SUMMARY
November 3, 2022

2022COA130

No. 21CA2032, *Env't Def. Fund v. Colo. Dep't of Pub. Health* — Public Health and Environment — Colorado Air Pollution Prevention and Control Act — Greenhouse Gas Emissions — Data Collection

In May, 2019, Governor Polis signed into law House Bill 1261 and Senate Bill 96. Codified, as pertinent here, under sections 25-7-102, -105, and -140, C.R.S. 2022, these complementary bills articulate the threats climate change poses to Colorado, identify the importance of addressing those threats by reducing greenhouse gas (GHG) emissions, and delineate statewide GHG emission reduction goals through 2050.

In a matter of first impression, a division of the Colorado Court of Appeals is required to interpret subsection 25-7-140(2)(a)(III). Finding the statutory language ambiguous, the division concludes

that based on the language of the entire statute, the larger statutory scheme, and pertinent legislative history, subsection 25-7-140(2)(a)(III) only requires the relevant Agencies to propose regulations by July 1, 2020, that pertain to the collection and maintenance of GHG-emissions data and corresponding statewide inventories. Because the Agencies have done so, we conclude they have satisfied the subsection 25-7-140(2)(a)(III) rulemaking requirement.

COLORADO COURT OF APPEALS **2022COA130**

Court of Appeals No. 21CA2032
City and County of Denver District Court No. 20CV32320
Honorable Christopher J. Baumann, Judge

Environmental Defense Fund and WildEarth Guardians,

Plaintiffs-Appellants,

v.

Colorado Department of Public Health and Environment, Colorado Air Quality Control Commission, and Colorado Air Pollution Control Division,

Defendants-Appellees,

and

Public Service Company of Colorado,

Intervenor-Defendant and Appellee.

JUDGMENT AFFIRMED

Division III
Opinion by JUDGE FOX
Tow and Yun, JJ., concur

Announced November 3, 2022

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¶ 1 Plaintiffs, Environmental Defense Fund and WildEarth Guardians (collectively, Plaintiffs), appeal the district court's order granting summary judgment to defendants, Colorado Department of Public Health and Environment (Department), Colorado Air Quality Control Commission (Commission), and Colorado Air Pollution Control Division (Division) (collectively, Agency Defendants). We affirm on grounds different from those relied on by the district court. *See Igou v. Bank of Am., N.A.*, 2020 COA 15, ¶ 9.

I. Factual, Legal, and Procedural Background

¶ 2 On May 30, 2019, Governor Jared Polis signed into law House Bill 19-1261, 72d Gen. Assemb., 1st Reg. Sess. (Colo. 2019) (H.B. 1261), and Senate Bill 19-096, 72d Gen. Assemb., 1st Reg. Sess. (Colo. 2019) (S.B. 96). These complementary bills seek to reduce statewide greenhouse gas (GHG) emissions and represent an important component of the General Assembly's effort to combat climate change. This case requires us to interpret how these bills affect one another.

¶ 3 H.B. 1261 is titled "An act concerning the reduction of [GHG] pollution, and, in connection therewith, establishing statewide [GHG] pollution reduction goals and making an appropriation." As

relevant here, it is codified as sections 25-7-102 and -105, C.R.S. 2022.

¶ 4 Section 25-7-102 identifies the current and future threats posed by climate change and the importance of addressing those threats by reducing GHG emissions. Accordingly, it directs that

> Colorado shall strive to increase renewable energy generation and eliminate statewide [GHG] pollution by the middle of the twenty-first century and *have goals of achieving, at a minimum, a twenty-six percent reduction in statewide [GHG] pollution by 2025, a fifty percent reduction in statewide [GHG] pollution by 2030, and a ninety percent reduction in statewide [GHG] pollution by 2050*.

§ 25-7-102(2)(g) (emphasis added). These GHG emission reduction targets (i.e., for 2025, 2030, and 2050) are the primary goals of H.B. 1261.

¶ 5 Section 25-7-105 lays out the Commission's duties that arise from section 25-7-102. The Commission's primary responsibility is to promulgate rules and regulations that effectuate the goals articulated in section 25-7-102(2)(g). Thus, "[c]onsistent with section 25-7-102(2)(g), the commission shall *timely promulgate implementing rules and regulations*." § 25-7-105(1)(e)(II) (emphasis added); *see also* § 25-7-105(1) ("[T]he commission shall promulgate

rules that are consistent with the legislative declaration set forth in section 25-7-102 . . . .").

¶ 6 Section 25-7-102(2)(g)'s GHG emission reduction goals are far-reaching in nature, and the policies deployed to reach these targets will touch nearly all parts of Colorado's political, economic, and social fabric. For this reason, subsections (1)(e)(III), (IV), (VIII), and (IX) of section 25-7-105 specify various forms of stakeholder engagement the Commission must perform as it promulgates its rules, and delineate reporting requirements that certain entities must complete.[1] Such stakeholder engagement includes identifying and working with disproportionately affected communities, § 25-7-105(1)(e)(III), and soliciting input from various state agencies, stakeholders, and members of the public most impacted by the anticipated regulations, § 25-7-105(1)(e)(IV). Such reporting requirements mandate, for example, that certain energy utilities submit clean energy plans to the Commission by December 31, 2021. § 25-7-105(1)(e)(VIII)(J).

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[1] Although not directly relevant here, section 25-7-105(1)(e)(V)-(VI), C.R.S. 2022, also provides the Commission with a complex scheme of mandatory and nonmandatory substantive considerations to consult in issuing its regulations.

¶ 7 S.B. 96, by contrast, is titled "An act concerning the collection of [GHG] emissions data to facilitate the implementation of measures that would most cost-effectively allow the state to meet its [GHG] emissions reduction goals, and, in connection therewith, making an appropriation." It is codified as section 25-7-140, C.R.S. 2022.

¶ 8 Section 25-7-140 opens by declaring that "it is in the state's interest to leverage data collected and analyses conducted for its [GHG] emissions inventories and forecasts and make data sets available to local governments." § 25-7-140(1)(b). Building on this priority, the statute first requires the Commission to take various steps to ensure that GHG-emitting entities monitor and report their emissions and to tailor such reporting requirements to fill any existing data gaps. § 25-7-140(2)(a)(I). Second, the statute directs the Division (under direction of the Commission) to regularly update statewide inventories on GHG emissions by sector and to make such data inventories public. § 25-7-140(2)(a)(II). Third, and most relevant in this case, the bill provides that

> [b]y July 1, 2020, [the Commission shall] publish a notice of proposed rule-making that proposes rules to *implement measures* that

> would cost-effectively *allow the state to meet* its [GHG] emission reduction goals.

§ 25-7-140(2)(a)(III) (emphases added).

¶ 9 On July 7, 2020, WildEarth Guardians sued the Governor and Agency Defendants, seeking declaratory and injunctive relief for the Agency Defendants' purported failure to abide by section 25-7-140(2)(a)(III)'s July 1, 2020, deadline.[2] The Environmental Defense Fund's identical lawsuit against Agency Defendants was consolidated with WildEarth Guardian's, and the Public Service Company of Colorado intervened.

¶ 10 By stipulation, Agency Defendants conceded that they had not proposed rules or promulgated regulations since the passage of H.B. 1261 and S.B. 96 that would, if complied with, be enough to meet the overarching GHG reduction goals. Soon thereafter, Plaintiffs moved for summary judgment. Plaintiffs argued that section 25-7-140(2)(a)(III) unambiguously requires Agency Defendants to promulgate rules "sufficient" to meet the GHG reduction goals articulated in section 25-7-102(2)(g). Because

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[2] The claims against the Governor were later dismissed without prejudice by stipulation of the parties.

Agency Defendants conceded that such comprehensive rules had not been promulgated, Plaintiffs reasoned, they violated section 25-7-140(2)(a)(III).

¶ 11 Agency Defendants filed a cross-motion for summary judgment. They argued that section 25-7-140(2)(a)(III) was ambiguous and that, given the purpose and larger statutory scheme, it only required the Agency Defendants to take "first steps" toward meeting the overarching GHG reduction goals. More precisely, they argued that section 25-7-140(2)(a)(III)'s proposed rulemaking deadline refers to data collection and inventory regulations that would, in turn, be used to inform the broader rules and regulations required by section 25-7-105(1), (1)(e)(II).

¶ 12 The district court ruled in favor of Agency Defendants. In so doing, it concluded that section 25-7-140(2)(a)(III) is ambiguous and that the July 1, 2020, rulemaking requirement concerns data collection and inventory regulations — and not, as Plaintiffs contended, comprehensive rules "sufficient" to meet section 25-7-102(2)(g)'s GHG emission reduction goals. Because the Agency Defendants had in fact promulgated rules that took steps to ensure

more robust data collection and statewide inventory, the court determined they had satisfied section 25-7-140(2)(a)(III)'s deadline.

II. Applicable Law and Standard of Review

¶ 13 When construing a statute, our primary purpose is to ascertain and effectuate the General Assembly's intent. *Ford Motor Co. v. Forrest Walker*, 2022 CO 32, ¶ 18. To that end, we "read the statute's words and phrases in accordance with their plain and ordinary meaning." *Id.* Additionally, "we look to the entire statutory scheme in order to give consistent, harmonious, and sensible effect to all of its parts, and we avoid constructions that would render any words or phrases superfluous or that would lead to illogical or absurd results." *Id.* (citation omitted); *see also AviComm, Inc. v. Colo. Pub. Utils. Comm'n*, 955 P.2d 1023, 1031 (Colo. 1998) ("[T]he intention of the legislature will prevail over a literal interpretation of the statute that leads to an absurd result.").

¶ 14 If the statutory language is clear and unambiguous, no further statutory analysis is permitted. *See Dep't of Revenue v. Agilent Techs., Inc.*, 2019 CO 41, ¶ 16. If, however, "the words chosen by the legislature are unclear in their common understanding, or capable of two or more constructions leading to different results,

the statute is ambiguous." *State v. Nieto*, 993 P.2d 493, 500-01 (Colo. 2000).

¶ 15 When a statute is ambiguous, we may consult the legislative history to ascertain the General Assembly's intent. *See* § 2-4-203(1), C.R.S. 2022.

¶ 16 Statutory interpretation is a question of law that we review de novo. *Ford Motor Co.*, ¶ 17.

III. Discussion

¶ 17 We first address whether section 25-7-140(2)(a)(III) is ambiguous and conclude that it is. After analyzing the plain meaning of the operative provisions, we consult the language of the entire statute, the overarching statutory scheme, and the pertinent legislative history to ascertain the statute's intended meaning. *See* § 2-4-203(1). Once we discern this intended meaning, we conclude that the Agency Defendants' actions are consistent with section 25-7-140(2)(a)(III)'s rulemaking requirement.

A. The Meaning of Section 25-7-140(2)(a)(III)

¶ 18 To reiterate, section 25-7-140(2)(a)(III) requires the Commission to publish a notice of proposed rulemaking to "implement measures" that would cost-effectively "allow the state to

meet" its GHG emission reduction goals. The meaning of this language is critical to our interpretation of the entire section because it outlines the scope of the Commission's duty. Without knowing the scope of the Commission's responsibilities, we cannot evaluate whether the Commission satisfied that duty vis-a-vis regulatory action.

¶ 19 According to Plaintiffs, rules that "allow the state to meet" its GHG reduction goals inexorably means the same thing to any reasonable reader. We think otherwise.

¶ 20 The phrase's ambiguity is evident in Plaintiffs' own shifting interpretation. In the district court, Plaintiffs argued that the phrase means rules that are "sufficient" to meet the GHG reduction goals. Yet on appeal, Plaintiffs contend that the phrase means rules that "make it possible" to meet the GHG reduction goals. The distinction is critical. Whereas rules that are "sufficient" *would be enough* to meet the state's GHG emission reduction goals, rules that "make it possible" *may be enough* to meet those goals. Similarly, a rule that is "sufficient" may stand alone, while rules that "make it possible" may need other complementary regulatory action to achieve their goal.

¶ 21 To be sure, both "sufficient" and "make it possible" are reasonable interpretations of the phrase "allow the state to meet." But that fact simply underscores the essential point — namely, that the phrase is unclear based on its common meaning. *Nieto*, 993 P.2d at 500-01. What is more, these competing constructions would impose distinct duties on the Commission, yet another marker of ambiguity. *Id.*

¶ 22 Although the parties' briefing does not focus on the accompanying term "implement measures," we also find this phrase susceptible of more than one reasonable interpretation. For instance, it is plausible to interpret the "measures" as referring to data collection measures, emission abatement measures, or both. These competing, reasonable interpretations of this phrase also highlight the section's ambiguity. *Id.*

¶ 23 The malleability of the phrases "implement measures" and "allow the state to meet" suggests that section 25-7-140(2)(a)(III) is ambiguous. The rest of the statute's text, the larger statutory scheme, and the pertinent legislative history help us ascertain the meaning of this section.

¶ 24 The text of section 25-7-140 evidences a focus on data collection. First, the bill's title specifically deals with "*the collection of [GHG] emissions data* to facilitate the implementation of measures that would most cost-effectively allow the state to meet its [GHG] emissions reduction goals." (Emphasis added.) Although the title does not dictate a statute's ultimate meaning, we may consult it to ascertain the General Assembly's intent. *See Martinez v. Cont'l Enters.*, 730 P.2d 308, 313 (Colo. 1986). Here, the title suggests that the Commission must collect such data to inform other rulemaking efforts. Likewise, the legislative declaration points in a similar direction, specifying that "it is in the state's interest *to leverage data collected and analyses conducted for its [GHG] emissions inventories*." § 25-7-140(1)(b) (emphasis added). A statute's stated purpose is probative of its ultimate meaning. *See Walgreen Co. v. Charnes*, 819 P.2d 1039, 1044 (Colo. 1991). In this instance, the stated purpose indicates that the duties outlined therein include data collection. Finally, the substance of section 25-7-140(2)(a)(I)-(II) concerns shoring up GHG emission data collection and maintaining state inventories for the same.

¶ 25 Taken together, these indicia show that section 25-7-140(2)(a)(III) requires the Commission to propose rules that implement measures — meaning more than one measure — related to data collection and the corresponding statewide inventories. While Plaintiffs urge an expedited process yielding comprehensive rules for attaining the overarching GHG emission reduction goals, nothing in the statute prevents the Commission from approaching the state's GHG emission challenge in stages.

¶ 26 The larger statutory context reinforces our interpretation that section 25-7-140(2)(a)(III) contemplates data collection-specific rulemaking. Foremost, the Commission's overarching rulemaking duty for achieving section 25-7-102(2)(g)'s GHG emission reduction goals is located in another part of the statutory scheme — specifically, in section 25-7-105(1)(e)(II).[3] That section mandates that, "[c]onsistent with section 25-7-102(2)(g), the commission *shall timely promulgate implementing rules and regulations*." § 25-7-

[3] We know this because the title of section 25-7-105 concerns the "duties of commission" and because section 25-7-105(1) directs, in the first sentence, that the "commission shall promulgate rules that are consistent with the legislative declaration set forth in section 25-7-102."

105(1)(e)(II) (emphasis added). This matters because if we accepted Plaintiffs' interpretation that section 25-7-140(2)(a)(III) establishes the Commission's primary rulemaking duty, it would render section 25-7-105(1)(e)(II)'s "timely promulgate" language superfluous. Plaintiffs' interpretation thus arguably contravenes a well-settled principle of statutory interpretation that we construe statutes "so as to give consistent, harmonious, and sensible effect to all its parts." *See Nieto*, 993 P.2d at 501 (quoting *People v. Dist. Ct.*, 713 P.2d 918, 921 (Colo. 1986).).

¶ 27 Plaintiffs' interpretation would also lead to absurd results across the broader statutory scheme. As discussed, subsections (1)(e)(III)-(IV) of section 25-7-105 direct the Commission to participate in extensive stakeholder engagement before issuing a notice of proposed rulemaking. Recall that a mere thirteen months separated the passage of H.B. 1261 and S.B. 96 and section 25-7-140(2)(a)(III)'s July 1, 2020, deadline. So, if we were to adopt Plaintiffs' interpretation, the Commission would effectively be denied the opportunity to perform the statewide, multi-faceted stakeholder engagement required by section 25-7-105(1)(e)(III)-(IV). *See Butler v. Bd. of Cnty. Comm'rs*, 2021 COA 32, ¶¶ 35-36

(avoiding absurd results). Similarly, section 25-7-105(1)(e)(VIII)(J) requires certain utilities to submit clean energy plans by December 31, 2021, that will in turn inform the Commission's continuing rulemaking. Under Plaintiffs' reading of section 25-7-140(2)(a)(III), however, the Commission would have been required to issue a notice of proposed rulemaking for this sector before receiving these clean energy plans. *See Butler*, ¶¶ 35-36.

¶ 28 These two nonexhaustive examples underscore what is perhaps the most fundamental absurdity — namely, that if we were to accept Plaintiffs' interpretation of section 25-7-140(2)(a)(III), the Commission would be compelled to issue a notice of proposed rulemaking *before* it is able to collect and establish a robust data inventory on the existing status of GHG emissions statewide. Such an interpretation could undermine the central purpose of section 25-7-140 as a whole. *See Johnson v. Sch. Dist. No. 1*, 2018 CO 17, ¶ 19.

¶ 29 Finally, the legislative history further bolsters our conclusion that section 25-7-140(2)(a)(III) imposes a less comprehensive rulemaking duty than Plaintiffs espouse. For example, in a statement on the Senate Floor, Senator Kerry Donovan (one of S.B.

96's primary sponsors) noted that "[t]his bill collects data . . . . That's all it is." 2d Reading on S.B. 19-096 before the S., 72d Gen. Assemb., 1st Reg. Sess. (Apr. 18, 2019). Similarly, before introducing the bill on the House floor, Representative Chris Hansen (S.B. 96's primary sponsor in the House) remarked, "This is our chance to make sure we have a comprehensive inventory for the state of climate change data. It is a very modest investment to make sure we have a complete data set." 2d Reading on S.B. 19-096 before the H., 72d Gen. Assemb., 1st Reg. Sess. (May 1, 2019). These statements reflect that the General Assembly intended section 25-7-140(2)(a)(III) to require rulemaking focusing on data collection to help inform GHG emission abatement regulations — a far cry from Plaintiffs' theory that the section requires the Commission to propose, in one fell swoop and presumably via a one-size-fits-all scheme, comprehensive GHG emission reduction rules for all GHG emitters.

¶ 30 All told, we conclude that, owing to the language of the full statute, the broader statutory scheme, and the legislative history, section 25-7-140(2)(a)(III) allows the Commission to first propose rules related to data collection systems and statewide GHG

inventories that seek to realize the goals of section 25-7-102(2)(g). With that in mind, we turn to the related question of whether the Agency Defendants have satisfied that duty.

B. Fulfillment of Section 25-7-140(2)(a)(III)'s Rulemaking Duty

¶ 31 Following the passage of H.B. 1261 and S.B. 96, Agency Defendants promulgated a rule directly related to GHG emission data reporting and collection.[4] This rule establishes "mandatory [GHG] monitoring, recordkeeping and reporting requirements for owners and operators of certain facilities that directly emit GHGs, and retail or wholesale electric service providers." Dep't of Pub. Health & Env't Reg. 22.A.I.A, 5 Code Colo. Regs. 1001-26.

¶ 32 Significantly, in that very rule the Commission acknowledged that it was undertaking its duties in two stages — first by requiring GHG emitters to monitor and report GHG emissions, and next by implementing measures to cost-effectively meet its GHG reduction goals. *Id.* at Reg. 22.D.I.

[4] Agency Defendants also point to a slew of actions the Commission took between October 2020 and August 2021 as additional evidence that they satisfied section 25-7-140(2)(a)(III), C.R.S. 2022.

¶ 33 In addition to taking this regulatory step, the Commission also engaged a third party to develop Colorado's Greenhouse Gas Pollution Reduction Roadmap. Although the Roadmap was not published in its final form until January 2021 (i.e., after section 25-7-140(2)(a)(III)'s July 1, 2020, deadline), the Commission's actions in 2019 and early 2020 made the development and publication of this essential policy document possible.

¶ 34 Enhancing the Agency Defendants' data collection framework and statewide inventories for GHG emissions will enable the Commission to implement additional measures aimed at cost-effectively meeting the GHG reduction goals delineated in section 25-7-102(2)(g). These actions are consistent with the duty imposed by section 25-7-140(2)(a)(III).

IV. Conclusion

¶ 35 For the reasons stated, we conclude that Agency Defendants' actions are consistent with the duty imposed by section 25-7-140(2)(a)(III). The district court's judgment is therefore affirmed.

JUDGE TOW and JUDGE YUN concur.