

<p>COLORADO SUPREME COURT  2 East 14th Avenue  Denver, CO 80203</p>	<p>DATE FILED: October 08, 2021</p>
<p>Original Proceeding Pursuant to  Article V, Section 44.5 of the Constitution of  the State of Colorado</p>	
<p><b>In re Colorado Independent  Congressional Redistricting  Commission</b></p>	
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<p><b>AMICUS CURIAE BRIEF OF ALL ON THE LINE – COLORADO</b></p>	

## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, I certify that:

The brief complies with the applicable word limit set forth in C.A.R. 28(g).

It contains 9,471 words.

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A).

I acknowledge that the brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

/s/ Shankar Duraiswamy

## TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	iv
IDENTITY AND INTEREST OF AMICUS CURIAE .....	1
ISSUE PRESENTED FOR REVIEW .....	1
STATEMENT OF THE CASE .....	1
I.    Legal Framework .....	2
A.    Constitutional Procedures for Congressional Redistricting.....	2
B.    Constitutional Standards for Congressional Redistricting.....	5
II.   Factual and Procedural Background.....	7
A.    The Addition of a Congressional Seat .....	7
B.    Commission-Nominated Maps for Final Balloting.....	8
C.    The Commission’s Adoption of the Final Plan .....	12
ARGUMENT .....	15
I.    The Commission Abused Its Discretion By Failing to Apply the Minority Vote Dilution Provision and By Adopting a Map That Had the Effect of Diluting Latino Electoral Influence. ....	16
A.    The Commission Did Not Attempt to Apply Section 44.3(4)(b).....	17
B.    To the Extent the Commission Interpreted the Minority Vote Dilution Provision as a Restatement of the VRA, It Abused Its Discretion. ....	19
C.    The Commission’s Adoption of the Final Plan Violated the Minority Vote Dilution Provision By Diluting the Electoral Impact of the Latino Community.....	22
II.   While the Commission’s General Placement of District 8 Was Appropriate, the District 8	

Boundaries in the Final Plan Failed to Preserve Communities of Interest. ....	29
A.    The Communities of Interest Criterion.....	30
B.    The Commission’s Decision to Place District 8 in the Corridor Stretching From the North Denver Suburbs to Greeley Was Sound. ....	32
C.    The Commission’s Decision to Exclude Longmont From District 8 Was an Abuse of Discretion. ....	34
III.    The Commission Abused Its Discretion in Elevating Competitiveness Over the Prevention of Minority Vote Dilution and the Preservation of Communities of Interest and Failing to Apply a Standard of Competitiveness That Complied with the Constitutional Definition. ....	43
CONCLUSION.....	49
CERTIFICATE OF SERVICE.....	50

## TABLE OF AUTHORITIES

	<b>Page(s)</b>
<b>Cases</b>	
<i>Avalos v. Davidson</i> , No. 01-CV-2897, 2002 WL 1895406 (Colo. Dist. Ct. Jan. 25, 2002), <i>aff'd sub nom. Beauprez v. Avalos</i> .....	37
<i>Barnett v. City of Chicago</i> , 141 F.3d 699 (7th Cir. 1998).....	23
<i>Bartlett v. Strickland</i> , 556 U.S. 1 (2009).....	20
<i>Carstens v. Lamm</i> , 543 F. Supp. 68 (D. Colo. 1982) .....	30, 40
<i>Dep't of Revenue v. Agilent Techs., Inc.</i> , 2019 CO 41, 441 P.3d 1012 (2019) .....	22
<i>Georgia v. Ashcroft</i> , 539 U.S. 461 (2003).....	23
<i>Hall v. Moreno</i> , 2012 CO 14, 270 P.3d 961(Colo. 2012) .....	32
<i>Johnson v. De Grandy</i> , 512 U.S. 997 (1994).....	28
<i>Metts v. Almond</i> , 217 F. Supp. 2d 252 (D.R.I. 2002) (vacated).....	23
<i>Moreno v. Gessler</i> , No. 11-CV-3461, 2011 WL 8614878 (Colo. Dist. Ct. Nov. 10, 2011).....	31
<i>Rodriguez v. Harris Cnty., Tex.</i> , 964 F. Supp. 2d 686 (S.D. Tex. 2013), <i>aff'd sub nom. Gonzalez v. Harris Cnty., Tex.</i> , 601 F. App'x 255 (5th Cir. 2015).....	23

<i>Session v. Perry</i> , 298 F. Supp. 2d 451 (E.D. Tex. 2004) (vacated).....	23
<i>Thornburg v. Gingles</i> , 478 U.S. 30 (1986).....	24
<i>Uno v. City of Holyoke</i> , 72 F.3d 973 (1st Cir. 1995) .....	24
<i>Voinovich v. Quilter</i> , 507 U.S. 146 (1993).....	23
<b>Statutes</b>	
Colo. Const. art. V, § 44.....	<i>passim</i>
C.R.S. § 2-1-102 (repealed 2020) .....	31
52 U.S.C. § 10301 .....	22
The Voting Rights Act of 1965 .....	<i>passim</i>
<b>Other Authorities</b>	
<i>Cassie Ratliff Comment, supra</i> note 56 .....	38
<i>Census, Colorado Among Fastest-Growing States Last Decade</i> , U.S. Census Bureau (Aug. 25, 2021), <a href="https://perma.cc/ST44-KHL5">https://perma.cc/ST44-KHL5</a> .....	7, 8
CICRC, <i>Map Adoption Ballot</i> (last modified Sept. 28, 2021), <a href="https://perma.cc/Y2HU-BPUJ">https://perma.cc/Y2HU-BPUJ</a> .....	12
CICRC, <i>Rules of Proc.</i> (modified on Aug. 2, 2021), <a href="https://redistricting.colorado.gov/content/commission-rules">https://redistricting.colorado.gov/content/commission- rules</a> (last visited Oct. 8, 2021).....	4
CICRC, <i>Rules of Proc.</i> .....	4
COHCC, <i>A Great 8 for a Great State</i> .....	40

Colo. Indep. Redistricting Comm’ns, *Commissioner Selection Process*, <https://perma.cc/LR2J-7LGV> (last visited Oct. 8, 2021)..... 3

Colo. Indep. Redistricting Comm’ns, *Congressional Redistricting Overview*, <https://perma.cc/9QPR-UMKZ> (last visited Oct. 8, 2021) ..... 4

Colo. Indep. Redistricting Comm’ns, *Public Comment, Cassie Ratliff Comment* (June 11, 2021), <https://perma.cc/7JAA-CX7C> ..... 36

Colo. Indep. Redistricting Comm’ns, *Public Comment, Cristobal Garcia Comment* (Sept. 27, 2021), <https://perma.cc/TJ37-JVL>; ..... 41, 42, 43

Colo. Indep. Redistricting Comm’ns, *Public Comment, Faith Halverson-Ramos Comment* (Aug. 24, 2021), <https://perma.cc/QZ4L-MQEX> ..... 36, 37, 38, 39

Colo. Indep. Redistricting Comm’ns, *Public Comment, Kathy Partridge Comment* (Sept. 22, 2021), <https://perma.cc/9H9S-ZK62>;..... 36, 39

Colo. Indep. Redistricting Comm’ns, *Public Comment, Martin Spann Comment* (June 13, 2021), <https://perma.cc/Z288-3XYC>;..... 36, 37

Colo. Indep. Redistricting Comm’ns, *Public Comment, Nancy Madrigal Comment* (June 11, 2021), <https://perma.cc/7EBZ-NMWU>..... 42, 43

Colo. Indep. Redistricting Comm’ns, *Public Comment, Tannis Bator Comment* (Aug. 18, 2021), <https://perma.cc/F38Y-3PZ5> ..... 39, 41

Colo. Sec’y of State, 2018 General Election Results, <https://perma.cc/X42M-B8NW> (last visited Oct. 8, 2021) ..... 3

*Final Cong. Redistricting Plan* (Oct. 1, 2021), <https://perma.cc/E4CP-7PGL> (last visited Oct. 8, 2021)..... 17

John Daley, <i>Futbol, Flags and Fun: Getting Creative to Reach Unvaccinated Latinos in Colorado</i> (July 10, 2021, 10:38 AM), <a href="https://perma.cc/GX3S-RDH5">https://perma.cc/GX3S-RDH5</a> .....	42
Meg Wingerter, <i>Colorado’s Latinos, Asian Americans Saw Greatest Increase in Death Rates in 2020, Mostly from COVID-19</i> , Denver Post (May 30, 2021, 6:00 AM).....	42
<i>Population Summary Report, Headwaters Tafoya P.007</i> , <a href="https://perma.cc/DW4P-7MWN">https://perma.cc/DW4P-7MWN</a> .....	25
<i>Population Summary Report, P.008 Shepherd Macklin – Schuster</i> (Sept. 25, 2021), <a href="https://perma.cc/E7RC-XB8T">https://perma.cc/E7RC-XB8T</a> .....	26
<i>Population Summary Report, Schell amendment to Moore amendment - 092521</i> (Sept. 26, 2021), <a href="https://perma.cc/842C-D2QR">https://perma.cc/842C-D2QR</a> ; .....	25
<i>Population Summary Report, Second Congressional Staff Plan</i> (Sept. 15, 2021), <a href="https://perma.cc/LU9H-W7Z2">https://perma.cc/LU9H-W7Z2</a> ;.....	25
<i>Population Summary Report, Staff Plan 2 Shepherd Macklin Amendments</i> (Sept. 22, 2021), <a href="https://perma.cc/8G2K-EZR2">https://perma.cc/8G2K-EZR2</a> ;.....	25
<i>Population Summary Report Staff Plan 3 Coleman Amendment</i> (Sept. 25, 2021), <a href="https://perma.cc/A2SL-N6UJ">https://perma.cc/A2SL-N6UJ</a> ; .....	25
<i>Population Summary Report, Staff Plan 3 Moore Amendment 2</i> , <a href="https://perma.cc/3W4X-ZVLB">https://perma.cc/3W4X-ZVLB</a> .....	25
<i>Population Summary Report, Staff Plan 3 Tafoya Amendment 2</i> (Sept. 26, 2021), <a href="https://perma.cc/8CCU-C7YN">https://perma.cc/8CCU-C7YN</a> ;.....	25
<i>Population Summary Report, Third Congressional Staff Plan</i> (Sept. 23, 2021), <a href="https://perma.cc/Q36R-A7C4">https://perma.cc/Q36R-A7C4</a> ;.....	25



*Review of Communities of Interest in Submitted Public  
Comments Memorandum 17 (June 23, 2021)*  
<https://perma.cc/5PUV-8QVB>..... 33, 34

*Staff Plan 3 Coleman Amendment*, [https://perma.cc/445U-  
HXJX](https://perma.cc/445U-HXJX) (last visited Oct. 8, 2021) ..... 10

*Staff Plan 3 Tafoya Amendment 2 Interactive Map*,  
<https://perma.cc/JRJ2-AHUF> (last visited Oct. 8, 2021)..... 10

Stephen J. Malone, *Recognizing Communities of Interest in a  
Legislative Apportionment Plan*, 83 VA. L. REV. 461, 465–  
67 (1997)..... 32

## **IDENTITY AND INTEREST OF AMICUS CURIAE**

All On The Line – Colorado is the state chapter of All On The Line (“AOTL”), a national project that seeks to restore fairness to democracy and ensure that every American has an equal voice in government, through the promotion of a fair reapportionment process. AOTL – Colorado, in particular, is dedicated to protecting the independent redistricting process approved by Colorado voters in 2018 and ensuring that the resulting redistricting maps fairly and accurately represent the State of Colorado.

## **ISSUE PRESENTED FOR REVIEW**

Whether the final redistricting map submitted to this Court by the Colorado Independent Congressional Redistricting Commission (“CICRC” or the “Commission”) on October 1, 2021 “constitutes an abuse of discretion in applying or failing to apply the criteria listed in [article V,] section 44.3” of the Colorado Constitution. Colo. Const. art. V, § 44.5(3).

## **STATEMENT OF THE CASE**

The Commission’s adoption of the final plan constituted an abuse of discretion in drawing the boundaries of District 8 in three critical ways. First, the Commission failed to comply with—or even attempt to apply—

the constitutional bar against the dilution of minority electoral influence, approving a map that renders it impossible for the large Latino community in District 8 to reliably elect a candidate of their choice. Second, while the Commission correctly considered the preservation of communities of interest in its decision to place the new District 8 along the Denver-to-Greeley corridor, it abused its discretion in applying the “communities of interest” criterion by inexplicably excluding the City of Longmont, despite its significant shared interests with the rest of District 8. Third, the Commission abused its discretion in applying the criterion of competitiveness by (i) prioritizing it over both preventing the dilution of Latino electoral influence and the preservation of communities of interest when drawing the boundaries of District 8, and (ii) failing to adopt or apply a measure of “competitiveness” that complied with the constitutional standard.

## **I. Legal Framework**

### **A. Constitutional Procedures for Congressional Redistricting**

In 2018, Colorado voters overwhelmingly approved Amendment Y, a ballot initiative to amend the Colorado Constitution and establish an

independent commission responsible for the state’s congressional redistricting process.<sup>1</sup>

Under Amendment Y, the Commission is charged with “divid[ing] the state into as many congressional districts as there are representatives in congress apportioned to this state” in accordance with the criteria set forth in Section 44.3. Colo. Const. art. V, § 44(2). Following each federal decennial census, twelve members are appointed to serve on the Commission—four from the State’s largest political party (currently the Democrats); four from the State’s second largest political party (currently the Republicans); and four who are *not* affiliated with any political party. *Id.* § 44.1(8)(b).<sup>2</sup>

To assist the Commission, nonpartisan staff from the general assembly’s legislative council and office of legislative legal services (or their successor offices) are appointed. *Id.* § 44.2(1)(b). Staff are required to prepare, publish, and present no fewer than three staff plans (unless

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<sup>1</sup> Colo. Sec’y of State, 2018 General Election Results, <https://perma.cc/X42M-B8NW> (last visited Oct. 8, 2021); Colo. Const. art. V, § 44(2).

<sup>2</sup> *See also* Colo. Indep. Redistricting Comm’ns, *Commissioner Selection Process*, <https://perma.cc/LR2J-7LGV> (last visited Oct. 8, 2021).

the Commission approves the first or second staff plan).<sup>3</sup> Staff are also required to prepare additional plans or amendments to plans requested by any commissioner or group of commissioners in a public hearing.<sup>4</sup> Members of the public may also present proposed redistricting maps and written comments for the Commission’s consideration. *Id.* § 44.2(3).<sup>5</sup>

Ultimately, the Commission must vote to adopt a final redistricting plan, which is then submitted to the Colorado Supreme Court. *Id.* § 44.2(3). The adopted final plan requires “the affirmative vote of at least eight commissioners, including the affirmative vote of at least two commissioners who are unaffiliated with any political party.” *Id.* § 44.2(2).

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<sup>3</sup> CICRC, *Rules of Proc.* at 8 (modified on Aug. 2, 2021), <https://redistricting.colorado.gov/content/commission-rules> (last visited Oct. 8, 2021).

<sup>4</sup> *Id.*; *see also* Colo. Const. art. V, §§ 44.4(4), 48.2(4). Commissioners are prohibited from communicating with staff about the mapping of any district except during a public meeting or hearing of the Commission. *See* Colo. Indep. Redistricting Comm’ns, *supra* note 2. Thus, any direction or suggestion on how staff should draw a map or factors to consider in drawing a map should only be given during a public meeting of the whole Commission. *Id.*

<sup>5</sup> *See also* CICRC, *Rules of Proc.*, *supra* note 3 at 13; Colo. Indep. Redistricting Comm’ns, *Congressional Redistricting Overview*, <https://perma.cc/9QPR-UMKZ> (last visited Oct. 8, 2021).

The Colorado Supreme Court must review the final congressional redistricting plan adopted by the Commission to ensure that it complies with the procedures and criteria mandated by article V, Section 44.3 of the Colorado Constitution. *Id.* § 44.5(1). If the Court determines that the plan “constitutes an abuse of discretion in applying or failing to apply the [constitutional] criteria” of Section 44.3, *id.* § 44.5(3), the Court must return the plan to the Commission with its reasons for disapproval, *see id.* § 44.5(3).

B. Constitutional Standards for Congressional Redistricting

Amendment Y includes two absolute prohibitions: it bars the approval of any congressional map that either dilutes a minority group’s electoral impact or is drawn for the purpose of favoring an incumbent, a declared candidate, or a political party—regardless of the application of any other criteria:

(4) No map may be approved by the commission or given effect by the supreme court if:

(a) It has been drawn for the purpose of protecting one or more incumbent members, or one or more declared candidates, of the united states house of representatives or any political party; or

(b) It has been drawn for the purpose of or results in the denial or abridgement of the right of any citizen to vote on account of that person’s race or membership in a

language minority group, including diluting the impact of that racial or language minority group’s electoral influence.

Colo. Const. art. V, § 44.3(4).

Section 44.3(4)(b), the prohibition against minority vote dilution, borrows some of its language from Section 2 of the federal Voting Rights Act (“VRA”), but provides even greater protection for minority communities. Like Section 2, the Colorado Constitution disallows any map that “results in the denial or abridgement” of any citizen’s right to vote. *Id.* § 44.3(4)(b). But Colorado’s version goes further, providing that “denial or abridgement” includes “diluting the impact of [the protected group’s] *electoral influence*”—a phrase that does not appear in Section 2. *Id.* (emphasis added).

Apart from these overarching prohibitions, Amendment Y established a set of ranked criteria for the Commission to apply when adopting a congressional redistricting plan. First, the Commission must follow federal law to ensure population equality between districts and compliance with the VRA. *Id.* § 44.3(1). Second, “[a]s much as is reasonably possible, the commission’s plan must preserve whole communities of interest and whole political subdivisions, such as

counties, cities, and towns,” and ensure that districts are “as compact as reasonably possible.” *Id.* § 44.3(2). Third, the Commission should attempt to maximize the number of politically competitive districts—but only *after* prioritizing the foregoing criteria: “*Thereafter*, the commission shall, *to the extent possible*, maximize the number of politically competitive districts.” *Id.* § 44.3(4) (emphases added). Amendment Y includes a very specific definition of “competitive” for purposes of this provision: a district is “competitive” if it has “a reasonable potential for the party affiliation of the district’s representative to change at least once between federal decennial censuses.” *Id.* § 44.3(3)(d).

## **II. Factual and Procedural Background**

### **A. The Addition of a Congressional Seat**

Following the 2020 census, Colorado was apportioned eight congressional seats, adding a seat to its seven-member delegation. The apportionment of an additional congressional seat was the result of Colorado’s growth in population over the past decade—14.8%.<sup>6</sup> Much of

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<sup>6</sup> America Counts Staff, *Colorado: 2020 Census, Colorado Among Fastest-Growing States Last Decade*, U.S. Census Bureau (Aug. 25, 2021), <https://perma.cc/ST44-KHL5>.



this population growth was concentrated in the area stretching from Denver north through Weld County; indeed, five of the seven highest growth counties were in or north of Denver.<sup>7</sup> In Weld County, the population grew by more than 30%—the second-largest increase of any county in Colorado.<sup>8</sup>

This population growth was fueled by substantial growth in the Latino population, which increased by 20.6%.<sup>9</sup> Much of the population growth was concentrated in the suburbs north of Denver. For example, in Weld County the Latino population grew by an astounding 37.4% and now comprises 29.4% of the county’s total population.<sup>10</sup> In Adams County, the Latino population grew by 29.1% and now comprises 41.7% of the county’s total population.<sup>11</sup>

B. Commission-Nominated Maps for Final Balloting

Throughout September, the Commission generated and received from the public various proposed maps. On September 27, 2021, the

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

Commission convened to nominate a subset of these maps to consider for final adoption. During the eight-hour meeting, each commissioner nominated three to four maps.<sup>12</sup> In total, 13 maps were nominated.<sup>13</sup> Of the 13 maps, two maps were tied for the most nominations, with eight votes apiece: (i) the Third Staff Plan Tafoya Workshop Adjusted Map (Amendment 2) (“Tafoya Amendment 2”); and (ii) the Third Staff Plan with the Coleman Amendment (the “Coleman Amendment”), which was subsequently adopted as the final plan.<sup>14</sup> Both maps were amended versions of the Third Staff Plan that had been created by Commission staff.

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<sup>12</sup> See Ex. 1, Hr’g Tr. 3:20–4:19, 242–245 (Sept. 27, 2021).

<sup>13</sup> See Ex. 2, Congressional Commission Polling Nominations (Sept. 27, 2021). The 13 maps nominated included the following: Third Staff Plan with Coleman Amendment (“Staff Plan 3 Coleman Amendment”), Third Staff Plan Tafoya Workshop Adjusted Map (Amendment 2) (“Tafoya Amendment 2”), P.007.Tafoya (“Headwaters Amended”), Moore Workshop Adjusted Amendment (“Moore Amendment 2”), Schell Workshop Adjusted Amendment (“Schell Moore Kelly Coleman”), the Third Staff Plan, the Preliminary Staff Plan, Staff Plan 3 Shepherd Macklin Amendment, Second Staff Plan, P.002.Moore02, Staff Plan 2 Shepherd Macklin Amendment, P.008.Shepherd Macklin (“Schuster Amended”), and Staff Plan 3 Kelly Amendment.

<sup>14</sup> See *id.* During the course of the meeting, four maps were removed from consideration, leaving nine maps for the final ballot. See Ex. 1, Hr’g Tr. 244:4–18 (Sept. 27, 2021).

Both Tafoya Amendment 2 and the Coleman Amendment situated the new District 8 in an area running from the north Denver suburbs up through Greeley, including the western part of Weld County and the borders between Weld County and Boulder and Larimer Counties.<sup>15</sup> However, the two maps had key differences with respect to the boundaries of District 8. Most notably, District 8 in Tafoya Amendment 2 included Longmont—a community that straddles the Weld/Boulder border and shares several interests with the other communities in District 8. The Coleman Amendment excluded Longmont from District 8 and instead included Brighton—a community in Adams County that shares significant agricultural interests with the eastern part of Adams—and a larger share of the municipality of Westminster.

During the nomination meeting, each commissioner was allotted three minutes to comment on each of the nominated maps.<sup>16</sup> Notably, it does not appear that there was *any* discussion of Section 44.3(4)(b) (the

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<sup>15</sup> See *Staff Plan 3 Tafoya Amendment 2 Interactive Map*, <https://perma.cc/JRJ2-AHUF> (last visited Oct. 8, 2021); *Staff Plan 3 Coleman Amendment*, <https://perma.cc/445U-HXJX> (last visited Oct. 8, 2021).

<sup>16</sup> Ex. 1, Hr’g Tr. 2:15–21 (Sept. 27, 2021).

“Minority Vote Dilution provision”). Instead, the commissioners largely focused their comments on communities of interest and competitiveness issues. For example, a number of commissioners praised Tafoya Amendment 2 for focusing on the preservation of communities of interest,<sup>17</sup> but several commissioners were preoccupied with its purported lack of competitiveness.<sup>18</sup> And no one discussed how Tafoya Amendment 2 and the Coleman Amendment—the two maps with the most nominations—compared with respect to diluting the Latino vote, despite the sizable Latino population in District 8 in each map.

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<sup>17</sup> See, e.g., *id.* at 41:10–15 (“What I do like about it is when we talk about being really mindful of the group and addressing communities of interest, the amendments to this map were made specifically with people in mind. So where the changes were made were deliberately made for communities of interest.”).

<sup>18</sup> See, e.g., *id.* at 24:5–11 (Schell: “[W]e’re creating a new district that . . . [should be] competitive.”); *id.* at 27:4–6 (Moore: “[T]his is the least competitive map that we’ve seen since the preliminary plans.”); *id.* at 28:17–20 (Shepherd Macklin: “[L]ack of competitiveness in this map is notable for me . . . again the eighth congressional district as the new district, I would like to see more competitive as the new district.”); *id.* at 31:17–19 (Leone complaining of relative reduction in competitiveness in Tafoya Amendment 2); *id.* at 32:3–5 (Kelly: adopting views of Commissioners Shepherd Macklin and Leone).

### C. The Commission's Adoption of the Final Plan

Following the nominations and discussions on September 27, the Commission convened again on September 28, 2021 to vote on a final plan. Nine nominated maps, including Tafoya Amendment 2 and the Coleman Amendment, were included on the final plan ballot.<sup>19</sup>

Minutes before the midnight deadline, the Commission adopted the Coleman Amendment as the final plan after seven rounds of voting—six rounds by written tally, with the final, seventh round by voice vote.<sup>20</sup> For the first three rounds of voting, the Commission used ranked-choice voting, but abandoned that procedure in the later rounds of voting.<sup>21</sup> During Rounds 4–6, the following nominated maps received the most votes: the Coleman Amendment, Tafoya Amendment 2, and Schuster Amendment.<sup>22</sup> Following the breakdown in ranked-choice voting, arguments for and against the competing plans intensified. After Rounds

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<sup>19</sup> See CICRC, *Map Adoption Ballot* (last modified Sept. 28, 2021), <https://perma.cc/Y2HU-BPUJ>.

<sup>20</sup> See Ex. 3, Sept. 28, 2021 Tally Sheets; Ex. 4, Hr'g Tr. 200:1–201:5 (Sept. 28, 2021).

<sup>21</sup> See Ex. 3, Sept. 28, 2021 Tally Sheets, 1–3.

<sup>22</sup> See *id.* at 4–6.

3 and 4, certain commissioners again emphasized competitiveness concerns in arguing against Tafoya Amendment 2. For example, when Commissioner Coleman noted that Tafoya Amendment 2 improved community of interest considerations,<sup>23</sup> Commissioner Schell countered that though she otherwise “generally like[d]” Tafoya Amendment 2, it was “significantly less competitive.”<sup>24</sup> After the fourth round of voting, when Tafoya Amendment 2 received the most votes (six), Commissioner Leone emphatically stated that he would “never” vote for Tafoya Amendment 2, because, when comparing that plan to the Coleman Amendment, he believed that Tafoya Amendment 2 would “destroy any semblance of competition in a congressional district.”<sup>25</sup> Commissioner Leone explicitly stated that he would even vote for the non-amended Third Staff Plan—which had not received *any* nominations—before he would vote for Tafoya Amendment 2, because of his competitiveness

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<sup>23</sup> Ex. 4, Hr’g Tr. 100:12–14 (Sept. 28, 2021) (noting that her comments pertained to Tafoya Amendment 2); *id.* at 100:22–101:4 (explaining that portions of the communities identified “really do . . . belong together”); *id.* at 101:10–13 (noting that changes were made to Tafoya Amendment 2 as part of “our workshop for communities of interest”).

<sup>24</sup> *Id.* at 102:12–19.

<sup>25</sup> *Id.* at 132:6–20.

concerns.<sup>26</sup> In response, Commissioner Espinoza, a supporter of Tafoya Amendment 2, noted that that map preserved communities of interest.<sup>27</sup> Commissioner Espinoza’s response was met with a familiar refrain: Tafoya Amendment 2 should be rejected because of the “importance of competitiveness.”<sup>28</sup>

Following this discussion, the Commission considered whether it could secure eight votes for another plan (Schuster Amended), but was unable to do so in either Round 5 or Round 6.<sup>29</sup> Facing an imminent midnight deadline, several commissioners acquiesced, without any further substantive discussion, and agreed to switch their votes to adopt the Coleman Amendment as the final plan.<sup>30</sup>

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<sup>26</sup> *Id.* at 132:14–20.

<sup>27</sup> *See id.* at 135:6–11 (explaining that Brighton, like Greeley, is a community in transition and that Brighton could be included in District 8 (the “growth district”), or District 4 (“the agricultural district”)).

<sup>28</sup> *Id.* at 137:2–16; *see also id.* at 137:17–138:1 (noting Tafoya Amendment 2 has “not one competitive district” and that because “every single public hearing” included discussions regarding the importance of competitiveness, it was the “deciding factor”).

<sup>29</sup> *Id.* at 160:3–161:21; *see also* Ex. 3, Sept. 28, 2021 Tally Sheets.

<sup>30</sup> Ex. 4, Hr’g Tr. 195:15–201:4 (Sept. 28, 2021).

Once again, throughout the six-hour discussion leading to the adoption of the Coleman Amendment as the final plan, there appears to have been *no* discussion of the Minority Vote Dilution provision. Only *after* the adoption of the Coleman Amendment did five different commissioners recite a conclusory statement that the map “was not drawn to dilute the electoral influence or the voting rights of any languages or racial minority groups” or something similar.<sup>31</sup>

### ARGUMENT

The Commission abused its discretion in adopting the Coleman Amendment as the final plan in three ways.

*First*, the Commission failed to apply the constitutional bar on adopting a map that “results in . . . diluting the impact of [a] racial or language minority group’s electoral influence.” Had the Commission applied this provision, it would not have approved the Coleman Amendment’s version of District 8, which paired a large Latino population (38% of the district) with a white majority that would be able to consistently defeat the Latino community’s candidate of choice.

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<sup>31</sup> *Id.* at 204:6–8; *see also id.* at 205:12–14, 213:15–17, 224:22–225:2, and 226:20–22.



*Second*, while the Commission’s decision to place the new District 8 in the fast-growing corridor between Denver and Greeley was faithful to concerns about communities of interest, the Commission abused its discretion in choosing a map that excluded Longmont, which has several shared interests with the other communities in the Denver-Greeley corridor, from District 8.

*Third*, the Commission abused its discretion in applying the competitiveness criteria, both by elevating it above higher priority requirements—including the absolute bar on diluting the electoral influence of a minority group—and by failing to adopt or apply a measure of competitiveness that adhered to the constitutional standard.

All three of these failures were exemplified by the Commission’s adoption of the Coleman Amendment over Tafoya Amendment 2, the other heavily-supported proposal. Driven by purported competitiveness concerns—which were not actually anchored in the constitutional definition of “competitiveness”—the Commission rejected Tafoya Amendment 2 for a map that diluted the votes of Latinos and did less to preserve communities of interest in District 8.

**I. The Commission Abused Its Discretion By Failing to Apply the Minority Vote Dilution Provision and By Adopting a**

## **Map That Had the Effect of Diluting Latino Electoral Influence.**

The Commission abused its discretion by (i) failing to apply the Minority Vote Dilution provision in any way, other than erroneously suggesting that the provision may be a mere restatement of the federal VRA, and (ii) failing to consider whether or how the boundaries that it chose for District 8 would dilute the electoral influence of the Latino community.

### **A. The Commission Did Not Attempt to Apply Section 44.3(4)(b).**

The report required to be submitted with the Commission's final map, entitled Final Congressional Redistricting Plan ("the Report"), addresses the Minority Vote Dilution provision in a single, conclusory sentence that merely recites the language of the Colorado Constitution:

The Final Plan was not drawn for the purpose of, and does not result in, the denial or abridgement of the right of any citizen to vote on account of that person's race or membership in a language minority group, including diluting the impact of that racial or language minority group's electoral influence.<sup>32</sup>

However, the Report does not provide any rationale or analysis to support that statement.

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<sup>32</sup> *Final Cong. Redistricting Plan* at 14 (Oct. 1, 2021), <https://perma.cc/E4CP-7PGL> (last visited Oct. 8, 2021).

The Commission record likewise suggests that the Commission did not perform any meaningful analysis of whether its adoption of the Coleman Amendment would dilute the electoral influence of any minority group—including the Latino community that comprises 21.9% of the state’s population.<sup>33</sup>

After nearly three months of Commission meetings and a mere two weeks before the final vote, Commission staff stated that it had not received “direction from the [C]ommission on how to interpret[, or] how the [C]ommission would like [staff] to interpret” the Minority Vote Dilution provision.<sup>34</sup> Staff also conceded that it was “actually not certain exactly what the meaning of that provision is going to be” and suggested that “[i]t may ultimately be up to the Colorado Supreme Court to tell us what the meaning of that provision is.”<sup>35</sup>

And nothing in the Commission’s deliberations on the final plan suggest that the uncertainty was ever addressed or clarified. As explained above, the issue was not discussed during the last two

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<sup>33</sup> America Counts Staff, *supra* note 6.

<sup>34</sup> Ex. 5, Hr’g Tr. 4:14–17 (Sept. 16, 2021).

<sup>35</sup> *Id.* at 3:5–21.

meetings before the final vote, despite more than ten hours of Commission deliberations on the nominated maps. Only after the Coleman Amendment was approved, did several commissioners make conclusory statements about the Commission's purported compliance with the Minority Vote Dilution provision. None, however, provide any support or explanation for their boilerplate recitations.

Regardless of whether the Commission was uncertain about the meaning of the Minority Vote Dilution provision or simply unwilling to discuss it in its 10 hours of deliberation, the Commission clearly abused its discretion by failing to apply the provision.

B. To the Extent the Commission Interpreted the Minority Vote Dilution Provision as a Restatement of the VRA, It Abused Its Discretion.

Unsure of how to interpret the Minority Vote Dilution provision, the Commission and its staff appeared to address that issue only to the extent that the provision could be interpreted as a mere restatement of certain requirements under the federal VRA. Each of the staff memoranda accompanying the three staff plans includes, under the heading, "Diluting a racial or language minority group's electoral influence," the following statement:

To the extent that section 44.4(4)(b) [sic] is a restatement of the federal Voting Rights Act, nonpartisan staff does not believe that there is an area in Colorado with sufficient citizen voting age minority population to form a majority-minority congressional district.<sup>36</sup>

Thus, the Commission and its staff only considered the possibility that the Minority Vote Dilution provision mirrored the federal VRA in requiring the drawing of a majority-minority district where there is a sufficient minority voting population to create such a district. But that interpretation is wrong in two respects.

First, it reads the requirements of the VRA too narrowly. It is true that the VRA requires the creation of majority-minority districts in which a minority group's members constitute a numerical majority of the voting population—*in certain circumstances*, where doing so is necessary to allow the minority group to elect their candidate of choice. But map-drawers may also comply with the VRA by creating districts in which minority groups have the ability to elect their preferred candidate districts even when they do not meet a strict 50 percent minority vote population threshold. *See Bartlett v. Strickland*, 556 U.S. 1, 23 (2009)

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<sup>36</sup> *See, e.g.,* Colo. Indep. Redistricting Comm'n's Staff, *Third Congressional Staff Plan Memorandum* at 3 (Sept. 23, 2021) <https://perma.cc/H7SN-US93>.

(Section 2 “allows States to choose their own method of complying with the Voting Rights Act, and we have said that may include drawing crossover districts”).

Second, even if the Commission’s characterization of the VRA were accurate, the structure and text of Amendment Y make clear that the Colorado provision is not a mere “restatement” of that federal requirement. Its protection is broader, creating an affirmative obligation not to dilute the *electoral influence* of a minority group.

As an initial matter, the structure of Amendment Y demonstrates that the Minority Vote Dilution provision goes beyond the requirements of the VRA. The first subdivision of Section 44.3 addresses federal law and includes the requirement that the Commission’s plan “[c]omply with the federal ‘Voting Rights Act of 1965.’” Colo. Const. art. V, § 44.3(1)(b). The Minority Vote Dilution provision is contained in a separate subdivision—Section 44.3(4)(b)—that addresses both partisan gerrymandering and the “electoral influence” of minority groups. Colo. Const. art. V, §§ 44.3(4). Thus, Section 44.3(4)(b) is unequivocally intended to go beyond federal law: it would be rendered superfluous if it were read merely as a “restatement” of the VRA, which is already

contained in a different subdivision of Amendment Y. *See Dep't of Revenue v. Agilent Techs., Inc.*, 2019 CO 41, ¶ 16, 441 P.3d 1012, 1016 (2019) (“We must avoid constructions that would render any words or phrases superfluous or that would lead to illogical or absurd results.”).

Moreover, the actual text of the Minority Vote Dilution provision confirms that it extends beyond the narrow VRA requirement that the staff referenced in its memoranda. Although Section 2 of the VRA bars voting procedures that deny a minority group an equal “opportunity” to “elect a candidate of their choice,” *see* 52 U.S.C. § 10301, it does not include the broader prohibition against “diluting the influence of [a minority group’s] electoral impact,” Colo. Const. art. V, § 44.3(4)(b).

C. The Commission’s Adoption of the Final Plan Violated the Minority Vote Dilution Provision By Diluting the Electoral Impact of the Latino Community.

The ban on dilution of electoral influence is a broad and powerful proscription that requires the Commission to assess how a minority group’s electoral power will be affected by the formation of congressional districts. Courts have recognized various ways in which a minority group may retain electoral influence. Some courts have defined influence districts as districts where minority voters have the ability to elect a

candidate of choice with the support of voters outside the protected group, including those in the majority.<sup>37</sup> Others have defined influence districts as districts where minority voters can affect the political positions of the person who is elected,<sup>38</sup> or exert some power over which candidate is elected, even if the candidate elected is not the protected group’s top choice.<sup>39</sup>

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<sup>37</sup> See *Voinovich v. Quilter*, 507 U.S. 146, 158 (1993) (describing “influence-dilution claim” as one in which “[B]lack voters have been deprived of . . . the possibility of being a sufficiently large *minority* to elect their candidate of choice with the assistance of cross-over votes from the white majority”) (emphasis in original); *Rodriguez v. Harris Cnty., Tex.*, 964 F. Supp. 2d 686, 707 (S.D. Tex. 2013), *aff’d sub nom. Gonzalez v. Harris Cnty., Tex.*, 601 F. App’x 255 (5th Cir. 2015) (“[A]n influence district is a district in which members of a minority group (i.e. Latinos) are a minority of the voters, but the minority population, at least potentially, is large enough to elect the candidate of its choice with help from voters who are members of the majority.”) (quotation marks omitted); *Metts v. Almond*, 217 F. Supp. 2d 252, 260 (D.R.I. 2002) (vacated).

<sup>38</sup> See *Georgia v. Ashcroft*, 539 U.S. 461, 482 (2003) (“In assessing the comparative weight of these influence districts, it is important to consider the likelihood that candidates elected without decisive minority support would be willing to take the minority’s interests into account.”) (quotation marks omitted); *Session v. Perry*, 298 F. Supp. 2d 451, 479 (E.D. Tex. 2004) (vacated) (“The elected representatives in influence districts, as a result of the influence of minority voting, take minority interests into account.”).

<sup>39</sup> See *Barnett v. City of Chicago*, 141 F.3d 699, 703 (7th Cir. 1998) (recognizing an influence district as one “in which a minority group has



To be sure, the text of the Minority Vote Dilution provision does not command the Commission to undertake a strict, formulaic inquiry when measuring influence dilution. Rather, as with the VRA, the Commission must employ a holistic assessment, “mak[ing] a searching evaluation of the degree of influence exercisable by the minority, consistent with the political realities, past and present.”<sup>40</sup> That evaluation requires an analysis of the totality of the circumstances regarding minority voting influence, including such critical factors as whether racially polarized voting in the proposed districts blunts the ability of a large minority group to exercise electoral influence.<sup>41</sup> However this vote dilution analysis may apply under various factual scenarios, at a minimum, it should bar the Commission from choosing a final plan that dilutes the electoral impact of the Latino community relative to the equally viable versions of District 8 that were before the Commission. Yet that is precisely what the Commission did.

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enough political heft to exert significant influence on the choice of candidate though not enough to determine that choice”).

<sup>40</sup> *Uno v. City of Holyoke*, 72 F.3d 973, 991 (1st Cir. 1995).

<sup>41</sup> *See Thornburg v. Gingles*, 478 U.S. 30, 37 (1986).

The Commission correctly elected to place the new District 8 in the fast-growing corridor stretching from the northern Denver suburbs through the western portion of Weld County and up through Greeley. As the record reflects, a significant factor in this decision was a recognition of the shared interests among the heavily Latino and immigrant communities in this fast-growing area.<sup>42</sup> Indeed, in all of the nominated maps considered by the Commission, the Latino population in District 8 was somewhere between 30 and 40%—higher than in any other proposed congressional district in the state.<sup>43</sup>

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<sup>42</sup> See Section II(B), *infra*.

<sup>43</sup> See Colo. Indep. Redistricting Comm’ns Staff, *Population Summary Report, Headwaters Tafoya P.007*, <https://perma.cc/DW4P-7MWN> (Updated Sept. 24, 2021); Colo. Indep. Redistricting Comm’ns Staff, *Population Summary Report Staff Plan 3 Coleman Amendment* (Sept. 25,, 2021), <https://perma.cc/A2SL-N6UJ>; Colo. Indep. Redistricting Comm’ns Staff, *Population Summary Report, Staff Plan 3 Tafoya Amendment 2* (Sept. 26, 2021), <https://perma.cc/8CCU-C7YN>; Colo. Indep. Redistricting Comm’ns Staff, *Population Summary Report, Staff Plan 3 Moore Amendment 2*, <https://perma.cc/3W4X-ZVLB> (last visited Oct. 8, 2021); Colo. Indep. Redistricting Comm’ns Staff, *Population Summary Report, Schell amendment to Moore amendment - 092521* (Sept. 26, 2021), <https://perma.cc/842C-D2QR>; Colo. Indep. Redistricting Comm’ns Staff, *Population Summary Report, Third Congressional Staff Plan* (Sept. 23, 2021), <https://perma.cc/Q36R-A7C4>; Colo. Indep. Redistricting Comm’ns Staff, *Population Summary Report, Second Congressional Staff Plan* (Sept. 15, 2021), <https://perma.cc/LU9H-W7Z2>; Colo. Indep. Redistricting Comm’ns Staff, *Population Summary Report*,

But having decided to create the new District 8 on the strength of Latino population growth in the Denver-to-Greeley corridor, the Commission then drew the boundaries of District 8 without even considering how that would affect this substantial Latino population’s “electoral influence,” as Section 44.3(4)(b) requires. Had the Commission considered this constitutional requirement, it would have been clear that the Coleman Amendment, in comparison to other well-supported maps that were nominated—in particular, Tafoya Amendment 2, which received an equal number of nominations and substantial support in the voting process—diluted Latinos’ electoral influence by placing them in a district with white voters who were more likely to vote against the Latino community’s candidate of choice. This dilution of electoral influence is demonstrated in the attached analysis by voting rights expert, Professor Christian Grose.<sup>44</sup>

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*Staff Plan 2 Shepherd Macklin Amendments* (Sept. 22, 2021), <https://perma.cc/8G2K-EZR2>; Colo. Indep. Redistricting Comm’ns Staff, *Population Summary Report, P.008 Shepherd Macklin – Schuster* (Sept. 25, 2021), <https://perma.cc/E7RC-XB8T>.

<sup>44</sup> See Ex. 6, Grose Report.

To analyze the potential for crossover white voters to support a Latino candidate of choice under both the Coleman Amendment’s version of District 8 and the alternative versions that the Commission considered, Professor Grose reviewed how these potential districts voted when a Latino candidate was on the ballot in the 2014 lieutenant governor election.<sup>45</sup> His analysis shows that the white crossover vote (*i.e.*, white voters who cross over to support the minority group’s candidate of choice) in the Coleman Amendment’s District 8 would be insufficient to elect the Latino candidate of choice.<sup>46</sup> However, under alternative versions of District 8 considered by the Commission—including Tafoya Amendment 2, which received substantial support during final deliberations—there would be sufficient white crossover support to provide the Latino candidate of choice with a winning margin.<sup>47</sup>

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<sup>45</sup> *Id.*, Part V.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

**Evaluation of District 8 for Latino ability to elect across proposed maps<sup>48</sup>**

<b>Map/Plan</b>	<b>Percent Vote received by Hickenlooper-Garcia in 2014 in district</b>	<b>Latino ability to elect improvement over Staff Plan 3 Coleman Amendment</b>	<b>Latino candidate of choice &gt;50 percent in district?</b>
Staff Plan 3 Coleman Amendment	48.53%	-----	No
<i>Tafoya Workshop Adjusted Amendment (Tafoya Amend. 2)</i>	50.41%	+1.88	Yes

The difference in white crossover support between the Coleman Amendment’s District 8 and the other versions of District 8 is thus critical. The Commission’s decision to adopt the Coleman Amendment’s District 8 makes the difference between a victory for the Latino candidate of choice and a loss.

To make such a choice in the congressional district with the highest Latino population is, by any reasonable understanding of the term, a substantial “dilution” of the Latino community’s “electoral influence.” See, e.g., *Johnson v. De Grandy*, 512 U.S. 997, 1007 (1994) (dilution of a

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<sup>48</sup> *Id.*

minority group’s influence may occur “by fragmenting the minority voters among several districts where a bloc-voting majority can routinely outvote them, or by packing them into one or a small number of districts to minimize their influence in the districts next door”).

## **II. While the Commission’s General Placement of District 8 Was Appropriate, the District 8 Boundaries in the Final Plan Failed to Preserve Communities of Interest.**

Tasked with creating a new congressional district after the 2020 census, the Commission appropriately situated District 8 along the corridor stretching from the northern Denver suburbs in Adams County and portions of Boulder County to the City of Greeley in Weld County.<sup>49</sup> In doing so, the Commission recognized communities of interest that had been identified through public testimony describing shared interests—including concerns related to population growth and infrastructure, the needs of a burgeoning Latino community, and threats to the environment and public health.

Yet despite this testimony, the Commission inexplicably excluded the City of Longmont from District 8. The record is clear that while the Commission was presented with at least one map that would have

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<sup>49</sup> See *Final Cong. Redistricting Plan*, *supra* note 32 at 5, 9–10.

preserved the communities of interest that tie Longmont to District 8 (Tafoya Amendment 2), it ultimately rejected that map because of competitiveness concerns—despite the fact that Section 44.3 clearly prioritizes the preservation of communities of interest over maximizing the number of politically competitive districts. By excluding Longmont from the communities of interest that define District 8, the Commission abused its discretion in applying the criteria of Section 44.3. *Id.* § 44.5(3).

A. The Communities of Interest Criterion

Prior to 2018, communities of interest in Colorado were limited to “distinctive units which share common concerns with respect to one or more identifiable features such as geography, demography, ethnicity, culture, socio-economic status, or trade.” *Carstens v. Lamm*, 543 F. Supp. 68, 91 (D. Colo. 1982). However, in approving the 2018 ballot initiative, Colorado voters significantly elaborated on the definition of communities of interest.

Specifically, voters amended article V, Section 44 of the Colorado Constitution to further define “community of interest” and list what should be considered in evaluating this criterion, including “any group . . . that shares one or more substantial interests that may be the subject

of federal legislative action.” Colo. Const. art. V, § 44(3)(b). These interests may include shared public concerns “such as education, employment, environment, public health, transportation, water needs and supplies, and issues of demonstrable regional significance.” *Id.* In addition, “racial, ethnic, and language minority groups, subject to . . . protect[ions] against the denial or abridgement of the right to vote” may also comprise communities of interest. *Id.*

Even prior to the passage of Amendment Y in 2018, Colorado courts prioritized the preservation of communities of interest in the congressional redistricting context, with the Denver District Court declaring in 2011 that “[o]f the discretionary factors specifically listed in the statute, the Court finds that no factor is more important than a district’s communities of interest.” *Moreno v. Gessler*, No. 11-CV-3461, 2011 WL 8614878, at \*21 (Colo. Dist. Ct. Nov. 10, 2011).<sup>50</sup> Moreover, in upholding the *Moreno* district court’s plan, this Court confirmed the

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<sup>50</sup> At the time of the *Moreno* decision, preservation of communities of interest was a discretionary factor for courts to consider in evaluating whether congressional districts were constitutional, with guidance set forth in C.R.S. § 2-1-102 (repealed 2020). Amendment Y established preservation of communities of interest as a mandatory criterion under the Colorado Constitution.



primary importance of communities of interest, commending the district court for “placing its concern for present communities of interest above a mechanistic attempt to minimize the disruption of existing district boundaries.” *Hall v. Moreno*, 2012 CO 14, ¶ 112, 270 P.3d 961, 985(Colo. 2012). This Court explained that “the preservation of communities of interest[] stems directly from the underlying purpose of maximizing fair and effective representation,” and that “[b]y grouping like-minded and similarly situated populations, this factor seeks to create cohesive districts that are organized around similar ethnic, cultural, economic, trade area, geographic, and demographic factors.” *Id.* ¶ 46, 270 P.3d at 971 (citations omitted).<sup>51</sup>

B. The Commission’s Decision to Place District 8 in the Corridor Stretching From the North Denver Suburbs to Greeley Was Sound.

The Commission’s placement of District 8 in the Denver-to-Greeley corridor was an appropriate response to public comments identifying multiple communities of interest in this fast-growing and diverse region

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<sup>51</sup> See also Stephen J. Malone, *Recognizing Communities of Interest in a Legislative Apportionment Plan*, 83 VA. L. REV. 461, 465–67 (1997) (observing that the organization of districts around communities of interest is intended to ensure that “the diversity of interests among the population is reflected in the legislature”).

of the state, with shared concerns related to infrastructure, transportation, the rights and needs of the Latino community, and energy and environmental policy.

When the Commission staff members presented their preliminary plan on June 23, 2021, they included a proposed District 8 encompassing the growing suburban cities north of Denver, explaining that they had received numerous public comments advocating for a congressional district along the I-25 corridor based on the preservation of communities of interest.<sup>52</sup> As the staff reported:

These comments note shared services and resources, such as health care, fire districts, entertainment and shopping, and transportation. One comment discussed the need to address aging oil and gas facilities in this area. Others discussed the high growth in the area and the need to address regional concerns resulting from this growth, including water and air quality, infrastructure, and broadband connectivity.<sup>53</sup>

The staff also reported receiving numerous public comments expressing a desire to create a cross-county Latino-influence district in this region and noting that these fast-growing and diverse suburbs have

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<sup>52</sup> See Colo. Indep. Redistricting Comm'ns Staff, *Review of Communities of Interest in Submitted Public Comments Memorandum 17* (June 23, 2021) <https://perma.cc/5PUV-8QVB>.

<sup>53</sup> *Id.*

more in common with each other than with the more rural, white parts of their own counties.<sup>54</sup> This proposal was also endorsed by the Colorado Hispanic Chamber of Commerce, which stated that the “north metro areas are home to a vibrant and growing Hispanic community with common interests who deserve representation at the federal level.”<sup>55</sup>

Following the staff’s Preliminary Plan, each of the three official staff plans and all nine of the proposed maps nominated for final consideration drew the new District 8 in this same corridor.

C. The Commission’s Decision to Exclude Longmont From District 8 Was an Abuse of Discretion.

Although the general placement of District 8 helps to preserve communities of interest among the rapidly growing communities of Western Adams, Eastern Boulder and Western Weld Counties, the

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<sup>54</sup> *See id.* (“The commissions also received comments about Greeley’s diverse ethnic makeup with many immigrants and refugees, as well as its rapid growth. . . . Some comments noted the growing Latino population in Greeley and suggested grouping it with cities in the northern Denver Metro . . . to create a district with a large Latino population.”).

<sup>55</sup> *See* Colorado Hispanic Chamber of Commerce (“COHCC”), *A Great 8 for a Great State* (video comment) at 5:56, <https://perma.cc/VUE3-LJXE>. COHCC also identified additional communities of interest in the north metro area based on shared concerns regarding clean air, safe water supplies, and transportation along the I-25 corridor. *See id.* at 6:16.

exclusion of Longmont in the Coleman Amendment cannot be squared with the public testimony that explicitly included Longmont alongside those communities. Indeed, the shared interests and concerns that unite many of the District 8 communities apply just as strongly to Longmont, and even more so than to other communities within the district. These interests include shared concerns about infrastructure, transportation, and access to resources for a rapidly growing suburban population, *see* Colo. Const. art. V, § 44.3(b)(II)(A), concerns and needs of a large Latino community, *id.* § 44.3(b)(III), and public policy concerns regarding the environmental and public health impacts of oil and gas production, *id.* § 44.3(b)(II)(B).

Numerous members of the public described the similar challenges presented by rapid population growth and suburban development in Longmont, Greeley, and other cities within District 8. As one resident noted:

[Longmont, Greeley and Commerce City] are going through similar growth expansions. Leadership in these areas are faced with many of the same issues. How do we grow in an inclusive and intentional way? One that is fiscally responsible

and meets the needs of current and future residents. And how do we make this growth sustainable.<sup>56</sup>

Clearly, these communities' shared public policy concerns related to their status as rapidly growing and interconnected suburbs qualify them as a community of interest for purposes of Section 44.3. *See* Colo. Const. art. V, § 44(3)(b)(II)(A).

The similar growth patterns of Longmont and its fellow communities along the northern I-25 corridor have also given rise to related shared public policy concerns about transportation. *See id.* § 44(3)(b)(II)(B). This transportation corridor was repeatedly described as a community of interest by members of the public concerned about long-term planning and access to resources.<sup>57</sup> As one resident explained, the communities along this corridor “have similar transportation needs” in that many of their residents use I-25 to commute to jobs in other cities,

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<sup>56</sup> *See* Colo. Indep. Redistricting Comm'ns, *Public Comment, Cassie Ratliff Comment* (June 11, 2021), <https://perma.cc/7JAA-CX7C>.

<sup>57</sup> *See, e.g., id.*, Colo. Indep. Redistricting Comm'ns, *Public Comment, Martin Spann Comment* (June 13, 2021), <https://perma.cc/Z288-3XYC>; Colo. Indep. Redistricting Comm'ns, *Public Comment, Kathy Partridge Comment* (Sept. 22, 2021), <https://perma.cc/9H9S-ZK62>; Colo. Indep. Redistricting Comm'ns, *Public Comment, Faith Halverson-Ramos Comment* (Aug. 24, 2021), <https://perma.cc/QZ4L-MQEX>.

and therefore it “would be valuable for these communities located in parts of Larimer and Weld counties to be grouped together with Longmont as a Congressional District.”<sup>58</sup> As commentator Martin Spann stated, “The citizens of the Northern I-25 corridor are my community,” and this community would benefit from more coordinated, long-term transportation planning to reduce traffic.<sup>59</sup>

Indeed, Colorado courts have found that the shared public policy concerns of communities centered around a transportation corridor can constitute a community of interest for purposes of redistricting. For example, in *Avalos v. Davidson*, the Colorado District Court found a “logical connection” between the Denver suburbs and Eagle, Summit and Grant Counties because of their shared concerns regarding “extreme” congestion on I-70. No. 01-CV-2897, 2002 WL 1895406, at \*5 (Colo. Dist. Ct. Jan. 25, 2002), *aff’d sub nom. Beauprez v. Avalos*, 42 P.3d 642 (Colo. 2002). The court explained: “Any improvements of this necessary highway in large part come from federal aid. For this reason, among

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<sup>58</sup> *Faith Halverson-Ramos Comment, supra note 57.*

<sup>59</sup> *Martin Spann Comment, supra note 57.*

others, it appears wise to have the counties burdened by the heavy I-70 traffic to be in the same congressional district.” *Id.*<sup>60</sup>

Similarly, several commentators identified shared concerns regarding affordable housing among residents of Longmont and other rapidly growing suburbs of the “Northern Range.”<sup>61</sup> The population growth of these communities requires the development of new and affordable housing options for young families and first-time home buyers.<sup>62</sup> Otherwise, as one resident noted, the lack of affordable housing in the suburban centers will cause residents to look for more affordable options further east, thereby exacerbating the transportation problems of the surrounding communities.<sup>63</sup> As another resident explained, the housing development required by population growth in turn requires infrastructure development across surrounding communities, the costs of

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<sup>60</sup> The *Avalos* court rejected a map that joined Pueblo with Colorado Springs in part because of an asserted community of interest around the I-25 corridor, but that was because the court found that they did not have any other similarities or shared interests. *See Avalos*, 2002 WL 1895406, at \*11. That is not the case with Longmont and the District 8 communities along the I-25 corridor, as explained above.

<sup>61</sup> *See Cassie Ratliff Comment, supra* note 56.

<sup>62</sup> *See id.*

<sup>63</sup> *See Faith Halverson-Ramos Comment, supra* note 57.

which ultimately must be borne by residents through higher property taxes.<sup>64</sup>

Relatedly, the rapid growth and transition from industrial-to-residential land use of Longmont and the communities of District 8 have given rise to shared public policy concerns regarding public health and the environment. *See* Colo. Const. art. V, § 44.3(b)(II)(B). Multiple commentators, including residents and community organizations, expressed concern about the potentially hazardous impacts of oil and gas development in Western Weld and Eastern Boulder Counties, including Longmont.<sup>65</sup> In fact, a coalition of community organizations from Adams and Weld Counties *and Longmont* submitted a joint letter to the Commission requesting that they be included together in District 8 “to ensure our communities have a voice at the Federal level that will understand the challenges and needs of those impacted by fracking and

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<sup>64</sup> *See Cassie Ratliff Comment, supra note 56.*

<sup>65</sup> *See, e.g., Faith Halverson-Ramos Comment, supra note 57* (noting that although Longmont voted to ban fracking, the air quality is still affected by wells in surrounding areas); *Kathy Partridge Comment, supra note 57*; Colo. Indep. Redistricting Comm’ns, *Public Comment, Tannis Bator Comment* (Aug. 18, 2021), <https://perma.cc/F38Y-3PZ5> (“Gas and oil have dominated the landscape for too long [in these communities].”).



oil and gas development in our region.”<sup>66</sup> These community groups cited specific local organizing efforts to push for stronger regulations of fossil fuel development, including in Longmont, and strongly advocated for the Commission to consider “our community of interest around fracking and oil and gas development . . . during this redistricting process.”<sup>67</sup>

As the community groups’ letter correctly noted, the fact that these communities share substantial interests “that may be the subject of federal legislative action”—namely, environmental and energy regulations—qualifies them as a community of interest under Section 44.3(2)(a). And Colorado courts have repeatedly recognized communities of interest based in shared concerns about environmental and natural resources issues. *See, e.g., Carstens*, 543 F. Supp. at 96–97 (noting the

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<sup>66</sup> Ex. 7, Letter from The League of Oil and Gas Impacted Coloradans, Statewide, et al. (June 14, 2021). *See also id.* at 3–4 (signed by The Longmont Climate Coalition, a resident of Longmont, and a former State House Representative from Longmont, among others).

<sup>67</sup> *Id.* at 2. *See also* COHCC, *A Great 8 for a Great State*, *supra* note 55 at 5:11 (“Cities like Greeley and Longmont aren’t just the fastest-growing mid-sized cities in the state, they’re some of the fastest growing cities in the country. This rapid, continuing growth in this region has galvanized communities of interest around potential legislation regarding the intersection of oil and gas development with neighborhoods and schools in these communities.”).

shared water, energy and environmental concerns of communities on the Western Slope); *Avalos*, 2002 WL 1895406, at \*4 (recognizing a community of interest in District 2 based on shared concerns about surface contamination and other environmental problems related to the Rocky Flats nuclear weapons manufacturing complex).

Finally, in excluding Longmont from District 8, the Commission failed to preserve the significant community of interest based on the shared concerns of the growing Latino community in this region. As commentators noted, this community has common public policy concerns that transcend county boundaries.<sup>68</sup> Among these are concerns about access to federal resources, including Title I funding for quality education<sup>69</sup> and resources for small businesses struggling to recover from the COVID-19 pandemic.<sup>70</sup> Relatedly, one commentator described

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<sup>68</sup> See, e.g., *Tannis Bator Comment*, *supra* note 65 (“The interests of the Hispanic community have long been ignored in the 4th Congressional District. . . . These communities need to have representation, and Greeley has more in common with Longmont, Niwot, and Adams County than it does with eastern Colorado.”).

<sup>69</sup> See, e.g., *id.*; *Kathy Partridge Comment*, *supra* note 57.

<sup>70</sup> See, e.g., Colo. Indep. Redistricting Comm’ns, *Public Comment, Cristobal Garcia Comment* (Sept. 27, 2021), <https://perma.cc/TJ37-JVL>;

extensive community organizing efforts across the Latino community in Longmont and other District 8 cities to inform the community about the COVID-19 vaccine and to advocate for resources to access it.<sup>71</sup> This coordinated effort is particularly notable as evidence of a community of interest, given the relatively low vaccination rates and disproportionate impact that COVID-19 has had on the Latino community in this region.<sup>72</sup> Likewise, commentators described the shared interests of the Latino community in Longmont and District 8 regarding the impact of existing

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Colo. Indep. Redistricting Comm'ns, *Public Comment, Nancy Madrigal Comment* (June 11, 2021), <https://perma.cc/7EBZ-NMWU>.

<sup>71</sup> See *Cristobal Garcia Comment*, *supra* note 70 (referring to efforts in Longmont, Evans, Greeley, Commerce City, and Thornton).

<sup>72</sup> See, e.g., John Daley, *Futbol, Flags and Fun: Getting Creative to Reach Unvaccinated Latinos in Colorado*, NPR.org (July 10, 2021, 10:38 AM), <https://perma.cc/GX3S-RDH5> (noting that “perhaps no group has been harder to get vaccinated than Coloradans who identify as Hispanic” and that Latino residents represent a disproportionate share of COVID-19 cases and hospitalizations); Meg Wingerter, *Colorado’s Latinos, Asian Americans Saw Greatest Increase in Death Rates in 2020, Mostly from COVID-19*, Denver Post (May 30, 2021, 6:00 AM), <https://perma.cc/2WHP-2VCU> (“Latinos are more likely than white Coloradans to work frontline jobs, rely on public transit and live in crowded housing, which increases the odds a working-age person will pass the virus to more vulnerable relatives.”).

and proposed federal legislation on subjects including immigration, transportation, and environmental justice.<sup>73</sup>

Thus, the record clearly shows that the Latino communities in Longmont and District 8 qualify as a single community of interest under Section 44(3)(b)(III) due to their status as a racial, ethnic and/or language minority group, and that they likewise qualify under Section 44(3)(b)(I) because they share “substantial interests that may be the subject of federal legislative action” pursuant to Section 44(3)(b)(I). Accordingly, the Commission was obligated to preserve this community (and the others identified above) “as much as is reasonably possible.” Colo. Const. art. V, § 44.3(2)(a).

### **III. The Commission Abused Its Discretion in Elevating Competitiveness Over the Prevention of Minority Vote Dilution and the Preservation of Communities of Interest and Failing to Apply a Standard of Competitiveness That Complied with the Constitutional Definition.**

Although the Coleman Amendment was inferior to other alternatives before the Commission—in particular, Tafoya Amendment

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<sup>73</sup> See *Nancy Madrigal Comment*, *supra* note 70 (“Immigration is another significant issue that we share in the Latino community, and we need a voice at the Federal level who can have substantial relationships and expertise with the agencies and policy areas that overlap and affect immigration issues.”); *Cristobal Garcia Comment*, *supra* note 70.

2—with respect to both preventing minority vote dilution and preserving communities of interest, it was nonetheless adopted by the Commission because of purported concerns about competitiveness. This was an abuse of discretion for two reasons.

First, Amendment Y makes clear that political competitiveness is a lower-priority criterion, to be considered only *after* prioritizing communities of interest and without diluting the votes of minority communities. Section 44.3(2) provides that the Commission, after ensuring compliance with federal requirements, “must preserve whole communities of interest and whole political subdivisions” and ensure that districts “are as compact as possible.” Colo. Const. art. V, § 44.3(2). Section 44.3(3) then states: “*Thereafter*, the commission shall, to the extent possible, maximize the number of politically competitive districts.” *Id.* § 44.3(3) (emphasis added). Amendment Y thus explicitly subordinates competitiveness to the preservation of communities of interest. Likewise, the Minority Vote Dilution provision at Section 44.3(4)(b) is a general prohibition—providing that “[n]o map may be approved by the Commission” if it results in the dilution of minority electoral influence—that stands apart from the tiered criteria in the

remainder of Section 44.3 and constrains the application of those criteria. *See id.* § 44.3(4)(b).

Second, the commission did not actually adopt a standard for competitiveness that was consistent with the principles laid out in Amendment Y. Section 44.3(3)(a) instructs the Commission to “maximize the number of politically competitive districts”—without regard to the partisan balance among the non-competitive districts—and Section 44.3(3)(d) explicitly defines as “competitive” a district that has “a reasonable potential for the party affiliation of the district's representative to change at least once between federal decennial censuses.” *Id.* § 44.3(3)(d).

However, the Commission did not adopt any particular standard or metric for analyzing whether a congressional seat had a “reasonable potential” to change parties over the course of the next decade. Instead, it simply produced reports that recounted the results of certain statewide elections from the last four years, leaving Commissioners to interpret those results however they chose in evaluating the map for “competitiveness.”

Indeed, many Commissioners interpreted these results without regard for the constitutional standard. For example, Commissioner Wilkes identified two districts in the Coleman Amendment as competitive because the average electoral differential between the Republican and Democratic candidate in those districts (across the handful of elections that were considered) was less than 7%.<sup>74</sup> But that arbitrary numerical threshold does not actually indicate whether a seat has a reasonable potential to change parties over a 10-year period.<sup>75</sup> Indeed, “closeness to 50/50 isn’t even a reliable indicator of the likelihood for the district to flip: one district might average a 55/45 partisan split and have mixed results across elections, while another might have the same average and yet favor the same party every time.”<sup>76</sup> But instead of actually looking at 10 years’ worth of election results to assess whether a

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<sup>74</sup> Ex. 1, Hr’g Tr. 19:14–16 (Sept. 27, 2021).

<sup>75</sup> Ex. 8, Letter from Dr. Andrew Therriault to Colo. Indep. Redistricting Comm’ns at 2–3 (Aug. 3, 2021) (“[I]n practice, determining how close to 50/50 indicates a ‘reasonable potential’ to change parties requires the commission to decide on an arbitrary numeric cutoff, which opens the door to further complications and debate.”).

<sup>76</sup> *Id.* at 3.

given district had switched between Democrats and Republicans, several commissioners chose arbitrary numerical averages to try.

Making things worse, the Commission did not even agree, during its final deliberations, on what numerical average should apply, sometimes choosing a number based on the map they were looking at. As Commissioner Espinoza conceded, “we never as a commission decided on a level that we would consider competitiveness.”<sup>77</sup> While he went on to note that “generally speaking, we’ve been saying that if it’s 10 points or less, that we would consider it within the competitive arena,” there was no adherence to this threshold.<sup>78</sup> Indeed, Commissioner Schell suggested that “no districts less than 6.5 percent would be a concern.”<sup>79</sup>

Several Commissioners adopted other arbitrary notions of competitiveness that were divorced from the constitutional standard. Commissioners Schell and Shepherd Macklin, in arguing against Tafoya Amendment 2, arbitrarily insisted that it was important for the new

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<sup>77</sup> Ex. 1, Hr’g Tr. 35:6–10 (Sept. 27, 2021).

<sup>78</sup> *Id.* at 35:9–11.

<sup>79</sup> *Id.* at 24:6–9.



District 8 to be competitive.<sup>80</sup> Commissioner Kelly pointed to this as well, in defending the Coleman Amendment.<sup>81</sup> And at another point, Commissioner Schell embraced a standard of map-wide partisan balance, stating that she “cannot move forward with a map that favors one party over another by two districts.”<sup>82</sup> But the Constitution says absolutely nothing about prioritizing the competitiveness of new district, nor does it demand specific conclusions about overall statewide partisan balance.

These are not merely abstract concerns. The Commission based its decision to adopt the Coleman Amendment over Tafoya Amendment 2 based almost entirely on competitiveness concerns. But because they did not establish or use a metric for measuring competitiveness *as defined in the constitution* the record does not actually reveal which map maximizes

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<sup>80</sup> *Id.* at 24:10–11 (Commissioner Schell asserting that “when we’re creating a new district . . . I believe we should be able to make competitive.”); *id.* at 28:18–20 (Commissioner Shepherd Mackling stating “the eighth congressional district as the new district, I would like to see more competitive as the new district.”).

<sup>81</sup> Ex. 4, Hr’g Tr. 207:1–8 (Sept. 28, 2021) (“I think without [sic] getting a new district, and that being the most competitive district on . . . this map is a good step forward as we continue to grow in Colorado”).

<sup>82</sup> *Id.* at 137:12–13.

the number of districts that have a reasonable potential to switch party affiliation over a 10-year period.

## CONCLUSION

AOTL – Colorado respectfully requests that the Court declare that the Commission’s adoption of the final plan constitutes “an abuse of discretion in applying or failing to apply the criteria listed in [article V,] section 44.3” of the Colorado Constitution, pursuant to Section 44.5(3), and return the plan to the Commission for the reasons set forth herein.

October 8, 2021

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## CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing upon all parties herein via the Colorado Court's E-filing service on this 8th day of October, 2021.

/s/ Marcela A. Mendoza

Marcela A. Mendoza

*Counsel for All On The Line –  
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DATE FILED: October 08, 2021 12:04 PM

# EXHIBIT 1



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SEPTEMBER 27, 2021

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20 Job No.: 403505

21 Pages: 1 - 246

22 Transcribed by: Christian Naaden

1 P R O C E E D I N G S

2 MS. HARE: I see almost everyone in one  
3 version or another. Commissioner Leone, Commissioner  
4 Tafoya, and Commissioner Moore, can I just get a quick  
5 hands up. You can do it with your emoji hand if you  
6 want to. Thank you. Thank you. Thank you. Great. I just  
7 want to make sure we had you guys on. Perfect.

8 And hello, Mr. Barry [ph]. All right. Okay. We  
9 have all 12 back. It is now 6:03. Just a reminder, for  
10 the next phase of our agenda we are going to begin the  
11 discussion of the plan. This will run fairly similar to  
12 the last process. We will ask one of the nominators to  
13 share -- to share a three minute outline of the -- of  
14 the plan, up to three minute outline of the plan.

15 We'll also pull that plan up on the screen and  
16 encourage you to either you -- look into [inaudible] or  
17 the interactive on the website, just so you have it up  
18 as we continue discussion on it. Then we will go -- we  
19 will come back together and have a -- each commissioner  
20 will have three minutes to share their reflections on  
21 that -- on that plan. And we'll do that first round.

22 Then we'll come back, we'll have a final wrap

1 up of 15 minutes for any -- and I'm asking folks to be  
2 concise with their questions and comments for that  
3 final round, so we're keeping that to 15 minutes per  
4 plan, so that we can make it through all the plans we  
5 have listed tonight.

6 And we will -- the first section of three, I  
7 will facilitate the discussion with Matthew doing the  
8 roll call. And then we will switch to Commissioner  
9 Brawner when we get back from our break.

10 But we'll do three at a time, and then take  
11 like a 15 minute break, three at a time, take a 15  
12 minute break, so that we can, one, continue to keep our  
13 energy going through the conversations, and two, it  
14 gives you a little time to reflect on those three plans  
15 coming up next, so you don't have to hold everything in  
16 your brain all at once.

17 Similarly, we have the timer clock here just  
18 to help us with time regulation and moderation through  
19 [inaudible]. In this first set of plans, the -- Julius  
20 [ph] posted to the -- to the commission the first --  
21 the ratings, given the nominations. And the first three  
22 that we will review will be the staff plan three -- I'm



1 just looking for the -- I have it in a screenshot  
2 that's easier to read for me than the other ones.

3 The staff plan three, Coleman amendment. The  
4 Tafoya workshop is the second one. That is the  
5 amendment two version of staff's plan three. And then  
6 the Tafoya 007. Those will be the first three for this  
7 set that we review. Eric?

8 ERIC: [inaudible] and I will be able to share  
9 my screen and pull it up on the interactive [inaudible]

10 MS. HARE: Thank you so much. That would be  
11 helpful. Do we have someone that will volunteer to  
12 introduce staff's plan three with Coleman amendments?  
13 Commissioner Coleman? At any point, we actually have  
14 different plans, different people. You don't have to be  
15 the -- the nominating, but you can be. Just one of the  
16 nominators we'll ask to share.

17 And Eric is pulling that up. Commissioner  
18 Coleman, you'll have three minutes to just provide an  
19 overview of staff's plan three with the amendments.

20 MS. COLEMAN: Okay. I will start my -- my own  
21 timer this time and try to pay attention.

22 MR. LEONE: Madam Chair and Commissioner

1           When I say I don't like Broomfield, I don't --  
2 I love Broomfield, I just don't like this place. And I  
3 love Custer County. I just don't like its place.

4           FEMALE: Good clarification.

5           MR. BECK: Commissioner Wilkes.

6           MS. WILKES: Thank you, Matthu. So what I like  
7 about this one was the -- as opposed to some of the  
8 iterations that came from plan three -- is its split  
9 route, which is a nonstarter for me. I don't like a  
10 route being split.

11           So I did vote for this one, but I don't like  
12 that it doesn't get the Douglas County except for the  
13 Aurora bits. I do like the Coal Creek is taken care of  
14 in this one. And I also do think there's two districts  
15 that are under 7 percent, which 7 percent -- word here  
16 -- competitive, there we go -- competitiveness.

17           So that kind of isn't in line with what the  
18 ensemble analysis has told us about what's realistic  
19 for our state. So I do like that part as well. And  
20 that's all I'll say.

21           MS. HARE: Great. Thank you all for your  
22 feedback. We now will have any additional questions,

1 overview. Matt- -- Matthu, can I hand it over to you? I  
2 think we'll reverse this time.

3 MR. BECK: Yes. Commissioner Wilkes.

4 MS. WILKES: Thank you, Matthu. So this one  
5 has three districts under 10 percent, just barely. It's  
6 less competitive in some way. The numbers -- the -- the  
7 deviation is -- is higher from the previous map.

8 So while we did hear some people in Teller say  
9 they wanted to be together with El Paso County, we also  
10 heard places in Teller that didn't want to be together  
11 with El Paso County. So I kind of think that one's a  
12 little weird, even though it does resolve the Green  
13 Mountain Falls issue.

14 I think the good thing about this one is that  
15 it had more Douglas County in it. So we're getting some  
16 more of that population into a urban district above.  
17 And -- oh, and then another notice saying here where  
18 that Black Forest was also split in El Paso County. So  
19 I'm not -- not the best fan of that one.

20 But overall I do really like the way that it  
21 has the nice -- the straight from the south, and it  
22 also brings those water issues that Commissioner Tafoya

1 has already brought up together. And overall I am very  
2 supportive of this map over some other options. Again  
3 [inaudible] is whole. So thank you.

4 MR. BECK: Commissioner Schell.

5 MS. SCHELL: Thank you, Matthu. So yes, this  
6 was my number two pick. Actually I will say I had not  
7 looked at any of the competitiveness numbers when I  
8 made my selections. And the fact that there are no  
9 districts less than 6.5 percent would be a concern,  
10 particularly when we're creating a new district that I  
11 believe we should be able to make competitive.

12 Does include a small portion of the northern  
13 Douglas County suburbs, does split Parker, just as an  
14 observation. I don't know, and I guess I'd be curious,  
15 we said there was kind of heavily populated in that  
16 C470, E470 corridor, I -- anyway, I'd just be curious  
17 to know what those population numbers were. Fort  
18 Collins and Boulder are kept together with that small  
19 northeast corner of Boulder County in C8.

20 I do like the Teller County, El Paso County  
21 marriage. And as Commissioner Wilkes indicated, it  
22 solves the Green Mountain problem. But that's -- that's

1 not a reason to do it. I -- I just feel like there is  
2 some connectivity there.

3 I don't like separating again Otero and  
4 Crowley Counties. And I don't like having to split  
5 Otero County. I would have taken more out of the  
6 Roaring Fork Valley. I do like that Broomfield is taken  
7 out of C7.

8 I'm not a huge fan of moving Summit County  
9 into CD 2, separating it from its western slope tourism  
10 oriented neighbors. But I do appreciate the I-70  
11 transportation corridor reasons for that -- that move.

12 I think all the other things, everything's  
13 kept whole -- kept as we had required in our -- in our  
14 votes. I would note that Jefferson County is split  
15 between -- between four different congressional  
16 districts, which I -- anyway, that's -- that's one of  
17 my biggest hesitations on this.

18 So, but thank you for the collaboration during  
19 our work session. I wish we had had more time to do  
20 more of that. Thank you.

21 MR. BECK: Commissioner Moore.

22 MR. MOORE: Thank you, Matthu. So there are

1 some things about this staff plan that I like and some  
2 things that I don't. The -- the things that I like  
3 about it, I do like how it did include some of Douglas  
4 County and the suburban corridor.

5 What I don't like is that it assumes community  
6 of interest between the southern part of Jefferson  
7 County, all of Douglas County, and then all of the  
8 eastern plain. And I think that -- for me that's a  
9 stretch.

10 The thing that also gets me is the kitten  
11 shape that's up in the northern part of Douglas County.  
12 It looks -- you know, I know that wasn't our intent,  
13 but it looks gerrymandered when you look at how the  
14 fingers are coming out of -- of each of the areas.

15 Broomfield, to me, I think we moved it from  
16 one mountain district to another. So I think that's,  
17 you know, one of the things I liked about the Coleman  
18 map is that it was pretty well together.

19 I didn't like the fact that it split Parker.  
20 We heard a lot of comments over Parker and wanting to  
21 keep Parker whole, even if it meant keeping Doug- --  
22 Douglas County whole itself. I do like some of the

1 elements of CD 8, although the thing that bothers me  
2 the most about the map is some of the things that I  
3 actually did as well which is that split over Otero  
4 County. And also the fact that this is the least  
5 competitive map that we've seen since the preliminary  
6 plans.

7 And so I think from that perspective, I do  
8 appreciate Commissioner Tafoya's effort and to try to  
9 get the things that he desired by adhering to, you  
10 know, what we had decided on for staff plan three. So  
11 for that, I thank him for that effort. And I thank the  
12 effort of the commission to work on something that  
13 would -- would try to answer the questions of the  
14 commission. Thank you, Madam Chair.

15 MR. BECK: Commissioner Shepherd Macklin.

16 MS. SHEPHERD MACKLIN: Thank you, Matthu.  
17 Thank you, Commissioner Tafoya. I know you indicate you  
18 framed this map as a -- as an attempt at a compromise.  
19 And I certainly see some of those elements. I think  
20 that in this case, however, the compromise comes at a  
21 cost for me in my mind of -- of just a reasonable  
22 configuration here. And I have several concerns with

1 this map, several -- most of which have already been  
2 mentioned.

3 But I think the -- the splits that were  
4 necessary to create this map concern me in both county  
5 -- county splits, as well as some of the city -- the  
6 city splits. I think that I -- the district eight as  
7 configured here, I think Brighton not being a part of  
8 that is -- is a problematic choice for me for many of  
9 the same reasons that you were describing that corridor  
10 along district eight. I think Brighton has an attached  
11 interest in that same corridor. And so I -- I don't  
12 like that it's excluded in this district eight.

13 I'm not particularly convinced or a fan of  
14 Summit County being in this district seven. And then  
15 again, although I recognize that it is the fourth  
16 criteria constitutionally listed, I do think that the -  
17 - the lack of competitiveness in this map is notable  
18 for me, that again the eighth congressional district as  
19 the new district, I would like to see more competitive  
20 as the new district.

21 And in general this -- this map doesn't  
22 reflect the level of competitiveness that I think is



1 possible. I recognize it's not our first criteria. And  
2 I'm not suggesting that we should draw a map solely  
3 based on that. But we have seen examples of other maps  
4 that create more competitive districts while still  
5 maintaining our other constitutional requirements.

6 So overall I -- while I recognize and  
7 appreciate the attempt at compromise, this is not a map  
8 that I -- I can support. And I feel -- I'll just --  
9 I'll end there. Thank you.

10 MR. BECK: Commissioner Leone.

11 MR. LEONE: Thank you. First thing I want to  
12 do is say I like something that this map does. I know  
13 I'm going to shock my friend and [inaudible],  
14 Commissioner Tafoya, with this acknowledgement. But I'm  
15 going to start with common ground. And to do this, I --  
16 I want to share my screen briefly, if I can do that. Am  
17 I -- can I do that now?

18 MS. HARE: So yes. Eric brough [inaudible] so  
19 you should be able to --

20 MR. LEONE: Okay. I took a picture this  
21 afternoon of the boundary between CD 8 and CD 7. So you  
22 could see that the way the map exists with the finger

1 that's been drawn, the right sandal is in CD 7 and my  
2 left sandal is in CD 8. My front tire is in CD 7 and my  
3 back tire is in CD 8. And the leaves fell off the tree  
4 in CD 8 and landed in CD 7.

5 So I thought that might be a way of  
6 illustrating some of the irrationality that we created  
7 when we said under all circumstance we must -- we must  
8 keep Broomfield whole.

9 This map -- now I'm going to get to the -- to  
10 the vinegar -- there's the sugar for Commissioner  
11 Tafoya and here's the vinegar. So this map --

12 MR. TAFOYA: [inaudible] sugar.

13 MR. LEONE: [inaudible] now, it's similar  
14 irrationalities in the boundary between district four  
15 and district three. I've zoomed in very sharply on this  
16 boundary today. And I realized that in the town of  
17 Fowler, which is in this map separated from Manzanola,  
18 and Lamar, and La Junta, and the other places that  
19 everyone in Fowler goes for everything. My brother's  
20 house is in district four, but his cattle will be  
21 eating in district three.

22 And that is just an example of how we can get

1 wrapped around the axle when we do a committee map  
2 drawing project. And I was -- I was -- I was frustrated  
3 by it yesterday. And I apologize for my intemperance.  
4 But I knew that in the moment, drawing this map  
5 freehand as a committee, we were going to create those  
6 kinds of irrational lines.

7 And my biggest problem with this map is that  
8 this is a map that is dramatically in some ways  
9 different from other maps that have been vetted by the  
10 public and commented on by the public. And I do think  
11 it is unfair to do this kind of radical surgery without  
12 the public getting an opportunity to comment.

13 Can you only imagine the comments we would  
14 hear from Jefferson County about splitting it into  
15 four? Can you only imagine the comments we would get  
16 from Lamar and La Junta about carving off parts of  
17 Highway 50? I don't think this map does any better at  
18 assembling communities of interest, but it does hurt  
19 competitiveness dramatically. So I would not be able to  
20 support this map.

21 MS. HARE: Thank you, Commissioner Leone.

22 MR. TAFOYA: [inaudible] does all that.

1 MS. HARE: Commissioner Tafoya, thank you.

2 MR. BECK: Commissioner Kelly.

3 MR. KELLY: Thanks, Matthu. I'll be very  
4 brief. I think Commissioner Shepherd Macklin and  
5 Commissioner Leone expressed all the concerns I had. I  
6 will say, Commissioner Tafoya, I do like the fact  
7 [inaudible] that does make more sense. And on the  
8 previous map, I think you split Moffat. And I was  
9 concerned about that. But I think I was looking at the  
10 -- the wrong map. So thanks for doing that.

11 Concerned the same, CD 8, I do think Brighton  
12 belongs more in CD 8 than in CD 4 in terms of that. And  
13 also the same concern with JeffCo. And it's like a  
14 Mosaic. And I think we can get a lot of -- we'd hear a  
15 lot about that especially [inaudible] the first  
16 hearings. They -- they were very adamant about keeping  
17 JeffCo as whole as possible. So thank you, Madam Chair.

18 MR. BECK: Commissioner Hare.

19 MS. HARE: Thank you. I forgot I was up next  
20 alphabetically reverse. I similarly am grateful to the  
21 process to have been able to workshop this of what some  
22 solutions could have been around some of the ideas. And

1 the things that I flagged was that I would call  
2 attention to is the trying to incorporate the southern  
3 suburbs of the metro area in that space.

4 I like -- while it -- while I think Summit  
5 County is another one of those places that because its  
6 connection to the I-70 corridor could be made -- makes  
7 sense in this version of the map. It is -- makes its  
8 positioning at other maps also is a separate community  
9 of interest that it is related to.

10 I do think that some of the other -- I like  
11 how it secures up a little clearly between two and  
12 eight. And I do think I share a couple of the other  
13 concerns around -- around competitiveness as -- as our  
14 fourth and final tier. But -- but understanding where  
15 we could increase some of that and what populations,  
16 particularly in that -- that district eight that could  
17 be included. However, I do like the balance of trying  
18 to incorporate that.

19 I also like that Broomfield got put in on this  
20 map with district two because of its connection to  
21 Broomfield -- to Boulder, and kind of that end of the  
22 kind of connection between the -- that path -- that

1 in my mind this is a compromise map. To be more -- to  
2 address some of the things that have just been said, I  
3 wouldn't have normally brought this up first, but  
4 because so many people have commented on the  
5 competitiveness and I have so little time, I do want to  
6 remind us that, you know, we never as a commission  
7 decided on a level that we would consider  
8 competitiveness.

9 But generally speaking, we've been saying that  
10 if it's 10 points or less, that we would consider it  
11 within the competitive arena. And both this map and the  
12 map we previously talked of, and -- and actually most  
13 of the top maps, have three strong dem districts, two  
14 strong republican districts, and three districts that  
15 are under that 10 percent. And -- and that includes  
16 this Tafoya map.

17 So you know, while I know the numbers for  
18 district eight in -- in particular is lower, it's still  
19 under that 10 percent number that -- that we've always  
20 talked about. So I -- I think it's a little unfair to  
21 say that it's not competitive.

22 And then Brighton, regarding Brighton,

1 I do feel that the northern edge of Greeley  
2 and Fort Collins were trimmed right down to the  
3 municipal boundary, which does mean people that feel  
4 part of that community are not there. And I'm out of  
5 time. Thanks.

6 MR. BECK: Commissioner Brawner.

7 MS. BRAWNER: Well thank you, Matthu. There's  
8 a lot I like about this map and a lot has been said  
9 about this map. So I will try to keep it under the  
10 three minutes for everyone. What I do like about it is  
11 when we talk about being really mindful of the group  
12 and addressing communities of interest, the amendments  
13 to this map were made specifically with people in mind.  
14 So where the changes were made were deliberately made  
15 for communities of interest.

16 And if we look at something like JeffCo, the  
17 split where it is, I think what's really interest is  
18 where we chose to split it. So the aerospace industry,  
19 Lockheed Martin, we made sure to put that right back  
20 with the rest of the aerospace industry.

21 The line splitting JeffCo goes along 285. And  
22 as someone who frequents that direction because I do a

1 Commissioner Espinoza.

2 MS. ESPINOZA: Thank you, Madame Chair. I have  
3 a process question. I noted tonight that there were two  
4 maps that were nominated for discussion that were tied  
5 in a number of votes. They both got eight votes. And so  
6 I'm just wondering what will be the process tomorrow  
7 when we get -- if we were to get tied votes for a  
8 particular map?

9 JEROME: Thank you, Commissioner Espinoza.  
10 That's a good question. Let me work with nonpartisan  
11 staff on working out all the details and -- and the  
12 [inaudible] iterations and then we'll -- we'll reach  
13 out to each commissioner during the day, sometime  
14 during the morning or so, to walk you through sort of  
15 the -- the process as well as some of the options so  
16 that we can gauge everybody's sort of temperature and  
17 feelings on that. And then at the beginning of the  
18 meeting, we'll walk through all of those details and --  
19 and answer all of those questions in the beginning.

20 MS. HARE: All right. So the last item -- or  
21 the -- the item for action related to -- oh.

22 Commissioner Tafoya.



1 MR. TAFOYA: Sorry. Can we get a new list of  
2 the amendments? Or -- or a new list of --

3 MS. HARE: The plans?

4 MR. TAFOYA: Yeah. That got pulled out -- that  
5 got pulled out so we all are on the same page.

6 MS. HARE: Yes. Can I ask the -- can -- can  
7 someone who had that full list that could be considered  
8 on the staff team or Jerome narrow that down and then  
9 post that in the box and e-mail that to everyone, what  
10 they -- the ones that will be on the ballot for  
11 tomorrow? Thank you for that request, Commissioner  
12 Tafoya.

13 MR. TAFOYA: Thank you.

14 MS. HARE: All right. Before that list gets  
15 finalized, is there any other -- this is the last  
16 action item for Section 5. Is there any other plans  
17 that weren't discussed today that you would like to put  
18 on the ballots at this moment?

19 All right. Seeing no hands, we have a ballot  
20 and we will -- as -- as Jerome mentioned, we -- they  
21 will -- he will be reaching out individually to -- as  
22 the -- as to the staff and [inaudible] confer on how to

1 best do the tabulation coordination between the poll --  
2 the voting that we will begin in our process tomorrow.

3

4 But we will walk through it step-by-step  
5 tomorrow so everyone understands how the voting will  
6 work and what the tabulation will look like  
7 collectively. Commissioner Schell?

8 MS. SCHELL: Sorry. Did we start a -- what is  
9 the number of -- of maps that will be on the ballot? I  
10 don't need a list of them right now but I want --

11 MS. HARE: We started with 13 and we  
12 eliminated four so that would --

13 MS. SCHELL: Nine. That's still a lot of maps.

14 MS. HARE: Yeah.

15 MS. SCHELL: Thank you.

16 MS. HARE: Or is that right? Yes. 13 and 4.  
17 Yep. Thank you. Yep. So nine maps will be on the  
18 ballot. All right. We are at the end of our meeting  
19 today. I wanted to thank you for holding this space  
20 with us, for lasting this long. We are at, from the  
21 start of the meeting to the end of the meeting, we are  
22 at nine hours and 39 minutes but we did have an hour-

1 and-a-half break compared in the -- in there so I hope  
2 folks got enough chance to breathe.

3 Thank you so much. Sleep well. Try not to  
4 dream of too many maps before tomorrow and then we will  
5 begin our voting process to get a res- -- towards  
6 getting a final map to submit to the Supreme Court. And  
7 with that, at 11:39 I will adjourn this meeting.

8 MR. LEONE: Goodnight.

9 MS. HARE: Goodnight. Bill, get some sleep.

10 MR. LEONE: Yeah.

11 MS. HARE: I hope you had enough medicine.

12 MR. LEONE: I did not.

13 MS. HARE: I'll see you guys tomorrow.

14 MS. SHEPHERD MACKLIN: Thank you to staff too.

15 MS. HARE: Thank you staff. Good call.

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CERTIFICATE OF TRANSCRIBER

I, Chris Naaden, a transcriber, hereby declare under penalty of perjury that to the best of my ability from the audio recordings and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome, the above 245 pages contain a full, true and correct transcription of the tape-recording that I received regarding the event listed on the caption on page 1.

I further declare that I have no interest in the event of the action.



---

October 5, 2021

Chris Naaden

(403505, Independent Congressional Redistricting  
Commission, 9-27-21)

DATE FILED: October 12, 2021 3:58 PM

# EXHIBIT 2



DATE FILED: October 12, 2021 3:58 PM

# EXHIBIT 3

# **ROUND 1 TALLY**



Ballot for "Final Plan"													
Vote for one plan that you want to become the Commission's adopted "Final Plan"													
	Brawner	Coleman	Diawara	Espinoza	Hare	Kelly	Leone	Shepherd Macklin	Moore	Schell	Tafoya	Wilkes	TALLY
Staff Plan 3 Coleman Amendment													5
Tafoya Workshop Adjusted Amendment (Tafoya Amendment 2)		x						x		x			1
P.007.Tafoya ("Headwaters Amended")	x		x	x							x	x	5
Moore Workshop Adjusted Amendment (Moore Amendment 2)													
Schell Workshop Adjusted Amendment (Schell Moore Kelly Coleman)						x							1
Third Staff Plan													
Second Staff Plan													
Staff Plan 2 Shepherd Macklin Amendment													
P.008.Shepherd Macklin ("Schuster Amended")													

**NOTE: A plan will become the Commission's adopted "Final Plan" if it receives at least 8 votes, including 2 votes from commissioners unaffiliated with a major political party.**

**Preliminary Staff Plan**

Staff Plan 3 Shepherd Macklin Amendment

P.002.Moore02

Staff Plan 3 Kelly Amendment

Informational Ballot for 1st Alternative													
Vote for one plan that is your first preferred alternative to become the "Final Plan"													
	Brawner	Coleman	Diawara	Espinoza	Hare	Kelly	Leone	Shepherd Macklin	Moore	Schell	Tafoya	Wilkes	TALLY
Staff Plan 3 Coleman Amendment		x				x							2
Tafoya Workshop Adjusted Amendment (Tafoya Amendment 2)	x			x							x		3
P.007.Tafoya ("Headwaters Amended")													
Moore Workshop Adjusted Amendment (Moore Amendment 2)													1
Schell Workshop Adjusted Amendment (Schell Moore Kelly Coleman)							x						2
Third Staff Plan								x			x		1
Second Staff Plan					x								1
Staff Plan 2 Shepherd Macklin Amendment													
P.008.Shepherd Macklin ("Schuster Amended")			x						x			x	3

**NOTE: This vote tally is for information purposes only.**

Informational Ballot for 2nd Alternative													
Vote for one plan that is your second preferred alternative to become the "Final Plan"													
	Brawner	Coleman	Diawara	Espinoza	Hare	Kelly	Leone	Shepherd Macklin	Moore	Schell	Tafoya	Wilkes	TALLY
Staff Plan 3 Coleman Amendment	x												1
Tafoya Workshop Adjusted Amendment (Tafoya Amendment 2)												x	1
P.007.Tafoya ("Headwaters Amended")													
Moore Workshop Adjusted Amendment (Moore Amendment 2)									x				2
Schell Workshop Adjusted Amendment (Schell Moore Kelly Coleman)					x			x					2
Third Staff Plan		x	x			x							3
Second Staff Plan										x			1
Staff Plan 2 Shepherd Macklin Amendment													
P.008.Shepherd Macklin ("Schuster Amended")				x			x						2

**NOTE: This vote tally is for information purposes only.**

Informational Ballot for 2nd Alternative													
Vote for one plan that is your second preferred alternative to become the "Final Plan"													
	Brawner	Coleman	Diawara	Espinoza	Hare	Kelly	Leone	Shepherd Macklin	Moore	Schell	Tafoya	Wilkes	TALLY
Staff Plan 3 Coleman Amendment			x									x	2
Tafoya Workshop Adjusted Amendment (Tafoya Amendment 2)					x								1
P.007.Tafoya ("Headwaters Amended")													
Moore Workshop Adjusted Amendment (Moore Amendment 2)						x	x						2
Schell Workshop Adjusted Amendment (Schell Moore Kelly Coleman)				x						x			2
Third Staff Plan													
Second Staff Plan													
Staff Plan 2 Shepherd Macklin Amendment													
P.008.Shepherd Macklin ("Schuster Amended")								x					1

**NOTE: This vote tally is for information purposes only.**

# **ROUND 2 TALLY**

Ballot for "Final Plan"													
Vote for one plan that you want to become the Commission's adopted "Final Plan"													
	Browner	Coleman	Diawara	Espinoza	Hare	Kelly	Leone	Shepherd Macklin	Moore	Schell	Tafoya	Wilkes	TALLY
Staff Plan 3 Coleman Amendment		1				1	1	1	1	1	1		7
Tafoya Workshop Adjusted	1											1	2
P.007.Tafoya ("Headwaters Amended")				1	1								3
Moore Workshop Adjusted													0
Schell Workshop Adjusted Amendment													0
Third Staff Plan													0
Second Staff Plan													0
Staff Plan 2 Shepherd Macklin													0
P.008.Shepherd Macklin ("Schuster													0

**NOTE: A plan will become the Commission's adopted "Final Plan" if it receives at least 8 votes, including 2 votes from commissioners unaffiliated with a major political party.**

Preliminary Staff Plan  
 Staff Plan 3 Shepherd Macklin Amendment  
 P.002.Moore02  
 Staff Plan 3 Kelly Amendment

Informational Ballot for 1st Alternative													
Vote for one plan that is your first preferred alternative to become the "Final Plan"													
	Browner	Coleman	Diawara	Espinoza	Hare	Kelly	Leone	Shepherd Macklin	Moore	Schell	Tafoya	Wilkes	TALLY
Staff Plan 3 Coleman Amendment													0
Tafoya Workshop Adjusted			1		1								2
P.007.Tafoya ("Headwaters Amended")	1											1	2
Moore Workshop Adjusted													0
Schell Workshop Adjusted Amendment							1	1					2
Third Staff Plan			1			1			1		1		4
Second Staff Plan													0
Staff Plan 2 Shepherd Macklin													0
P.008.Shepherd Macklin ("Schuster										1		1	2

**NOTE: This vote tally is for information purposes only.**

Informational Ballot for 2nd Alternative													
Vote for one plan that is your second preferred alternative to become the "Final Plan"													
	Browner	Coleman	Diawara	Espinoza	Hare	Kelly	Leone	Shepherd Macklin	Moore	Schell	Tafoya	Wilkes	TALLY
Staff Plan 3 Coleman Amendment	1		1										2
Tafoya Workshop Adjusted Amendment (Tafoya Amendment 2)						1						1	2
P.007.Tafoya ("Headwaters Amended")													0
Moore Workshop Adjusted Amendment (Moore Amendment 2)								1					1
Schell Workshop Adjusted Amendment (Schell Moore Kelly Coleman)									1		1		2
Third Staff Plan		1					1						2
Second Staff Plan													0
Staff Plan 2 Shepherd Macklin Amendment													0
P.008.Shepherd Macklin ("Schuster Amended")					1							1	2

**NOTE: This vote tally is for information purposes only.**

Informational Ballot for 3rd Alternative													
Vote for one plan that is your second preferred alternative to become the "Final Plan"													
	Browner	Coleman	Diawara	Espinoza	Hare	Kelly	Leone	Shepherd Macklin	Moore	Schell	Tafoya	Wilkes	TALLY
Staff Plan 3 Coleman Amendment						1							1
Tafoya Workshop Adjusted Amendment (Tafoya Amendment 2)											1		1
P.007.Tafoya ("Headwaters Amended")													0
Moore Workshop Adjusted Amendment (Moore Amendment 2)							1						1
Schell Workshop Adjusted Amendment (Schell Moore Kelly Coleman)						1							1
Third Staff Plan													0
Second Staff Plan													0
Staff Plan 2 Shepherd Macklin Amendment													0
P.008.Shepherd Macklin ("Schuster Amended")								1		1			2

**NOTE: This vote tally is for information purposes only.**

# **ROUND 3 TALLY**

Ballot for "Final Plan"													
Vote for one plan that you want to become the Commission's adopted "Final Plan"													
	Browner	Coleman	Diawara	Espinoza	Hare	Kelly	Leone	Shepherd Macklin	Moore	Schell	Tafoya	Wilkes	TALLY
Staff Plan 3 Coleman Amendment			1			1	1	1	1	1	1		7
Tafoya Workshop Adjusted Amendment (Tafoya Amendment 2) P.007.Tafoya ("Headwaters Amended")	1				1							1	2
Moore Workshop Adjusted Amendment (Moore Amendment 2)				1								1	3
Schell Workshop Adjusted Amendment (Schell Moore Kelly Coleman)													0
Third Staff Plan													0
Second Staff Plan													0
Staff Plan 2 Shepherd Macklin Amendment													0
P.008.Shepherd Macklin ("Schuster Amended")													0

**NOTE: A plan will become the Commission's adopted "Final Plan" if it receives at least 8 votes, including 2 votes from commissioners unaffiliated with a major political party.**

Preliminary Staff Plan  
 Staff Plan 3 Shepherd Macklin Amendment  
 P.002.Moore02  
 Staff Plan 3 Kelly Amendment

Informational Ballot for 1st Alternative													
Vote for one plan that is your first preferred alternative to become the "Final Plan"													
	Browner	Coleman	Diawara	Espinoza	Hare	Kelly	Leone	Shepherd Macklin	Moore	Schell	Tafoya	Wilkes	TALLY
Staff Plan 3 Coleman Amendment					1								1
Tafoya Workshop Adjusted Amendment (Tafoya Amendment 2) P.007.Tafoya ("Headwaters Amended")		1				1							2
Moore Workshop Adjusted Amendment (Moore Amendment 2)													0
Schell Workshop Adjusted Amendment (Schell Moore Kelly Coleman)							1				1		3
Third Staff Plan									1				0
Second Staff Plan													0
Staff Plan 2 Shepherd Macklin Amendment													0
P.008.Shepherd Macklin ("Schuster Amended")				1						1		1	4

**NOTE: This vote tally is for information purposes only.**

Informational Ballot for 2nd Alternative													
Vote for one plan that is your second preferred alternative to become the "Final Plan"													
	Browner	Coleman	Diawara	Espinoza	Hare	Kelly	Leone	Shepherd Macklin	Moore	Schell	Tafoya	Wilkes	TALLY
Staff Plan 3 Coleman Amendment		1											1
Tafoya Workshop Adjusted Amendment (Tafoya Amendment 2) P.007.Tafoya ("Headwaters Amended")			1								1	1	4
Moore Workshop Adjusted Amendment (Moore Amendment 2)													0
Schell Workshop Adjusted Amendment (Schell Moore Kelly Coleman)									1				1
Third Staff Plan			1			1							2
Second Staff Plan													0
Staff Plan 2 Shepherd Macklin Amendment													0
P.008.Shepherd Macklin ("Schuster Amended")							1	1					2

**NOTE: This vote tally is for information purposes only.**

Informational Ballot for 3rd Alternative													
Vote for one plan that is your second preferred alternative to become the "Final Plan"													
	Browner	Coleman	Diawara	Espinoza	Hare	Kelly	Leone	Shepherd Macklin	Moore	Schell	Tafoya	Wilkes	TALLY
Staff Plan 3 Coleman Amendment				1								1	2
Tafoya Workshop Adjusted Amendment (Tafoya Amendment 2) P.007.Tafoya ("Headwaters Amended")													0
Moore Workshop Adjusted Amendment (Moore Amendment 2)													0
Schell Workshop Adjusted Amendment (Schell Moore Kelly Coleman)													0
Third Staff Plan													1
Second Staff Plan													0
Staff Plan 2 Shepherd Macklin Amendment													0
P.008.Shepherd Macklin ("Schuster Amended")									1				1

**NOTE: This vote tally is for information purposes only.**

# **ROUND 4 TALLY**

Ballot for "Final Plan"													
Vote for one plan that you want to become the Commission's adopted "Final Plan"													
	Browner	Coleman	Diawara	Espinoza	Hare	Kelly	Leone	Shepherd Macklin	Moore	Schell	Tafoya	Wilkes	TALLY
Staff Plan 3 Coleman Amendment													5
Tafoya Workshop Adjusted Amendment (Tafoya Amendment 2)							1	1	1	1	1		
P.007.Tafoya ("Headwaters Amended")	1	1		1		1						1	1
Moore Workshop Adjusted Amendment (Moore Amendment 2)													0
Schell Workshop Adjusted Amendment (Schell Moore Kelly Coleman)													0
Third Staff Plan													0
Second Staff Plan													0
Staff Plan 2 Shepherd Macklin Amendment													0
P.008.Shepherd Macklin ("Schuster Amended")													0

**NOTE: A plan will become the Commission's adopted "Final Plan" if it receives at least 8 votes, including 2 votes from commissioners unaffiliated with a major political party.**

- Preliminary Staff Plan
- Staff Plan 3 Shepherd Macklin Amendment
- P.002.Moore02
- Staff Plan 3 Kelly Amendment

Informational Ballot for 1st Alternative													
Vote for one plan that is your first preferred alternative to become the "Final Plan"													
	Browner	Coleman	Diawara	Espinoza	Hare	Kelly	Leone	Shepherd Macklin	Moore	Schell	Tafoya	Wilkes	TALLY
Staff Plan 3 Coleman Amendment													0
Tafoya Workshop Adjusted Amendment (Tafoya Amendment 2)													0
P.007.Tafoya ("Headwaters Amended")													0
Moore Workshop Adjusted Amendment (Moore Amendment 2)													0
Schell Workshop Adjusted Amendment (Schell Moore Kelly Coleman)													0
Third Staff Plan													0
Second Staff Plan													0
Staff Plan 2 Shepherd Macklin Amendment													0
P.008.Shepherd Macklin ("Schuster Amended")													0

**NOTE: This vote tally is for information purposes only.**

Informational Ballot for 2nd Alternative													
Vote for one plan that is your second preferred alternative to become the "Final Plan"													
	Browner	Coleman	Diawara	Espinoza	Hare	Kelly	Leone	Shepherd Macklin	Moore	Schell	Tafoya	Wilkes	TALLY
Staff Plan 3 Coleman Amendment													0
Tafoya Workshop Adjusted Amendment (Tafoya Amendment 2)													0
P.007.Tafoya ("Headwaters Amended")													0
Moore Workshop Adjusted Amendment (Moore Amendment 2)													0
Schell Workshop Adjusted Amendment (Schell Moore Kelly Coleman)													0
Third Staff Plan													0
Second Staff Plan													0
Staff Plan 2 Shepherd Macklin Amendment													0
P.008.Shepherd Macklin ("Schuster Amended")													0

**NOTE: This vote tally is for information purposes only.**

Informational Ballot for 3rd Alternative													
Vote for one plan that is your second preferred alternative to become the "Final Plan"													
	Browner	Coleman	Diawara	Espinoza	Hare	Kelly	Leone	Shepherd Macklin	Moore	Schell	Tafoya	Wilkes	TALLY
Staff Plan 3 Coleman Amendment													0
Tafoya Workshop Adjusted Amendment (Tafoya Amendment 2)													0
P.007.Tafoya ("Headwaters Amended")													0
Moore Workshop Adjusted Amendment (Moore Amendment 2)													0
Schell Workshop Adjusted Amendment (Schell Moore Kelly Coleman)													0
Third Staff Plan													0
Second Staff Plan													0
Staff Plan 2 Shepherd Macklin Amendment													0
P.008.Shepherd Macklin ("Schuster Amended")													0

**NOTE: This vote tally is for information purposes only.**

# **ROUND 5 TALLY**



**Ballot for "Final Plan"**

**Vote for one plan that you want to become the Commission's adopted "Final Plan"**

	Browner	Coleman	Diawara	Espinoza	Hare	Kelly	Leone	Shepherd Macklin	Moore	Schell	Tafoya	Wilkes	TALLY
Staff Plan 3 Coleman Amendment		1					1			1	1		4
Tafoya Workshop Adjusted Amendment (Tafoya Amendment 2)	1			1		1						1	4
P.007.Tafoya ("Headwaters Amended")													0
Moore Workshop Adjusted Amendment (Moore Amendment 2)													0
Schell Workshop Adjusted Amendment (Schell Moore Kelly Coleman)													0
Third Staff Plan													0
Second Staff Plan													0
Staff Plan 2 Shepherd Macklin Amendment													0
P.008.Shepherd Macklin ("Schuster Amended")					1			1	1			1	4

**NOTE: A plan will become the Commission's adopted "Final Plan" if it receives at least 8 votes, including 2 votes from commissioners unaffiliated with a major political party.**

~~Preliminary Staff Plan~~

~~Staff Plan 3 Shepherd Macklin Amendment~~

~~P.002.Moore02~~

~~Staff Plan 3 Kelly Amendment~~

# **ROUND 6 TALLY**

Ballot for "Final Plan"													
Vote for one plan that you want to become the Commission's adopted "Final Plan"													
	Browner	Coleman	Diawara	Espinoza	Hare	Kelly	Leone	Shepherd Macklin	Moore	Schell	Tafoya	Wilkes	TALLY
Staff Plan 3 Coleman Amendment	1	1				1	1			1	1		6
Tafoya Workshop Adjusted Amendment (Tafoya Amendment 2)													0
P.007.Tafoya ("Headwaters Amended")												1	1
Moore Workshop Adjusted Amendment (Moore Amendment 2)													0
Schell Workshop Adjusted Amendment (Schell Moore Kelly Coleman)													0
Third Staff Plan													0
Second Staff Plan													0
Staff Plan 2 Shepherd Macklin Amendment													0
P.008.Shepherd Macklin ("Schuster Amended")				1	1			1					1
													5

**NOTE: A plan will become the Commission's adopted "Final Plan" if it receives at least 8 votes, including 2 votes from commissioners unaffiliated with a major political party.**

DATE FILED: October 12, 2021 3:58 PM

# EXHIBIT 4



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# Transcript of Hearing

**Date:** September 28, 2021  
**Case:** Transcription Services

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TRANSCRIPT OF AUDIO-RECORDED MEETING OF THE  
INDEPENDENT CONGRESSIONAL REDISTRICTING COMMISSION

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SEPTEMBER 28, 2021

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19

20 Job No.: 403505

21 Pages: 1 - 243

22 Transcribed by: Christian Naaden

1 you know, Chair Hare and Vice Chair Bronner for their  
2 incredible job running these proceedings. I mean, my  
3 hat is off. The members of the commission, everybody,  
4 we all worked really [inaudible] put in time and  
5 energy.

6 And I -- I'm glad also we have the technology,  
7 because I couldn't imagine being able to do it if I  
8 didn't have the Zoom and all of that. So I [inaudible]  
9 we will continue to have our own disagreement and we  
10 are agreeing to agree to disagree and [inaudible] we  
11 are going to get this mission done.

12 So I thank everyone, honestly, for your hard  
13 work. Now, our work could not have been completed, it  
14 would have been impossible, in fact, if not for these  
15 [inaudible] during the public hearings [inaudible]  
16 people that were thanking the commissioners, but for  
17 me, the real credit was [inaudible] staff and all of  
18 them -- to all of them.

19 I like to tease and I used the lawyers on this  
20 vote, you know, same thing [inaudible] someone in my  
21 class.

22 MR. BARRY: We're at three minutes, sir.

1 MR. DIAWARA: My three minutes are up?

2 MR. BARRY: Yes.

3 MR. DIAWARA: Okay. Bye. Thank you.

4 [inaudible] for your work. That's it.

5 MR. BARRY: Thank you. Thank you,  
6 Commissioner. Looks like we have [inaudible] Coleman.

7 MS. COLEMAN: Thank you, Jerome, and thank you  
8 so much to everyone, especially to the staff and  
9 everyone whose heart is in this for all the right  
10 reasons in terms of creating a really good  
11 redistricting map for our state.

12 As some of you may have noticed, my first vote  
13 was for the Tafoya Workshop Adjusted Amendment and I'd  
14 like to just say a few things about it. Not too many  
15 things, but I just -- you know, we worked together to  
16 build the staff plan three.

17 It was a -- we listened to public comment and hearing  
18 testimonies and over the last weeks, two months,  
19 actually, the commissioners' knowledge, we gained a lot  
20 of -- a lot of understanding about the communities and  
21 interest.

22 And the -- the -- the district we have, that



1 has the western agriculture and water and southern  
2 communities, agriculture and water, plus the other  
3 portions of those communities, I really do feel belong  
4 together.

5 I think that better -- it's a better fit than  
6 anything else for the -- our southern community, if we  
7 have to expand it and it just didn't have enough  
8 population to be its own congressional district.

9 I sure wish we had 10 congressional districts.  
10 So I will say a few things about the Tafoya Workshop  
11 Adjusted Amendment that I have in my notes. So it was  
12 and is -- these are changes we made as -- in our  
13 workshop for communities of interest.

14 Custer County was added to help support the  
15 southern community of interest along the Arkansas River  
16 Basin in CD 3. Summit County was added to strengthen  
17 the I25 transportation shared public policy concern in  
18 CD 7.

19 Lone Tree and Green Acres plus the  
20 neighborhoods within 470 were added to broaden CD 6  
21 into the very northern tier of Douglas County where  
22 possible.

1 Broomfield and Loveland, as per public comment, were  
2 moved to CD 2 while aligning the agricultural northeast  
3 section of Larimer County into CD 4 and Greeley remains  
4 solely within CD 8.

5 I believe these changes were all improvements  
6 to the map and I think in this round, those who can  
7 support this, let's see what that vote looks like and  
8 then we'll know. And that's what I would suggest. So  
9 thank you.

10 MR. BARRY: Thank you, Commissioner Coleman.  
11 Commissioner Shell?

12 MS. SHELL: Yes, thank you, Jerome. My main  
13 concern with the Tafoya Workshop Adjusted map is that  
14 it is significantly less competitive. If we measure  
15 competitiveness as a lower partisan lean.

16 That gives me pause. Even the new CD 8 has a  
17 Democrat lean of 6.5 percent for creating a new  
18 district, I am troubled by that. Otherwise I generally  
19 like that Tafoya Workshop Adjusted map.

20 As I said previously, I don't love taking  
21 Summit County as a western slope county out of CD 2,  
22 but the I70 corridor has some appeal. So you know,

1 we've whittled it down to maps that do have Greely in  
2 CD 8.

3 I recognized that from the very beginning,  
4 that we weren't going to get past that. I think there  
5 are some maps that I preferred, but that -- as I said,  
6 I do like Teller with El Paso County. I'm not troubled  
7 by putting Custer in CD 3.

8 But I am troubled by the lack of -- by the  
9 imbalance in the competitiveness. Basically we have  
10 five districts that lean pretty solidly to the  
11 Democrats and three that lean pretty solidly to the  
12 Republicans.

13 I would be very comfortable with a 4-3. I'm  
14 much less comfortable with a 5-2. So -- or 5-3. Excuse  
15 me. I would be comfortable with a lean that favors one  
16 party over the other by one district. I am much less  
17 comfortable by a lean that favors one party by two  
18 districts.

19 Thank you.

20 MR. BARRY: Thank you, Commissioner Shell.  
21 Commissioner Kelly?

22 MR. KELLY: Thanks, Jerome. So I'll just echo

1 nexus. But I listened to their comments and every  
2 single iteration of these maps that came out after that  
3 kept Jefferson County whole. And the comments from  
4 Jefferson County diminished and we got thank yous from  
5 Jefferson County and at every meeting, we were told how  
6 happy Jefferson County was for that accommodation.

7 And that is --

8 MR. BARRY: Unfortunately, that's three --

9 MR. LEONE: That is the last --

10 MR. BARRY: That's three --

11 MR. LEONE: -- Saturday. And suddenly, with a  
12 -- with a stroke of a pen, we divided Jefferson County  
13 into four sections. And we've had no --

14 MR. BARRY: Unfortunately, that's --

15 MR. LEONE: -- hearings on it and no  
16 commentary on it.

17 MR. BARRY: Commissioner Leone, let's -- let's  
18 stop there. It's been three minutes.

19 MR. LEONE: I will wrap it up.

20 MR. BARRY: Thank you.

21 MR. LEONE: I will wrap it up.

22 MALE 1: As long as you give equal amount to

1 the other side, that's fine.

2 MR. LEONE: If I can have another 30 seconds,  
3 there's one more point I'd like to make. And I'm happy  
4 to give 30 seconds to one of the proponents for the  
5 other map.

6 When you look at the competitive impact of the  
7 Tafoya map and compare it to the third staff plan,  
8 there is only one conclusion that observers of this  
9 commission will draw and that is that this map was  
10 engineered on the last day that maps could be submitted  
11 to destroy any semblance of competition in a  
12 congressional district. And I would be hard pressed to  
13 disagree with them.

14 We have a chance in the third staff plan to  
15 have at least one competitive district. I would rather  
16 see the third --

17 MALE 1: Mr. Chair, is that 30 seconds?

18 MR. LEONE: -- amended plan be submitted  
19 unamended than to see the Tafoya workshop plan go  
20 forward. And I will never vote for it. Thank you.

21 MR. BARRY: We've gone an -- we've gone an  
22 extra minute over. So we'll give a minute to the other

1 side. And let's -- let's do try to keep our time. We've  
2 had strong signals from the commission that people want  
3 to stay within the three minutes.

4 Let me see. Can I have a volunteer who will  
5 speak who voted for the Tafoya plan? Commissioner  
6 Espinoza.

7 MS. ESPINOZA: Thank you, Mr. Chair. I've  
8 already made some of my points, but first, I want to  
9 say, that was extremely disrespectful by Commissioner  
10 Leone and I'm very disappointed that one, he went so  
11 far over his time and secondly, that he would accuse --  
12 throw out this accusation of engineering.

13 We built that map because that was the process  
14 that we had decided on in our agenda before the -- the  
15 meeting even began. It was done in a public meeting.  
16 Every single commissioner was there and could give  
17 input. That's really an unfair accusation to throw out.  
18 And I do not appreciate that whatsoever.

19 Now, Commissioner Leone, you -- you may or may  
20 not be aware that the Coleman map that is in contention  
21 was also workshopped, but it was workshopped in a  
22 committee meeting, not in an open commission meeting

1 with all commissioners in attendance.

2 And so the only people that have input into  
3 that meeting were the four commissioned map analytics  
4 people that sit on that committee. That was raised as  
5 an objection. I didn't raise it as an objection at the  
6 time because it was an open meeting. Everyone was  
7 invited to go to that meeting, but we had no idea ahead  
8 of time that that map was going to be workshopped.

9 I'm not suggesting anything nefarious happened  
10 during that meeting or that was the purpose of that.  
11 And -- and to the contrary. I know that Commissioner  
12 Coleman listens to everyone's input, and she was simply  
13 trying to get some feedback on a map that she was  
14 working on.

15 The point is, this idea that we workshopped  
16 the Tafoya map in an open meeting was somehow a last  
17 minute underhanded sort of strategic plan to dilute  
18 some votes is just false and outrageous as an  
19 accusation, if you ask me.

20 Finally, Brighton --

21 MR. BARRY: Thirty -- thirty seconds. Thirty  
22 seconds, commissioner.

1 MS. ESPINOZA: Does that include my extra  
2 minute?

3 MR. BARRY: Do you want the extra minute?

4 MS. ESPINOZA: Absolutely.

5 MR. BARRY: Sure.

6 MS. ESPINOZA: Brighton is a community in  
7 transition much like Greeley is. So there can be an  
8 argument made for having Brighton in either CD 8 with  
9 the growth district or in CD 4 with the agricultural  
10 district. Both of those communities of interest are  
11 reflected there.

12 With regard to -- during the map process  
13 grabbing -- trying to get population here and there,  
14 looking for places, that's how the maps are built. When  
15 you get down to that last piece and you have to find  
16 those few populations, you do have to look at the  
17 census block numbers and pick out a census block that  
18 fits because we have to get it down to plus or minus  
19 one. That's the way it works.

20 And may I remind the commission that  
21 population balance is the number criteria? The number  
22 one criteria. So again --



1 MR. BARRY: Twenty -- 20 seconds. Twenty  
2 seconds. Twenty seconds.

3 MS. ESPINOZA: So again, to say that that is  
4 somehow being arbitrary is just not fair, in my  
5 estimation. And I will stop there. Thank you.

6 MR. BARRY: Thank you. Thank you,  
7 commissioner. Can we have a volunteer speaker for the  
8 Coleman map? Commissioner Schell, I saw your hand  
9 first.

10 MS. SCHELL: Thank you, Jerome. First of all,  
11 I have to correct Commissioner Espinoza. So our  
12 workshopped map was associated with the second staff  
13 plan and not with the third staff plan. So the Coleman  
14 map four was not workshopped by the math analytics  
15 committee. So just a correction for the record.

16 So -- and -- and it seems to me that we have  
17 two maps. Both have good points; both have bad points.  
18 Jefferson County [inaudible], we've heard that over and  
19 over and over. The I-70 corridor, we've now ba- --  
20 basically cut eagle out of that corridor. I think in  
21 kind of just looking at everything that it makes more  
22 sense to keep the center part of that corridor whole

1 and not cut eagle out of it.

2 But above all, we heard from everybody the  
3 importance of competitiveness. We heard that. That was  
4 threw out there where many people that justified that  
5 competitiveness should have a higher ranking in the  
6 constitution. It -- it does not. But I feel that we  
7 have a reached a point where we have two maps, both of  
8 which have good points, both of which have bad points.  
9 I could name both for both.

10 But in the end, I cannot move forward a map  
11 that has not one single competitive district. And as I  
12 said previously, I cannot forward with a map that  
13 favors one party over another by two districts. I don't  
14 care which party it is. I -- I cannot move forward with  
15 that, given all of this testimony heard about  
16 competitiveness.

17 So in the end, I believe we have two maps that  
18 are, as I said, maybe unbalanced, pros and cons with  
19 both, but to move forward I feel with just a Tafoya  
20 workshop adjusted map that has not one competitive  
21 district when we heard I believe at public -- every  
22 single public hearing how important competitiveness was

1 and -- and that for me is the deciding factor.

2 MR. BARRY: Thank you, commissioner.

3 Commissioner Diawara.

4 MR. DIAWARA: Thank you, Jerome. Not really  
5 speaking in favor or against any map, even though I do  
6 support the Tafoya map, I just would like to make one  
7 point. Let's -- let's keep this [inaudible]. Let's --  
8 let's im- -- you know, they -- they [inaudible]. People  
9 -- people are listening.

10 The Tafoya map was that we are talking about  
11 the process, we followed the process. Below here, the -  
12 - the counselor was on board and we -- we -- we -- we  
13 did it openly. Everyone did have a chance to come in  
14 and audit. So we -- everybody who really produced and  
15 presented a map before this committee -- commission  
16 worked really hard. And I -- I respect each and every  
17 one. And that is -- that is map, too. Commissioner  
18 Moore.

19 And -- and I -- and I -- I understand you when  
20 you said I had a map that has this element, it didn't  
21 get -- you know, if the map didn't get a board, it  
22 doesn't necessarily mean it was a bad map. Just someone

1 Tafoya, did we -- get anything from Tafoya yet?

2 MR. TAFOYA: I'm here.

3 MR. BARRY: Great. All right. Let's --  
4 Jessika, if you're ready, would you please walk us  
5 through the results?

6 MS. SHIPLEY: Sure. We have four votes for  
7 staff plan three Coleman amendment. They are Coleman,  
8 Kelly, Moore, Schell. Four votes for Tafoya workshop  
9 adjusted amendment. They are Brawner, Diawara, Hare,  
10 and Tafoya. And we have four votes for P.008, also  
11 known as the Schuster. Espinoza, Leone, Shepherd  
12 Macklin, and Wilkes.

13 MR. BARRY: Thank you, Jessika. And were we  
14 able to post that for the public?

15 MS. SHIPLEY: Yes.

16 MR. BARRY: Commissioners, did we get anyone's  
17 vote wrong? Sounds like we got everybody's vote right.  
18 Thank you.

19 Okay. So I -- I think it would be helpful to  
20 discuss process at this point. And I would make a  
21 suggestion to see what the commissioners think about  
22 this. It seems like we -- the commission has discussed

1 staff plan three Coleman amendment and the Tafoya  
2 workshop adjusted amendment pretty in-depth and fully.

3 And it didn't sound to me like anyone was  
4 going to -- like -- like -- it sounded to me like those  
5 two maps have reached their ceiling. Something may  
6 change if -- if -- if that -- if there's a change,  
7 someone should let us know.

8 But if those are -- have truly reached their  
9 ceiling, maybe this next discussion would be more  
10 productive if the commissioners spoke about other maps  
11 that they would be interested in. For example, there's  
12 the Schuster map. So that would be something that I  
13 would recommend, but that's just recommendation. I'm  
14 not a commissioner and this is your process. We're  
15 rooting for you all as a commission to try to reach  
16 eight.

17 So I'll throw that on the table as something  
18 you all can like, dislike, and offer something else. So  
19 we'll just go with what I see, and I see Commissioner  
20 Coleman at the top with -- with her hand up.  
21 Commissioner Coleman.

22 MR. MOORE: Thank you, Jerome. And I just want

1 MS. SHEPHERD MACKLIN: I was going to ask that  
2 we -- if we have an opportunity to vote again? I think  
3 we're -- we've made some cracks. And -- and I would  
4 appreciate that if other commissioners are willing to  
5 entertain. I think we are very close and would  
6 appreciate the consideration.

7 MR. BARRY: It's been asked that we go to  
8 voting, I believe, without discussion. Are  
9 commissioners comfortable with that, prepared to do  
10 that? Okay. Let's do a --

11 MS. HARE: Commissioner Tafoya and  
12 Commissioner Leone both have their hands before we jump  
13 in.

14 MR. BARRY: Commissioner Leone.

15 MR. LEONE: Thank you. Yeah. So I was going to  
16 ask, and maybe this is short circuiting the process a  
17 little bit, but I think we're to that time of the night  
18 where maybe we can do that. My only question would be  
19 to any of the other seven commissioners who have not  
20 voted for the Schuster plan, is there anyone who  
21 believes that they can in good conscious -- conscience  
22 switch their vote to that plan if we do another round

1 of voting?

2           Could I just see -- raise a -- see anyone who  
3 thinks they can do that raise their hand. Commissioner  
4 Moore could, so that would be six. Is there anyone  
5 else? I don't have a full view of all the  
6 commissioners. Jerome, you probably do. I -- now I have  
7 the gallery view up. Commissioner Tafoya's hand is up,  
8 but I don't think he means that he's voting -- would  
9 vote for the Schuster plan. Do you Commissioner Tafoya?

10           MR. TAFOYA: I'm open to it. But it's --

11           MR. LEONE: Okay. I understand that you might.  
12 That would be seven votes. Is there anyone else that  
13 would vote for it? That was my guess, that we won't be  
14 able to get a super majority. So I would change my vote  
15 to staff plan 3 Coleman amendments in the next round of  
16 voting. Thank you.

17           MR. BARRY: Any other questions or statements  
18 before we go into the voting?

19           MS. SHEPHERD MACKLIN: Mr. Tafoya has his hand  
20 up.

21           MR. BARRY: Thank you. Commissioner Tafoya.

22           MR. TAFOYA: No. I -- I was going to comment

1 on something else, but to Commissioner Leone's  
2 comments.

3 MR. BARRY: Okay. I think folks are ready to  
4 vote. Jessika, can you -- ?

5 MS. SHEPHERD MACKLIN: Wilkes put their hand  
6 up. Commissioner Wilkes.

7 MR. BARRY: I'm sorry. Commissioner Wilkes.

8 MS. WILKES: It sounds like we're going to get  
9 the eight. Can we just do it verbally right now or  
10 something? Because we have eight minutes.

11 MR. BARRY: Yeah. That's what I was going to  
12 recommend.

13 MS. WILKES: Okay.

14 MR. BARRY: Jessika, can we do this by just a  
15 role call?

16 MS. SHIPLEY: Absolutely.

17 MR. BARRY: Okay.

18 MR. LEONE: Yes. One second. Let me just pull  
19 up my list real quick.

20 MS. SCHELL: Because this is a role call, do  
21 we process that --

22 MS. SHEPHERD MACKLIN: Point -- point of --



1 MS. HARE: Point of order.

2 MS. SHEPHERD MACKLIN: Yeah. I had my hand up  
3 for that.

4 MS. HARE: Go ahead, Commissioner Shepherd  
5 Macklin.

6 MS. SHEPHERD MACKLIN: As it is an order, I  
7 would like to make a motion. I would like to move the  
8 adoption -- the final adoption of the Coleman staff  
9 plan three amendment for adoption.

10 MR. BARRY: Okay. Is there a second?

11 MR. MOORE: Second.

12 MR. BARRY: We have Commission Moore --  
13 Commissioner Moore. Okay. And just a point of  
14 clarification, if -- we'll take the vote. If -- if --  
15 if the vote passes, then we would go around again so  
16 each commissioner could put out a record of statement  
17 of their vote. But we do the role call first. Is there  
18 any discussion or can we go to voting? Looks like we go  
19 to voting. Jessika.

20 MR. TAFOYA: Or Jerome, just point of process.  
21 You said that everybody's going to make a statement  
22 after.

1 MR. BARRY: Yes. After we -- after we do the  
2 role call.

3 MR. TAFOYA: Okay. Thank you.

4 MR. BARRY: So a statement -- statement for  
5 the record of your -- of reasons for your vote.

6 MS. SHIPLEY: I'll let Matthu do it.

7 MR. BARRY: Okay. Matthu.

8 MR. BECK: Okay. Commissioners Coleman.

9 MS. COLEMAN: Aye.

10 MR. BECK: Diawara.

11 MR. DIAWARA: Aye.

12 MR. BECK: [inaudible]

13 MR. LEONE: I missed the motion -- I missed  
14 the motion. Is this -- are we -- what are we voting in  
15 favor of in this role call?

16 MR. BARRY: Commissioner Shepherd Macklin  
17 [inaudible]

18 MR. LEONE: Oh, that's right. Never mind. I  
19 did write the motion is for Coleman staff plan three.  
20 I'm sorry. I apologize for interrupting the vote. Go  
21 ahead.

22 MR. BECK: Commissioner Espinoza.

1 MS. ESPINOZA: So is this a vote in -- either  
2 for or against Coleman staff plan three?

3 MR. BARRY: Yes.

4 MS. ESPINOZA: Okay. I'll vote aye.

5 MR. BECK: Kelly.

6 MR. KELLY: Aye.

7 MR. BECK: Leone.

8 MR. LEONE: Aye.

9 MR. BECK: Shepherd Macklin.

10 MS. SHEPHERD MACKLIN: Aye.

11 MR. BECK: Moore.

12 MR. MOORE: Aye.

13 MR. BECK: Schell.

14 MS. SCHELL: Aye.

15 MR. BECK: Tafoya.

16 MR. TAFOYA: No.

17 MR. BECK: Wilkes.

18 MS. WILKES: Aye.

19 MR. BECK: Brawner.

20 MS. BRAWNER: Aye.

21 MR. BECK: And Hare.

22 MS. HARE: Aye.

1 MR. BECK: 11 yeses, one no.

2 MR. BARRY: The motion proves. And I believe  
3 we have eight votes including two of the [inaudible] is  
4 that correct, Jessika?

5 MS. SHIPLEY: Yes.

6 MR. BARRY: Commissioners you have adopted  
7 fast [congressional districts?]. And I'm -- now let's  
8 go in the same order and -- let's go in the same order  
9 if -- if folks are prepared to make a statement for the  
10 record.

11 MR. BECK: Commissioner Coleman.

12 MS. COLEMAN: Thank you, chair and  
13 commissioners, and Jerome. I'm not sure I'm -- who is -  
14 - you -- Jerome, I believe you're the MC at the moment,  
15 and so thank you. I don't have a statement prepared,  
16 but I do want to say that it has been incredibly --  
17 just an incredible journey to -- from where we started  
18 to where we our now.

19 And having heard so much public comment and  
20 hearing testimony, and having the deliberative  
21 conversations we've had to put together the kind of map  
22 and -- you know, I -- I feel it has been a process of -

1 the plan provides a competitive -- you know, enough --  
2 you know, some districts that are competitive  
3 [inaudible] which is also reflected by public comment.

4 It is important finally to mention that the  
5 plan was not drawn to protect any incumbent candidate  
6 or parties, and it was not drawn to dilute the  
7 electoral influence or the voting rights of any  
8 languages or racial minority groups. My name is Moussa  
9 Merriam [ph] Diawara, Commissioner from city five, and  
10 professor of [inaudible] at Colorado State University.  
11 Thank you.

12 MR. BARRY: Thank -- thank you, Commissioner.  
13 Commissioner Espinoza.

14 MS. ESPINOZA: Thank you, chair. I also don't  
15 have any real prepared comments. I -- I would say that  
16 I echo everything that commissioner Diawara just  
17 outlined. I think that -- I voted for this map because  
18 it -- in the interest of compromise, this was one of  
19 the maps that was an alternative map for me.

20 It does a very good job of addressing most of  
21 the comments that we have heard from public comment in  
22 hearings, and written. I think it's very responsive to

1 those requests regarding communities of interest. It's  
2 exciting to know that district eight is very  
3 competitive. I believe the score was one point  
4 something, 1.3. And it adheres to all of our  
5 constitutional criteria that we've been charged with  
6 doing.

7 I -- I think it represents a iterative process  
8 of -- of considering among all of the commissioners  
9 from across the state in taking into consideration  
10 everything that we have heard from the public. The  
11 plan, I agree, was not drawn to protect any incumbent  
12 candidates or party, and it was not drawn to dilute the  
13 elect -- electoral influence or voting rights of any  
14 language or racial minority. Thank you.

15 MR. BARRY: Thank you, Commissioner.  
16 Commissioner Kelly.

17 MR. KELLY: Thanks, Jerome. Yeah. I don't have  
18 anything prepared either. I would just first of all  
19 want to thank everybody in the public for sticking in.  
20 I know that this is -- we're approaching midnight hour.

21 In terms of why I voted for this map, I think  
22 when you start looking at the second staff map, we had

1 I see merit and the intentionality of this map  
2 across the entire state, but a couple things I just  
3 want to point out from my corner of the state in Aurora  
4 in the current CD6. That I especially appreciate the  
5 city of Aurora was kept whole.

6 This did mean some splits took places, like  
7 Douglas County, Arapahoe County, and Adams County.  
8 However, that split was reasonable and in direct  
9 response to public comment. And I think that that is --  
10 that fact is mirrored in other places where we did have  
11 to make those difficult decisions to potentially split  
12 a county or a city boundary.

13 I would reiterate that this plan was not drawn  
14 to protect incumbent candidates, or a specific party.  
15 And it was not intended or drawn to dilute any  
16 electoral influence or voting rights of a language or  
17 racial minority group.

18 And I will just end with -- with -- with  
19 gratitude and appreciation for the process. And  
20 excitement that we have done this work and have made  
21 history at the commission in Colorado. Thank you.

22 MR. BARRY: Thank you, Commissioner.

1 is not something that can answer all needs and  
2 requests. But we've worked really hard to listen to as  
3 many people as possible, and to make something that  
4 will work for as many communities as possible.

5 So my thoughts about this plan. The plan  
6 respects and -- and keeps together the -- the following  
7 communities of interest that we heard from the public.  
8 I'll mostly talk about El Paso County, because that's  
9 where I'm from. Most of the El Paso County comments  
10 were to keep it as whole as possible, removing only the  
11 population that was necessary.

12 City 5 in this map is entirely in El Paso  
13 County, keeping all incorporated municipalities within  
14 El Paso County whole [inaudible] Green Mountain Falls,  
15 which straddles the county line with Teller. This map  
16 complies with all guidelines set by the commission and  
17 both of the strong recommendations.

18 Everybody else has already talked about  
19 competitiveness, so I don't need to repeat that. And  
20 not only was this plan not drawn to protect any  
21 incumbent candidates or party members, it was also not  
22 drawn to persecute any of those people. And it was not



1 I also believe that it important that we try  
2 to find some competitiveness here. And -- and the fact  
3 that CD8 is as competitive as it is in this map,  
4 certainly I -- I think without getting a new district,  
5 and that being the most competitive district on -- on  
6 this map is a good step forward as we continue to grow  
7 in Colorado, and as we -- we will certainly to get more  
8 districts. And I think it set a precedent -- precedent  
9 as future commissions look at competitiveness, and as  
10 those districts get added to try and maintain that as  
11 the districts go in, and keep them as competitive as  
12 possible.

13 So again, I think this map does a good job of  
14 compromise. Certainly not everything I wanted, I -- I  
15 know that. But it does a great job, I think, of  
16 balancing those interests on a statewide level. And I  
17 appreciate everybody's work on that. So thank you.

18 MR. BARRY: Thank -- thank you, Commissioner.  
19 Commissioner Leone.

20 MR. LEONE: Thank you, Jerome. I, too, share  
21 the sentiment of gratitude towards all the  
22 commissioners and the staff. The staff worked

1 drawn to dilute the electoral influence or voting  
2 rights of any language or racial minority group.

3 MR. BARRY: Thank you, Commissioner.  
4 Commissioner Brawner.

5 MS. BRAUNER: I'll keep this brief. Everyone  
6 had really fantastic statements that covered such a  
7 wide gambit of what a long, strange trip it's been. And  
8 as I reflect upon this, I think what I really want to  
9 highlight is, when I look at this final map, and the  
10 reasons, and the iterations, and when we got here, I  
11 see all of our conversations reflected in this map. And  
12 I think that says something about the process, I think  
13 that says something about all of us being part of it.

14 But I also see the people of Colorado  
15 reflected in this map. Through their public comments,  
16 through their maps, through their testimony at  
17 hearings. And I can see it. And I think that's  
18 something we can be proud of.

19 Yes, we couldn't keep every community of  
20 interest together. But I think we had thoughtful  
21 conversations about communities. I think we  
22 passionately debated what we believed was really

1 important. And I think that matters a lot.

2 I am super proud of this new congressional  
3 district we added to the state. We identified a  
4 community of interest there that goes from the  
5 community of Commerce City being kept completely whole  
6 as they asked, heading up the corridor where there is  
7 growth. Keeping Fort Lupton, all of Greeley, also the  
8 Spanish colonies in this map, as identified in the  
9 public comment and the testimony in Greeley. And I  
10 think that's really a fantastic thing that we  
11 accomplished.

12 Also, we managed to get 11 people to vote yes  
13 on a map. And I think that's pretty amazing. I don't  
14 know that we've had a lot of things that we've had 11  
15 of us vote yes on. So I think that's something to  
16 celebrate, too.

17 Again, this map does not violate the Voting  
18 Rights Act, this map does not protect any political  
19 incumbents, or persecute any political in -- elected  
20 officials. It also does not dilute any minority groups  
21 or minority language groups, as required by the  
22 Colorado Constitution. But also it reflects the people.

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CERTIFICATE OF TRANSCRIBER

I, Chris Naaden, a transcriber, hereby declare under penalty of perjury that to the best of my ability from the audio recordings and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome, the above 242 pages contain a full, true and correct transcription of the tape-recording that I received regarding the event listed on the caption on page 1.

I further declare that I have no interest in the event of the action.



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October 5, 2021

Chris Naaden

(403505, Independent Congressional Redistricting Commission, 9-28-21)

DATE FILED: October 12, 2021 3:58 PM

# EXHIBIT 5



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# Transcript of Hearing Portion

**Date:** September 16, 2021  
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TRANSCRIPT OF PORTION OF AUDIO-RECORDED  
MEETING OF THE INDEPENDENT CONGRESSIONAL  
REDISTRICTING COMMISSION  
SEPTEMBER 16, 2021

Job no.: 403505

Pages: 1 - 5

Transcribed by: Olivia Wilke

1 P R O C E E D I N G S

2 (The requested portion began.)

3 MR. BARRY: And that is the provision about  
4 the report on competitiveness that I referenced  
5 dealing with the constitutional criteria concerning  
6 competitiveness. It's been covered now. Thank you for  
7 pointing that out.

8 MS. MICHELLE: Follow up, please.

9 THE CHAIR: Go ahead, Ms. Michelle  
10 (phonetic).

11 MS. MICHELLE: So, Mr. Berry, what guidance  
12 does staff feel it needs to make that report as robust  
13 as it needs to be?

14 MR. BARRY: If you can -- if the commission  
15 can discuss at least how the plan reflects the  
16 evidence presented to and the findings concerning the  
17 extent to which competitiveness is fostered through  
18 the plan.

19 THE CHAIR: Thank you. We'll go to  
20 Commissioner Tafoya.

21 MR. TAFOYA: Thank you, Mr. Barry to -- and  
22 as it relates to the Colorado Constitution and the



1 dilution of any language, ethnic or racial minority,  
2 what test, if any, did the staff utilize to make the  
3 determination as it relates to the Colorado  
4 Constitution? And -- yeah, stop there.

5 MR. BARRY: Well, I -- I have seen different  
6 interpretations of the language in the Constitution  
7 specifically that Section 44 -- 4B and staff is  
8 actually not certain exactly what the meaning of that  
9 provision is going to be. It may ultimately be up to  
10 the Colorado Supreme Court to tell us what the meaning  
11 of that provision is. Staff took into consideration  
12 that provision, and I understand that there are maps  
13 that may do a better job of meeting that criteria,  
14 depending on what the meaning of that --- that section  
15 is found to be. And that -- but staff was attempting  
16 not to divide communities of interest and ethnic and  
17 language minorities -- that felt we attempted not to  
18 divide those communities. I understand that there are  
19 plans and some who would argue that that provision  
20 goes further than that and says we have to join as  
21 many of those communities as we can. But again, I'm  
22 not certain what the interpretation of the language

1 that of that section in the Constitution is going to  
2 be by the Colorado Supreme Court.

3 MR. TAFOYA: Follow-up, Madam Chair?

4 THE CHAIR: Yes, go ahead, Commissioner  
5 Tafoya.

6 MR. TAFOYA: So I guess I -- any of --  
7 anything we can do can be interpreted by the Supreme  
8 Court in any way they want. So my question is not so  
9 much -- is what we anticipate they'll -- they'll  
10 interpret, but more what the staff utilizes as test,  
11 whether it's testimony or the conversations of the  
12 commission or the actions of the commission, to be  
13 able to make that determination.

14 MR. BARRY: To date, we haven't gotten  
15 direction from the commission on how to interpret how  
16 the commission would like us to interpret that  
17 provision. To the extent we do get direction from the  
18 commission on how to interpret that, staff will follow  
19 that direction.

20 (The requested portion was concluded.)

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CERTIFICATION OF TRANSCRIPT

I, Olivia Wilke, do hereby certify that the foregoing transcript, to the best of my ability, knowledge, and belief, is a true and correct record of the proceedings; that said proceedings were reduced to typewriting under my supervision; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.



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OLIVIA WILKE, AAERT CET  
Planet Depos, LLC  
October 6, 2021

Transcript of Hearing Portion  
 Conducted on September 16, 2021

<p style="text-align: center;"><b>A</b></p> <p><b>aaert</b> 5:14</p> <p><b>ability</b> 5:3</p> <p><b>able</b> 4:13</p> <p><b>about</b> 2:3</p> <p><b>actions</b> 4:12</p> <p><b>actually</b> 3:8</p> <p><b>again</b> 3:21</p> <p><b>ahead</b> 2:9, 4:4</p> <p><b>anticipate</b> 4:9</p> <p><b>any</b> 3:1, 3:2, 4:6, 4:8, 5:8</p> <p><b>anything</b> 4:7</p> <p><b>argue</b> 3:19</p> <p><b>attempted</b> 3:17</p> <p><b>attempting</b> 3:15</p> <p><b>audio-recorded</b> 1:1</p> <hr/> <p style="text-align: center;"><b>B</b></p> <p><b>barry</b> 2:3, 2:14, 2:21, 3:5, 4:14</p> <p><b>been</b> 2:6</p> <p><b>began</b> 2:2</p> <p><b>belief</b> 5:4</p> <p><b>berry</b> 2:11</p> <p><b>best</b> 5:3</p>	<p><b>better</b> 3:13</p> <hr/> <p style="text-align: center;"><b>C</b></p> <p><b>case</b> 5:8</p> <p><b>certain</b> 3:8, 3:22</p> <p><b>certification</b> 5:1</p> <p><b>certify</b> 5:2</p> <p><b>cet</b> 5:14</p> <p><b>chair</b> 2:9, 2:19, 4:3, 4:4</p> <p><b>colorado</b> 2:22, 3:3, 3:10, 4:2</p> <p><b>commission</b> 1:3, 2:14, 4:12, 4:15, 4:16, 4:18</p> <p><b>commissioner</b> 2:20, 4:4</p> <p><b>communities</b> 3:16, 3:18, 3:21</p> <p><b>competitiveness</b> 2:4, 2:6, 2:17</p> <p><b>concerning</b> 2:5, 2:16</p> <p><b>concluded</b> 4:20</p> <p><b>congressional</b> 1:2</p> <p><b>consideration</b> 3:11</p> <p><b>constitution</b> 2:22, 3:4, 3:6, 4:1</p> <p><b>constitutional</b> 2:5</p> <p><b>conversations</b> 4:11</p> <p><b>correct</b> 5:4</p>	<p><b>counsel</b> 5:7</p> <p><b>court</b> 3:10, 4:2, 4:8</p> <p><b>covered</b> 2:6</p> <p><b>criteria</b> 2:5, 3:13</p> <hr/> <p style="text-align: center;"><b>D</b></p> <p><b>date</b> 4:14</p> <p><b>dealing</b> 2:5</p> <p><b>depending</b> 3:14</p> <p><b>depos</b> 5:15</p> <p><b>determination</b> 3:3, 4:13</p> <p><b>different</b> 3:5</p> <p><b>dilution</b> 3:1</p> <p><b>direction</b> 4:15, 4:17, 4:19</p> <p><b>discuss</b> 2:15</p> <p><b>divide</b> 3:16, 3:18</p> <hr/> <p style="text-align: center;"><b>E</b></p> <p><b>employed</b> 5:8</p> <p><b>ethnic</b> 3:1, 3:16</p> <p><b>evidence</b> 2:16</p> <p><b>exactly</b> 3:8</p> <p><b>extent</b> 2:17, 4:17</p> <hr/> <p style="text-align: center;"><b>F</b></p> <p><b>feel</b> 2:12</p> <p><b>felt</b> 3:17</p>	<p><b>financial</b> 5:9</p> <p><b>findings</b> 2:16</p> <p><b>follow</b> 2:8, 4:18</p> <p><b>follow-up</b> 4:3</p> <p><b>foregoing</b> 5:3</p> <p><b>fostered</b> 2:17</p> <p><b>found</b> 3:15</p> <p><b>further</b> 3:20</p> <hr/> <p style="text-align: center;"><b>G</b></p> <p><b>go</b> 2:9, 2:19, 4:4</p> <p><b>goes</b> 3:20</p> <p><b>going</b> 3:9, 4:1</p> <p><b>gotten</b> 4:14</p> <p><b>guess</b> 4:6</p> <p><b>guidance</b> 2:11</p> <hr/> <p style="text-align: center;"><b>H</b></p> <p><b>hereby</b> 5:2</p> <hr/> <p style="text-align: center;"><b>I</b></p> <p><b>independent</b> 1:2</p> <p><b>interest</b> 3:16, 5:9</p> <p><b>interpret</b> 4:10, 4:15, 4:16, 4:18</p> <p><b>interpretation</b> 3:22</p> <p><b>interpretations</b> 3:6</p> <p><b>interpreted</b> 4:7</p>
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Transcript of Hearing Portion  
 Conducted on September 16, 2021

<p style="text-align: center;"><b>J</b></p> <p><b>job</b> 1:20, 3:13</p> <p><b>join</b> 3:20</p> <hr/> <p style="text-align: center;"><b>K</b></p> <p><b>knowledge</b> 5:4</p> <hr/> <p style="text-align: center;"><b>L</b></p> <p><b>language</b> 3:1, 3:6, 3:17, 3:22</p> <p><b>least</b> 2:15</p> <p><b>llc</b> 5:15</p> <hr/> <p style="text-align: center;"><b>M</b></p> <p><b>madam</b> 4:3</p> <p><b>make</b></p> <p><b>many</b> 3:21</p> <p><b>maps</b> 3:12</p> <p><b>meaning</b> 3:8, 3:10, 3:14</p> <p><b>meeting</b> 1:2, 3:13</p> <p><b>michelle</b> 2:8, 2:9, 2:11</p> <p><b>minorities</b> 3:17</p> <p><b>minority</b> 3:1</p> <p><b>more</b> 4:10</p> <p><b>much</b> 4:9</p> <hr/> <p style="text-align: center;"><b>N</b></p> <p><b>needs</b> 2:12, 2:13</p> <p><b>neither</b> 5:7</p>	<p style="text-align: center;"><b>O</b></p> <p><b>october</b> 5:16</p> <p><b>olivia</b> 1:22, 5:2, 5:14</p> <p><b>otherwise</b> 5:9</p> <p><b>out</b> 2:7</p> <p><b>outcome</b> 5:10</p> <hr/> <p style="text-align: center;"><b>P</b></p> <p><b>pages</b> 1:21</p> <p><b>parties</b> 5:8</p> <p><b>phonetic</b> 2:10</p> <p><b>plan</b> 2:15, 2:18</p> <p><b>planet</b> 5:15</p> <p><b>plans</b> 3:19</p> <p><b>please</b> 2:8</p> <p><b>pointing</b> 2:7</p> <p><b>portion</b> 1:1, 2:2, 4:20</p> <p><b>presented</b> 2:16</p> <p><b>proceedings</b> 5:5</p> <p><b>provision</b> 2:3, 3:9, 3:11, 3:12, 3:19, 4:17</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <p><b>question</b> 4:8</p> <hr/> <p style="text-align: center;"><b>R</b></p> <p><b>racial</b> 3:1</p> <p><b>record</b> 5:5</p>	<p><b>redistricting</b> 1:3</p> <p><b>reduced</b> 5:6</p> <p><b>referenced</b> 2:4</p> <p><b>reflects</b> 2:15</p> <p><b>related</b> 5:7</p> <p><b>relates</b> 2:22, 3:3</p> <p><b>report</b> 2:4, 2:12</p> <p><b>requested</b> 2:2, 4:20</p> <p><b>robust</b> 2:12</p> <hr/> <p style="text-align: center;"><b>S</b></p> <p><b>said</b> 5:5</p> <p><b>says</b> 3:20</p> <p><b>section</b> 3:7, 3:14, 4:1</p> <p><b>seen</b> 3:5</p> <p><b>september</b> 1:4</p> <p><b>signature-9wmu</b> 5:12</p> <p><b>some</b> 3:19</p> <p><b>specifically</b> 3:7</p> <p><b>staff</b> 2:12, 3:2, 3:7, 3:11, 3:15, 4:10, 4:18</p> <p><b>stop</b> 3:4</p> <p><b>supervision</b> 5:6</p> <p><b>supreme</b> 3:10, 4:2, 4:7</p> <hr/> <p style="text-align: center;"><b>T</b></p> <p><b>tafoya</b> 2:20, 2:21,</p>	<p>4:3, 4:5, 4:6</p> <p><b>tell</b> 3:10</p> <p><b>test</b> 3:2, 4:10</p> <p><b>testimony</b> 4:11</p> <p><b>thank</b> 2:6, 2:19, 2:21</p> <p><b>through</b> 2:17</p> <p><b>took</b> 3:11</p> <p><b>transcribed</b> 1:22</p> <p><b>transcript</b> 1:1, 5:1, 5:3</p> <p><b>true</b> 5:4</p> <p><b>typewriting</b> 5:6</p> <hr/> <p style="text-align: center;"><b>U</b></p> <p><b>ultimately</b> 3:9</p> <p><b>under</b> 5:6</p> <p><b>understand</b> 3:12, 3:18</p> <p><b>utilize</b> 3:2</p> <p><b>utilizes</b> 4:10</p> <hr/> <p style="text-align: center;"><b>W</b></p> <p><b>want</b> 4:8</p> <p><b>way</b> 4:8</p> <p><b>we'll</b> 2:19</p> <p><b>whether</b> 4:11</p> <p><b>wilke</b> 1:22, 5:2, 5:14</p> <hr/> <p style="text-align: center;"><b>Y</b></p> <p><b>yeah</b> 3:4</p>
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Transcript of Hearing Portion  
Conducted on September 16, 2021

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DATE FILED: October 12, 2021 3:58 PM

# EXHIBIT 6

## REPORT OF CHRISTIAN GROSE, Ph.D.

### Evaluating Colorado's Congressional District 8: An Analysis of Dilution of Latino Electoral Influence in the Presence of Racially Polarized Voting

#### I. Background and Qualifications

I am an Associate Professor of Political Science and Public Policy at the University of Southern California. I am currently the Academic Director of the USC Schwarzenegger Institute for State and Global Policy and Editor of the peer-reviewed journal *Research and Politics*. From 2015 to 2018, I served as the Director of the University of Southern California's Political Science and International Relations Ph.D. program. I received my Ph.D. from the University of Rochester and my B.A. from Duke University. I have authored and published more than 40 articles and chapters about U.S. politics, Latino politics, Black politics, voting rights, redistricting, statistical methodology, and political representation. These articles have appeared in journals such as the *American Political Science Review*; the *American Journal of Political Science*; the *Journal of Politics*; *Legislative Studies Quarterly*; and the *Journal of Race, Ethnicity, and Politics*. My book, *Congress in Black and White* (Cambridge University Press), makes an argument about the most advantageous way to draw districts to ensure the ability for voters of color to be able to elect preferred candidates of choice. My peer-reviewed research on voting rights, redistricting, and political science has been profiled in the *Washington Post*, the *New York Times*, National Public Radio, and other media outlets. I currently direct USC's Fair Maps and Political Reform Lab where researchers, students, and policy practitioners work together to generate new ideas to improve American democracy. In 2020, I was named the Herman Brown Distinguished Scholar, an award given annually to one U.S. political scientist. I have conducted research on nonpartisan and bipartisan independent redistricting commissions and other political reforms. I have previously served as an expert consultant and expert witness in congressional and state legislative redistricting and voting rights cases.



## II. Summary of Findings

I was asked to evaluate whether the 8<sup>th</sup> congressional district (“District 8”) in the map proposed by the Colorado Congressional Redistricting Commission (“the Commission”) results in a dilution of the electoral influence of Latino voters.

To do this, (1) I conducted racially polarized voting (“RPV”) statistical analyses to assess whether Colorado’s Latino voters and white voters choose different candidates in elections; and (2) I assessed if District 8 in the map adopted by the Commission (the “Final Plan”) allows for Latino voters to elect a Latino candidate of choice to District 8.<sup>1</sup> I conclude that there is racially polarized voting in Colorado and in the specific geographic region in which District 8 was drawn. Moreover, based on ability-to-elect analyses, I conclude that Latino candidates who are preferred by Latino voters are likely to lose in District 8 by small margins to candidates preferred by white voters. Thus, the Final Plan has a dilutive impact on Latino voters when compared to alternate maps considered by the Commission.

Based on the empirical and statistical analyses I conducted, the district would not have this dilutive impact if it were changed to increase the likelihood that the Latino candidate of choice could win. There are alternative maps that have higher probabilities of Latino candidates of choice winning in districts in the same geographic area, but with slightly different boundaries, than the Final Plan approved by the Commission.

Based on analysis of previous elections, the Final Plan’s District 8 is about 1.5 percentage points below the threshold for the ability to elect Latino candidates preferred by Latino voters in the district. The threshold in the analysis here is whether a Latino candidate of choice

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<sup>1</sup> When I refer to white voters, this includes only those voters who identify as white and do not identify as Hispanic or Latino. I use the term Latino through the Report. In terms of census categorization, “Latino voters” refer to those who would identify as “Latino or Hispanic” on the census; “white voters” refer to those who would identify as non-Hispanic white on the census.

receives 50% or more in the district in a two-candidate election, and thus can have the ability to be elected. One way to increase this ability to elect in the district would be to increase the proportion of white crossover voters who are willing to support Latino candidates preferred by Latino voters, and to reduce the proportion of white voters who are likely to oppose Latino candidates of choice. By increasing the percentage of white crossover voters to the district, Latino influence to affect the outcome of the election will be improved.

### III. Racial Polarization Voting (“RPV”) Analysis

#### A. Latino Voting-Age Population and Latino Citizen Voting-Age Population in District 8

To set the stage for the RPV analysis, I first examined the demographics of District 8 under the Final Plan. Table 1 shows the overall Latino population, the Latino voting-age population (“Latino VAP”), and the Latino citizen voting-age population (“Latino CVAP”) in District 8 based on the Final Plan.

**Table 1: Demographic data in the Final Plan<sup>2</sup>**

<b>Demographic</b>	<b>Percentage within the Final Plan</b>
Latino population	38.5%
Latino VAP	34.5%
Latino CVAP	27.5%

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<sup>2</sup> The population and VAP data are from the 2020 Census data. See Hispanic or Latino, and Not Hispanic or Latino by Race for the Population 18 Years and Over, U.S. Census Bureau. The CVAP data are from the American Community Survey, 5-year estimates, U.S. Census. These population, VAP, and CVAP data were mapped onto the Commission Final Plan’s District 8.

Under the Final Plan, District 8 has a Latino population of 38.5%, with lower Latino VAP and Latino CVAP percentages. As currently drawn, District 8 does not have a Latino majority, though it includes a sizable Latino population.

Latino CVAP is a metric that helps inform analyses of congressional districts when there is Latino voter cohesion. It is often a more informative metric than Latino VAP and Latino population of a district, as it includes only those Latino voters who can register to vote.<sup>3</sup> However, Latino CVAP alone is not sufficient to determine if a district is likely to elect a Latino candidate of choice. As I show later in this Report, Latino voters in District 8 and in Colorado vote cohesively as a bloc for Latino candidates of choice. Research on congressional districts also shows that in instances where Latinos cohesively support a candidate of choice, Latinos can influence the outcome of an election if there is a sufficiently large number of Latino voters and/or a sufficiently large number of white crossover voters who will support the Latino candidate of choice.<sup>4</sup>

However, it is important to note that each legislative district and its voters must be analyzed individually to determine if there is racially polarized voting and if the district will provide an ability to influence the election of Latino candidates of choice.<sup>5</sup> Even in districts with high Latino voter cohesion but lower Latino CVAP percentages, Latino candidates of choice can only win if the Latino CVAP combines with a large proportion

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<sup>3</sup> Yuki Atsusaka, “A Logical Model for Predicting Minority Representation: Application to Redistricting and Voting Rights Cases,” *American Political Science Review* (2021), available at <https://doi.org/10.1017/S000305542100054X>.

<sup>4</sup> David Lublin, Lisa Handley, Thomas Brunell, and Bernard Grofman, “Minority Success in Non-Majority Minority Districts: Finding the Sweet Spot,” *Journal of Race, Ethnicity, and Politics* 5:2:275–98 (2020).

<sup>5</sup> Matt Barreto, Christian R. Grose, and Ana Henderson, “Redistricting: Coalition Districts and the Voting Rights Act,” *Warren Institute on Law and Social Policy* (May 2011).

of crossover white voters (or other minority coalition voters) who also vote for the Latino candidate of choice.

Because the Latino CVAP (and VAP) within District 8 of the Final Plan cannot ensure the election of Latino candidates of choice based purely on Latino voting cohesion, line drawers must assess the ability for Latino voters to influence the outcomes of district elections in coalition with white crossover voters. Thus, given the need for crossover white voters to vote with Latino voters, it is important to evaluate whether there is racial polarization in District 8; and then to evaluate the electoral performance of past Latino candidates of choice rather than looking at the small differences in Latino VAP and Latino CVAP in District 8 in the Final Plan in contrast to other proposed versions of District 8.

### **B. Racial Polarization Between Latino Voters and White Voters Occurs Statewide in Colorado**

Before proceeding, it is important to establish a baseline for the most probative elections for analyzing racially polarized voting and the ability for Latino voters to elect candidates of choice in congressional districts. Prior research and data tend to show that white voters are more likely to oppose Latino voters' candidates of choice when those candidates are Latino. For example, studies of nationwide congressional elections show that Latino candidates running against white candidates *receive four percentage points less in total votes in elections than when a white candidate preferred by Latino voters runs against another white candidate*.<sup>6</sup> In short, there is an electoral penalty from white voters in congressional elections that accrues to Latino candidates who are preferred by Latino voters.

Under this baseline, the most probative election(s) for examining whether proposed District 8 dilutes the impact of Latino voters' electoral influence are those in which a Latino candidate runs against a white candidate. In these elections, one must first assess if the Latino candidate

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<sup>6</sup> Neil Visalvanich, "When Does Race Matter? Exploring white responses to minority congressional candidates," *Politics, Groups, and Identities* (2016).

is preferred by a cohesive majority of Latino voters, and then also assess if the white candidate is preferred by a cohesive majority of white voters.

I examined every statewide election in Colorado from 2012 to the present and found only one instance of a Latino candidate running for a major statewide office in Colorado during a general election. I also found an instance in the previous decade of a Latino candidate of choice running and losing in a statewide primary election against a white candidate.<sup>7</sup> I examined both of these probative elections to assess if there is racial polarization in statewide Colorado elections and in order to determine which candidates were preferred by Latino voters.

Racially polarized voting is defined as when one racial group regularly votes for one candidate, and a different racial group regularly votes for another candidate. RPV analyses are conducted to assess whether there is compliance with legal requirements regarding prohibitions on minority vote dilution.<sup>8</sup> In order to determine if a Latino candidate of choice can be elected in District 8, one first needs to establish if racial polarization between Latino voters and white voters exists in Colorado and in District 8. If it does not, then the question of vote dilution and the ability to elect is mooted. If there is racial polarization in voting between Latino and white voters, then the district needs to be analyzed carefully to assess if the candidate of choice of Latino voters as revealed by the RPV analysis is able to win in District 8 in the Commission's Final Plan. RPV occurs when a majority of one racial group (*e.g.*, white voters) votes for and prefers different candidates than a majority of another racial group (*e.g.*, Latino voters). There is no stark threshold percentage

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<sup>7</sup> The Democratic primary in Colorado is a semi-closed primary, and thus examining this election between a Latino Democratic candidate and a white Democratic candidate can be informative for assessing racially polarized voting between Latino voters and white voters who are Democrats and Independents. The ability to elect Latino candidates of choice may depend on the ability for Latino candidates of choice to emerge from primary elections.

<sup>8</sup> Bernard Grofman, Lisa Handley, and Richard Niemi, *Minority Representation and the Quest for Voting Equality*, New York: Cambridge University Press (1992).

point for RPV, but it is typically found when a majority of one racial group prefers a different candidate than a majority of the other racial group. RPV analyzes individual elections of candidates, and does not consider partisan aggregate performance or competitiveness in a district. Latino candidates of choice are defined as candidates who are preferred by a majority of Latino voters; and white candidates of choice are defined as candidates who are preferred by a majority of white voters.

## 1. 2014 Garcia-Repella General Election

As explained above, the most probative election would include a Latino candidate running for a major statewide office in Colorado during a general election. In 2014, Joseph Garcia, a Latino candidate, ran for lieutenant governor. Garcia ran on a ticket with John Hickenlooper, both of whom were incumbents in 2014. Opposing Garcia and Hickenlooper were Bob Beauprez and Jill Repella—two white candidates.

For this election, I estimated racially polarized voting in the state using a statistical procedure called ecological inference (“EI”).<sup>9</sup> Table 2—which includes the voting patterns in this probative 2014 election—demonstrates racial polarization when a Latino candidate of choice (Garcia on the Hickenlooper-Garcia ticket) faced off against a white candidate (Jill Repella on the Beauprez-Repella ticket).

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<sup>9</sup> Ecological inference was estimated using the EI package in the statistical software R. The unit of analysis is the voting district (“VTD”), using all available VTD data in the state for the 2014 general election. These merged VTD data included election return proportions for the candidates as well as Latino CVAP data and non-Hispanic white CVAP data from the American Community Survey. The EI models estimate the proportion of Latino CVAP on the proportion of the vote received by the Hickenlooper-Garcia ticket; the models also estimate the proportion of the non-Hispanic white CVAP on the proportion of the vote received by the Hickenlooper-Garcia ticket using the King EI method. See Gary King, *A Solution to the Ecological Inference Problem*, Princeton University Press (1998). I also conducted RPV analysis utilizing ecological regression (“ER”). The EI and ER results are substantially similar, so only the EI results are presented in the Report.

**Table 2: Racially polarized voting 2014 governor/lieutenant governor election (EI)**

<b>Candidate</b>	<b>Latino vote support %</b>	<b>White voter support %</b>
Hickenlooper-Garcia <sup>10</sup> (Latino candidate & white candidate)	<b>80%</b>	44%
Bob Beauprez-Jill Repella (two white candidates)	20%	<b>56%</b>

As Table 2 demonstrates, Latino voters statewide cohesively supported the ticket with Joe Garcia, which received 80% of the Latino vote. In contrast, a majority of white voters in the state supported the Beauprez-Repella ticket: 56% of white voters supported Beauprez-Repella, and only 44% of white voters supported Hickenlooper-Garcia. Because a majority of each racial/ethnic group supported a different candidate, this is evidence of racially polarized voting (albeit at 44% support from white voters, the state of Colorado does have a large proportion of white crossover voters willing to vote for a Latino candidate of choice). Overall, Hickenlooper-Garcia received 51.7% of the total statewide two-party vote (from all voters), and Beauprez-Repella received 48.3% of the total statewide two-party vote (from all voters). The presence of racial polarization in Colorado in this election establishes a need for a Latino influence district.

## **2. 2018 Salazar-Weiser Democratic Primary Election**

In addition to the 2014 general election, I analyzed the 2018 Democratic primary for Attorney General. In this Democratic primary, Latino candidate Joe Salazar ran against Phil Weiser, a white candidate. Weiser won this statewide primary 50.4% to 49.6%; his raw vote margin of victory was less than 5,000 votes.<sup>11</sup>

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<sup>10</sup> The Latino candidate of choice won statewide, despite the presence of racially polarized voting.

<sup>11</sup> Secretary of State of Colorado, “2018 Primary Election Results, Democratic Party Ballot, Attorney General.”

I collected data on the vote shares for Salazar and Weiser across all 64 counties in Colorado in the 2018 Democratic primary. Once again, I used EI to estimate racially polarized voting statewide in this primary election.<sup>12</sup> Table 3 shows that Latino Democratic primary voters were polarized from white Democratic primary voters. Specifically, 83% of Latino Democratic primary voters supported Joe Salazar, and only 17% supported Phil Weiser. Conversely, the data suggest that a greater proportion of white voters supported Weiser (57%) over the Latino candidate of choice, Salazar (43%), in the Democratic primary election. Thus, the cohesive Latino voter majority's candidate of choice lost the primary in the state. These results demonstrate racially polarized voting, which again demonstrate the need for a new congressional district that is a Latino influence district where Latino votes are not diluted.

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<sup>12</sup> Data for this Democratic primary were unfortunately not available at the precinct level in all jurisdictions. For instance, I contacted the Adams County registrar to obtain precinct-level data from this 2018 primary; a representative for the County reported that they “do not report results by precinct number for Primary or Coordinated Elections” and that the “information you are requesting for the 2018 Primary election is not available.” Thus, I utilized EI to estimate Latino and non-Hispanic white voting support by reviewing (1) the proportion support in each county for Salazar, and (2) the proportion of Latino and white CVAP in each county. The lack of precinct data precludes any additional analysis at the precinct level across the entire state of Colorado. Readers should interpret the RPV analyses at the county level with this information in mind. The paucity of Latino candidates at the statewide level makes this election particularly probative for assessing racially polarized voting, even if the estimates would be more precise at the precinct level.



**Table 3: RPV in Colorado, Democratic primary, 2018, Attorney General (EI)**

<b>Candidate</b>	<b>Latino voter support %</b>	<b>White voter support %</b>
Joe Salazar (Latino Democrat)	<b>83%</b>	43%
Phil Weiser (white Democrat) <sup>13</sup>	17%	<b>57%</b>

Collectively, the data suggest that when Latino candidates run for office—both in 2014 (a general election) and in 2018 (a primary election)—Latino voters and white voters diverge in their respective candidates of choice. In other words, the data show statewide racial polarization in Colorado.

### **C. Racially Polarized Voting in Final Plan District 8**

The above analyses reveal that in Colorado, Latino and white voters exhibit racial polarization. Under this baseline, I also assessed whether racially polarized voting would occur in the geographic boundary of proposed District 8 in the Commission’s Final Plan.

#### **1. 2014 Garcia-Repella General Election in Commission District 8**

I looked at racially polarized voting in District 8 of the Final Plan by looking at voting patterns in the Garcia lieutenant-gubernatorial election within District 8.<sup>14</sup>

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<sup>13</sup> The white candidate of choice won the election.

<sup>14</sup> This was done by analyzing the proportion Latino on the proportion of the vote for Hickenlooper-Garcia and the proportion white on the proportion of the vote for Hickenlooper-Garcia, but by looking only at VTDs within District 8 as passed in the Commission’s Final Plan. This way one can assess if District 8 as proposed has racially polarized voting between Latinos and whites.

To examine racially polarized voting in District 8, I examine voting districts that are located within District 8. I only analyzed geographic areas included within the proposed District 8. Through EI, I statistically estimated the percentage of Latino voters and white voters that supported Garcia, the Latino candidate of choice, within the geography of District 8, as demonstrated below.<sup>15</sup>

**Table 4: Racially polarized voting in Commission’s District 8, support for candidate Garcia**

<b>Candidate</b>	<b>Latino vote % for candidate</b>	<b>White vote % for candidate</b>
Hickenlooper-Garcia (Latino candidate & white candidate)	<b>85%</b>	36%
Beauprez-Repella (two white candidates)	15%	<b>64%</b>

As Table 4 demonstrates, District 8 exhibits racial polarization between Latino voters and white voters. It is important to note that in the statewide RPV analyses in this election, more than 40% of whites at the state level supported Hickenlooper-Garcia. However, as seen in Table 4, this metric is *below* 40%, which suggests that there is more racially polarized voting in District 8.

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<sup>15</sup> I was not able to statistically analyze the 2018 Democratic primary for Attorney General between Latino candidate Joe Salazar and white candidate Phil Weiser within District 8 of the Final Plan. Adams County was not able to distribute precinct-level data for the 2018 Democratic primary. Since part of Adams County is a substantial portion of District 8, I am unable to estimate racially polarized voting using precinct-level or VTD-level data on election outcomes in the primary in 2018. Therefore, the only probative election with a Latino candidate of choice in this District 8 analysis is the Hickenlooper-Garcia gubernatorial-lieutenant governor ticket.

#### **D. Conclusions Regarding the Presence of Racially Polarized Voting in Colorado and District 8**

Based on my analyses, I conclude that (1) there is racial polarization statewide in Colorado; and (2) racial polarization is more extreme in District 8 than it is statewide. These large degrees of racial polarization will make it challenging for Latino voters to elect a candidate of choice in District 8 unless the district has a large enough percentage of cohesive Latino voters *and* a large enough percentage of white voters willing to cross over and vote for the candidate of choice of Latino voters. I examine this issue in the Section IV below.

#### **IV. The Commission's District 8 Dilutes Latino Voting Power.**

Given the presence of racial polarization in District 8, the next step is to evaluate if a Latino candidate of choice is likely to lose or likely to win in District 8—*i.e.*, an ability to elect analysis. If the Latino candidate of choice is likely to lose in the presence of racially polarized voting, then a district would be considered dilutive to Latino voting power. If the Latino candidate of choice is likely to win, then the district would not be dilutive to Latino voting power. Accordingly, the two operative questions are as follows:

- Did the Latino candidate that was cohesively supported by Latino voters at the state and district levels win in the Commission's District 8?
- Or does the white candidate preferred by a majority of white voters see electoral success in the Commission's District 8?

As the data below reveal, the Latino candidate of choice would have lost to the white candidate of choice in the District 8 of the Commission Final Plan. In other words, District 8 was drawn with too high a percentage of cohesive white voters who can deny the ability of a Latino candidate of choice to be elected. This inability for Latino voters to elect a candidate of choice results in the dilution of Latino voters' influence.

To determine ability to elect, I analyzed the winner of the 2014 gubernatorial-lieutenant governor election in District 8. As stated

previously, elections with Latino candidates preferred by Latino voters running against non-Latino candidates are the most probative for assessing racially polarized voting and the ability to elect. In other words, this 2014 statewide election is the most effective election to measure whether Latino candidates of choice have an ability to elect, even more so than the other statewide elections held in 2014 or 2018.

As Table 5 shows, the Latino candidate, Joe Garcia—who was preferred by Latino voters within District 8—would not have won the election in that district. Hickenlooper-Garcia received only 48.53% of the two-party vote in District 8. By contrast, the white candidate of choice won this district with 51.47% of the vote. Thus, a cohesive white majority blocked the Latino candidate of choice from winning in District 8 in the Final Plan.

**Table 5: District 8 in the Commission map does not provide the ability to elect Latino candidates of choice**

<b>District</b>	<b>Percent of two-party vote received by Latino candidate in District 8</b>	<b>Latino candidate of choice wins or loses?</b>
District 8 as passed by Commission	48.53%	Loses – Latino vote diluted

In District 8, the white candidate of choice won by a margin of almost 3 percentage points over the Latino candidate who was preferred by a majority of Latino voters. The high levels of racial polarization in District 8 made this defeat of the Latino candidate of choice more likely. Accordingly, the loss of the only Latino candidate in Colorado in this district suggests a dilutive effect of the Final Plan.

However, the district can be improved to become a district where Latinos can influence the outcome of the election and choose Latino candidates to which they prefer. An increase of slightly more than 1.5

percentage points, at least, in electoral performance for the Hickenlooper-Garcia ticket in 2014 will put the Latino candidate of choice at above 50% in District 8.<sup>16</sup> Assuming similar rates of turnout between Latino voters and white voters, if District 8 can be redrawn so that the Hickenlooper-Garcia vote share is greater than 50%, then this district will be one in which Latinos can exert influence to elect a candidate of choice who is Latino.

## **V. Comparing District 8 to Nominated Maps Considered But Not adopted By the Commission**

As part of my analyses, I reviewed other versions of District 8 maps that were not adopted, but strongly considered, by the Commission. Table 6 displays the nine maps that were nominated for the final ballot before the Commission.

None of the proposed District 8s within these nine maps has significantly different Latino CVAP or VAP populations (when compared to the demographic composition of District 8 in the Final Plan). Thus, the most significant consideration is the electoral performance of Latino candidates of choice. Using the Garcia gubernatorial-lieutenant governor election, each District 8 proposal is displayed in Table 6 alongside the percentage of the vote that Latino candidate of choice Garcia would have won in each map's District 8. In addition, I indicate if the Latino candidate of choice would prevail in the district with greater than 50% of the two-party general election vote or if the Latino candidate of choice would not win. District maps where the Latino candidate preferred by Latino voters fails to reach 50% of the vote (and thus the white candidate of choice wins) are indicators that the electoral influence of Latino voters has been diluted.

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<sup>16</sup> I am unable to analyze the ability to elect the Latino candidate of choice in the 2018 Democratic primary because precinct-level data from Adams County were not given to me upon request to the county. These data would be needed to conduct an ability-to-elect analysis of the Latino candidate in the 2018 primary election in District 8 specifically.

Table 6 reveals that two of these proposals (italicized and bolded below) would result in the Latino candidate of choice receiving greater than 50% of the vote: Tafoya Workshop Adjusted Amendment (“Tafoya Amendment 2”) and the P.007 Tafoya (“Headwaters Amended”). Both plans are examples of maps that do *not* dilute Latino voters’ ability to influence the election outcome so that a Latino candidate of choice can win in District 8 of Colorado. In no other plan, does the Latino candidate of choice win in District 8.

**Table 6: Evaluation of District 8 for Latino influence/ability to elect across nine proposed maps**

<b>Map/Plan</b>	<b>Percent vote received by Hickenlooper-Garcia in 2014 in district</b>	<b>Latino ability to elect improvement over Final Plan</b>	<b>Latino candidate of choice &gt;50% in district?</b>
Final Plan (Staff Plan 3 Coleman Amend.)	48.53%	-----	No
<b><i>Tafoya Workshop Adjusted Amendment (Tafoya Amend. 2)</i></b>	<b><i>50.41%</i></b>	<b><i>+1.88</i></b>	<b><i>Yes</i></b>
<b><i>P.007.Tafoya (Headwaters Amend.)</i></b>	<b><i>50.52%</i></b>	<b><i>+1.99</i></b>	<b><i>Yes</i></b>
Moore Workshop Adjusted Amendment (Moore Amend. 2)	47.57%	-0.96	No
Schell Workshop Adjusted Amend. (Schell Moore Kelly Coleman)	47.58%	-0.95	No
3 <sup>rd</sup> Staff Plan	48.53%	+0	No

2 <sup>nd</sup> Staff Plan	49.53%	+1.00	No, but close
2 <sup>nd</sup> Staff Plan, Shepherd Macklin Amend.	49.77%	+1.24	No, but very close
P.008.Shepherd Macklin (Schuster Amend.)	49.08%	+0.55	No

The remaining maps vary in their probability of electing a Latino candidate of choice. District 8 as adopted by the Commission performs very poorly. It is the third worst District 8 map in terms of improving the electoral performance of a Latino candidate who may run for office out of all nine District 8 maps displayed in Table 6. Joe Garcia, the last statewide general election Latino candidate preferred by Latino voters, would have easily lost this district in the adopted map—even as Garcia and his running mate won the entire state of Colorado. Baselineing the ability of District 8 in the Final Plan against these other District 8s in other map proposals shows just how dilutive of Latino voting power that District 8 in the Final Plan is. There are two other versions of District 8 in alternative map proposals that would improve the electoral performance of Latino candidates of choice, and many of the other maps are improvements over the Final Plan.

To summarize, the map passed by the Commission dilutes the power of Latino voters. Latino candidates supported by Latino voters do not win in District 8 as passed by the Commission, but white candidates of choice do. Nearly any of the versions of District 8 in Table 8 would be an improvement for Latino electoral influence relative to the adopted District 8 passed by the Commission. However, only two maps would increase Latino electoral influence so that Latino voters could affect the outcome of the election by electing a Latino candidate. These are italicized and bolded in Table 6, above.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 8, 2021

/s/ Christian Grose  
Christian Grose



DATE FILED: October 12, 2021 3:58 PM

# EXHIBIT 7

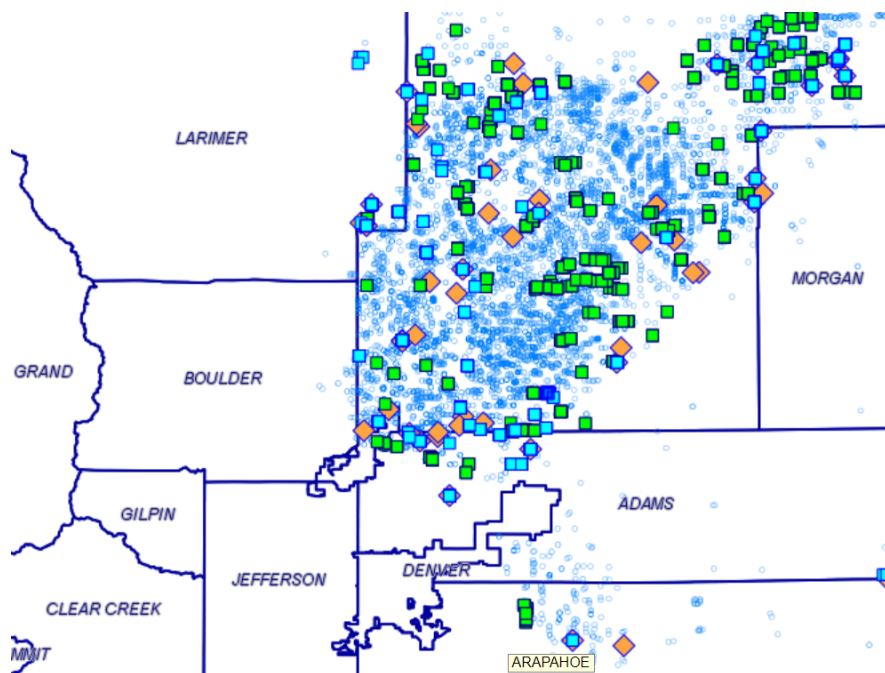
Colorado Independent Congressional Redistricting Commission  
200 E. Colfax Avenue  
Denver, CO 80203

Dear Commissioners:

Thank you for serving on Colorado's first independent redistricting commission. As you debate the location of Colorado's new 8<sup>th</sup> Congressional district, it is critical to take into account the large community of interest comprised of those impacted by fracking and oil and gas development in communities that reside in Adams and Weld counties. Our organizations represent in those very communities, and we share a substantial interest in this issue that is subject to federal legislative action.

We propose the new 8<sup>th</sup> Congressional District be located to ensure our communities have a voice at the Federal level that will understand the challenges and needs of those impacted by fracking and oil and gas development in our region.

The below map highlights current pending and approved well sites by the Colorado Oil and Gas Conservation Commission.



Source: COGCC Map – pending, approved, and existing wells, 2021

There has been, and will continue to be, an explosion of new population growth in our region – extending from Commerce City up to Greeley. Combined with existing wells and the explosion of oil and gas development in the Denver-Julesburg oil basin, this could make our region the biggest area for oil and gas development in Colorado, further impacting the health and environment of all who live here.

Our region is home to Suncor Oil Refinery and over 90% of Colorado's newest oil and gas development, impacting our communities immediately north of Denver to Greeley, most heavily. Our region also impacted by [three other major greenhouse gas polluters](#) - Cherokee Generating Station, Fort Saint Vrain

Generating Station, and Rocky Mountain Energy Center - accounting for 10% of the state's greenhouse gas emissions. Combined with the overlap of oil and gas development, the communities between Denver and Greeley are significantly impacted.

According to the 2019 article, [“How Close Will Fracking Get to Denver?”](#) in the Westword:

The vast majority of modern oil and gas drilling in Colorado has occurred in the Wattenberg Field, an oil- and gas-rich patch situated roughly between Denver and Greeley. More than 200 new wells spread across ten drilling sites have been proposed in and around residential areas in northern Commerce City, with new, fast-growing housing developments like Reunion, Turnberry and Buffalo Mesa set to be impacted. Commerce City is already home to several major sources of industrial pollution, like the Suncor Oil Refinery, which [emits 8.5 tons of cyanide gas per year](#) over low-income neighborhoods in north Denver, state records show. Residents fear the effects that further emissions from new oil and gas facilities could have on the area's air quality — and studies have shown that the [ozone-forming pollutants emitted](#) by fracking sites are a major contributor to the Denver region's unhealthy levels of smog.

The oil and gas development in the DJ Basin is an alarming mix of new, modern mega-pads and legacy vertical wells. Each poses their own, distinct threat, and each will need to be safely and effectively plugged and abandoned at the end of its life. [Currently, the State of Colorado is woefully unprepared to handle this reality.](#) The lack of adequate financial assurance leaves this region, and the entire state, vulnerable to an orphaned well crisis if more operators go bankrupt or simply chose to walk away from their wells.

Our communities and citizens have been leading on addressing and challenging the impact that fracking and oil and gas development have in our region.

- Greeley: [Parents at Bella Romero Academy](#) have been challenging the location of fracking wells near their school and homes.
- Longmont: [Rider Well near Longmont school](#) to be plugged next week
- Erie: [New Colorado Residents in Erie](#) join the fight against fracking as housing booms into the oil patch
- Firestone: [Erin Martinez and the impacted community](#) push for stronger regulations on flowlines following fatal explosion
- Thornton: [Colorado's new oil and gas law](#) ushered in new era – kind of
- Commerce City: [Commerce City faces prospect of nearly 200 new oil and gas wells](#)

We strongly advocate for the new Congressional District to be located in our region and that our community of interest around fracking and oil and gas development be considered during this redistricting process.

Sincerely,

The League of Oil and Gas Impacted Coloradans, Statewide

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DATE FILED: October 08, 2021 12:10 PM

# EXHIBIT 8

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978-994-3041

August 3, 2021

Colorado Independent Redistricting Commissions  
1580 Logan St, Suite 430  
Denver, CO 80203

**Re: Recommendations for Measuring Competitiveness in Redistricting**

Dear Commissioners:

I am writing to offer guidance on how the commissions can most effectively address the state constitution's requirement to promote competitiveness in drawing new congressional and state legislative districts.

My background is as a political scientist, with a focus on election analysis and political methodology. I have spent much of the past fifteen years working with exactly the sort of data the commission is trying to analyze, in both academic settings and for political organizations, and I also teach courses in government and data science at Harvard and Northeastern. Currently, I am serving as a consultant for the National Democratic Redistricting Committee, and in this letter I summarize my recommendations for how to measure district competitiveness and how to apply it in the redistricting process.

**The Constitutional Requirements for Promoting Competitiveness**

To fulfill their constitutional responsibilities with regard to promoting district competitiveness, the commissions must do three things:

1. Define what is meant by competitiveness
2. Determine the best way to measure it
3. Apply that measurement to the drawing of new districts

Fortunately, Amendments Y and Z were very explicit in providing a clear definition of competitiveness: “‘Competitive’ means having a **reasonable potential** for the party affiliation of the district's representative **to change at least once** between federal decennial censuses” (emphasis added). Those amendments were also very specific about where promoting competitiveness fit in the broader redistricting process. Only after six other primary criteria (equal size, contiguity, VRA compliance, preservation of communities of interest, preservation of political subdivisions, and compactness) are met should the commissions then “to the extent possible, maximize the number of politically competitive districts.”

With that guidance in place, the remaining tasks for the commissions are twofold. First, they must each decide on a measure that matches the constitutional definition of competitiveness. Then, they must decide how to use that measure to maximize the number of competitive districts. In the sections below, I offer my own guidance on how the commissions can fulfill both of these tasks simply and effectively, in a way that most directly fits the requirements presented by the state constitution.

### **How to Measure District Competitiveness**

In testimony and discussions during previous meetings and hearings, other presenters have proposed a variety of ways to measure competitiveness. I have serious concerns about the accuracy of these proposed measures and, more importantly, their compliance with the requirements specified in Amendments Y and Z. Most of these proposals center on using some indicator or set of indicators of past electoral performance - a specific past election or average of several election results, for example - under the theory that a “competitive” district is one that is close to 50% Democrat and 50% Republican.

Each of these approaches can be critiqued from a technical standpoint, most notably because they all require making subjective and untested assumptions about the ideal way to weigh and combine past results to predict future trends. But even more importantly, they do not actually follow from the constitutional requirements. The constitution requires a “reasonable potential” for a district to switch hands at some point within 10 years, which is not the same as saying that the next election or the average election will be close to tied. Those proposed measures that look at how close a district is to 50/50 are not optimizing for *competitiveness*, but rather for *balance*, which is not what is required.

What’s more, unless a state is split exactly 50/50, trying to force any particular district to be balanced requires creating greater *imbalances* in others, so any partisan “balance” this creates is artificial. And in practice, determining how close to 50/50 indicates a “reasonable potential” to change parties requires the commission to decide on an arbitrary



numeric cutoff, which opens the door to further complications and debate. Finally, because the consistency of votes varies across districts, closeness to 50/50 isn't even a reliable indicator of the likelihood for the district to flip: one district might average a 55/45 partisan split and have mixed results across elections, while another might have the same average and yet favor the same party every time.

I propose an alternative approach to measuring competitiveness that is grounded directly in the constitutional test given in Amendments Y and Z: *is there potential for switching parties within 10 years?* The closest proxy for this outcome, I argue, is what a proposed district's voters did over the *last 10 years*, and the best indicator of potential competitiveness is whether the results in that district were mixed during that timeframe - that is, whether they sometimes favored Democrats and other times Republicans, or if instead they favored the same party every time. Neither of these outcomes (whether the past results were mixed or not) is an absolute prediction of future results, but it's a straightforward and reasonable way to answer the question of whether a district is competitive.

This approach has many advantages over the other proposed measures. Most importantly, it aligns with the constitutional definition. It is also very simple to measure, and does not require arbitrary or subjective choices about the relative weights of different elections, the future direction of over-time trends, or where to set a threshold for what's called "competitive." This measure also allows the commission the flexibility to draw maps that fulfill requirements to preserve communities of interest and political subdivisions, without risking major delays or complications.

To estimate competitiveness in this fashion, the commissions would first need to re-aggregate precinct-level results from past elections to the geographies of new proposed districts. (*Please note that this step is required in all the other proposed approaches as well. If necessary, I can provide technical guidance to staff on how to implement this using official election returns.*) From there, you would look at votes cast in federal and state races over the past decade in each new district. Proposed districts which have cast most of their votes for Democrats in some elections and for Republicans in others would be coded as "competitive", while those which have always favored the same party would not be. The commission would then focus on this latter group to see if they could be made competitive, as I describe in the next section.

An example of how this is done is provided in Figure 1, below. In this map and table, I've taken the current US Congressional district map and evaluated the competitiveness of each district using all federal and statewide executive (Governor, Secretary of State, Attorney General, Treasurer, and At-large University of Colorado Regent) elections since 2012. From the table you can see that districts 1 through 5 are all non-competitive by this standard, as

in every election the voters in that district supported the same party (CD1 and CD2 are safe Democratic seats, while CD3, CD4, and CD5 are safe Republican seats). Only two districts, CD6 and CD7, are coded as competitive. CD6 shows very mixed results, supporting Democrats in 13 elections and Republicans in 8. CD7 is only barely competitive, supporting Democrats in every race except the 2014 Attorney General's race.

	CD1	CD2	CD3	CD4	CD5	CD6	CD7
20 US Pres	Blue	Blue	Red	Red	Red	Blue	Blue
20 US Sen	Blue	Blue	Red	Red	Red	Blue	Blue
20 US Rep	Blue	Blue	Red	Red	Red	Blue	Blue
18 Gov	Blue	Blue	Red	Red	Red	Blue	Blue
18 SOS	Blue	Blue	Red	Red	Red	Blue	Blue
18 AG	Blue	Blue	Red	Red	Red	Blue	Red
18 Treas	Blue	Blue	Red	Red	Red	Blue	Blue
18 Reg	Blue	Blue	Red	Red	Red	Blue	Blue
16 Pres	Blue	Blue	Red	Red	Red	Blue	Blue
16 US Sen	Blue	Blue	Red	Red	Red	Blue	Blue
16 US Rep	Blue	Blue	Red	Red	Red	Blue	Blue
16 Reg	Blue	Blue	Red	Red	Red	Blue	Blue
14 Gov	Blue	Blue	Red	Red	Red	Blue	Blue
14 SOS	Blue	Blue	Red	Red	Red	Blue	Blue
14 AG	Blue	Blue	Red	Red	Red	Blue	Red
14 Treas	Blue	Blue	Red	Red	Red	Blue	Blue
14 US Sen	Blue	Blue	Red	Red	Red	Blue	Blue
14 US Rep	Blue	Blue	Red	Red	Red	Blue	Blue
12 US Pres	Blue	Blue	Red	Red	Red	Blue	Blue
12 US Rep	Blue	Blue	Red	Red	Red	Blue	Blue
12 Reg	Blue	Blue	Red	Red	Red	Blue	Blue
<b>% Won by Dominant Party</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>62%</b>	<b>95%</b>
<b>% Won by Non-Dominant Party</b>	<b>0%</b>	<b>0%</b>	<b>0%</b>	<b>0%</b>	<b>0%</b>	<b>38%</b>	<b>5%</b>

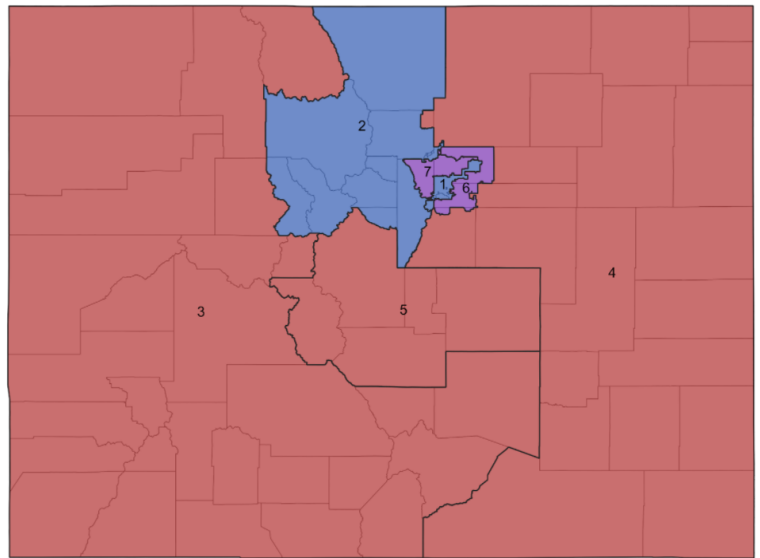


Figure 1: Applying the Proposed Competitiveness Measure to Current US Congressional Districts

This last district shows the difference between competitiveness and balance in this standard. While it would be a stretch to describe CD7 as balanced, it passes the constitutional test for competitiveness because, in certain years and with certain candidates, its voters have shown the willingness to support Republicans as well as Democrats. This pattern demonstrates a “reasonable potential” for these voters to go either way in future elections over the coming decade, so that district would be coded as competitive using the measure I propose.

### How to Apply Competitiveness in Redistricting

The second question is how to apply this measure when drawing new districts to fulfill their constitutional responsibilities. As mentioned above, the constitution requires that the commissions meet six other primary criteria before addressing competitiveness. As such,

maximizing the number of competitive districts cannot come at the expense of other criteria.

To understand why this matters, it helps to think through what would happen if we did try to maximize competitiveness from the outset. Journalist Evan Wyloge did just this for a post on *coloradopolitics.com* in June.<sup>1</sup> In drawing a map which featured seven competitive congressional districts, he had to make many compromises that led to serious violations of other redistricting criteria. Parts of Colorado Springs were combined with parts of Boulder, which itself was split across three different districts. Meanwhile, three out of the four corners of the state were all in a single district. And that district itself also somehow included pieces of Boulder as well.<sup>2</sup> To be sure, this is just one example of what a map which prioritizes competitiveness might look like, but the key point is that meeting the constitutional requirements in Amendment Y and Z requires following the order they prescribe.

To apply competitiveness constitutionally, then, the commission should follow a four-step process:

1. Draw potential districts based on primary criteria (*communities of interest, political jurisdictions, etc.*)
2. Measure the competitiveness of each potential district<sup>3</sup>
3. Consider adjustments to the boundaries of districts that are not competitive as drawn, but where the results were close in one or more past elections
4. Confirm that these adjustments do not violate primary criteria or make other districts non-competitive

The constitutional requirements are then satisfied when there are no ways to make any non-competitive districts competitive without violating other criteria or making other districts non-competitive.

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Thank you for your consideration, and I hope that my recommendations are helpful to the commissions as they determine the best path forward. If it would be of interest, I would be

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<sup>1</sup> [CHOICE CUTS | How competing redistricting requirements will reshape Colorado's congressional map](#), published June 7, 2021

<sup>2</sup> To get to those seven competitive districts, Wyloge also had to pack a disproportionate number of Democrats into a single non-competitive district to dilute their influence, echoing my earlier point about how seeking some sort of artificial “balance” in some districts requires promoting imbalances in others.

<sup>3</sup> I recommend using the “mixed results” approach described herein, but this same process should be used regardless of the specific measure of competitiveness preferred by the commission.

happy to present to either or both of the commissions on these topics in greater detail, and answer whatever questions you might have.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Therriault'.

Andrew Therriault, PhD