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ADVANCE SHEET HEADNOTE
February 24, 2025

2025 CO 8

No. 24SC394, *League of Women Voters v. Board of County Commissioners* – Home Rule Counties – Colorado Constitution – Redistricting Statutes – Standing – Private Right of Action – County Commissioners – Redistricting Process – Elections – Election Maps

In this case, the supreme court addresses whether the plaintiffs have standing to sue under the redistricting statutes, whether the redistricting statutes contain an implied private right of action, and whether a home rule county, such as Weld County, must comply with Colorado's redistricting statutes when conducting its county commissioner election redistricting process. The court answers each of these issues affirmatively. The court determines that while article XIV of the Colorado Constitution empowers home rule counties to determine the organization and structure of county government, it obliges them to comply with any mandatory county functions required by statute, including the duties laid out in the redistricting statutes. Accordingly, the court orders Weld County's Board of County Commissioners to complete its redistricting process and adopt a district

map in accordance with the redistricting statutes' procedures in time for Weld's next county commissioner election.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

25 CO 8

Supreme Court Case No. 24SC394

C.A.R. 50 Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 24CA774
Weld County District Court Case No. 23CV30834
Honorable Todd L. Taylor, Judge

Petitioners:

League of Women Voters of Greeley, Weld County, Inc.; Latino Coalition of
Weld County; Barbara Whinery; and Stacy Suniga,

v.

Respondent:

The Board of County Commissioners of the County of Weld.

Order Affirmed in Part and Reversed in Part

en banc

February 24, 2025

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JUSTICE HOOD delivered the Opinion of the Court, in which **JUSTICE BOATRIGHT, JUSTICE GABRIEL, JUSTICE HART, JUSTICE SAMOUR,** and **JUSTICE BERKENKOTTER** joined.

CHIEF JUSTICE MÁRQUEZ concurred in the judgment.

JUSTICE HOOD delivered the Opinion of the Court.

¶1 In 2023, the Board of County Commissioners of the County of Weld (the “Board”) approved a new map for electing county commissioners. In approving the map, the Board chose not to comply with sections 30-10-306.1 to -306.4, C.R.S. (2024) (the “redistricting statutes”), asserting that its compliance with statewide mandates was unnecessary because Weld is a home rule county.

¶2 Weld County residents Stacy Suniga and Barbara Whinery; the League of Women Voters of Greeley, Weld County, Inc.; and the Latino Coalition of Weld County (collectively, the “Voters”) sued the Board. They sought a declaratory judgment that the Board must comply with the redistricting statutes and an injunction to prohibit the Board from using the new map. The district court agreed with the Voters and granted summary judgment in their favor.

¶3 Today, we consider whether home rule counties, like Weld, must comply with Colorado’s redistricting statutes. As threshold matters, we hold that the redistricting statutes provide a private right of action and that the Voters have standing to sue the Board. We further hold that the redistricting statutes apply to home rule counties, and therefore, the Board must immediately comply with them.

I. Facts and Procedural History

¶4 Weld has been a home rule county since 1976. The Board includes two at-large commissioners, elected by all voters in Weld County, and three district-

specific commissioners, elected by voters in each of the three districts in Weld County.

¶5 At a March 1, 2023 hearing, the Board considered a single map that it had drawn. Several Weld County voters, including petitioners Suniga and Whinery, were present. These voters objected to the proposed map and asked the Board to comply with the redistricting statutes. Weld County's attorney responded that home rule counties, such as Weld, don't need to comply with them. Although the parties dispute the law, the fact that the Board didn't comply with the statutes when adopting the map is undisputed.

¶6 The Voters sued the Board. The district court granted the Voters' motion for summary judgment and enjoined the Board from using the newly adopted map. In so doing, the court ruled that (1) the Voters have standing to challenge the Board's approval of the redistricting plan; (2) the redistricting statutes govern county commissioner redistricting in Weld County; and (3) because the Board violated the redistricting statutes, the Voters are entitled to declaratory and injunctive relief to compel the Board to comply with the redistricting statutes in approving a new map.

¶7 The Board appealed the district court’s order to the court of appeals. The Voters then petitioned this court for certiorari review before judgment pursuant to C.A.R. 50. We granted the Voters’ petition.¹

II. C.A.R. 50 Jurisdiction

¶8 We granted the Voters’ petition for certiorari review under C.A.R. 50 because this case “involves a matter of substance that is of sufficient public importance to justify deviation from normal appellate processes and requires immediate determination in this court.” *Colo. State Bd. of Educ. v. Adams Cnty. Sch. Dist. 14*, 2023 CO 52, ¶ 17, 537 P.3d 1, 7; *see also* C.A.R. 50(a)(3). Our decision will

¹ We granted certiorari to review the following five issues:

1. Whether the trial court erred in concluding that section 30-10-306, et seq., C.R.S. (2023), implies a private right of action.
2. Whether the trial court erred in concluding that plaintiff-appellants had standing to sue the Board based on nothing more than generalized grievance constituting pure procedural irregularities.
3. Whether the trial court erred in concluding as a matter of law that section 30-10-306, et seq., applies to a home rule county with a conflicting charter.
4. Whether the trial court erred in determining there is no conflict between the provisions of section 30-10-306, et seq., and the Weld County home rule charter.
5. Whether the Board must be directed to engage in a county commissioner redistricting process that complies with the redistricting statutes for future elections.

not only clarify the scope of Colorado’s redistricting statutes but also allow Weld County to adjust before its next commissioner election in 2026.

III. Analysis

¶9 We begin with an overview of the redistricting statutes. We then address the following issues in turn: whether the redistricting statutes provide a private right of action, whether the Voters have standing, and whether home rule counties must follow the redistricting statutes’ procedures. Finally, we examine the proper remedy for failing to comply with the statutes.

¶10 In conducting this analysis, we review all issues of constitutional and statutory interpretation de novo. *Kulmann v. Salazar*, 2022 CO 58, ¶ 15, 521 P.3d 649, 653. We also review standing issues de novo. *Colo. State Bd. of Educ.*, ¶ 19, 537 P.3d at 7. When construing a statute, “we first look to the statutory language itself, giving words and phrases their commonly accepted and understood meaning.” *Town of Erie v. Eason*, 18 P.3d 1271, 1276 (Colo. 2001). Our primary task is to effectuate the legislative purpose, *id.* at 1275, and “our responsibility is to give full meaning to the legislative intent,” *Conte v. Meyer*, 882 P.2d 962, 965 (Colo. 1994).

A. The Redistricting Statutes

¶11 In 2021, the Colorado General Assembly enacted House Bill 21-1047 (“H.B. 21-1047”) to curb gerrymandering in county commissioner redistricting in

a manner consistent with requirements for federal and state legislative redistricting. Ch. 70, secs. 1-3, §§ 30-10-306 to -306.4, 2021 Colo. Sess. Laws 277, 277-87.

¶12 In counties with a population exceeding seventy thousand, like Weld, the board of county commissioners must divide the county into districts according to a final redistricting plan. § 30-10-306(2), C.R.S. (2024). The board must designate a redistricting commission to establish those districts, and the statute encourages the board to make that commission independent. § 30-10-306.1(1), C.R.S. (2024).

¶13 In addition, the commission must hold at least three public hearings, § 30-10-306.4(1)(f), C.R.S. (2024), soliciting feedback on at least three different plans before adopting a final plan, § 30-10-306.4(1)(d). The commission is precluded from voting on a final plan “until at least seventy-two hours after it has been proposed to the commission in a public meeting,” § 30-10-306.2(2), C.R.S. (2024), and it must “provide meaningful and substantial opportunities for county residents to present testimony, either in person or electronically, at hearings,” § 30-10-306.2(3)(b).

¶14 In drafting the plan, the redistricting statutes require the commission to:

- “[m]ake a good-faith effort to achieve mathematical population equality between districts,” § 30-10-306.3(1)(a), C.R.S. (2024);

- “preserve whole communities of interest and whole political subdivisions” as is “reasonably possible,” including making districts “as compact as . . . reasonably possible,” § 30-10-306.3(2); and
- “maximize the number of politically competitive elections in the county,” § 30-10-306.3(3)(a).

¶15 Lastly, section 30-10-306.4 lays out the deadlines for the preparation, amendment, and approval of the plans. The board of county commissioners must establish these deadlines to ensure that it adopts “a plan for the redrawing of county commissioner districts no later than September 30 of the redistricting year.” § 30-10-306.4(1).

B. Private Right of Action

¶16 The Board asserts that because the redistricting statutes don’t expressly create a private right of action, none exists. We disagree.

¶17 True, we require a “clear expression” of legislative intent to establish a private right of action. *City of Arvada ex rel. Arvada Police Dep’t v. Denver Health & Hosp. Auth.*, 2017 CO 97, ¶ 22, 403 P.3d 609, 614 (quoting *State v. Moldovan*, 842 P.2d 220, 227 (Colo. 1992)). But if a statute doesn’t explicitly provide a private right of action, we may consider (1) “whether the plaintiff is within the class of persons intended to be benefitted by the legislative enactment”; (2) “whether the legislature intended to create, albeit implicitly, a private right of action”; and

(3) “whether an implied civil remedy would be consistent with the purposes of the legislative scheme.” *Gerrity Oil & Gas Corp. v. Magness*, 946 P.2d 913, 923 (Colo. 1997) (quoting *Allstate Ins. Co. v. Parfrey*, 830 P.2d 905, 911 (Colo. 1992)).

¶18 Because the redistricting statutes are silent regarding a private right of action, we employ this three-factor test here. The test for whether there’s an implied private right of action is the same for both private and government defendants. *City of Arvada*, ¶ 24, 403 P.3d at 615.

¶19 *First*, the Voters are within the class of persons intended to benefit from the redistricting statutes. The General Assembly’s stated purpose for enacting H.B. 21-1047 was to empower “voters in every Colorado county . . . to elect commissioners who will reflect the communities within the county and who will be responsive and accountable to them.” Ch. 70, sec. 1(1)(i), 2021 Colo. Sess. Laws 277, 278. Petitioners in this case are two individual registered Weld County voters and two nonprofit organizations whose members are also Weld County voters. These are the constituents the redistricting statutes are intended to benefit.

¶20 *Second*, we conclude that the General Assembly intended to give registered voters a private right of action to ensure that counties comply with the redistricting statutes. After all, the General Assembly told us that it wanted “to ensure that counties that elect some or all of their commissioners by the voters of individual districts are held to the same high standards that Amendments Y and Z require of

redistricting for congressional districts, state house of representative districts, and state senate districts,” including through “robust public participation.” Ch. 70, sec. 1(2), 2021 Colo. Sess. Laws 277, 278. This goal would be thwarted if the very constituents this law is designed to protect couldn’t seek its enforcement. *See, e.g., Parfrey*, 830 P.2d at 911 (explaining that the goal of the uninsured/underinsured motorist coverage statute would be “substantially frustrated . . . without a private civil remedy to redress the injuries and damages caused by an insurer’s failure to discharge its statutory responsibility”).

¶21 *Third*, an implied civil remedy is consistent with the purposes of the redistricting statutes’ legislative scheme. As we have already explained, the procedural requirements in the redistricting statutes promote transparency and fairness. Without the remedy provided by a private right of action, those elaborate requirements could become a dead letter. That outcome is impossible to square with the purposes of the legislative scheme.

¶22 Thus, because the Voters are among the class of persons protected by the redistricting statutes, pursuant to which the General Assembly implicitly created a private right of action and a civil remedy consistent with the statutory scheme, we conclude that the redistricting statutes provide a private right of action.

C. Standing

¶23 The Board asserts that the Voters don't have standing because they haven't suffered a "concrete harm" and have made only "generalized grievances." See *Hickenlooper v. Freedom from Religion Found., Inc.*, 2014 CO 77, ¶ 9, 338 P.3d 1002, 1006–07 (noting that neither an "overly 'indirect and incidental'" injury nor the "remote possibility of a future injury" convey standing (quoting *Ainscough v. Owens*, 90 P.3d 851, 856 (Colo. 2004))). Again, we disagree.

¶24 Standing is a jurisdictional requirement. *Ainscough*, 90 P.3d at 855. To establish standing, a plaintiff must show that "the plaintiff suffered (1) an injury-in-fact, (2) to a legally protected interest." *Id.* Organizations have standing to sue if their individual members have standing to sue. *Colo. Union of Taxpayers Found. v. City of Aspen*, 2018 CO 36, ¶ 10, 418 P.3d 506, 510.

¶25 The injury-in-fact prong asks whether there's a "'concrete adverseness which sharpens the presentation of issues' that parties argue to the courts." *City of Greenwood Vill. v. Petitioners for Proposed City of Centennial*, 3 P.3d 427, 437 (Colo. 2000) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)); accord *Ainscough*, 90 P.3d at 856. Injury-in-fact includes the deprivation of legal rights. *Ainscough*, 90 P.3d at 856.

¶26 The legally-protected-interest prong asks "whether the plaintiff has a claim for relief under the constitution, the common law, a statute, or a rule or

regulation.” *Id.* Such an interest includes “having a government that acts within the boundaries of our state constitution,” and it “encompass[es] all rights arising from constitutions, statutes, and case law.” *Id.* As with the private-right-of-action analysis, this prong ensures that “the injury is actionable.” *Denver Health & Hosp. Auth.*, ¶¶ 20–21, 403 P.3d at 613–14 (“When a statute does not specify what constitutes an actionable injury, we look to the law of implied private rights of action to determine whether the statute might still create a claim conferring standing.”).

¶27 Here, the Board deprived the Voters of the procedural protections afforded by the redistricting statutes. That is an injury-in-fact. *See Ainscough*, 90 P.3d at 856. And, as set forth above, the Voters have an implied private right of action under the redistricting statutes. This right is an actionable, legally protected interest. *See Cloverleaf Kennel Club, Inc. v. Colo. Racing Comm’n*, 620 P.2d 1051, 1058 (Colo. 1980) (noting, in the context of the Administrative Procedure Act, that “the law of implied private rights of action furnishes a model for our judgment whether the substantive law creates rights the invasion of which confers standing”).

¶28 Therefore, the Voters have standing to sue the Board, and we turn to the merits.

D. Home Rule Counties Have a Constitutional Duty to Comply with the Redistricting Statutes

¶29 To set the stage on the merits, we first address whether home rule counties are exempt from the requirements of the redistricting statutes. The Board argues that because the General Assembly “cannot prohibit the exercise of constitutional home rule powers,” *Town of Telluride v. San Miguel Valley Corp.*, 185 P.3d 161, 170 (Colo. 2008), home rule counties aren’t subject to the redistricting statutes.

¶30 To assess this claim, we must examine its constitutional underpinnings.² The Colorado Constitution vests the registered electors of each county with “the power to adopt a home rule charter establishing the *organization and structure* of county government consistent with this article and statutes enacted pursuant hereto.” Colo. Const. art. XIV, § 16(1) (emphasis added). And while home rule counties are “empowered to provide such *permissive functions, services, and facilities* and to exercise such permissive powers as may be authorized by statute . . . except as may be otherwise prohibited or limited by charter or this constitution,” *id.* at § 16(4) (emphasis added), they are still obliged to comply with

² Of course, “[a] county is not an independent governmental entity existing by reason of any inherent sovereign authority of its residents; rather, it is a political subdivision of the state,” and “as such, [a county] possesses only those powers expressly granted by the constitution or delegated to it by statute.” *Romer v. Bd. of Cnty. Comm’rs*, 897 P.2d 779, 782 (Colo. 1995) (first quoting *Bd. of Cnty. Comm’rs v. Love*, 470 P.2d 861, 862 (Colo. 1970); and then quoting *Pennobscot, Inc. v. Bd. of Cnty. Comm’rs*, 642 P.2d 915, 918 (Colo. 1982)).

any “mandatory county functions” required by statute, *id.* at § 16(3) (emphases added). The redistricting statutes employ mandatory, not permissive, language. For example, “[t]he board . . . *must* designate a county commissioner district redistricting commission,” § 30-10-306.1(1) (emphasis added), and “[t]he commission *shall not* vote upon a final plan until at least seventy-two hours after it has been proposed,” § 30-10-306.2(2) (emphasis added). So, for purposes of this analysis, we must distinguish matters that go to the “organization and structure” of county government from those that go to its “mandatory . . . functions.” *See* Colo. Const. art. XIV, § 16(1), (3).

¶31 The Board points to *Board of County Commissioners v. Andrews*, 687 P.2d 457, 459 (Colo. App. 1984), to support its position that home rule counties aren’t subject to the redistricting statutes. In *Andrews*, a division of the court of appeals observed that “home rule counties are given broad discretion in the area of structure.” *Id.* The division held that the home rule county’s charter provision establishing the personnel system for the sheriff’s office superseded the state statute governing the county sheriff’s authority to hire and fire. *Id.* The division reasoned that the personnel system related to the “structure and organization of county government, not to the functions of that government.” *Id.*

¶32 The Board analogizes the personnel system in *Andrews* to the redistricting process in Weld County’s Charter, asserting that it may draw redistricting maps

on its own terms because this activity likewise falls under the county's "organization and structure." We're unpersuaded.

¶33 The *Andrews* division described actions that fall within county structure as those "creating . . . a frame of government, designating county officials, and establishing their relative duties *within* the county government." *Id.* (emphasis added). On the other hand, it observed that "[i]n terms of the functions . . . *the constitution is much more restrictive*. A home rule county *must* do the things that all counties must do and *must* provide the services all counties must provide." *Id.* at 458 (emphases added). So, *Andrews* acknowledged that the Colorado Constitution limits home rule counties' authority to determine the functions it must carry out.

¶34 In distinguishing between structure and function, dictionary definitions are also instructive. See *Eason*, 18 P.3d at 1276 (construing words and phrases according to their commonly accepted meanings). Black's Law Dictionary defines "structure" as "[t]he organization of elements or parts," such as "corporate structure." *Structure*, Black's Law Dictionary (12th ed. 2024). Conversely, "function" is defined as "[o]ffice; duty; the occupation of an office." *Function*, Black's Law Dictionary (12th ed. 2024). And while not directly on point, the definition of "municipal function" is also helpful as we consider these terms in the county government context: "[t]he duties and responsibilities that a municipality owes its members." *Municipal function*, Black's Law Dictionary (12th ed. 2024).

¶35 Taken together, these definitions support the *Andrews* division's understanding of these terms: "structure" relates to the internal organization of parts, such as personnel rules, which home rule counties are constitutionally empowered to establish, whereas "function" relates to the duties a home rule county must carry out, a power that is constrained by the constitution and curtailed by statute. Colo. Const. art. XIV, § 16(1), (3). In other words, structure refers to *how* a county conducts its internal affairs, and function refers to *what* a county government is obliged to do for its citizens.

¶36 Applying that interpretation here, the Board's redistricting duties appear to fall into the county's "function." The statutes' requirements, such as "designat[ing] a county commissioner district redistricting commission," § 30-10-306.1(1); providing "meaningful and substantial opportunities for county residents to present testimony," § 30-10-306.2(3)(b); and making "a good-faith effort to achieve mathematical population equality between districts," § 30-10-306.3(1)(a), to name a few, all represent duties and responsibilities that a board of county commissioners owes its citizens throughout this process. By contrast, these requirements *don't* tell the Board how to frame its internal organization or how the individual members of the Board work together and arrange duties once elected, which would go to the county's structure.

¶37 For these reasons, we conclude that the Board’s duty to draw and adopt redistricting maps according to the redistricting statutes relates to the county’s *function*, not the county’s structure. And because the Colorado Constitution requires home rule counties to carry out statutorily mandated functions, home rule counties, like Weld, must comply with the redistricting statutes.³

E. Remedy

¶38 Having determined that Weld County must comply with the redistricting statutes, we turn to the question of *when* it must do so. The district court enjoined the Board’s use of the map in question, but it also allowed the Board to use the previous map (the one in use before the March 1, 2023 resolution) if it couldn’t adopt a new map in time for the next election.

³ The Board asserts that Weld County’s Charter conflicts with the statutes and that the Board must follow the Charter. The Voters counter that the Charter and the redistricting statutes are not materially different and that the Charter itself requires the county to comply with the redistricting statutes. Because we conclude that the statutes supersede a home rule county’s charter, this issue is moot, and we don’t address it.

Additionally, because the redistricting statutes contain an implied right of action, there’s no separation of powers concern. *See* Colo. Const. art. III (“[N]o person or collection of persons charged with the exercise of powers properly belonging to one of these [legislative, executive, and judicial] departments shall exercise any power properly belonging to either of the others.”). Today, we order the Board to perform duties that the General Assembly already mandated and that the Constitution doesn’t allow the Board to ignore.

¶39 Section 30-10-306.4(1) requires a board of county commissioners to “adopt a [final redistricting] plan . . . no later than September 30 of the redistricting year.” A board “may not revise or alter county commissioner districts, beyond making de minimis revisions or alterations, unless the board of county commissioners makes such revisions or alterations during a redistricting year in accordance with a final redistricting plan pursuant to section 30-10-306.4.” § 30-10-306.1(3). A “[r]edistricting year” is the second odd-numbered year after the “federal decennial census.” § 30-10-306(6)(h). In this case, the census year was 2020, so the redistricting year was 2023.

¶40 The Board asserts that, even if it must follow the redistricting statutes, section 30-10-306.1(3) prohibits it from redistricting until 2033 – the second odd-numbered year after the next federal census. We disagree.

¶41 The Board’s position would fail to effectuate the legislative intent of the redistricting statutes and lead to an absurd result for at least two reasons. *See Eason*, 18 P.3d at 1276 (avoiding constructions that lead to absurd results).

¶42 *First*, the previous map, adopted in 2015, relied on 2010 census data. The Board admitted that it undertook its 2023 map-drawing process due to Weld County’s rapid population growth. If the Board is permitted to use the 2015 map, Weld County’s commissioner districts would be based on 2010 census data until 2033. This result would be inconsistent with certain goals of the statute: that once

a decade the Board “[m]ake a good-faith effort to achieve mathematical population equality between districts,” § 30-10-306.3(1)(a), while preserving communities of interest and political subdivisions, § 30-10-306.3(2)(a). Moreover, the 2015 map wasn’t drawn and approved according to the redistricting statutes enacted in 2021, so its use wouldn’t remedy the injury to the Voters (namely, the Voters’ legally protected right to have the maps drawn in compliance with those statutes). Using a map based on outdated population data that was drawn before the current statutory protections were put in place would conflict with the Board’s statutory duties.

¶43 *Second*, if no remedy is available until the *next* statutory redistricting year in 2033, the Board could simply hold out, violate the statute again in ten years, and wait out the next decade until the following census year. (Even if *this* Board wouldn’t do so, the point remains that *a* board could.) There would potentially be no meaningful relief from the injury to the Voters’ legal right to have their county commissioner redistricting maps drawn in accordance with the statutory requirements. This would create an absurd loophole.

¶44 Therefore, we order the Board to draw and approve a new county commissioner district map in compliance with the redistricting statutes and to do so in time for that map to be used in the 2026 county commissioner election.

IV. Conclusion

¶45 We reverse that portion of the district court’s order permitting the Board to use the 2015 map, but we otherwise affirm its order granting summary judgment in favor of the Voters. Because the Board may no longer use the 2015 map, we remand the case to the district court with instructions to order the Board to complete the county commissioner redistricting process in accordance with Colorado’s redistricting statutes in time for the 2026 Weld County Commissioner Election.

CHIEF JUSTICE MÁRQUEZ concurred in the judgment.

CHIEF JUSTICE MÁRQUEZ, concurring in the judgment.

¶46 I agree with the result the majority reaches today. I further agree that the Voters¹ have standing and that the Board² has a legal duty to comply with the redistricting statutes, sections 30-10-306.1 to -306.4, C.R.S. (2024). I write separately, however, because I would construe the Voters' request to order the Board to comply with the redistricting statutes as a request for mandamus relief. This construction is important for two reasons.

¶47 First, the majority never explains this court's authority to order the Board to comply with the redistricting statutes. Generally, courts do not enjoin legislative bodies, such as the Board, absent "extraordinary circumstances." *Markwell v. Cooke*, 2021 CO 17, ¶ 19, n.6, 482 P.3d 422, 426 n.6 (quoting *Lewis v. Denver City Waterworks Co.*, 34 P. 993, 995 (Colo. 1893)). Although injunctive relief is typically deployed to prevent harm or maintain the status quo, the majority does not cite to any Colorado precedent justifying a court's reliance on an injunction to compel a legislative body to carry out an affirmative act.

¹ Like the majority, I refer collectively to Weld County residents Stacy Suniga and Barbara Whinery; the League of Women Voters of Greeley, Weld County, Inc.; and the Latino Coalition of Weld County as the "Voters." Maj. op. ¶ 2.

² Like the majority, I refer to the Board of County Commissioners of the County of Weld as the "Board." Maj. op. ¶ 1.

¶48 By contrast, courts have traditionally used mandamus relief to compel a public official or governmental body to perform a duty required by law. *See Bd. of Cnty. Comm'rs v. Cnty. Rd. Users Ass'n*, 11 P.3d 432, 437 (Colo. 2000); *see also Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 149 (1803). That is precisely the relief that the Voters ask for here: an order directing the Board to conduct a redistricting process pursuant to the redistricting statutes. Moreover, both this court and the district court have the express authority to issue writs of mandamus. Colo. Const. art. VI, §§ 3, 9(1); C.R.C.P. 106(a)(2). Although the parties' arguments regarding the applicability of C.R.C.P. 106(a)(4) overlooked the district court's power of mandamus under C.R.C.P. 106(a)(2), that does not mean the court's power does not exist. Nor does the parties' oversight absolve us of the responsibility to assure ourselves of the court's authority to act.

¶49 Second, and relatedly, I am concerned with the majority's unnecessary reliance on *Allstate Insurance Co. v. Parfrey*, 830 P.2d 905, 911 (Colo. 1992), to find an implied right of action here. The *Parfrey* test applies to implied claims for damages, particularly in the tort context. But the Voters here seek neither damages nor relief in tort. Rather, the Voters seek to compel government officials to perform various duties plainly imposed by the redistricting statutes.

¶50 Again, construing the Voters' request for an order directing compliance as a request for mandamus relief resolves this tension. I see no need to stretch *Parfrey*

to fit the circumstances of this case when the Voters' complaint clearly meets the requirements for mandamus relief. *See* C.R.C.P. 106(a)(2) (abolishing the special pleading requirements for mandamus claims). Further, by relying on *Parfrey*, today's decision injects uncertainty and confusion into Colorado's case law on mandamus.

¶51 For these reasons, I respectfully concur only in the judgment.

I. Authority to Grant Relief

¶52 The majority suggests that unless this court can compel the Board to redraw its county districts before the next federal census, the legislative intent of the redistricting statutes would be thwarted—leading to an absurd result. *Maj. op.*

¶ 41. But the majority does not identify the source of any court's authority to order the Board to undertake the redistricting process, particularly now, outside of statutory deadlines. Identifying the source of such authority is important because directing a legislative body to take specific action raises significant separation of powers concerns. *See Grossman v. Dean*, 80 P.3d 952, 961 (Colo. App. 2003) ("A request that the court enjoin conduct by the legislature generally entails an improper intrusion into legislative affairs." (citing *Colo. Common Cause v. Bledsoe*, 810 P.2d 201, 210 (Colo. 1991))).

¶53 Courts in other jurisdictions have grounded their authority to compel redistricting in specific language in their constitutions. *See Hoffmann v. N.Y. State*

Indep. Redistricting Comm'n, 234 N.E.3d 1002, 1012 (N.Y. 2023) (relying on a constitutional provision expressly allowing courts to “order the adoption of, or changes to, a redistricting plan as a remedy for a violation of law” (quoting N.Y. Const. art. III, § 4(e))). And no comparable language exists in the redistricting statutes at issue here.

¶54 However, there is no question that Colorado district courts have the constitutional authority to “compel performance by public officials of a plain legal duty” by issuing a writ of mandamus. *Cnty. Rd. Users Ass’n*, 11 P.3d at 437; *see also* C.R.C.P. 106(a)(2); Colo. Const. art. VI, §§ 3, 9(1). It is that power that justifies the order here directing the Board to comply with its duties under the redistricting statutes.

II. Right of Action

¶55 Construing the Voters’ request as one for mandamus relief also avoids concerns raised by the majority’s inappropriate reliance on the *Parfrey* test.

A. *Parfrey*

¶56 In *Parfrey*, this court asked “whether a private tort remedy is available against a nongovernmental defendant for violating a statutory duty.” 830 P.2d at 911. *Parfrey*’s implied-private-right-of-action test was thus developed in the tort context, and its factors reflect that aim. For example, *Parfrey*’s first factor asks “whether the plaintiff is within the class of persons intended to be benefitted by

the legislative enactment.” *Id.* This factor reflects the duty element of a negligence claim, which in the case of nonfeasance asks whether there is a special relationship between two individuals or classes of persons. *Bittle v. Brunetti*, 750 P.2d 49, 53 (Colo. 1988) (“No special relationship exists between the plaintiff and the defendants in this case or between the class of pedestrians using public sidewalks and the class of people owning or occupying property abutting public sidewalks.”).

¶57 True, this court has since held that “[t]he same implied-private-right-of-action analysis applies irrespective of the defendant’s governmental status.” *City of Arvada ex rel. Arvada Police Dep’t v. Denver Health & Hosp. Auth.*, 2017 CO 97, ¶ 24, 403 P.3d 609, 614. And this court has, in limited instances, relied on *Parfrey* in other contexts. See *Taxpayers for Pub. Educ. v. Douglas Cnty. Sch. Dist.*, 2015 CO 50, ¶ 23, 351 P.3d 461, 469 (holding that the petitioners lacked standing to challenge a taxpayer funded scholarship program under *Parfrey*), *cert. granted and judgment vacated sub nom. Colo. State Bd. of Educ. v. Taxpayers for Pub. Educ.*, 582 U.S. 951 (2017). But this court has never used *Parfrey* to find an implied right of action in a case similar to this one. This case does not involve a tort claim. It does not seek damages. It does not seek to *enjoin* a defendant from acting, but rather, it seeks an order *compelling* the defendant to act.

¶58 For these reasons, I would not apply *Parfrey* here, well beyond its original context, particularly when mandamus provides the exact relief the Voters seek.

B. Mandamus Actions

¶59 This is not the first time county residents have sought to compel their board of county commissioners to redraw county districts. In *Board of County Commissioners v. Edwards*, 468 P.2d 857, 858 (Colo. 1970), residents of Saguache County did just that. When county residents brought suit, Saguache County had not redrawn its county districts in over forty years. *Id.* During that period, Colorado had enacted statutes requiring county districts to be as “equal in population as possible.” *Id.* (quoting § 35-3-6, C.R.S. (1963)). The redistricting statutes then in effect, as in this case, did not contain any express language allowing residents to bring an action to enforce their terms. *See* §§ 35-3-1 to -22, C.R.S. (1963). This court nevertheless affirmed the district court’s judgment requiring the county board of commissioners to redraw the districts. *Edwards*, 468 P.2d at 859. In doing so, we observed that “[i]t is well established that[,] to compel the performance of an act which the law specifically enjoins upon public officers as a duty, mandamus is the proper and effective remedy.” *Id.*

¶60 A plaintiff seeking mandamus relief must satisfy a three-part test: “(1) the plaintiff must have a clear right to the relief sought, (2) the defendant must have a clear duty to perform the act requested, and (3) there must be no other available

remedy.” *Cnty. Rd. Users Ass’n*, 11 P.3d at 437. The Voters’ claim meets these requirements.

¶61 First, the Voters have “a clear right to the relief sought.” *Id.* Although some statutes expressly allow plaintiffs to bring a mandamus action, *see, e.g.*, § 10-3-814(3), C.R.S. (2024), this is not necessary for a plaintiff to establish a clear right to mandamus relief. *See Edwards*, 468 P.2d at 858. Colorado courts have held that the first element is met when the plaintiff is among the intended beneficiaries of the public official’s legal duty. *See id.* (holding that the residents of Saguache County had a clear right to compel the board of county commissioners to redistrict under the redistricting statutes). Indeed, under the first and second elements for mandamus relief, the plaintiff’s right to relief and the defendant’s duty generally stem from the same legal source. *Id.*

¶62 Here, the majority correctly notes that in enacting the redistricting statutes, the legislature declared, “In order for our democratic republic to truly represent the voices of the people, districts must be drawn such that the people have an opportunity to elect representatives who are reflective of and responsive and accountable to their constituents.” Ch. 70, sec. 1(1)(a), 2021 Colo. Sess. Laws 277, 277. The redistricting statutes were thus enacted for the people’s benefit and to ensure that county districts represent their constituents. The Voters, as residents

of Weld County, thus have a clear right to have districts drawn in compliance with the redistricting statutes.

¶63 Second, the Board has “a clear duty to perform the act requested.” *Cnty. Rd. Users Ass’n*, 11 P.3d at 437. This second requirement “compel[s] the performance of a purely ministerial duty involving no discretionary right and not requiring the exercise of judgment.” *Id.* The use of mandatory language, such as “shall” or “must,” signals that the law is intended to impose “a mandatory duty and not suggest merely a permissive or discretionary act.” *Edwards*, 468 P.2d at 859.

¶64 The redistricting statutes contain several non-discretionary, ministerial duties. For example, county boards “*must* designate a county commissioner district redistricting commission,” § 30-10-306.1(1), C.R.S. (2024) (emphasis added), and they “*shall* appoint staff as needed to assist the commission,” § 30-10-306.2(1), C.R.S. (2024) (emphasis added). Redistricting commissions, in turn, “*shall* . . . [m]ake a good-faith effort to achieve mathematical population equality between districts” and “[c]omply with the federal ‘Voting Rights Act of 1965,’ 52 U.S.C. sec. 10301.” § 30-10-306.3(1)(a), (b), C.R.S. (2024) (emphasis added). They also “[a]s much as is reasonably possible . . . must preserve whole communities of interest and whole political subdivisions, such as cities and towns,” and “to the extent reasonably possible, maximize the number of politically competitive districts.” § 30-10-306.3(2)(a), (3)(a). Finally, county boards “*must*”

create “a website and a method for county residents to present testimony,” submit “not less than three plans for county commissioner districts,” publish the plans online, and have “[t]hree public hearings on the plans.” § 30-10-306.4(c)-(f), C.R.S. (2024). These duties of the Board are non-discretionary.

¶65 Third, the Voters have “no other available remedy.” *Cnty. Rd. Users Ass’n*, 11 P.3d at 437. “[M]andamus will not issue until all forms of alternative relief have been exhausted.” *Gramiger v. Crowley*, 660 P.2d 1279, 1281 (Colo. 1983). Such alternative relief can take several forms, including common law and statutory actions. *Julesburg Sch. Dist. No. RE-1 v. Ebke*, 562 P.2d 419, 421 (Colo. 1977) (denying mandamus relief when a contract claim was available); *Dep’t of Revenue v. Dist. Ct.*, 802 P.2d 473, 477 (Colo. 1990) (denying mandamus relief when the Administrative Procedure Act provided relief).

¶66 As in *Edwards*, the redistricting statutes at issue here do not specify a remedy for noncompliance. Nor was there, before today’s opinion, any other statutory or common law action that the Voters could have brought to compel the Board to act. Because I reject the majority’s reliance on *Parfrey*, I would hold that the Voters lacked an alternative, available remedy. And thus, with all three requirements met, I would hold that the Voters are entitled to mandamus relief.

¶67 The fact that the Voters did not expressly seek mandamus relief does not preclude such relief because C.R.C.P. 106(a) abolished the special pleading

requirements for mandamus actions. Further, the district court's order on appeal ruled on the Board's motion to dismiss and the Voters' motion for summary judgment. To the extent the district court was ruling on the Board's motion to dismiss, the exact theory of relief pled by the Voters is not important. Pleadings are construed to do substantial justice, and what matters is that the pleaded facts entitle the plaintiff to relief under the law. C.R.C.P. 8(e)(2); *Spomer v. City of Grand Junction*, 355 P.2d 960, 963 (Colo. 1960). As the majority notes, it is undisputed that the Board failed to follow the redistricting statutes. Maj. op. ¶ 5. And to the extent the district court granted summary judgment on the Voters' claim, this court can affirm a judgment based on any ground supported by the record, whether or not it was considered by the trial court. *Laleh v. Johnson*, 2017 CO 93, ¶ 24, 403 P.3d 207, 212.

¶68 And we are not precluded from construing the Voters' claim as a mandamus action given the procedural posture of this case. Requests for mandamus relief have come before this court via original proceedings and certiorari review. *Meredith v. Zavaras*, 954 P.2d 597, 601 (Colo. 1998) (addressing mandamus relief under C.A.R. 21 jurisdiction); *Cnty. Rd. Users Ass'n*, 11 P.3d at 434 (addressing mandamus relief under certiorari jurisdiction).

C. The Impact of Today's Decision on Mandamus Jurisprudence

¶69 Today's decision injects confusion and uncertainty into our mandamus jurisprudence. As mentioned, mandamus actions can only be brought if there is no alternative remedy available. *Cnty. Rd. Users Ass'n*, 11 P.3d at 437. But today's decision suggests that a government official can be compelled to act via an implied right of action under *Parfrey*. If so, there will always be alternative remedies for claims that would otherwise qualify for mandamus relief, effectively eliminating plaintiffs' ability to bring mandamus actions. Today's decision thus undermines over 150 years of Colorado's mandamus precedent. *See, e.g., Deitz v. City of Cent.*, 1 Colo. 323, 332 (1871).

¶70 This result is concerning. Because the *Parfrey* test was designed to address implied claims for damages in the tort context, its factors do not reflect many of the nuances that have developed in the mandamus context. For example, under *Parfrey*, there is no requirement that the compelled official act be non-discretionary. It would appear that future plaintiffs could rely on today's decision to argue that the *Parfrey* test authorizes them to ask courts to compel otherwise discretionary acts by government officials. Additionally, the *Parfrey* analysis does not ask whether the plaintiff has an available remedy. Today's decision would suggest that litigants can now circumvent alternative remedies, such as administrative or common law claims, and instead seek injunctions against

government officials. Even if the majority believes that *Parfrey* can deal with these problems, I fear today's opinion inadvertently gives rise to new legal issues that could be easily avoided.

III. Conclusion

¶71 In sum, to avoid separation of powers concerns and to resolve this case in line with longstanding precedent, I would construe the Voters' request to order the Board to comply with the redistricting statutes as a request for mandamus relief.

¶72 Accordingly, I respectfully concur only in the judgment.