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44.5 of the Colorado Constitution

**In re Colorado Independent Congressional
Redistricting Commission**

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Citizens and Colorado League of United Latin
American Citizens*

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Case No.: 2021SA208

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

– ORAL ARGUMENT REQUESTED –

CERTIFICATE OF COMPLIANCE

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

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

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

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

/s/ Eric Maxfield
Eric Maxfield
Counsel for LULAC

STATEMENT REGARDING ORAL ARGUMENT

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

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INTRODUCTION

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

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

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

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

ISSUES PRESENTED

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

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

FACTS

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

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

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

¹ www.census.gov/library/stories/state-by-state/colorado-population-change-between-census-decade.html (accessed Oct. 3, 2021).

the formation of the State itself, Colorado has only ever sent *one* Latino candidate to the House of Representatives: John Salazar from 2005 until the third congressional district was redrawn in 2011.²

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

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

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

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

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

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

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

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

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

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

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

LEGAL STANDARD

I. Congressional Redistricting Criteria

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

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

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

II. Abuse of Discretion

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

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

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

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

SUMMARY OF ARGUMENT

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

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

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

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

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

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

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

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

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

ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

The Commission, however, ignored Coloradans’ concerted choice to protect electoral influence apart from the VRA. Throughout its deliberations, the Commission relied on staff’s atextual and unexplained conclusion that “[t]o the extent that section 44.4(4)(b) [sic] is a restatement of the federal Voting Rights Act, nonpartisan staff does not believe that there is an area in Colorado with sufficient citizen voting age population to form a majority-minority congressional district.” First Staff Plan Memo at 4 (Sept. 3, 2021) (App. D at 13). If the electoral influence provision were merely a restatement of the VRA, it would use the same words as the VRA. It does not.

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

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

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

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

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

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

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

white voters.” *See Voinovich*, 507 U.S. at 154.⁵ Thus, the electoral influence provision is triggered when (1) the district could be drawn with “a sufficiently large minority to elect their candidate of choice with the assistance of crossover votes,” (2) the substantial minority group is politically cohesive, and (3) the district as currently drawn has “sufficient white majority bloc voting to frustrate the election of the minority group’s candidate of choice.” *See id.* at 158; *accord LULAC v. Perry*, 548 U.S. 399, 443 (2006).

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

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

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

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

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

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

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

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

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

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

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

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

1. Voting in Commission District 3 is racially polarized.

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

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

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

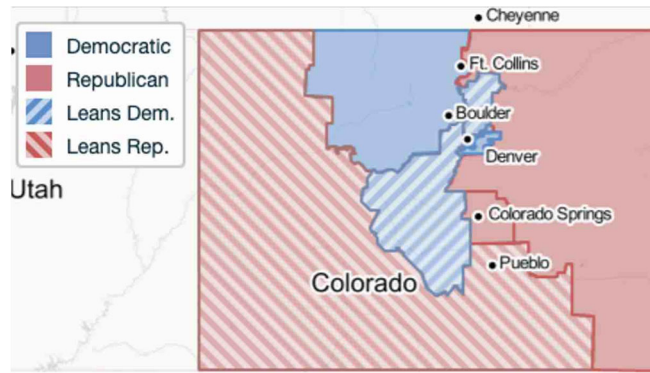
As these tables illustrate, voting is racially polarized across the affected area in the Commission map, with Latino voters “hav[ing] expressed clear political preferences” for Democratic candidates, *see id.* at 1315 (citation omitted), and white voters strongly preferring Republican candidates.

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

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

The Commission's election results data show that the Democratic candidate—the preferred candidate of Latino voters in District 3—would have lost *each* of the last eight evaluated elections, ranging from a loss by 6.1% in the 2018 gubernatorial election to a loss by 15.3% in the 2016 presidential election. *see* Comm'n Ex. I, at 4-5. Republicans also have a substantial voter registration advantage in District 3 (31.8% to 26.1%). *Id.* Moreover, as shown in the map below, PlanScore⁸ reveals that even excluding the effects of incumbency, District 3 leans Republican with just a 14% chance that a Democratic candidate—the Latino-preference—could win in the district. *See* App. D at 3-5 (Commission Map PlanScore).

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



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

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

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

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

1. Voting in Commission District 8 is racially polarized.

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

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

See App. A at 18-19.

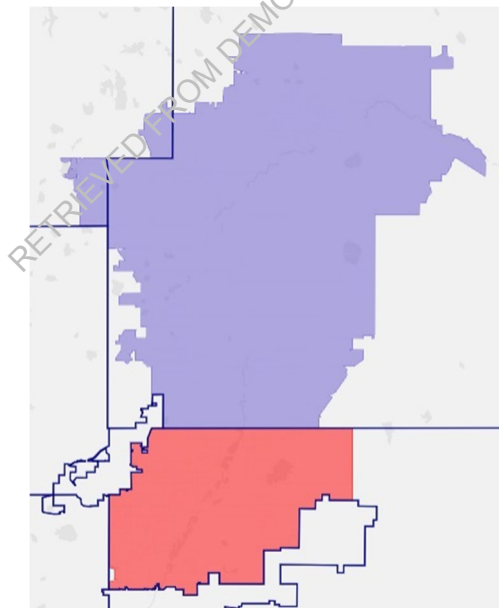
As the above table illustrates, voting is racially polarized across the affected area in the Commission map, with Latino voters strongly preferring Democratic candidates and white voters strongly preferring Republican candidates.

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

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

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

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



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

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

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

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

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

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

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

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

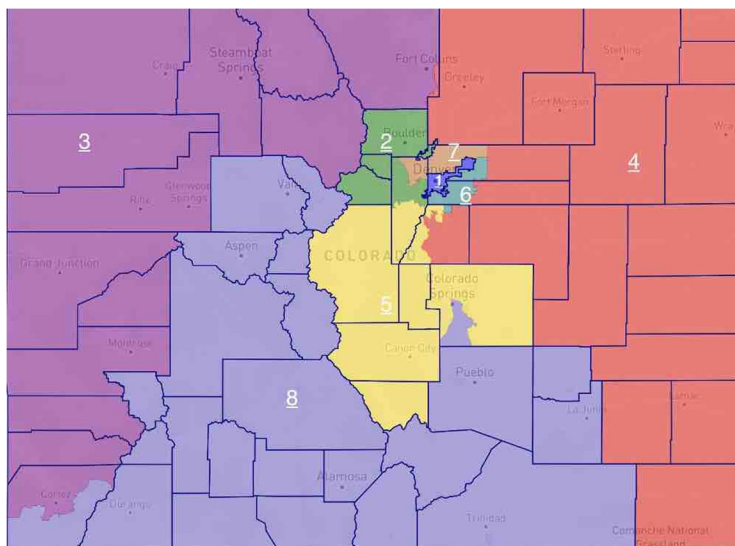
Here, adding Latino voters from Greeley does not in fact provide a Latino electoral influence district because they continue to lack the opportunity to join with other voters to elect candidates of their choice. *See id.* By adding substantially more rural white voters in Weld County that bloc vote against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

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

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

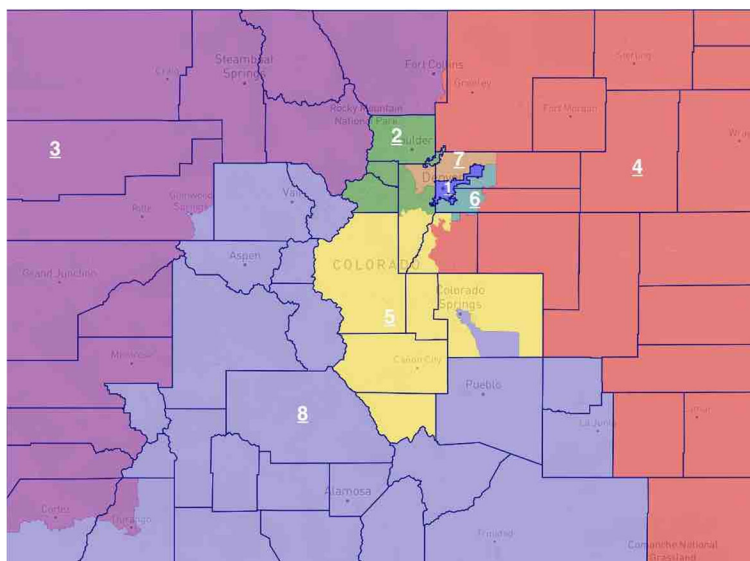
LULAC proposed two maps to the Commission that satisfy Colorado’s constitutional requirements. LULAC’s submissions explained why these two maps meet all traditional redistricting criteria while also drawing effective crossover districts in southern Colorado and the north Denver suburbs to fulfill the Constitution’s mandate to avoid “diluting the impact of [a] minority group’s electoral influence.” Colo. Const. art. V, § 44.3(4)(b). LULAC submitted LULAC Congressional Map One¹⁰ on August 17, 2021, and again on September 10, 2021:

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



After Commission staff proposed its third map iteration, LULAC submitted LULAC Congressional Map Two on September 25, 2021.¹¹ This second map meets traditional redistricting criteria, prevents the dilution of Latino’s electoral influence, and satisfies the Commission’s additional designated communities of interest criteria by keeping the Roaring Fork Valley whole, following the “southern district” concept, keeping the military bases in El Paso County together in one district, and keeping Denver whole, *see* App. D at 8:

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



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

A. LULAC's maps prioritize traditional redistricting criteria.

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

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

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

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

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

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

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

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

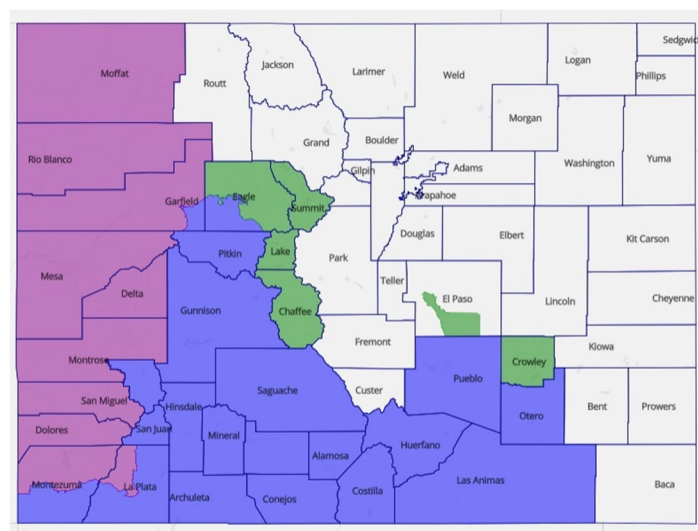
¹³ To the extent that *Beauprez v. Avalos*, 42 P.3d 642 (Colo. 2002), suggests otherwise, that dicta should not control the Court’s analysis of crossover districts here. The *Beauprez* dicta is irrelevant because the Court analyzed a purported Fourteenth Amendment dilution claim, distinct from the Amendment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

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

1. LULAC District 8 is an effective crossover district.

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

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



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

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

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

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

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

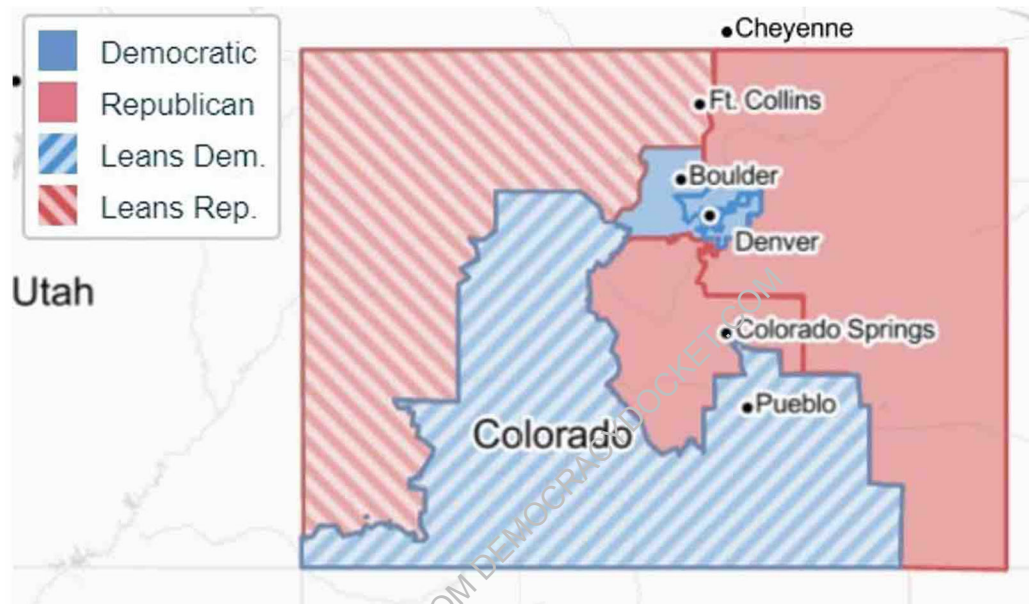
Moreover, although the Commission voted to keep Colorado Springs whole because it had also voted to keep Denver whole,¹⁴ this oversimplified decision fails to account for the racially polarized voting conditions that exist in Colorado Springs (but do not exist in general elections in Denver) displayed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

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

¹⁴ See Sept. 6, 2021 Comm'n Mtg. at 6:11:30-:50.

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

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



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

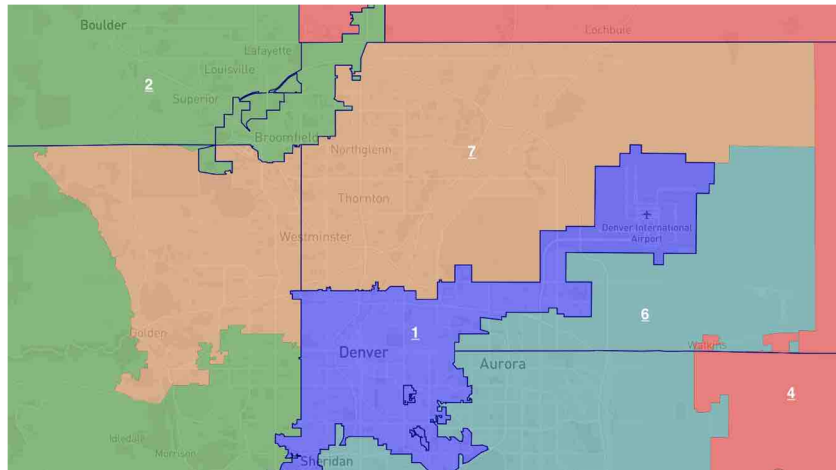
In short, linking the substantial Latino voting community in southern Colorado with crossover voters in Lake, Summit, Chaffee, Eagle, El Paso, and Crowley Counties (as LULAC District 8 does), instead of the white-bloc voters on the western border (as Commission District 3 does), would avoid diluting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

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

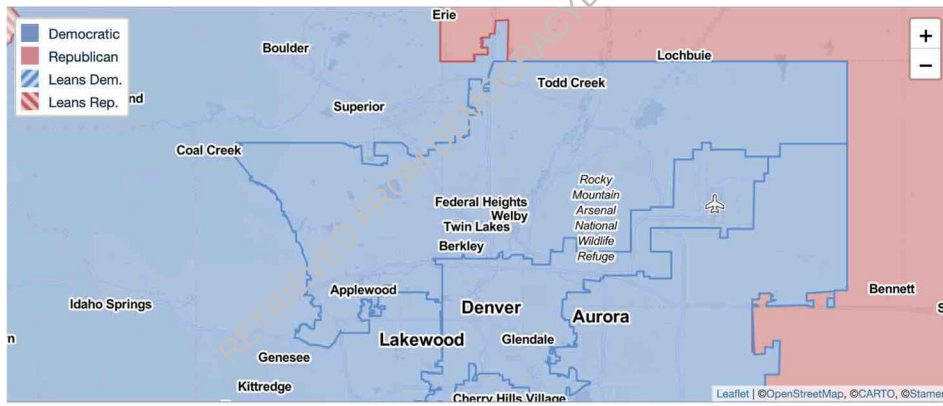
2. LULAC District 7 is an effective crossover district.

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

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



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



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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

October 7, 2021

Respectfully submitted,

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Counsel for LULAC

CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing upon all parties herein
via the Colorado Court's E-filing service on the 7th day of October, 2021.

/s/ Eric Maxfield
Eric Maxfield

Counsel for LULAC

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2 East 14th Avenue, 4th Floor
Denver, Colorado 80203

DATE FILED: October 07, 2021 8:50 PM

Original Proceeding Pursuant to Article V,
Section 44.5 of the Colorado Constitution

**In re Colorado Independent Congressional
Redistricting Commission**

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Citizens and Colorado League of United Latin
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**Motion for admission pro hac vice pending*

▲ COURT USE ONLY ▲

Case No.: 2021SA208

APPENDIX A

**LULAC First Comment and
Congressional Map One
(August 17, 2021)**



Comments of the League of United Latin American Citizens (“LULAC”) and Colorado League of United Latin American Citizens (“Colorado LULAC”) Regarding Colorado Congressional and Legislative Redistricting

On behalf of the League of United Latin American Citizens (“LULAC”) and the Colorado League of United Latin American Citizens (“Colorado LULAC”), Campaign Legal Center (“CLC”) submits the following comments regarding the Colorado Independent Redistricting Commission staff’s preliminary congressional and state legislative plans.

I. Introduction and Summary

The Colorado Constitution provides strong protections for minority voters in redistricting—protections that exceed those imposed by the federal Voting Rights Act (“VRA”). By misinterpreting the Colorado Constitution’s requirements, the Commission’s staff has proposed congressional and state legislative maps that dilute the ability of Hispanic voters to influence electoral outcomes—in violation of the state Constitution.

Unlike the VRA, the Colorado Constitution does not require a threshold showing that a minority group is sufficiently large to constitute the *majority* of a district’s voting population in order for the law to require a district to be drawn to prevent vote dilution. Instead, the Colorado Constitution requires the Commission to draw districts that protect the ability of minority voters to *influence* electoral outcomes. This standard is intentionally more protective than the VRA, and it requires the drawing of “crossover” districts—districts in which a sizeable population of minority voters is joined by white crossover voters to elect minority-preferred candidates. While the United States Supreme Court has held that federal law permits, but does not require, the drawing of crossover districts to prevent vote dilution, the Colorado Constitution mandates the creation of crossover districts where necessary to avoid vote dilution.

Contrary to the Colorado Constitution’s plain text, the Commission’s staff has expressed the view in public meetings that the state Constitution’s protections for minority voters are duplicative of the VRA’s, and that the Colorado provision merely prevents *reducing* the number of preexisting districts with sizeable minority populations (regardless of whether those districts would actually function to elect minority-preferred candidates).

This misunderstanding has led to preliminary maps by the Commission staff that violate the Colorado Constitution.

In particular, the proposed congressional map dilutes the ability of Hispanic voters in southern Colorado, Pueblo, Colorado Springs, Eagle County, and Lake County to influence electoral outcomes, by fracturing them among Districts 3, 4, and 5, where white bloc voting will result in the perpetual defeat of Hispanic-preferred candidates. The proposed state senate map dilutes the voting strength of Hispanic voters in southern Colorado and Pueblo by splitting them between Districts 8 and 9, where white bloc voting will make their ability to influence electoral outcomes nearly impossible (District 8) or tenuous (District 9). The proposed state house map dilutes the ability of Hispanic voters in eastern Greeley and eastern Evans in Weld County to influence electoral outcomes by excluding crossover white voters from District 64 and including in their place white voters who bloc vote against Hispanic-preferred candidates.

The Colorado Constitution precludes the adoption of maps that dilute minorities' voting strength in this manner, elevating this requirement over all others. LULAC and Colorado LULAC have proposed district plans to remedy this violation, and urge the Commission to adopt them.

II. Legal Framework

The Colorado Constitution provides that “[n]o map may be approved by the commission or given effect by the supreme court if . . . [i]t has been drawn for the purpose of or results in the abridgment of the right of any citizen to vote on account of that person’s race or membership in a language minority group, including *diluting the impact* of that racial or language minority group’s *electoral influence*.”¹ The Colorado Constitution therefore eschews any threshold requirement that minority voters constitute a majority of a district’s voting population in order to benefit from legal protections. Instead, if a crossover district can be drawn whereby minority voters, with the assistance of some white voters, can elect their preferred candidates, the constitutional provision requires that such a district be drawn to prevent vote dilution.

This broad language stands in contrast to Section 2 of the VRA. The United States Supreme Court has held in *Bartlett v. Strickland* that the VRA does not require the creation of crossover districts that preserve minority groups’ electoral influence. Rather, the Court held that Section 2’s legal protections are triggered only if a minority group can show “that the minority population in the potential election district is greater than 50%.” In that sense, Section 2 requires a threshold showing that the minority group could depend upon its own votes to elect its candidate of choice. This high bar is precisely what the voters of Colorado rejected in adopting a standard prohibiting the adoption of districts that “dilut[e] the impact” of a minority group’s “electoral influence.”

¹ Colo. Const. art. V, § 44.3(4)(b) (emphasis added); *id.* at § 48.1(4)(b) (same).

While the *Bartlett* Court’s plurality rejected an interpretation of VRA Section 2 that mandated drawing crossover districts, it invited states to adopt their own laws that did so. “Our holding that § 2 does not require crossover districts does not consider the permissibility of such districts as a matter of legislative choice or discretion.”² The plurality underscored that crossover districts may advance important policy considerations, serving “to diminish the significance and influence of race by encouraging minority and majority voters to work together toward a common goal.”³ As the Court acknowledged, crossover districts “give[] [states] a choice that can lead to less racial isolation, not more.”⁴ The plurality therefore concluded that “in the exercise of lawful discretion States c[an] draw crossover districts as they deem[] appropriate.”⁵ Colorado’s voters exercised that discretion by adopting Amendments X and Y in 2018.

Although the plain text of the Colorado Constitution adopts a more protective standard than does VRA Section 2, the Commission’s staff has publicly suggested that the Colorado provision is merely duplicative of the VRA. At the June 23, 2021 Commission meeting, the staff member presenting the preliminary congressional plan explained his view that the drafters of Amendments X and Y were concerned that Congress might repeal the VRA and so adopted a corollary provision under Colorado law that merely duplicates the VRA’s requirements. Indeed, the memo accompanying the proposed maps does not assess the maps under the separate Colorado Constitution’s provision at all, despite its distinct requirements.

While acknowledging that the Colorado Supreme Court had not interpreted the phrase “diluting the impact” of a minority group’s “electoral influence,” the staff member opined that this phrase was a corollary of Section 5 of the VRA, rather than of Section 2.⁶ Section 5 (prior to the U.S. Supreme Court’s invalidation of its coverage formula) precluded certain jurisdictions from *diminishing* the *existing* voting strength of minority voters.⁷ One way Section 5 could be violated was by eliminating a district in which a minority group exerted influence, but not control, over the outcome of elections.⁸ But by its plain text, Section 5 limited its inquiry into whether the elimination of such districts

² *Bartlett v. Strickland*, 556 U.S. 1, 23 (2009).

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 24.

⁶ See Independent Congressional Redistricting Commission, June 23, 2021 Hr’g at 2:33-2:35, <https://sg001-harmony.sliq.net/00327/Harmony/en/PowerBrowser/PowerBrowserV2/20210401/154/12019>.

⁷ See 52 U.S.C. § 10304.

⁸ See *LULAC v. Perry*, 548 U.S. 399, 446 (2006).

“diminish[ed]” existing voting strength, and not whether *new* influence districts could be drawn.⁹

By contrast, the Colorado Constitution does not limit its protections to changes that “diminish” existing voting opportunities. Indeed, it does not reference the concept of diminishment at all. Rather, it prohibits the Commission from adopting, and the state Supreme Court from approving, any map that “results in . . . diluting the impact of [a] racial or language minority group’s electoral influence.” Colo. Const. art. V § 44.3(4)(b). The Amendments’ framers therefore took the “influence” standard that was relevant to inquiries under VRA Section 5, eliminated the concept of diminishment or retrogression, and instead applied that relaxed standard to the type of forward-looking vote dilution inquiry that animates VRA Section 2.¹⁰ In doing so, they rejected allowing the minority vote dilution embedded in past maps to dictate whether dilution must be proactively corrected going forward.

The Colorado provision thus creates an affirmative obligation for the Commission to create *new* districts that protect minority voters’ electoral influence. This is a more protective standard than the federal VRA provides, and it requires independent analysis from the State’s VRA obligations. The question is not, as the Commission’s staff posited, whether the proposed plan reduces the total number of districts with a sizeable Hispanic population. Instead, the question is whether the proposed plan includes features that result in Hispanic voters’ electoral influence being diluted, and whether that dilution can be corrected in a different configuration containing crossover districts.

Here, the Commission’s proposed plans dilute Hispanic voters’ ability to influence electoral outcomes by fracturing them into districts where white bloc voting will routinely defeat their preferred candidates. Alternative districts can be drawn that allow Hispanic voters in the affected regions of the state to be aided by white crossover voters in electing Hispanic-preferred candidates. The Colorado Constitution creates an affirmative obligation on the Commission to draw those crossover districts. And it elevates that obligation over all others, by prohibiting the adoption of a map that dilutes minority voters’ electoral influence while ensuring that other considerations—such as compactness and maintaining whole political subdivisions—should be achieved to the extent “reasonably possible.” Colo. Const. art. V, § 44.3.

III. The Preliminary Congressional Plan Dilutes Hispanic Voters’ Electoral Influence.

The Commission staff’s preliminary congressional plan dilutes the electoral influence of Hispanic voters in southern Colorado, Pueblo, Colorado Springs, Eagle County, and Lake County by fracturing them across Districts 3, 4, and 5, where significant white bloc voting will defeat their preferred candidates. An alternative district can be drawn

⁹ 52 U.S.C. § 10304.

¹⁰ See *LULAC*, 548 U.S. at 433 (“Under § 2, . . . the injury is vote dilution, . . .”).

that joins these voters with a sufficient number of white crossover voters who support Hispanic-preferred candidates to remedy that dilution.

A. Voting in Proposed Districts 3, 4, and 5 is Racially Polarized such that White-Bloc Voting Will Defeat Hispanic Preferred Candidates.

Voting in the Commission staff’s proposed Districts 3, 4, and 5 is racially polarized. This is readily apparent from the voting patterns in racially homogenous precincts, from which the voting preferences of Hispanic and white voters can be deduced.¹¹ The tables below present all precincts in the affected region of the state with Hispanic CVAP exceeding 84% and a sampling of precincts from staff-proposed Districts 3, 4, and 5 with white CVAP exceeding 84% (there are many more such precincts).¹²

Homogenous Hispanic Precincts (CVAP > 84%)								
Precinct	Hispanic CVAP	Party	2020 Pres.	2020 Sen.	2018 Gov.	2018 AG	2018 SOS	2018 Cong.
Costilla County Precinct 1	87.7%	(D)	80.5%	80.5%	90.2%	90.3%	91.4%	90.2%
		(R)	16.9%	15.8%	7.7%	7.6%	8.6%	9.8%
Costilla County Precinct 4	88.1%	(D)	76.6%	78.2%	77.7%	85.7%	86.6%	83.5%
		(R)	22.6%	20.1%	16.3%	11.1%	13.4%	16.5%
Conejos County Precinct 1	84.5%	(D)	74.5%	77.4%	72.7%	77.6%	81.2%	75.1%
		(R)	22.0%	21.5%	21.8%	21.0%	18.8%	24.9%
Conejos County Precinct 4	85.5%	(D)	67.9%	72.4%	78.2%	80.2%	82.5%	73.5%
		(R)	29.1%	25.4%	18.3%	18.3%	17.5%	26.5%
Pueblo County Precinct 101	86.9%	(D)	74.3%	74.0%	77.8%	77.4%	83.3%	76.4%
		(R)	22.5%	23.0%	18.4%	18.7%	16.7%	23.6%

Exemplar Homogenous White Precincts (CVAP > 84%)								
Precinct	White CVAP	Party	2020 Pres.	2020 Sen.	2018 Gov.	2018 AG	2018 SOS	2018 Cong.
Montezuma County Precinct 1	99.7%	(D)	16.5%	16.2%	21.0%	22.8%	24.3%	21.6%
		(R)	82.1%	82.0%	76.6%	75.1%	75.8%	78.4%
Montrose County Precinct 5	98.0%	(D)	14.5%	14.2%	14.6%	12.5%	15.1%	14.0%
		(R)	84.3%	83.7%	83.4%	85.1%	84.9%	86.0%

¹¹ See *Sanchez v. Colorado*, 97 F.3d 1303, 1313 (10th Cir. 1996) (noting the U.S. Supreme Court’s approval of homogenous precinct analysis as well as bivariate ecological regression statistical analysis to assess racially polarized voting).

¹² All demographic data reported herein is from Dave’s Redistricting App (“DRA”), which the Commission’s website encourages the public to use. Where total population and voting age population (“VAP”) are reported, the data is from the 2020 Census, which was released in legacy format on August 12, 2021. Where citizen voting age population (“CVAP”) is reported, the data is from the 2019 American Community Survey (“ACS”) 5-year report. Election data is from DRA, with the exception of the 2018 Secretary of State and 2018 Congress results, which were obtained from the MGGG Redistricting Lab’s District tool, a nonpartisan research group at Tufts University. MGGG excluded “other” candidate votes from its reporting, resulting in minor differences in the reported vote percentages. The precinct numbers are those indicated on DRA.

Exemplar Homogenous White Precincts (CVAP > 84%)								
Precinct	White CVAP	Party	2020 Pres.	2020 Sen.	2018 Gov.	2018 AG	2018 SOS	2018 Cong.
Mesa County Precinct 19	98.5%	(D)	17.0%	17.1%	22.2%	20.4%	18.6%	18.4%
		(R)	80.7%	81.7%	73.9%	77.2%	81.4%	81.6%
Moffat County Precinct 1	95.2%	(D)	14%	13.4%	13.6%	14.2%	14.0%	11.8%
		(R)	83.6%	84.2%	83.7%	82.8%	86.0%	88.3%
Pueblo County Precinct 110	85.8%	(D)	20.8%	21.2%	17.0%	16.1%	19.9%	15.1%
		(R)	77.1%	77.2%	81.1%	82.6%	80.1%	84.9%
Pueblo County Precinct 303	88.9%	(D)	20.6%	20.9%	22.4%	22.2%	26.6%	20.9%
		(R)	77.7%	78.6%	73.4%	73.9%	73.4%	79.1%
Pueblo County Precinct 304	95.6%	(D)	27.1%	25.7%	28.2%	28.2%	29.3%	25.9%
		(R)	70.5%	72.4%	67.1%	68.5%	70.7%	74.1%
Kiowa County Precinct 1	94.9%	(D)	9.0%	10.2%	9.0%	14.3%	15.8%	14.1%
		(R)	90.4%	89.8%	88.1%	85.0%	84.2%	85.9%
Baca County Precinct 9	97.6%	(D)	6.1%	6.3%	5.8%	12.7%	11.3%	11.9%
		(R)	93.9%	92.5%	91.3%	87.3%	88.7%	88.1%
Washington County Precinct 6	98.1%	(D)	8.0%	7.8%	7.2%	8.6%	8.0%	7.4%
		(R)	90.2%	91.2%	90.0%	89.8%	92.0%	92.6%
Phillips County Precinct 2	100%	(D)	8.1%	7.3%	8.8%	9.0%	7.7%	7.6%
		(R)	90.9%	91.7%	87.5%	88.5%	92.3%	92.4%
Weld County Precinct 102	92.0%	(D)	11.6%	9.7%	12.6%	10.7%	13.7%	9.8%
		(R)	86.9%	89.9%	85.0%	87.6%	86.3%	90.2%
El Paso County Precinct 522	90.3%	(D)	19.1%	18.6%	19.1%	18.3%	20.8%	19.8%
		(R)	76.9%	77.1%	74.0%	77.0%	79.2%	80.2%
El Paso County Precinct 502	94.6%	(D)	16.1%	16.0%	19.8%	18.0%	21.0%	21.9%
		(R)	80.9%	81.4%	75.5%	79.8%	79.0%	78.1%

As these tables illustrate, voting is racially polarized across Districts 3, 4, and 5 in the Commission staff's proposal, with Hispanic voters strongly preferring Democratic candidates and white voters strongly preferring Republican candidates.¹³

¹³ Eagle and Lake Counties have sizeable Hispanic populations, but no homogenous precincts. In Eagle County, 30.2% of the total population is Hispanic, and 13.6% of the CVAP is Hispanic. In Lake County, 35.8% of the total population is Hispanic, and 20.7% of the CVAP is Hispanic. The largest concentration of Hispanic population is in Eagle County Precinct 22, where 67.7% of the total population is Hispanic and 48.4% of the CVAP is Hispanic. President Biden received 63.9% of the vote in Precinct 22.

As a general matter, voting in Eagle, Lake, Summit, Pitkin, and Gunnison Counties is not racially polarized, with both Hispanic and a majority of white voters supporting Democratic candidates. But the Commission staff's proposed map prevents Hispanic voters from harnessing this crossover support to effectuate their electoral influence because the proposal situates these counties in District 3, which is dominated by white bloc voting in favor of Republican candidates, while fracturing the areas with large Hispanic populations between Districts 4 and 5.

B. White Bloc Voting Will Defeat Hispanic-Preferred Candidates in Districts 3, 4, and 5.

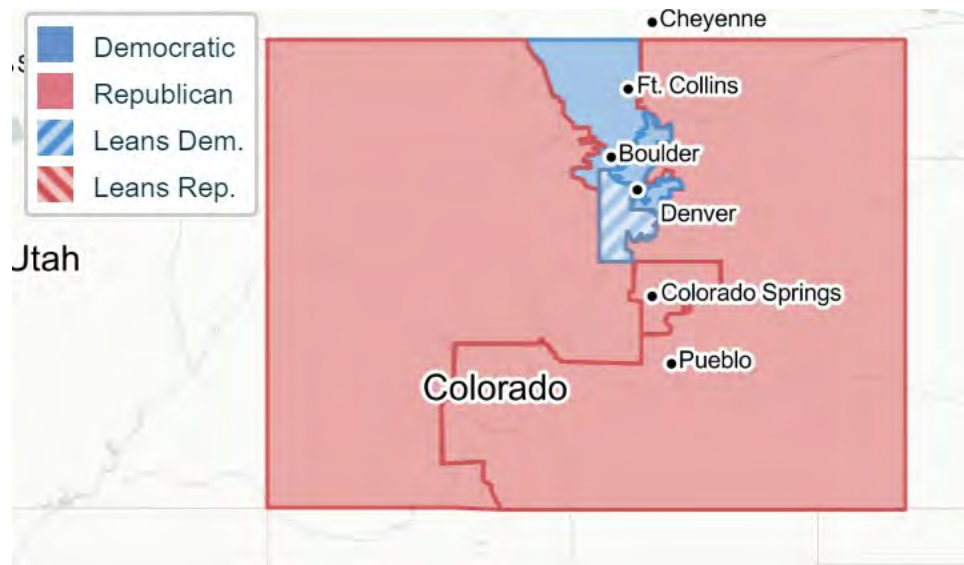
White bloc voting will defeat Hispanic-preferred candidates in the Commission staff's proposed Districts 3, 4, and 5. The Commission staff's memo accompanying its proposal illustrates this result. As the Political Summary appendix to the staff memo shows, Republicans have a substantial voter registration advantage in each district (District 3: 33.0% Republican, 22.0% Democratic; District 4: 35.1% Republican, 24.2% Democratic; District 5: 33.9% Republican, 19.9% Democratic). Likewise, the Commission's staff reported the results of the 2018 Attorney General election, the closest most recent statewide election. In each of proposed Districts 3, 4, and 5, the Republican candidate handily wins over the Hispanic-preferred candidate in those districts, despite losing statewide (District 3: 53.2% to 43.4%; District 4: 59.8% to 36.7%; District 5: 58.2% to 37.8%).

Moreover, predictive tools likewise point to the conclusion that Districts 3, 4, and 5 will solidly elect Republicans—the preferred candidates of white voters in those districts. When the staff's preliminary congressional plan is assessed by PlanScore (www.planscore.org)—a CLC tool that assesses redistricting plans under various measures of partisan effect—Districts 3, 4, and 5 are shown to be solidly Republican. Even excluding the effect of incumbency, PlanScore predicts an 87% chance that Republicans would win District 3, a greater than 99% chance Republicans would win District 4, and a 94% chance that Republicans would win District 5.¹⁴ PlanScore predicts Republican candidates would receive 55% of the vote in District 3, 62% of the vote in District 4, and 57% of the vote in District 5.¹⁵ The map below illustrates the predicted partisan lean of the staff's preliminary congressional plan.¹⁶

¹⁴ See Ex. 1 (Staff Congressional Proposal PlanScore Report). Proposed plans can be uploaded to planscore.org, which scores the partisan effects of the plan under four metrics: efficiency gap, declination, partisan bias, and mean-median difference. Explanations for each measure are available at planscore.org. PlanScore also reports predicted vote shares, certain demographic characteristics, and reconstituted election results from the 2020 presidential election in each district. The demographic data may vary slightly from what is reported in mapping tools used to create plans because of the process of generating data reports from GIS files.

¹⁵ *Id.*

¹⁶ *Id.*



At the June 23 Commission meeting, at which the staff unveiled the preliminary plan, the staff member highlighted that this was the first time Hispanic residents would exceed 28% of the total population in three districts (28.6% in proposed District 1, 31.0% in proposed District 4, and 29.9% in proposed District 8). But this underscores the dilutive effect of the staff's proposal. The district with the largest Hispanic population—District 4—has the strongest white bloc voting in opposition to Hispanic-preferred candidates, with the Hispanic-preferred candidate predicted to have *less than a 1% chance* of winning.

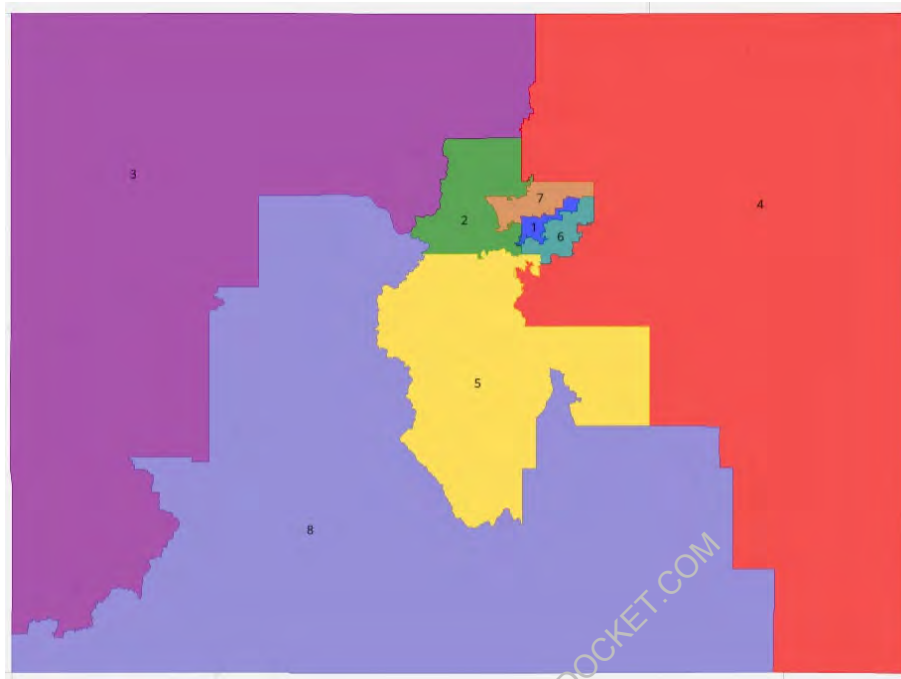
The data shows that the fracturing of Hispanic voters among Districts 3, 4, and 5, coupled with the heavy white bloc voting in opposition to their preferred candidates, will cause the perpetual defeat of Hispanic-preferred candidates. The Commission staff's proposed configuration of Districts 3, 4, and 5 thus results in the dilution of Hispanic voters' ability to influence electoral outcomes in violation of the Colorado Constitution.

C. An Alternative Crossover District Would Remedy the Vote Dilution.

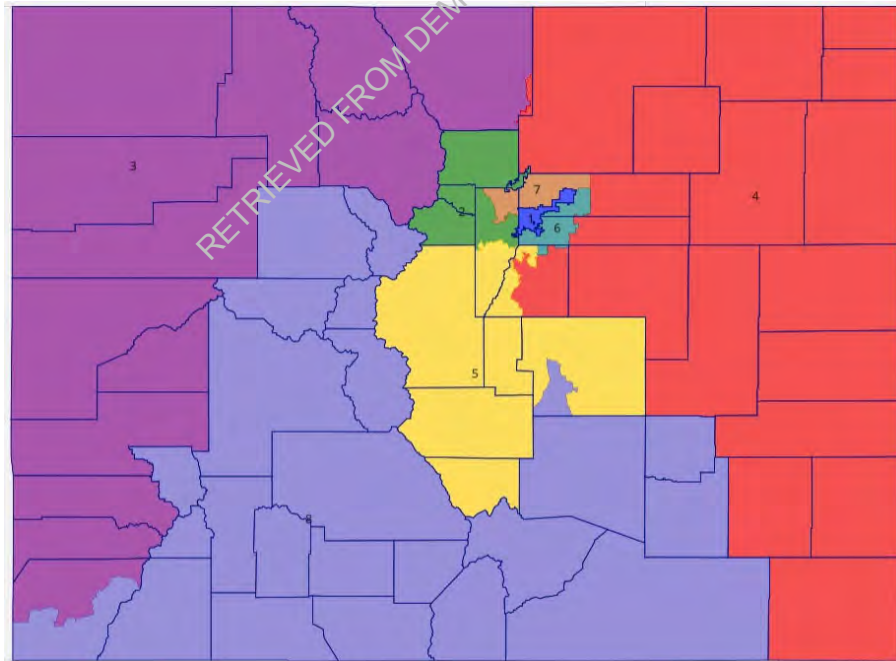
This vote dilution can be remedied by an alternative crossover district that combines the Hispanic populations in southern Colorado, Pueblo, Colorado Springs, Eagle County, and Lake County that are fractured in the Commission staff's proposed map, and pairs them with a sufficient number of white crossover voters to provide Hispanic voters the ability to influence electoral outcomes. LULAC and Colorado LULAC have submitted the following plan ("LULAC Congressional Plan")¹⁷ through the Commission's online portal:

¹⁷ Based on the 2020 Census data, the ideal population of a district is 721,714. Districts 3, 5, 7, and 8 have total populations of 721,714 (0 deviation from ideal). Districts 1, 4, and 6 have total populations of 721,715 (+1 deviation from ideal). District 2 has a total population of 721,713 (-1 deviation from ideal).

LULAC Congressional Plan



LULAC Congressional Plan (with county borders)



In the LULAC Congressional Plan, District 8 remedies the vote dilution present in the Commission staff's preliminary proposal by eliminating the fracturing of the Hispanic population across Districts 3, 4, and 5 and combining them with white crossover voters in

the adjacent mountain communities. The chart below shows the demographic characteristics of the LULAC Plan:

LULAC Congressional Plan Total Population

District	White	Hispanic	Black	Asian	Native	Pacific
1	54.5%	27.8%	10.8%	5.5%	3.5%	0.4%
2	73.8%	15.2%	2.1%	6.0%	2.9%	0.3%
3	77.0%	15.2%	1.6%	2.5%	3.6%	0.3%
4	70.1%	21.5%	2.4%	3.5%	3.0%	0.3%
5	74.5%	12.2%	5.0%	5.4%	3.3%	0.6%
6	54.3%	22.4%	13.2%	8.6%	3.2%	0.6%
7	57.8%	31.8%	3.0%	5.2%	4.0%	0.3%
8	59.2%	29.0%	6.0%	2.8%	5.1%	0.7%

LULAC Congressional Plan Voting Age Population (VAP)

District	White	Hispanic	Black	Asian	Native	Pacific
1	58.8%	24.4%	9.7%	5.2%	3.3%	0.4%
2	76.6%	13.2%	1.8%	5.6%	2.6%	0.2%
3	79.9%	12.8%	1.4%	2.3%	3.3%	0.3%
4	73.3%	18.9%	2.0%	3.0%	3.0%	0.3%
5	77.2%	10.6%	4.3%	4.8%	3.0%	0.5%
6	58.3%	19.7%	11.9%	8.1%	3.0%	0.5%
7	62.0%	28.1%	2.5%	4.9%	3.8%	0.3%
8	63.0%	25.8%	5.2%	2.5%	4.7%	0.5%

LULAC Congressional Plan Citizen Voting Age Population (CVAP)

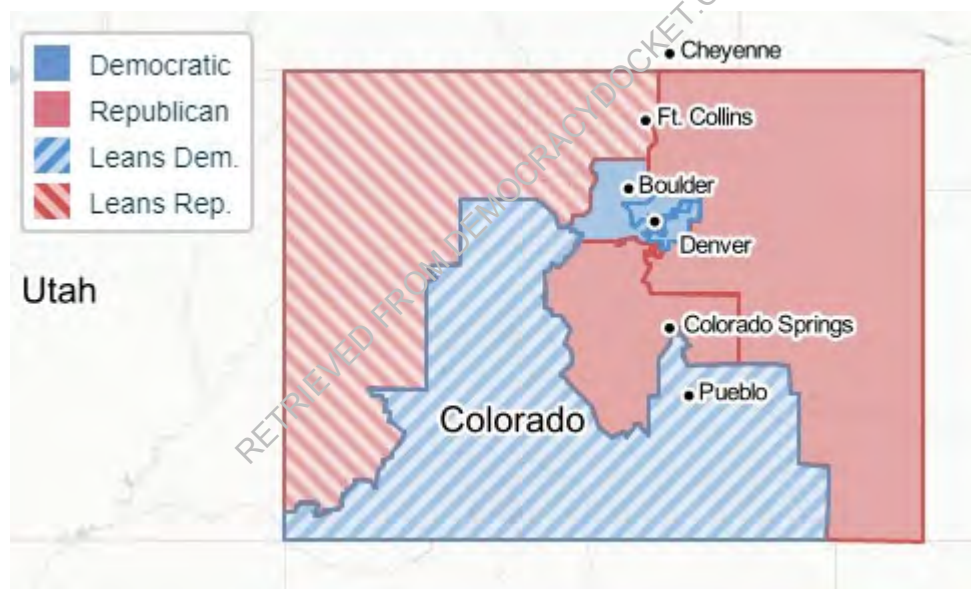
District	White	Hispanic	Black	Asian	Native	Pacific
1	65.1%	20.4%	9.7%	3.3%	1.2%	0.1%
2	82.9%	11.0%	1.3%	3.5%	1.0%	0.1%
3	86.4%	9.6%	1.0%	1.5%	1.4%	0.1%
4	80.3%	15.3%	1.4%	1.6%	1.1%	0.1%
5	82.0%	9.5%	3.9%	3.1%	1.1%	0.1%
6	69.0%	13.3%	11.1%	5.2%	1.1%	0.2%
7	70.9%	22.4%	2.0%	3.3%	1.0%	0.1%
8	67.9%	23.3%	4.5%	1.6%	2.2%	0.3%

The LULAC Congressional Plan, like the Commission staff's preliminary plan, has three districts whose total populations are around 30% Hispanic (including a district centered in the northern suburbs of Denver). But, unlike the staff's plan, in LULAC's Plan the electoral influence of the Hispanic voters in one of those districts is not diluted by submerging them in a district characterized by overwhelming white bloc voting in opposition to their preferred candidates.

The Hispanic-preferred candidate would be expected to prevail in District 8. Below are recent reconstituted election results for District 8.

2020 President		2020 Senate		2018 Governor	
Biden (D)	53.6%	Hickenlooper (D)	52.5%	Polis (D)	53.5%
Trump (R)	43.4%	Gardner (R)	44.5%	Stapleton (R)	42.0%
2018 Atty. Gen.		2016 President		2016 Senate	
Weiser (D)	52.4%	Clinton (D)	47.1%	Bennet (D)	50.9%
Brauchler (R)	43.8%	Trump (R)	43.9%	Glenn (R)	42.5%

PlanScore confirms that District 8 would likely function to protect the electoral influence of Hispanic voters. Excluding the effect of incumbency, PlanScore predicts that District 8 would “Lean Democratic,” with the Democratic candidate predicted to prevail 53% to 47%, with a 74% chance of winning.¹⁸ The map below illustrates PlanScore’s predicted partisan lean for the LULAC Congressional Plan. Notably, the LULAC Congressional Plan advances the Colorado Constitution’s “competitiveness” standard better than the Commission staff’s preliminary plan. In LULAC’s Congressional Plan, two districts are characterized as “leaning” in favor of one party, as opposed to just one district in the Commission staff’s proposal.



Finally, District 8 would function as a crossover district, because the Hispanic-preferred candidate would be likely to prevail in the Democratic primary, and be supported by white crossover voters in the general election. The 2018 Democratic primary for Attorney General is probative. That race featured a close election between Phil Weiser, a white man, and Joe Salazar, a man of Spanish and Apache descent. Weiser won the primary

¹⁸ See Ex. 2 (LULAC Congressional Plan PlanScore Report)

election by fewer than 5,000 votes statewide.¹⁹ Joe Salazar was the candidate of choice among Hispanic voters in LULAC-proposed District 8, as demonstrated by his strong performance in majority-Hispanic counties.²⁰ Although Salazar narrowly lost the statewide primary, he would have carried District 8 by a healthy margin.²¹ Salazar's strong performance in District 8 demonstrates that the Hispanic-preferred candidate would prevail in Democratic primaries in District 8.

IV. LULAC's Congressional Plan Is Compact and Avoids Splitting Political Subdivisions and Communities of Interest to the Extent Practicable.

LULAC's Plan is compact and avoids splitting political subdivisions and communities of interest to the extent practicable, in light of the Colorado Constitution's overriding prohibition on adopting vote dilutive districts. The Reock and Polsby-Popper scores reported below reflect that LULAC's Congressional Plan is as, or more, compact than the Commission staff's preliminary proposal.

District	Reock Score	Polsby-Popper Score
1	.16	.09
2	.50	.18
3	.33	.30
4	.44	.38
5	.50	.23
6	.29	.15
7	.21	.17
8	.31	.21

LULAC's Congressional Plan also has fewer county splits than the Commission staff's plan. In four of the eight districts, LULAC's Congressional Plan splits fewer counties than the Commission staff's plan. The plans have the same number of splits in two districts. And in only two districts does LULAC's Congressional Plan split more counties than the Commission staff's plan. The chart below demonstrates the county splits in the two plans.

¹⁹ Colo. Sec'y of State, 2018 Primary Election Results – Attorney General, <https://www.sos.state.co.us/pubs/elections/Results/Abstract/2018/primary/democratic/attorneyGeneral.html>

²⁰ Salazar carried Conejos County with 64.7% of the vote, and Costilla County with 69.6% of the vote.

²¹ Because of the difficulty of matching 2018 precinct numbers in El Paso County, Salazar's exact winning percentage is uncertain. But among the 22 counties that are wholly within District 8, Salazar would have received 29,531 votes (55%) to Weiser's 24,157 votes (45%). Salazar also prevailed in the 2 counties partially within District 8, Montezuma (1,130 votes (58%) to 807 votes (42%)) and El Paso (23,732 votes (52.6%) to 21,306 votes (47.3%)).

LULAC's Congressional Plan		Commission Staff's Plan	
District	Number of Split Counties	District	Number of Split Counties
1	2	1	2
2	1	2	3
3	2	3	1
4	4	4	6
5	3	5	1
6	4	6	4
7	2	7	3
8	2	8	4

LULAC's proposed District 8 is similarly compact to those proposed by the Commission's staff, and it contains 22 whole counties and just 2 split counties. One of the split counties, Montezuma, is to ensure that Ute Mountain Reservation and the Southern Ute Reservation are not split between congressional districts. Although the city of Colorado Springs is split, this is necessary to prevent the city's Hispanic voters from having their electoral influence diluted. In any event, it is necessary to split El Paso County because its population exceeds the ideal population of a congressional district.

District 8 respects traditional districting criteria; indeed, under the existing congressional plan, Pueblo, southern Colorado, and the mountain communities are contained in the same district. LULAC's proposal preserves those existing ties, while simultaneously remedying the features of the staff proposal that result in Hispanic vote dilution.

V. The Preliminary State Senate Plan Dilutes Hispanic Voters' Electoral Influence.

The Commission staff's preliminary state senate plan dilutes the electoral influence of Hispanic voters in southern Colorado and Pueblo by splitting them between proposed Districts 8 and 9, where white bloc voting would always (District 8) defeat the Hispanic-preferred candidate, or would make the Hispanic-preferred candidate's likelihood of winning tenuous (District 9).

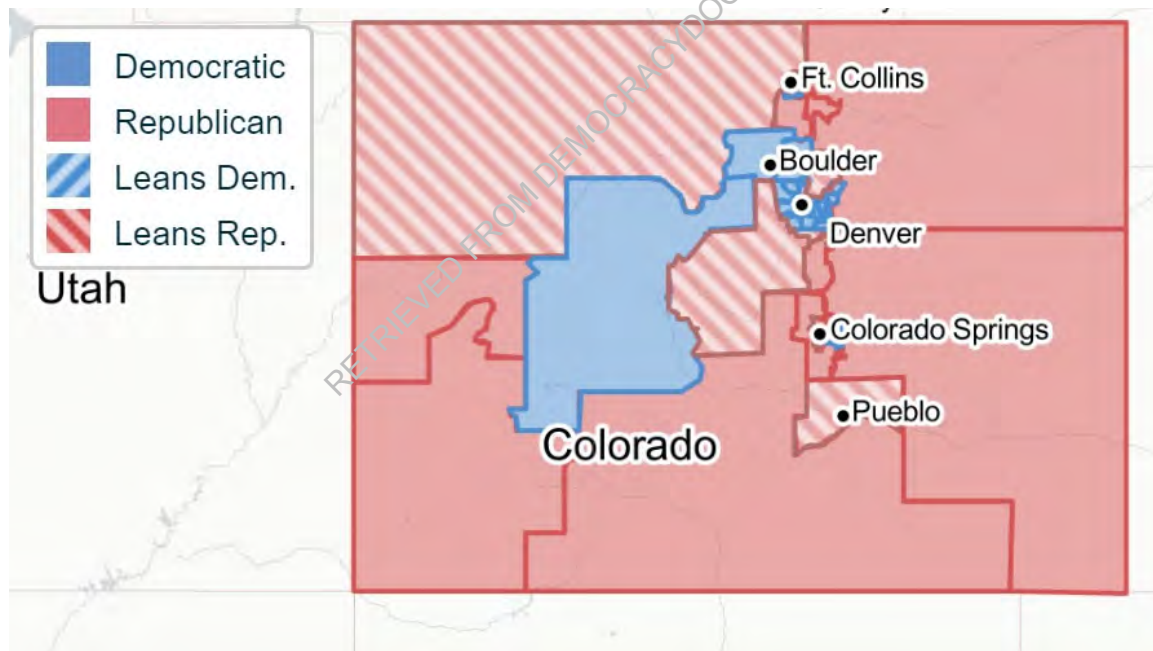
A. White Bloc Voting Would Prevent or Jeopardize the Ability of Hispanic Voters to Influence Electoral Outcomes in Districts 8 and 9.

The Commission staff's reports accompanying the preliminary state senate plan demonstrate that white bloc voting would dilute Hispanic voters' ability to influence electoral results in Districts 8 and 9. In District 8, Hispanic residents constitute 25% of the total population, with large Hispanic communities in Costilla, Conejos, and Alamosa Counties contained in the district. In the district, 36.8% of voters are registered Republicans, and 23.7% are registered Democrats. The 2018 Republican candidate for Attorney General carried District 8 with 59.1% of the vote, and the 2020 Republican Senate

candidate carried the district with 61% of the vote. PlanScore reports that the Republican candidate has over a 99% chance of winning District 8.²²

In District 9, Hispanic residents constitute 44% of the total population. District 9 has more registered Democrats than Republicans (36.9% to 23.6%), but this registration advantage does not translate to equivalent electoral strength. The 2018 Democratic candidate for Attorney General carried District 9 by 51% to 45.3%, and the 2020 Democratic Senate candidate carried the district by only 50% to 47%.

PlanScore's analysis adds further doubt that District 9 will reliably perform to protect Hispanic voters' ability to influence electoral outcomes. Excluding any incumbency effect, PlanScore characterizes District 9 as "Leans Republican," and predicts just a 50% chance that the Hispanic-preferred Democratic candidate would carry the district. PlanScore reports that President Biden carried the district by just 52% of the two-party vote. When the district is recreated (as close as possible, given the split precincts in the Commission staff's plan) on MGGG's Districtr program, the data shows that in the 2018 race for U.S. House, the Democratic candidate would have prevailed by just 50.05% to 49.95%. Below is PlanScore's assessment of the Commission staff's state senate plan, showing District 9 (the Pueblo-based seat) as "Leans Republican."

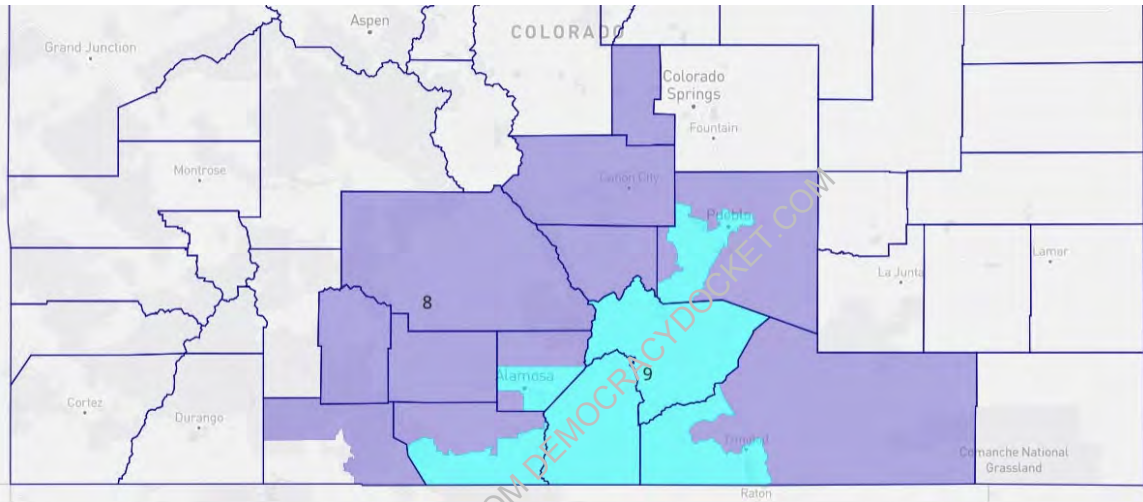


The Commission staff's preliminary state senate plan results in Hispanic voters in southern Colorado and Pueblo having their ability to influence electoral outcomes diluted.

²² See Ex. 3 (Preliminary State Senate Plan PlanScore Analysis).

B. An Alternative Crossover District Remedies the Dilution of Hispanic Voters' Electoral Influence.

An alternative crossover district can be drawn that remedies this vote dilution. The plan below, “LULAC Senate Plan,” focuses only on Districts 8 and 9, and redraws them so that District 9 will perform to protect the ability of Hispanic voters to influence electoral outcomes. In this map, the collective boundaries of Districts 8 and 9 differ only by removing the Southern Ute Reservation from District 8, to ensure it can be kept whole with the Ute Mountain Reservation in Montezuma County—the staff plan unnecessarily splits the two Reservations. But the internal boundaries of Districts 8 and 9 are altered to cure the vote dilution present in the Commission staff’s preliminary map.²³

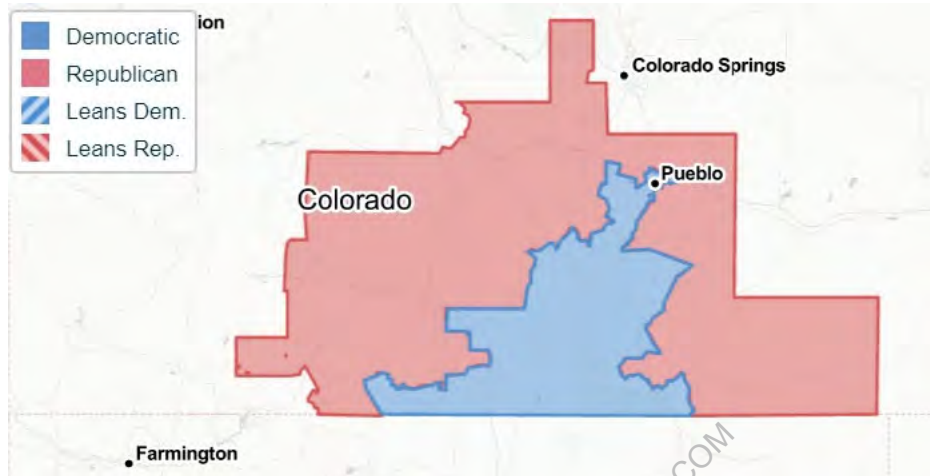


In this plan, District 9’s total population is 47.2% Hispanic, 45.5% white, 6.1% Native American, and 3.5% Black. Its Hispanic CVAP is 44.3%. Below are reconstituted election results for the district, illustrating how it would correct the dilution of Hispanic voters’ ability to influence electoral results present in the Commission staff’s proposed plan.

2020 President		2020 Senate		2018 Governor	
Biden (D)	55.1%	Hickenlooper (D)	54.7%	Polis (D)	56.4%
Trump (R)	42.2%	Gardner (R)	42.3%	Stapleton (R)	38.5%
2018 Atty. Gen.		2018 Sec’y of State		2018 Congress	
Weiser (D)	55.9%	Griswold (D)	60.8%	Composite Dem.	55.9%
Brauchler (R)	40.3%	Williams (R)	39.2%	Composite Rep.	44.4%

²³ The ideal population size for state senate districts is 164,963. LULAC’s proposed District 8 has a total population of 162,855 (-1.28% deviation) and District 9 has a total population of 161,826 (-1.9% deviation). These deviations are well within the permissible 10% range for state legislative seats.

PlanScore's analysis confirms that LULAC's proposed District 9 would be likely to effectuate Hispanic voters' electoral influence. The analysis of District 9 shows that the Hispanic-preferred candidate in that district—the Democratic candidate—would be predicted to have an 80% chance of winning. Below is the PlanScore map of the districts.²⁴



Moreover, Hispanic voters would be able to control the results of the Democratic primary in this district, making it an effective crossover district. In 2018, Hispanic Democrat Carlos Lopez lost state senate District 35 to Republican Cleave Simpson by a 20% margin. In LULAC's proposed District 9 (setting aside Pueblo, which was outside District 35), Mr. Lopez would have defeated Mr. Simpson 53% to 47%.²⁵ With the city of Pueblo added, itself currently represented by a Hispanic Democrat, Mr. Lopez's margin of victory would be expected to increase substantially.

The LULAC Senate Plan remedies the Commission staff plan's dilution of Hispanic voters in southern Colorado and Pueblo, as required by the Colorado Constitution.

VI. The Preliminary State House Plan Dilutes Hispanic Voters' Electoral Influence.

The Commission staff's preliminary state house plan also dilutes Hispanic voters' electoral influence in violation of the Colorado Constitution. In particular, the Commission's preliminary plan dilutes the electoral influence of the substantial Hispanic community in east Greeley and east Evans in Weld County. Like other regions of the State, Greeley, Evans, and their surrounding area exhibit racially polarized voting, with the

²⁴ Ex. 4 (LULAC Senate Plan PlanScore Report). The partisan effect metrics reported in Exhibit 4 should not be considered because it is not a statewide plan, but rather just two districts.

²⁵ See Colo. Sec'y of State, Election Results & Data, <https://www.sos.state.co.us/pubs/elections/Results/2020/2020GEPrecinctLevelResultsPosted.xlsx>.

precincts with large Hispanic populations favoring Democratic candidates, and surrounding white precincts—particularly the rural precincts included in the Commission staff’s proposal—supporting Republican candidates.²⁶

The Commission staff’s proposed District 64 dilutes Hispanic voters’ ability to influence electoral outcomes by excluding from the district white crossover voters around the University of Northern Colorado and the North Colorado Medical Center in the city of Greeley, and including instead rural white voters to the east of Greeley who bloc vote against Hispanic-preferred candidates.²⁷ The Commission staff’s proposal is particularly alarming because it destroys an existing crossover district that currently performs to elect the Hispanic-preferred candidate (House District 50).²⁸

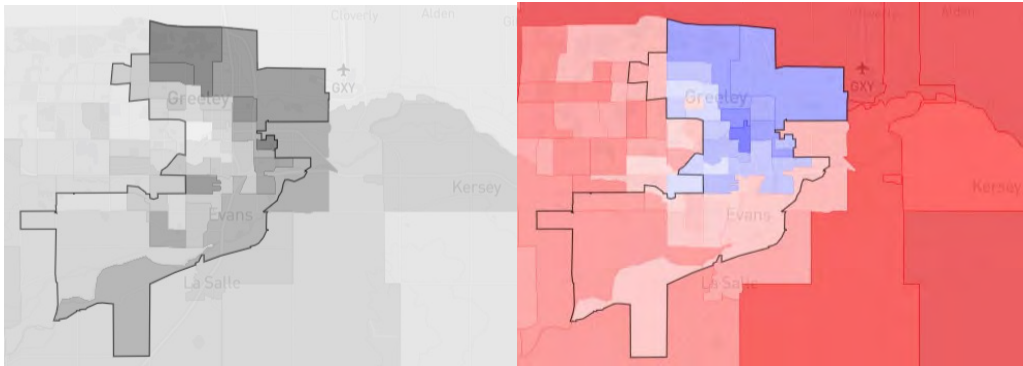
Below are images of the demographic and election data for existing District 50, as well as the Commission staff’s proposed District 64.

²⁶ Although there are not homogenous Hispanic precincts in Weld County, the trend is evident from the election results; Weld County precincts with large Hispanic populations favor Democrats. For example, Weld County precinct 105 has a Hispanic CVAP of 57.4%, and Biden received 61.6% of the vote. Weld County precinct 106 has a Hispanic CVAP of 53.4%, and Biden received 56.6% of the vote. By contrast, the rural precincts the Commission staff has proposed to add to District 64 demonstrate clear white bloc voting in favor of Republican candidates. For example, Weld County precinct 120 has a white CVAP of 86.7%, and former Trump received 80% of the vote. Weld County precinct 152 has a white CVAP of 85.2%, and Trump received 81% of the vote. Weld County precinct 316 has a white CVAP of 72.6%, and Trump received 79.4% of the vote. Weld County precinct 320 has a white CVAP of 70.2%, and Trump received 77.8% of the vote. Weld County precinct 326 has a white CVAP of 66.1%, and Trump received 60.4% of the vote. Weld County precinct 331 has a white CVAP of 61.9%, and Trump received 62.1% of the vote.

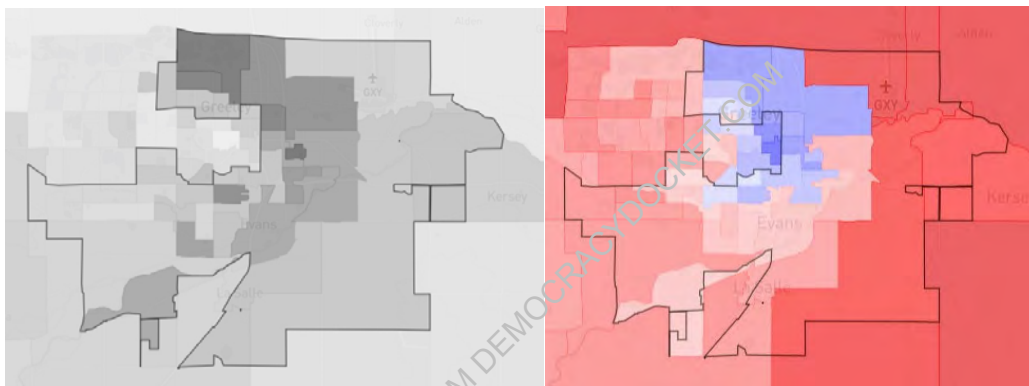
²⁷ In particular, the Commission staff’s proposed District 64 excludes white crossover voters in Weld County precincts 113, 110, 317, 247, 220, 217, 109, and surrounding areas in the city of Greeley, and includes instead white voters in surrounding rural areas (*e.g.*, Weld County precincts 120, 152, 316, 320, 326, and 331) who bloc vote in opposition to Hispanic-preferred candidates.

²⁸ House district 50 is represented by a Democratic representative, and the Democratic candidates have won all recent statewide elections (2020 President, 2020 Senate, 2018 Governor, 2018 Senate, 2018 Secretary of State, etc.).

Current District 50



Commission Staff's Proposed District 64

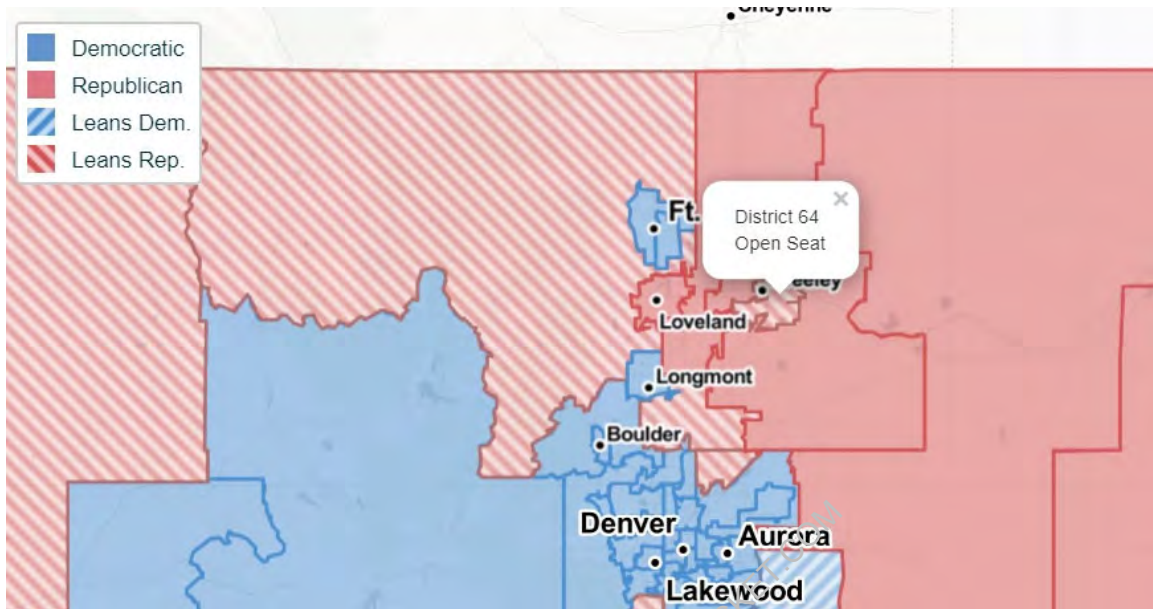


As these images illustrate, the Commission staff's proposal cleaves the university and hospital neighborhoods in the city of Greeley from existing District 50, where white voters cross over to support Hispanic-preferred candidates, and replaces those neighborhoods with rural areas dominated by white voters who bloc vote against Hispanic-preferred candidates.

Not only does this violate the Colorado Constitution's prohibition on diluting the ability of minority voters' to influence electoral outcomes, but it also violates the Fourteenth and Fifteenth Amendments by the intentional elimination of an existing performing crossover district. *See Bartlett*, 556 U.S. at 24 (noting that "if there were a showing that a State intentionally drew district lines in order to destroy otherwise effective crossover districts, that would raise serious questions under both the Fourteenth and Fifteenth Amendments.").

As the PlanScore analysis demonstrates, by excluding white crossover voters in the city of Greeley and instead including precincts dominated by bloc-voting rural white voters, the Commission staff's proposed District 64 would dilute Hispanic voters' electoral influence. The Commission staff's data shows that the Democratic candidates for Attorney General (2018) and Senate (2020) would have lost District 64. PlanScore reports that District 64 would "Lean Republican," with a 70% chance that the Republican candidate

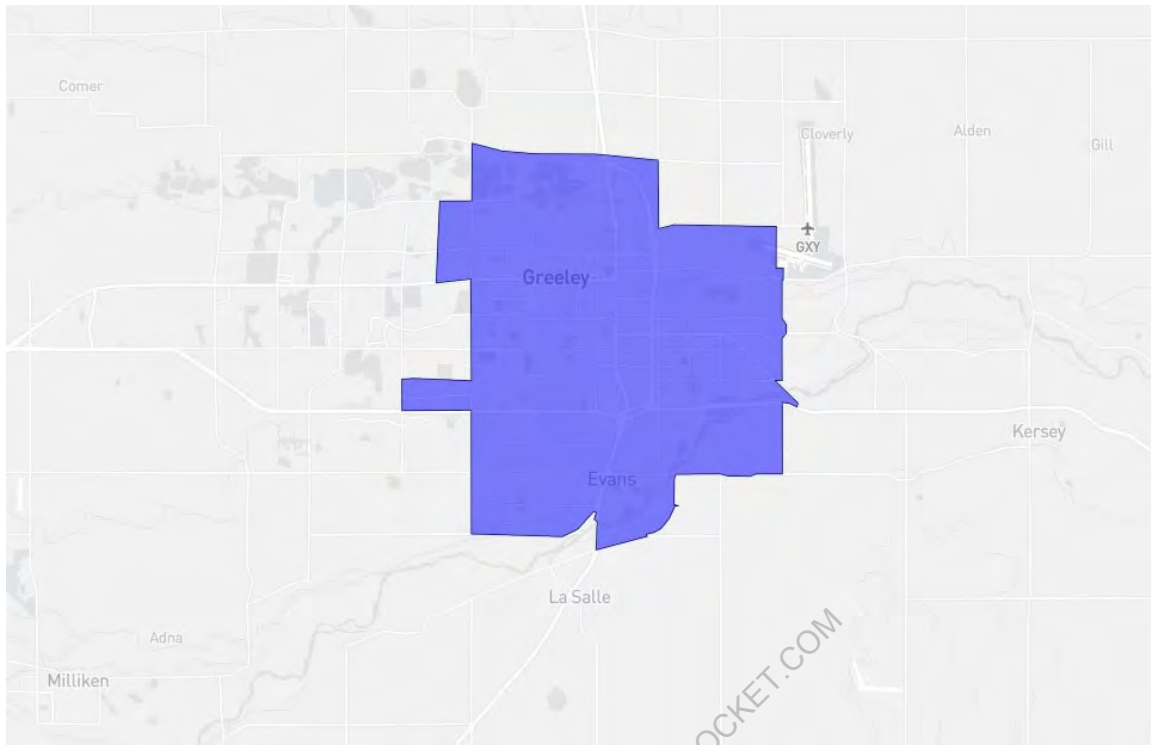
would prevail, at an estimated vote margin of 52% Republican to 48% Democratic.²⁹ Below is the PlanScore map of District 64.



By contrast, a performing crossover district can be drawn with a Hispanic total population of 49.5% and a Hispanic CVAP of 34.7%. Although the Commission staff reports a similar Hispanic total population in their proposed district 64 (48%), the staff proposal pairs them with bloc-voting rural white voters. *Cf. Perez v. Abbott*, 253 F. Supp. 3d 864, 884-55 (W.D. Tex. 2017) (invalidating plan that created the “façade of a Latino district” by including non-performing precincts with Hispanic voters and excluding performing precincts). Below is an example alternative district that would perform to elect Hispanic-preferred candidates.³⁰

²⁹ See Ex. 5 (Commission Staff’s Preliminary State House Plan PlanScore Report).

³⁰ The ideal population for state house districts is 88,826. LULAC’s proposed district has a total population of 87,505 (-1.49% deviation), well within the 10% permissible range for state legislative districts.



The Hispanic-preferred candidates would have prevailed in this district in all recent statewide elections. President Biden would have prevailed by 52% to 44.6%, Senator Hickenlooper would have prevailed by 51.3% to 45.6%, Attorney General Weiser would have prevailed by 50.1% to 45.2%, and Governor Polis would have prevailed by 50.2% to 43.7%.

Moreover, LULAC's proposed district is more compact than the Commission staff's proposed District 64. District 64 has a Reock score of .52 and a Polsby-Popper score of .2. LULAC's proposed district has a Reock score of .63 and a Polsby-Popper score of .46.

The Commission staff's proposed District 64 results in the dilution of Hispanic voters' electoral influence in violation of the Colorado Constitution, and potentially violates the Fourteenth and Fifteenth Amendments. The Commission should remedy this violation by adopting LULAC's proposed district.³¹

VII. The Commission Staff's Analysis of Denver-Area State Legislative Districts Is Flawed.

The Commission staff's memo accompanying its state house and state senate districts concludes that because white voters in the Denver area also prefer Democratic

³¹ Like the Commission staff's proposed state senate plan, the proposed state house plan also splits the Ute Mountain Reservation from the Southern Ute Reservation. The Commission should remedy this by adding the Ute Mountain Reservation to District 52.

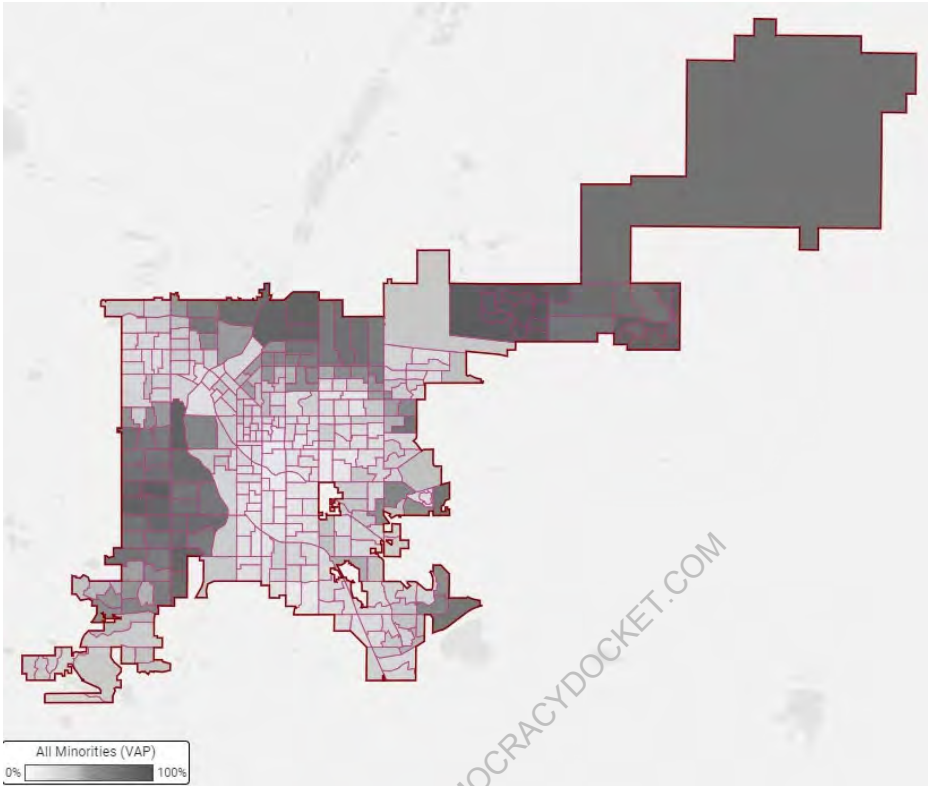
candidates, there are no legal obligations triggered to ensure minority voting rights. But this analysis is insufficient. The Colorado Constitution is broader in its protections than the Voting Rights Act, as explained above, and requires the drawing of districts with less than a majority of minority voters if necessary to prevent vote dilution. In particular, the Commission staff's analysis is inadequate because it fails to consider racially polarized voting within Democratic primaries.

At the June 23, 2021 Commission meeting, the presenting staff member responded to a question from the public about primary elections in Denver by suggesting that there were not probative primaries to suggest racially polarized voting. But several recent Democratic primary elections in Denver County featuring Hispanic and white candidates demonstrated significant racially polarized voting. As the maps below illustrate, the 2018 Democratic primary for Attorney General featured racially polarized voting in Denver County. The first map illustrates, via shading, the Denver County precincts with substantial minority populations. The second map shows the results of the 2018 Attorney General primary, with yellow shading for Salazar, the Hispanic-preferred Democratic candidate, and green for Weiser, the white-preferred Democratic candidate.³² The results—and the intensity of those results—in comparison to the demographic map illustrate clear racially polarized voting.

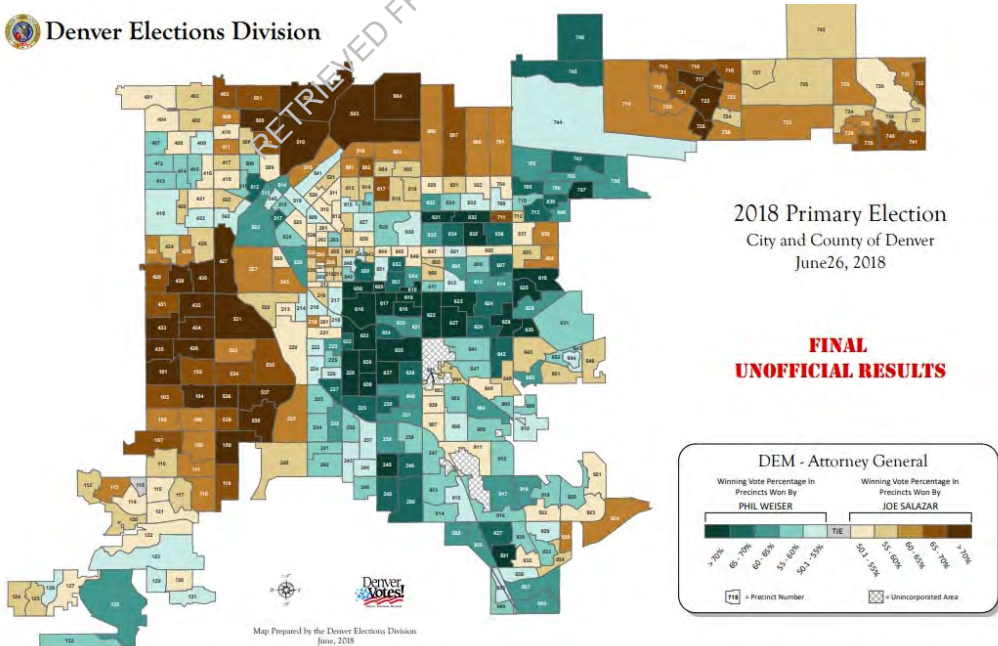
[IMAGES ON NEXT PAGE]

³² The demographic map was obtained from DRA. The election results map is available at https://www.denvergov.org/media/denverapps/electionresults/maps/20180626/F--6-28-2018-Final_Unofficial_Results/Final_Unofficial_Results_Dem_Attorney_General.pdf.

Denver County Demographic Map



Denver County 2018 Attorney General Democratic Primary Results Map



Moreover, the 2018 Democratic primary elections for state house District 5 and state senate District 32 also exhibited racially polarized voting.³³ The Commission staff's proposed state house and senate plans make a number of changes in the Denver metro area that reduce the number of districts with sizeable minority populations. In light of the racially polarized voting exhibited in Democratic primaries in the Denver area, the Commission should conduct a full analysis to ensure that minority voters' ability to influence election outcomes is not being diluted in the Commission staff's proposed state house and senate districts located in the Denver area. At the very least, this should involve a reconstituted election results analysis of the 2018 attorney general primary election under any proposed district lines to ensure that minority vote dilution would not occur.

* * *

Colorado law requires the Commission to draw plans that meet a standard of protection for minority voters higher than the bare minimum required by federal law. The Commission staff's preliminary proposals fail Colorado's standard. The Commission should adopt districts consistent with LULAC's proposals to ensure that the electoral influence of Colorado's Hispanic voters is not diluted.

August 17, 2021

Submitted by,

/s/ Mark P. Gaber

Mark P. Gaber
Director of Redistricting
Campaign Legal Center
1101 14th St. NW, Ste. 400
Washington, DC 20005
(202) 736-2200
mgaber@campaignlegal.org

³³ See House District 5 Results at https://www.denvergov.org/media/denverapps/electionresults/maps/20180626/F--6-28-2018-Final_Unofficial_Results/Final_Unofficial_Results_Dem_Colo_House_Dist_5.pdf; Senate District 32 Results at https://www.denvergov.org/media/denverapps/electionresults/maps/20180626/F--6-28-2018-Final_Unofficial_Results/Final_Unofficial_Results_Dem_Colo_Senate_Dist_32.pdf.

EXHIBIT 1

Staff Congressional: PlanScore Analysis


PlanScore

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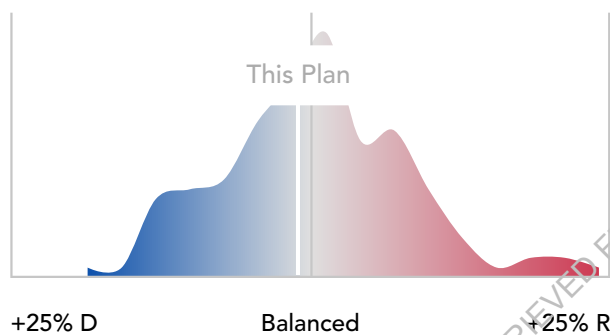
CO_Congressional_Districts_Prelim_Final_SHP (1).zip

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Colorado U.S. House plan

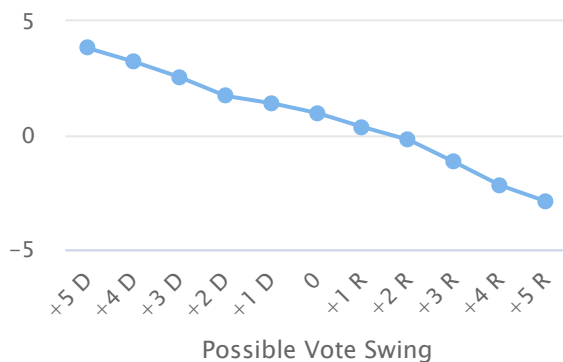
PlanScore bases its scores on predicted precinct-level votes for each office (State House, State Senate, and U.S. House) built from past election results and U.S. Census data. [More information about the predictive model used to score this plan.](#)

Efficiency Gap: 1.0%



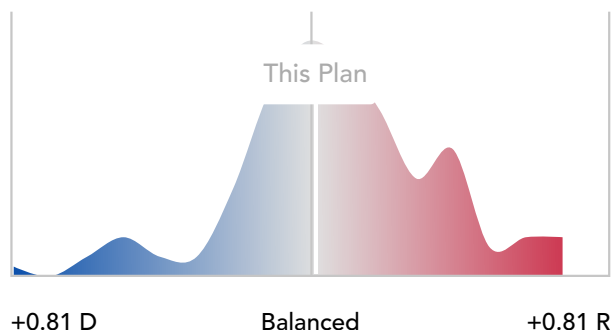
Votes for Democratic candidates are expected to be inefficient at a rate 1.0% lower than votes for Republican candidates. The expected gap favors Democrats in 60% of predicted scenarios. [Learn more](#) ➤

Sensitivity Testing



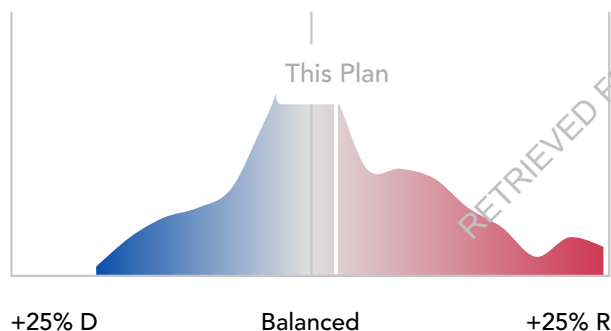
Sensitivity testing shows us a plan's expected efficiency gap given a range of possible vote swings. It lets us evaluate the durability of a plan's skew.

Declination: 0.01



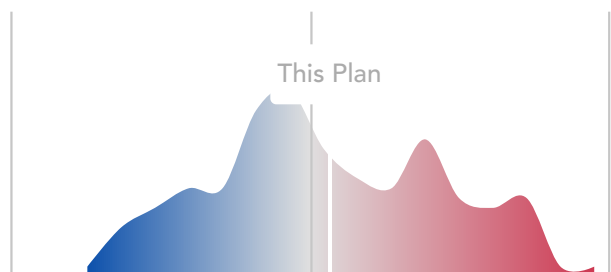
The Democrats' mean vote share in districts they won was 3.9% higher than the Republicans' mean vote share in districts they won. This, along with the relative fraction of seats won by each party, leads to a declination that favors Republicans in 53% of predicted scenarios. [Learn more](#) >

Partisan Bias: 2.2%



Republicans would be expected to win 2.2% extra seats in a hypothetical, perfectly tied election. The expected bias favors Republicans in 71% of predicted scenarios. [Learn more](#) >

Mean-Median Difference: 0.8%

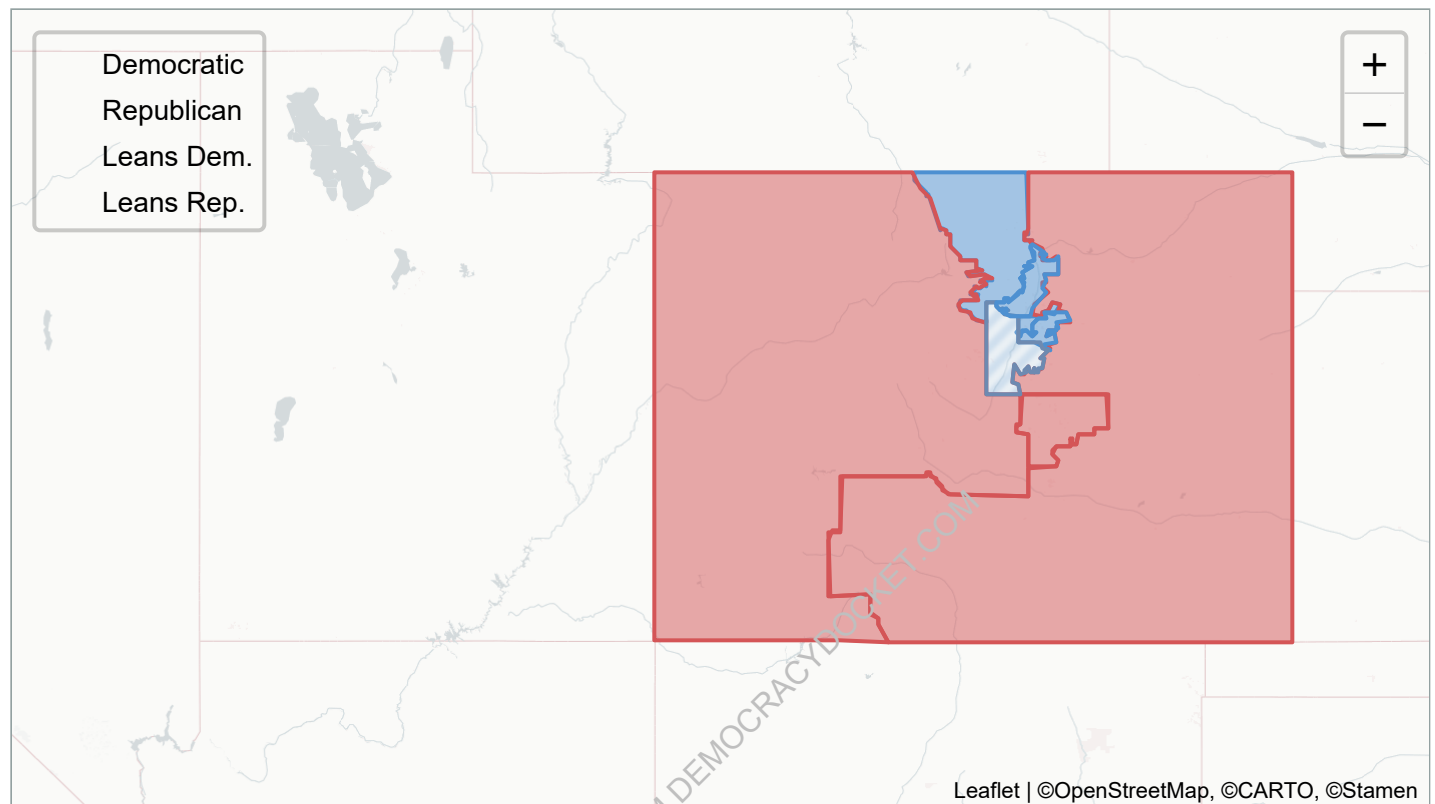


+12% D

Balanced

+12% R

The median Republican vote share is expected to be 0.8% higher than the mean Republican vote share. The expected difference favors Republicans in 64% of predicted scenarios. [Learn more](#) ➤



District	Candidate Scenario	Pop. 2020	Black Pop. 2019	Hispanic Pop. 2019	Chance of Democratic Win	Predicted Vote Shares	Biden (D) 2020	Trump (R) 2020
1	Open Seat	705,622	75,386	206,806	>99%	78% D / 22% R	310,464	68,906
2	Open Seat	730,270	11,661	90,646	>99%	63% D / 37% R	295,472	146,960
3	Open Seat	716,414	11,136	110,219	13%	45% D / 55% R	194,697	223,082
4	Open Seat	719,563	18,931	224,994	<1%	38% D / 62% R	147,449	224,736
5	Open Seat	728,356	60,704	119,132	6%	43% D / 57% R	161,615	201,688
6	Open Seat	719,514	89,288	146,023	99%	60% D / 40% R	227,772	134,859
7	Open Seat	724,141	13,872	92,120	73%	53% D / 47% R	248,542	204,711
8	Open Seat	729,822	19,078	218,222	87%	55% D / 45% R	218,336	159,663

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EXHIBIT 2

LULAC Congressional: PlanScore Analysis



PlanScore

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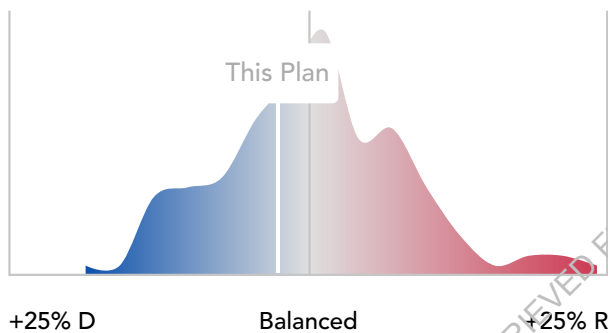
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Colorado U.S. House plan

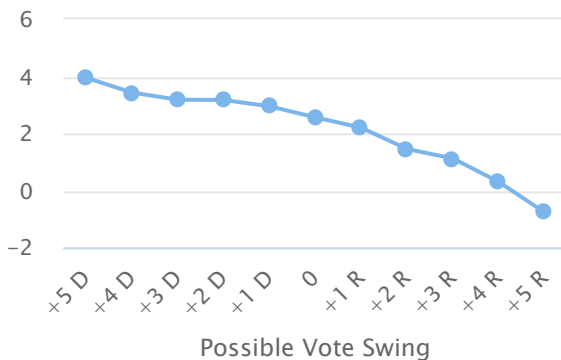
PlanScore bases its scores on predicted precinct-level votes for each office (State House, State Senate, and U.S. House) built from past election results and U.S. Census data. [More information about the predictive model used to score this plan.](#)

Efficiency Gap: 2.6%



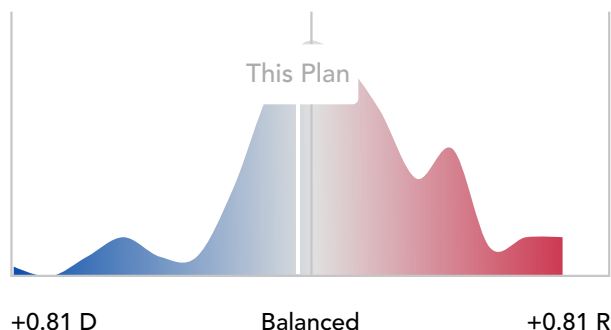
Votes for Democratic candidates are expected to be inefficient at a rate 2.6% lower than votes for Republican candidates. The expected gap favors Democrats in 66% of predicted scenarios. [Learn more](#) ➤

Sensitivity Testing



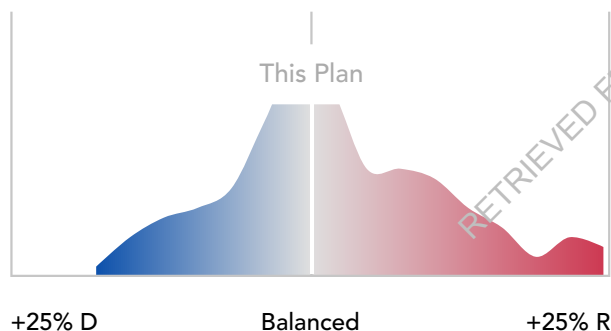
Sensitivity testing shows us a plan's expected efficiency gap given a range of possible vote swings. It lets us evaluate the durability of a plan's skew.

Declination: 0.03



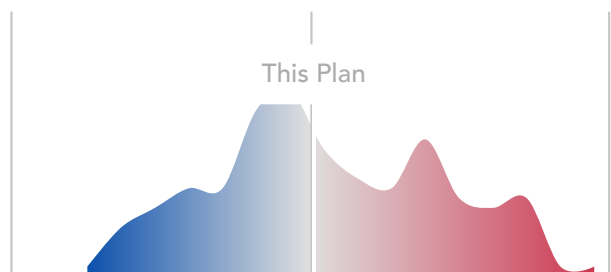
The Republicans' mean vote share in districts they won was 4.1% higher than the Democrats' mean vote share in districts they won. This, along with the relative fraction of seats won by each party, leads to a declination that favors Republicans in 57% of predicted scenarios. [Learn more](#) >

Partisan Bias: 0.1%



Republicans would be expected to win 0.1% extra seats in a hypothetical, perfectly tied election. The expected bias favors Republicans in 68% of predicted scenarios. [Learn more](#) >

Mean-Median Difference: 0.1%

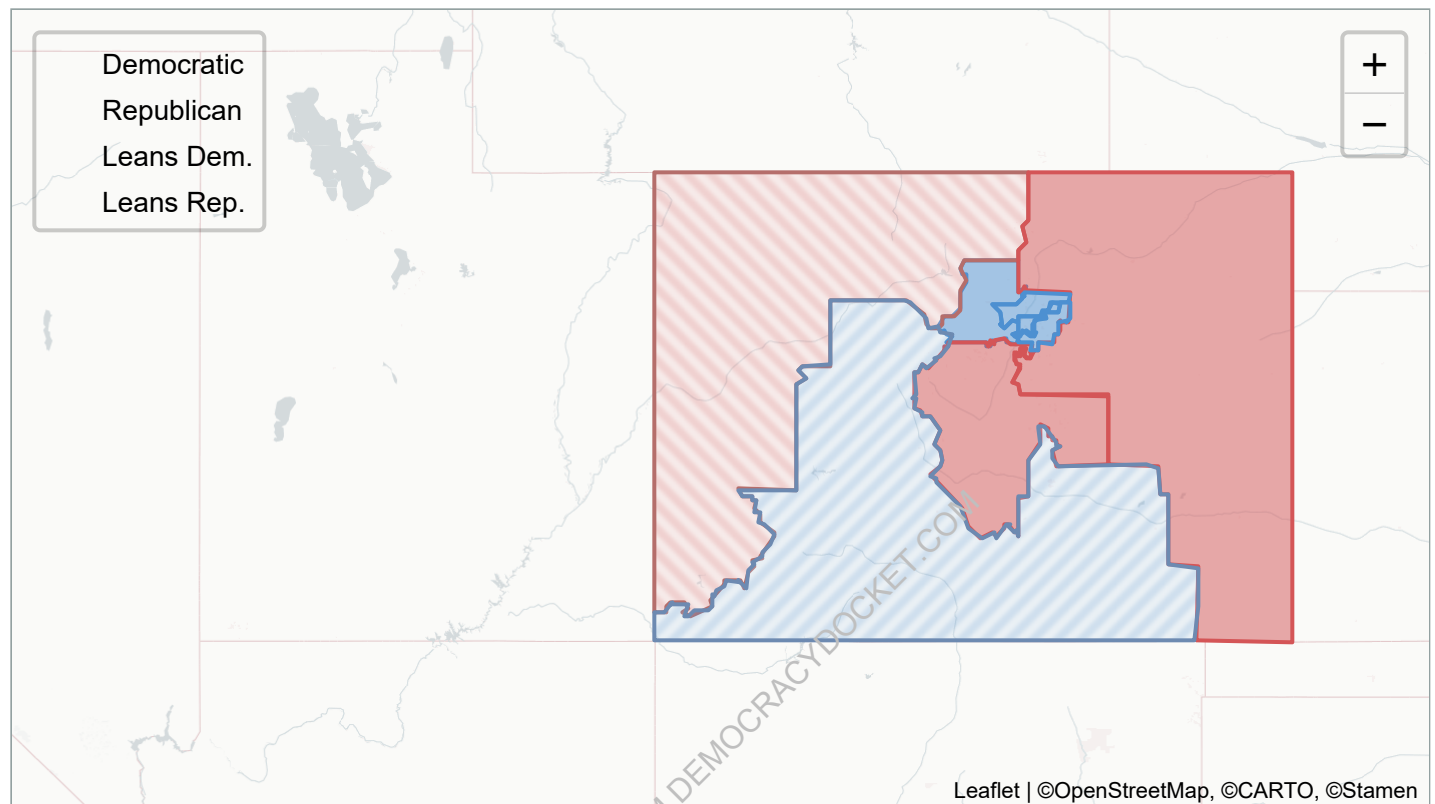


+12% D

Balanced

+12% R

The median Republican vote share is expected to be 0.1% higher than the mean Republican vote share. The expected difference favors Republicans in 53% of predicted scenarios. [Learn more](#) >



District	Candidate Scenario	Pop. 2020	Black Pop. 2019	Hispanic Pop. 2019	Chance of Democratic Win	Predicted Vote Shares	Biden (D) 2020	Trump (R) 2020
1	Open Seat	721,715	75,976	211,810	>99%	77% D / 23% R	316,098	72,298
2	Open Seat	721,736	12,964	104,828	>99%	65% D / 35% R	304,872	140,902
3	Open Seat	721,708	10,792	100,279	25%	47% D / 53% R	205,603	214,373
4	Open Seat	721,715	13,639	141,456	<1%	37% D / 63% R	149,016	246,081
5	Open Seat	721,708	34,147	79,905	3%	41% D / 59% R	179,699	243,706
6	Open Seat	721,715	90,686	146,992	99%	60% D / 40% R	229,908	135,896
7	Open Seat	721,691	19,664	214,435	94%	57% D / 43% R	221,394	151,185
8	Open Seat	721,714	42,188	208,459	74%	53% D / 47% R	197,758	160,162

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EXHIBIT 3

Staff State Senate: PlanScore Analysis



PlanScore

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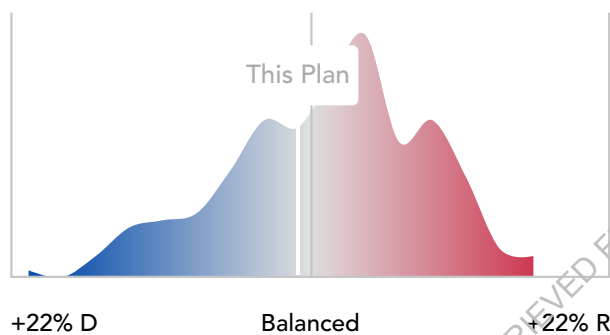
CO_Senate_Districts_Prelim_Final (3).zip

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Colorado State Senate plan

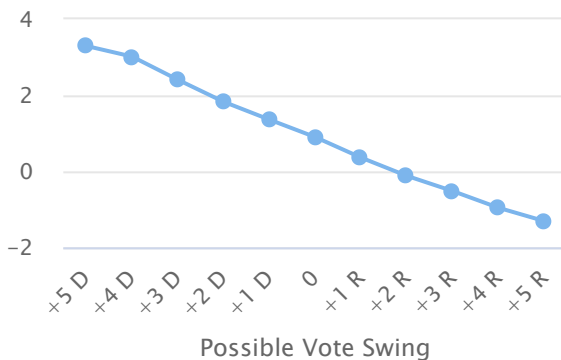
PlanScore bases its scores on predicted precinct-level votes for each office (State House, State Senate, and U.S. House) built from past election results and U.S. Census data. [More information about the predictive model used to score this plan.](#)

Efficiency Gap: 0.9%



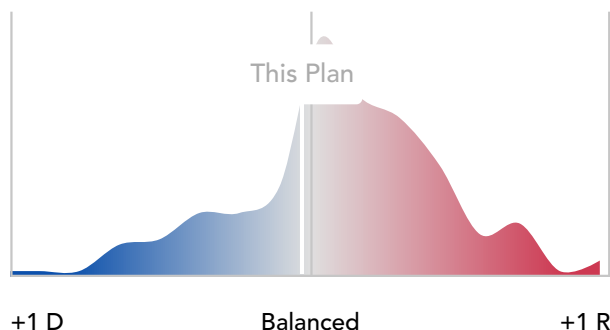
Votes for Democratic candidates are expected to be inefficient at a rate 0.9% lower than votes for Republican candidates. The expected gap favors Democrats in 59% of predicted scenarios. [Learn more](#) ➤

Sensitivity Testing



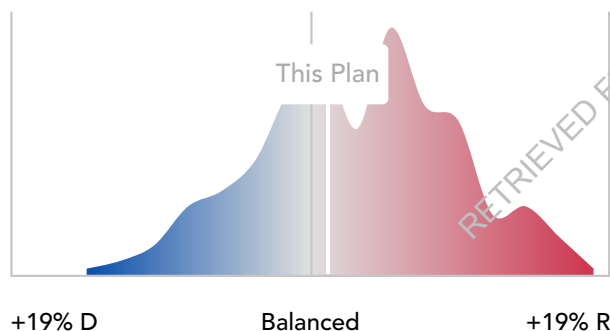
Sensitivity testing shows us a plan's expected efficiency gap given a range of possible vote swings. It lets us evaluate the durability of a plan's skew.

Declination: 0.03



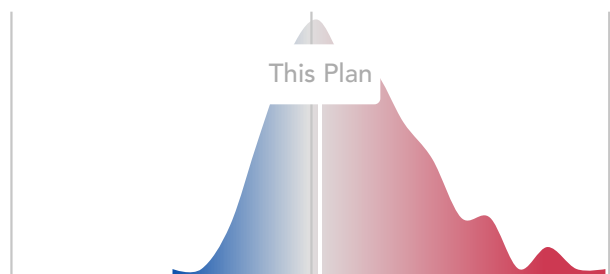
The Republicans' mean vote share in districts they won was 6.1% higher than the Democrats' mean vote share in districts they won. This, along with the relative fraction of seats won by each party, leads to a declination that favors Republicans in 56% of predicted scenarios. [Learn more](#) >

Partisan Bias: 1.1%



Republicans would be expected to win 1.1% extra seats in a hypothetical, perfectly tied election. The expected bias favors Republicans in 62% of predicted scenarios. [Learn more](#) >

Mean-Median Difference: 0.4%

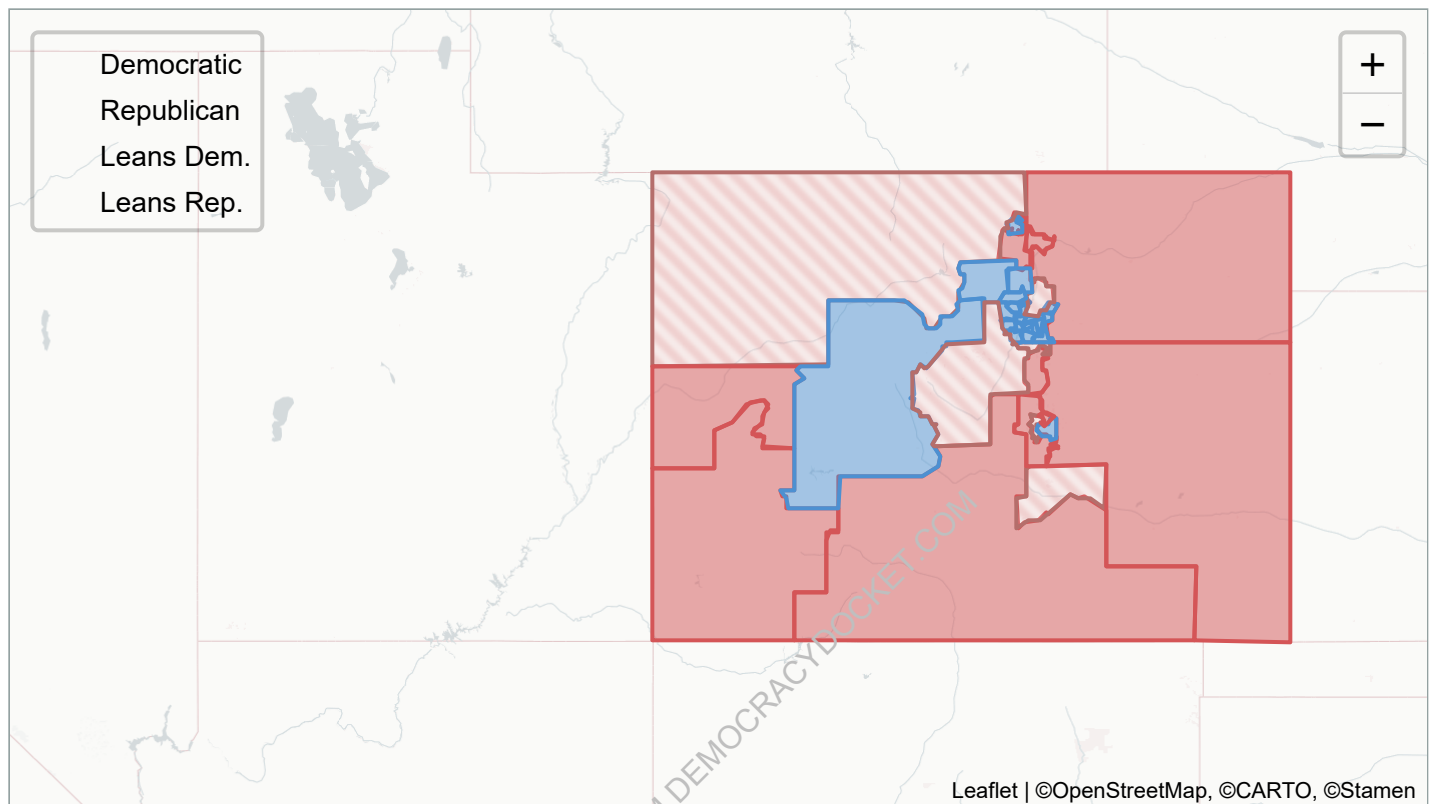


+13% D

Balanced

+13% R

The median Republican vote share is expected to be 0.4% higher than the mean Republican vote share. The expected difference favors Republicans in 62% of predicted scenarios. [Learn more](#) ➤



District	Candidate Scenario	Pop. 2020	Black Pop. 2019	Hispanic Pop. 2019	Chance of Democratic Win	Predicted Vote Shares	Biden (D) 2020	Trump (R) 2020
1	Open Seat	165,749	5,296	38,864	<1%	27% D / 73% R	24,729	65,138
2	Open Seat	163,525	3,936	54,695	7%	43% D / 57% R	32,422	39,806
3	Open Seat	168,916	1,481	19,779	11%	44% D / 56% R	48,166	56,210
4	Open Seat	168,361	4,395	19,185	>99%	67% D / 33% R	66,498	28,222
5	Open Seat	165,456	2,097	25,947	28%	47% D / 53% R	47,644	49,183
6	Open Seat	164,496	1,999	22,572	<1%	35% D / 65% R	34,156	60,523
7	Open Seat	163,334	1,581	24,216	9%	44% D / 56% R	44,564	54,119
8	Open Seat	167,270	4,299	42,527	<1%	37% D / 63% R	36,374	58,807
9	Open Seat	160,087	5,414	69,422	50%	50% D / 50% R	42,194	38,692

District	Candidate Scenario	Pop. 2020	Black Pop. 2019	Hispanic Pop. 2019	Chance of Democratic Win	Predicted Vote Shares	Biden (D) 2020	Trump (R) 2020
10	Open Seat	161,064	5,414	29,161	<1%	26% D / 74% R	25,033	69,432
11	Open Seat	172,834	13,926	24,468	1%	39% D / 61% R	33,881	49,557
12	Open Seat	159,188	8,908	21,285	28%	47% D / 53% R	42,212	43,147
13	Open Seat	171,161	23,977	46,494	77%	53% D / 47% R	39,632	31,705
14	Open Seat	161,359	10,668	20,129	3%	41% D / 59% R	35,354	48,199
15	Open Seat	165,576	2,763	13,027	3%	41% D / 59% R	43,435	59,113
16	Open Seat	167,169	3,920	13,576	46%	49% D / 51% R	53,365	50,538
17	Open Seat	169,928	17,649	21,523	87%	55% D / 45% R	53,612	39,017
18	Open Seat	162,247	5,637	13,893	>99%	61% D / 39% R	66,322	37,170
19	Open Seat	160,049	3,533	27,598	87%	55% D / 45% R	55,421	40,526
20	Open Seat	161,767	3,693	36,266	>99%	62% D / 38% R	62,744	33,667
21	Open Seat	158,488	7,970	88,049	>99%	76% D / 24% R	58,539	14,708
22	Open Seat	168,094	15,429	20,710	>99%	76% D / 24% R	81,652	20,302
23	Open Seat	167,337	35,085	46,612	>99%	68% D / 32% R	50,822	19,872
24	Open Seat	163,964	33,500	54,337	>99%	66% D / 34% R	43,393	19,398
25	Open Seat	171,350	37,226	56,299	>99%	82% D / 18% R	70,535	10,907
26	Open Seat	148,216	8,585	34,118	>99%	81% D / 19% R	75,836	13,304
27	Open Seat	170,622	3,120	29,330	97%	59% D / 41% R	60,706	38,946
28	Open Seat	171,968	5,162	41,235	97%	58% D / 42% R	57,470	37,001
29	Open Seat	166,167	5,062	77,411	98%	59% D / 41% R	43,071	26,409
30	Open Seat	167,232	5,335	64,616	40%	49% D / 51% R	38,321	37,075
31	Open Seat	165,073	3,119	20,355	>99%	65% D / 35% R	68,977	31,566
32	Open Seat	167,806	2,178	33,005	96%	58% D / 42% R	58,097	37,182
33	Open Seat	167,806	2,637	14,938	>99%	80% D / 20% R	87,449	16,362

District	Candidate Scenario	Pop. 2020	Black Pop. 2019	Hispanic Pop. 2019	Chance of Democratic Win	Predicted Vote Shares	Biden (D) 2020	Trump (R) 2020
34	Open Seat	163,179	2,625	29,588	>99%	62% D / 38% R	62,630	34,035
35	Open Seat	156,864	2,440	12,933	49%	50% D / 50% R	59,092	54,766

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EXHIBIT 4

LULAC State Senate: PlanScore Analysis



district-shapes (21).geojson

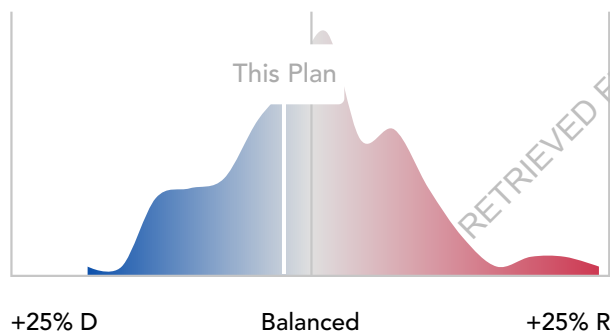
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Colorado U.S. House plan

This plan has 2 seats. Fairness metrics for plans with fewer than seven seats should be interpreted with great caution.

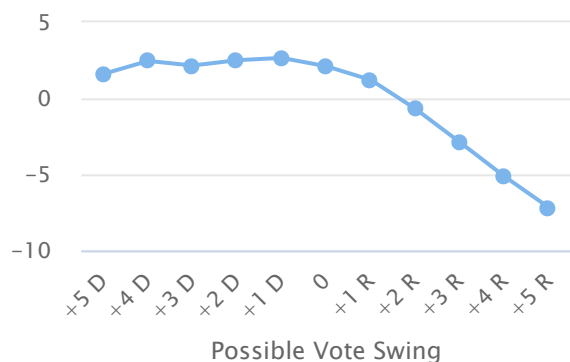
PlanScore bases its scores on predicted precinct-level votes for each office (State House, State Senate, and U.S. House) built from past election results and U.S. Census data. [More information about the predictive model used to score this plan.](#)

Efficiency Gap: 2.1%



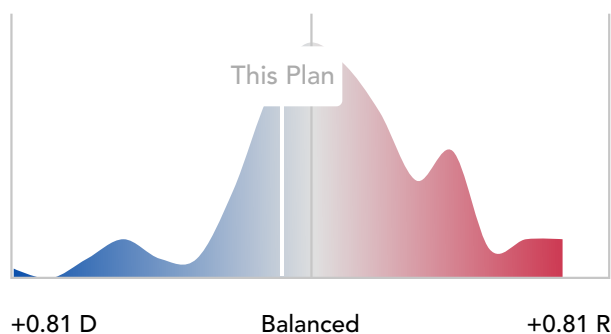
Votes for Democratic candidates are expected to be inefficient at a rate 2.1% lower than votes for Republican candidates. The expected gap favors Democrats in 76% of predicted scenarios. [Learn more](#) ➤

Sensitivity Testing



Sensitivity testing shows us a plan's expected efficiency gap given a range of possible vote swings. It lets us evaluate the durability of a plan's skew.

Declination: 0.07



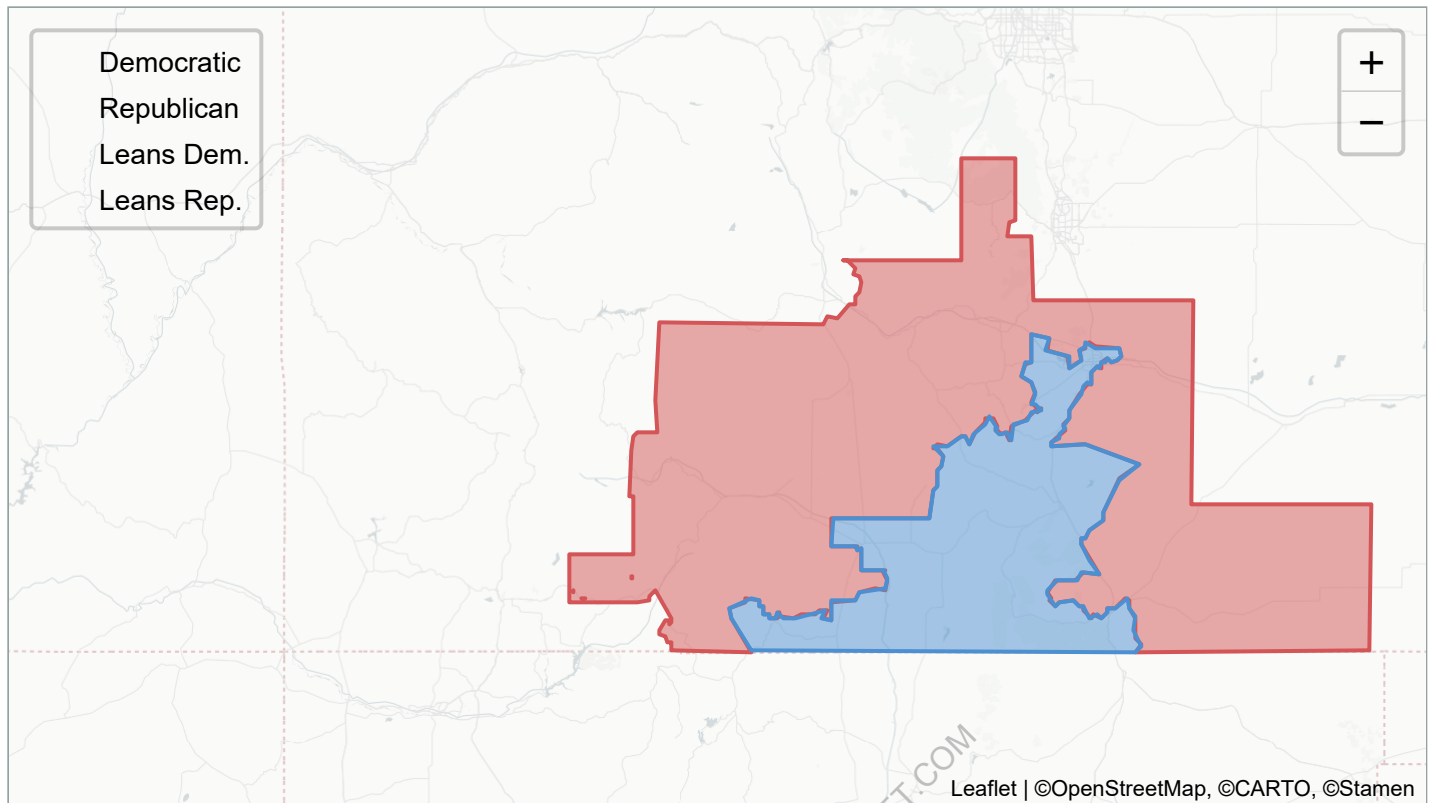
The Republicans' mean vote share in districts they won was 11.9% higher than the Democrats' mean vote share in districts they won. This, along with the relative fraction of seats won by each party, leads to a declination that favors Republicans in 76% of predicted scenarios. [Learn more](#) >

Partisan Bias

The parties' statewide vote shares are 44.0% (Democratic) and 56.0% (Republican) based on the model. Partisan bias is shown only where the parties' statewide vote shares fall between 45% and 55%. Outside this range the metric's assumptions are not plausible.

Mean-Median Difference

The parties' statewide vote shares are 44.0% (Democratic) and 56.0% (Republican) based on the model. The mean-median difference is shown only where the parties' statewide vote shares fall between 45% and 55%. Outside this range the metric's assumptions are not plausible.



District	Candidate Scenario	Pop. 2020	Black Pop. 2019	Hispanic Pop. 2019	Chance of Democratic Win	Predicted Vote Shares	Biden (D) 2020	Trump (R) 2020
1	Open Seat	162,868	4,926	36,402	<1%	34% D / 66% R	32,689	61,459
2	Open Seat	161,813	4,780	75,093	80%	54% D / 46% R	44,572	34,174

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EXHIBIT 5

Staff State House: PlanScore Analysis



PlanScore

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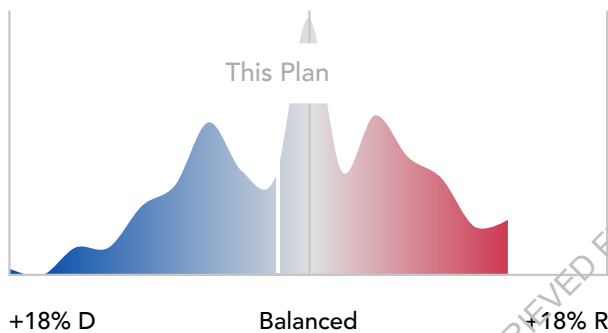
CO_House_Districts_Prelim_Final (3).zip

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Colorado State House plan

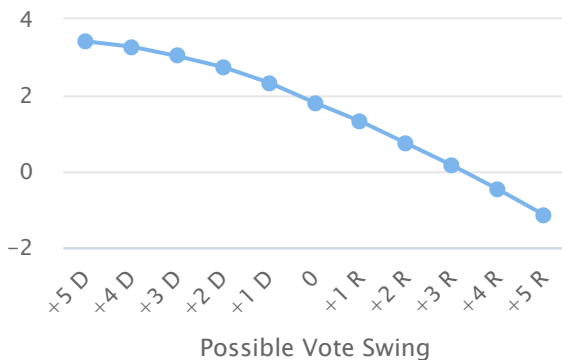
PlanScore bases its scores on predicted precinct-level votes for each office (State House, State Senate, and U.S. House) built from past election results and U.S. Census data. [More information about the predictive model used to score this plan.](#)

Efficiency Gap: 1.8%



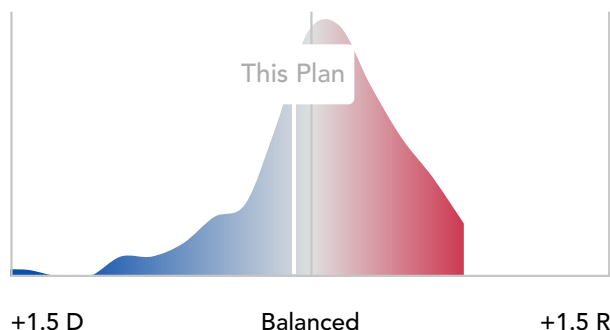
Votes for Democratic candidates are expected to be inefficient at a rate 1.8% lower than votes for Republican candidates. The expected gap favors Democrats in 71% of predicted scenarios. [Learn more](#) ➤

Sensitivity Testing



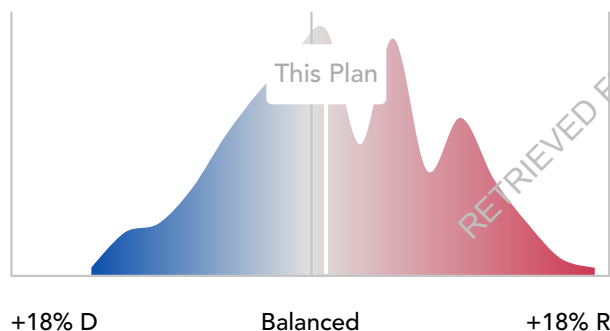
Sensitivity testing shows us a plan's expected efficiency gap given a range of possible vote swings. It lets us evaluate the durability of a plan's skew.

Declination: 0.08



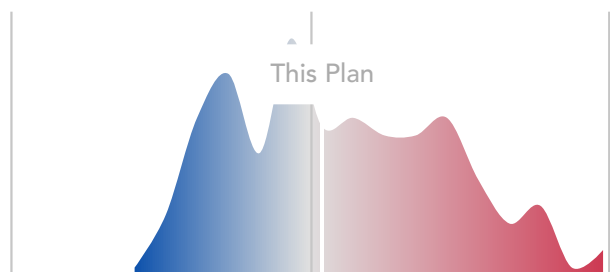
The Republicans' mean vote share in districts they won was 4.1% higher than the Democrats' mean vote share in districts they won. This, along with the relative fraction of seats won by each party, leads to a declination that favors Republicans in 73% of predicted scenarios. [Learn more](#) >

Partisan Bias: 1.0%



Republicans would be expected to win 1.0% extra seats in a hypothetical, perfectly tied election. The expected bias favors Republicans in 63% of predicted scenarios. [Learn more](#) >

Mean-Median Difference: 0.4%

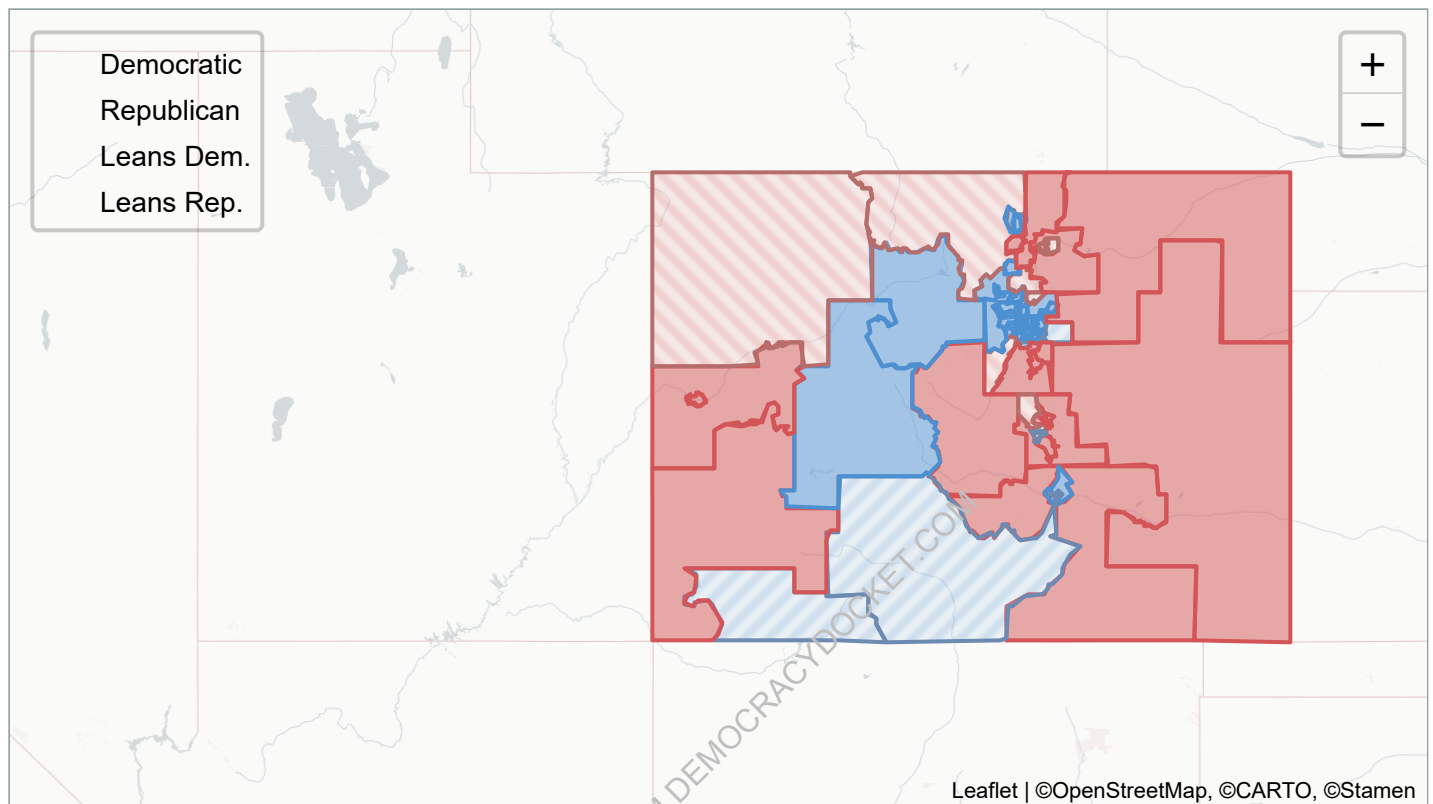


+9% D

Balanced

+9% R

The median Republican vote share is expected to be 0.4% higher than the mean Republican vote share. The expected difference favors Republicans in 63% of predicted scenarios. [Learn more](#) ➤



District	Candidate Scenario	Pop. 2020	Black Pop. 2019	Hispanic Pop. 2019	Chance of Democratic Win	Predicted Vote Shares	Biden (D) 2020	Trump (R) 2020
1	Open Seat	89,806	4,008	52,478	>99%	67% D / 33% R	28,058	12,076
2	Open Seat	85,192	4,248	34,731	>99%	82% D / 18% R	39,158	6,131
3	Open Seat	75,295	3,200	23,452	>99%	80% D / 20% R	40,872	7,756
4	Open Seat	81,762	10,309	20,117	>99%	82% D / 18% R	38,572	5,945
5	Open Seat	93,757	7,020	10,586	>99%	76% D / 24% R	47,760	11,616
6	Open Seat	90,122	14,073	11,301	>99%	82% D / 18% R	46,454	7,377
7	Open Seat	94,584	22,281	42,520	>99%	78% D / 22% R	29,325	6,342
8	Open Seat	91,002	7,072	11,355	>99%	72% D / 28% R	39,409	12,884
9	Open Seat	85,826	2,522	15,557	99%	61% D / 39% R	31,296	17,791

District	Candidate Scenario	Pop. 2020	Black Pop. 2019	Hispanic Pop. 2019	Chance of Democratic Win	Predicted Vote Shares	Biden (D) 2020	Trump (R) 2020
10	Open Seat	86,174	1,652	13,084	90%	56% D / 44% R	32,169	23,116
11	Open Seat	87,484	2,279	25,597	>99%	63% D / 37% R	30,613	15,261
12	Open Seat	90,999	2,076	14,274	>99%	64% D / 36% R	38,247	18,362
13	Open Seat	88,753	1,718	12,507	91%	56% D / 44% R	32,765	23,414
14	Open Seat	89,904	2,224	52,023	>99%	64% D / 36% R	22,290	10,873
15	Open Seat	90,002	4,330	38,205	83%	54% D / 46% R	20,203	15,309
16	Open Seat	86,340	17,645	40,299	>99%	72% D / 28% R	19,930	6,352
17	Open Seat	89,316	22,803	30,433	>99%	67% D / 33% R	23,099	9,823
18	Open Seat	89,609	20,596	18,383	>99%	69% D / 31% R	30,053	11,127
19	Open Seat	90,808	12,837	18,187	98%	60% D / 40% R	28,733	16,998
20	Open Seat	88,756	4,423	7,804	95%	57% D / 43% R	33,090	22,030
21	Open Seat	85,434	2,543	8,399	91%	56% D / 44% R	31,996	22,301
22	Open Seat	88,599	1,634	7,327	60%	51% D / 49% R	29,821	26,419
23	Open Seat	87,872	1,291	8,163	40%	49% D / 51% R	29,585	28,550
24	Open Seat	87,901	935	5,572	>99%	64% D / 36% R	41,286	19,954
25	Open Seat	94,301	1,329	11,742	88%	55% D / 45% R	34,270	24,567
26	Open Seat	93,683	3,075	35,804	99%	62% D / 38% R	28,273	15,565
27	Open Seat	89,826	1,959	11,742	99%	61% D / 39% R	34,304	19,924
28	Open Seat	87,854	3,715	24,495	83%	55% D / 45% R	25,383	19,286
29	Open Seat	87,524	2,273	24,400	26%	47% D / 53% R	22,280	23,273
30	Open Seat	91,712	9,043	10,706	71%	52% D / 48% R	27,750	22,928
31	Open Seat	86,990	1,868	7,385	5%	43% D / 57% R	23,782	29,978
32	Open Seat	91,096	995	6,439	2%	40% D / 60% R	22,763	31,790
33	Open Seat	91,293	2,546	8,060	11%	44% D / 56% R	28,287	33,083

District	Candidate Scenario	Pop. 2020	Black Pop. 2019	Hispanic Pop. 2019	Chance of Democratic Win	Predicted Vote Shares	Biden (D) 2020	Trump (R) 2020
34	Open Seat	86,193	2,045	7,761	<1%	32% D / 68% R	17,170	34,713
35	Open Seat	89,820	1,900	14,764	99%	60% D / 40% R	31,712	18,719
36	Open Seat	85,927	1,088	8,577	>99%	77% D / 23% R	47,583	11,074
37	Open Seat	90,186	1,742	8,263	>99%	85% D / 15% R	43,048	4,937
38	Open Seat	88,559	923	16,435	48%	50% D / 50% R	26,590	24,468
39	Open Seat	85,419	1,694	20,621	<1%	37% D / 63% R	17,898	28,898
40	Open Seat	85,748	1,868	16,999	<1%	24% D / 76% R	12,363	39,771
41	Open Seat	83,302	2,616	23,812	<1%	35% D / 65% R	16,091	28,268
42	Open Seat	88,578	5,549	9,546	<1%	32% D / 68% R	17,783	37,356
43	Open Seat	89,827	11,344	19,235	6%	43% D / 57% R	13,651	17,221
44	Open Seat	91,867	9,852	20,751	70%	52% D / 48% R	21,528	17,967
45	Open Seat	90,694	12,779	24,358	70%	53% D / 47% R	21,014	17,218
46	Open Seat	92,057	7,391	14,034	3%	41% D / 59% R	17,973	24,422
47	Open Seat	88,013	4,064	8,027	1%	39% D / 61% R	20,382	29,989
48	Open Seat	91,905	6,399	14,108	6%	44% D / 56% R	23,007	27,961
49	Open Seat	89,162	3,357	8,833	30%	47% D / 53% R	25,634	26,325
50	Open Seat	92,641	3,349	41,198	81%	54% D / 46% R	26,079	20,399
51	Open Seat	84,398	2,140	43,183	65%	52% D / 48% R	21,766	18,613
52	Open Seat	88,507	890	12,136	61%	51% D / 49% R	27,724	24,214
53	Open Seat	88,970	932	14,674	<1%	36% D / 64% R	21,046	35,587
54	Open Seat	89,076	1,058	16,173	98%	61% D / 39% R	35,628	20,199
55	Open Seat	89,505	713	11,977	<1%	31% D / 69% R	15,985	34,357
56	Open Seat	92,186	1,502	14,122	<1%	39% D / 61% R	19,685	29,534
57	Open Seat	88,350	1,093	17,544	35%	48% D / 52% R	25,791	25,510

District	Candidate Scenario	Pop. 2020	Black Pop. 2019	Hispanic Pop. 2019	Chance of Democratic Win	Predicted Vote Shares	Biden (D) 2020	Trump (R) 2020
58	Open Seat	87,610	889	6,177	40%	49% D / 51% R	31,003	29,939
59	Open Seat	94,297	2,687	12,188	>99%	67% D / 33% R	35,240	14,540
60	Open Seat	86,074	1,925	11,073	>99%	66% D / 34% R	35,837	16,344
61	Open Seat	86,882	808	10,295	19%	46% D / 54% R	25,980	28,423
62	Open Seat	91,582	1,520	23,358	>99%	65% D / 35% R	34,765	16,540
63	Open Seat	91,197	589	11,052	<1%	33% D / 67% R	16,993	33,408
64	Open Seat	88,053	2,583	43,307	30%	48% D / 52% R	14,766	14,965
65	Open Seat	87,541	2,247	20,459	<1%	24% D / 76% R	10,758	34,524

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PlanScore is a project of Campaign Legal Center.



SUPREME COURT, STATE OF COLORADO
2 East 14th Avenue, 4th Floor
Denver, Colorado 80203

DATE FILED: October 07, 2021 8:50 PM

Original Proceeding Pursuant to Article V,
Section 44.5 of the Colorado Constitution

**In re Colorado Independent Congressional
Redistricting Commission**

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**Motion for admission pro hac vice pending*

▲ COURT USE ONLY ▲

Case No.: 2021SA208

APPENDIX B

LULAC Second Comment (September 10, 2021)



Comments of League of United Latin American Citizens (“LULAC”) and Colorado League of United Latin American Citizens (“Colorado LULAC”) Regarding First Staff Congressional Plan Released September 3, 2021

On behalf of the League of United Latin American Citizens and the Colorado League of United Latin American Citizens (collectively “LULAC”), Campaign Legal Center (“CLC”) submits the following comments regarding the First Staff Congressional Plan released on September 3, 2021. These comments supplement those LULAC submitted on August 17, 2021, in response to the Staff’s preliminary redistricting plans.

I. Introduction and Summary

Latinos constitute over 15.6% of Colorado’s citizen voting age population (“CVAP”)—over one eighth of its total CVAP—yet because of their distribution throughout the State, they do not constitute a majority of a single of the State’s eight proposed congressional district, and no current member of Colorado’s congressional delegation (nor any member for the past decade) is Latino. Because the U.S. Supreme Court has interpreted the federal Voting Rights Act (“VRA”) to require a threshold showing that a majority-minority district can be drawn, Latinos in Colorado currently have no *federal* statutory protection against vote dilution absent a showing of intentional discrimination.

Colorado’s voters responded to the U.S. Supreme Court’s narrow interpretation of the VRA by adopting Amendments X and Y in 2018, which provide broader protections than federal law for Colorado’s large, but geographically dispersed, Latino population. Under § 44.3(4)(b) of the Colorado Constitution, the Commission is prohibited from adopting a plan that dilutes Latino voters’ electoral *influence*. This language is a stark and intentional departure from the VRA’s text, and a direct rejection of the numerical majority standard adopted by the U.S. Supreme Court in *Bartlett v. Strickland*, 556 U.S. 1 (2009). And this departure was at the *Bartlett* Court’s invitation. Although the Court held that *federal* law did not require the adoption of crossover districts—districts in which sizeable minority populations coalesce with white crossover voters to elect minority-preferred candidates—it explained that states could choose to adopt crossover districts to remedy vote dilution. As LULAC explained in detail in its prior comments, this is precisely what Colorado voters did.

Yet the staff’s September 3, 2021 memo disregards the plain text of § 44.3(4)(b) and LULAC’s detailed legal analysis, and instead notes that “[t]o the extent that section

44.4(4)(b) [*sic*] is a restatement of the federal Voting Rights Act, nonpartisan staff does not believe that there is an area in Colorado with sufficient citizen voting age population to form a majority-minority congressional district.” If § 44.3(4)(b) were a *restatement* of the VRA, it would use the same words as the VRA. It does not. *Compare* 52 U.S.C. § 10301 with Colo. Const. art. V, § 44.3(4)(b). It was adopted precisely *because* Colorado’s Latino voters cannot form a majority of a district, despite constituting over 15% of the state’s CVAP, as a way to nevertheless protect against minority vote dilution.

The memo accompanying the First Staff Congressional Plan asserts that the staff “does not believe that the electoral influence of any . . . community [of interest] was diluted in this plan.” But § 44.3(4)(b) is separate from the “community of interest” provision in the State Constitution; it expressly prohibits diluting ability of *minority voters* to influence electoral outcomes. Moreover, the “belief” of the staff is insufficient. Whether a proposal complies with § 44.3(4)(b) is a question to be answered by demographic and electoral data—data that LULAC provided the Commission well in advance of the release of the First Staff Congressional Plan, and that plainly reveal that the staff’s plan dilutes the ability of Latino voters to influence electoral outcomes.

As LULAC explained, with detailed demographic and electoral data, the staff’s preliminary congressional plan diluted the electoral influence of Latino voters by cracking them among Districts 3, 4, and 5, preventing them from coalescing with white crossover voters to elect their preferred candidates. The staff’s preliminary plan included two districts with sizeable Latino populations in which the data showed that candidates opposed by Latino voters would not win the general election (Districts 1 and 8), and one district in which the data showed that white voters would successfully bloc vote to elect the general election candidate opposed by Latino voters (District 4). LULAC proposed a congressional plan, consistent with all the Colorado Constitution’s criteria, in which Latino voters would not only succeed in overcoming white bloc voting to prevent general election candidates they oppose from prevailing, but that also included a district (LULAC District 8) in which Latino voters could reliably elect their preferred candidate in both the primary *and* general election.

Far from correcting these defects in the preliminary staff plan that LULAC identified, the First Staff Congressional Plan *worsens* the dilution of Latino voters’ electoral influence. The new plan again contains three districts with sizeable Latino populations: Districts 1, 3, and 8. But the electoral data reveal that Latino voters could reliably overcome white bloc voting in the general election in just *one* of those districts. This violates the Colorado Constitution.

I. District 3 in the First Staff Congress Plan Dilutes the Ability of Latino Voters to Influence Electoral Outcomes.

District 3 dilutes the ability of Latino voters to influence electoral outcomes. District 3 has a Latino total population of 25.8%, and a Latino CVAP of 20.9%.¹ As LULAC previously explained, with a thorough analysis of election results in racially homogenous precincts, voting in the affected area of the State is racially polarized: Latino voters strongly support Democratic candidates while white voters throughout rural Colorado strongly support Republican candidates. As a result, it dilutes the electoral influence of Latino voters to combine them with rural white voters who oppose Latino-preferred candidates if an alternative district can be drawn that includes a sufficient number of white crossover voters to permit Latino voters to reliably elect their candidates of choice.

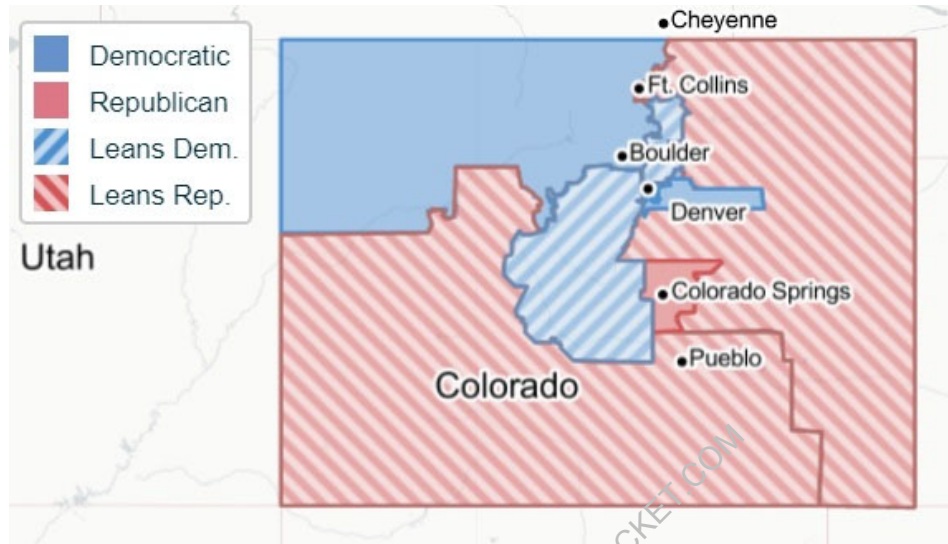
Although District 3 corrects the fracturing of Latinos in Pueblo, southern Colorado, and Eagle County—one of the problems with the preliminary proposal—it continues to fracture Latino populations in southern Colorado Springs and Lake County. Moreover, instead of combining the Latino population with white crossover voters in southern Colorado Springs and Lake, Summit, and Chaffee Counties, District 3 instead includes Mesa, Delta, Montrose, Dolores, and Custer Counties, where white voters overwhelmingly vote as a bloc against Latino-preferred candidates.²

The result is a district that dilutes the electoral influence of Latino voters. As the staff's analysis shows, the Democratic candidate—the preferred candidate of Latino voters in District 3—would have lost *each* of the eight elections assessed by the staff, ranging from a loss by 2.2% in the 2018 gubernatorial election to a loss by 11.3% in the 2016

¹ The Commission's staff reports include only total population. The CVAP data provided in these comments—the metric relevant to assessing eligible voters—were obtained from Dave's Redistricting App ("DRA"), davesredistricting.org, by uploading the Block Equivalency File for the First Staff Congressional Plan. The Commission website encourages the public to use DRA.

² For example, in the 2020 presidential election, Trump (R) received 62.8% in Montrose County, 67.5% in Delta County, 67.3% in Montrose County, 75.2% in Dolores County, and 68.1% in Custer County. In the 2020 Senate election, Gardner (R) received 64.2% in Mesa County, 68.0% in Delta County, 68.3% in Montrose County, 74.5% in Dolores County, and 68.3% in Custer County. In the 2018 Governor election, Stapleton (R) received 61.0% in Mesa County, 64.1% in Delta County, 65.8% in Montrose County, 73.3% in Dolores County, and 65.3% in Custer County. In the 2018 Attorney General election, Brauchler (R) received 64.5% in Mesa County, 66.2% in Delta County, 68.7% in Montrose County, 74.9% in Dolores County, and 67.6% in Custer County. In the 2016 presidential election, Trump received 64.1% in Mesa County, 69.4% in Delta County, 67.9% in Montrose County, 75.2% in Dolores County, and 67.2% in Custer County. And in the 2016 Senate election, Glenn (R) received 62.8% in Mesa County, 65.4% in Delta County, 66.5% in Montrose County, 67.1% in Dolores County, and 64.8% in Custer County. These election results were obtained from DRA.

presidential election. In the 2020 presidential election, Trump would have carried the district by a margin of 51.0% to 46.6%. As shown below, PlanScore—a CLC project that predicts the partisan fairness and outcome of redistricting plans—reveals that District 3 would lean Republican, with just a 21% chance that a Democratic candidate could win.³

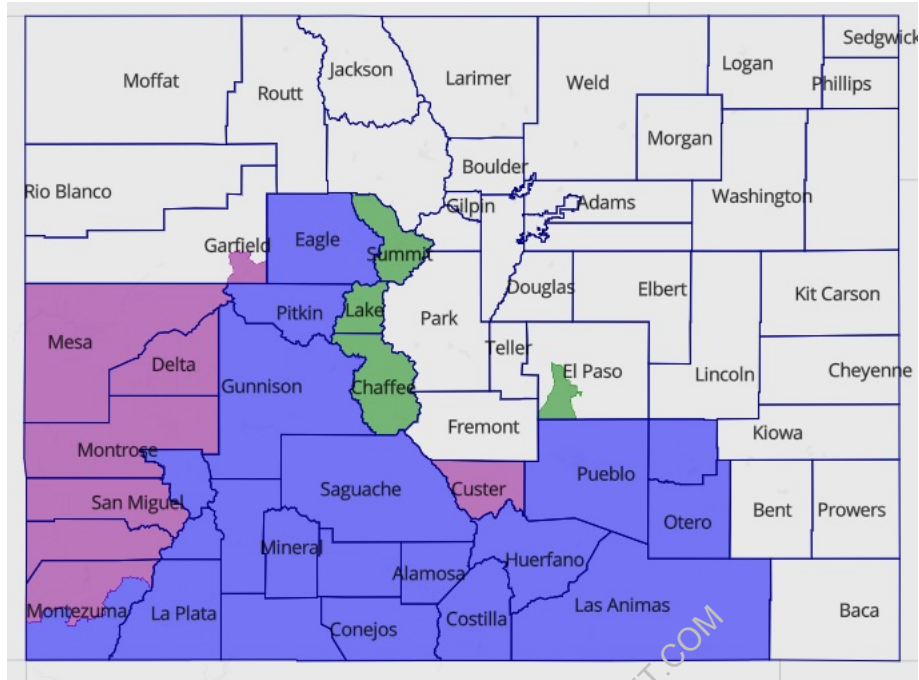


As LULAC previously explained, an effective crossover district can be drawn that would afford Latino voters in Pueblo, southern Colorado, southern Colorado Springs, and Eagle and Lake Counties an opportunity to elect their preferred candidate. In LULAC proposed District 8, Latinos are 29.0% of the district's total population and 23.3% of the district's CVAP, and the Latino-preferred candidate would prevail in every recent election, with PlanScore reporting a 74% chance that the Democratic candidate—the preferred candidate of Latino voters in the district—would prevail.

The map below compares LULAC's proposed District 8 with the First Staff Congressional Plan's District 3. The areas in blue are those common to both districts, the area in green shows the additional territory included in LULAC's proposed District 8, and the area in purple shows the territory the First Staff Congressional Plan instead includes.

[IMAGE ON NEXT PAGE]

³ See Ex. 1 (PlanScore Analysis of First Staff Congressional Plan).



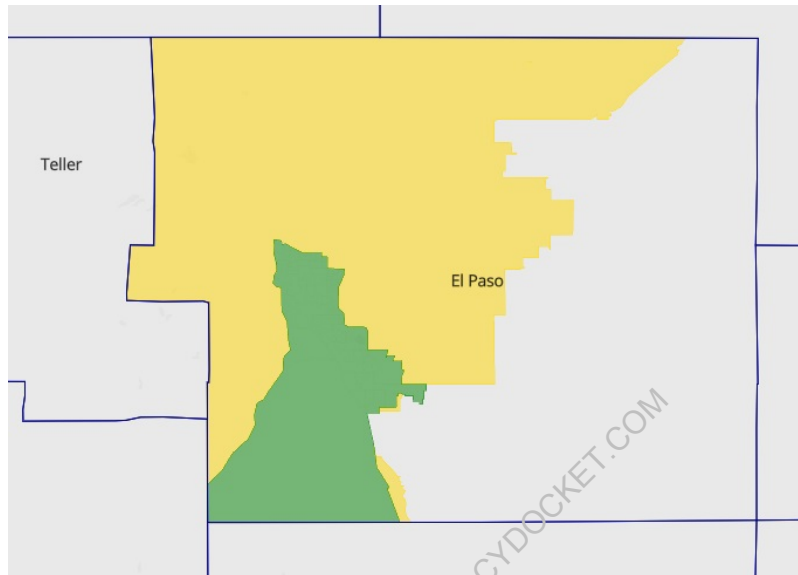
The blue area has a Latino total population of 32.0% and CVAP of 27.4%. The blue area reliably performs to elect Latino voters' preferred candidates: Biden received 53.2% in this area, Hickenlooper received 52.4%, Polis received 53.4%, Weiser received 52.6%, Clinton received 47.8% (to Trump's 43.8%), and Bennet received 52.2%.

The green area (proposed by LULAC) has a Latino total population of 24.5% (and a Black total population of 11.4%), and a Latino CVAP of 17.0%. The green area reliably performs to elect Latino voters' preferred candidates: Biden received 54.3%, Hickenlooper received 52.8%, Polis received 53.6%, Weiser received 52.1%, Clinton received 45.8% (to Trump's 44.0%), and Bennet received 48.4% (to Glenn's 43.9%).

By contrast, the purple area (proposed by the Commission staff) has a Latino total population of 16.6% and a Latino CVAP of 11.1%. The purple area's white voting age population is 79.1%, and election results show that its white voters overwhelmingly vote as a bloc to defeat Latino-preferred candidates. In the purple area, Trump (2020) received 60.4%, Gardner received 61.5%, Stapleton received 58.5%, Brauchler received 61.2%, Trump (2016) received 61.7%, and Glenn received 60.1%. The inclusion of the purple areas, instead of the green areas, dilutes the ability of Latino voters to influence electoral outcomes and violates the Colorado Constitution.

At the September 6, 2021 meeting at which the staff proposal was presented to the Commission, the staff commented that because Denver—the State's largest city—had been kept largely whole in the First Staff Congressional plan, the staff felt it should likewise

keep the Colorado Springs—the second largest city—whole.⁴ But white voters in Denver do not bloc vote against Latino preferred candidates in congressional general elections. They do, however, in Colorado Springs and its surrounding area, as the map below illustrates.



The combined yellow and green area constitutes District 5 in the First Staff Congressional plan, while the green area shows the portion of El Paso County (and Colorado Springs) that LULAC included in its proposed District 8.

The green area (constituting 32.3% of District 5's population) has a Latino total population of 26.4%, a Black total population of 13.9%, an Asian total population of 5.0%, and a Native American total population of 4.6%. The white total population is 52.7%. The CVAP of the green area is 19.3% Latino, and its white CVAP is 62.9%. The Latino preferred candidates usually prevail in the green area. Biden prevailed 51.6% to 43.8%, Hickenlooper prevailed 50.1% to 45.1%, Polis prevailed 51.1% to 43.0%, and Weiser prevailed 49.7% to 45.2%. The 2016 election was closer in the green area, with Bennet prevailing by 19 votes, and Clinton losing 46.2% to 43.2%. But the Latino preferred candidate prevailed in this region in 5 out of 6 elections, including by healthy margins in the most recent elections.

By contrast, the yellow area (constituting 67.7% of District 5's population) has a Latino total population of 13.7%, a Black total population of 6.3%, an Asian total population of 5.6%, a Native American total population of 3.4%, and a white total population of 71.9%. The Latino CVAP of the yellow area is just 10.4%, and its white

⁴ See Sept. 6, 2021 Comm'n Mtg at 6:11:30-:50, <https://sg001-harmony.sliq.net/00327/Harmony/en/PowerBrowser/PowerBrowserV2/20210401/154/12102>.

CVAP is 80.0%. The white voters in the yellow area bloc vote in large numbers against Latino preferred candidates. Trump (2020) prevailed 56.3% to 40.3%, Gardner prevailed 59.5% to 37.6%, Stapleton prevailed 59.7% to 36.4%, Brauchler prevailed 61.9% to 34.5%, Trump (2016) prevailed 59.1% to 31.1%, and Glenn prevailed 61.7% to 32.9%.

By submerging the less populous green area—with its large Latino and Black populations—into the yellow area to form District 5, the staff plan dilutes the electoral influence of Latino (and Black) voters in violation of the State Constitution. The staff plan, by prioritizing keeping Colorado Springs in a single congressional district, has inverted the Colorado Constitution’s requirements. Section 44.3(4)(b) contains no exceptions: “No map may be approved by the commission or given effect by the supreme court if . . . [it] . . . results in the . . . dilut[ion of] the impact of [a] racial or language minority group’s electoral influence.” By contrast, the Constitution provides that “[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.” Colo. Const. art. V, § 44.3(2)(b)(2) (emphasis added).

Where these provisions conflict—as is the case in Colorado Springs—the plain text of the Colorado Constitution provides that § 44.3(4)(b) prevails. That is, it is not “reasonably possible” to preserve a city in a single congressional district if doing so results in the dilution of a minority group’s electoral influence, as it does by the staff’s proposal to keep Colorado Springs in a single district.

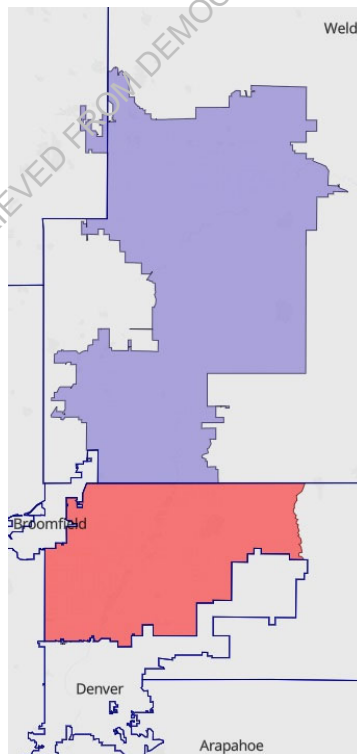
The Commission must adopt a district based in southern Colorado—such as LULAC’s proposed District 8—that does not dilute the electoral influence of Latino voters. As LULAC showed in its August 17 comments, this district would not only avoid a general election victory by candidates opposed by Latino voters as a result of white bloc voting but would also provide the reliable opportunity—based on the available election data—for a Latino candidate to prevail in both the primary *and* general election. This satisfies the Colorado Constitution’s “electoral influence” mandate.

II. District 8 in the First Staff Congressional Plan Dilutes the Ability of Latino Voters to Influence Electoral Outcomes.

District 8 in the First Staff Congressional Plan dilutes the ability of Latino voters to influence electoral outcomes. Both the preliminary plan and the First Staff Plan place District 8 in the northern suburbs of Denver, where there is a large Latino population. LULAC proposed a district similar to the staff’s preliminary plan (numbered District 7 in LULAC’s plan), also with a large Latino population. In both the staff’s preliminary plan and LULAC’s plan, white bloc voters would not be able to elect the general election candidate opposed by Latino voters. *See, e.g.*, Preliminary Plan Political Memo (noting that Democratic Attorney General candidate carried District 8 51.8% to 44.4%); LULAC Comments (Aug. 17, 2021) Ex. 1 (PlanScore analysis of staff’s preliminary plan showing 87% chance Democratic candidate would prevail in District 8, with predicted margin of 55% to 45%); *Id.* Ex. 2 (PlanScore analysis of LULAC Plan showing 94% chance Democratic candidate would prevail in District 7, with predicted margin of 57% to 43%).

The First Staff Congressional Plan, however, creates a significant risk that white bloc voting would result in general election victories by candidates opposed by Latino voters. Although the newly proposed District 8 has an even higher Latino population—a total population of 38.0% and a CVAP of 27.2% (compared to LULAC District 7’s Latino CVAP of 22.4%)—the plan attains those higher numbers by swapping white voters in suburban Denver who cross over to support Latino preferred candidates with white voters in Weld County who bloc vote against Latino preferred candidates. By doing so, the First Staff Congressional Plan dilutes the ability of Latino voters to influence electoral outcomes. As the staff memo reflects, the Latino preferred candidates lost both the 2016 presidential race and the 2018 Attorney General race in District 8, with an overall average of just a 1.5% margin of victory across the eight elections analyzed by the staff. PlanScore reveals that the Democratic candidate—the Latino preferred candidate—would have just a 52% chance of winning the district, with a projected margin of 51% to 49%.⁵ It violates the Colorado Constitution to create the façade of a Latino opportunity district that the data show may not actually perform to permit Latino voters to elect their preferred candidates. *Cf. Perez v. Abbott*, 253 F. Supp. 3d 864, 884-55 (W.D. Tex. 2017) (invalidating plan that created the “façade of a Latino district” by including non-performing precincts with Hispanic voters and excluding performing precincts).

The image below shows the Weld and Larimer County portions of District 8 in purple, and the Adams County portion in red.



⁵ See Ex. 1 (PlanScore analysis of First Staff Congressional Plan).

The red area (64.9% of the district's population) has a Latino total population of 47.1% and a Latino CVAP of 29.6%. Its white CVAP is 62.6%. The red area reliably votes to favor of Latino-preferred general election candidates. For example, Biden prevailed 56.5% to 40.5%, Hickenlooper prevailed 55.2% to 41.9%, Polis prevailed 54.5% to 40.6%, Weiser prevailed 53.0% to 43.0%, Clinton prevailed 49.7% to 41.4%, and Bennet prevailed 52.6% to 41.3%.

By contrast, the purple area (35.1% of the district's population) has a Latino total population of 32.4%, a Latino CVAP of 23.0%, and a white CVAP of 72.5%. White voters in the purple area bloc vote against Latino preferred candidates. For example, Trump (2020) prevailed 55.6% to 41.5%, Gardner prevailed 57.6% to 40.1%, Stapleton prevailed 56.2% to 39.1%, Brauchler prevailed 58.2% to 37.9%, Trump (2016) prevailed 54.4% to 36.3%, and Glenn prevailed 53.8% to 40.7%.

To the extent District 8 is intended to further the Colorado Constitution's criterion that the Commission should "to the extent possible, maximize the number of politically competitive districts," Colo. Const. art. V, § 44.3(3(a)—the lowest priority in the Constitution's set of criteria—it is unlawful to accomplish that goal by making the district with the largest Latino population into the façade of a Latino opportunity district. By doing so, the proposal dilutes the ability of Latino voters to influence electoral outcomes by creating a 48% chance⁶ that white bloc voting will defeat their preferred candidate.

Moreover, if the Commission's goal was to create a district with a larger Latino population in the Denver region, that could have been achieved without diluting the ability of Latino voters to influence electoral outcomes, by including adjacent precincts in Denver County or Jefferson County with large Latino populations.

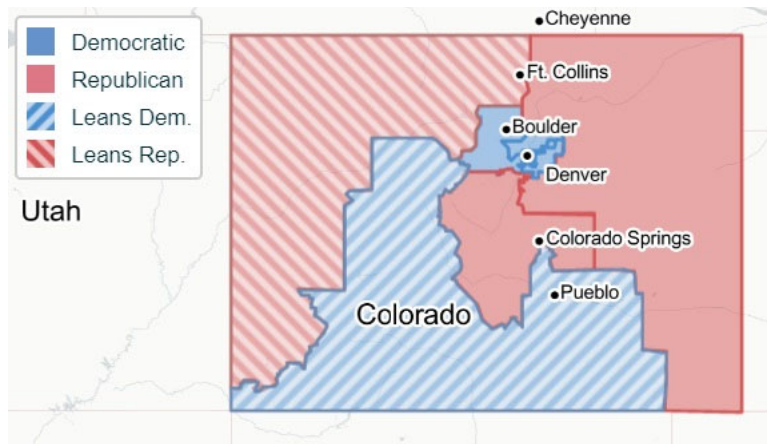
* * *

The preliminary staff plan violated the Colorado Constitution by drawing three districts with large Latino populations, but only two in which Latino voters had the ability to influence electoral outcomes. This new First Staff Congressional Plan is worse yet—it includes three districts with large Latino populations, but only *one* in which Latino voters could avoid being overwhelmed in general elections by white bloc voting.

Notably, this is not necessary to achieve a map characterized by partisan fairness or competitiveness. As the PlanScore analysis of LULAC's proposed plan shows,⁷ LULAC's Plan achieves a fair outcome by all accepted measures of partisan fairness and creates two districts that "lean" in one direction or another, as the PlanScore map below illustrates.

⁶ See Ex. 1 (PlanScore analysis of First Staff Congressional Plan).

⁷ See Ex. 2 (PlanScore analysis of LULAC Plan showing partisan fairness across all accepted metrics).



It is not necessary—nor lawful—to achieve a competitive map by diluting the electoral influence of Latino voters. The First Staff Congressional Plan violates the Colorado Constitution, and must be changed consistent with the Colorado Constitution, as reflected in LULAC's proposed plan.

September 10, 2021

Submitted by,

/s/ Mark P. Gaber

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EXHIBIT 1

Staff Congressional: PlanScore Analysis



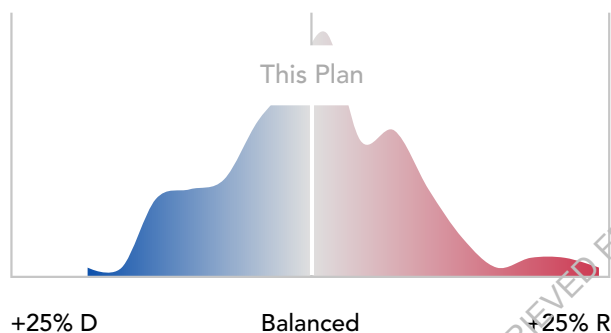
First_Staff_Congressional_Final_20210902.zip

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Colorado U.S. House plan

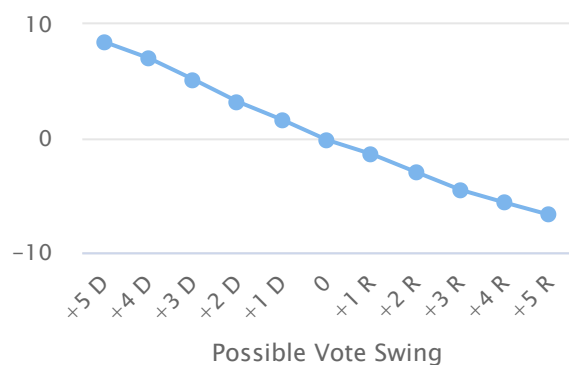
PlanScore bases its scores on predicted precinct-level votes for each office (State House, State Senate, and U.S. House) built from past election results and U.S. Census data. [More information about the predictive model used to score this plan.](#)

Efficiency Gap: 0.1%



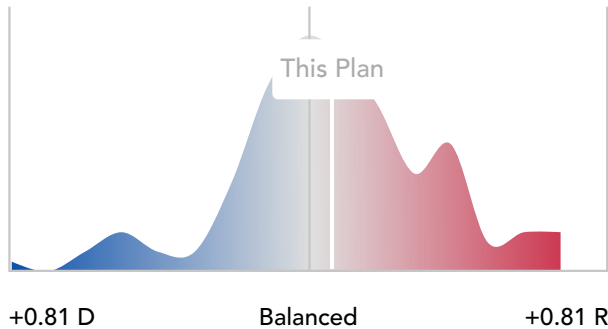
Votes for Republican candidates are expected to be inefficient at a rate 0.1% lower than votes for Democratic candidates, favoring Republicans in 52% of predicted scenarios.* [Learn more](#) >

Sensitivity Testing



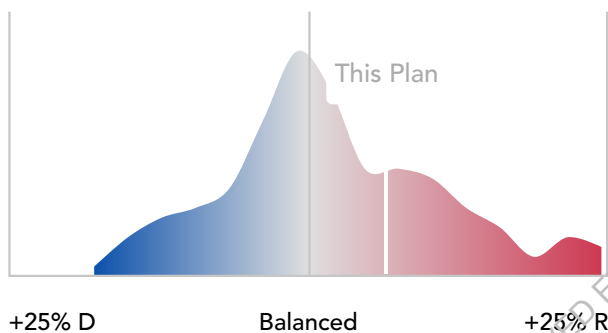
Sensitivity testing shows us a plan's expected efficiency gap given a range of possible vote swings. It lets us evaluate the durability of a plan's skew.

Declination: 0.07



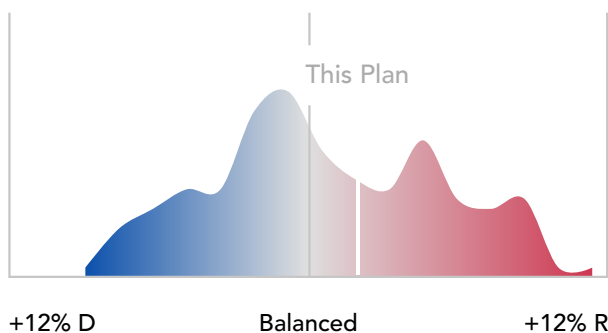
The mean Democratic vote share in Democratic districts is expected to be 5.0% higher than the mean Republican vote share in Republican districts. Along with the relative fraction of seats won by each party, this leads to a declination that favors Republicans in 72% of predicted scenarios.* [Learn more](#) ➤

Partisan Bias: 6.5%

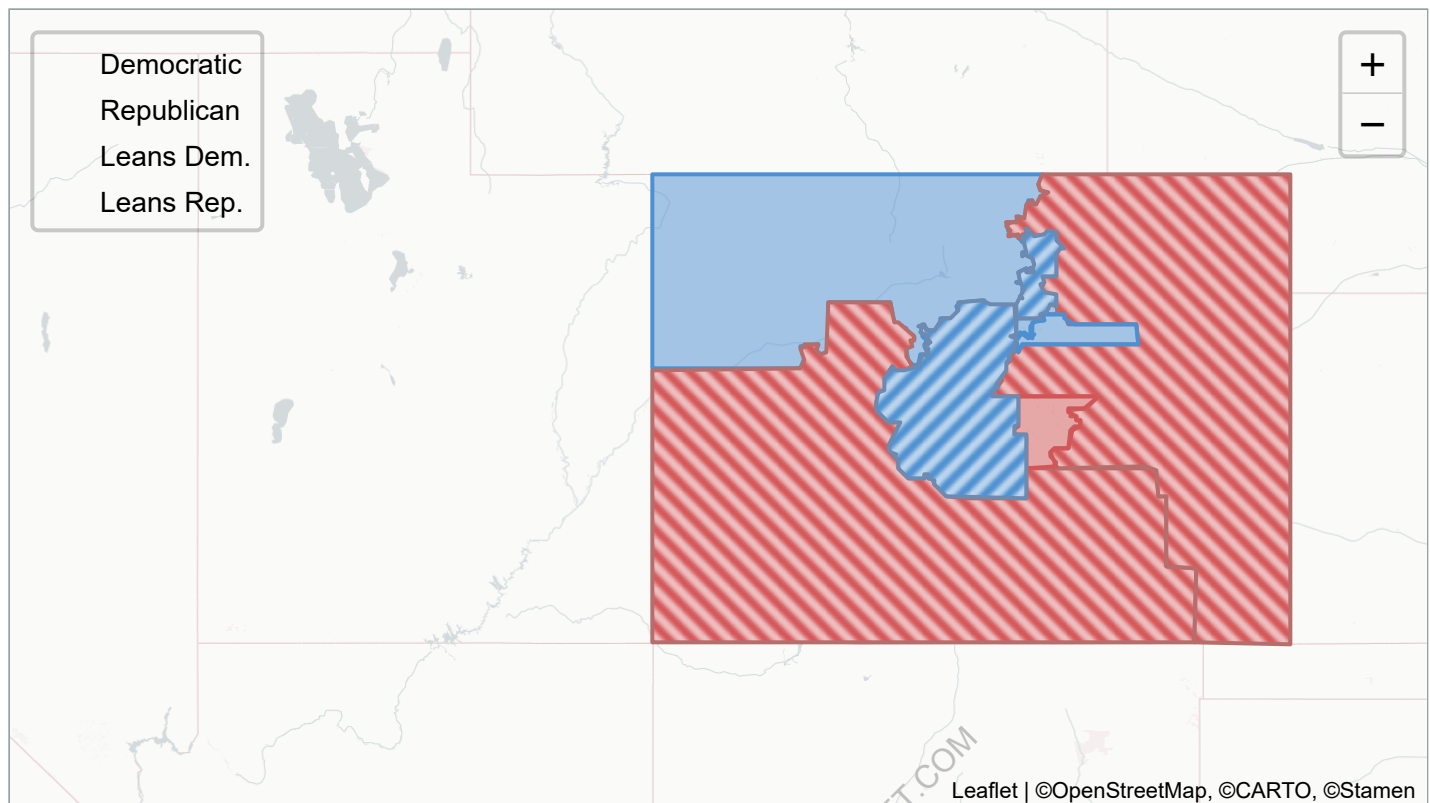


Republicans would be expected to win 6.5% extra seats in a hypothetical, perfectly tied election, favoring Republicans in 86% of predicted scenarios.* [Learn more](#) ➤

Mean-Median Difference: 2.0%



The median Republican vote share is expected to be 2.0% higher than the mean Republican vote share, favoring Republicans in 85% of predicted scenarios.* [Learn more](#) ➤



District	Candidate Scenario	Pop. 2020	Non-Hisp. Black CVAP 2019	Hispanic CVAP 2019	Non-Hisp. Asian CVAP 2019	Chance of 1+ Flips†	Chance of Democratic Win	Predicted Vote Shares	Biden (D) 2020
1	Open Seat	721,713	9.5%	20.3%	3.3%	No	>99%	77% D / 23% R	316,030
2	Open Seat	721,709	1.0%	8.7%	2.8%	No	98%	61% D / 39% R	280,840
3	Open Seat	721,714	1.2%	20.9%	0.8%	Yes	21%	46% D / 54% R	191,320
4	Open Seat	721,715	1.7%	10.0%	2.6%	Yes	14%	44% D / 56% R	195,240
5	Open Seat	721,714	6.9%	13.3%	3.2%	No	11%	43% D / 57% R	160,920
6	Open Seat	721,713	10.7%	13.3%	5.0%	No	96%	60% D / 40% R	229,550
7	Open Seat	721,709	1.6%	11.8%	2.3%	Yes	78%	54% D / 46% R	257,220
8	Open Seat	721,715	2.0%	27.2%	3.1%	Yes	52%	51% D / 49% R	173,190

Download raw data as tab-delimited text.

Metric	Value	Favors Democrats in this % of Scenarios*	More Skewed than this % of Historical Plans†	More Pro-Democratic than this % of Historical Plans‡
Efficiency Gap	0.1% Pro-Republican	48%	2%	43%
Declination	0.07 Pro-Republican	28%	27%	40%
Partisan Bias	6.5% Pro-Republican	14%	56%	24%
Mean- Median Difference	2.0% Pro-Republican	15%	26%	34%

* Scenarios are part of [the predictive model used to score this plan](#).

† 50%+ chance of one or more party flips assuming the plan is used for one decade with five State House elections, five U.S. House elections, or three State Senate elections.

‡ Enacted [U.S. House](#), [State House](#), and [State Senate](#) plan metrics are featured in our [historical dataset](#).



PlanScore is a project of Campaign Legal Center.



EXHIBIT 2

LULAC Congressional: PlanScore Analysis



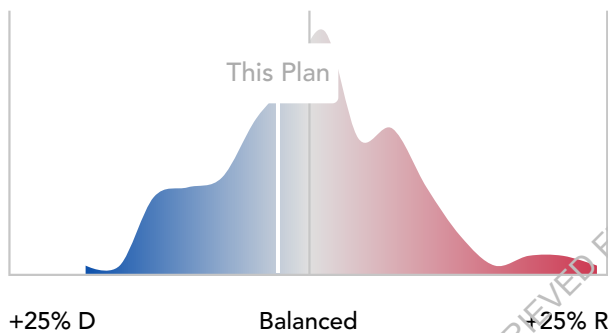
LULAC Congress.geojson

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Colorado U.S. House plan

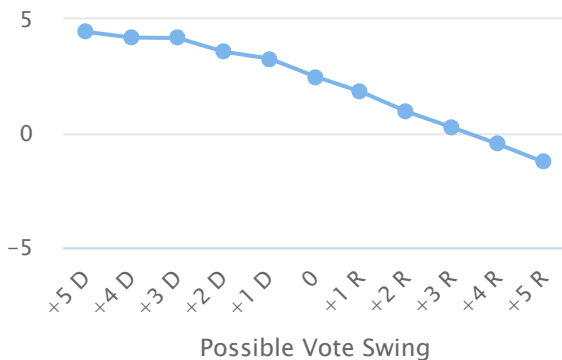
PlanScore bases its scores on predicted precinct-level votes for each office (State House, State Senate, and U.S. House) built from past election results and U.S. Census data. [More information about the predictive model used to score this plan.](#)

Efficiency Gap: 2.5%



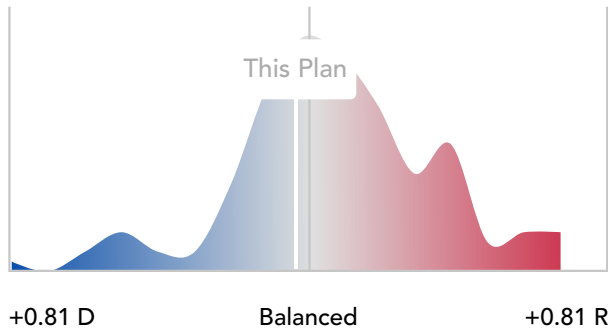
Votes for Democratic candidates are expected to be inefficient at a rate 2.5% lower than votes for Republican candidates, favoring Democrats in 63% of predicted scenarios.* [Learn more](#) >

Sensitivity Testing



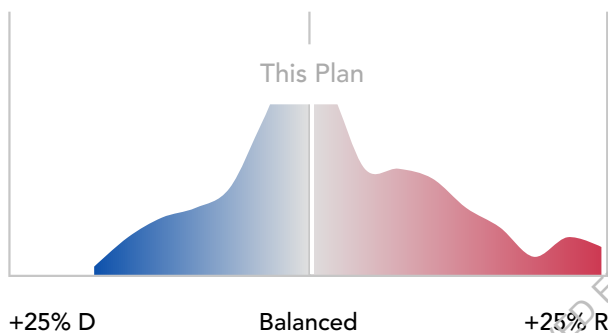
Sensitivity testing shows us a plan's expected efficiency gap given a range of possible vote swings. It lets us evaluate the durability of a plan's skew.

Declination: 0.04



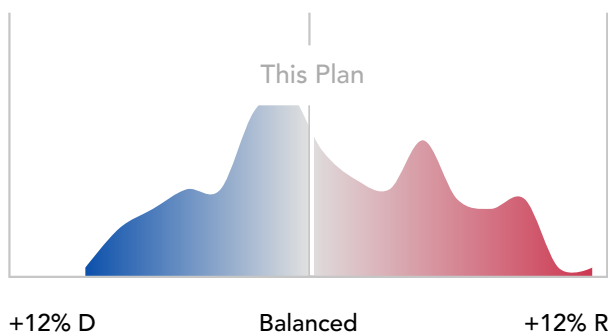
The mean Republican vote share in Republican districts is expected to be 4.2% higher than the mean Democratic vote share in Democratic districts. Along with the relative fraction of seats won by each party, this leads to a declination that favors Democrats in 55% of predicted scenarios.* [Learn more](#) ➤

Partisan Bias: 0.3%

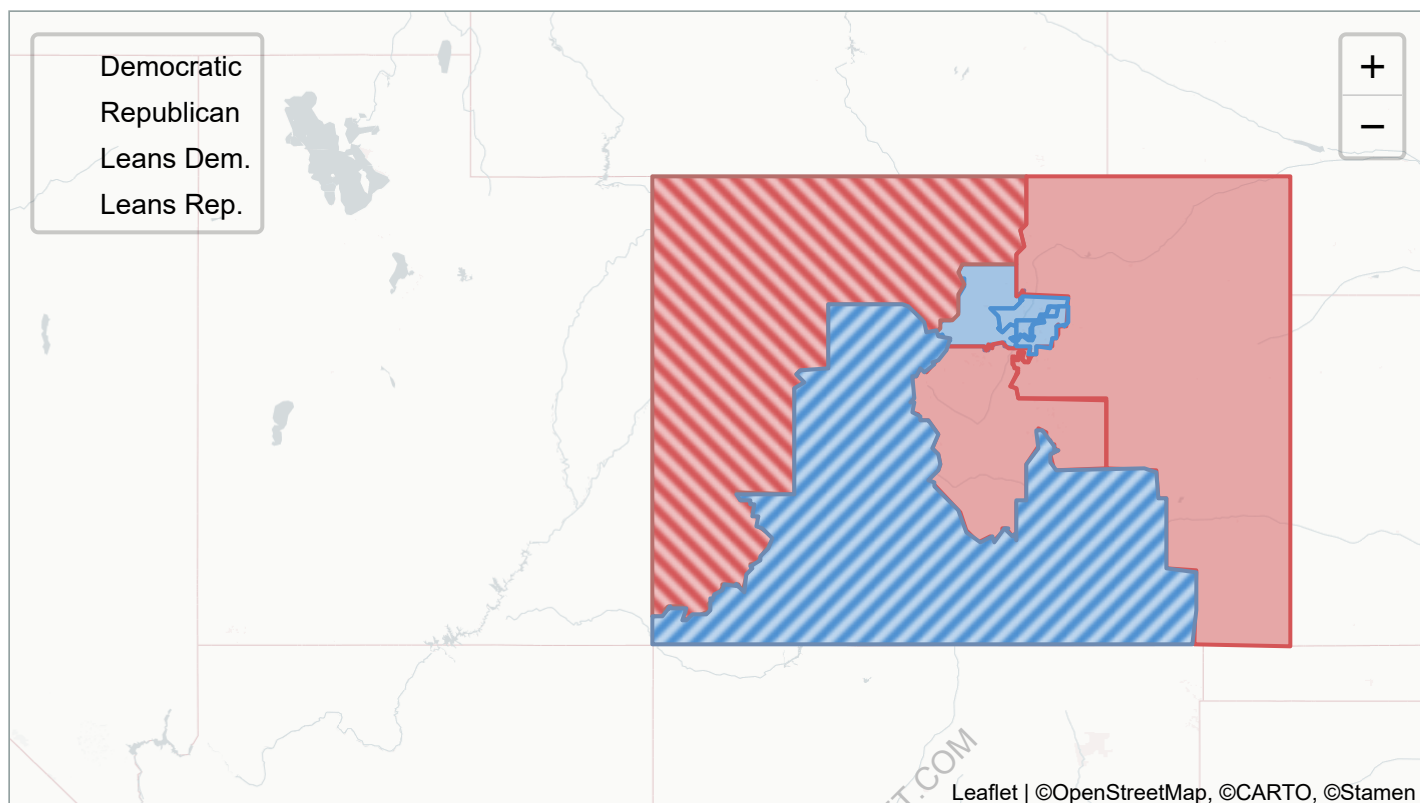


Republicans would be expected to win 0.3% extra seats in a hypothetical, perfectly tied election, favoring Republicans in 67% of predicted scenarios.* [Learn more](#) ➤

Mean-Median Difference: 0.2%



The median Republican vote share is expected to be 0.2% higher than the mean Republican vote share, favoring Republicans in 53% of predicted scenarios.* [Learn more](#) ➤



District	Candidate Scenario	Pop. 2020	Non-Hisp. Black CVAP 2019	Hispanic CVAP 2019	Non-Hisp. Asian CVAP 2019	Chance of 1+ Flips†	Chance of Democratic Win	Predicted Vote Shares	Biden (D) 2020
1	Open Seat	721,715	9.5%	20.4%	3.3%	No	>99%	77% D / 23% R	316,090
2	Open Seat	721,736	1.3%	11.0%	3.5%	No	>99%	65% D / 35% R	304,870
3	Open Seat	721,708	1.0%	9.6%	1.5%	Yes	29%	47% D / 53% R	205,600
4	Open Seat	721,715	1.3%	15.4%	1.6%	No	2%	37% D / 63% R	149,010
5	Open Seat	721,708	3.9%	9.5%	3.1%	No	6%	41% D / 59% R	179,690
6	Open Seat	721,715	10.9%	13.3%	5.2%	No	97%	60% D / 40% R	229,900
7	Open Seat	721,691	1.9%	22.5%	3.3%	No	90%	57% D / 43% R	221,390
8	Open Seat	721,714	4.4%	23.3%	1.6%	Yes	72%	53% D / 47% R	197,750

Download raw data as tab-delimited text.

Metric	Value	Favors Democrats in this % of Scenarios*	More Skewed than this % of Historical Plans [†]	More Pro-Democratic than this % of Historical Plans [‡]
Efficiency Gap	2.5% Pro-Democratic	63%	26%	57%
Declination	0.04 Pro-Democratic	55%	14%	58%
Partisan Bias	0.3% Pro-Republican	33%	4%	44%
Mean-Median Difference	0.2% Pro-Republican	47%	4%	45%

* Scenarios are part of the predictive model used to score this plan.

[†] 50%+ chance of one or more party flips assuming the plan is used for one decade with five State House elections, five U.S. House elections, or three State Senate elections.

[‡] Enacted U.S. House, State House, and State Senate plan metrics are featured in our historical dataset.



PlanScore is a project of Campaign Legal Center.



SUPREME COURT, STATE OF COLORADO
2 East 14th Avenue, 4th Floor
Denver, Colorado 80203

DATE FILED: October 07, 2021 8:50 PM

Original Proceeding Pursuant to Article V,
Section 44.5 of the Colorado Constitution

**In re Colorado Independent Congressional
Redistricting Commission**

*Attorneys for League of United Latin American
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**Motion for admission pro hac vice pending*

▲ COURT USE ONLY ▲

Case No.: 2021SA208

APPENDIX C

**LULAC Third Comment and
Congressional Map Two
(September 25, 2021)**



Comments of League of United Latin American Citizens (“LULAC”) and Colorado League of United Latin American Citizens (“Colorado LULAC”) Regarding Third Staff Congressional Plan Released September 23, 2021

On behalf of the League of United Latin American Citizens and the Colorado League of United Latin American Citizens (collectively “LULAC”), Campaign Legal Center (“CLC”) submits the following comments regarding the Third Staff Congressional Plan released on September 23, 2021. These comments supplement those LULAC submitted on August 17, 2021 and September 10, 2021, in response to the Staff’s preliminary plans and the First Staff Congressional plan.

I. Introduction and Summary

LULAC has previously explained how the Commission staff has misinterpreted—in fact, disregarded—the Colorado Constitution’s requirement that maps not have the purpose or effect of “dilut[ing] the impact of [minority’s] electoral influence.” Colo. Const. art. V, § 44.3(b). The Third Staff Congressional Plan worsens that violation of the Colorado Constitution present in the prior versions.

I. District 3 in the Third Staff Congress Plan Dilutes the Ability of Latino Voters to Influence Electoral Outcomes.

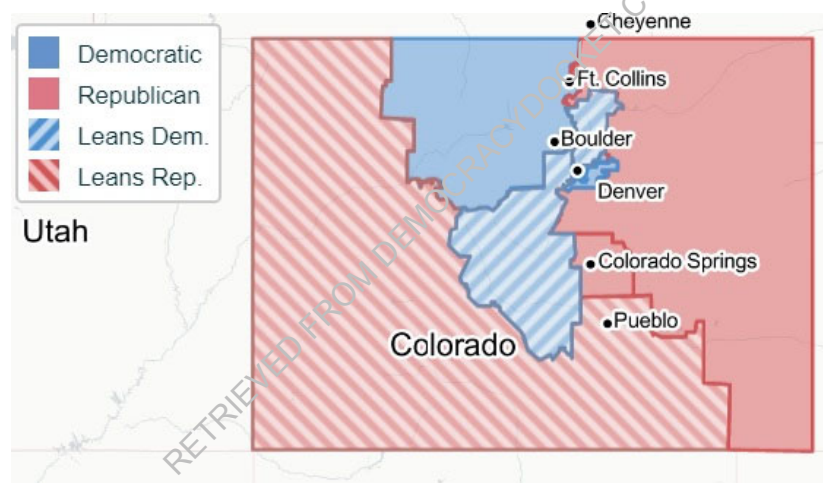
District 3 dilutes the ability of Latino voters to influence electoral outcomes. District 3 has a Latino total population of 25.7%, and a Latino CVAP of 20.6%.¹ As LULAC previously explained, with a thorough analysis of election results in racially homogenous precincts, voting in the affected area of the State is racially polarized: Latino voters strongly support Democratic candidates while white voters throughout rural Colorado strongly support Republican candidates. As a result, it dilutes the electoral influence of Latino voters to combine them with rural white voters who oppose Latino-

¹ The Commission’s staff reports include only total population. The CVAP data provided in these comments—the metric relevant to assessing eligible voters—were obtained from Dave’s Redistricting App (“DRA”), davesredistricting.org, by uploading the Block Equivalency File for the First Staff Congressional Plan. The Commission website encourages the public to use DRA.

preferred candidates if an alternative district can be drawn that includes a sufficient number of white crossover voters to permit Latino voters to reliably elect their candidates of choice.

The Third Staff Plan worsens the dilution that was present in the First Staff Plan. In particular, the Third Staff Plan removes the white crossover voters—who support Latino-preferred candidates—from Eagle County and replaces them with rural white voters from Garfield, Rio Blanco, and Moffat Counties who bloc vote against Latino-preferred candidates.²

As the staff's analysis shows, the Democratic candidate—the preferred candidate of Latino voters in District 3—would have lost *each* of the eight elections assessed by the staff, ranging from a loss by 6.1% in the 2018 gubernatorial election to a loss by 15.3% in the 2016 presidential election. In the 2020 presidential election, Trump would have carried the district by a margin of 52.9% to 44.7%. As shown below, PlanScore—a CLC project that predicts the partisan fairness and outcomes of redistricting plans—reveals that District 3 would lean Republican, with just a 14% chance that a Democratic candidate—the Latino-preference—could win.³



As LULAC previously explained, an effective crossover district can be drawn that would afford Latino voters in Pueblo, southern Colorado, southern Colorado Springs, and Eagle and Lake Counties an opportunity to elect their preferred candidate in both primary and general elections. *See* LULAC Comments (Aug. 17, 2021).

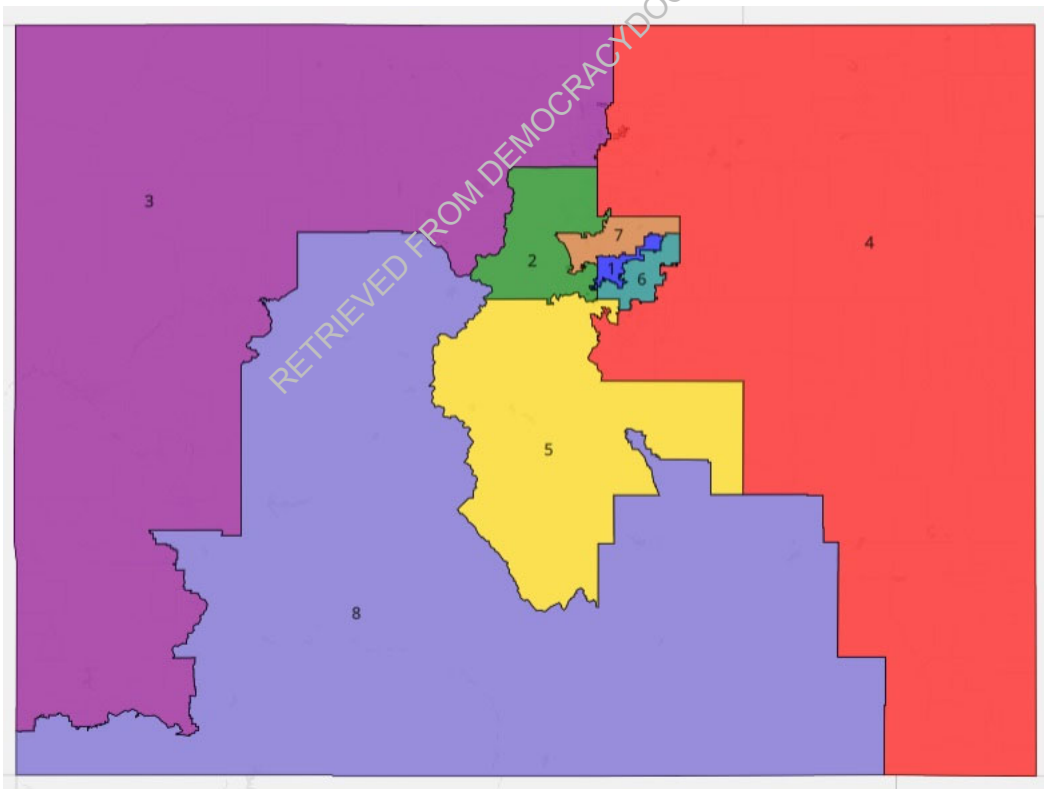
At a recent meeting, however, the Commission voted to require that the following military bases in El Paso County be included in a single district: the Air Force Academy,

² For example, here are the election results for Garfield, Rio Blanco, and Moffat Counties combined: 2020 President: Trump (R) prevailed 56.3% to 41.3%; 2020 Senate: Gardner (R) prevailed 57.3% to 40.4%; 2018 Governor: Stapleton (R) prevailed 55.8% to 40.7%; 2018 Attorney General: Brauchler (R) prevailed 56.7% to 40.1%; 2016 President: Trump (R) prevailed 58.2% to 34.5%; 2016 Senate: Glenn (R) prevailed 55.7% to 38.9%.

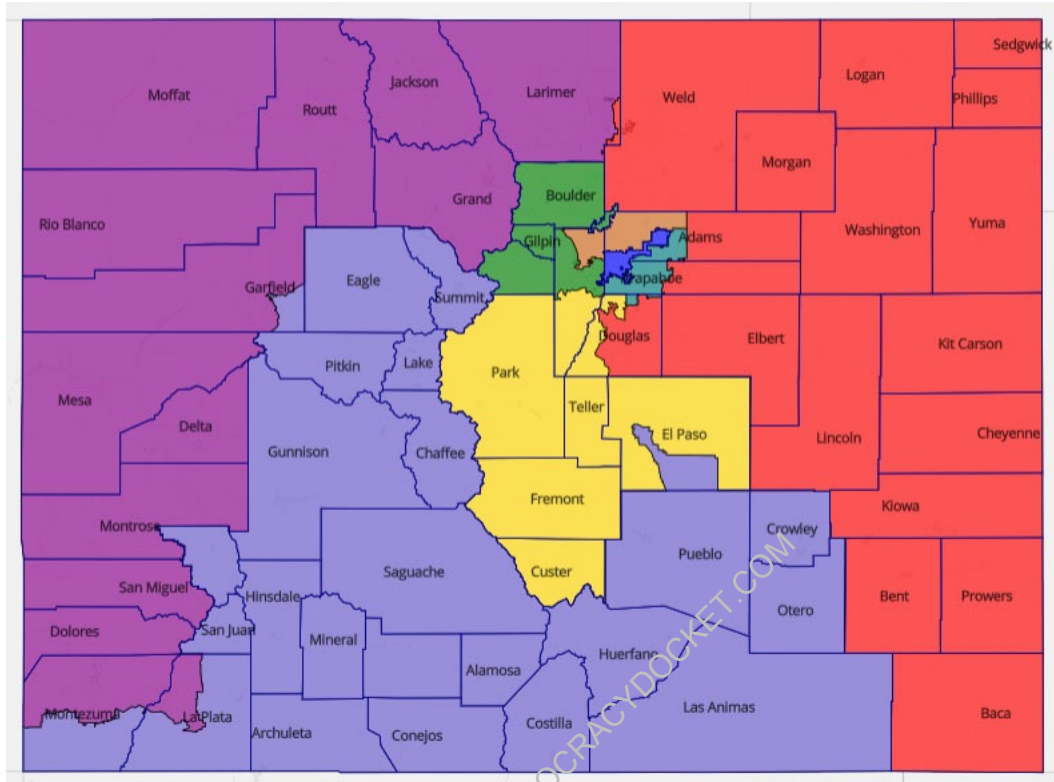
³ *See* Ex. 1 (PlanScore Analysis of Third Staff Congressional Plan).

Cheyenne Mountain Space Force Station, Peterson Air Force Base, Schriever Space Force Base, and the populated portion of Fort Carson. In LULAC's original congressional proposal, all but Fort Carson were placed in LULAC proposed District 5, while Fort Carson was in District 8. The Commission also recently voted to keep the Roaring Fork Valley whole, including the towns of Aspen, Basalt, Carbondale, El Jebel, Glenwood Springs, and Snowmass Village. In LULAC's original congressional proposal, Glenwood Springs and Carbondale were in separate districts from the remainder of the Roaring Fork Valley. Given the Commission's vote to keep the El Paso County military bases and the Roaring Fork Valley whole, LULAC now submits a second proposed Congressional Plan that accomplishes these Commission priorities. LULAC does so by switching some El Paso County precincts from District 5 to District 8, and by moving the City of Durango and surrounding precincts, as well as a portion of Montezuma County, from proposed District 8 to proposed District 3 in exchange for keeping all of the Roaring Fork Valley whole in District 8. Unlike the Third Staff Plan, LULAC is able to accommodate these Commission priorities while simultaneously complying with the Colorado Constitution's requirement that Latino voters' electoral influence not be diluted. Below is a map of LULAC Congressional Plan Option 2.

LULAC CONGRESSIONAL PLAN OPTION 2 (without county lines)



LULAC CONGRESSIONAL PLAN OPTION 2 (with county lines)



The districts are equally populated.⁴ Below is the demographic information for LULAC Congressional Plan Option 2, which alters only Districts 3, 5, and 8.

LULAC Congressional Plan Option 2 Total Population

District	White	Hispanic	Black	Asian	Native	Pacific
1	54.5%	27.8%	10.8%	5.5%	3.5%	0.4%
2	73.8%	15.2%	2.1%	6.0%	2.9%	0.3%
3	77.4%	14.5%	1.6%	2.5%	3.8%	0.3%
4	70.1%	21.5%	2.4%	3.5%	3.0%	0.3%
5	74.0%	12.4%	5.3%	5.5%	3.3%	0.6%
6	54.3%	22.4%	13.2%	8.6%	3.2%	0.6%
7	57.8%	31.8%	3.0%	5.2%	4.0%	0.3%
8	59.3%	29.4%	5.7%	2.7%	5.0%	0.6%

⁴ Districts 2 and 5 have 721,713 people, Districts 7 and 8 have 721,714 people, and Districts 1, 3, 4, and 6 have 721,715 people.

LULAC Congressional Plan Option 2 Voting Age Population (VAP)

District	White	Hispanic	Black	Asian	Native	Pacific
1	58.8%	24.4%	9.7%	5.2%	3.3%	0.4%
2	76.6%	13.2%	1.8%	5.6%	2.6%	0.2%
3	80.2%	12.3%	1.4%	2.3%	3.4%	0.3%
4	73.3%	18.9%	2.0%	3.0%	3.0%	0.3%
5	76.7%	10.6%	4.6%	4.8%	3.0%	0.5%
6	58.3%	19.7%	11.9%	8.1%	3.0%	0.5%
7	62.0%	28.1%	2.5%	4.9%	3.8%	0.3%
8	63.2%	26.1%	4.9%	2.5%	4.6%	0.5%

LULAC Congressional Plan Option 2 Citizen Voting Age Population (CVAP)

District	White	Hispanic	Black	Asian	Native	Pacific
1	65.1%	20.4%	9.7%	3.3%	1.2%	0.1%
2	82.9%	11.0%	1.3%	3.5%	1.0%	0.1%
3	86.3%	9.5%	1.0%	1.4%	1.5%	0.1%
4	80.3%	15.3%	1.4%	1.6%	1.1%	0.1%
5	81.5%	9.7%	4.2%	3.1%	1.1%	0.1%
6	69.0%	13.3%	11.1%	5.2%	1.1%	0.2%
7	70.9%	22.4%	2.0%	3.3%	1.0%	0.1%
8	68.4%	23.3%	4.3%	1.6%	2.0%	0.3%

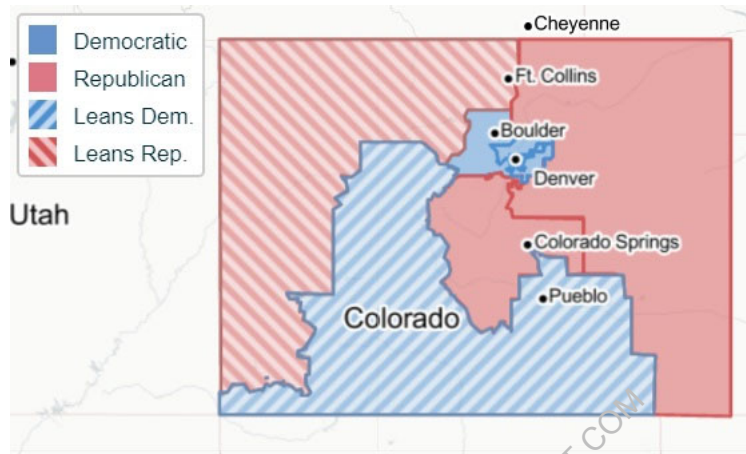
LULAC's Congressional Plan Option 2 also has high compactness scores, as shown below:

District	Reock Score	Polsby-Popper Score
1	.16	.09
2	.50	.18
3	.33	.27
4	.44	.38
5	.50	.22
6	.29	.15
7	.21	.17
8	.31	.19

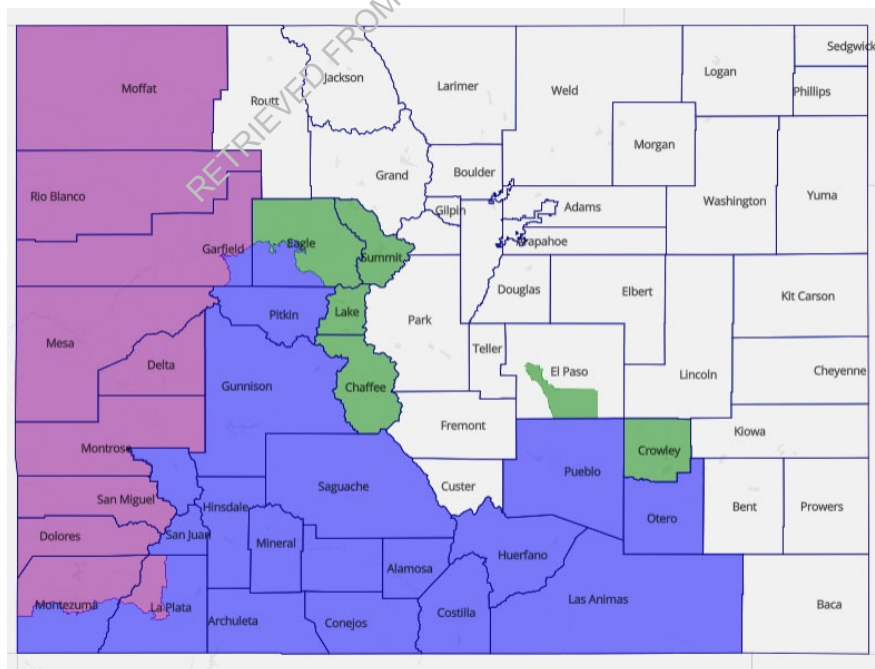
Reconstituted election results and predictive models show that the Latino-preferred candidate reliably would be able to prevail in District 8.

2020 President		2020 Senate		2018 Governor	
Biden (D)	53.6%	Hickenlooper (D)	52.5%	Polis (D)	53.3%
Trump (R)	43.4%	Gardner (R)	44.6%	Stapleton (R)	42.1%
2018 Atty. Gen.		2016 President		2016 Senate	
Weiser (D)	52.3%	Clinton (D)	47.0%	Bennet (D)	50.7%
Brauchler (R)	43.9%	Trump (R)	44.1%	Glenn (R)	42.7%

PlanScore’s analysis likewise shows that District 8 would be likely to perform to permit Latino voters to influence electoral outcomes, as shown below. PlanScore characterizes District 8 as “Lean Democratic,” and predicts a 71% chance that the Latino-preferred Democratic candidate would prevail in District 8, with a predicted voted margin of 53% to 47%.⁵



The map below compares LULAC’s proposed District 8 (from LULAC Congressional Plan Option 2) with the Third Staff Congressional Plan’s District 3. The areas in blue are those common to both districts, the area in green shows the additional territory included in LULAC’s proposed District 8, and the area in purple shows the territory the Third Staff Congressional Plan includes instead.



⁵ See Ex. 2 (PlanScore Analysis of LULAC Congressional Plan Option 2).

The blue area has a Latino total population of 33.7% and CVAP of 29.2%. The blue area reliably performs to elect Latino voters' preferred candidates: Biden received 52.0% in this area, Hickenlooper received 51.2%, Polis received 52.4%, Weiser received 51.6%, Clinton received 46.9% (to Trump's 44.9%), and Bennet received 51.9%.

The green area (proposed by LULAC) has a Latino total population of 24.8% (and a Black total population of 9.4%), and a Latino CVAP of 16.4%. The green area reliably performs to elect Latino voters' preferred candidates: Biden received 55.6%, Hickenlooper received 54.1%, Polis received 54.6%, Weiser received 53.1%, Clinton received 47.1% (to Trump's 43.0%), and Bennet received 49.2% (to Glenn's 42.8%).

By contrast, the purple area (proposed by the Commission staff) has a Latino total population of 17.0% and a Latino CVAP of 10.9%. The purple area's white citizen voting age population is 85.0%, and election results show that its white voters overwhelmingly vote as a bloc to defeat Latino-preferred candidates. In the purple area, Trump (2020) received 60.9%, Gardner received 62.0%, Stapleton received 59.3%, Brauchler received 61.7%, Trump (2016) received 62.1%, and Glenn received 60.2%. The inclusion of the purple areas, instead of the green areas, dilutes the ability of Latino voters to influence electoral outcomes and violates the Colorado Constitution.⁶

The Commission must adopt a district based in southern Colorado—such as LULAC's proposed District 8—that does not dilute the electoral influence of Latino voters. As LULAC showed in its August 17 comments, this district would not only avoid a general election victory by candidates opposed by Latino voters as a result of white bloc voting but would also provide the reliable opportunity—based on the available election data—for a Latino candidate to prevail in both the primary *and* general election. This satisfies the Colorado Constitution's "electoral influence" mandate. It also better serves the Commission's other criteria.

II. District 8 in the Third Staff Congressional Plan Dilutes the Ability of Latino Voters to Influence Electoral Outcomes.

District 8 in the Third Staff Congressional Plan dilutes the ability of Latino voters to influence electoral outcomes. Both the preliminary plan and the Third Staff Plan place District 8 in the northern suburbs of Denver, where there is a large Latino population. LULAC proposed a district similar to the staff's preliminary plan (numbered District 7 in LULAC's plan), also with a large Latino population. In both the staff's preliminary plan and LULAC's plan, white bloc voters would not be able to elect the general election candidate opposed by Latino voters. *See, e.g.,* Preliminary Plan Political Memo (noting

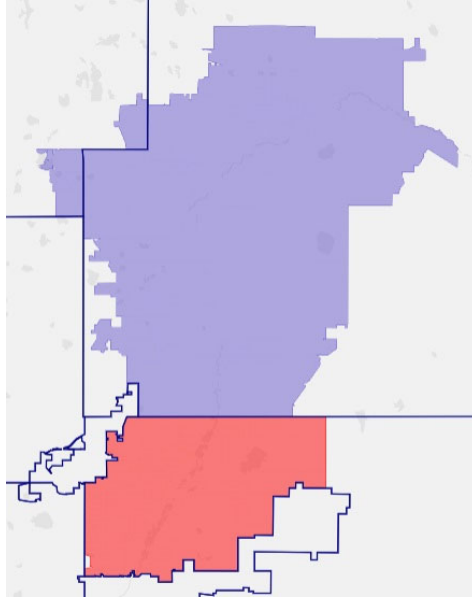
⁶ In the September 3, 2021 comments, LULAC showed how the Commission's focus on keeping the city of Colorado Springs whole dilutes the electoral influence of Latino voters in southern Colorado Springs. The minor changes proposed by LULAC in Option 2—to accommodate the Commission's desire to keep the five military bases in a single district—do not affect the analysis in LULAC's prior comments showing the need to split the city of Colorado Springs.

that Democratic Attorney General candidate carried District 8 51.8% to 44.4%); LULAC Comments (Aug. 17, 2021) Ex. 1 (PlanScore analysis of staff's preliminary plan showing 87% chance Democratic candidate would prevail in District 8, with predicted margin of 55% to 45%); *Id.* Ex. 2 (PlanScore analysis of LULAC Plan showing 94% chance Democratic candidate would prevail in District 7, with predicted margin of 57% to 43%).

The Third Staff Congressional Plan, however, creates a significant risk that white bloc voting would result in general election victories by candidates opposed by Latino voters. Although the newly proposed District 8 has an even higher Latino population—a total population of 38.5% and a CVAP of 27.5% (compared to LULAC District 7's Latino CVAP of 22.4%)—the plan attains those higher numbers by swapping white voters in suburban Denver (including in Jefferson County) who cross over to support Latino preferred candidates with white voters in Weld County who bloc vote against Latino preferred candidates. By doing so, the Third Staff Congressional Plan dilutes the ability of Latino voters to influence electoral outcomes. As the staff memo reflects, the Latino preferred candidates lost both the 2016 presidential race and the 2018 Attorney General race in District 8, with an overall average of just a 1.3% margin of victory across the eight elections analyzed by the staff. PlanScore reveals that the Democratic candidate—the Latino preferred candidate—would have just a 50% chance of winning the district, with a projected *tied* vote of 50% to 50%.⁷ It violates the Colorado Constitution to create the façade of a Latino opportunity district that the data show may not actually perform to permit Latino voters to elect their preferred candidates. *Cf. Perez v. Abbott*, 253 F. Supp. 3d 864, 884-55 (W.D. Tex. 2017) (invalidating plan that created the “façade of a Latino district” by including non-performing precincts with Hispanic voters and excluding performing precincts).

The image below shows the Weld and Larimer County portions of District 8 in purple, and the Adams County portion in red.

⁷ See Ex. 1 (PlanScore analysis of Third Staff Congressional Plan).



The red area (63.2% of the district's population) has a Latino total population of 41.3% and a Latino CVAP of 29.7%. Its white CVAP is 62.5%. The red area reliably votes to favor of Latino-preferred general election candidates. For example, Biden prevailed 56.6% to 40.5%, Hickenlooper prevailed 55.2% to 41.8%, Polis prevailed 54.5% to 40.6%, Weiser prevailed 53.1% to 42.9%, Clinton prevailed 49.8% to 41.3%, and Bennet prevailed 52.6% to 41.2%.

By contrast, the purple area (36.8% of the district's population) has a Latino total population of 33.8%, a Latino CVAP of 23.7%, and a white CVAP of 72.0%. White voters in the purple area bloc vote against Latino preferred candidates. For example, Trump (2020) prevailed 55.8% to 41.2%, Gardner prevailed 57.7% to 40.0%, Stapleton prevailed 56.3% to 38.9%, Brauchler prevailed 58.1% to 37.8%, Trump (2016) prevailed 54.6% to 36.1%, and Glenn prevailed 53.6% to 40.7%.

To the extent District 8 is intended to further the Colorado Constitution's criterion that the Commission should "to the extent possible, maximize the number of politically competitive districts," Colo. Const. art. V, § 44.3(3(a)—the lowest priority in the Constitution's set of criteria—it is unlawful to accomplish that goal by making the district with the largest Latino population into the façade of a Latino opportunity district. By doing so, the proposal dilutes the ability of Latino voters to influence electoral outcomes by creating a 50% chance⁸ that white bloc voting will defeat their preferred candidate.

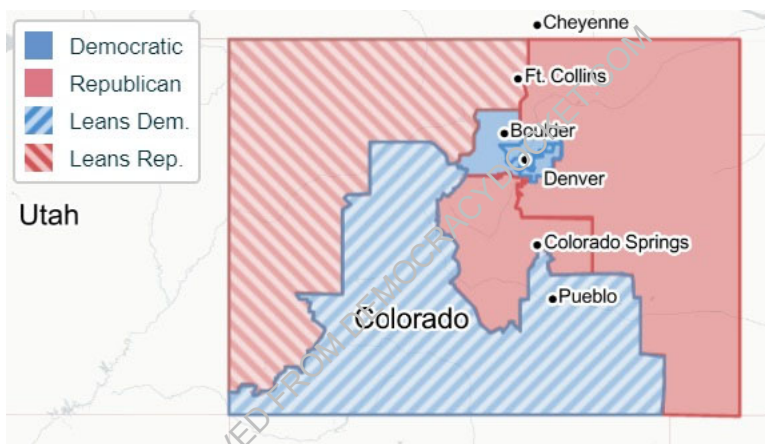
Moreover, if the Commission's goal was to create a district with a larger Latino population in the Denver region, that could have been achieved without diluting the ability of Latino voters to influence electoral outcomes, by including adjacent precincts in Denver County or Jefferson County with large Latino populations.

⁸ See Ex. 1 (PlanScore analysis of Third Staff Congressional Plan).

* * *

The preliminary staff plan violated the Colorado Constitution by drawing three districts with large Latino populations, but only two in which Latino voters had the ability to influence electoral outcomes. This Third Staff Congressional Plan is worse yet—it includes three districts with large Latino populations, but only *one* in which Latino voters could avoid being overwhelmed in general elections by white bloc voting, and *zero* in which Latino voters could be expected reliably to win both the primary *and* the general election.

Notably, this is not necessary to achieve a map characterized by partisan fairness or competitiveness. As the PlanScore analysis of LULAC’s proposed plan shows,⁹ LULAC’s Plan achieves a fair outcome by all accepted measures of partisan fairness and creates two districts that “lean” in one direction or another, as the PlanScore map below illustrates.¹⁰



It is not necessary—nor lawful—to achieve a competitive map by diluting the electoral influence of Latino voters. The Third Staff Congressional Plan violates the Colorado Constitution, and must be changed consistent with the Colorado Constitution, as reflected in LULAC’s proposed plan.

⁹ See Ex. 2 (PlanScore analysis of LULAC Plan showing partisan fairness across all accepted metrics).

¹⁰ See *id.* For more information about the partisan fairness metrics shown on the PlanScore report, see www.planscore.campaignlegal.org.

September 25, 2021

Submitted by,

/s/ Mark P. Gaber

Mark P. Gaber
Director of Redistricting
Campaign Legal Center
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mgaber@campaignlegal.org

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EXHIBIT 1



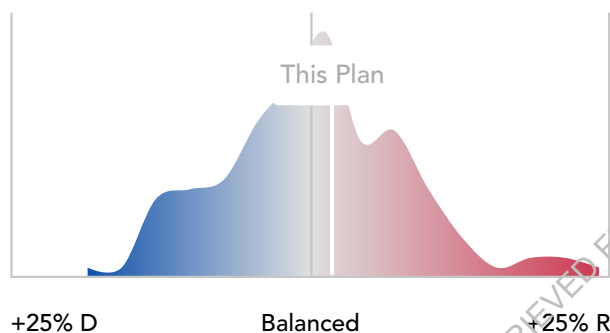
Third_Congressional_District_Staff_Plan_Final.zip

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Colorado U.S. House plan

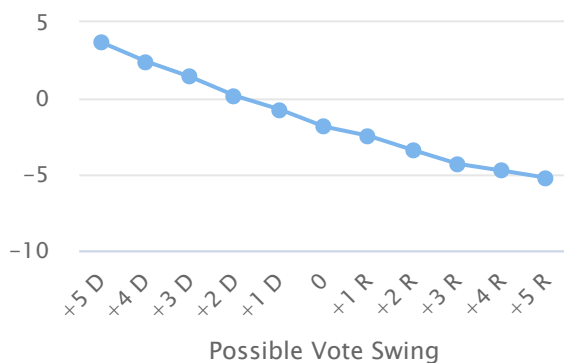
PlanScore bases its scores on predicted precinct-level votes for each office (State House, State Senate, and U.S. House) built from past election results and U.S. Census data. [More information about the predictive model used to score this plan.](#)

Efficiency Gap: 1.9%



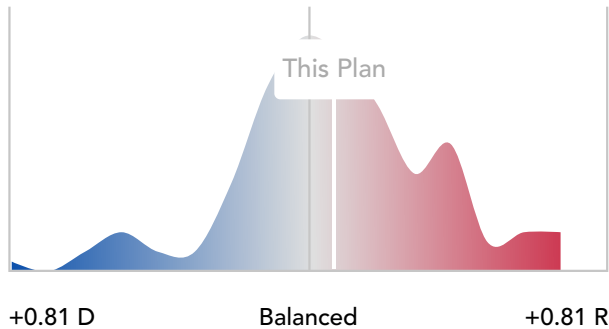
Votes for Republican candidates are expected to be inefficient at a rate 1.9% lower than votes for Democratic candidates, favoring Republicans in 59% of predicted scenarios.* [Learn more](#) >

Sensitivity Testing



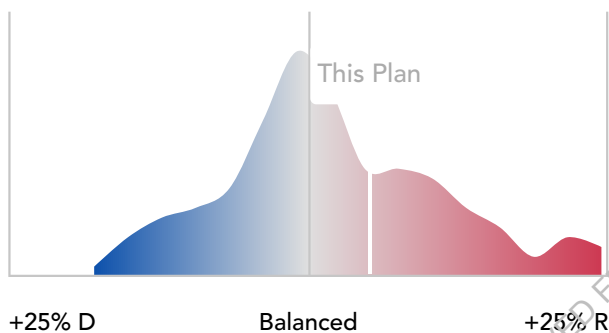
Sensitivity testing shows us a plan's expected efficiency gap given a range of possible vote swings. It lets us evaluate the durability of a plan's skew.

Declination: 0.07



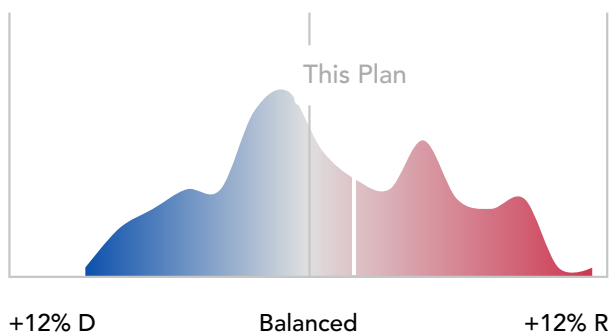
The mean Democratic vote share in Democratic districts is expected to be 4.1% higher than the mean Republican vote share in Republican districts. Along with the relative fraction of seats won by each party, this leads to a declination that favors Republicans in 69% of predicted scenarios.* [Learn more](#) >

Partisan Bias: 5.1%

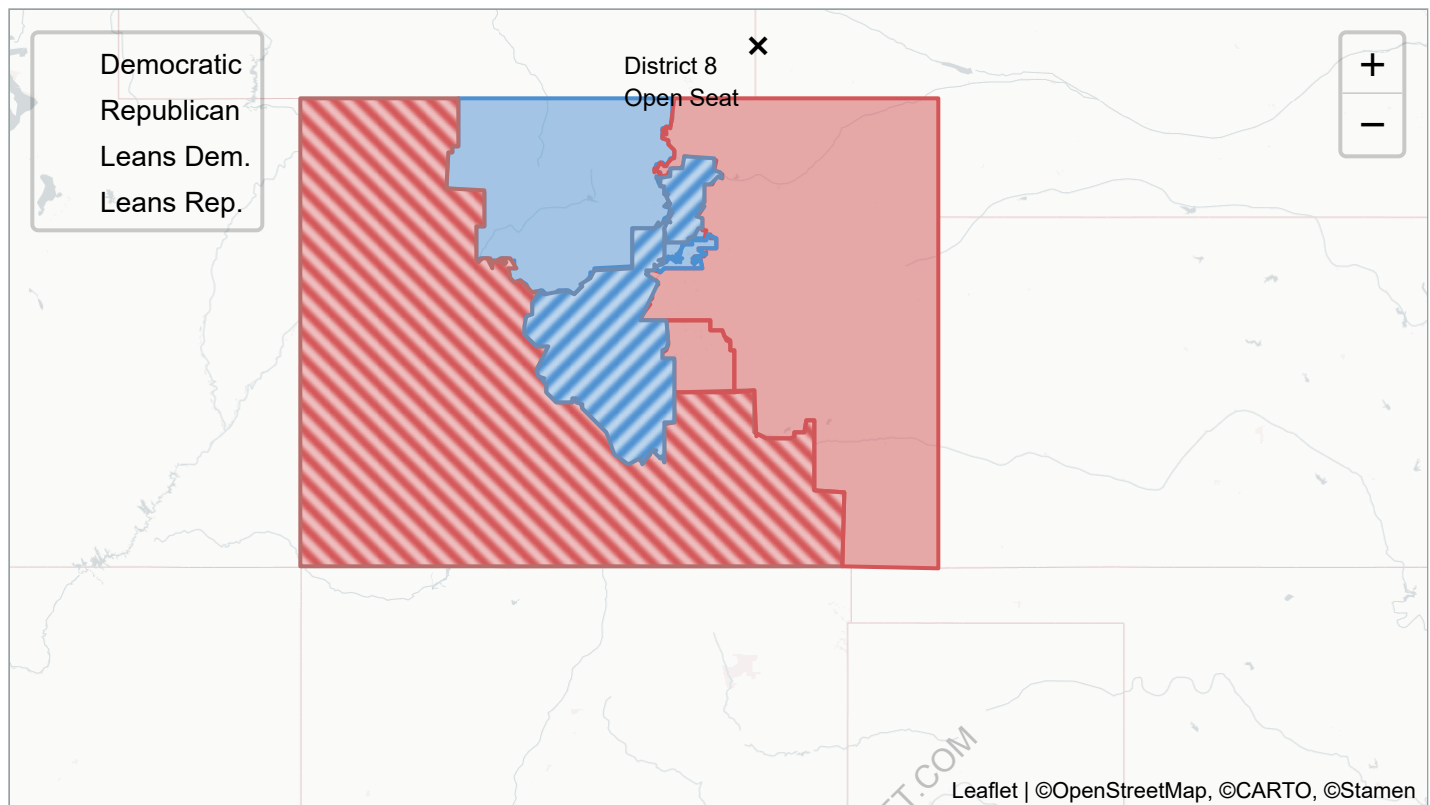


Republicans would be expected to win 5.1% extra seats in a hypothetical, perfectly tied election, favoring Republicans in 83% of predicted scenarios.* [Learn more](#) >

Mean-Median Difference: 1.9%



The median Republican vote share is expected to be 1.9% higher than the mean Republican vote share, favoring Republicans in 81% of predicted scenarios.* [Learn more](#) >



District	Candidate Scenario	Pop. 2020	Non-Hisp. Black CVAP 2019	Hispanic CVAP 2019	Non-Hisp. Asian CVAP 2019	Chance of 1+ Flips†	Chance of Democratic Win	Predicted Vote Shares	Biden (D) 2020
1	Open Seat	721,714	9.5%	20.4%	3.3%	No	>99%	77% D / 23% R	315,480
2	Open Seat	721,709	1.3%	8.8%	2.7%	No	>99%	67% D / 33% R	305,750
3	Open Seat	721,714	1.1%	20.6%	0.8%	Yes	14%	44% D / 56% R	186,120
4	Open Seat	721,743	1.7%	9.9%	2.5%	No	4%	39% D / 61% R	174,280
5	Open Seat	721,714	6.9%	13.4%	3.2%	No	11%	43% D / 57% R	161,060
6	Open Seat	721,714	10.3%	13.1%	4.7%	No	96%	60% D / 40% R	232,710
7	Open Seat	721,680	1.6%	12.1%	2.7%	Yes	83%	55% D / 45% R	255,490
8	Open Seat	721,714	2.0%	27.4%	3.0%	Yes	50%	50% D / 50% R	173,410

Download raw data as tab-delimited text.

Metric	Value	Favors Democrats in this % of Scenarios*	More Skewed than this % of Historical Plans†	More Pro-Democratic than this % of Historical Plans‡
Efficiency Gap	1.9% Pro-Republican	41%	20%	34%
Declination	0.07 Pro-Republican	31%	29%	40%
Partisan Bias	5.1% Pro-Republican	17%	46%	29%
Mean- Median Difference	1.9% Pro-Republican	19%	24%	34%

* Scenarios are part of the predictive model used to score this plan.

† 50%+ chance of one or more party flips assuming the plan is used for one decade with five State House elections, five U.S. House elections, or three State Senate elections.

‡ Enacted U.S. House, State House, and State Senate plan metrics are featured in our historical dataset.



PlanScore is a project of Campaign Legal Center.



EXHIBIT 2

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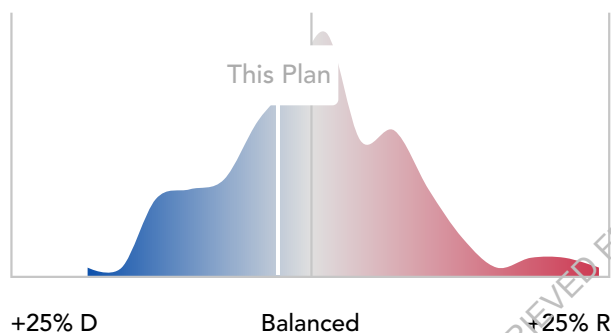
block-assignments (5).csv

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Colorado U.S. House plan

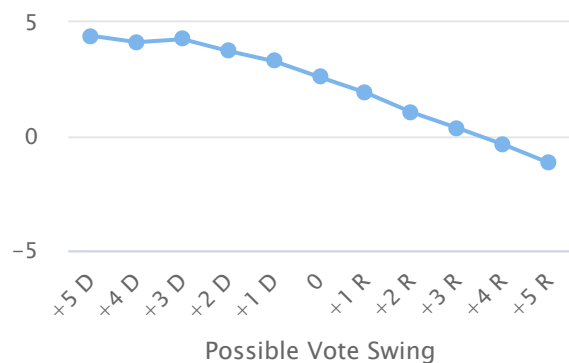
PlanScore bases its scores on predicted precinct-level votes for each office (State House, State Senate, and U.S. House) built from past election results and U.S. Census data. [More information about the predictive model used to score this plan.](#)

Efficiency Gap: 2.6%



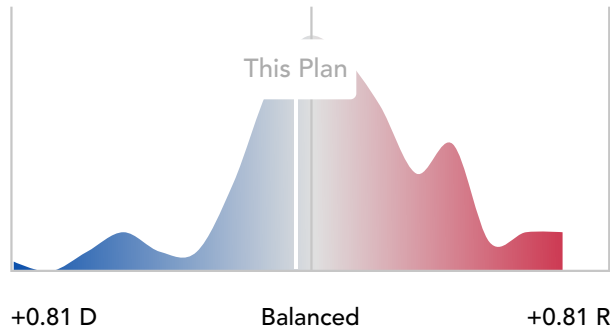
Votes for Democratic candidates are expected to be inefficient at a rate 2.6% lower than votes for Republican candidates, favoring Democrats in 64% of predicted scenarios.* [Learn more](#) >

Sensitivity Testing



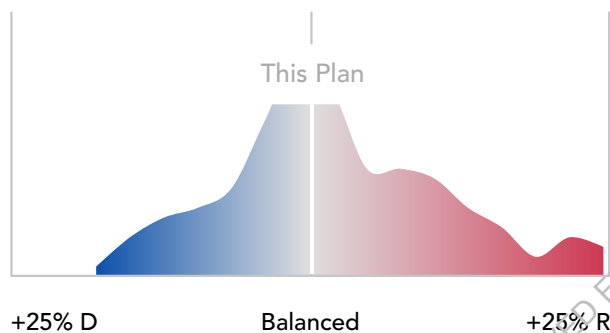
Sensitivity testing shows us a plan's expected efficiency gap given a range of possible vote swings. It lets us evaluate the durability of a plan's skew.

Declination: 0.04



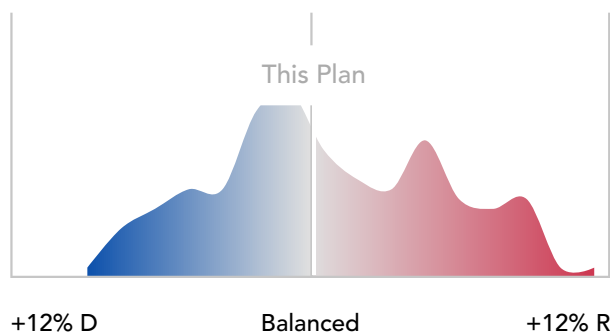
The mean Republican vote share in Republican districts is expected to be 4.1% higher than the mean Democratic vote share in Democratic districts. Along with the relative fraction of seats won by each party, this leads to a declination that favors Democrats in 56% of predicted scenarios.* [Learn more](#) ➤

Partisan Bias: 0.2%

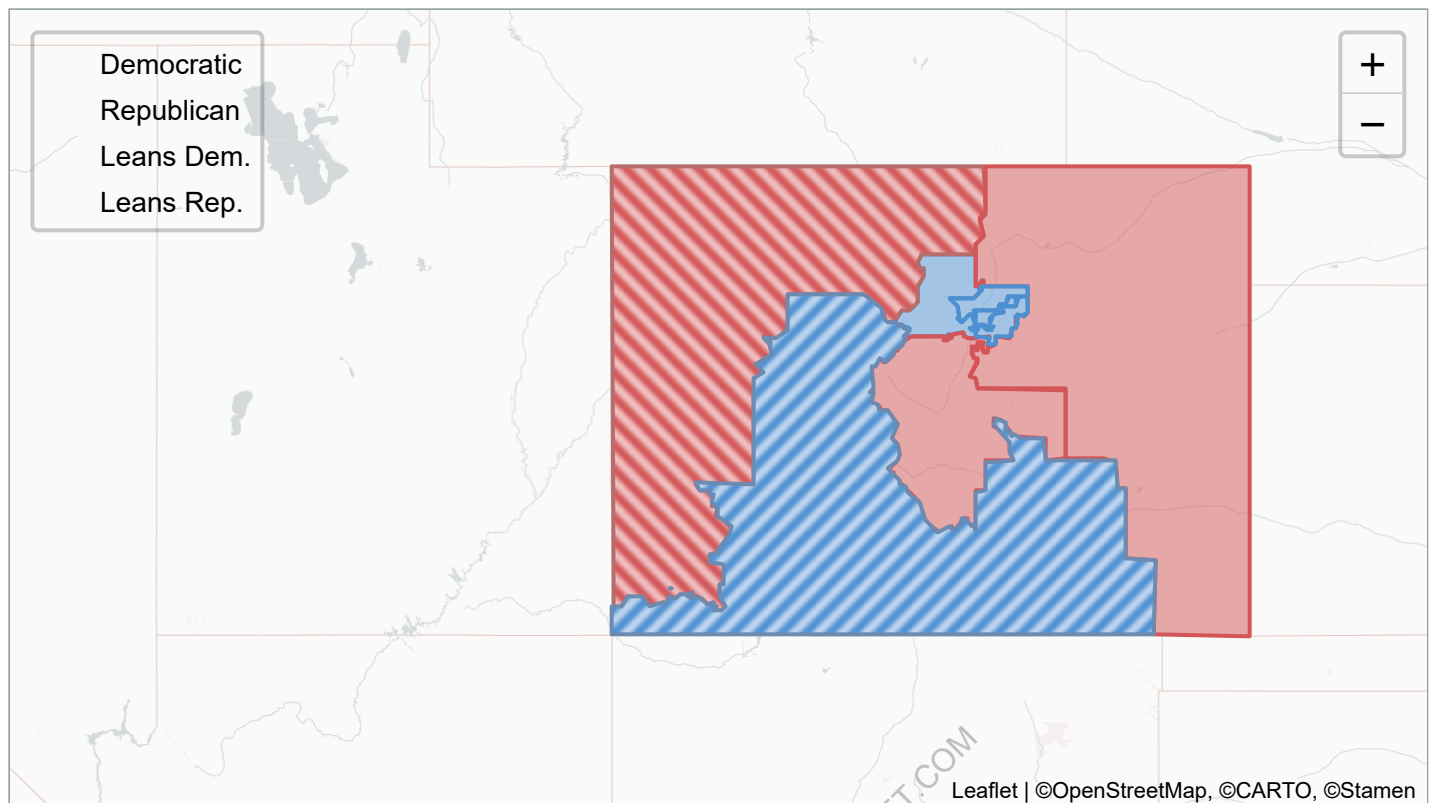


Republicans would be expected to win 0.2% extra seats in a hypothetical, perfectly tied election, favoring Republicans in 65% of predicted scenarios.* [Learn more](#) ➤

Mean-Median Difference: 0.1%



The median Republican vote share is expected to be 0.1% higher than the mean Republican vote share, favoring Republicans in 52% of predicted scenarios.* [Learn more](#) ➤



District	Candidate Scenario	Pop. 2020	Non-Hisp. Black CVAP 2019	Hispanic CVAP 2019	Non-Hisp. Asian CVAP 2019	Chance of 1+ Flips†	Chance of Democratic Win	Predicted Vote Shares	Biden (D) 2020
1	Open Seat	721,715	9.5%	20.4%	3.3%	No	>99%	77% D / 23% R	316,100
2	Open Seat	721,713	1.3%	11.0%	3.5%	No	>99%	65% D / 35% R	304,840
3	Open Seat	721,709	1.0%	9.5%	1.4%	Yes	31%	47% D / 53% R	208,550
4	Open Seat	721,715	1.3%	15.4%	1.6%	No	2%	37% D / 63% R	149,010
5	Open Seat	721,707	4.2%	9.7%	3.1%	No	5%	41% D / 59% R	173,660
6	Open Seat	721,715	10.9%	13.3%	5.2%	No	97%	60% D / 40% R	229,900
7	Open Seat	721,714	1.9%	22.5%	3.3%	No	90%	57% D / 43% R	221,410
8	Open Seat	721,714	4.2%	23.3%	1.6%	Yes	71%	53% D / 47% R	200,840

Download raw data as tab-delimited text.

Metric	Value	Favors Democrats in this % of Scenarios*	More Skewed than this % of Historical Plans†	More Pro-Democratic than this % of Historical Plans‡
Efficiency Gap	2.6% Pro-Democratic	64%	27%	58%
Declination	0.04 Pro-Democratic	56%	20%	61%
Partisan Bias	0.2% Pro-Republican	35%	3%	44%
Mean-Median Difference	0.1% Pro-Republican	48%	4%	45%

* Scenarios are part of the predictive model used to score this plan.

† 50%+ chance of one or more party flips assuming the plan is used for one decade with five State House elections, five U.S. House elections, or three State Senate elections.

‡ Enacted U.S. House, State House, and State Senate plan metrics are featured in our historical dataset.



PlanScore is a project of Campaign Legal Center.



SUPREME COURT, STATE OF COLORADO
2 East 14th Avenue, 4th Floor
Denver, Colorado 80203

DATE FILED: October 07, 2021 8:50 PM

Original Proceeding Pursuant to Article V,
Section 44.5 of the Colorado Constitution

**In re Colorado Independent Congressional
Redistricting Commission**

*Attorneys for League of United Latin American
Citizens and Colorado League of United Latin
American Citizens*

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mgaber@campaignlegal.org

**Motion for admission pro hac vice pending*

▲ COURT USE ONLY ▲

Case No.: 2021SA208

APPENDIX D

**Commission's Proposed
Map PlanScore
(October 6, 2021)**


[View the Library](#)
[Score a Plan](#)
[What is PlanScore?](#)

2021 Final Approved Commission Congressional Plan.zip

The Plan Library is live! [See proposed plans from across the country.](#)

State
Colorado

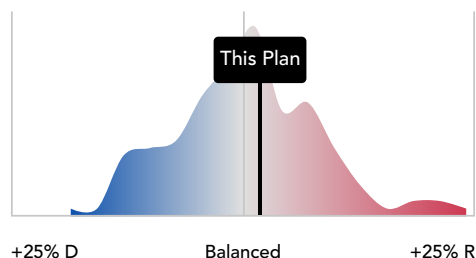
Legislative
U.S. House

Added to PlanScore
Oct. 6, 2021

PlanScore bases its scores on predicted precinct-level votes for each office (State House, State Senate, and U.S. House) built from past election results and U.S. Census data. [More information about the predictive model used to score this plan.](#)

Charts and Graphs

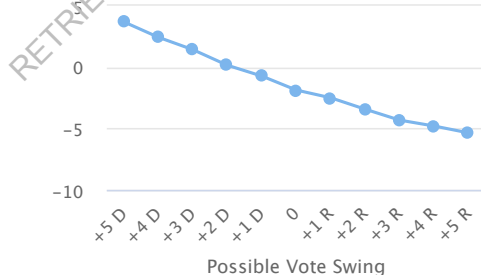
Efficiency Gap: 1.9%



Votes for Republican candidates are expected to be inefficient at a rate 1.9% lower than votes for Democratic candidates, favoring Republicans in 59% of predicted scenarios.*

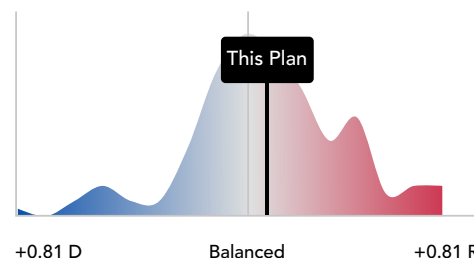
[Learn more >](#)

Sensitivity Testing



Sensitivity testing shows us a plan's expected efficiency gap given a range of possible vote swings. It lets us evaluate the durability of a plan's skew.

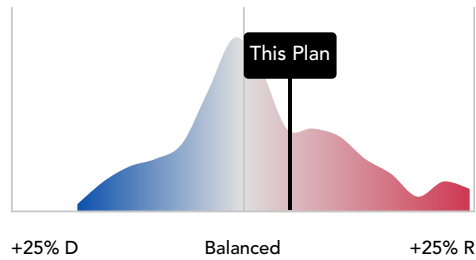
Declination: 0.07



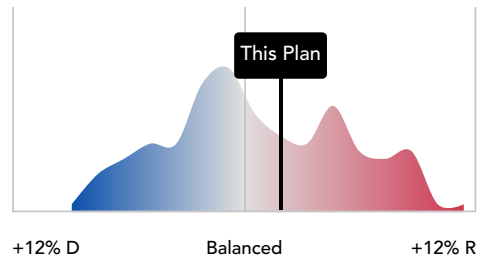
The mean Democratic vote share in Democratic districts is expected to be 4.1% higher than the mean Republican vote share in Republican districts. Along with the relative fraction of seats won by each party, this leads to a declination that favors Republicans in 70% of predicted scenarios.* [Learn more >](#)

Partisan Bias: 5.1%

Mean-Median Difference: 1.9%

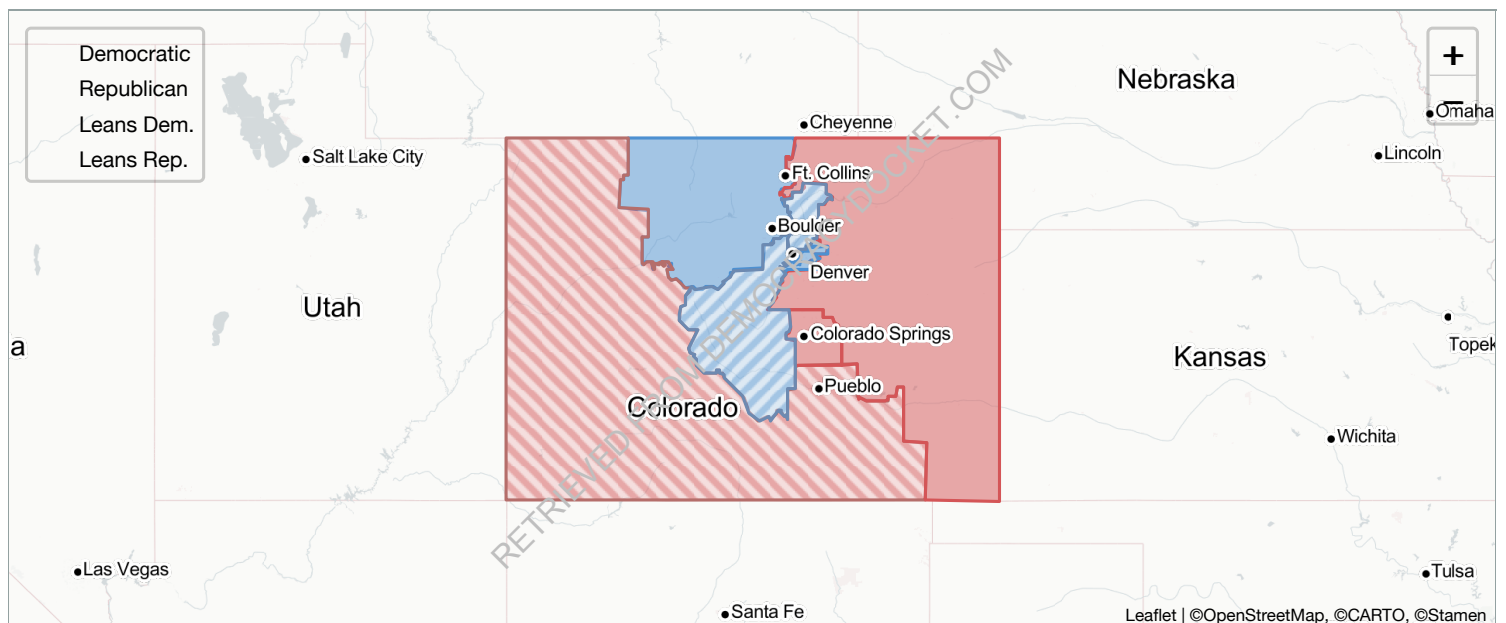


Republicans would be expected to win 5.1% extra seats in a hypothetical, perfectly tied election, favoring Republicans in 81% of predicted scenarios. * [Learn more](#) >



The median Republican vote share is expected to be 1.9% higher than the mean Republican vote share, favoring Republicans in 81% of predicted scenarios. * [Learn more](#) >

District Map



District Data

District	Candidate Scenario	Pop. 2020	Non-Hisp. Black CVAP 2019	Hispanic CVAP 2019	Non-Hisp. Asian CVAP 2019	Chance of 1+ Flips [†]	Chance of Democratic Win	Predicted Vote Shares	Biden (D) 2020	Trump (R) 2020
1	Open Seat	721,714	9.5%	20.4%	3.3%	No	>99%	77% D / 23% R	315,482	72,272
2	Open Seat	721,708	1.3%	8.8%	2.7%	No	>99%	67% D / 33% R	305,453	128,343
3	Open Seat	721,714	1.1%	20.6%	0.8%	Yes	14%	44% D / 56% R	186,128	219,706
4	Open Seat	721,715	1.7%	9.9%	2.5%	No	4%	39% D / 61% R	173,753	255,406
5	Open Seat	721,713	6.9%	13.4%	3.2%	No	11%	43% D / 57% R	161,066	198,721
6	Open Seat	721,715	10.2%	13.1%	4.7%	No	96%	60% D / 40% R	232,937	141,261
7	Open Seat	721,708	1.6%	12.1%	2.7%	Yes	83%	55% D / 45% R	256,111	190,950
8	Open Seat	721,714	2.0%	27.4%	3.0%	Yes	50%	50% D / 50% R	173,418	157,947

[Download raw data as tab-delimited text.](#)

Metric	Value	Favors Democrats in this % of Scenarios*	More Skewed than this % of Historical Plans [‡]	More Pro-Democratic than this % of Historical Plans [‡]
Efficiency Gap	1.9% Pro-Republican	41%	20%	34%
Declination	0.07 Pro-Republican	31%	29%	40%
Partisan Bias	5.1% Pro-Republican	19%	47%	28%
Mean-Median Difference	1.9% Pro-Republican	19%	24%	34%

Freedom to Vote Act Races

[Section 5003\(c\)\(3\) of the FTVA](#) specifies that partisan fairness should be assessed using a state's two most recent elections for U.S. President and two most recent elections for U.S. Senate.

**U.S. President
2020: 1.4%**

Under this plan, votes for the Republican candidate were inefficient at a rate 1.4% lower than votes for the Democratic candidate.

**U.S. President
2016: 5.4%**

Under this plan, votes for the Republican candidate were inefficient at a rate 5.4% lower than votes for the Democratic candidate.

**U.S. Senate
2020: 3.0%**

Under this plan, votes for the Democratic candidate were inefficient at a rate 3.0% lower than votes for the Republican candidate.

**U.S. Senate
2016: 6.5%**

Under this plan, votes for the Democratic candidate were inefficient at a rate 6.5% lower than votes for the Republican candidate.

* Scenarios are part of [the predictive model used to score this plan](#).

[†] 50%+ chance of one or more party flips assuming the plan is used for one decade with five State House elections, five U.S. House elections, or three State Senate elections.

[‡] Enacted [U.S. House](#), [State House](#), and [State Senate](#) plan metrics are featured in our [historical dataset](#).



PlanScore is a project of Campaign Legal Center.



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**Commission's Communities
of Interest List
(September 20, 2021)**

Colorado Independent Congressional Redistricting Commission Adopted Guidelines and Recommendations

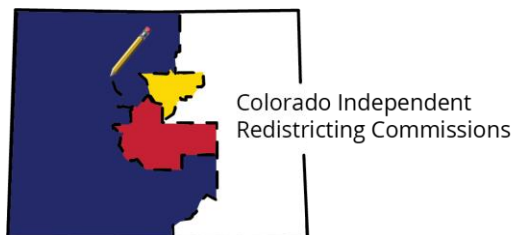
Guidelines (approved by at least 8 commissioners including at least one unaffiliated)

Date	Motion
08/26/21	Keep the counties of the San Luis Valley together
9/20/21	That the non-partisan staff move forward with the Second Staff Plan as the basis for the Third Staff Plan with the following guidance: to take into consideration the issues raised by the Commissioners this evening and up to the time it submits the Third Staff Plan. (moved by Commissioner Leone, seconded by Commissioner Espinoza)
09/20/21	Keep roaring fork valley whole (to include El Jebel, Basalt, Aspen, Carbondale, Snowmass Village, and Glenwood Springs). (moved by Commissioner Wilkes, seconded by Commissioner Tafoya)
09/20/21	Keep the City and County of Denver whole to the extent necessary for population and keep the City of Colorado Springs whole. (moved by Commissioner Tafoya, seconded by Commissioner Schell)
09/20/21	Keep the military bases in El Paso County in a single district (to include Schriever Space Force Base, Cheyenne Mountain Space Force Station, Peterson Air Force Base, the Air Force Academy, and the population portion of Fort Carson). (moved by Commissioner Wilkes, seconded by Commissioner Leone)

Recommendations (approved by a majority of commissioners)

Date	Motion
09/01/21	Keep Pueblo, Huerfano, Otero, Las Animas, Archuleta, and the southern portions of Montezuma and La Plata Counties together with San Luis Valley. (moved by Commissioner Tafoya)
09/20/21	Keep Commerce City whole (noncontiguous zero blocks exempted). (moved by Commissioner Tafoya, seconded by Commissioner Coleman)

**Commission First Staff
Plan Memo
(September 3, 2021)**



Colorado Independent Redistricting Commissions Staff

1580 Logan Street, Suite 430
Denver, CO 80203
303-866-2652

colorado.redistricting2020@state.co.us

MEMORANDUM

September 3, 2021

TO: Independent Congressional Redistricting Commission

FROM: Colorado Independent Redistricting Commissions Staff

SUBJECT: First Congressional Staff Plan

Preliminary Statement

The primary goal of the nonpartisan staff of the Colorado Independent Congressional Redistricting Commission ("nonpartisan staff"), has been, and always will be, for the Colorado Independent Congressional Redistricting Commission ("Congressional Commission") to approve a congressional redistricting plan with a constitutionally required supermajority vote. As explained below, nonpartisan staff is submitting this First Congressional Staff Plan in furtherance of that goal.

It appears that members of the Congressional Commission are divided as to whether the congressional redistricting plan should include a largely southern district or should include both a Western Slope district and an Eastern Plains district. Nonpartisan staff believes it is up to the Congressional Commission to decide which direction the final plan should take.

At its meeting on September 1, 2021, a majority of the Congressional Commission voted to recommend to nonpartisan staff that, due to expressed communities of interest, the following should be kept together in a single congressional district:¹

- The six counties of the San Luis Valley;²
- Huerfano, Las Animas, Otero, and Pueblo Counties; and
- The Southern Ute and Ute Mountain Ute tribal lands in Archuleta, La Plata, and Montezuma Counties.

¹ Article V, Section 44.4 (3) of the Colorado Constitution authorizes the Congressional Commission to provide direction to the nonpartisan staff for the development of staff plans, to which the nonpartisan staff must adhere, if approved by eight commissioners one of whom is an unaffiliated voter. Since there were only seven votes in favor of the motion concerning these counties, the motion described above is only a recommendation from the commissioners and nonpartisan staff was not required to adhere to it in the creation of the First Congressional Staff Plan.

² Alamosa, Conejos, Costilla, Mineral, Rio Grande, and Saguache Counties.

In drafting the First Congressional Staff Plan, nonpartisan staff considered modifying the Preliminary Congressional Plan in response to the public comments by adding the tribal lands to the proposed Congressional District 4. These modifications would have shown how the subject area looked in a plan with Western Slope and Eastern Plains districts. However, if adding the tribal lands to an Eastern Plains district is the direction that the Congressional Commission decides to follow, this can be done as a simple amendment to the Preliminary Congressional Plan. Nonpartisan staff believes that it is instead more beneficial to the future work of the Congressional Commission for the First Congressional Staff Plan to place the subject area in a largely southern district. Further, the Congressional Commission now has two distinct plans created by nonpartisan staff that can be amended by the commission.

By submitting this First Congressional Staff Plan, nonpartisan staff is not recommending or suggesting that the Congressional Commission approve a congressional redistricting plan with a largely southern district. Again, that is a choice for the Congressional Commission to make. No congressional redistricting plan will be perfect. There are advantages and disadvantages to both types of plans.

Description of Congressional Districts

Congressional District 1. Congressional District 1 is composed entirely of the area within the boundaries of the City and County of Denver. The population of Denver is 715,522. The population of the enclaves of Arapahoe County completely surrounded by Denver add an additional 7,348 for a total population within the boundaries of Denver of 722,870 or 1,156 over the ideal district size of 721,714. Nonpartisan staff moved the additional population from Denver into Congressional District 8.

Congressional District 2. Congressional District 2 is in the northwest portion of the state. It includes the whole mountainous counties of Grand, Jackson, Moffat, Rio Blanco, and Routt and portions of Garfield and Summit Counties. It also includes all of Boulder County and the City and County of Broomfield. It includes nearly all of Larimer County except Fort Collins, and the population is completed with portions of Weld County. Boulder, Longmont, and Loveland are the major population centers.

Congressional District 3. Congressional District 3 includes the counties recommended by a majority of the Congressional Commission members, including the San Luis Valley, Huerfano, Las Animas, Otero, and Pueblo Counties, together with the counties of La Plata and Montezuma that include the tribal lands. It also includes the whole counties of Archuleta, Crowley, Custer, Delta, Dolores, Eagle, Gunnison, Hinsdale, Mesa, Montrose, Ouray, Pitkin, San Juan, and San Miguel. The population is completed with portions of the Roaring Fork Valley in Garfield County. The population centers in this district are Grand Junction and Pueblo.

Congressional District 4. Congressional District 4 is an Eastern Plains district and includes the following whole counties: Baca, Bent, Cheyenne, Elbert, Kiowa, Kit Carson, Lincoln, Logan, Morgan, Phillips, Prowers, Sedgwick, Washington, and Yuma. It also includes eastern portions of Adams and El Paso Counties. It includes nearly all of Douglas County, and much of Weld County, including portions of the city of Greeley. The population is completed with portions of Larimer County, including all of the city of Fort Collins. The population centers are Castle Rock, Fort Collins, and Greeley.

Congressional District 5. Congressional District 5 is composed of nearly all of El Paso County including all of Colorado Springs. The population of El Paso County is 730,395 or 8,681 over the ideal district size. Nonpartisan staff moved the excess population in the eastern portion of El Paso County to Congressional District 4.

Congressional District 6. Congressional District 6 includes all of Arapahoe County except for the enclaves in Denver and the small enclave of Bow Mar, which is not contiguous and is in Congressional District 7. It also includes all of the City of Aurora, including the portions in Adams and Douglas Counties. Its population is completed with a portion of Highlands Ranch in Douglas County. Its population centers are Aurora and Centennial.

Congressional District 7. Congressional District 7 is a Front Range district including all of Chaffee, Clear Creek, Fremont, Gilpin, Jefferson, and Park Counties. The population is completed with a portion of Summit County. The population centers are Arvada and Lakewood.

Congressional District 8. Congressional District 8 begins with the suburbs north of Denver in Adams County including all of Commerce City. It then covers the cities in Southeastern Weld County along the I-25 corridor, up to and including portions of the City of Greeley. Its population centers are Greeley, Thornton, and Westminster.

Constitutional Criteria

Equal Population. The population of each of the districts is within one person of the ideal district size of 721,714.

Federal Voting Rights Act. Nonpartisan staff does not believe that there is sufficient voting age population to create a majority-minority congressional district within Colorado that complies with the requirements of the Colorado Constitution. The Congressional Commission has not received any comments suggesting that a majority-minority district must be created.

Contiguity. All portions of the congressional districts are contiguous to other portions of the same congressional districts.

Preservation of communities of interest and political subdivisions. When it was necessary for nonpartisan staff to divide a county to arrive at the required congressional district population, nonpartisan staff attempted to keep communities of interest together, such as keeping the Roaring Fork Valley together when dividing Garfield County and keeping the major ski areas together when dividing Summit County. Of the 64 counties in Colorado only ten were split, and all of these counties had to be split in order to equalize population across the congressional districts. To the extent possible, nonpartisan staff kept municipalities that include portions in two counties together or split those municipalities at the county border.

Compactness. Nonpartisan staff believes that the districts are reasonably compact. Some congressional district border lines are irregular due to municipal boundaries or the shape of census blocks necessary to equalize the population.

Politically competitive districts. The Congressional Commission has not identified a standard for judging competitiveness. The Commission has identified eight statewide races that it

believes should be used in determining competitiveness.³ The report on election results accompanying the First Congressional Staff Plan shows an average of the difference between the votes cast for Democratic and Republican candidates across these eight elections. A positive number indicates that there were more votes cast for the Republican candidates, and a negative number indicates that there were more votes cast for the Democratic candidates.

Diluting a racial or language minority group's electoral influence. To the extent that section 44.4 (4)(b) 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. Nonpartisan staff considered communities of interest in creating this plan and does not believe that the electoral influence of any such community was diluted in this plan.

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³ The eight elections are: From the 2016 General Election: Colorado Senator and President; From the 2018 General Election: Governor, Attorney General, Treasurer, Secretary of State, and at-large Regent of University of Colorado; and From 2020 General Election: Colorado Senator.