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ADVANCE SHEET HEADNOTE
October 16, 2023

2023 CO 52

No. 23SC61, *Colo. State Bd. of Educ. v. Adams Cnty. Sch. Dist. 14*—Standing—Political Subdivision Doctrine—Local Government Law.

The supreme court abandons the judicially created political subdivision doctrine in Colorado and its articulation in *Martin v. District Court*, 550 P.2d 864 (Colo. 1976) (the "rule of *Martin*"), and holds that state agencies, political subdivisions, and their officials no longer need to comply with an additional, specialized test to establish standing to bring suit. Instead, *Wimberly* supplies the sole test for determining whether a party has standing in Colorado. Applied to the facts of this case, the supreme court holds that Adams 14 fails to assert an injury in fact to a legally protected interest. Accordingly, the supreme court affirms the district court's order dismissing each of Adams 14's claims for lack of standing.

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

2023 CO 52

Supreme Court Case No. 23SC61
C.A.R. 50 Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 22CA1803
District Court, City and County of Denver, Case No. 22CV31807
Honorable Shelley I. Gilman, Judge

Petitioner:

Colorado State Board of Education,

v.

Respondents:

Adams County School District 14 and Board of Education of Adams County School District 14.

Judgment Affirmed
en banc
October 16, 2023

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

JUSTICE MÁRQUEZ delivered the Opinion of the Court.

¶1 This case and *Weld County Colorado Board of County Commissioners v. Ryan*, 2023 CO 54, __ P.3d __ ("*Weld County*"), also issued today, provide an opportunity for this court to re-examine the political subdivision doctrine in Colorado and its articulation in *Martin v. District Court*, 550 P.2d 864 (Colo. 1976).[1] The "rule of *Martin*," which has been applied to state agencies, political subdivisions, and officials acting in their official capacity, is a judicially created rule that precludes standing to challenge a government entity's decision when: (1) the state agency, political subdivision, or official seeking review is subordinate to the government entity whose action is challenged; and (2) no statutory or constitutional provision expressly authorizes the subordinate party to seek judicial review of the superior government entity's action. *See City of Greenwood Vill. v. Petitioners for Proposed City of Centennial*, 3 P.3d 427, 438 (Colo. 2000) (citing *Martin*, 550 P.2d at 866). Here,

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[1] This opinion focuses on Colorado's political subdivision doctrine, and does not address the federal version of the doctrine. Colorado case law refers to the doctrine described here in a variety of ways. *See, e.g., Aurora Pub. Sch. v. A.S.*, 2023 CO 39, ¶ 32, 531 P.3d 1036, 1045 ("political subdivision doctrine"); *Aurora Urb. Renewal Auth. v. Kaiser*, 2022 COA 5, ¶ 35, 507 P.3d 1033, 1041 ("political subdivision standing doctrine"); *Romer v. Bd. of Cnty. Comm'rs*, 956 P.2d 566, 573 (Colo. 1998) ("rule of *Martin*" (quoting *Maurer v. Young Life*, 779 P.2d 1317, 1323 (Colo. 1989))); *City of Greenwood Vill. v. Petitioners for Proposed City of Centennial*, 3 P.3d 427, 436 (Colo. 2000) (describing the doctrine but not offering a label). In this opinion, we use the terms "political subdivision doctrine" and "rule of *Martin*" interchangeably.

the Colorado State Board of Education ("the State Board") invoked this doctrine in successfully moving to dismiss claims brought by Adams County School District 14 ("Adams 14") challenging the State Board's decision to remove its accreditation and order its reorganization. Adams 14 challenges the district court's dismissal of its claims and the political subdivision doctrine itself, contending that the doctrine has become unmoored from its jurisprudential origins and results in the unfair denial of judicial relief to public entities that have been injured by state agencies and statutes.

¶2 We conclude that the political subdivision doctrine and its articulation in the rule of *Martin* have generated unnecessary confusion and are ultimately duplicative of the two-part test for standing set forth in *Wimberly v. Ettenberg*, 570 P.2d 535, 539 (Colo. 1977). We therefore abandon the doctrine and the rule of *Martin* and instead hold that *Wimberly* supplies the sole test for determining whether a party has standing in Colorado. In other words, subordinate state agencies, political subdivisions, and officials raising claims challenging a government entity's decision need not satisfy any additional specialized standing test. Evaluating each of Adams 14's claims under *Wimberly*, we further hold that all were correctly dismissed for lack of standing. Accordingly, we affirm the district court's order.

I. Factual Background

¶3 The Colorado Education Accountability Act of 2009 ("Education Accountability Act" or "the Act") establishes an "aligned education accountability system for public education in this state that . . . [h]olds the state, school districts, the institute, and public schools accountable on statewide performance indicators supported by consistent, objective measures." § 22-11-102(3)(a), C.R.S. (2023). It instructs the State Board to conduct an annual performance review of each public school and school district and assign them an accreditation category based on their performance according to statewide performance indicators. § 22-11-201(1)(a), C.R.S. (2023). If a school district is "accredited with [a] priority improvement plan" rating or lower for a total of five years (including two initial consecutive years), the Act requires the State Board to take "significant action." § 22-11-207(4)(a), C.R.S. (2023). Section 22-11-209, C.R.S. (2023), sets forth the actions the State Board may take against a school district, including removing accreditation and ordering reorganization.

¶4 Adams 14 serves more than 6,000 students—90% are students of color, 84% qualify for free and reduced lunch, and 53% are English language learners. From 2010 to 2018, Adams 14 received a priority improvement plan rating or lower.

¶5 Given these ratings, in June 2017, the State Board issued an order removing Adams 14's accreditation, as required by section 22-11-207(4)(a). However, the

State Board stayed this order subject to Adams 14's compliance with certain conditions, including contracting with an external entity that would control aspects of instructional components at its lowest performing schools. When Adams 14's outcomes did not improve in 2018, it agreed to contract with a new external manager (the "Lead Partner") who would have "full authority over matters other than the hiring and firing of personnel," would be "empowered to give directives to the Superintendent," and whose recommendations the Adams 14 board of education would be "obligated to consider, and presumptively accept."

¶6 Consistent with this agreement, in November 2018, the State Board issued an order (the "2018 Order") that extended the stay on the condition that Adams 14 (1) execute a contract that delegated all formal decision-making authority in the district to the Lead Partner, and (2) provide a copy of the contract to the Education Commissioner to permit the Commissioner to determine whether the contract satisfied the terms of the 2018 Order. The 2018 Order also advised Adams 14 that it would remain subject to ongoing performance monitoring under sections 22-11-209(3.5) and 22-11-210(5.5), C.R.S. (2023), and that if the district failed to comply with the order, the State Board would reconsider whether to lift the stay on the removal of Adams 14's accreditation, which would trigger reorganization of the district.

¶7 Adams 14 selected a public-private partnership as its Lead Partner, which the State Board approved. But in the summer of 2021, disputes arose between the Lead Partner and the new Adams 14 superintendent, leading the superintendent to expel the Lead Partner from Adams 14 schools that August.

¶8 After a September 2021 show-cause hearing, the State Board found that Adams 14 had violated the 2018 Order and indicated that the stay would be lifted if the district did not return the Lead Partner's contractual authority. Adams 14 could not come to a full agreement with the Lead Partner, so the State Board lifted the stay on the district's removal of accreditation on October 1, 2021.

¶9 Approximately a week later, Adams 14 temporarily resolved the impasse by signing a memorandum of understanding with the Lead Partner, and the State Board restored the district's accreditation.

¶10 In January 2022, however, Adams 14 terminated its contract with the Lead Partner for cause. Consistent with the provisions of the 2018 Order, Adams 14 filed a motion with the State Board to amend the order. After receiving an update from Colorado Department of Education staff regarding Adams 14's implementation of the 2018 Order, the State Board issued an order denying the district's motion as premature because "any replacement directed action must be grounded in the statutory factors in § 22-11-208(3) [, C.R.S. (2023)] and § 22-11-

209(2)(b)."[2] This order allowed for a rehearing to be held in April 2022 after the State Review Panel had re-evaluated Adams 14's leadership, infrastructure, personnel, readiness and capacity to engage with and benefit from the assistance of an external partner, and the need for Adams 14 to remain in operation to serve students. The State Board denied Adams 14's motion to disqualify a particular State Board member based on that person's allegedly biased comments at a board meeting about Adams 14's leadership. Adams 14 alleges that the State Board also ruled that its motion in limine to exclude the Colorado Department of Education's evidence from the January 2022 State Board meeting was "out of order" because the meeting was not a hearing.[3]

¶11 Following a site visit conducted February 9–11, 2022, the State Review Panel issued a report giving Adams 14 its lowest rating across all five capacity level criteria and found "evidence of the need for drastic change." As a result, the Panel recommended the closure of at least one or more Adams 14 schools, district reorganization, or some combination of these options. The report recommended against continuing with an external manager because "current district leadership

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[2] The 2018 Order required that amendments to the Order be consistent with the State Board's authority under the Accountability Act. Sections 22-11-208(3) and 22-11-209(2)(b) of the Act include factors the State Review Panel must consider when recommending whether to appoint an external partner.

[3] Beyond Adams 14's complaint, the record contains no account of the Board's resolution of Adams 14's motion in limine.

does not want to be managed and is unable to work effectively with a management partner," even though "multiple stakeholders . . . [had] stated that Adams 14 [had] made progress under . . . [the Lead Partner]." At hearings in April and May of 2022, Adams 14 objected to the State Review Panel report's findings and submitted documentation supporting those objections. Adams 14 proposed a Three Year Turnaround Plan that involved the assistance of a particular external partner but did not delegate any decision-making authority to that partner.

¶12 After deliberating, the State Board issued an order (the "2022 Order") lifting the stay on the removal of Adams 14's accreditation and directing the district to reorganize.

II. Procedural History

¶13 Adams 14 sued the State Board to stop the reorganization and removal of accreditation, alleging that the 2022 Order caused staff and students to leave the district and triggered a downgrade in its bond rating. Adams 14 alleged injury based on various violations of procedural due process, local control provisions, and the Administrative Procedures Act ("APA"). It also alleged an equal protection claim on behalf of Adams 14 students.

¶14 The State Board moved to dismiss the complaint under C.R.C.P. 12(b)(1), arguing, as relevant here, that Adams 14 lacked standing to bring its claims under the political subdivision and third-party standing doctrines.

¶15 The district court granted the State Board's motion to dismiss. First, the district court applied the rule of *Martin*, citing this court's decision in *City of Greenwood Village*, 3 P.3d at 436. The district court ruled that (1) Adams 14 is a subordinate agency of the State Board in the context of the Education Accountability Act, and (2) no statutory or constitutional provision confers a right on Adams 14 to seek judicial review of the State Board's Order. Accordingly, the district court concluded that Adams 14 lacked standing to raise claims asserting injury to the district (its Second through Ninth Claims for Relief). The district court also determined that Adams 14 lacked third-party standing to assert an equal protection claim on behalf of its students (its First Claim for Relief) because it had failed to demonstrate injury to itself.

¶16 Adams 14 appealed the district court's ruling. The State Board petitioned this court for certiorari review under C.A.R. 50.[4]

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[4] The court granted certiorari review under C.A.R. 50 on the following issues:

1. [REFRAMED] Whether the district court erred in ruling that the political subdivision doctrine precludes Adams 14's constitutional claims against the State Board because Adams 14 is a subordinate agency under the Education Accountability Act, § 22-11-101, et seq., C.R.S. (2022).

2. [REFRAMED] Whether the local control provision in Colo. Const. art. IX, § 15, confers on Adams 14 the right to judicial review of the State Board's acts and conduct under the Education Accountability Act.

III. C.A.R. 50 Jurisdiction

¶17 We granted the State Board's 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. First, because questions regarding the contour and scope of the political subdivision doctrine have been raised in other pending cases, including in the companion case we decide today, *Weld County*, ¶ 1, __ P.3d at __,[5] resolution of these issues by this court will provide necessary guidance to state agencies and political subdivisions throughout the state. Second, it is particularly important to provide Adams 14 (along with its staff, students, and parents) swift resolution of the claims in this case so they may know whether Adams 14 will continue to exist as currently constituted or must be reorganized. *See Aurora Pub. Schs. v. A.S.*, 2023 CO 39, ¶ 21, 531 P.3d 1036, 1043 (granting review

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3. [REFRAMED] Whether the district court erred in ruling that Adams 14 cannot assert due process claims against the State Board.
4. [REFRAMED] Whether the district court erred in ruling that Adams 14 cannot assert third-party claims against the State Board on behalf of its students.

[5] These concerns were raised throughout the briefing in *Weld County*, the companion case decided today. However, given our holding here abandoning the political subdivision doctrine, we ultimately resolve the dispute in *Weld County* under the *Wimberly* test. *Weld County*, ¶¶ 1–2, 12–27, __ P.3d at __.

pursuant to C.A.R. 50 to provide swift resolution of time-sensitive questions to the parties and the affected individuals).

IV. Analysis

¶18 We begin with Colorado's standing test under *Wimberly*. We then recount the origin and development of Colorado's judicially created political subdivision doctrine. Next, we note that the modern political subdivision doctrine has generated substantial confusion as to its scope and applicability and explain that it is ultimately unnecessary because it is duplicative of *Wimberly*. Consequently, we abandon the political subdivision doctrine and the rule of *Martin*. Finally, we apply the *Wimberly* standing test to Adams 14's claims and conclude that it lacks standing to bring all of them. Accordingly, we affirm the district court's order dismissing Adams 14's claims, albeit on different grounds.

A. Standard of Review

¶19 "Whether a plaintiff has standing to sue is a question of law that we review de novo." *Barber v. Ritter*, 196 P.3d 238, 245 (Colo. 2008).

B. Legal Rule

¶20 As discussed more fully below, viewed in the context of current case law, the rule of *Martin* essentially operates as a specialized application of the prudential prong of the *Wimberly* standing test. *See, e.g.*, *City of Greenwood Vill.*, 3 P.3d at 437–38. In other words, the political subdivision doctrine and the rule of

Martin—which preceded this court's decision in *Wimberly*—have been effectively subsumed by *Wimberly*'s overarching two-part test for standing in Colorado.

1. *Wimberly* Standing Test

¶21 We begin with the current test for standing in Colorado. "In order for a court to have jurisdiction over a dispute, the plaintiff must have standing to bring the case." *Ainscough v. Owens*, 90 P.3d 851, 855 (Colo. 2004). For more than forty-five years, Colorado courts have applied the two-part test from *Wimberly*, 570 P.2d at 539, to determine whether a plaintiff satisfies both constitutional and prudential standing requirements. *See Mesa Verde Co. v. Montezuma Cnty. Bd. of Equalization*, 831 P.2d 482, 484 (Colo. 1992). To establish standing under *Wimberly*, a plaintiff must show "injury in fact to a legally protected interest as contemplated by statutory or constitutional provisions." 570 P.2d at 539.

¶22 *Wimberly*'s first requirement—that a plaintiff show "injury in fact" from the challenged action—is the constitutional prong of our standing jurisprudence. *City of Greenwood Vill.*, 3 P.3d at 437. It is "rooted in [a]rticle VI, section 1 of the Colorado Constitution, under which we limit our inquiry to the resolution of actual controversies," *id.* at 437–38, and in separation of powers principles, which "prevent[] courts from invading legislative and executive spheres," *Hickenlooper v. Freedom from Religion Found., Inc.*, 2014 CO 77, ¶ 9, 338 P.3d 1002, 1006.

¶23 *Wimberly*'s second requirement—that the plaintiff's alleged injury be to a right or interest that is protected by a statutory or constitutional provision, *Maurer v. Young Life*, 779 P.2d 1317, 1323–24 (Colo. 1989)—"reflects prudential considerations of judicial self-restraint." *Colo. Gen. Assembly v. Lamm*, 700 P.2d 508, 516 (Colo. 1985). "Claims for relief under the constitution, the common law, a statute, or a rule or regulation satisfy the legally-protected-interest requirement." *Hickenlooper*, ¶ 10, 338 P.3d at 1007.

2. Colorado's Political Subdivision Doctrine

¶24 The political subdivision doctrine has been described as a prudential standing limit that "operates to *preclude* standing [for political subdivisions] in certain instances." *Maurer*, 779 P.2d at 1323; *see also City of Greenwood Vill.*, 3 P.3d at 437–38. While "often identified with our decision in *Martin*," *City of Greenwood Vill.*, 3 P.3d at 438, the political subdivision doctrine dates back at least to our decision in *Board of County Commissioners v. Love*, 470 P.2d 861 (Colo. 1970). But as explained below, *Love*'s articulation of the political subdivision doctrine blended two independent lines of case law that did not directly support the doctrine's prudential limitation on standing.

a. History of the Political Subdivision Doctrine

i. Standing Precluded for Ministerial Officers (*Ames* Line of Cases)

¶25 The first line of cases concerned local officials who challenged state statutes or agency actions (or refused to enforce them), arguing they were unconstitutional. This line of cases, originating near the turn of the twentieth century with *People v. Ames*, 51 P. 426 (Colo. 1897), originally stood for the proposition that officials may not question the constitutionality of laws requiring them to take certain ministerial actions.

¶26 In *Ames*, a county assessor refused to extend a military poll tax upon the assessment roll. This court rejected the challenge, reasoning that it would be "dangerous to government" to allow purely ministerial officers to question the constitutionality of statutes requiring them to take certain actions. *Id.* at 430–31. Two years later, the court built on this ruling in *Ames v. People ex rel. Temple*, 56 P. 656 (Colo. 1899). There, a county assessor challenged a statute authorizing the State Board of Equalization to assess the value of railways in the state, arguing that vesting the power to assess property in an entity other than county assessors violated the Colorado Constitution. 56 P. at 658. This court observed that, as a general rule in mandamus proceedings, "courts refuse to determine the constitutionality of statutes affecting the rights of third parties, and grave questions of this character may not be raised by ministerial officers whose duty it

is to carry out statutory directions." *Id.* The court went on to observe that such officers "have no right to refuse to perform ministerial duties prescribed by law because of any apprehension on their part that others may be injuriously affected by it, or that the statute prescribing such duties may be unconstitutional." *Id.* The court then added that "[i]ndividuals who might be injuriously affected" by a statute may challenge it in court. *Id.* (first citing *Airy v. People*, 40 P. 362, 366 (Colo. 1895) ("[O]nly the one whose rights are affected by the determination of these questions, and who has some right to and interest in the defeat of the act, can raise them . . . ."); and then citing *Newman v. People*, 47 P. 278, 282 (Colo. 1896) (holding that a sheriff could not question the validity of a statute prescribing his duty to seize an illegal gambling machine, since "no person can attack the constitutionality of a statute whose right it does not affect, and who, therefore, has no interest in defeating it.")).

¶27 For the next sixty years, this court continued to cite *Ames* and its progeny for the general principle that a government official cannot challenge a statute or agency directing the official to fulfill ministerial duties. *See, e.g.*, *People ex rel. State Bd. of Equalization v. Pitcher*, 156 P. 812, 815 (Colo. 1916); *People ex rel. State Bd. of Equalization v. Hively*, 336 P.2d 721, 734–35 (Colo. 1959) ("[T]he Assessor here had no more standing to question the validity of the action of the Board [of Equalization] than a lower court has to question the validity of the mandate of a

reviewing court."). These cases were anchored in concerns about disruption to government functions, but also the notion that only a party who is "injuriously affected" by a law or agency action can challenge its validity.

ii. Governmental Immunity Applied to School Districts (*Florman* / *Newt Olson* Line of Cases)

¶28 The second line of cases undergirding Colorado's political subdivision doctrine originally stood for the proposition that school districts were immune from suit because they are "merely the instruments of the state government," which (at that time) enjoyed common law governmental immunity. *Newt Olson Lumber Co. v. Sch. Dist. No. 8 in Jefferson Cnty.*, 263 P. 723, 724 (Colo. 1928) (quoting *Florman v. Sch. Dist. No. 11*, 40 P. 469, 470 (Colo. App. 1895)

¶29 In *Florman*, a contractor sued a school district to enforce a mechanic's lien against a schoolhouse in the district. 40 P. at 469. Because the mechanic's lien was enforceable against the school district only to the extent of its ownership interest in the schoolhouse, the case turned on whether the school district was considered the owner of school property. *Id.* at 469–70. The court of appeals proceeded from the understanding that "[a] school district is a subdivision of the state for educational purposes" and the directors of the school district are "merely the instruments of the state government" for purposes of effectuating state school policy. *Id.* at 470. Because "school officers and school districts are merely the agencies through which [the state] acts," the court reasoned, "[w]e do not think

that either the school board or the school district is, within any definition of the term, the 'owner' of the school property." *Id.* Thus, the court held that the mechanic's lien was not enforceable against the school district. *Id.*

¶30 In *Newt Olson*, a nearly identical case involving a mechanic's lien held against school property, this court built upon the conclusion reached in *Florman* by extending the state's common law governmental immunity to the school district. 263 P. 723. This court first noted that *Florman* had characterized schools as mere subdivisions of the state. *Id.* at 724. Next, citing *Board of Commissioners v. Bish*, 33 P. 184, 184 (Colo. 1893), this court observed that counties enjoyed governmental immunity precisely because they were subdivisions of the state. 263 P. at 724. This court concluded that, as a subdivision of the state, the school district likewise enjoyed the state's immunity from suit. *Id.* Thus, the mechanic's liens were unenforceable against the school district absent a statute imposing such liability. *Id.*

¶31 Later decisions by this court cited *Florman* and *Newt Olson* for the same principles regarding the application of sovereign immunity to political subdivisions of the state. *See, e.g.*, *Colo. Inv. & Realty Co. v. Riverview Drainage Dist.*, 266 P. 501, 502–03 (Colo. 1928) (citing *Newt Olson* and concluding that a drainage district was *not* a state agency and therefore was not immune from suit); *cf. Hazlet v. Gaunt*, 250 P.2d 188, 191–94 (Colo. 1952) (discussing *Florman* and *Newt*

Olson, and holding that taxpayers lacked standing to challenge the reorganization of a school district because they had no property interest in their school district's property, which was ultimately owned by the state).

b. Creation and Development of Colorado's Political Subdivision Doctrine

¶32 This court blended the *Ames* and *Florman*/*Newt Olson* lines of cases when it articulated the political subdivision doctrine in *Love*. 470 P.2d at 862–64. There, a group of Dolores County officials brought several claims challenging property appraisals and reappraisal orders issued by the State Board of Equalization and the Colorado Tax Commission. *Id.* at 862. The court relied on the *Florman*/*Newt Olson* line of cases for the proposition that counties "exist[] only for the convenient administration of the state government, created to carry out the will of the state." *Id.* (citing, *inter alia*, *Colo. Inv. & Realty*, 266 P. 501). This court then combined this principle with case law holding that counties, school districts, and other political subdivisions possess only such powers as are expressly or implicitly conferred upon them by the constitution and statutes, and concluded that the county officials did not have standing to challenge findings and orders by the State Board of Equalization and the Colorado Tax Commission because "[n]o constitutional or statutory provision . . . grants any express or implied powers to [counties] to challenge in court [such] findings and orders." *Id.* at 862–63. The *Love* court buttressed its reasoning with the *Ames* line of cases, which holds that ministerial

officials cannot challenge orders directing their ministerial duties. *Id.* at 863–64 (quoting *Hively*, 336 P.2d at 734). Rather than focusing on whether the county officials had alleged an injury in fact, as we would do today under *Wimberly*, the *Love* court held that the counties did not have standing because they, as mere arms of the state, lacked the statutory or constitutional authority to sue the state. *Id.* at 863. Accordingly, the court affirmed the dismissal of the county's claims. In doing so, the court observed that although the *county officials* did not have standing, the taxpayers who may have been injured by the state's actions (who were not parties to the proceeding) might instead have standing to challenge the actions. *Id.* at 864.

¶33 Though *Love*'s holding was correct, its reasoning, which gave rise to the modern articulation of the political subdivision doctrine in Colorado, made questionable use of the *Florman* and *Ames* lines of case law. First, the court had never previously relied on either the *Florman* or *Ames* lines of cases to support a rule limiting standing for political subdivisions. Until *Love*, *Florman* and *Newt Olson* universally had been understood as limiting a school district's ability to *be sued*. *See, e.g.*, *Fisher v. Pioneer Constr. Co.*, 163 P. 851, 854 (Colo. 1917); *Sch. Dist. No.*

28 v. Denver Pressed Brick Co., 14 P.2d 487, 488 (Colo. 1932).[6] But the *Love* court instead relied on *Florman* and *Newt Olson* to preclude school districts from *suing*.

¶34 Second, the new political subdivision standing rule articulated in *Love* was unnecessary to reach its holding (that county officials did not have standing to challenge state actions based on alleged injury to taxpayers in the county). Analyzed under the traditional standing principles reflected in the *Ames* line of cases, the county officials in *Love* lacked standing because they could not show that they had suffered any injury from the challenged action. *See, e.g., Newman v. People*, 47 P. 278, 282 (Colo. 1896) ("[N]o person can attack the constitutionality of a statute whose right it does not affect, and who, therefore, has no interest in defeating it.").

¶35 In the decades that followed, this court extended its holding in *Love* to additional contexts. First, in *Board of County Commissioners v. State Board of Social Services*, 528 P.2d 244, 247–48 (Colo. 1974) ("*State Board of Social Services*"), the court held that a board of county commissioners could not challenge a rule promulgated by the State Board of Social Services requiring pay raises for county social services

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[6] Even *Evans v. Board of County Commissioners*, 482 P.2d 968, 970 (Colo. 1971), published the year after *Love* was decided, categorized *Florman* as a governmental immunity decision.

employees. Then, in 1976, the court handed down *Martin*, the decision that has become synonymous with the political subdivision doctrine.

¶36 In *Martin*, the Montrose Board of County Commissioners, acting in its capacity as the county board of social services, challenged the State Merit System Council's reinstatement of the director of the county's department of social services. 550 P.2d at 865. The district court denied the State Merit System Council's motion to dismiss the county board's claims for lack of standing. *Id.* In an original proceeding, this court reversed. *Id.* at 866. Adopting the court of appeals' reasoning in *Nadeau v. Merit System Council for County Departments of Social Services*, 545 P.2d 1061, 1063 (Colo. App. 1975) (relying on *State Board of Social Services* to hold that a county department of social services lacked standing to challenge the state merit system council's reinstatement of an employee), this court concluded that the county board "lack[ed] standing or any other legal authority to obtain judicial review of an action of a superior state agency" because the county board was "set up as a subordinate agency or arm of the state" and the governing statute did not authorize county boards to obtain judicial review of State Merit System Council actions. *Martin*, 550 P.2d at 865–66 (first citing *Nadeau*, 545 P.2d 1061; then citing *State Board of Social Services*, 528 P.2d 244; and then citing *Love*, 470

P.2d 861).[7] This holding created the rule of *Martin*, a two-part test that asks (1) whether the government entity seeking judicial review is subordinate to the entity whose decision is challenged, and (2) if so, whether any statutory or constitutional provision confers a right on the subordinate government entity to seek such judicial review.

¶37 In the years since, this court has applied the rule of *Martin* in various contexts while recognizing certain exceptions. *See, e.g.*, *Denver Ass'n for [Disabled] Child. v. Sch. Dist. No. 1 in City & Cnty. of Denver*, 535 P.2d 200, 204 (Colo. 1975) (applying the rule of *Martin* to school districts); *Denver Urb. Renewal Auth. v. Byrne*, 618 P.2d 1374, 1380–81 (Colo. 1980) (recognizing an exception to the rule of *Martin* for home rule cities); *accord City of Greenwood Vill.*, 3 P.3d at 438; *Bd. of Cnty. Comm'rs of Cnty. of Adams v. Colo. Dep't of Pub. Health & Env't*, 218 P.3d 336, 338, 344–46 (Colo. 2009) ("*CDPHE*") (applying the rule of *Martin* to a county board of commissioners and holding that a statute authorized suit challenging a state agency's approval of a hazardous waste permit).

¶38 At first, this court grounded the political subdivision doctrine in the idea that counties derive their existence and authority from the state, and they therefore

[7] Importantly, *Martin* made clear that while the county board lacked standing, nothing about the court's holding should be construed to bar an *aggrieved employee* from seeking judicial review of the State Merit System Council's personnel determinations. 550 P.2d at 866.

do not have the requisite authority to sue the state absent express authorization in the constitution or a statute. *See, e.g.*, *Love*, 470 P.2d at 862–63.

¶39 Later, as the court recognized certain circumstances in which statutory and constitutional provisions *did* authorize political subdivisions to seek judicial review, *see, e.g.*, *Maurer*, 779 P.2d at 1321; *Douglas Cnty.*, 829 P.2d at 1308–10; *Byrne*, 618 P.2d at 1381; *City of Colo. Springs v. State*, 626 P.2d 1122, 1126–27 (Colo. 1980), the court's rationale evolved to ground the political subdivision doctrine in prudential standing rules intended to preserve the separation of powers and avoid inserting the court into legislative matters or internecine executive branch disputes. *See, e.g.*, *Maurer*, 779 P.2d at 1323 ("The rule of *Martin* . . . operates to *preclude* standing in certain instances where we have concluded that absent contrary statutory authority, disputes between a subordinate and a superior state agency are properly to be resolved within the executive branch without resort to judicial review.").

¶40 Although our recent political subdivision doctrine cases have reasonably applied the rule of *Martin* in ways that reinforce key standing principles, the doctrine as articulated in *Love* and *Martin* was never directly supported by the precedent on which it claimed to rely. Moreover, over time, confusion has developed about the doctrine's scope and applicability, particularly regarding disputes over which entities qualify as subordinate agencies and in which

contexts. *Compare Romer*, 956 P.2d at 574 ("[A] county board is an agent of the state when it makes expenditures for social services."), *with CDPHE*, 218 P.3d at 345 ("[T]he [c]ounty is not a subordinate state agency with regard to the issuance (or non-issuance) of a [certificate of designation] . . . .").

3. Redundancy of the Political Subdivision Doctrine

¶41 To be sure, uncertainty regarding the precise scope of the political subdivision doctrine would not, standing alone, be a sufficient reason to jettison it. However, upon close review of cases applying the rule of *Martin*, we conclude that the rule is essentially subsumed by the legally protected interest prong of the two-part *Wimberly* test. Given that the doctrine and the rule have generated unnecessary confusion, we conclude it is best to abandon the doctrine and the rule as unnecessarily duplicative. *See People v. LaRosa*, 2013 CO 2, ¶¶ 2–3, 29–31, 293 P.3d 567, 570, 574–75 (abandoning the century-old judicially created corpus delicti rule because it was "originally erroneous," subsequent developments in case law made it unnecessary, and "abandoning the rule [would] do more good than harm.").

¶42 As noted above, the first prong of the rule of *Martin* asks whether the plaintiff is a "subordinate agency." If the answer is no, then the political subdivision doctrine does not apply. *See CDPHE*, 218 P.3d at 345–47. In other words, because the first prong functions only to *exclude* plaintiffs from the

doctrine's application entirely, any independent work done by the rule of *Martin* happens through its second step.

¶43 The second prong of the rule of *Martin* asks whether a statutory or constitutional provision confers upon the plaintiff a right to judicial review. But this prong essentially collapses into *Wimberly*'s "legally protected interest" inquiry. *See, e.g.*, *Maurer*, 779 P.2d at 1325. Indeed, to ask whether an interest is legally protected *is* to ask whether a statute or the constitution grants a person in the plaintiff's position the right to judicial relief. *State Bd. for Cmty. Colls. & Occupational Educ. v. Olson*, 687 P.2d 429, 434 (Colo. 1984) ("In essence, the question of standing is really an inquiry into 'whether the constitutional or statutory provision on which the claim rests properly can be understood as granting persons in the plaintiff's position a right to judicial relief.'" (quoting *Warth v. Seldin*, 422 U.S. 490, 500 (1975))).

¶44 A close inspection of several of our recent political subdivision doctrine decisions reveals that a *Wimberly* "legally protected interest" inquiry leads to the same outcomes as the second step of the rule of *Martin*. *See Maurer*, 779 P.2d at 1325 ("[T]he [plaintiff] may satisfy the prudential standing considerations by demonstrating that the harm [they] allegedly suffered is protected by a statutory or constitutional provision . . . ."); *Romer v. Fountain Sanitation Dist.*, 898 P.2d 37, 40 (Colo. 1995) ("[A]n exception to the general rule [of *Martin*] is recognized when

subordinate political subdivisions are constitutionally or by statute granted express or implied authority to file a civil action against the state."); *City of Greenwood Vill.*, 3 P.3d at 438 (holding that article XX, section 6 of the Colorado Constitution would give the City of Greenwood Village both a legally protected interest under *Wimberly* and the authority to seek judicial review under *Martin*); *CDPHE*, 218 P.3d at 338 (holding that the same statutes satisfy both the second step of the *Wimberly* analysis and the second step of the rule of *Martin*).

¶45 To be sure, certain prudential considerations that animate the modern understanding of Colorado's political subdivision doctrine still hold force. Courts must respect the separation of powers and the lawful administrative processes the General Assembly has established for resolving disputes regarding actions taken by executive agencies. *See Romer*, 956 P.2d at 573 (noting that the doctrine exists so courts avoid intruding into matters committed to resolution in another branch of government); *Maurer*, 779 P.2d at 1337 (Mullarkey, J., concurring in part and dissenting in part) (The rule of *Martin* "is premised on . . . the legislature's ability to define the relationships between subordinate state entities [and to] . . . create a hierarchy between agencies and provide that one agency's decision is final and unappealable by another agency."). But these objectives are readily accomplished through the second prong of *Wimberly*, which requires the plaintiff to identify a

statutory or constitutional provision authorizing courts to protect the interest or right they claim has been injured.

¶46 Because the "legally protected interest" inquiry essentially subsumes any independent work done by the rule of *Martin*, we conclude that the political subdivision doctrine may be abandoned. We hold that subordinate state agencies, political subdivisions, and officials raising claims challenging a government entity's decision are not subject to any specialized standing test in addition to the *Wimberly* test; instead, the court should conduct a *Wimberly* analysis, and that should be the end of its standing inquiry.

C. Application

¶47 Having established that *Wimberly* supplies the sole test for standing, we apply *Wimberly*'s two-pronged test to Adams 14's claims. Adams 14 makes four sets of claims, each purporting to allege injuries to distinct legally protected interests. We discuss these assertions in turn, concluding that none assert an injury in fact to a legally protected interest. Accordingly, we affirm the dismissal of Adams 14's complaint for lack of standing.

1. Local Control Claims

¶48 In its Eighth and Ninth Claims for Relief, Adams 14 alleges that the State Board violated the local control provision of the Colorado Constitution, article IX, section 15, when it: (1) directed the State Review Board to evaluate the district's

leadership, and (2) reviewed the district's contracts between the district and its Lead Partner. Assuming that Adams 14 has a legally protected interest in the local control of instruction in its public schools, we conclude that it has not alleged an injury in fact to that interest.

¶49 Article IX, section 15 provides that school district boards of education[8] "shall have control of instruction in the public schools of their respective districts." This provision must be read in conjunction with article IX, section 1, *Bd. of Educ. of Sch. Dist. No. 1 in City & Cnty. of Denver v. Booth*, 984 P.2d 639, 646 (Colo. 1999), which vests "general supervision of the public schools of the state" in the State Board. Colo. Const. art. IX, § 1(1). "[T]he constitutional framers contemplated general supervision to include direction, inspection, and critical evaluation of Colorado's public education system from a statewide perspective, . . . and . . . they intended the General Assembly to have broad but not unlimited authority to delegate to the State Board 'powers and duties' consistent with this intent." *Booth*, 984 P.2d at 648 (quoting Colo. Const. art. IX, § 1(1)). In contrast, a school district's control of instruction "requires power or authority to guide and manage both the

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[8] Although the constitutional language speaks of the directors of school boards, districts act through the directors of their board, and our case law speaks of boards and districts interchangeably when analyzing their legally protected interest in local control of instruction. *See, e.g.*, *Byrne*, 618 P.2d at 1380 ("We first consider whether the school district and its board members have a legally protected interest within a statutory or constitutional sense.").

action and practice of instruction as well as the quality and state of instruction," *id.*, which includes the "ability to implement, guide, or manage the [district's] educational programs" and ultimate decision-making authority in specific teacher employment decisions, *id.* at 649. Collectively, these provisions require "balancing the local board's interest in exercising control over instruction with the State Board's interest in asserting its general supervisory authority." *Id.* at 646.

¶50 Assuming Adams 14's interest in retaining control over instruction in its schools is "a legal right protected by statutory or constitutional provision," *Wimberly*, 570 P.2d at 539, none of the challenged actions cause injury in fact to Adams 14's control of instruction in its schools. Adams 14 does not explain how the State Board's review of the district's leadership or its contract with its Lead Partner hindered Adams 14's ability to guide and manage the instruction in its schools. Moreover, the State Board actions that Adams 14 challenges are expressly permitted or required by the Education Accountability Act, the facial legality of which Adams 14 does not challenge. *See* § 22-11-209(2)(a), (b)(I) (instructing the State Board to assign the State Review Panel to evaluate a low-performing school district's performance, including "[w]hether the school district's . . . leadership is adequate to implement change to improve results"); § 22-11-209(2)(a)(I)(B) (authorizing the State Board to require a low-performing school district to contract with an external "lead partner" to "partially or wholly manage one or more of the

district public schools”). We do not see how the State Board's actions constitute an injury in fact to Adams 14's control of instruction in its schools; instead, the State Board's actions appear to be a mere exercise of the general supervisory "powers and duties" delegated to the State Board by the General Assembly. Colo. Const. art IX, § 1(1). Accordingly, Adams 14's local control claims fail the constitutional "injury in fact" prong of the *Wimberly* test.

2. Education Accountability Act and APA Claims

¶51 In its Third and Fourth Claims for Relief, Adams 14 challenges the processes the State Board followed to remove the district's accreditation and order its reorganization, arguing the State Board violated the Education Accountability Act. And in its Second and Seventh Claims for Relief, Adams 14 alleges that the State Board violated the APA by failing to properly consider various sources of information before reaching its final decision regarding the district. We conclude that Adams 14 does not have a legally protected interest in procedures proscribed by either the Education Accountability Act or the APA.

¶52 A statute may generally vest an agency or a political subdivision—here, the school district—with a legally protected interest in one of two ways: (1) by directly authorizing the school district to seek judicial review of an agency action; or (2) by expressly incorporating the protections of the APA, which provide the right to seek judicial review of agency decisions. *CDPHE* offers an example of the former.

In that case, a provision of the Low-Level Radioactive Waste Act provided that "'any person aggrieved and affected' by [agency] action 'is entitled to judicial review.'" 218 P.3d at 346 (quoting § 25-1-113(1), C.R.S. (2023)); *see also Douglas Cnty.*, 829 P.2d at 1308. Our decision today in *Weld County*, provides an example of the latter. There, a provision of the Air Act incorporates the APA by stating that "[a]ny final order or determination by the division or the commission shall be subject to judicial review in accordance with the provisions of this article and the provisions of [the APA]." *Weld County*, ¶ 16, __ P.3d at __.

¶53 Here, the Education Accountability Act offers neither. It does not confer on school districts the right to seek judicial review, nor does it incorporate the protections of the APA. The only appeal contemplated under the Act is an appeal to the *State Board*; the Act does not otherwise mention any right of review. *See* § 22-11-209(4)(a); *see also Booth*, 984 P.2d at 648 (describing how the General Assembly's original delegation of powers to the State Board made it the "final arbiter of disputes involving local boards"). Accordingly, Adams 14's claims that the State Board violated the Education Accountability Act and the APA fail the prudential "legally protected interest" prong of the *Wimberly* test.

3. Procedural Due Process Claims

¶54 In its Fifth and Sixth Claims for Relief, Adams 14 alleges that the State Board violated its statutory due process rights under the APA and its constitutional

procedural due process rights by (1) hearing evidence from the Colorado Department of Education, and refusing to hear evidence from Adams 14, regarding the district's performance; and (2) refusing to disqualify a certain State Board member from participating in the decision-making process concerning Adams 14.

¶55 In *Romer*, this court explicitly rejected the argument that the APA itself provides substantive legal rights that form the basis of a claim for relief:

> [T]he APA does not create substantive legal rights on which a claim for relief can be based. That is, such substantive legal rights must exist either by statutory language, by the agency's rules and regulations, or by some constitutional command. . . . [The APA] simply addresses the procedures of review available once it is properly established that the dispute is justiciable pursuant to some other statutory grant.

956 P.2d at 576–77; *see also Weld County*, ¶ 16, __ P.3d at __.

¶56 As discussed above, the Education Accountability Act neither incorporates the protections of the APA nor expressly confers on school districts the right to seek judicial review of State Board actions, and Adams 14 does not point to any other statute that confers any statutorily protected due process right. The Act here stands in contrast to the statute at issue in *Weld County*, which provides: "Any final order or determination by the division or the commission shall be subject to judicial review in accordance with the provisions of this article and the provisions of [the APA]." § 25-7-120, C.R.S. (2023).

¶57 Neither does Adams 14 have constitutionally protected procedural due process rights during State Board proceedings. Political subdivisions do not have any rights under the federal constitution. *Williams v. Mayor & City Council of Baltimore*, 289 U.S. 36, 40 (1933); *Kerr v. Polis*, 20 F.4th 686, 696–97 (10th Cir. 2021). And as the district court explained, Adams 14 is not a "person" under the due process clause of the Colorado Constitution and thus may not claim its protections. *Dist. 50 Metro. Recreation Dist. v. Furbush*, 441 P.2d 645, 646 (Colo. 1968) (holding that the equal protection clauses of the United States and Colorado constitutions were not designed to protect political subdivisions from state action);[9] *Enger v. Walker Field*, 508 P.2d 1245, 1249 (Colo. 1973) ("A municipal corporation, whether statutory or created under the constitution, has no privileges or immunities under the state constitution."); *Lujan v. Colo. State Bd. of Educ.*, 649 P.2d 1005, 1020 (Colo. 1982) (holding that school districts are not "persons" for purposes of Colorado's equal protection guarantee).[10]

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[9] Adams 14 contends that school districts have procedural due process interests in their property, as recognized by this court's ruling in *School District No. 23 (Independence) Weld County v. School Planning Committee*, 361 P.2d 360 (Colo. 1961). We now clarify that *Furbush*, decided seven years later, abrogated that aspect of *School District No. 23*.

[10] Because Colorado's constitution does not contain an equal protection provision, we find such rights in article II, section 25's due process protections and interpret its terms to have the same meaning in the context of both equal protection and procedural due process claims. *See Lujan*, 649 P.2d at 1014.

¶58 We note that even if Adams 14 had alleged sufficient injury in fact to its rights under the local control provision of the Colorado Constitution, that would not confer standing to raise separate procedural claims, as counsel for Adams 14 contended at oral argument. A plaintiff cannot establish standing by alleging injury to one legally protected interest and then shoehorn in distinct procedural claims that do not involve injuries to that substantive right. *See Romer*, 956 P.2d at 572 ("The *Wimberly* test of standing is satisfied if: (1) the plaintiff was injured in fact; and (2) *that* injury was to a legal right protected by statutory provisions which allegedly have been violated." (emphasis added)).

¶59 Because Adams 14 cannot point to a statutory or constitutional provision protecting the procedural due process rights it claims were violated, it fails the prudential "legally protected interest" prong of *Wimberly* and thus lacks standing to bring its Fifth and Sixth Claims for Relief.

4. Third-Party Claim

¶60 In its First Claim for Relief, Adams 14 alleges that the State Board's use of cut scores to measure district performance under the Education Accountability Act "results in public school districts that have majority-minority student populations and who are poor being placed on the accountability clock, which then places those public school districts in danger of having punitive action taken against them, such as removal of accreditation or reorganization." This, the district

contends, violates the equal protection rights of the economically disadvantaged, non-white, non-English speaking students in Adams 14 and other school districts' majority-minority student populations. We disagree.

¶61 Any party seeking to assert claims on behalf of a third party must first demonstrate that they themselves have suffered an injury in fact caused by the application of the statute that they seek to challenge. *Augustin v. Barnes*, 626 P.2d 625, 628 (Colo. 1981). And although both tangible and intangible injuries can satisfy the injury in fact requirement, "'an injury that is overly indirect and incidental to the defendant's action' will not convey standing, nor will the remote possibility of a future injury." *Hickenlooper*, ¶ 9, 338 P.3d at 1006–07 (quoting *Ainscough*, 90 P.3d at 856). This requirement exists to ensure concrete adverseness and effective advocacy of the rights allegedly violated. *City of Greenwood Vill.*, 3 P.3d at 439 (citing *Singleton v. Wulff*, 428 U.S. 106, 113–14 (1976)).

¶62 In Adams 14's First Claim for Relief, it has not alleged any injury to itself caused by the State Board's use of cut scores to measure district performance. Assuming the use of cut scores to measure school district performance does indeed result in districts with poor, majority-minority student populations receiving low accreditation ratings, that does not constitute injury in fact to Adams 14. A school district is not injured by receiving a low accreditation rating. A low accreditation rating means that the district will receive additional resources from the state to

facilitate improved performance—a process intended to *help* districts and their students, not harm them. Such an action does not constitute an injury in fact. Moreover, many intervening steps must take place (or fail to take place) before such a school district loses its accreditation or is reorganized. Adams 14 has not alleged that the State Board's use of cut scores caused any of those intervening steps to be taken against it. Thus, the potential injury of reorganization or the loss of accreditation is "overly indirect and incidental" and too far removed from the State Board's use of cut scores—the alleged unconstitutional application of the Education Accountability Act—to constitute an injury in fact.

¶63 Accordingly, since Adams 14 has failed to allege an injury in fact to the district caused by the alleged unconstitutional application of the Education Accountability Act, we conclude that it does not have standing to bring such claims on behalf of its students, and we need not determine whether it satisfies any of the three exceptions to the general rule precluding third-party claims. *See City of Greenwood Vill.*, 3 P.3d at 439 ("We recognize exceptions to this rule when the party before the court can establish one of three circumstances: (1) the existence of a substantial relationship between the party before the court and the third party; (2) the difficulty or improbability of the third party in asserting an alleged deprivation of his or her rights; or (3) the need to avoid dilution of third-party rights in the event that standing is not permitted.").

V. Conclusion

¶64 Today we abandon the political subdivision doctrine and the rule of *Martin*. Subordinate state agencies, political subdivisions, and officials challenging a government entity's decision need not satisfy any additional standing inquiry beyond the *Wimberly* test that applies to all other plaintiffs. The *Wimberly* test, particularly its "legally protected interest" prong, sufficiently addresses the important prudential concerns that animated the development of the political subdivision doctrine as articulated by the rule of *Martin*.

¶65 Here, Adams 14 has failed to satisfy the *Wimberly* standing test for each of its claims. Accordingly, we affirm the district court's order granting the State Board's motion to dismiss, albeit on different grounds.