

<p>COLORADO SUPREME COURT  2 East 14th Avenue  Denver, CO 80203</p>	<p>DATE FILED: October 8, 2021 11:55 AM</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, <i>Commissioner Selection Process</i> , <a href="https://perma.cc/LR2J-7LGV">https://perma.cc/LR2J-7LGV</a> (last visited Oct. 8, 2021).....	3
Colo. Indep. Redistricting Comm’ns, <i>Congressional Redistricting Overview</i> , <a href="https://perma.cc/9QPR-UMKZ">https://perma.cc/9QPR-UMKZ</a> (last visited Oct. 8, 2021) .....	4
Colo. Indep. Redistricting Comm’ns, <i>Public Comment, Cassie Ratliff Comment</i> (June 11, 2021), <a href="https://perma.cc/7JAA-CX7C">https://perma.cc/7JAA-CX7C</a> .....	36
Colo. Indep. Redistricting Comm’ns, <i>Public Comment, Cristobal Garcia Comment</i> (Sept. 27, 2021), <a href="https://perma.cc/TJ37-JVL">https://perma.cc/TJ37-JVL</a> ; .....	41, 42, 43
Colo. Indep. Redistricting Comm’ns, <i>Public Comment, Faith Halverson-Ramos Comment</i> (Aug. 24, 2021), <a href="https://perma.cc/QZ4L-MQEX">https://perma.cc/QZ4L-MQEX</a> .....	36, 37, 38, 39
Colo. Indep. Redistricting Comm’ns, <i>Public Comment, Kathy Partridge Comment</i> (Sept. 22, 2021), <a href="https://perma.cc/9H9S-ZK62">https://perma.cc/9H9S-ZK62</a> ;.....	36, 39
Colo. Indep. Redistricting Comm’ns, <i>Public Comment, Martin Spann Comment</i> (June 13, 2021), <a href="https://perma.cc/Z288-3XYC">https://perma.cc/Z288-3XYC</a> ;.....	36, 37
Colo. Indep. Redistricting Comm’ns, <i>Public Comment, Nancy Madrigal Comment</i> (June 11, 2021), <a href="https://perma.cc/7EBZ-NMWU">https://perma.cc/7EBZ-NMWU</a> .....	42, 43
Colo. Indep. Redistricting Comm’ns, <i>Public Comment, Tannis Bator Comment</i> (Aug. 18, 2021), <a href="https://perma.cc/F38Y-3PZ5">https://perma.cc/F38Y-3PZ5</a> .....	39, 41
Colo. Sec’y of State, 2018 General Election Results, <a href="https://perma.cc/X42M-B8NW">https://perma.cc/X42M-B8NW</a> (last visited Oct. 8, 2021) .....	3
<i>Final Cong. Redistricting Plan</i> (Oct. 1, 2021), <a href="https://perma.cc/E4CP-7PGL">https://perma.cc/E4CP-7PGL</a> (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>	<i>50.41%</i>	<i>+1.88</i>	<i>Yes</i>

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 –  
Colorado*

DATE FILED: October 8, 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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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, 9-27-21)