board governed by C.R.C.P. 106.

The defendants contend that the plaintiffs' challenge to the redistricting plan comes too late because they did not file this case within the 28-day limitation imposed by C.R.C.P. 106(a)(4), thus depriving the court of subject matter jurisdiction over the plaintiffs' claims. The court disagrees, however, that the plaintiffs' claims are subject to C.R.C.P. 106(a)(4).

The term, *jurisdiction*, generally refers to a court's authority to entertain and resolve particular claims. *People v. C.O.*, 2017 CO 105, ¶ 21. The Colorado Constitution grants district courts general subject matter jurisdiction. Colo. Const. art. VI, § 9. "A trial court's unrestricted and sweeping jurisdictional powers are only limited by … statute or constitutional provision." *People In Int.*

of S.A.G., 2021 CO 38, ¶ 22 (quoting *Currier v. Sutherland*, 218 P.3d 709, 712 (Colo. 2009)) (internal quotations omitted).

"Lack of jurisdiction over the subject matter" is a defense that should be raised by motion. C.R.C.P. 12(b)(1). At any time, any party, including the court sua sponte, can challenge the court's subject matter jurisdiction. C.R.C.P. 12(h)(3). When it appears that the court lacks subject matter jurisdiction, the court will dismiss the action. *Id.* In response to a C.R.C.P. 12(b)(1) challenge, the plaintiff has the burden of proving subject matter jurisdiction. *Medina v. State*, 35 P.3d 443, 452 (Colo. 2001).

The defendants contend that C.R.C.P. 106(a)(4) is the plaintiffs' exclusive remedy because the Board's action was quasi-judicial. Because the plaintiffs filed this case more than 28 days after the March 1 resolution approving the redistricting plan was adopted, the defendants argue that the claims are untimely under C.R.C.P. 106(a)(4) and that this court lacks subject matter jurisdiction.

The plaintiffs respond that, because the Board's approval of the redistricting plan is a legislative or quasi-legislative action, is not governed by C.R.C.P. 106. The court agrees.

Whether a governmental action is judicial or quasi-judicial depends centrally on its nature and "the process by which that decision is reached." *Cherry Hills Resort Dev. Co. v. City of Cherry Hills Village*, 757 P.2d 622, 627 (Colo. 1988). Quasi-judicial decisions "bear[] similarities to the adjudicatory function performed by courts." *Id.* They are "likely to adversely affect the protected interests of specific individuals" and are "reached through the application of preexisting legal standards or policy considerations to present or past facts presented to the governmental body." *Id.*

Legislative action is "usually reflective of some public policy relating to matters of a permanent or general character, [are] not normally restricted to identifiable persons or groups, and [are] usually prospective in nature." *Cherry Hills*, 757 P.2d at 625. While quasi-judicial actions require evidentiary hearings, legislative actions depend on "legislative facts," which usually do not concern any immediate parties before the legislative body and thus rely on "empirical observations;" legislative facts therefore "need not be developed through evidentiary hearings." *City & County of Denver v. Eggert*, 647 P.2d 216, 222 (quotations omitted). Legislative and administrative actions are not reviewable pursuant to C.R.C.P. 106(a)(4). *Prairie Dog Advocates v. City of Lakewood*, 20 P.3d 1203 (Colo. App. 2000).

The court concludes that plaintiffs' complaint pleads claims for declaratory relief governed by C.R.C.P. 57 and injunctive relief governed by C.R.C.P. 65. The court further concludes that the Board's approval of the redistricting plan was a legislative action.

Contrary to the defendants' assertion that the plaintiffs "claim the Board exceeded its jurisdiction or abused its discretion," *Def. Mot.* at 8, the complaint instead seeks declaratory and injunctive relief based on the plaintiffs' allegations that the Board failed to comply with the procedural requirements imposed by Colorado's redistricting statutes.

The Board did not conduct an evidentiary hearing in the process leading up to its approval of the redistricting plan. The Board did not adjudicate the rights of any specific party. The Board instead made a legislative policy decision as to where to draw the lines of each of three county commissioner districts in Weld County. The Board's decision was based on the individual board members' empirical observations and beliefs as to what the redistricting map should look

like in the future, as opposed to any findings of historical fact, as is the case with quasi-judicial determinations.

The defendants argue that their action was quasi-judicial because they applied preexisting legal standards in determining the new commissioner districts, but the Board did not apply these standards to specific parties. These standards instead reflect the county's policy interest in maintaining districts that are "as nearly equal in population as possible." WCC § 3-2.

The defendants also argue that their decision was quasi-judicial because the Board provided notices and hearings before the resolution's approval. But "the presence of such legally-mandated procedures is [] not determinative." *In re Water Rights of Colorado Water Conservation Bd. in the San Miguel River*, 2015 CO 21, ¶ 27. "[T]he nature of the decision rendered by the governmental body, and not the existence of a legislative scheme mandating notice and a hearing," is the "predominant consideration" in determining whether an action is quasi-judicial. *Cherry Hills*, 757 P.2d at 626. Rezoning decisions also require notice and hearings, but when they affect a significant number of people, these decisions are "quasi-legislative in nature based on [their] prospective nature and broad impact …." *Jafay v. Bd. of Cnty. Comm'rs of Boulder Cnty.*, 848 P.2d 892, 898 (Colo. 1993).

Because the Board's approval of the redistricting plan was a legislative action, C.R.C.P. 106 does not apply.

2. The plaintiffs have standing to challenge the Board's approval of the redistricting plan.

The defendants contend that the plaintiffs lack standing to challenge their approval of the redistricting plan. The court is not persuaded.

A plaintiff's standing requirement "prevents litigants from asserting rights or legal interests of others." *Pueblo Sch. Dist. No. 60 v. Colorado High Sch. Activities Ass'n*, 30 P.3d 752, 753 (Colo. App. 2000). A court must dismiss the case if it determines that the plaintiff does not have standing. *Hickenlooper v. Freedom from Religion Foundation, Inc.*, 2014 CO 77, ¶ 7.

Colorado has traditionally "confer[red] standing to a wide class of plaintiffs." *Ainscough v. Owens*, 90 P.3d 851, 853 (Colo. 2004). Organizations may bring claims on behalf of their members if their members have "standing to sue in their own right"; the interests at issue pertain to their organizational purpose; and the claims do not require individual members' participation. *Colo. Union of Taxpayers Found. v. City of Aspen*, 418 P.3d 506, 510 (Colo. 2018). To have standing, a plaintiff must have suffered an injury in fact to a legally protected interest. *Id.* at 855.

To satisfy the injury-in-fact requirement, a plaintiff must allege facts that show the defendant caused harm to the plaintiff's legally protected interest. *Id.* at 855. An interest is legally protected if the constitution, common law, or a statute, rule, or regulation provides the plaintiff with a claim for relief. *Ainscough*, 90 P.3d at 856. Courts must consider whether the legal basis for the claim confers a right or interest to the plaintiff and whether the defendant's alleged conduct could have abridged that right or interest. *O'Bryant v. Pub. Utilities Comm'n of State of Colo.*, 778 P.2d 648, 653 (Colo. 1989). When a plaintiff asserts that a statute implies a private right of enforcement, the court must determine (1) whether the plaintiff is within the class of persons intended to be benefitted by the legislative enactment; (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 purposes of the legislative scheme. *Allstate Ins. Co. v. Parfrey*, 830 P.2d 905, 911 (Colo. 1992).

The plaintiffs allege that their injury occurred when the defendants approved a new commissioner redistricting map for Weld County without following the procedures imposed by the General Assembly in H.B. 21-1047, which has been codified at §§ 30-10-306–306.4, C.R.S. 2023. The plaintiffs contend that they have the legal right to enforce these procedures and that the defendants harmed their legally-protected interests by violating a number of the statutory requirements.

The court concludes that the plaintiffs have met the injury-in-fact requirement. The plaintiffs allege an actual, intangible injury based on "the deprivation of civil liberties." *Cloverleaf*, 620 P.2d at 1058. While the defendants cite *Lance v. Coffman*, 549 U.S. 437, 439 (2007), and argue that "generalized grievances" are insufficient to establish an injury-in-fact, Colorado law broadly confers standing. Unlike in the federal courts, a Colorado plaintiff need not show that their injury is "concrete or particularized" or that their injury is "actual or imminent" rather than "conjectural or hypothetical." *City of Greenwood Vill. v. Petitioners for Proposed City of Centennial*, 3 P.3d 427, 437 n.8 (Colo. 2000).[1] Colorado law also recognizes that "parties actually protected by a statute or constitutional provision are generally best situated to vindicate their own rights." *Id.* at 437.

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[1] Multiple divisions of the court of appeals have held that plaintiffs must have "a personal stake in the alleged dispute," and the injury must be "particularized" to them. *Grossman v. Dean*, 80 P.3d 952, 959 (Colo. App. 2003); *Rechberger v. Boulder Cnty. Bd. of Cnty. Commissioners*, 2019 COA 52, ¶ 10. To the extent that there is any tension between the holdings of these divisions and Colorado Supreme Court's standing doctrine, this court must adhere to the precedent set down by the Supreme Court. In any event, the court concludes that the plaintiffs have sufficient demonstrated there that they have personal stake in the alleged dispute and that the alleged injury is particularized to them or the individual interests they represent.

The court further concludes that the plaintiff's alleged injury is not speculative. The Board approving the resolution without following H.B. 21-1047's requirements would constitute a direct and immediate cause of the plaintiffs' alleged injuries. While the defendants argue that the plaintiffs did not suffer an injury because the Board is authorized to change precinct boundaries and the plaintiffs participated in one hearing, this argument goes to the merits of the plaintiffs' claims rather than their standing to bring those claims. The question is whether the plaintiffs have alleged a cognizable injury to their legally protected interests—which they have. Besides, the authority to change precinct boundaries does not exempt the defendants from the duty to do so in compliance with any applicable legal procedures, nor does the plaintiffs' partial participation in one part of the redistricting process excuse the defendants from complying with those requirements.

While plaintiffs' legally protected interests arise from the alleged violation of a statute, the statute is silent as to whether it provides the plaintiffs with a private right of action. After considering the *Parfrey* factors, the court concludes that it does.

First, the plaintiffs are within the class of persons the legislation aims to benefit because the individual plaintiffs are registered electors in Weld County and the corporate plaintiffs consist of members who are also Weld County registered electors. The General Assembly clarified its intent in enacting H.B. 21-1047: to ensure 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." Ch. 70, sec. 1(i), 2021 Colo. Sess. Laws 278.

Second, this same quoted language expresses the General Assembly's intent to implicitly create a private right of action. To empower voters, an implied private right of action would "furnish[] an effective incentive" for county commissioners to comply with the statute, and without this incentive the General Assembly's intent "would be substantially frustrated" because there would be no other means of enforcement. *Parfrey*, 830 P.2d at 911. If the General Assembly had intended for someone other than the registered voters of county to enforce the statute, such as the Attorney General, it could have explicitly said so.

Third, an implied civil remedy would be consistent with the purposes of the legislative scheme. H.B. 21-1047 establishes a thorough process to ensure that electoral districts are fairly redistricted. But the legislative scheme does not provide administrative remedies or any other means to effectuate the statutes' intent. A private cause of action is consistent with the General Assembly's stated intent to empower voters and protect their right to elect commissioners who will be responsive and accountable to them because they were elected through fairly drawn voting districts.

The corporate plaintiffs have a clear interest in the claims because their members have standing to sue in their own right; the interests at issue pertain to their organizational purposes; and this action does not require individual members' participation. *See Colo. Union of Taxpayers Found. v. City of Aspen*, 418 P.3d 506, 510 (Colo. 2018).

Thus, the court concludes that all the plaintiffs have standing to assert the claims they bring here.

3. The redistricting statutes govern the redistricting process in Weld County.

The defendants contend that the redistricting processes does not apply to Weld County because of its status as a home rule county. The defendants argue that (1) provisions of Article XIV of the Colorado Constitution, (2) statutes enacted pursuant to those provisions, and (3) the Weld County Charter all exempt the Board from H.B. 21-1047's requirements. The defendants contend that the General Assembly lacks the authority to govern Weld County's redistricting process and that only the people of Weld County can change the redistricting process by amending the Weld County Charter.

The plaintiffs respond that the General Assembly expressed its clear intent to govern the redistricting process in counties like Weld County and point to the codification of H.B. 21-1047 in § 30-10-306.1(1)(a), which specifies that the redistricting process applies to boards of county commissioners in counties "that have any number of their county commissioners not elected by the voters of the whole county[.]" Weld County squarely fits this definition.

It is clear beyond all reasonable doubt that the General Assembly intended to regulate the redistricting process in counties such as Weld County. As noted above, the General Assembly declared that "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, Ch. 70, sec. 1(i), 2021 Colo. Sess. Laws 278. The General Assembly enacted the bill to "ensure that counties that elect some or all of their commissioners by the voters of individual districts are held to the same high [redistricting] standards" as congressional districts and state house and senate districts. Ch. 70, sec. 1(2), 2021 Colo. Sess. Laws 278. To this end, the General Assembly adopted standards that include "fair criteria for drawing of

districts, plans drawn by nonpartisan staff, robust public participation, and where practicable, independent commissions." *Id.*

Thus, the only real question is whether the General Assembly has the plenary authority to regulate the redistricting of county commissioner districts. The court concludes that it does. The court also concludes that there is no conflict between H.B. 21-1047 and the sparse redistricting provisions in the Weld County Code.

Article XIV of the Colorado Constitution, the Colorado County Home Rule Powers Act, and the Weld County Charter each require that the Board comply with the redistricting statutes. Under the Colorado Constitution, a county's voters may adopt a home rule charter whose government organization and structure is "consistent with [Article XIV] and statutes enacted pursuant hereto." Colo. Const. art. XIV, § 16(1). Once established, "[a] home rule county shall provide all mandatory county functions, services, and facilities and shall exercise all mandatory powers as may be required by statute." *Id.* at § 16(3). Home rule counties have the power "to exercise such permissive powers as may be authorized by statute applicable to all home rule counties, except as may be otherwise prohibited or limited by charter or this constitution." *Id.* at § 16(4). Thus, the Colorado Constitution requires home rule counties to comply with state statutes when exercising their mandatory and permissive powers.

The Colorado County Home Rule Powers Act provides that "a home rule county, and its officers and employees, shall have all the powers of any county not adopting a home rule charter, except as otherwise provided in [Article 35] or in the [county] charter or in the state constitution." § 30-35-103(1), C.R.S. 2023. Home rule counties "shall provide all mandatory county functions, services, and facilities and shall exercise all mandatory powers as are required

by law for counties not having home rule powers." § 30-35-103(4). A home rule county's governing body "shall have all the powers and responsibilities as provided by law for governing bodies" of counties without a home rule charter. § 30-35-201, C.R.S. 2023. The redistricting processes that H.B. 21-1047 requires Colorado counties to perform are among these responsibilities.

The defendants cite *Bd. of Cnty. Comm'rs v. Andrews* in support of their contention that they are exempt from H.B. 21-1047's provisions. 687 P.2d 457 (Colo. App. 1984). But in that case a county's charter conflicted with state law, whereas here Weld County Charter's provisions do not. H.B. 21-1047 requires that the board of county commissioners of each county that has "any number of their county commissioners not elected by the voters of the whole county" designate a commission to work on redistricting efforts. § 30-10-306.1, C.R.S. 2023. Section 30-10-306.3(a) requires that the commission "[m]ake a good-faith effort to achieve mathematical population equality between districts." Similarly, § 3-2(2) of the Weld County Charter requires that the Board "revise and alter the boundaries so that districts are as nearly equal in population as possible." Thus, while H.B. 21-1047 requires additional procedures, it does not conflict with the Weld County Charter.

The Weld County Charter also includes terms requiring the Board to comply with state statutes. The charter requires that the Board "exercise all the powers and perform all the duties now required or permitted or that may hereafter be required or permitted by State law to be exercised or performed by County Commissioners in either home rule or non-home rule counties." WCC § 3-8. Thus, by the express provisions of the Weld County Charter, the redistricting statutes establish duties that the Board must perform. Weld

County's status as a home rule county does not excuse the county commissioners from complying with the requirements of H.B. 21-1047.

4. Neither the political question doctrine nor the separation of powers doctrine prevents the court from applying HB 21-1047 to the Board.

The defendants contend that the plaintiffs' claims present a nonjusticiable political question because the plaintiffs' relief would require the court to improperly interfere with the Board's constitutional duties and because there are no standards available to resolve the issues presented.[2] The plaintiffs respond that their claims are justiciable because it is the judiciary's role to interpret the law and their claims simply ask the court to exercise its authority. The court agrees with the plaintiffs.

The judiciary's role is "to determine what the law is." *Lujan v. Colo. State Bd. of Educ.*, 649 P.2d 1005, 1025 (Colo. 1982). This role includes interpreting the Colorado Constitution. *Colo. Common Cause v. Bledsoe*, 810 P.2d 201, 206 (Colo. 1991). "The political question doctrine establishes that certain constitutional provisions may be interpreted and enforced only through the political process." *Lobato v. State*, 218 P.3d 358, 368 (Colo. 2009). Thus, courts should avoid deciding cases that present political questions. *Colo. Gen. Assembly v. Lamm*, 704 P.2d 1371, 1378 (Colo. 1985).

The defendants rely primarily on the strict standards for evaluating political questions announced by the United States Supreme Court in *Baker v.*

[2] The court notes that this argument contradicts the defendants' other argument that C.R.C.P. 106 applies because they were engaged in quasi-judicial action as opposed to legislative action. One critical aspect of a political question is that it involves "the impossibility of deciding without an initial policy determination of a kind clearly for *nonjudicial discretion*." *Colorado Common Cause v. Bledsoe*, 810 P.2d 201, 205 (Colo. 1991) (quotation omitted) (emphasis added).

Carr, 369 U.S. 186 (1962). But it is inappropriate to "mechanically" apply the *Baker* test to every case, *Markwell v. Cooke*, 2021 CO 17, ¶ 25, and it would be inappropriate to do so here. While federal courts have limited jurisdiction over cases and controversies, district courts in Colorado are courts of general jurisdiction. *Lobato*, 218 P.3d at 370. The Colorado Constitution also includes positive rights, while the U.S. Constitution contains only negative rights that restrict government action. *Id.* at 370–371. The difference in the federal and state approach to rights guaranteed by their respective constitutions means that state courts "engage … in substantive areas that have historically been outside the Article III domain." *Id.* at 371 (quotations omitted).

Thus, this court may appropriately interpret the law that the General Assembly enacted through H.B. 21-1047 and determine how that law relates to the state constitution and the general legislative scheme. In so doing, the court concludes that determining whether the redistricting statutes apply to the Board "is one traditionally within the role of the judiciary to resolve." *Bledsoe*, 810 P.2d at 206.

The defendants also contend that the separation of powers doctrine precludes the court from exercising its authority to determine whether the redistricting statutes apply to home rule counties.[3] The defendants argue that Weld County has the discretionary authority to conduct its own redistricting functions under the Weld County Charter and that granting the plaintiffs' relief would interfere with this power. The plaintiffs respond that, if the court were to accept the defendants' the separation of powers argument, it would allow the

[3] This argument also contradicts the defendants' other argument that Rule 106 applies because they were engaged in quasi-judicial action, as opposed to legislative action. For the separation of powers doctrine to be a consideration, the Board must be exercising legislative or executive powers rather than judicial powers.

Board to have "unreviewable discretion" over whether they must comply with the redistricting statutes. The court agrees with the plaintiffs.

The doctrine of the separation of powers originates in Article III of the Colorado Constitution where the executive, judicial, and legislative branches are distinct arms of government. The doctrine aims to "prevent one department from exercising power that is essential to another department's exercise of its constitutionally defined functions." *Dee Enters. V. Indus. Claim Appeals Off.*, 89 P.3d 430, 433 (Colo App. 2003).

The court concludes that granting the plaintiffs' claims for relief would not violate the separation of powers. The plaintiffs seek to have the defendants comply with state law. Deciding the plaintiffs' claims on their merits would not result in judicial intrusion but would instead be the judicial branch applying the law as enacted by the legislative branch.

5. Because the Board violated the redistricting statutes, the plaintiffs are entitled to declaratory relief.

Viewing the undisputed facts in the light most favorable to the Board, the court concludes that the Board violated the redistricting statutes. The undisputed facts show that the Board violated several requirements imposed by § 30-10-306.2 and § 30-10-306.4(1)(e).

Under C.R.C.P. 57(b), "[a]ny person … whose rights, status, or legal relations are affected by a statute [or] municipal ordinance … may have determined any question of construction or validity arising under the … statute [or] ordinance … and obtain a declaration of rights, status, or other legal relations thereunder." The plaintiffs seek declaratory relief based on the defendants violating the redistricting statutes and have shown that the undisputed material facts entitle them to the relief they seek.

The court will therefore entitle judgment in the form of a declaration that the defendants did not comply with the procedural requirements imposed by the redistricting statutes when adopting the March 1 resolution that approved the new redistricting map.

6. The plaintiffs are entitled to injunctive relief to compel the Board to comply with the redistricting statutes before the Board can approve a new redistricting map.

The defendants contend that the plaintiffs fail to show that they are entitled to injunctive relief because they cannot satisfy the six-factor test in *Rathke v. MacFarlane*, 648 P.2d 648 (Colo. 1982). The plaintiffs respond that they do not seek a preliminary injunction, so the *Rathke* test does not apply to their request for a permanent injunction.

A party seeking a permanent injunction must show (1) actual success on the merits; (2) irreparable harm unless the injunction is issued; (3) the threatened injury outweighs the harm that the injunction may cause to the opposing party; and (4) the injunction, if issued, will not adversely affect the public interest. *See Dallman v. Ritter*, 225 P.3d 610, 621 (Colo. 2010); *Langlois v. Bd. of Cty. Comm'rs*, 78 P.3d 1154, 1158 (Colo. App. 2003). Applying these elements to the undisputed material facts, the court concludes that the plaintiffs have shown that they are entitled to injunctive relief.

First, the undisputed facts show that the Board violated the redistricting statutes in adopting the new redistricting map. Thus, the plaintiffs have achieved actual success on the merits.

Second, the undisputed facts show that the plaintiffs will suffer irreparable harm unless the injunction is issued. The term "irreparable harm" is "adaptable to the unique circumstances that an individual case might present." *Gitlitz v.*

Bellock, 171 P.3d 1274, 1278–79 (Colo. App. 2007). The term is generally defined as "certain and imminent harm for which a monetary award does not adequately compensate." *Id.* at 1279. The plaintiffs will suffer irreparable harm because their rights to a redistricting process guided by and in compliance with Colorado's redistricting statutes will be violated by holding an election using a redistricting map that was approved through an improper process. No monetary award will adequately compensate the plaintiffs if county commissioners are elected using illegal voting districts.

Third, the violation of the plaintiffs' rights outweighs any harm the injunction may cause the Board or its individual commissioners. The Board will not suffer any harm: it simply must comply with the duties imposed by the redistricting statutes, which were duties the Board had before the violation.

Fourth, the injunction will not harm the public interest. An injunction will instead protect the rights that the redistricting statutes provide to all voters in Weld County. No public interest would be served by permitting the Board to adopt a new redistricting map that was approved in violation of the redistricting statutes.

Because the undisputed facts show that each of the four requirements for a permanent injunction are satisfied here, the plaintiffs are entitled to injunctive relief.

7. The plaintiffs fail to state a valid claim based on a violation of their procedural due process rights.

The defendants contend that the plaintiffs have failed to allege a constitutionally protected interest in their voting rights, arguing that federal authorities persuasively hold that this right is not a cognizable liberty interest under the Due Process Clause. The plaintiffs respond that the state created a

liberty interest through its enactment of the redistricting statutes and that defendants were required to provide due process before arbitrarily removing those privileges. The court agrees with the defendants.

The plaintiffs have not cited any Colorado state appellate court decision that holds voting rights are a protected liberty interest for procedural due process purposes, and the court is unaware of any such authority. The federal cases involving voting rights relied on by the plaintiffs are too dissimilar from this case to convince the court that plaintiffs have a protected liberty interest in connection with Colorado's redistricting statutes.

Thus, while this claim may be moot in light of the court's disposition of the plaintiff's other claims, the court dismisses the plaintiffs' procedural due process claim for failure to state a valid claim.

8. Because individual commissioners cannot compel the Board to act, and because the Board is a proper party, the court dismisses the individual commissioners from this case.

County commissioners cannot act alone; the board of county commissioners speaks with one voice in exercising political authority and home-rule powers. *See* §§ 30-10-302, -303, 30-11-103, -105, -107, C.R.S. 2023; *City of Aurora v. Bd. of Cnty. Comm'rs*, 902 P.2d 375, 378 (Colo. App. 1994), *aff'd*, 919 P.2d 198 (Colo. 1996) (county acts via board of county commissioners); *Robbins v. Cnty. Comm'rs*, 115 P. 526, 528 (Colo. 1911) ("County commissioners are constitutional officers (article XIV, section 6). To bind the county, or to make their doings legal, they must act, not individually, or separately, but collectively as a board."); *see also Nicholl v. E-470 Pub. Highway Auth.*, 896 P.2d 859, 866 (Colo. 1995) (board acts via majority of members, not via individuals).

Thus, entering a permanent injunction as to the individual commissioner would be meaningless and they would be powerless, acting individually, to comply with that injunction. Declaratory relief as to the individual commissioners would also be improper because it was the Board acting collectively that approved the redistricting plan although the Board had not followed the procedures required by H.B. 21-1047.

Consequently, the court dismisses the individual commissioners from this case.

9. The plaintiffs' claims for declaratory relief and injunctive relief are not moot.

The defendants contend that the plaintiffs' claims are moot because it is impossible for the Board to now comply with the procedural requirements imposed by H.B. 21-1047. While the defendants largely rely on conclusory statements to support their contention, for the purposes of ruling on the plaintiffs' motion for summary judgment, the 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.

In any event, it would be improper for the court to allow the Board to use the new redistricting map that was improperly approved in violation of Colorado law. The plaintiffs' claims are not moot.

Order

Accordingly, the plaintiffs' *Motion for Summary Judgment* is GRANTED as to their claims for declaratory relief and injunctive relief.

The court hereby declares that §§ 30-10-306.1 through 30-10-306.4, C.R.S., 2023, apply to, and are binding upon, Weld County and the Weld County Board of County Commissioners, and that the Board violated §§ 30-10-306.2 and 30-10-306.4 when it approved the new commissioner district maps in the resolution of March 1, 2023.

The use of the map adopted by the March 1 Resolution in any election is hereby enjoined.

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.

The plaintiffs' claim based on a violation of the procedural due process right is hereby dismissed with prejudice and the individual commissioners are hereby dismissed from this case.

So Ordered:
March 1, 2024

BY THE COURT:

Todd Taylor
District Court Judge

DISTRICT COURT SEAL WELD COUNTY, COLORADO