

<p>SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue, 4th Floor Denver, Colorado 80203</p>	
<p>Original Proceeding Pursuant to Art. V, § 44.5 of the Colorado Constitution</p>	
<p>In re Colorado Independent Congressional Redistricting Commission</p>	<p>▲ COURT USE ONLY ▲</p>
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<p style="text-align: center;">COLORADO INDEPENDENT CONGRESSIONAL REDISTRICTING COMMISSION'S RESPONSE TO CLLARO'S SUPPLEMENTAL AUTHORITY</p>	

CERTIFICATE OF COMPLIANCE

I certify this filing complies with the requirements of C.A.R. 28(i) and C.A.R. 32, including all formatting requirements set forth in these rules. Additionally, I certify that this filing contains 350 words.

I acknowledge this filing may be stricken if it fails to comply with the requirements of C.A.R. 28.

s/ Frederick R. Yarger _____
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CLLARO’s supplemental authority asserts that the Legislative Commission “understood” Colo. Const. Art. V, § 48.1(4)(b) as “distinct” from Section 2 of the Voting Rights Act. That is incorrect. The Legislative Commission interprets Section 48.1(4)(b) as coterminous with the Supreme Court’s Section 2 jurisprudence. Leg. Comm’n Br. at 34. In the Legislative Commission’s view, CLLARO’s interpretation “would raise grave issues under the Equal Protection Clause.” *Id.* at 34-35. The Legislative Commission confirmed this position at oral argument.

Audio from the Legislative Commission’s October 10 meeting is not to the contrary. No one in the cited excerpt of that meeting mentioned Section 48.1(4)(b) or stated it is “distinct” from Section 2 of the VRA.

CLLARO also cites the Legislative Commission’s VRA compliance policy, implying it supports a broad interpretation of Section 48.1(4)(b). It does not. Legislative districting in Colorado has long required VRA compliance because the relatively small size of Colorado legislative districts enables the drawing of reasonably compact majority-minority

districts. *E.g.*, *Sanchez v. Colorado*, 97 F.3d 1303, 1321-22 & n.33 (10th Cir. 1996) (ordering a majority-minority district while noting that “geographical compactness or size of the minority group” is “an essential element”). Accordingly, the Legislative Commission hired a VRA expert to comply with *Thornburg v. Gingles*, 478 U.S. 30 (1986), including to conduct a “racial bloc voting analysis ... in ***select areas*** of Colorado.” CLLARO Supp. Auth. at 3 (citing VRA report; emphasis added). The expert did not consider drawing minority influence districts in other areas. And the Legislative Commission did not draw any districts based on race without satisfying the *Gingles* requirement of a “sufficiently large and geographically compact” minority group that could “constitute a majority of the voting-age population in a single-member district.” Leg. Comm’n Policy #9 at 1.

In contrast to legislative districting in Colorado, congressional districting—given the large size of congressional districts—does not trigger the *Gingles* preconditions. Courts have therefore been careful not to approve congressional “influence” districts drawn based on race,

because doing so would violate equal protection. *Moreno v. Gessler*, 2011 WL 8614878, at *25 (Colo. Dist. Ct. (Denver Cnty.) Nov. 10, 2011).

Dated: October 26, 2021

Respectfully submitted,

s/ Frederick R. Yarger

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CERTIFICATE OF SERVICE

I certify that on October 26, 2021, a true and correct copy of this **COLORADO INDEPENDENT CONGRESSIONAL REDISTRICTING COMMISSION'S RESPONSE TO CLLARO'S SUPPLEMENTAL AUTHORITY** was filed with the Court via the Colorado Courts E-Filing System, with e-service to all parties entered in the case.

s/ Christine Keitlen _____

Christine Keitlen