

DISTRICT COURT, WELD COUNTY, COLORADO
901 Ninth Avenue
Greeley, CO 80631

DATE FILED: January 24, 2024 12:44 PM
FILING ID: A7CB15613FED1
CASE NUMBER: 2023CV30834

Plaintiffs: LEAGUE OF WOMEN VOTERS OF
GREELEY, WELD COUNTY, INC., et al.,

v.

Defendants: THE BOARD OF COUNTY
COMMISSIONERS OF THE COUNTY OF WELD, a
body corporate and politic, et al.

PHILIP J. WEISER, Attorney General
NATALIE HANLON LEH, Chief Deputy Attorney
General, Reg. No. 18824
SHANNON STEVENSON, Solicitor General, Attorney
Reg. No. 35542
JENNIFER L. SULLIVAN, Deputy Attorney General,
Attorney Reg. No. 32092*
KURTIS T. MORRISON, Deputy Attorney General,
Attorney Reg. No. 45760
ALEX J. ACERRA, Assistant Attorney General,
Attorney Reg. No. 47631
JOSHUA J. LUNA, Assistant Attorney General,
Attorney Reg. No. 51217
CATA A. CUNEO, Assistant Attorney General,
Attorney Reg. No. 59510
Colorado Department of Law
Ralph L. Carr Colorado Judicial Center
1300 Broadway
Denver, Colorado 80203
Telephone: (720) 508-6000
Email: jen.sullivan@coag.gov
*Counsel of Record
*Attorneys for Colorado Attorney General Philip J.
Weiser*

▲ COURT USE ONLY ▲

Case No. 2023CV30834

Division: 4

**BRIEF OF AMICUS CURIAE COLORADO ATTORNEY GENERAL IN
SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

TABLE OF CONTENTS

IDENTITY OF AMICUS CURIAE..... 1

INTEREST OF AMICUS CURIAE 1

I. The General Assembly enacted laws to remedy Colorado’s complicated redistricting history. 2

 A. Colorado has historically struggled with redistricting. 2

 B. Constitutional Amendments Y and Z limit the role of partisan politics and promote public participation and transparency in redistricting. 3

 C. H.B. 21-1047 extends fair congressional and state legislative redistricting criteria to county commissioner redistricting. 4

II. County home rule powers do not authorize a home rule county to disregard State redistricting laws..... 5

 A. Laws governing home rule county powers do not grant authority to a home rule county to set its own redistricting processes that contravene State laws. 6

 B. State law does not vest home rule counties with authority to set their own redistricting processes for commissioner districts. 8

 C. Weld County’s Charter requires Defendants to follow the provisions of H.B. 21-1047. 10

III. Defendants failed to follow the procedural requirements of sections 30-10-306 to -306.4, thwarting the General Assembly’s objective to ensure fair county redistricting criteria. 12

 A. The requirements of sections 30-10-306 to -306.4 promote transparency and robust public participation in redistricting. 12

 B. Defendants’ procedural violations yielded a substantively suspect map with no factual record to support it. 14

 C. When counties follow the statute’s procedural requirements, they promote public confidence in fairer and more competitive maps. 18

IV. This Court should compel Defendants to comply with State laws governing county commissioner redistricting. 21

TABLE OF AUTHORITIES

PAGES

CASES

Bd. of Cnty. Comm’rs v. Andrews,
687 P.2d 457 (Colo. App. 1984) 10, 11

In re Colo. Indep. Cong. Redistricting Comm’n,
497 P.3d 493 (Colo. 2021)..... 2, 3, 4, 18

In re Colo. Indep. Legislative Redistricting Comm’n,
513 P.3d 352 (Colo. 2021)..... 18

In re Interrogatories on Senate Bill 21-247 Submitted by Colo. Gen. Assembly,
488 P.3d 1008 (Colo. 2021)..... 2, 3

In re Reapportionment of Colo. Gen. Assemb.,
45 P.3d 1237 (Colo. 2002)..... 17

League of United Latin Am. Citizens v. Perry,
584 U.S. 399 (2006) 2

Lucas v. Forty-Fourth Gen. Assemb. of State of Colo.,
377 U.S. 713 (1964) 2

Rucho v. Common Cause,
588 U.S. ---, 139 S. Ct. 2484 (2019) 4

STATUTES

§ 1-1-101, C.R.S., *et seq.*..... 8

§ 24-31-101, C.R.S..... 1

§ 30-10-101, C.R.S., *et seq.*..... 8

§ 30-10-306.1, C.R.S..... 13

§ 30-10-306.2, C.R.S..... 13

§ 30-10-306.3, C.R.S..... 10, 14, 15, 16, 17

§ 30-10-306.4, C.R.S..... 13, 16

§§ 30-10-306–306.4, C.R.S. 12, 14, 21

§§ 30-10-306–306.7, C.R.S.....	1
§ 30-35-103, C.R.S.....	9
§ 30-35-201, C.R.S.....	6, 9, 10
H.B. 1047, 73d Gen. Assemb., 1st Reg. Sess. (Colo. 2021).....	passim

CONSTITUTION

Colo. Const. art. IV	1
Colo. Const. art. V.....	1, 3, 4, 21
Colo. Const. art. XIV.....	6, 7, 8
Colo. Const. art. XX	8

OTHER AUTHORITIES

<i>2020 November General Election Turnout Rates</i> , United States Election Project (Dec. 7, 2020), http://www.electproject.org/2020g (last visited Jan. 23, 2024)	4
<i>2023 Commissioner Redistricting</i> , Arapahoe County, https://www.arapahoeco.gov/your-county/about-arapahoe-county/2023-arapahoe-county-commissioner-redistricting.php (last visited Jan. 23, 2024)	19, 20
<i>2023 El Paso County Redistricting Information</i> , El Paso County, Colorado, https://www.elpasoco.com/redistricting/ (last visited Jan. 23, 2024)	19, 20
<i>Arapahoe Commissioners Adopt New District Map</i> , Clerk & Recorder’s Office – Elections Division (Aug. 8, 2023), https://www.arapahoevotes.gov/news/arapahoe-commissioners-adopt-new-district-map (last visited Jan. 23, 2024).....	19
Colo. Att’y Gen. Op. No. 03-1 (Jan. 13, 2003).....	8
<i>Commissioner Districts</i> , Weld County, CO https://www.weld.gov/Government/Departments/Commissioners/Commissioner-Districts (last visited Jan. 23, 2024)	15
<i>Final Report</i> , 2023 El Paso County Redistricting Commission, https://epc-assets.elpasoco.com/wp-content/uploads/2023-COMMISSIONER-REDISTRICTING-COMMISSION-REPORT.pdf (last visited Jan. 23, 2024).....	20
<i>Greeley city, Colorado</i> , United States Census Bureau, http://tinyurl.com/mty42xrk (last visited Jan. 23, 2024).....	16, 17

Home Rule Charter for the County of Weld, Colorado, <http://tinyurl.com/2rjf6mbn>
 (last visited Jan. 23, 2024)..... 10, 11

Tom Cronin, Bob Loevy, *County Commissioner Redistricting Has Competitive
 Districts*, *The Gazette*, Sept. 9, 2023, [https://gazette.com/election-coverage/county-
 commissioner-redistricting-has-competitive-districts-cronin-and-
 loevy/article_38dd8884-4ec6-11ee-82cf-4b7d1906a8af.html](https://gazette.com/election-coverage/county-commissioner-redistricting-has-competitive-districts-cronin-and-loevy/article_38dd8884-4ec6-11ee-82cf-4b7d1906a8af.html) (last visited Jan. 23,
 2024) 21

Weld County, Colorado, United States Census Bureau, <http://tinyurl.com/etmmv226>
 (last visited Jan. 23, 2024)..... 16, 17

IDENTITY OF AMICUS CURIAE

The Colorado Attorney General (“Attorney General”) is the chief legal representative for the State of Colorado, represents and defends the legal interests of the State and the People of Colorado, and enforces the laws of the State. Colo. Const. art. IV, § 1; § 24-31-101(1)(a), (i), C.R.S. (2023). The Attorney General has a significant interest in ensuring that the laws of Colorado enacted by the General Assembly are carried out as well as ensuring fair treatment of Colorado voters.

INTEREST OF AMICUS CURIAE

This case concerns whether a home rule county may opt out of a statutorily mandated redistricting process and requirements for the drawing of district lines for county commissioner districts. More specifically, the case asks whether House Bill 21-1047 (“H.B. 21-1047”), enacted by the General Assembly and signed into law by the Governor, applies to Weld County and its 2023 county commissioner redistricting process. The people of the State of Colorado and the General Assembly have affirmatively acted to ensure their elected representatives at the federal, state, and county levels represent electoral districts drawn according to fair and transparent processes that prevent partisan gerrymandering, allow for public participation, and ensure transparency. Colo. Const. art. V, §§ 44–48.4 (“Amendments Y and Z”); H.B. 21-1047, 73d Gen. Assemb., 1st Reg. Sess. (Colo. 2021) (codified at §§ 30-10-306–306.7, C.R.S. (2023)). Those issues are at the heart of this case. The Attorney General has a statutory duty and interest in defending

the laws of the State, specifically ensuring compliance with H.B. 21-1047 to protect equal voting rights for Colorado citizens and fairness and transparency in redistricting.

I. The General Assembly enacted laws to remedy Colorado’s complicated redistricting history.

A. Colorado has historically struggled with redistricting.

“[D]rawing lines for congressional districts is one of the most significant acts a state can perform to ensure citizen participation in republican self-governance.”

League of United Latin Am. Citizens v. Perry, 584 U.S. 399, 416 (2006). It is an “incredibly complex and difficult process that is fraught with political ramifications and high emotions.” *In re Colo. Indep. Cong. Redistricting Comm’n*, 497 P.3d 493, 515 (Colo. 2021).

During the first half of the twentieth century, the General Assembly failed to redistrict, resulting in “grossly disproportionate” districts in which “urban areas were systematically underrepresented.” *In re Interrogatories on Senate Bill 21-247 Submitted by Colo. Gen. Assembly*, 488 P.3d 1008, 1012 (Colo. 2021). Even after the U.S. Supreme Court ordered Colorado to comply with the “one-person, one vote” principle, see *Lucas v. Forty-Fourth Gen. Assemb. of State of Colo.*, 377 U.S. 713, 739 (1964), Colorado’s redistricting challenges remained.

Two years after *Lucas*, Colorado voters vested the power to conduct legislative reapportionment for Colorado House of Representatives and Senate districts in a commission comprised of members of the Legislative, Executive, and

Judicial Departments. *See* Colo. Const. art. V, § 48 (1967). The authority to draw congressional district boundaries, however, remained with the General Assembly. *Interrogatories on S.B. 21-247*, 488 P.3d at 1012. Still, the General Assembly struggled to produce acceptable redistricting plans. *See Colo. Indep. Cong. Redistricting Comm’n*, 497 P.3d at 497 (observing that in three of four recent redistricting cycles, the General Assembly failed to produce a redistricting plan that was constitutional).

B. Constitutional Amendments Y and Z limit the role of partisan politics and promote public participation and transparency in redistricting.

In November 2018, following unanimous, bipartisan support by the General Assembly, 71 percent of Colorado voters approved Amendments Y and Z to amend the Colorado Constitution to eliminate gerrymandering of Colorado’s congressional and state legislative districts. *See* H.B. 21-1047, § 1(1)(e)–(f). These amendments removed responsibility for congressional redistricting from the General Assembly and state legislative reapportionment from the Colorado Reapportionment Commission. *Interrogatories on S.B. 21-247*, 488 P.3d at 1013. In their place, Amendments Y and Z vested redistricting in independent commissions. *Colo. Indep. Cong. Redistricting Comm’n*, 497 P.3d at 504. Amendments Y and Z also codified new redistricting procedures to “limit the role of partisan politics,” make the redistricting process “more transparent,” “provide greater opportunity for public

participation,” and “bring structure to the redistricting process by using clear, ordered, and fair criteria in the drawing of districts.” *Id.*

These amendments established Colorado as a leader in anti-partisan-gerrymandering. In leaving the policing of extreme partisan-gerrymandering to the province of the states, the Supreme Court recognized Colorado as an innovator in “restricting partisan considerations in districting through legislation.” *Rucho v. Common Cause*, 588 U.S. ---, 139 S. Ct. 2484, 2507 (2019). Notably, the amendments provided a role for unaffiliated voters in drawing district boundaries. Colo. Const. art. V, §§ 44.1, 47. Enabled by Amendments Y and Z and a commitment to reducing barriers to voting, Colorado has the second-highest voter participation rate in the country. *Cf. 2020 November General Election Turnout Rates*, United States Election Project (Dec. 7, 2020), <http://www.electproject.org/2020g>.

C. H.B. 21-1047 extends fair congressional and state legislative redistricting criteria to county commissioner redistricting.

Following the voters’ approval of Amendments Y and Z, which addressed redistricting of congressional and state legislative districts, in 2021, the General Assembly enacted H.B. 21-1047. H.B. 21-1047 which addressed “[t]he only partisan offices elected by districts in Colorado not included in Amendments Y and Z”—county commissioners. The law extended many of the Amendment Y and Z substantive and procedural protections to county commissioner electoral districts with the purpose of “ensuring that counties that elect some or all of their commissioners...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.” H.B. 21-1047, § 1(2). These standards include “fair criteria for drawing of districts, plans drawn by nonpartisan staff, robust public participation, and where practicable, independent commissions.” *Id.*

H.B. 21-1047 declares 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.” *Id.* at § (1)(i). The law further recognizes that “[i]n 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.” *Id.* at § (1)(a). It also explains that “[t]he people are best served when districts are not drawn to benefit particular parties or incumbents, but are instead drawn to ensure representation for the various communities of interest and to maximize the number of competitive districts.” *Id.* at § (1)(b).

II. County home rule powers do not authorize a home rule county to disregard State redistricting laws.

Defendants contend that Weld County’s home rule county status leaves it free to disregard a duly enacted law—H.B. 21-1047—and that the Court cannot compel it otherwise. *See* Defendants’ Motion to Dismiss Plaintiffs’ Complaint (“MTD”), pp. 13-14. This is not the case.

The Colorado Constitution vests a county's voters with authority to adopt a home rule charter. Such a charter establishes that county's organization "consistent with...[Article XIV] and statutes enacted pursuant hereto." Colo. Const. art. XIV, § 16(1). And in establishing county home rule authority, the Constitution also requires that home rule counties "exercise all mandatory powers *as may be required by statute.*" *Id.* at § 16(3) (emphasis added).

Home rule county status does not provide a blanket exemption for home rule counties to disregard any state law in conflict with its home rule charter. While home rule counties do enjoy expanded authority over local governance matters, that expanded authority is limited to matters delineated in the Colorado Constitution and statutes. Colo. Const. art. XIV, § 16; § 30-35-201, C.R.S. Those matters do not include redistricting.

A. Laws governing home rule county powers do not grant authority to a home rule county to set its own redistricting processes that contravene State laws.

Defendants contend that the only path to challenge the Weld County redistricting process is to amend, by referendum and a majority county vote, the Weld County Charter. *See* MTD at 12-13. They further contend that neither the General Assembly nor this Court may compel Weld County to comply with H.B. 21-1047. *Id.* at 13. In so doing, Defendants claim that:

Weld County's home-rule status exempts it from those aspects of the Constitution and related statutes which set forth the type of officers each county must elect and how to choose and compensate them, i.e. the Redistricting statutes. This includes statutes purporting to *direct*

elections of county commissioners – elected officials Weld County need not install at all.

MTD at 13 (internal citation omitted). Defendants point to Article XIV, § 16(1),¹ stating that this section “exempt[s] Weld County from art. XIV, § 6 requiring election of commissioners.” *Id.*

To the contrary, Article XIV, § 16(5) makes no such exemption. True, section 16(5) relaxes other constitutional requirements on county officers found in Article XIV, §§ 6, 8, 9, 10, 12, and 15 from applying to home rule counties. But notably, *none of those sections govern the setting of county commissioner districts.* Article XIV, § 6 governs county commission quorums, terms of office, and staggering of terms. Article XIV, § 8 governs county clerks, treasurers, and attorneys. Article XIV, § 9—commissioner vacancies. Article XIV, § 10—commissioner residency requirements. And Article XIV, § 12—municipal and other non-commissioner county officers. None of the Article XIV, § 16(5) exemptions speak to a home rule county’s authority to set commissioner district lines.

Even assuming, for the sake of argument, that Article XIV, § 16(5) allows a home rule county to be exempt from Article XIV, § 6 fails to provide an exemption from state redistricting laws. Article XIV, § 6 contains important provisions on

¹ Presumably, Defendants’ motion intended to cite Colo. Const. art. XIV, § 16(5)—rather than § 16(1)—which states “[t]he provisions of sections 6, 8, 9, 10, 12, and 15 of article XIV of this constitution shall apply to counties adopting a home rule charter only to such extent as may be provided in said charter.” This amicus brief presumes this was in error and the correct citation intended by Defendants was § 16(5); the argument above reflects this assumption.

county commissioner elections—even bearing the title “County commissioners—election—term”—which, for example, includes directives on term lengths and staggering commissioner seats. But redistricting processes are *not* elections, and elections are not redistricting processes.

In fact, redistricting processes are not included in other election laws. For example, the Colorado Uniform Election Code of 1992, § 1-1-101, C.R.S., *et seq.*, governing the State’s elections contains no reference to redistricting, nor does the Municipal Election Code, § 31-10-101, C.R.S., *et seq.*

Defendants’ argument that Weld County’s home rule status and Article XIV, § 16(5) shields it from state redistricting laws fails.

B. State law does not vest home rule counties with authority to set their own redistricting processes for commissioner districts.

Unlike home rule municipalities, which are governed by the Home Rule Amendment and have broad authority to regulate, *see* Colo. Const. art. XX, § 6, county home rule is far more limited. Colo. Att’y Gen. Op. No. 03-1 (Jan. 13, 2003) (“The General Assembly exercises substantial control over home rule counties...[and] can provide by statute limits to the permissive functions, services, facilities, and powers that can be exercised by home rule counties.”). State law provides that:

The governing body of a home rule county shall...have all the powers and *responsibilities as provided by law for governing bodies of counties not adopting a home rule charter* and shall also have all of the following powers that have been included in the county’s home rule charter or in

any amendment thereto, pursuant to the provisions of section 30-35-103(1)...

To provide by ordinance for the powers, duties, appointment, term of office, removal, and compensation of all officers and employees of the county *not otherwise provided for by the state constitution or by statute* or by charter and to provide for a retirement plan for such officers and employees;....

§ 30-35-201, (7) (emphases added).

By its plain language, state law requires that home rule counties, like their non-home rule counterparts, must fulfill statutory obligations. *Id.* Therefore, statutory mandates such as H.B. 21-1047 must be met by all counties, whether having a home rule charter or not.

Moreover, home rule counties have additional self-governance powers. But, according to section 30-35-201, to exercise those powers, such powers must be: (1) included in a home rule county's charter; and (2) enumerated in one or more of the governance fields listed in section 30-35-201(1)–(46).

The county home rule powers listed in section 30-35-201(1)–(46) include broad governance fields such as local taxes, public entertainment, parking, streets, parks, firehouses, and cemeteries. None of these powers address, expressly or implicitly, redistricting of commissioner district boundaries. One such enumerated power is to prescribe requirements and restrictions on county officers, like commissioners. Yet the statute's grant of authority to home rule counties is limited to an officer's "duties, appointment, term of office, removal, and compensation." §

30-35-201(7). This grant of authority does not mention how district lines are created for such officers.

But even if it did, the same statute limits that authority to matters “not otherwise provided for by...statute.” *Id.* And, here, there exists another statute providing for redistricting—H.B. 21-1047. In essence, the law establishing county home rule powers not only does not vest redistricting authority with home rule counties, but rather expressly directs that State laws on point, such as H.B. 21-1047, shall control.

C. Weld County’s Charter requires Defendants to follow the provisions of H.B. 21-1047.

Contrary to Defendants’ claims, the requirements in H.B. 21-1047 complement—not conflict with—obligations set forth in Weld County’s Charter.

In their Motion to Dismiss, Defendants raise as a defense charter section 3-2, titled “Districts,” requiring the board of county commissioners to revise the three geographic commissioner districts so that they “are as nearly equal in population as possible.” MTD at 13. But this requirement is echoed in H.B. 21-1047, which requires “a good-faith effort to achieve mathematical population equality between districts...[and no] more than five percent deviation between the most populous and the least population district in each county....” § 30-10-306.3(1)(a), C.R.S.

Weld County’s Charter provides no other substantive guidance for drawing the geographic commission districts. This is in stark contrast to the charter provisions in *Andrews*, a case that Defendants assert exempt them from the

redistricting statutes. There, the court turned to the charter’s “fairly elaborate provisions” establishing a personnel system to determine whether it conflicted with state statutes regarding the hiring and firing of sheriff’s deputies. *Bd. of Cnty. Comm’rs v. Andrews*, 687 P.2d 457, 459–60 (Colo. App. 1984). The language of the charter established that sheriff’s deputies were entitled to the protection of the county personnel system, thereby preempting a conflicting state law. *Id.* at 461. Here, however, Defendants want the Court to infer that the silence surrounding the lone substantive redistricting provision preempts any state law addressing commissioner districts. *Andrews*’s holding is not so broad.

Comparing the Weld County Charter redistricting provisions to H.B. 21-1047’s requirements, much like the court did in *Andrews*, reveals that in this case the statute and charter do not conflict. Weld County Charter section 3-2 does not by its language forbid the board of county commissioners from abiding by the procedural or substantive requirements set forth by H.B. 21-1047. To the extent Defendants assert that they cannot abide by the provisions of H.B. 21-1047 due to their obligations to the charter, section 3-8(1) provides that the board “shall...perform all the duties required by state law to be exercised or performed by County Commissioners in either home rule or non-home rule counties.” Section 3-8(4)(a) echoes this obligation, mandating that board duties include *performing any duties or responsibilities statutorily required of county commissioners in home rule counties and statutory counties*.

H.B. 21-1047 places the attendant duties and responsibilities, both procedurally and substantively, equally on both home rule and statutory counties. So, by its Charter's terms, Weld County must carry out the duties set forth in the redistricting statutes. Therefore, there is no conflict between the Charter and the provisions of H.B. 21-1047, and this Court need not entertain claims that the Charter preempts those provisions.

III. Defendants failed to follow the procedural requirements of sections 30-10-306 to -306.4, thwarting the General Assembly's objective to ensure fair county redistricting criteria.

Defendants failed to comply with H.B. 21-1047's procedural requirements that promote transparency and robust public engagement in the redistricting process. In not complying with those procedural requirements, Defendants adopted a map that, on its face, appears consistent with violations of the redistricting statute's substantive criteria because it splits the City of Greeley into three pieces without developing the factual record required by law to explain such a split. In contrast, recent redistricting processes in El Paso and Arapahoe Counties successfully followed the statutory process and developed the factual record the law requires.

A. The requirements of sections 30-10-306 to -306.4 promote transparency and robust public participation in redistricting.

To effectuate the goals of fair, competitive redistricting, through H.B. 21-1047 the General Assembly codified various procedural requirements for boards of county commissioners to follow. *See* §§ 30-10-306–306.4. These requirements apply to all

counties that, like Weld County, “have any number of their county commissioners not elected by the voters of the whole county.” § 30-10-306.1(1)(a). Plaintiffs allege that Defendants did not follow the H.B. 21-1047 procedural requirements 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, § 30-10-306.2(3)(b);
- Broadly promote throughout the county the public hearings about proposed redistricting plans, *Id.*;
- Establish a method of electronically participating in hearings about redistricting, § 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, *Id.* at (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, § 30-10-306.4(1)(e).

See Compl., ¶103.

What Defendants allegedly did in adopting a new map falls far short of H.B. 21-1047’s requirements. Defendants posted only two public notices, using difficult-to-read eight-point font in the *Greeley Tribune*, 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). In short, Defendants failed to meet nearly every procedural requirement of sections 30-10-306 to -306.4.

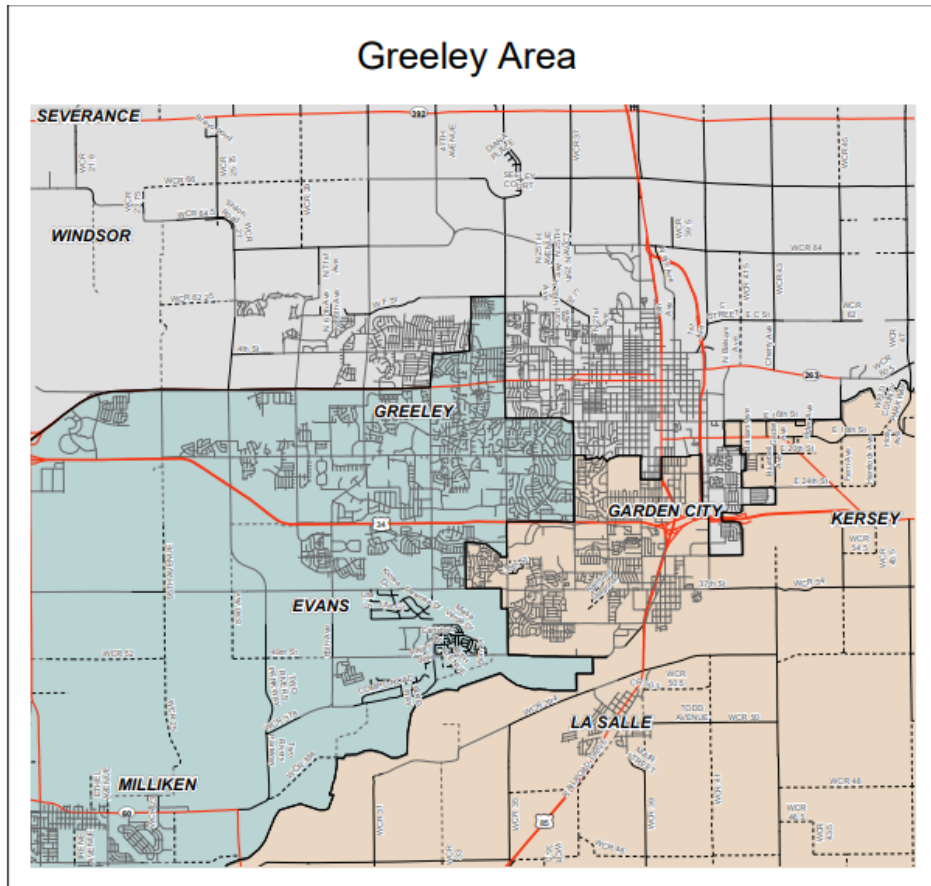
B. Defendants’ procedural violations yielded a substantively suspect map with no factual record to support it.

H.B. 21-1047’s procedural requirements promote transparency and robust public engagement in redistricting by giving the public a variety of proposed maps, opportunities to provide feedback on those maps, and public awareness of why a particular map is ultimately adopted. These procedural protections are particularly important when the selected map divides a community of interest of political subdivision into multiple districts. The map Defendants adopted does just that to electors residing within the City of Greeley. Notably, Defendants failed to develop the evidence in the record required by law when a city is split:

As much as is reasonably possible, the commission’s plan must preserve whole communities of interest and whole political subdivisions, such as cities and towns; except that a division of such city or town is permitted where, based on a preponderance of the evidence in the record, a community of interest’s legislative issues are more essential to the fair and effective representation of residents of the district. When the commission divides a city or town, it shall minimize the number of divisions of that city or town.

§ 30-10-306.3(2)(a) (emphases added).

Here, Defendants' map divides Greeley into each of three commissioner districts.²



Facially, the map's division of Greeley appears to violate the section 30-10-306.3(2)(a) substantive redistricting criteria in at least three respects. First, it does not keep Greeley—stated to be a community of interest and political subdivision in the statute—whole.

² *Weld County Commissioner Districts*, <https://www.weld.gov/Government/Departments/Commissioners/Commissioner-Districts> (last visited Jan. 23, 2024).

Second, no “preponderance of the evidence in the record” exists to demonstrate that dividing Greeley was “more essential to the fair and effective representation of residents of the district.” *Id.* Because Defendants did not follow the procedural requirements to “explain how the plans were created, how the plans address the categories of public comments received, and how the plans comply with the criteria prescribed in section 30-10-306.3,” § 30-10-306.4(1)(e), there is no record to explain why Greeley was subdivided in this manner.

Allegedly, Defendants’ sole concern in redistricting involved the “population” of the three districts. Compl., ¶91. But even if one individual’s remarks could constitute “the record” that section 30-10-306.3(2)(a) contemplates, the equal-population concern fails to explain why population alone was necessary to divide Greeley.

Greeley represents slightly less than one-third of Weld County’s population. *See* United States Census Bureau, <http://tinyurl.com/mty42xrk> (last visited Jan. 23, 2024) [hereinafter *Greeley Census*] (Greeley, CO, 2022 Population Estimates: 109,209); <http://tinyurl.com/etmmv226> (last visited Jan. 23, 2024) [hereinafter *Weld County Census*] (Weld County, CO, 2022 Population Estimates: 350,176). A reasonable conclusion could be drawn from the population alone that Greeley could have been kept whole in a single commissioner district. *See* § 30-10-306.3(2)(b) (“Districts must be as compact as is reasonably possible.”). Yet no record exists demonstrating the purpose of not doing so—or that doing so was even considered.

Third, Defendants facially divided Greeley into three commissioner districts—the maximum number of divisions possible. *See* § 30-10-306.3(2)(a) (“When the commission divides a city or town, it shall minimize the number of divisions of that city or town.”). Greeley is both the largest city in Weld County and has a larger concentration of Latinos (39.9%) than Weld County as a whole (31%). *See Greeley Census; Weld County Census*. By dividing Greeley into the maximum number of districts possible, Defendants’ map facially dilutes the voting power of Weld County’s urban voters and Latino voters. The absence of a record demonstrating non-partisan reasons for Greeley’s subdivision leaves open the reasonable inference that the map improperly divided Greeley voters into three districts for political purposes.³

The Colorado Supreme Court has historically disapproved of redistricting that divides cities. For example, the court disapproved of a state senate redistricting map that divided the Cities of Boulder and Pueblo. *In re Reapportionment of Colo. Gen. Assemb.*, 45 P.3d 1237, 1252-53 (Colo. 2002). It instructed that, on remand, “the Commission should avoid these city divisions, if possible.” *Id.* at 1253.

³ Although tools exist to detect partisan gerrymandering, the purpose of H.B. 21-1047’s procedural safeguards is to prevent partisan gerrymandering by requiring transparent redistricting processes. That Defendants failed to comply with the statutorily mandated procedure leaves this Court and Weld County electors in the dark about their process and reasons for adopting the final map. In turn, this gives rise to an injury by requiring the state, the parties, and the judiciary to expend time and resources on litigation to require Defendants to follow the required procedures for transparent, fair redistricting.

Similarly, in *In re Colorado Independent Legislative Redistricting Commission*, 513 P.3d 352, 361 (Colo. 2021), the opposers challenged the splitting of the City of Lakewood into two state senate districts. The court noted the issue was “the closest and most difficult” in the case because “the record evidence supporting the Commission’s decision” to split Lakewood was “thin.” *Id.* However, based on public comments identifying communities of interest within a split Lakewood, the court ultimately concluded that the record supported the decision by a preponderance of the evidence. *Id.* at 361-62; *accord Colorado Indep. Cong. Redistricting Comm’n*, 497 P.3d at 512-14 (describing challenges to U.S. congressional redistricting based on splitting of counties, but ultimately affirming based on the preservation of communities of interest identified in the redistricting commission’s record).

The purpose of the procedural steps mandated by H.B. 21-1047 is to ensure development of the record necessary to support the map ultimately chosen, particularly when that map splits a city into the maximum number of divisions possible, as the adopted district boundaries does to Greeley. This Court should hold Defendants to the process required by statute.

C. When counties follow the statute’s procedural requirements, they promote public confidence in fairer and more competitive maps.

By contrast, the only other counties to which H.B. 21-1047 applied, El Paso and Arapahoe, followed the H.B. 21-1047 redistricting requirements. Both counties

created redistricting websites in which the public could: view proposed districts; submit public comments and propose their own maps; watch recorded public redistricting hearings held throughout different parts of the county; and find detailed reports on how the adopted maps meet the statutory requirements to maintain equal population across all districts, preserve communities of interest, and promote political competitiveness. *See* 2023 El Paso County Redistricting Information, <https://www.elpasoco.com/redistricting/> (last visited Jan. 23, 2024) [hereinafter *El Paso Redistricting*]; 2023 Commissioner Redistricting, https://www.arapahoeco.gov/your_county/about_arapahoe_county/2023_arapahoe_county_commissioner_redistricting.php (last visited Jan. 23, 2024) [hereinafter *Arapahoe Redistricting*].

Arapahoe County created an independent Citizens Redistricting Advisory Committee comprised of three Democratic, three Republican, and three politically unaffiliated members. *Arapahoe Redistricting*. After reviewing 19 different maps, including submissions from Arapahoe County residents, and holding five public hearings throughout the county, the Committee submitted four proposed maps to its board of county commissioners, who approved a final map. *See id.*; *see also* <https://www.arapahoevotes.gov/news/arapahoe-commissioners-adopt-new-district-map> (last visited Jan. 22, 2024).

The El Paso County Board of County Commissioners exercised its authority to appoint itself as the redistricting commission. The El Paso Board held several

public hearings throughout the county, offered options for the public to submit comments and propose maps, made three proposed maps publicly available, and created a final report explaining the chosen map's compliance with the redistricting criteria. *See El Paso Redistricting*.

El Paso County's treatment of the City of Colorado Springs stands in stark contrast to Weld County's treatment of Greeley. The El Paso County final report explained that "due to the size and population of the City of Colorado Springs, divisions were required to ensure population equality amongst the districts while still preserving communities of interest." *Final Report*, <https://epc-assets.elpasoco.com/wp-content/uploads/2023-COMMISSIONER-REDISTRICTING-COMMISSION-REPORT.pdf> (last visited Jan. 23, 2024). Specifically, El Paso County's final map sought to preserve the military-based communities of Fort Carson, Peterson Air Force Base, and Schriever Space Force Base, and not split the United States Air Force Academy or the North American Aerospace Defense Command ("NORAD") between districts. *Id.* The final map also sought to preserve school districts as much as reasonably possible and kept whole 30 precincts in southeastern Colorado Springs containing "a concentration of Hispanic or Latino residents" to maintain "the integrity of this community of interest." *Id.*

Consistent with statutory requirements, El Paso and Arapahoe Counties identified efforts to maximize, to the extent possible, the political competitiveness in redistricting. *See id.*; *Arapahoe Redistricting*. While El Paso County did not convene

an independent commission, commentators have observed its redistricting efforts “did a reasonably fair job” that gives individuals with different political viewpoints “the opportunity to elect some county commissioners.” Tom Cronin, Bob Loevy, *County Commissioner Redistricting Has Competitive Districts*, *The Gazette*, Sept. 9, 2023, https://gazette.com/election-coverage/county-commissioner-redistricting-has-competitive-districts-cronin-and-loevy/article_38dd8884-4ec6-11ee-82cf-4b7d1906a8af.html (last visited Jan. 23, 2024).

IV. This Court should compel Defendants to comply with State laws governing county commissioner redistricting.

Colorado, through the adoption of Amendments Y and Z and H.B. 21-1047, has chosen to elevate the manner and process by which elected officials’ districts are drawn. This includes criteria ensuring robust public participation, procedural transparency, and fair and competitive redistricting maps that protect communities of interest.

A home rule county has no constitutional or statutory power to exempt itself from State redistricting laws. The failure to adhere to the procedural requirements in sections 30-10-306 to -306.4 denies Weld County citizens their right to a transparent and open process the law requires. El Paso and Arapahoe Counties’ respect for the procedural requirements in redistricting underscores how this process can and should be done to promote public confidence and fairness.

This Court should rule for Plaintiffs and compel Defendants to comply with sections 30-10-306 to -306.4.

Respectfully submitted this 24th day of January, 2024.

PHILIP J. WEISER
Attorney General

/s/ Jennifer L. Sullivan
NATALIE HANLON LEH
Chief Deputy Attorney General, No. 18824
SHANNON STEVENSON
Solicitor General, No. 35542
JENNIFER L. SULLIVAN
Deputy Attorney General, No. 32092*
KURTIS MORRISON,
Deputy Attorney General, No. 45760
ALEX J. ACERRA,
Assistant Attorney General, No. 47631
JOSHUA J. LUNA,
Assistant Attorney General, No. 51217
CATA A. CUNEO,
Assistant Attorney General, No. 59510
Colorado Department of Law
Ralph L. Carr Colorado Judicial Center
1300 Broadway
Denver, Colorado 80203
Telephone: (720) 508-6000
Email: jen.sullivan@coag.gov
*Counsel of Record
*Attorneys for Colorado Attorney General
Philip J. Weiser*

CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2024, I served a true and complete copy of the foregoing **BRIEF OF AMICUS CURIAE COLORADO ATTORNEY GENERAL IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**, upon all parties and their counsel of record by e-filing with the Colorado Courts E-Filing system maintained by the court.

/s/ Carmen Van Pelt