SUMMARY
October 28, 2021

2021COA132

No. 20CA0641, *Brannberg v. Colo. State Bd. of Educ.* — Education — Charter Schools Act — Appeal

A division of the court of appeals considers whether a provision of the Charter Schools Act bars judicial review of decisions of the Colorado State Board of Education. The Act allows individuals or groups to apply to a local school board to create a charter school, and section 22-30.5-108, C.R.S. 2021, outlines a four-step process whereby charter school applicants may twice appeal the local board's decision to the State Board. Subsection 108(3)(a) governs the first appeal and subsection 108(3)(d) governs the second appeal. For each appeal, the State Board may either affirm the local board's decision or remand for further proceedings. Only subsection 22-30.5-108(3)(d) concludes by stating that "[t]he decision of the state board shall be final and not subject to appeal."

The division concludes that the unambiguous plain meaning of this appeal-preclusion language does not bar judicial review of State Board decisions rendered after a first appeal under subsection 108(3)(a). The division further concludes that this interpretation is not absurd so as to allow the court to depart from a plain-meaning reading. Because the trial court ruled otherwise, the division reverses and remands for further proceedings.

COLORADO COURT OF APPEALS **2021COA132**

Court of Appeals No. 20CA0641
City and County of Denver District Court No. 19CV550
Honorable Morris B. Hoffman, Judge

Judy A. Brannberg and John Dewey Institute, Inc.,

Plaintiffs-Appellants,

v.

Colorado State Board of Education and Douglas County School District RE-1,

Defendants-Appellees.

JUDGMENT REVERSED AND CASE
REMANDED WITH DIRECTIONS

Division I
Opinion by JUDGE TAUBMAN*
Dailey and Vogt*, JJ., concur

Announced October 28, 2021

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*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2021.

¶ 1 Plaintiffs, Judy A. Brannberg[1] and her proposed charter school, John Dewey Institute, Inc. (JDI), appeal the district court's judgment concluding that it lacked subject matter jurisdiction to review the rejection of their charter school application by defendants, the Douglas County School District RE-1 (the District) and the Colorado State Board of Education (collectively, the School Boards). Because we disagree with the district court's conclusion that the statute at issue bars court review of plaintiffs' claims, we reverse the judgment and remand for further proceedings.

¶ 2 This case presents the question of whether the General Assembly has precluded the courts' authority to hear and decide a given class of cases under the Charter Schools Act, sections 22-30.5-101 to -120, C.R.S. 2021. The Act allows individuals or groups to apply to a local school board to create a charter. § 22-30.5-107, C.R.S. 2021. In the event of an adverse decision, applicants may appeal the local board's decision to the Colorado

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[1] Defendants assert, and plaintiffs do not disagree, that Brannberg is not properly a party to this case because she was not a party to JDI's appeal before the state board. *See* § 24-4-106(4), C.R.S. 2021. We agree and conclude that Brannberg lacks standing to pursue this appeal. *See State, Dep't of Pers. v. Colo. State Pers. Bd.*, 722 P.2d 1012, 1014, 1016-17 (Colo. 1986).

State Board of Education. § 22-30.5-108, C.R.S. 2021. When the initial appeal of the local board's decision — known as the first appeal — occurs, subsection 108(3)(a) instructs the state board either to affirm the decision or to remand the proceeding to the local board. If, on remand, the local board again renders a decision adverse to the applicant, the applicant may take a second appeal to the state board. § 22-30.5-108(3)(c). Following instructions explaining how the state board must decide the second appeal, subsection 108(3)(d) concludes by stating that "[t]he decision of the state board shall be final and not subject to appeal."

¶ 3 The issue in this case is whether this appeal-preclusion language also applies to a state board decision rendered after a first appeal — a scenario in which the Board has affirmed the local board's decision, without the applicant getting to a second appeal and thus to subsection 108(3)(d), where the appeal-preclusion language appears. While the Colorado Constitution vests our courts with broad jurisdiction, the General Assembly may define and restrict this jurisdiction through statutory language that explicitly or by necessary implication does so. *Colorow Health Care, LLC v. Fischer*, 2018 CO 52M, ¶ 21, 420 P.3d 259, 263 (citing Colo.

Const. art. VI, §§ 1, 2, 3, 9). Resolving a question of statutory interpretation, we conclude that the appeal-preclusion language in subsection 108(3)(d) does not explicitly or by necessary implication apply to state board decisions rendered after a first appeal. Subsection 108(3)(d) thus does not revoke courts' subject matter jurisdiction to review such decisions.

I. Background

¶ 4 Before turning to the meaning of the provision in question, we provide background on both the procedural history of this case and the charter school appeals process.

A. Procedural History

¶ 5 JDI brought claims against the School Boards under the Colorado Administrative Procedure Act (APA), alleging that they failed to follow the procedures required by the Act. Specifically, JDI's complaint alleged, among other things, that the District violated section 22-30.5-107(2) by failing to rule on its charter application in an official board resolution. JDI also alleged that the District violated section 22-30.50-107(4) by failing to adequately provide reasons for the denial. At a board meeting, JDI alleged, District board members verbally expressed their reasons for

denying the application rather than setting them forth in an official, written resolution. JDI alleged that these statutory violations created an inadequate record for review for its state board appeal. Finally, JDI alleged that the State Board erred by affirming the District's denial.

¶ 6 The School Boards moved to dismiss under C.R.C.P. 12(b)(1) on two grounds. First, they argued that subsection 108(3)(d) barred judicial review of both first- and second-appeal state board decisions. Second, they argued that JDI lacked standing to bring the suit under the political subdivision doctrine. The district court did not reach the second ground because it granted the School Boards' motion on the first ground alone. It concluded that subsection 108(3)(d) was ambiguous with respect to whether it applied to both first- and second-appeal decisions, but that extra-textual considerations weighed in favor of it precluding judicial review of first-appeal state board charter-application decisions under section 22-30.50-108. Accordingly, the court dismissed the case for lack of subject matter jurisdiction. JDI now appeals.

B. The Charter School Application Process

¶ 7 The General Assembly declared that one purpose of the Act is "[t]o provide citizens with multiple avenues by which they can obtain authorization for a charter school." § 22-30.5-102(2)(j), C.R.S. 2021. To this end, sections 22-30.5-106 and -107 of the Act detail procedures and requirements for individuals or groups to submit applications to a local school board to establish a charter school within its district. If the application is approved by the local board, it serves as the basis for a governing contract between the charter school and the local board. § 22-30.5-105(1)(a), C.R.S. 2021. If, however, the local board either denies a charter application or accepts the application with unilaterally imposed conditions on the applicant school,[2] any person may appeal that decision to the state board. § 22-30.5-108(2).

¶ 8 Subsection 108(3) sets forth the procedures and standards the state board must follow in appeals from the local school board. It

[2] Section 22-30.5-108, C.R.S. 2021, applies equally where a party wishes to appeal a local board's revocation of, or refusal to renew, a charter school contract. However, for economy of reference and because this case involves an application rather than a revocation or renewal, we discuss section 108 only in the context of charter applications.

describes two possible decisions of the state board: (1) a remand or affirmation in the appeal of the local board's initial decision, and (2) in the event the state board remands an initial decision, a second remand with instructions or affirmation in the appeal of the local board's second decision. § 22-30.5-108(3). It is this appeal-remand-appeal process — and the finality accorded to ultimate state board decisions at either step — that is at issue here.

¶ 9 Subsection 22-30.50-108(3)(a) governs the first appeal. It requires the state board to determine whether the local board's initial decision was "contrary to the best interests of the pupils, school district, or community." *Id.* If it so finds, the state board must remand the proceeding to the local board with specific matters for the local board to reconsider. *Id.*

¶ 10 Subsection 108(3)(a) does not explicitly mention the possibility that the state board may affirm the local board's initial decision. Nevertheless, a first-appeal affirmation would constitute the state board's ultimate decision on the matter. Most important for our purposes, subsection 108(3)(a) does not contain any appeal-preclusion language.

¶ 11 On remand, if the local board again denies or unilaterally imposes unacceptable conditions on the applicant, the applicant may again appeal to the state board. § 22-30.5-108(3)(b), (c). The state board must then apply the same "contrary to the best interests" standard stated in subsection 108(3)(a). § 22-30.5-108(3)(d). This time, however, if the state board again disagrees with the local board's decision, its remand no longer contains mere recommendations; rather, it is an order to the local board to either approve the application or dispense with any of the board's unacceptable conditions. *See id.*

¶ 12 Like subsection 108(3)(a), subsection 108(3)(d) does not expressly mention the possibility that the state board may affirm the local board's decision on second appeal. Unlike subsection 108(3)(a), however, subsection 108(3)(d) ends with a provision on finality: "The decision of the state board shall be final and not subject to appeal."

¶ 13 The parties agree that this appeal-preclusion language bars judicial review of state board decisions rendered after a second appeal. They disagree, though, about the meaning of this language — specifically whether "the decision of the state board" also

includes a state board decision under subsection 108(3)(a) to affirm after a first appeal.

II. The Appeal-Preclusion Language in Subsection 108(3)(d)

¶ 14 JDI contends that the district court erred by concluding that subsection 108(3)(d) precludes judicial review of first-appeal state board decisions. We agree.

A. Standard of Review and Preservation

¶ 15 We review questions of statutory interpretation de novo. *Munoz v. Am. Fam. Mut. Ins. Co.*, 2018 CO 68, ¶ 9, 425 P.3d 1128, 1130.

¶ 16 To preserve an issue for appeal, "all that was needed was that the issue be brought to the attention of the trial court and that the court be given an opportunity to rule on it." *Berra v. Springer & Steinberg, P.C.*, 251 P.3d 567, 570 (Colo. App. 2010). No "talismanic language" is necessary, *People v. Melendez*, 102 P.3d 315, 322 (Colo. 2004), at least so long as the party presented the district court with the "sum and substance" of the argument it makes on appeal, and the district court ruled on it, *Berra*, 251 P.3d at 570.

¶ 17 In the district court, JDI contended that subsection 108(3)(d) did not bar its suit. The court ruled that this subsection was ambiguous, and it interpreted the appeal-preclusion language as barring judicial review of both first- and second-appeal decisions. We therefore conclude that this statutory interpretation issue is preserved.

¶ 18 Despite conceding that the issue is preserved, the School Boards contend that, because JDI asserted in the district court that the statute is "ambiguous," JDI should now be barred from asserting that this text is susceptible of a plain-meaning interpretation. JDI concedes that its "ambiguous" assertion was a misnomer. We conclude that JDI's plain-meaning argument in the district court is the "sum and substance" of the position it now raises on appeal. *See Berra*, 251 P.3d at 570. Therefore, we conclude that JDI adequately preserved its statutory argument.

B. General Principles of Statutory Interpretation

¶ 19 Our primary goal when interpreting statutory text is to effectuate the intent of the General Assembly. *Poudre Sch. Dist. R-1 v. Stanczyk*, 2021 CO 57, ¶ 13, 489 P.3d 743, 747. To accomplish this, we must "respect the legislature's choice of language."

Smokebrush Found. v. City of Colorado Springs, 2018 CO 10, ¶ 18, 410 P.3d 1236, 1240. Consequently, we always look first to the statutory text at issue, applying its plain and ordinary meaning while ensuring that we are giving "consistent, harmonious, and sensible effect" to every part of the statutory scheme. *Bd. of Cnty. Comm'rs v. Colo. Dep't of Pub. Health & Env't*, 2021 CO 43, ¶ 17, 488 P.3d 1065, 1069.

¶ 20 In doing so, we must not "add or subtract words from a statute." *Smokebrush Found.*, ¶ 18, 410 P.3d at 1240. The General Assembly's failure to add certain language to a statute can "indicate[] purposeful omission." *Neher v. Neher*, 2015 COA 103, ¶ 23, 402 P.3d 1030, 1034; *see also Nieto v. Clark's Mkt., Inc.*, 2021 CO 48, ¶ 22, 488 P.3d 1140, 1145 ("It is just as important as what the statute says [a]s what the statute does not say.") (citation omitted); *Specialty Rests. Corp. v. Nelson*, 231 P.3d 393, 397 (Colo. 2010) ("[T]he General Assembly's failure to include particular language is a statement of legislative intent.").

¶ 21 Our first task is thus to determine whether the text at issue is susceptible of one or more plain-meaning interpretations. *See Bd. of Cnty. Comm'rs*, ¶¶ 18-26, 488 P.3d at 1070-71. A statute is

ambiguous "when it is reasonably susceptible of multiple interpretations." *Elder v. Williams*, 2020 CO 88, ¶ 18, 477 P.3d 694, 698. Yet, the mere fact that parties advance opposing plain-meaning interpretations does not establish that the text is ambiguous. *Klun v. Klun*, 2019 CO 46, ¶ 18, 442 P.3d 88, 92.

¶ 22 If the text is unambiguous, our analysis is done; "we apply it as written — venturing no further." *Blooming Terrace No. 1, LLC v. KH Blake St., LLC*, 2019 CO 58, ¶ 11, 444 P.3d 749, 752.

¶ 23 Moreover, we depart from a literal interpretation of an unambiguous statute to avoid a construction that "would lead to illogical or absurd results." *Bd. of Cnty. Comm'rs*, ¶ 17, 488 P.3d at 1069. We are not permitted to give unambiguous text a meaning different from what the plain language supports "in order to avoid a result that we find inequitable or unwise." *People v. Lindsey*, 2020 CO 21, ¶ 44, 459 P.3d 530, 540. Accordingly, the absurdity exception is reserved for the rare circumstance where the literal absurdity is "so gross as to shock the general moral or common sense." *Dep't of Transp. v. City of Idaho Springs*, 192 P.3d 490, 494 (Colo. App. 2008) (quoting *Crooks v. Harrelson*, 282 U.S. 55, 60 (1930)).

¶ 24 An additional consideration applies when interpreting statutory text that limits the jurisdiction of Colorado courts. The Colorado Constitution confers on its courts "unrestricted and sweeping jurisdictional powers in the absence of limiting legislation." *Matter of A. W.*, 637 P.2d 366, 373 (Colo. 1981). The supreme court has thus ruled that, "[w]hile the General Assembly may define and restrict this jurisdiction, 'no statute will be held to so limit court power unless the limitation is explicit'" or results from necessary implication. *Colorow Health Care*, ¶ 20, 420 P.3d at 263 (quoting *State v. Borquez*, 751 P.2d 639, 642 (Colo. 1988)). Our ultimate task is therefore to determine whether the appeal-preclusion language in subsection 108(3)(d) explicitly or by necessary implication limits Colorado courts' jurisdiction to hear challenges to first-appeal state board decisions.

C. Analysis

¶ 25 We conclude that the appeal-preclusion language in subsection 108(3)(d) is clear — it does not explicitly or by necessary implication limit Colorado courts' jurisdiction to review first-appeal state board decisions. This result is made plain by the provision's placement in only the second-appeal subsection, its reference to a

singular and definite "decision" in a process containing two possible state board decisions, and a comparison to similar appeal-preclusion language in section 22-30.5-107.5, C.R.S. 2021. Accordingly, we need not — and may not — rely on other indicia of legislative intent. *See Elder*, ¶ 18, 477 P.3d at 698; § 2-4-203, C.R.S. 2021.

¶ 26 Further, we conclude that this plain-meaning construction of the appeal-preclusion language does not lead to an absurd or illogical result. Rather, we envision at least one plausible explanation for the General Assembly barring judicial review of second-appeal but not first-appeal decisions of the state board.

1. The Plain-Meaning of Subsection 108(3)(d)

¶ 27 Our first task is to determine the plain and ordinary meaning of the statute and whether it is ambiguous — that is, "reasonably susceptible of multiple interpretations." *Elder*, ¶ 18, 477 P.3d at 698. As noted, JDI contends that the appeal-preclusion language does not bar judicial review of first-appeal state board decisions rendered under subsection 108(3)(a). The School Boards disagree. Both JDI and the School Boards argue that the plain meaning of

the statute supports their respective positions. We agree with JDI and disagree with the School Boards.

¶ 28 We start with the placement of the appeal-preclusion language in the statute. Through subsections (3)(a) through (3)(d), section 22-30.5-108 sets forth a four-step procedure whereby charter school applicants may twice appeal a decision of the local school board. Most importantly, the text governing the state board's first-appeal decision appears in a separate subsection from that governing the Board's second-appeal decision. The appeal-preclusion language appears only in the latter and uses the definite article "the" to refer to "the decision" of the state board. A familiar principle of statutory construction is that "the use of the definite article particularizes the subject which it precedes." *Coffey v. Colo. Sch. of Mines*, 870 P.2d 608, 610 (Colo. App. 1993) (citing *City of Ouray v. Olin*, 761 P.2d 784 (Colo. 1988)). By a plain and ordinary reading, "the decision" refers only to decisions made under the subsection in which it occurs — that is, the second-appeal subsection.

¶ 29 Further, no other indicator or cross-reference in the appeal-preclusion language or in subsection 108(3)(d) more

generally points to this language's applicability to subsection 108(3)(a). Considering this in tandem with the overall structure of section 22-30.5-108 makes clear that the appeal-preclusion language applies only to subsection 108(3)(d).

¶ 30 If the General Assembly had intended to preclude judicial review of first appeals, it could have added appeal-preclusion language to subsection 108(3)(a); placed the appeal-preclusion provision in subsection 108(3)(d) into its own, separate subsection, as it did in section 22-30.5-107.5; or combined subsections 108(3)(a) and (3)(d) to create a single subsection governing all state board appeals, complete with appeal-preclusion language. Each of these alternatives would have made it clear that the appeal-preclusion language also applies to first-appeal state board affirmations. At the very least, the General Assembly's failure to craft appeal-preclusion language that expressly applies to multiple subsections suggests "purposeful omission." *Neher*, ¶ 23, 402 P.3d at 1034.

¶ 31 We next observe that the appeal-preclusion language in question is singular. It references "the decision" and not "the decisions" of the state board. Yet, subsection 108(3) established a

two-appeal procedure where the state board could twice review the actions of a local school board. The School Boards nevertheless contend that, when the state board affirms on a first appeal, it has still only rendered one final decision. The appeal-preclusion language, they argue, only applies to the Board's ultimate decision, whether that is after a first or second appeal. The School Boards' interpretation, however, would be akin to adding language to subsection 108(3)(d) to say: "The *ultimate* decision of the state board shall be final and not subject to appeal." We may not read a word into a provision that the General Assembly did not include. *Smokebrush Found.*, ¶ 18, 410 P.3d at 1240.

¶ 32 We disagree with the district court's conclusion that the appeal-preclusion language "creates some ambiguity." The court observed that the General Assembly could have clarified section 22-30.5-108 by specifying that no appeals would lie from a first-appeal decision of the state board. However, the court did not explain how the statute is subject to reasonable, conflicting interpretations, as is required for a determination of ambiguity. *Elder*, ¶ 18, 477 P.3d at 698. Instead, it concluded that the legislative scheme "makes no sense" and that it would have been more logical for the General

Assembly to preclude judicial review of first appeals, rather than second appeals. In so doing, it did not consider whether a plain-language interpretation of subsection 108(3)(d) could have a plausible rationale, a topic which we discuss below.

¶ 33 Because we conclude that subsection 108(3)(d) does not bar review of JDI's case, we also disagree with the district court's conclusion that the provisions of the APA under which JDI brought claims are inapplicable. At oral argument, the School Boards conceded that their "contrary to best interests" review of local board decisions encompasses review of the local boards' compliance with the procedural requirements of the Act. Given this concession, JDI's claims regarding the District's alleged procedural violations are reviewable under the APA.

¶ 34 Our conclusion that section 22-30.5-108 should be interpreted in accordance with its plain meaning is reinforced by a comparison of this section to one containing similar appeal-preclusion language, section 22-30.5-107.5. Rather than governing charter application disputes, this section governs the appeals process for certain charter contract disputes. Like section 22-30.5-108, it allows parties to appeal to the state board for review. § 22-

30.5-107.5(3)(b). Unlike section 22-30.5-108, this section only provides for a single appeal. *See* § 22-30.5-107.5(3)-(6). This section concludes with a provision, set off in its own subsection, stating as follows: "Any decision by the state board pursuant to this section shall be final and not subject to appeal." § 22-30.5-107.5(6).

¶ 35 Comparing these sections is useful for two reasons. Because these sections concern a similar subject — an appeals process for charter disputes — we should construe them together to avoid inconsistencies. *See People v. Carrillo*, 2013 COA 3, ¶ 13, 297 P.3d 1028, 1030. Second, because we presume the General Assembly chooses language with an "aware[ness] of its own enactments," *LaFond v. Sweeney*, 2015 CO 3, ¶ 12, 343 P.3d 939, 943, we must at least entertain the possibility that the structural and linguistic differences between these sections are indicative of the General Assembly's intent to craft two appeals processes accorded differing levels of finality.

¶ 36 Accordingly, we again start with the provision's placement in its statute. Unlike section 22-30.5-108, section 22-30.5-107.5 places its appeal-preclusion provision in a separate subsection.

Though this section provides for a single appeal to the state board — and thus a single decision per dispute — this structure makes it abundantly clear that section 22-30.5-107.5's appeal-preclusion language applies to any state board decision under that section. If, as we noted above, the General Assembly had used a similar structure for section 22-30.5-108, it would be clear that its appeal-preclusion language did the same.

¶ 37 Likewise, section 22-30.5-107.5 adds "pursuant to this section" in its appeal-preclusion provision. Again, the General Assembly's phrasing makes the scope of that provision abundantly clear. With such a phrase missing in subsection 108(3)(d), it does not inexorably follow that subsection 108(3)(d) applies to subsection 108(3)(a).

¶ 38 Last, section 22-30.5-107.5(6)'s appeal-preclusion language refers to "[a]ny decision" rather than "the decision." We have already noted that the use of the definite article particularizes section 22-30.5-108's appeal-preclusion language to only the second-appeal subsection. The supreme court has repeatedly noted that "the use of different terms signals an intent on the part of the General Assembly to afford those terms different meanings." *People*

v. Rediger, 2018 CO 32, ¶ 22, 416 P.3d 893, 899 (citation omitted). The legislature's use of "[a]ny" in section 22-30.5-107.5 thus reinforces our conclusion that the definite article in "the decision" limits that phrase to subsection 108(3)(d).

¶ 39 Given the above reasons, we are especially hesitant to read the appeal-preclusion language as applying to subsection 108(3)(a) considering that such a reading would restrict the jurisdiction of Colorado courts. Such restrictions, our supreme court has ruled, must be explicit or necessarily implied. *Colorow Health Care*, ¶ 20, 420 P.3d at 263. We conclude that the appeal-preclusion provision in subsection 108(3)(d) does not explicitly or by necessary implication restrict jurisdiction for a state board decision rendered under a separate subsection.

2. Two Charter Schools Act Cases — *Booth* and *Academy of Charter Schools*

¶ 40 Because we conclude that the meaning of the appeal-preclusion provision is clear, we need not go beyond the plain meaning of the text to determine legislative intent.

¶ 41 The parties discuss at length the applicability of two supreme court cases addressing the Act, *Board of Education of School District*

No.1 v. Booth, 984 P.2d 639 (Colo. 1999), and *Academy of Charter Schools v. Adams County School District No. 12*, 32 P.3d 456 (Colo. 2001). Those cases are inapposite for two reasons. First, those cases involved judicial review of either a second appeal, *Booth*, 984 P.2d at 642-44, or a dispute not brought through the state board appeals process, *Acad. of Charter Schs.*, 32 P.3d at 460-61. Neither scenario is the same as that here. Second, *Booth* and *Academy of Charter Schools* did not address whether the General Assembly precluded judicial review of second-appeal but not first-appeal state board decisions.

¶ 42 Accordingly, the seemingly broad language in *Academy of Charter Schools*, 32 P.3d at 468 ("[A]ny decision rendered by the State Board under section 22-30.5-108 is final and not subject to appeal."), must be viewed as dicta because it was contained in a description of the statutory scheme for charter schools and was not part of the court's holding. *Coon v. Berger*, 41 Colo. App. 358, 360, 588 P.2d 386, 387 (1978) ("[A]ny expression of opinion on a question not necessary for the decision is merely *obiter dictum*, and is not, in any way, controlling upon later decisions."), *aff'd*, 199 Colo. 133, 606 P.2d 68 (1980). Further, unlike in *Booth*, this case

does not concern whether the General Assembly has the power to authorize the state board to approve a charter school application that a local board had twice rejected. *Booth*, in fact, explicitly noted that the General Assembly has the constitutional authority to provide for judicial review of local board decisions. 984 P.2d at 649. This, therefore, is not a situation where the combination of the constitution's provision of exclusive authority to a state entity with appeal-preclusion language means that judicial review is barred. *See Colo. Jud. Dep't. v. Colo. Jud. Dep't Pers. Bd. of Rev.*, 2021 COA 82, ¶ 35, __ P.3d __, __.

¶ 43 We thus conclude that, contrary to the School Boards' contention, *Booth* and *Academy of Charter of Schools* do not require a result different from what we reach here.

3. The Absurdity Exception

¶ 44 Finally, we determine that a bar to review of second-appeal but not first-appeal state board decisions is not so absurd as to "shock the general moral or common sense." *City of Idaho Springs*, 192 P.3d at 494 (quoting *Crooks*, 282 U.S. at 60). Rather, we envision at least one plausible justification for the General Assembly according these appeals different degrees of finality.

¶ 45 A bar to judicial review of the state board's second-appeal decisions serves an important purpose in the statutory scheme. Namely, in the event the state board orders the local board to approve or deny a charter application under subsection 108(3)(d), the second-appeal bar to review prevents a recalcitrant local board from litigating to avoid doing so. The bar to judicial review of second appeals thus affords the process a level of conclusiveness to what may be contentious conflicts between the state board and local boards. *See Booth*, 984 P.2d at 648 (affirming the state board's role as "final arbiter" of disputes between it and local boards).

¶ 46 No such justification undergirds a bar to review of first-appeal state board decisions. In the first-appeal scenario, the state board has affirmed the decision of the local board — that is, the state board and local board agree over whether to approve or deny the charter application. Thus, the General Assembly reasonably could have allowed judicial review of first-appeal state board decisions because there would be no need in that scenario to prevent a recalcitrant local board from prolonging the charter application process through litigation.

¶ 47 Though a bar to review of both first-appeal and second-appeal decisions may be a more logical statutory scheme, absurdity is a high bar to clear. *E.g.*, *Stovic v. R.R. Ret. Bd.*, 826 F.3d 500, 505 (D.C. Cir. 2016). The School Boards' arguments simply do not clear it. Moreover, we may not "rewrite statutes to improve them." *City of Idaho Springs*, 192 P.3d at 494. The plain meaning of the text the legislature enacted does not explicitly or by necessary implication limit Colorado courts' jurisdiction, and we decline to expand its meaning to so conclude. A bar to first-appeal but not second-appeal decisions simply does not meet the high bar of being too absurd to justify, even if it might not ultimately be better policy. "Every legislature must grapple with the problem of unintended consequences. If a statute gives rise to undesirable results, the legislature must determine the remedy." *Id.*

III. Conclusion

¶ 48 The district court dismissed JDI's case for lack of subject matter jurisdiction, reasoning that subsection 108(3)(d) barred judicial review of all state board charter-application decisions under section 22-30.5-108. We reach a different conclusion. Because the district court did not rule on the School Boards' other ground for

Rule 12(b)(1) dismissal — the applicability of the political subdivision doctrine — we do not reach that issue. We reverse the judgment of the district court and remand for further proceedings.

JUDGE DAILEY and JUDGE VOGT concur.