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**In re Colorado Independent Congressional  
Redistricting Commission**

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Citizens and Colorado League of United Latin  
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Case No.: 2021SA208

**BRIEF OF LEAGUE OF UNITED LATIN AMERICAN CITIZENS AND  
COLORADO LEAGUE OF UNITED LATIN AMERICAN CITIZENS**

**– ORAL ARGUMENT REQUESTED –**

## 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, the undersigned certifies that the brief complies with the applicable word limits in C.A.R. 28(g) and the Court's July 26, 2021 Order because it contains 9,497 words (not exceeding 9,500 words).

Moreover, the brief complies with C.A.R. 28(k) because it contains a concise statement of the applicable standard of appellate review with citation to authority and a citation to the precise location in the record, not to an entire document, where the pertinent issues were raised and ruled on below.

I acknowledge that my 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/ Eric Maxfield  
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## **STATEMENT REGARDING ORAL ARGUMENT**

Pursuant to the Court's July 26, 2021 Order, the League of United Latin American Citizens and Colorado League of United Latin American Citizens (together, "LULAC") respectfully request to participate in oral argument in this matter.

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## INTRODUCTION

Coloradans voted overwhelmingly in 2018 to reform the congressional redistricting process and guarantee strong protections for the State’s large and rapidly growing Latino voter population—protections that exceed what the federal Voting Rights Act (“VRA”) provides. Although over a fifth of Coloradans identify as Latino and that community has increased by close to a quarter million people over the last decade, the State’s congressional maps have historically prevented these voters from exercising their electoral influence. Latino communities have been routinely fractured between districts and their votes diluted due to a racially polarized electorate that invariably votes against Latino-preferred candidates.

By enacting Amendment Y, Colorado voters created an independent Commission with a mandate to correct these dilutive conditions in the State’s congressional map. Amendment Y instructs the new Commission to meet traditional redistricting criteria while both “comply[ing] with the federal Voting Rights Act” *and* preventing the “dilut[ion of] the impact of ... racial or language minority group’s electoral influence.” Colo. Const. art. V, §§ 44.3(1)(b), (4)(b).

But the Commission—relying on the undisclosed reasoning of staff provided beyond the public eye—has disregarded this critical “electoral influence” requirement and thus violated the Colorado Constitution. The Commission effectively erased the electoral influence provision from the Constitution by

conflating it with the federal VRA and then minimizing both constitutionally required criteria. As a result, the Commission treated Colorado's substantial and growing Latino voter population as just another community of interest, no more important than those involved in ski recreation, living along a highway corridor, or working in the aviation industry. Worse, the Commission sacrificed the interests of the Latino community in its often-insistent desire to boost partisan competitiveness, the least important of the Commission's governing criteria. These missteps are not a grounded exercise of the Commission's discretion; but rather constitute legal error this Court should correct.

### **ISSUES PRESENTED**

1. Did the Commission violate the Colorado Constitution's prohibition on diluting the electoral influence of Latino voters by adopting district configurations that overwhelm Latino voters with white voters who vote as a bloc to defeat Latino-preferred candidates, rather than nearby white crossover voters who support Latino-preferred candidates?

2. Did the Commission violate the Colorado Constitution's transparency requirements by conducting its minority voting rights discussions in nonpublic settings?

### **FACTS**

Latino voters are a large and expanding portion of the Colorado electorate, comprising 21.9% of the State's total population. *See* U.S. Census Bureau,

*Colorado: 2020 Census* (Aug. 25, 2021).<sup>1</sup> This represents an increase of nearly 225,000 people who identify as Latino over the last decade. *Id.* Much of this population resides in southern Colorado, which includes the three counties where Latinos are at least a plurality of residents: Alamosa (47%), Conejos (50.7%), and Costilla (56.8%). *Id.* Other areas with large Latino communities include Pueblo County (41.6%), Otero County (41.2%), and the north Denver suburbs in Adams County (41.7%). *Id.*

Latinos are also over 15.6% of Colorado’s citizen voting age population (“CVAP”)—close to one sixth of its total CVAP—yet because of their distribution throughout the State, they do not constitute a majority in any of the State’s eight congressional districts. As such, Latino voters have struggled to overcome the structural obstacles built into Colorado’s district boundaries that enable white-bloc voting to defeat Latino-preferred candidates. Throughout Colorado’s history, the dilution of minority groups’ voting power has marred the State’s elections and has often required court action to correct. *See, e.g., Sanchez v. Colo.*, 97 F.3d 1303, 1306 (10th Cir. 1996); *Cuthair v. Montezuma-Cortez, Colo. Sch. Dist. No. RE-1*, 7 F. Supp. 2d 1152, 1167 (D. Colo. 1998). Indeed, even though Colorado has many residents with Latino heritage and generations of Chicano inhabitants that predate

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<sup>1</sup> [www.census.gov/library/stories/state-by-state/colorado-population-change-between-census-decade.html](http://www.census.gov/library/stories/state-by-state/colorado-population-change-between-census-decade.html) (accessed Oct. 3, 2021).

the formation of the State itself, Colorado has only ever sent *one* Latino candidate to the House of Representatives: John Salazar from 2005 until the third congressional district was redrawn in 2011.<sup>2</sup>

Coloradans adopted Amendment Y in part to change this history. In 2018, a bipartisan consensus in the General Assembly referred Amendments Y and Z to the ballot to counteract undemocratic influences in redistricting. *In re Interrogatories on Senate Bill 21-247 Submitted by Colorado Gen. Assembly*, 488 P.3d 1008, 1013 (Colo. 2021). Voters overwhelmingly approved the measures, *id.*, including the ballot question language that the Amendments would “prohibit[] maps from being drawn to dilute the electoral influence of any racial or ethnic group[.]” S.C.R. 18-004, § 2 (2018). Coloradans voted to empower the large but geographically dispersed Latino community to achieve representation commensurate with its electoral influence.

Amendment Y is urgently needed to counteract the conditions of racially polarized voting and systemic barriers to fair representation that remain today. As described *infra* II, the history of election results in Colorado reveals that many of the areas with the State’s largest Latino populations are routinely subsumed in districts with majority white voters who overwhelmingly vote as a bloc against Latino-

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<sup>2</sup> Although the race of the candidate is not dispositive to showing racially polarized voting, it is a relevant factor in the analysis. *See, e.g., Sanchez*, 97 F.3d at 1317-18.

preferred candidates. That trend continues in the Commission’s chosen map. From southern Colorado to the north Denver suburbs, Latino voters’ cohesive political voice is diluted because the Commission’s map exacerbates rather than mitigates the effects of Colorado’s racially polarized voting.

The League of United Latin American Citizens and the Colorado League of United Latin American Citizens (together, “LULAC”) submitted three comments urging the Commission to comply with the electoral influence provision, with two proposed alternative maps showing how it could do so. *See* App. A, B, & C. LULAC, the oldest and largest nonpartisan Latino civil rights nonprofit in the United States, advocates for fair maps around that country. LULAC demonstrated that the Commission could fulfill this goal in Colorado by drawing “crossover districts” that combine the large Latino populations in southern Colorado and the north Denver suburbs with white voters who cross over to vote for the Latino-preferred candidate.

The Commission heard LULAC’s proposals. *See, e.g.*, Aug. 20, 2021 Public Hearing at 8:12-8:28pm (LULAC counsel discussing map); Aug. 23, 2021 Commission Meeting at 2:31-2:33pm, 2:40-2:43pm, 2:51-2:52pm (noting LULAC’s map); August 30, 2021 Commission Meeting at 3:04-3:05pm (same).<sup>3</sup> Other commenters also supported LULAC’s map and reinforced LULAC’s legal analysis

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<sup>3</sup> <https://sg001-harmony.sliq.net/00327/Harmony/en/View/EventListView/20210401/154> (accessed Oct. 4, 2021).

of the Constitution’s electoral influence provision. *See, e.g.*, Colorado Rural Voters Sept. 9, 2021 Submission (proposing slightly amended LULAC map); CLLARO Sept. 22, 2021 Submission (adopting legal analysis); Aug. 28, 2021 Public Hearing at 4:14-4:28 (reiterating legal analysis). But the Commission discounted LULAC’s submissions and the submissions from other Latino-advocacy groups about the need to avoid vote dilution.

Instead, the Commission worked in secret to devise its policy rejecting the Constitution’s electoral influence provision. The Commission repeatedly hid its decision-making processes for evaluating how to avoid redistricting choices that dilute Colorado’s minority voters. When vote dilution came up in meetings, for example, the Commission retreated to discuss “confidential briefs” in closed-door “executive sessions” that shielded their deliberations from public accountability. *See, e.g.*, Aug. 16, 2021 Commission Meeting at 2:31-2:34pm; Aug. 30, 2021 Commission Meeting at 3:19-3:21pm; Sept. 1, 2021 Commission Meeting at 2:02-2:04pm.

The Commission ultimately finalized its recommendation during a haphazard, seven-hour voting process that one commissioner deemed “a little crazy.” Much of the Commission’s debate centered on the competitiveness of the small list of final possible maps. The Commission then hurriedly voted to adopt “Staff Plan 3 Coleman Amendment” as its proposed map before a perceived midnight deadline. The

Commission’s selected map dilutes Latino voters’ electoral influence in southern Colorado and the north Denver suburbs and is unconstitutional.

## LEGAL STANDARD

### I. Congressional Redistricting Criteria

The Commission must apply a hierarchy of criteria in drawing Colorado’s congressional map. *In re Interrog.*, 488 P.3d at 1013-14. These criteria are first divided into seven affirmative considerations with varying degrees of exigency. *See* Colo. Const. art. V, § 44.3. The Commission “shall” heed federal law by (1) “mak[ing] a good-faith effort to achieve precise mathematical population equality between districts, justifying each variance, no matter how small;” (2) “compos[ing]” districts to be “of contiguous geographic areas;” and (3) “[c]omply[ing] with the federal Voting Rights Act of 1965.” *Id.* § 44.3(1). In addition, the Commission should “[a]s much as reasonably possible” draw maps that (4) “preserve whole communities of interest” and (5) preserve “whole political subdivisions, such as counties cities, and towns.” *Id.* § 44.3(2)(a). The Commission must also (6) draw districts that are “as compact as is reasonably possible.” *Id.* § 44.3(2)(b). Only “[t]hereafter” should the Commission (7) “to the extent possible, maximize the number of politically competitive districts.” *Id.* § 44.3(3)(a).

The Commission is also subject to four negative prohibitions. Amendment Y provides that “[n]o map may be approved by the commission or given effect by the

supreme court if” it has been drawn: (1) for “the purpose of protecting one or more incumbent[s];” or (2) for the purpose of protecting “any political party;” nor if it is drawn for the purpose of or results in (3) “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,” copied from Section 2 of the VRA; or (4) “diluting the impact of that racial or language minority group’s electoral influence.” *Id.* § 44.3(4). A map that violates these prohibitions must be rejected irrespective of what the Commission attempted to do to achieve Amendment Y’s affirmative criteria.

## **II. Abuse of Discretion**

Amendment Y directs the Court to “review the [Commission’s] submitted plan and determine whether the plan complies with the criteria listed in section 44.3 of this article V.” *Id.* § 44.5(1). A Commission map must be rejected if the Commission “abused its discretion in applying or failing to apply the criteria ... in light of the record before the commission.” *Id.* § 44.5(2). In making this determination, the Court “may consider any maps submitted to the commission.” *Id.*

Applying the abuse of discretion standard, the Court “looks to see if the [Commission] has misconstrued or misapplied applicable law, or whether the decision under review is not reasonably supported by competent evidence in the record.” *Freedom Colo. Info., Inc. v. El Paso Cty. Sheriff’s Dep’t*, 196 P.3d 892, 899-900 (Colo. 2008) (citations omitted). A “[l]ack of competent evidence occurs



when the administrative decision is so devoid of evidentiary support that it can only be explained as an arbitrary and capricious exercise of authority.” *Id.* at 900. Additionally, the “misapplication of the law” plainly “constitute[s] an abuse of discretion.” *Id.* at 899-900 (citation omitted).

Abuse of discretion is less deferential review than the standard the Court has previously applied to commission-drawn legislative maps. In those cases, the Court applied a “strong” “presumption of good faith and validity” standard, *see In re Colorado Gen. Assembly*, 828 P.2d 185, 189 & n.4 (Colo. 1992) (citation omitted), and afforded the legislative commission latitude if it “substantially complied with the constitutional requirements,” *In re Reapportionment of Colorado Gen. Assembly*, 647 P.2d 191, 197 (Colo. 1982). But even under that more deferential standard of review, the Court did not hesitate to remand to the commission when it misapplied the redistricting criteria. *See, e.g., In re Colorado Gen. Assembly*, 332 P.3d at 112; *In re Colorado Gen. Assembly*, 45 P.3d 1237, 1241 (Colo. 2002); *In re Colorado Gen. Assembly*, 828 P.2d 185, 195-96 (Colo. 1992); *In re Colorado Gen. Assembly*, 647 P.2d 209, 213 (Colo. 1982).

## **SUMMARY OF ARGUMENT**

The Commission’s plan violates the Colorado Constitution’s prohibition against diluting the electoral influence of Latino voters, and its process of

considering minorities' voting rights violated the Constitution's transparency requirements.

The Colorado Constitution's minority voting rights protections exceed those imposed by the federal VRA. Unlike the VRA, the Colorado Constitution protects against districts that dilute minority voters' electoral *influence*—a more protective standard than the VRA's focus on districts in which minorities constitute a numerical majority of voters. The Commission disregarded the plain text of the Constitution and instead concluded that the Colorado Constitution's provision merely “restates” the VRA—despite using different, and broader, words.

The plan adopted by the Commission dilutes Latino voters' electoral influence in southern Colorado and in the northern Denver suburbs. In southern Colorado, Latino voters are fractured across three districts, with the bulk placed in District 3. Moreover, Latino voters in Districts 3 and 5 are then joined together with rural white voters who bloc vote against Latino-preferred candidates, rather than nearby white crossover voters who support Latino-preferred candidates. These choices dilute Latino voters' electoral influence by preventing them from forming an effective majority in coalition with a minority of white crossover voters.

District 8 in Denver's northern suburbs has the same defect. It groups Adams County's Latino voters with large numbers of rural white voters in Weld County

who bloc vote against Latino-preferred candidates rather than nearby white crossover voters in Denver’s suburbs who support Latino-preferred candidates.

As LULAC explained to the Commission, and demonstrates below, alternative district configurations are possible that achieve all the Colorado Constitution’s criteria—including by ensuring that no district dilutes the electoral influence of Latino voters.

Moreover, the Commission’s process violated the Colorado Constitution’s transparency requirements. While the Commission deliberated at length in public about competitiveness—the lowest priority criteria in the Constitution—the Commission conducted its discussion regarding minority voting entirely behind closed doors.

The Commission’s plan should be rejected, and the Commission should be ordered to adopt a plan, consistent with LULAC’s proposals, that does not dilute Latino voters’ electoral influence. Moreover, it should be ordered to conduct its process on remand consistent with the Colorado Constitution’s transparency requirements.

## **ARGUMENT**

### **I. The Commission abused its discretion by disregarding the Constitution’s “electoral influence” requirement.**

The Commission selected its map based on a critical misunderstanding of the Colorado Constitution’s plain-text requirement that district boundaries be drawn to

avoid diluting minority voters' electoral influence. The Commission decided that the electoral influence provision simply restates the provision requiring compliance with the VRA, which it concluded was not implicated in Colorado congressional redistricting. That decision contradicts the plain text of the Constitution, the VRA, and U.S. Supreme Court precedent; violates the whole-text canon of constitutional interpretation; overlooks the straightforward ballot question put to voters in 2018; and ignores that Coloradans enacted Amendment Y following the trend of other states that provide additional protections against vote dilution apart from the VRA.

**A. The electoral influence mandate is separate from the VRA.**

The redistricting criteria that voters adopted in 2018 include three provisions concerning minority vote dilution, two of which restate the VRA and one that does not. To start, the Colorado Constitution has long specified that maps must “[c]omply with the federal Voting Rights Act of 1965.” Colo. Const. art. V, § 44.3(1)(b) (quotations omitted). But Amendment Y then expanded protections for minority voters by adding two more vote dilution prohibitions. First, Amendment Y incorporated a key passage from Section 2 of the VRA, providing that “[n]o map may be approved by the commission or given effect by the supreme court if ... [i]t has been drawn for the purpose of or *results in the abridgment of the right of any citizen to vote on account of that person’s race or membership in a language minority group.*” *Id.* § 44.3(4)(b) (emphasis added to Section 2 duplicated text).

Second, Amendment Y additionally requires that no map may result in “*diluting the impact* of that racial or language minority group’s *electoral influence*.” *Id.* (emphasis added).

The provision prohibiting the dilution of minority voters’ electoral *influence* is intentionally more protective than the federal VRA. The VRA speak in terms of minority voters’ opportunity to *elect*, not to influence, with Section 2 protecting minority voters’ ability to “elect representatives of their choice,” 52 U.S.C. § 10301(b), and Section 5 guarding against the retrogression of their “ability ... to elect their preferred candidates of choice,” *id.* § 10304(b); *see also Cooper v. Harris*, 137 S. Ct. 1455, 1464 (2017) (describing retrogression). The Supreme Court has interpreted Section 2’s opportunity-to-elect language to require a threshold showing “that the minority population in the potential election district is greater than 50 percent” such that the minority group(s) could elect their preferred candidate depending only on their own voters. *Bartlett v. Strickland*, 556 U.S. 1, 19-20 (2009) (plurality opinion for the Court).

In contrast, the Colorado Constitution not only protects minority voters’ opportunity to unilaterally elect preferred candidates, but also requires the Commission to draw districts that protect minority voters’ ability to influence electoral outcomes even if they are not the voting majority of a given district. This standard contemplates drawing “crossover” districts—districts in which a sizeable

minority population is joined by white crossover voters to elect minority-preferred candidates, as discussed in more detail *infra* III.B. While the U.S. Supreme Court has held that federal law permits, but does not require, drawing crossover districts to prevent vote dilution, *see Cooper*, 137 S. Ct. at 1471-72; *Bartlett*, 556 U.S. at 23-24, the Colorado Constitution mandates their creation to avoid the needless dilution of minority voters' influence, Colo. Const. art. V, § 44.3(4)(b).

Colorado voters adopted this electoral influence requirement at the Supreme Court's invitation. While the *Bartlett* Court declined to interpret Section 2 to require crossover districts, it allowed states to adopt their own laws that did so: "Our holding that § 2 does not require crossover districts does not consider the permissibility of such districts as a matter of legislative choice or discretion." 556 U.S. at 23. The *Bartlett* plurality underscored that crossover districts may advance important policy considerations "to diminish the significance and influence of race by encouraging minority and majority voters to work together toward a common goal." *Id.* Crossover districts, as the Court acknowledged, "give[] [states] a choice that can lead to less racial isolation, not more." *Id.* The Court therefore concluded that "in the exercise of lawful discretion States c[an] draw crossover districts as they deem[] appropriate." *Id.* at 24. Colorado voters made the policy decision to go this route by adopting Amendment Y's electoral influence requirement.

**B. The Commission’s contrary reading erases the electoral influence provision from the Constitution.**

The Commission, however, ignored Coloradans’ concerted choice to protect electoral influence apart from the VRA. Throughout its deliberations, the Commission relied on staff’s atextual and unexplained conclusion that “[t]o 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 population to form a majority-minority congressional district.” First Staff Plan Memo at 4 (Sept. 3, 2021) (App. D at 13). If the electoral influence provision were merely a restatement of the VRA, it would use the same words as the VRA. It does not.

The Commission thus disregarded the thorough analysis submitted by LULAC and other groups and defied the binding interpretive canon to “afford the language of the Constitution its ordinary and common meaning to give effect to every word and term contained therein, whenever possible.” *People v. Rodriguez*, 112 P.3d 693, 696 (Colo. 2005) (citation and quotations omitted); *see also People v. Lee*, 476 P.3d 351, 354 (Colo. 2020) (interpretations must give “consistent, harmonious, and sensible effect to each part of the” text by “interpret[ing] every word, rendering no words or phrases superfluous” (citation omitted)).

The Commission’s conflation also contradicts “[t]he straightforward language of the ballot questions [that] was in front of the voters” when they overwhelmingly

approved Amendment Y. *See Mesa Cty. Bd. of Cty. Comm'rs v. State*, 203 P.3d 519, 534 (Colo. 2009). The ballot question informed voters that Amendment Y would “prohibit[] maps from being drawn to dilute the electoral influence of any racial or ethnic group,” without any mention of the VRA or opportunity-to-elect language. S.C.R. 18-004, § 2 (2018). The Commission’s opaque erasure of the electoral influence provision frustrates the voters’ clear intent and constitutes an abuse of discretion.<sup>4</sup>

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<sup>4</sup> LULAC’s plain-text reading of the electoral influence provision is also consistent with a growing trend of states providing additional vote dilution protections, as the *Bartlett* Court invited them to do. *See* 556 U.S. at 24. Although “not binding authority,” the Court has routinely “looked to other states for guidance” in redistricting cases. *Salazar*, 79 P.3d at 1240. Michigan and Virginia, like Colorado, opted for redistricting commissions that must comply with the VRA *and* provide additional protections against vote dilution. Mich. Const. art. IV, § 6(13); *Daunt v. Benson*, 999 F.3d 299, 305 (6th Cir. 2021) (upholding commission’s constitutionality); Va. Const. art. II, § 6; *Adkins v. Va. Redistricting Comm’n*, Case No. 210770 (Va. Sept. 22, 2021) (dismissing mandamus petition arguing that the adopted criteria were unconstitutional). Numerous other states have also enacted state VRA’s that, using analogous language to Colorado’s provision, similarly protect electoral influence exceeding the federal VRA. Va. Code Ann. § 24.2-130(A); Cal. Elec. Code § 14027; Or. Rev. Stat. § 255.405(1)(a); Wash. Rev. Code Ann. §§ 29A.92.005, 29A.92.030; 10 Ill. Comp. Stat. 120/5-5; *see also Radogno v. Illinois State Bd. of Elections*, No. 1:11-cv-04884, 2011 WL 5025251 (N.D. Ill. Oct. 21, 2011) (three-judge panel rejecting constitutional challenge); *Sanchez v. City of Modesto*, 145 Cal. App. 4th 660, 669-70 (2006) (applying California VRA to draw crossover districts).



## **II. The Commission abused its discretion by submitting a map that needlessly dilutes the electoral influence of Colorado’s Latino voters.**

The Commission’s misinterpretation of the electoral influence provision led it to select a map that dilutes Latino voters’ electoral influence. Vote dilution offends the principle of representational equality that seeks to prevent “debasement of voting power and diminution of access to elected representatives.” *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969). “[D]istrict lines can dilute the voting strength of politically cohesive minority group members ... by fragmenting the minority voters among several districts where a bloc-voting majority can routinely outvote them[.]” *Johnson v. De Grandy*, 512 U.S. 997, 1007 (1994) (citing *Voinovich v. Quilter*, 507 U.S. 146, 153-54 (1993)).

Under Section 2 of the VRA, plaintiffs establish vote dilution by first proving three preconditions: (1) the minority group could constitute a numerical majority in the district, (2) the group is “politically cohesive,” and (3) the district as drawn has a “white majority [that] votes sufficiently as a bloc to enable it ... usually to defeat the minority’s preferred candidate.” *Sanchez*, 97 F.3d at 1310 (quoting *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986)). But proving vote dilution under the electoral influence provision diverges on the first component. Instead of a *numerical* majority, the Colorado Constitution requires only an *effective* majority where minority voters “are numerous enough and their candidate attracts sufficient cross-over votes from

white voters.” *See Voinovich*, 507 U.S. at 154.<sup>5</sup> Thus, the electoral influence provision is triggered when (1) the district could be drawn with “a sufficiently large minority to elect their candidate of choice with the assistance of crossover votes,” (2) the substantial minority group is politically cohesive, and (3) the district as currently drawn has “sufficient white majority bloc voting to frustrate the election of the minority group’s candidate of choice.” *See id.* at 158; *accord LULAC v. Perry*, 548 U.S. 399, 443 (2006).

The Commission’s map violates this framework by diluting the electoral influence of cohesive Latino voters in southern Colorado and the north Denver suburbs who could form an effective majority with white crossover voters. The map instead fractures southern Colorado Latinos across racially polarized districts. And it has placed north Denver’s Latino voters in Colorado’s most competitive district, which appears superficially to be a Latino electoral influence district but is unlikely to be effective.

In diluting Latino voters’ electoral influence, the Commission treated Latinos as if they are no different than any other community of interest, including aviation workers, people living along the highway 285 corridor, and ski enthusiasts. Unlike

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<sup>5</sup> Moreover, because the electoral influence provision lacks VRA Section 2’s “totality of the circumstances” language, the provision does not require examining conditions of discrimination. Regardless, that inquiry would be satisfied here. *See, e.g., Sanchez*, 97 F.3d at 1322-27; *Hall v. Moreno*, 270 P.3d 961, 968 (Colo. 2012); *United States v. Alamosa Cty., Colo.*, 306 F. Supp. 2d 1016, 1019 (D. Colo. 2004).

ski enthusiasts, however, the Colorado Constitution specifically protects the electoral influence of Latino voters. *See, e.g., Carstens v. Lamm*, 543 F. Supp. 68, 95 (D. Colo. 1982) (three-judge court) (discussing vote dilution of Latino voters and retaining communities of interest separately, prioritizing the former). The Commission abused its discretion by failing to apply these protections in drawing the proposed map.

Moreover, this needless vote dilution is explained not by a desire to keep counties or communities whole but by an effort to increase competitiveness in one district, and a result to protect incumbents in the others. The Commission's competitiveness objective became so unyielding that some commissioners bluntly stated they would not vote for a proposed district 8 unless it hit a certain arbitrary competitiveness numerical threshold.<sup>6</sup> And, in stark contrast to the Commission's handling of minority vote dilution, the Commission thoroughly analyzed competitiveness in public meetings and documents.<sup>7</sup> This focus came at the direct

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<sup>6</sup> *See, e.g.*, Sept. 28, 2021 Commission Meeting at 10:13-10:14pm (Schell stating that “[i]n the end, I cannot move forward [with] a map that has not one single competitive district” and that competitiveness was “the deciding factor”); This fixation on competitiveness occurred despite some commissioners’ repeated pleas that their colleagues not “choose competitiveness over communities of interest” of Latino voters. Sept. 28, 2021 Commission Meeting at 10:33-10:34pm (Tafoya); *see also* Sept. 25, 2021 Commission Meeting at 10:55-10:57am (Tafoya), 11:12-11:13am (Brawner), 11:23-11:25am (Diawara).

<sup>7</sup> *See* Comm’n Ex. I, at 1-3 (staff competitiveness report); Jeanne Clelland, *Ensemble Analysis for 2021 Congressional Redistricting in Colorado* (Sept. 10, 2021),

cost of Latino voters' electoral influence, where the Commission's desired toss-up districts contains the State's largest Latino population. But the Commission cannot sacrifice Latino voters' electoral influence either to privilege the *lowest priority* criteria (for competitiveness), or to meet prohibited criteria (protecting incumbency). By diluting the electoral influence of Latinos in Commission Districts 3 and 8, the Commission's map violates the Colorado Constitution.

**A. Commission District 3 dilutes the electoral influence of Latino voters in southern Colorado.**

The Commission map dilutes the electoral influence of Latino voters in the San Luis Valley, Pueblo, southern Colorado Springs, Eagle County, and Lake County by fracturing these voters across three districts where significant white-bloc voting will defeat their preferred candidates. Commission District 3 in particular has a large Latino total population of 25.7% and a Latino CVAP of 22.78%. But this politically cohesive Latino population is subsumed in a district where they have only a 14% chance of effectively exerting their electoral influence. This is because the Commission's map needlessly combines them with rural white voters who vote as a bloc in opposition to Latino-preferred candidates. *See* App. D at 3-5 (Commission Map PlanScore). As detailed *infra* III.B.1., an alternative district can be drawn that

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<https://app.box.com/s/x3o93nl58p1usyyoqn82twxy4x26avs2/file/863628909389>;  
Map Analytics Standing Committee Meeting (Aug. 8, 2021),  
<https://app.box.com/s/x3o93nl58p1usyyoqn82twxy4x26avs2/file/853376895657>.

joins these Latino voters together with a sufficient number of white crossover voters to fix the preventable dilution of their electoral influence.

**1. Voting in Commission District 3 is racially polarized.**

Voting in Commission District 3, and the surrounding affected areas in Commission Districts 5 and 7, is racially polarized such that white-bloc voting will dilute the electoral influence of the substantial Latino voter population. Racially polarized voting “exists where there is a consistent relationship between the race of the voter and the way in which the voter votes ... or to put it differently, where [voters of different races] vote differently.” *Sanchez*, 97 F.3d at 1312 (quoting *Gingles*, 478 U.S. at 53 n.21) (alterations in original). Homogenous precincts analysis is used to analyze the presence of racially polarized voting by deducing voting preferences of Latino and white voters. *See id.* at 1313. The tables below present reconstituted election results for all precincts in the affected region of the State with Latino CVAP exceeding 84% and a sampling of precincts with white CVAP exceeding 84%:

<b>Homogenous Latino Precincts (CVAP &gt; 84%)</b>						
<b>Precinct</b>	<b>Latino CVAP</b>	<b>Candidate Party</b>	<b>2020 Pres.</b>	<b>2020 Sen.</b>	<b>2018 Gov.</b>	<b>2018 AG</b>
Costilla County Precinct 1	87.7%	(D)	80.5%	80.5%	90.2%	90.3%
		(R)	16.9%	15.8%	7.7%	7.6%
Costilla County Precinct 4	88.1%	(D)	76.6%	78.2%	77.7%	85.7%
		(R)	22.6%	20.1%	16.3%	11.1%
Conejos County Precinct 1	84.5%	(D)	74.5%	77.4%	72.7%	77.6%
		(R)	22.0%	21.5%	21.8%	21.0%
Conejos County Precinct 4	85.5%	(D)	67.9%	72.4%	78.2%	80.2%
		(R)	29.1%	26.4%	18.3%	18.3%
Pueblo County Precinct 101	86.9%	(D)	74.3%	74.0%	77.8%	77.4%
		(R)	22.5%	23.0%	18.4%	18.7%

<b>Exemplar Homogenous White Precincts (CVAP &gt; 84%)</b>						
<b>Precinct</b>	<b>White CVAP</b>	<b>Candidate Party</b>	<b>2020 Pres.</b>	<b>2020 Sen.</b>	<b>2018 Gov.</b>	<b>2018 AG</b>
Montezuma County Precinct 1	99.7%	(D)	16.5%	16.2%	21.0%	22.8%
		(R)	82.1%	82.0%	76.6%	75.1%
Montrose County Precinct 5	98.0%	(D)	14.5%	14.2%	14.6%	12.5%
		(R)	84.3%	83.7%	83.4%	85.1%
Mesa County Precinct 19	98.5%	(D)	17.0%	17.1%	22.2%	20.4%
		(R)	80.7%	81.7%	73.9%	77.2%
Moffat County Precinct 1	95.2%	(D)	14.0%	13.4%	13.6%	14.2%
		(R)	83.6%	84.2%	83.7%	82.8%
Pueblo County Precinct 110	85.8%	(D)	20.8%	21.2%	17.0%	16.1%
		(R)	77.1%	77.2%	81.1%	82.6%
Pueblo County Precinct 303	88.9%	(D)	20.6%	20.9%	22.4%	22.2%
		(R)	77.7%	78.6%	73.4%	73.9%
Pueblo County Precinct 304	95.6%	(D)	27.1%	25.7%	28.2%	28.2%
		(R)	70.5%	72.4%	67.1%	68.5%
Moffat County Precinct 3	87.9%	(D)	14.2%	13.4%	13.7%	14.3%
		(R)	84.4%	85.8%	82.7%	83.6%
Montrose County Precinct 8	84.0%	(D)	13.3%	13.1%	10.8%	9.7%
		(R)	85.5%	84.7%	86.1%	86.6%
Dolores County Precinct 3	84.5%	(D)	13.5%	14.3%	15.9%	17.1%
		(R)	86.2%	84.2%	81.0%	81.1%
Garfield County Precinct 24	90.0%	(D)	22.8%	21.0%	20.2%	19.3%
		(R)	75.4%	76.8%	76.9%	77.8%
El Paso County Precinct 522	90.3%	(D)	19.1%	18.6%	19.1%	18.3%
		(R)	76.9%	77.1%	74.0%	77.0%
El Paso County Precinct 502	94.6%	(D)	16.1%	16.0%	19.8%	18.0%
		(R)	80.9%	81.4%	75.5%	79.8%
Fremont County Precinct 3	85.0%	(D)	21.2%	21.8%	23.9%	21.7%
		(R)	76.1%	75.7%	72.7%	74.3%

As these tables illustrate, voting is racially polarized across the affected area in the Commission map, with Latino voters “hav[ing] expressed clear political preferences” for Democratic candidates, *see id.* at 1315 (citation omitted), and white voters strongly preferring Republican candidates.

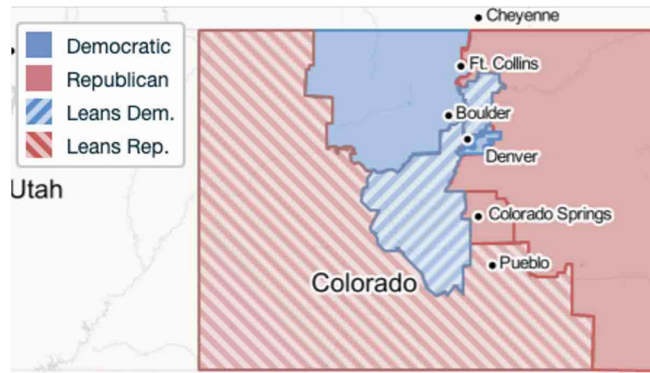
## 2. White bloc voting will defeat Latino-preferred candidates in Commission District 3.

As the Commission's data establish, white bloc voting will defeat Latino-preferred candidates in Commission District 3 and the surrounding communities with Latino voters. Commission District 3 contains these dilutive features because it excludes white crossover voters in Eagle, Summit, Lake, and Chaffee Counties who support Latino-preferred candidates but includes rural white voters in Mesa, Moffat, Delta, Montrose, Garfield, Rio Blanco, and Dolores Counties who bloc vote against Latino-preferred candidates.

The Commission's election results data show that the Democratic candidate—the preferred candidate of Latino voters in District 3—would have lost *each* of the last eight evaluated elections, ranging from a loss by 6.1% in the 2018 gubernatorial election to a loss by 15.3% in the 2016 presidential election. *see* Comm'n Ex. I, at 4-5. Republicans also have a substantial voter registration advantage in District 3 (31.8% to 26.1%). *Id.* Moreover, as shown in the map below, PlanScore<sup>8</sup> reveals that even excluding the effects of incumbency, District 3 leans Republican with just a 14% chance that a Democratic candidate—the Latino-preference—could win in the district. *See* App. D at 3-5 (Commission Map PlanScore).

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<sup>8</sup> PlanScore scores the partisan effects of plans under four metrics: efficiency gap, declination, partisan bias, and mean-median difference. *See* <https://planscore.campaignlegal.org>.



The Commission acknowledged that District 3 has a substantial and politically cohesive Latino population in southern Colorado throughout Pueblo and the San Luis Valley, as numerous courts have also concluded. *See Sanchez*, 97 F.3d at 1306; *Hall*, 270 P.3d at 968; *Carstens*, 543 F. Supp. at 87; *Alamosa*, 306 F. Supp. 2d at 1019. But the Commission then chose to draw district boundaries that engulf these voters in a district of contrary white-bloc voters living in faraway Mesa, Moffat, Delta, Montrose, Garfield, Rio Blanco, and Dolores Counties instead of combining them with the Latino population and additional white crossover voters in southern Colorado Springs and Lake, Summit, Eagle, and Chaffee Counties.

These figures show that there are severe racially polarized conditions in Commission District 3, and that white voters will “normally bloc vot[e] ... to trounce minority preferred candidates most of the time.” *See Sanchez*, 97 F.3d at 1313 (quoting *Uno v. City of Holyoke*, 72 F.3d 973, 980 (1st Cir. 1995)). This is the definition of “diluting the impact of [a] minority group’s electoral influence.” Colo. Const. art. V, § 44.3(4)(b). Commission District 3 is thus unconstitutional.



**B. Commission District 8 dilutes the electoral influence of Latino voters in the north Denver suburbs.**

Commission District 8 dilutes the ability of Latino voters in Adams County to influence electoral outcomes. Commission District 8 has a large Latino total population of 38.5% and a Latino CVAP of 34.5%. But the Commission has stretched its proposed District 8 from the Adams County cities in Commerce City and Thornton—which host the district’s largest Latino population—north along the racially polarized highway 85 corridor to capture Greeley and half of Weld County. Doing so adds substantial rural white Weld County voters to Commission District 8 that bloc vote against Latino-referred candidates. The Commission made these choices to make Commission District 8 the most competitive in the map. And although it added *some* Latino voters in Greeley in the process, the Commission diluted all of their electoral influence by creating the façade of a district that would perform when it, in reality, is unlikely to reliably do so.

**1. Voting in Commission District 8 is racially polarized.**

Voting in Commission District 8 is racially polarized such that white-bloc voting will dilute the electoral influence of the substantial Latino population. Although there are not homogenous Latino precincts in Weld County, the racially polarized voting trend in the area where the Commission expanded the district from Adams County to Weld County is evident from the election results:

Racially Polarized Districts in Weld County			
Precinct	CVAP	Candidate Party	2020 Presidential
Weld County Precinct 105	Latino: 57.4%	(D)	61.6%
	White: 36.7%	(R)	35.7%
Weld County Precinct 106	Latino: 53.4%	(D)	56.6%
	White: 43.2%	(R)	40.3%
Weld County Precinct 120	Latino: 8.7%	(D)	17.8%
	White: 86.7%	(R)	80.0%
Weld County Precinct 152	Latino: 11.0%	(D)	17.9%
	White: 85.2%	(R)	81.0%
Weld County Precinct 316	Latino: 22.4%	(D)	18.1%
	White: 72.6%	(R)	79.4%
Weld County Precinct 320	Latino: 27.4%	(D)	20.9%
	White: 70.2%	(R)	77.8%
Weld County Precinct 326	Latino: 28.8%	(D)	37.5%
	White: 66.1%	(R)	60.4%
Weld County Precinct 331	Latino: 22.8%	(D)	36.4%
	White: 61.9%	(R)	62.1%

See App. A at 18-19.

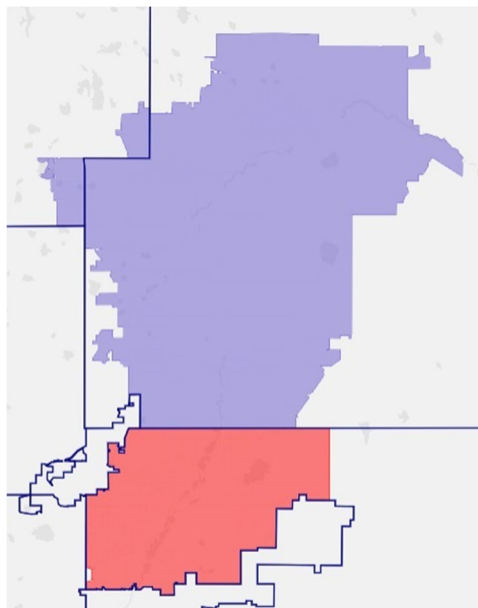
As the above table illustrates, voting is racially polarized across the affected area in the Commission map, with Latino voters strongly preferring Democratic candidates and white voters strongly preferring Republican candidates.

**2. White-bloc voting likely defeats Latino-preferred candidates in Commission District 8.**

The Commission’s data shows that Commission District 8 creates a significant risk that white-bloc voting would result in general election defeats of Latino-preferred candidates. Although Commission District 8 has the highest percentage of Latinos in Colorado with 38.5% total population and 34.5% CVAP, the district would also be the State’s most competitive—essentially a toss-up, with

some evaluators giving Republicans the advantage.<sup>9</sup> The Commission’s competitiveness data show the Latino-preferred candidates lost both the 2016 presidential race and the 2018 Attorney General race in District 8, with an overall average of just a 1.3% margin of victory across the eight analyzed elections. Comm’n Ex. I, at 4-5. PlanScore reveals that the Democratic candidate—the Latino-preferred candidate—would have just a 50% chance of winning Commission District 8, with a projected tied vote of 50% to 50%. *See* App. D at 5.

The below image further shows that by reaching up through Weld County to north of Greeley (in purple), the Commission has diluted the large Latino population in Adams County (in red):



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<sup>9</sup> *See, e.g., What Redistricting Looks Like In Every State: Colorado*, FiveThirtyEight (Oct. 4, 2021), [https://projects.fivethirtyeight.com/redistricting-2022-maps/colorado/final\\_plan/](https://projects.fivethirtyeight.com/redistricting-2022-maps/colorado/final_plan/) (accessed Oct. 4, 2021).

Per the election results set out below, the red area representing part of Adams County supports the Latino-preferred candidate while the white voters that the Commission has pulled in from the purple area in Weld County will bloc vote against Latino preferred candidates:

<b>Racially Polarized Voting in Commission District 8</b>								
<b>Area</b>	<b>CVAP</b>	<b>Candidate Party</b>	<b>2020 Pres.</b>	<b>2020 Sen.</b>	<b>2018 Gov.</b>	<b>2018 AG</b>	<b>2016 Pres.</b>	<b>2016 Sen.</b>
Red - Adams County (63.2% district population)	Latino: 29.7%	(D)	56.6%	55.2%	54.5%	53.1%	49.3%	52.6%
	White: 62.5%	(R)	40.5%	41.8%	40.8%	42.9%	41.3%	41.2%
Purple - Weld County (36.8% district population)	Latino: 23.7%	(D)	41.2%	40.0%	38.9%	37.8%	36.1%	40.7%
	White: 72.0%	(R)	55.8%	57.7%	56.3%	58.1%	54.6%	53.6%

*See App. A at 19; see also Dave’s Redistricting App.*

The Commission’s choice to stretch Commission District 8 to Weld County dilutes the voting strength of Latino voters in Adams County. It does so by including rural white voters who will bloc vote against Latino-preferred candidates and excluding other Denver-area Latinos and white crossover voters in Jefferson County and other parts of Adams County that will support Latino-preferred candidates.

The Commission stretched Commission District 8 to make it competitive, with one decisive commissioner candidly stating that she would not vote for a different proposed configuration of District 8 because it was less competitive. *See supra* n.7. But it is unconstitutional for the Commission to sacrifice the electoral influence of Adams County’s Latino voters, the largest concentration of Latino

voters in the State, to boost Constitution's lowest priority criterion of competitiveness. Colo. Const. art. V, § 44.3(3)(a).

Despite portraying District 8 as a Latino electoral influence district, the Commission has merely created the façade of a Latino district that contains a large minority population but will nonetheless be needlessly diluted due to contrary white-bloc voting. *See LULAC*, 548 U.S. at 441-42; *see also Perez v. Abbott*, 253 F. Supp. 3d 864, 884-90 (W.D. Tex. 2017) (three-judge court) (invalidating “façade” Latino district). That the Commission made efforts to nominally increase the Latino population in District 8 by including Greeley is significant only if in reality the increase has “a meaningful impact on minority voting strength.” *Carstens*, 543 F. Supp. at 86. In other words, election results data “must reveal that minority voters in the district” are “in fact [able to] join[] with other voters to elect representatives of their choice.” *Uno*, 72 F.3d at 991 n.13.

Here, adding Latino voters from Greeley does not in fact provide a Latino electoral influence district because they continue to lack the opportunity to join with other voters to elect candidates of their choice. *See id.* By adding substantially more rural white voters in Weld County that bloc vote against Latino-preferred candidates, any potential “benefit obtained through a [nominal] increase in the minority population in” the proposed district “was far outweighed by the detrimental impact of” deciding to draw a hyper-competitive district. *See Carstens*, 543 F. Supp. at 85-

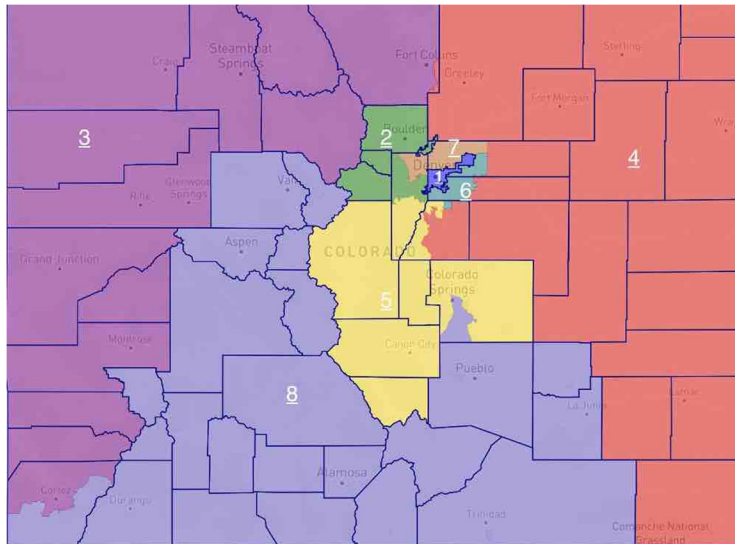
86 (rejecting proposed district in north Denver). While the “legally significant white bloc voting [that] enables the majority” in Commission District 8 to routinely defeat Latino-preferred candidates “may be more subtle,” *see Sanchez*, 97 F.3d at 1313 (quoting *Uno*, 72 F.3d at 980), the result is the same. The unconstitutional vote dilution in Commission District 8 “disenfranchise[s] Hispanic voters by permitting the white majority to vote as a bloc to defeat Hispanic-preferred candidates.” *Id.* at 1308. As discussed *infra* III.B., this preventable dilution can be fixed by keeping the Adams County Latino voters in a more compact district northwest of Denver.

### **III. LULAC’s proposed maps better satisfy traditional redistricting criteria while preventing vote dilution through effective crossover districts.**

LULAC proposed two maps to the Commission that satisfy Colorado’s constitutional requirements. LULAC’s submissions explained why these two maps meet all traditional redistricting criteria while also drawing effective crossover districts in southern Colorado and the north Denver suburbs to fulfill the Constitution’s mandate to avoid “diluting the impact of [a] minority group’s electoral influence.” Colo. Const. art. V, § 44.3(4)(b). LULAC submitted LULAC Congressional Map One<sup>10</sup> on August 17, 2021, and again on September 10, 2021:

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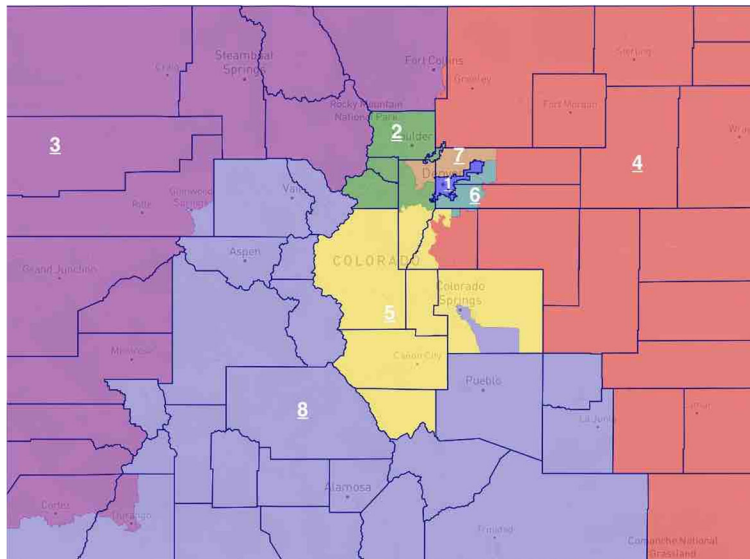
<sup>10</sup> Available at <https://davesredistricting.org/join/0126b2db-43fc-4be1-a763-02d981faa1a3>.



After Commission staff proposed its third map iteration, LULAC submitted LULAC Congressional Map Two on September 25, 2021.<sup>11</sup> This second map meets traditional redistricting criteria, prevents the dilution of Latino’s electoral influence, and satisfies the Commission’s additional designated communities of interest criteria by keeping the Roaring Fork Valley whole, following the “southern district” concept, keeping the military bases in El Paso County together in one district, and keeping Denver whole, *see* App. D at 8:

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<sup>11</sup> Available at <https://davesredistricting.org/join/ae6ce8c4-883e-42a1-be38-9eb85937e4c5>.



As described below, LULAC’s maps prioritize meeting all traditional redistricting criteria and the considerations listed in Amendment Y, but sharply depart from the Commission map by using effective crossover districts to prevent the unnecessary dilution of Latino’s electoral influence.

**A. LULAC’s maps prioritize traditional redistricting criteria.**

LULAC’s maps accomplish the Colorado Constitution’s requirement to avoid diluting Latino’s electoral influence while prioritizing traditional redistricting criteria. As LULAC presented in its comments to the Commission, LULAC’s proposed districts are contiguous, equalize population, are compact, and reduce splits of political subdivision and established communities of interest, in compliance with the criteria laid out in Amendment Y. *See* App. A at 14-15, App. C at 5-9. Indeed, LULAC’s maps meet these objectives as well as or better than the Commission’s map.



For example, LULAC Congressional Map One splits 41 precincts and 8 counties 13 times, and LULAC Congressional Map Two splits 48 precincts and 10 counties 15 times. *See* App. A at 14-15; App. C at 6-9. Both maps have fewer splits than the Commission map, which splits 96 precincts and 10 counties 17 times. *See* Comm’n Ex. F.<sup>12</sup> Moreover, LULAC’s maps, unlike the Commission’s map, maintain the core of the districts in Colorado’s current congressional map by not removing Lake and Eagle Counties from current district 3 and the population centers of Weld County from current district 4. Finally, even with the Commission’s overemphasis on competitiveness, LULAC’s maps improve on this criterion as well by creating two competitive districts—one that leans Democratic and one that leans Republican—rather than the Commission’s single toss-up district. *See* App. A at 31-35; App. B. at 18-22; App. C at 20-23 (LULAC Maps PlanScores).

Thus, LULAC’s maps have effectively “balanced the many competing interests at stake” without sacrificing the electoral influence of minority voters. *Hall*, 270 P.3d at 974. In meeting all constitutional requirements, LULAC avoided “subordinat[ing] other districting criteria” but still drew effective crossover districts in southern Colorado and north of Denver that prevent “produc[ing] boundaries [that] amplify[] divisions between” voting groups. *See Cooper*, 137 S. Ct. at 1469.

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<sup>12</sup> LULAC’s second proposal required more splits to accommodate the Commission’s decision to keep the Roaring Fork Valley whole.

**B. LULAC’s maps prevent vote dilution by drawing effective crossover districts.**

LULAC’s maps create “crossover districts” to prevent the vote dilution of Colorado’s substantial but geographically dispersed Latino population. Crossover districts are districts in which white crossover voters join a sizeable population of minority voters to elect minority-preferred candidates. *Bartlett*, 556 U.S. at 13. Using crossover districts avoids the dilution of a minority group’s electoral influence “regardless of whether members of the ... minority group constitute an arithmetic majority in the proposed district.” Bernard Grofman, Lisa Handley & David Lublin, *Drawing Effective Minority Districts: A Conceptual Framework and Some Empirical Evidence*, 79 N.C. L. Rev. 1383, 1390 (2001); *see also id.* at 1407 (summarizing crossover districts model).

As the U.S. Supreme Court has made clear, “States that wish to draw crossover districts” to avoid minority vote dilution “are free to do so” as a valid policy decision that “lead[s] to less racial isolation, not more.” *Bartlett*, 556 U.S. at 23-24; *accord Cooper*, 137 S. Ct. at 1470-71; *De Grandy*, 512 U.S. at 1019-20. Colorado voters made this policy decision by enacting the electoral influence provision in Amendment Y that goes beyond the VRA by requiring crossover districts that prevent “diluting the impact of [the] minority group’s electoral influence.” Colo. Const. art. V, § 44.3(4)(b).

The crossover district concept is familiar both to the Commission, which heard testimony from LULAC and other proponents of crossover districts, and to the Court, which has endorsed “alternative [legislative] plans that” satisfy traditional criteria “while still preserving ... minority-influence districts.” *In re Colorado Gen. Assembly*, 332 P.3d at 112; *see also Carstens*, 543 F. Supp. at 85-87 (discussing vote-dilution in non-majority districts). Drawing crossover districts is not a mechanical process that can shortcut to numerical baselines.<sup>13</sup> The process requires evaluating the “lessons of practical politics” from past election results in the jurisdiction that demonstrate how cohesive minority voters can work with crossover voters to exert electoral influence commensurate with their political strength. *Uno*, 72 F.3d at 991. This “case-specific functional analysis” must “take[] into account such factors as the relative participation rates of whites and minorities, and the degree of cohesion and crossover voting that can be expected,” “the type of election ... , and the multi-stage election process.” Grofman, *supra*, at 1423.

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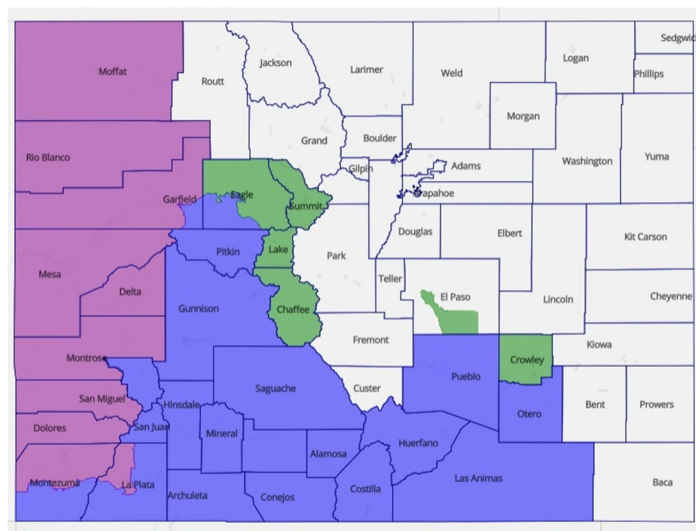
<sup>13</sup> To the extent that *Beauprez v. Avalos*, 42 P.3d 642 (Colo. 2002), suggests otherwise, that dicta should not control the Court’s analysis of crossover districts here. The *Beauprez* dicta is irrelevant because the Court analyzed a purported Fourteenth Amendment dilution claim, distinct from the Amendment Y electoral influence provision, *id.* at 645; it is likely nullified because *Beauprez* relied on the conclusions in *Davis v. Bandemer*, *id.* at 650, which has since been overruled; and it was wrongly decided because the presence of vote dilution relies on a searching local appraisal of conditions in the jurisdiction, not an arbitrary arithmetic threshold, *see Sanchez*, 97 F.3d at 1310.

LULAC’s crossover districts proposal takes this functional approach to establish that LULAC District 8 fixes the vote dilution in Commission District 3, and same for LULAC District 7 correcting Commission District 8.

**1. LULAC District 8 is an effective crossover district.**

LULAC’s District 8 in both of its proposed maps represents an effective crossover district that avoids diluting Latino voters’ electoral influence. It does so by combining the Latino populations in the San Luis Valley, Pueblo, southern Colorado Springs, Eagle County, and Lake County that are fractured in the Commission’s map, and pairs them with a sufficient number of neighboring white crossover voters to provide Latino voters the ability to influence electoral outcomes.

The map below compares LULAC District 8 in LULAC Congressional Map Two to Commission District 3. The areas in blue are those common to both districts, the area in green shows the additional territory included in LULAC District 8, and the area in purple shows the territory the Commission included instead.



As the below table shows, the blue area has a substantial Latino population that votes cohesively for its preferred candidate, but the inclusion of the purple areas along the western border with Utah adds racially polarized white voters who will bloc vote to defeat the Latino-preferred candidate. Including the additional Latino voters and white crossover voters in the green area LULAC proposes will avoid that needless vote dilution:

Racially Polarized Voting in Commission District 8								
Area	Latino CVAP	Candidate Party	2020 Pres.	2020 Sen.	2018 Gov.	2018 AG	2016 Pres.	2016 Sen.
Blue – Core of district	29.2%	(D)	52%	51.2%	52.4%	51.6%	46.9%	51.9%
		(R)	45.6%	46.3%	43.4%	45.0%	44.9%	42.6%
Purple – Commission proposal	10.4%	(D)	36.8%	35.4%	37.1%	35.0%	30.4%	33.9%
		(R)	60.9%	62.0%	59.3%	61.7%	62.1%	60.2%
Green – LULAC proposal	16.4%	(D)	55.6%	54.1%	54.6%	53.1%	47.1%	49.2%
		(R)	40.6%	42.3%	40.4%	42.5%	43.0%	42.8%

App. C at 9; Dave’s Redistricting App.

The additional green area LULAC proposes has a larger Latino population, non-white population, and group of white crossover voters who reliably vote with southern Colorado Latinos to elect their preferred candidates. The election results in the purple area the Commission included, by contrast, show that its predominantly white rural population will overwhelmingly vote as a bloc to defeat Latino-preferred candidates. Including the green areas, rather than the purple areas, would avoid diluting the ability of Latino voters to influence electoral outcomes—indeed, would make a Latino-preferred candidate likely to win the primary election as well, App. A at 13-14, 23-25 (reconstituted election results from 2018 Democratic primary for

Attorney General featuring Latino candidate), while still prioritizing traditional redistricting criteria.

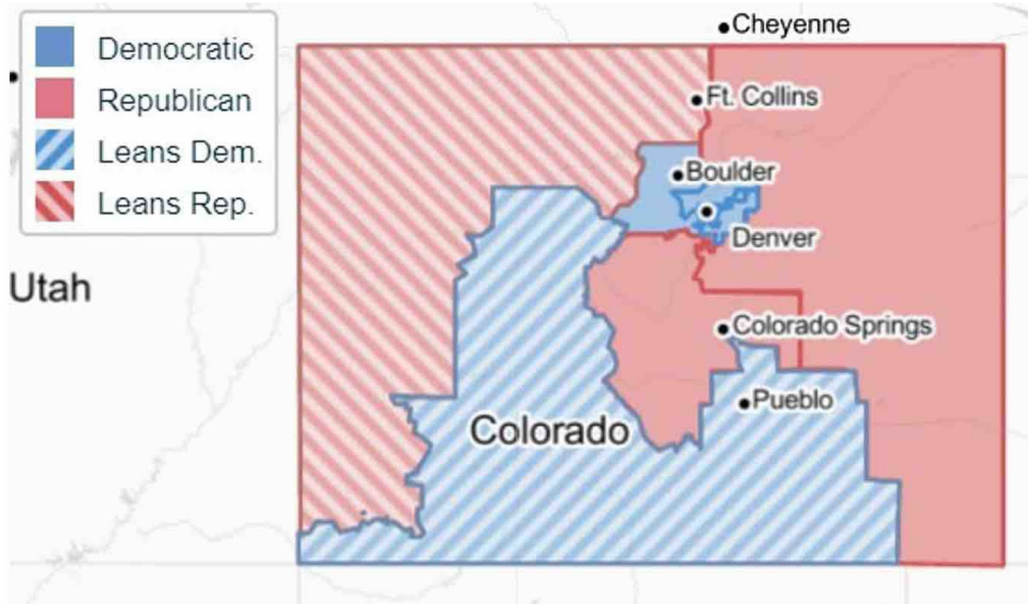
Moreover, although the Commission voted to keep Colorado Springs whole because it had also voted to keep Denver whole,<sup>14</sup> this oversimplified decision fails to account for the racially polarized voting conditions that exist in Colorado Springs (but do not exist in general elections in Denver) displayed in the table below. By keeping Colorado Springs whole, the Commission diluted the substantial Latino population in the southern part of the city. By splitting no more political subdivisions than the Commission’s map, LULAC avoids the needless dilution in Colorado Springs by combining the Latinos in the southern part of the city with the large Latino populations nearby in the southern part of the State to form an effective crossover district.

Racially Polarized Voting in Colorado Springs									
Area	Colorado Springs Area	CVAP	Candidate Party	2020 Pres.	2020 Sen.	2018 Gov.	2018 AG	2016 Pres.	2016 Sen.
LULAC Map 1 section	32.5%	Latino: 22.9% White: 57.1%	(D)	51.8%	50.3%	51.3%	49.9%	43.4%	46.2%
			(R)	43.6%	44.9%	42.8%	45.1%	46.0%	45.8%
Commission Map’s remaining section	67.5%	Latino: 11.9% White: 74.9%	(D)	40.3%	37.6%	36.4%	34.5%	31.1%	32.9%
			(R)	56.2%	59.4%	59.7%	61.9%	59.1%	61.7%
LULAC Map 2 section	32.5%	Latino: 22.3% White: 59.0%	(D)	52.8%	51.2%	52.0%	50.6%	44.1%	46.8%
			(R)	42.8%	44.2%	42.3%	44.5%	45.4%	45.2%
Commission Map’s remaining section	67.5%	Latino: 12.2% White: 74.0%	(D)	39.6%	36.8%	35.5%	33.6%	30.4%	32.1%
			(R)	57.0%	60.2%	60.5%	62.8%	59.8%	62.5%

<sup>14</sup> See Sept. 6, 2021 Comm’n Mtg. at 6:11:30-:50.

App. B at 8; Dave’s Redistricting App (numbers updated to reflect final district configuration).

As the PlanScore analysis of LULAC District 8 below also shows, the district would be likely to perform to permit Latino voters to influence electoral outcomes:



PlanScore characterizes LULAC District 8 as “Lean Democratic,” and predicts a 71% chance that the Latino-preferred Democratic candidate would prevail, with a predicted vote margin of 53% to 47%. App. A at 31-35; App. B. at 18-22; App. C at 20-23 (LULAC Maps PlanScores).

In short, linking the substantial Latino voting community in southern Colorado with crossover voters in Lake, Summit, Chaffee, Eagle, El Paso, and Crowley Counties (as LULAC District 8 does), instead of the white-bloc voters on the western border (as Commission District 3 does), would avoid diluting their electoral influence. Indeed, LULAC District 8 would continue the longstanding links

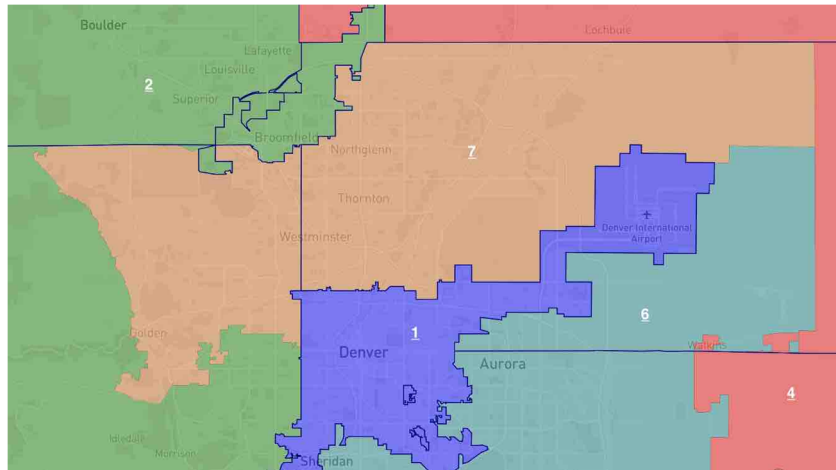
in these areas, *see Hall*, 270 P.3d at 976-77; *Carstens*, 543 F. Supp. at 92, 95, and continue these same coalitions of voters that elected John Salazar, Colorado's first and only Latino Representative, to Congress.

**2. LULAC District 7 is an effective crossover district.**

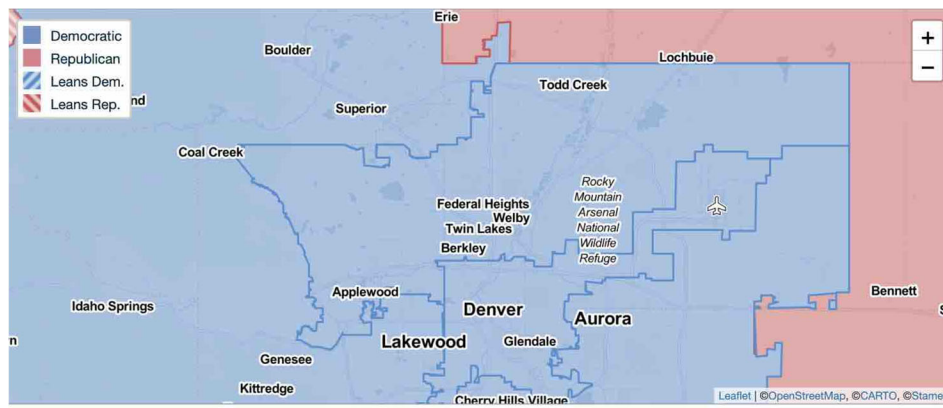
LULAC District 7, the same in both of its proposed maps, would also function as an effective crossover district to avoid the dilution of Adams County Latinos' electoral influence. As described *supra* II.B.2, Commission District 8 dilutes these voters' electoral influence by stretching the district from north Denver to Weld County where racially polarized rural white voters will bloc vote against Latino-preferred candidates. The Commission drew the district in this manner to enhance competitiveness, and merely created the façade of a Latino electoral influence district that will in reality dilute their electoral influence.

LULAC District 7, by contrast, creates a compact north Denver suburbs district by maintaining the Adams County Latino voters in Thornton, Commerce City, Adams City, and Northglenn in the same district, and then adding crossover white voters from Jefferson County in Wheatridge, Arvada, and Golden:





The PlanScore analysis below shows that configuring a north Denver district in this way creates a Latino electoral influence district, rather than the toss-up district fashioned in Commission District 8.



PlanScore characterizes LULAC District 8 as “Democratic,” and predicts a 90% chance that the Latino-preferred Democratic candidate would prevail, with a predicted vote margin of 57% to 43%. App. A at 31-35; App. B. at 18-22; App. C at 20-23 (LULAC Maps PlanScores).

In sum, the vote dilution in the Commission’s map is evident but not inevitable. LULAC’s proposed alternative maps would prioritize traditional

redistricting criteria and satisfy them even better than the Commission's map. But LULAC's maps would also prevent the needless vote dilution of Latino voters in southern Colorado and the north Denver suburbs by drawing effective crossover districts that protect their electoral influence, as the Constitution requires.

**IV. The Commission independently abused its discretion by disregarding its transparency and public access requirements.**

Independent of its disregard for the electoral influence provision, the Commission also abused its discretion by devising its policy concerning racial vote dilution entirely out of public view. The Commission's covert vote dilution analysis results in a decision that "is not reasonably supported by competent evidence in the record," such "that it can only be explained as an arbitrary and capricious exercise of authority." *See Freedom Colo.*, 196 P.3d at 899-900 (citations omitted).

As the Court summarized, Colorado voters adopted Amendment Y "to limit the influence of partisan politics over redistricting and make the process more transparent and inclusive." *In re Interrog.*, 488 P.3d at 1013. The Constitution codifies the voters' intent by directing that the Commission "ensure transparency in the redistricting process." Colo. Const. art. V, § 44.2(4)(b). It requires that "a commissioner shall not communicate with nonpartisan staff on the mapping of congressional districts unless the communication is during a public meeting or hearing of the commission," and that "nonpartisan staff shall not have any communications about the content or development of any plan outside of public

hearings with anyone except other staff members” with an affirmative duty to “report to the commission any attempt by anyone to exert influence over the staff’s role in the drafting of plans.” *Id.* §§ 44.2(4)(b)(I)(B)-(C); *see also id.* § 44.2(4)(b)(I)(C) (limited exception for discussions regarding “administrative matters”).

Yet the Commission exclusively discussed Colorado’s racially polarized voting and the Commission’s vote dilution obligations in non-public executive sessions. *See, e.g.*, Aug. 16, 2021 Commission Meeting at 2:31-2:34pm (mentioning an undisclosed memo on how vote dilution affects the commission’s work and emphasizing that the matter should be discussed in executive session); Aug. 30, 2021 Commission Meeting at 3:19-3:21pm (specifying need for executive session to discuss VRA); Sept. 1, 2021 Commission Meeting at 2:02-2:03pm (same). In these sessions, the Commission made important interpretative decisions about the Constitution without the benefit of public input or accountability, and in plain disregard of public comments urging the Commission to conduct an open analysis of vote dilution.

At one public hearing, for example, attorney Mark Grueskin concurred with LULAC’s submission that the Commission could not ignore the Constitution’s electoral influence requirements. Aug. 28, 2021 Public Hearing at 4:14-4:28pm. When the Commission later brought up Mr. Grueskin’s comments and questioned how to evaluate minority vote dilution, Chairwoman Hare suggested that the topic

be discussed “at a different time and in a different capacity” with a “confidential brief” to consider, to which Commission counsel Jerome DeHerrera agreed that the discussion should be had “in the next executive session” because he would “like the litigation staff, especially Misha [Tseytlin] to be involved in the discussion because it is his area of specialty.” Aug. 30, 2021 Commission Meeting at 3:19-3:21pm. This explicitly non-public consideration of vote dilution violates the strict transparency rules that Colorado voters sought and the Constitution requires.

Although the Commission is generally “subject to open meetings requirements” under state law, Colo. Const. art. V, § 44.2(4)(b)(I)(A), including the exception to receive discrete legal advice in executive session, *see* C.R.S. § 24-6-402(3)(a)(II), the Commission’s purported expansive reading of that exception would swallow the Constitution’s redistricting transparency rules. Indeed, the “[m]ere presence ... of an attorney” at the commission’s meeting is insufficient to shield it from public scrutiny. *See id.* § 24-6-402(3)(a)(III). If the narrow executive sessions exception can conceal all of the Commission’s policy development about minority vote dilution, so too would it enable the Commission to make its compactness, competitiveness, or communities of interest guidelines with an attorney behind closed doors. These other redistricting criteria are no less subject to legal challenge in the Court’s review of whether the “plan complies with the [enumerated] criteria,” Colo. Const. art. V, § 44.5(1), and allowing the Commission

to hide all discussions of redistricting criteria because of potential legal challenges would enfeeble the strong transparency rules Coloradans enacted in Amendment Y.

### CONCLUSION

For the foregoing reasons, the Court should reject the Commission's submitted map, which violates the prohibition on diluting Latino voters' electoral influence, and order the Commission to alter its District 3 to form an effective crossover district consistent with LULAC's proposed District 8, and to alter its District 8 to form an effective crossover district consistent with LULAC's proposed District 7.

October 7, 2021

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Respectfully submitted,

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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 the 7th day of October, 2021.

/s/ Eric Maxfield  
Eric Maxfield

*Counsel for LULAC*