

<p>SUPREME COURT, STATE OF COLORADO  2 East 14<sup>th</sup> Avenue, 4th Floor  Denver, CO 80203</p>	<p>DATE FILED: October 8, 2021 12:27 PM</p>
<p>Original Proceeding Pursuant to Art. V, § 44.5 of the Colorado Constitution</p>	
<p><b>In re Colorado Independent Congressional Redistricting Commission</b></p>	
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<p><b>AMICUS CURIAE BRIEF OF THE COLORADO MULTI-ETHNIC COALITION AND THE HISPANIC CHURCHES OF THE CENTRAL DISTRICT/DISTRITO CENTRAL OF THE ASSEMBLIES OF GOD IN NORTHERN COLORADO</b></p>	

## CERTIFICATE OF COMPLIANCE

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I acknowledge that this document may be stricken if it fails to comply with any of the requirements of Colorado Appellate Rules 28 and 32.

Dated: October 8, 2021

*s/ Rebecca A.R. Smith*

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## INTRODUCTION

Competitive elections are the heartbeat of democracy. A map that increases competition benefits voters and Colorado as a whole. The Final Redistricting Plan (“The Final Plan”) is politically competitive statewide—with the potential for an even split between Republican and Democratic congressional representatives. The key to determining the makeup of the congressional delegation is the closely drawn District 8, in which neither Democrats nor Republicans hold a majority. Hispanic voters comprise 38.5% of District 8—enough to swing this swing district. This creates structural incentives for both political parties to compete for the Hispanic vote, empowering this historically marginalized and ignored constituency.

This question before this Court is easily answered. This Court need not—and indeed cannot—analyze whether the Final Plan is the best possible option. Rather this Court need only determine whether the Colorado Independent Congressional Redistricting Commission (“the Commission”) abused its discretion in creating a Final Plan that satisfies the constitutional requirements based on the record. As demonstrated below, the Commission faithfully met all such constitutional requirements. Accordingly, in this

instance, this Court should not set the precedent that it will substitute its opinion for that of this apolitical body.

### **STATEMENT OF THE ISSUE**

Whether, given the lack of evidence that the Colorado Independent Congressional Redistricting Commission abused its discretion, the Final Plan that it submitted to this Court should be upheld?

### **STATEMENT OF IDENTITY OF AMICI AND THEIR INTERESTS IN THE CASE**

The Colorado Multiethnic Coalition (“CMEC”) serves as a resource hub for Hispanic and multiethnic faith leaders in Colorado and across the United States, in addition to developing community-based projects. It has members in the new District 8. The CMEC has an interest in advocating on behalf of its members who live in District 8.

The Hispanic Churches of the Central District/Distrito Central of the Assemblies of God in Northern Colorado (“Hispanic Churches”) is a network of churches from Colorado and other states in the Western part of the United States. Their churches offer English, Spanish, or bi-lingual ministry. The Central Latin American District is a partnership of over 140 congregations within the States of New Mexico, Colorado, Wyoming, Montana, Utah, and Idaho. The Hispanic Churches’ mission includes providing community

leadership. Accordingly, the Hispanic Churches have an interest in advocating on behalf of their members who live in District 8.

## **FACTUAL BACKGROUND**

On October 1, 2021, Pursuant to Section 44.5 of Article V of the Colorado Constitution, the Commission submitted its Final Plan dividing the state of Colorado into congressional districts to this Court for approval.

### **I. A Bi-partisan Way to Redistrict is Born.**

For several decades, “Colorado's decennial redistricting process has been a tumultuous, politically fraught, and notoriously litigious affair.” *In re Interrogatories on Senate Bill 21-247 Submitted by the Colo. Gen. Assembly*, 488 P.3d 1008, 1010 (Colo. 2021). To solve this problem, a bi-partisan group of Colorado leaders crafted a constitutional amendment to comport with legal precedent, prioritize community over partisanship, increases public participation, and relieve judges from having to draw political district lines. The resulting proposal, Amendment Y, had broad support from elected officials and ideologically diverse organizations, including the current and former governors from both parties, the ACLU, Denver Metro Chamber of

Commerce and the Independence Institute, a free-market think tank.<sup>1</sup>

Amendment Y removed congressional map making from the partisan legislature and created an Independent Commission “made up of ordinary voters.” *In re Interrogatories on Senate Bill 21-247 Submitted by the Colo. Gen. Assembly*, 488 P.3d 1008, 1010 (Colo. 2021). The appointment and composition of the Commission, including Democrats, Republicans, and independents, was intended to alleviate political influence as much as possible by providing political balance and representation to voters not affiliated with either of the state’s two largest parties. Colo. Const. art. V, § 44(1)(b).

The Independent Commission was designed to end the practice of political gerrymandering, and is required, “to the extent possible, [to] maximize the number of politically competitive districts.” Colo. Const. art. V, §§ 44(1)(a) and 44.3(3)(a) (emphasis added).

Although competitiveness was not previously a statutory requirement, courts do consider it as a factor in evaluating redistricting maps. *Hall v. Moreno*, 270 P.3d 961, 973 (Colo. 2012) (“it was proper for the trial court to consider competitiveness in addition to the enumerated ... factors.”). Among

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<sup>1</sup>Botkin, Ben, *Colorado Amendments Y and Z: Measures pass handily*, Nov. 6, 2018, <https://www.denverpost.com/2018/11/06/colorado-amendment-y-z-results/>

other obligations, the Commission was also tasked with protecting voting blocs considered “communities of interest,” so that minority demographics and other communities are not disenfranchised. *Id.* at § 44.3(2)(a).

## **II. The Commission’s Extensive Process**

The Commission is a bipartisan group of Colorado leaders made up of 12 members: four Democrats, four Republicans, and four unaffiliated voters. Since the Commission convened on March 15, 2021, it held 50 meetings. Subcommittees of the Commission—including the Map Analytics, Public Comment, and Public Hearing Schedule subcommittees—have also met regularly.

Additionally, the Commission held 40 public hearings in locations across the state, with multiple hearings in each existing Congressional district. At least one meeting was held in each Congressional district after final data was released by the U.S. Census Bureau. Members of the public were invited to attend those hearings, either in person or virtually, and give testimony. As few as two and as many as 74 individuals testified at each hearing.

Members of the public were also invited to submit public comments and proposed redistricting maps through the Commission’s website.

<https://tinyurl.com/2u33u975>. In response, the Commission received and considered over 5,000 public comments and 170 proposed

The Commission's Non-Partisan Staff has assisted the Commission by, among other things, creating plans for the Commission's consideration. First, on June 23, Staff prepared and released a Preliminary Plan, which was based on preliminary data because of delays in the 2020 Decennial Census caused by the pandemic. See *In re Interrogatories on S.B. 21-247*, 2021 CO 37, ¶¶36-39 (agreeing that the preliminary plan could be prepared before final redistricting-level census data was released). The Preliminary Plan and supporting materials are available at <https://tinyurl.com/svubhry7>.

Final redistricting-level census data was released on August 12. After processing that data, Non-Partisan Staff released the First Staff Plan on September 3. That plan and supporting materials are available at <https://tinyurl.com/hrkwr2h>. A Second Staff Plan was released September 15. That plan and supporting materials are available at <https://tinyurl.com/6bt7pdd9>. A Third Staff Plan was released September 23, 2021. That plan and supporting materials are available at <https://tinyurl.com/nxjkth28>.

Along with preparing the preliminary and three staff plans,

non-Partisan Staff also prepared seven more plans at the request of Commissioners. Also, at the Commissioners' requests, Staff prepared three amendments to the Second Staff Plan and five amendments to the Third Staff Plan. Those Commissioner-requested plans and amendments can be found at <https://tinyurl.com/jtkx8xdz>.

Colorado was apportioned a new, eighth congressional seat after the 2020 Decennial Census. Accordingly, the Final Plan divides Colorado into eight contiguous districts. *See* COLO. CONST. art. V, § 44.3(1)(a).

### **III. The Commission Approves the Final Plan 11-1**

In a near unanimous vote, the Commission approved the Final Plan. All four unaffiliated Commissioners voted for this plan, three of the Commission's four Democrats voted for the plan, and all four Republicans voted for the plan. That plan is the Final Plan the Commission has adopted for submission to this Court for judicial review.

### **STANDARD OF REVIEW**

This Court must review the Commission's plan to "determine whether [it] complies with" certain criteria, described at length in other briefing to this Court. COLO. CONST. art. V, § 44.5(1). Specifically, "[t]he supreme court shall approve the plan submitted unless it finds that the commission . . . abused its

discretion in applying or failing to apply the criteria . . . , in light of the record before the commission.” *Id.* art. V, § 44.5(2) (emphasis added). An abuse of discretion occurs only when “the decision under review is not reasonably supported by *any competent evidence in the record.*” *Widder v. Durango Sch. Dist.* No. 9-R, 85 P.3d 518, 526 (Colo. 2004) (emphasis added) (citing *Van Sickle v. Boyes*, 797 P.2d 1267, 1272 (Colo. 1990)).

## ARGUMENT

The Colorado Supreme Court should accept the final maps developed by the Commission. The record is clear that the Final Plan before the court satisfies all constitutional standards.

**I. Under the final districting map, Hispanic voters are the key constituency in the key district in the State, forcing both political parties to compete for their votes and listen to their traditionally undervalued perspectives.**

The Final Plan not only strikes the proper balance between the multiple purposes required by the Colorado Constitution. It also enhances, rather than diminishes, political power for Hispanic voters.

When the voters passed Amendment Y, it was their stated declaration that “[t]he practice of political gerrymandering, whereby congressional districts are purposefully drawn to favor one political party or incumbent politician over another, must end.” COLO. CONST., art V, § 44(1)(a). In service

of this mission, the Constitution expresses two goals as relevant here: first, the redistricting commission must “[a]s much as is reasonably possible, . . . preserve whole communities of interest<sup>2</sup> and whole political subdivisions”; and second, it “shall, to the extent possible, maximize the number of politically competitive districts.” COLO. CONST., art V, §§ 44.3(1)(2)(a), 44.3(1)(3)(a). The entire Final Plan—and particularly the new Eighth Congressional District—accomplish both goals set forth in the Colorado Constitution.

The Final Plan creates a politically competitive landscape in Colorado: three districts expected to favor the Republican Party (Districts 3, 4, and 5), four districts expected to favor the Democratic party (Districts 1, 2, 6, and 7), and a new, competitive district where it is difficult to predict a winner (District 8). Hispanic voters, whom Colorado politicians have largely ignored or taken for granted, make up 38.5% of the new District 8, creating a key constituency in this close district.

To win in District 8, both political parties will have to compete for Hispanic voters. In that regard, Hispanic voices will be given greater weight

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<sup>2</sup> A “Community of Interest” expressly includes “racial, ethnic, and language minority groups.” Colo. Const., art V, § 44(1)(3)(b)(III).

than ever before. And given that this crucially important demographic will have such an impact on the outcome of the *most* competitive district in the state, which has the power to swing Colorado's coalition in the U.S. House of Representatives, courting Hispanic voters in District 8 may very well become the most important consideration for Colorado political parties. This provides more political power to Hispanic voters than would packing them into a single district. Put simply, under the Final Plan, Hispanic voters are the swing block in the swing district, making their votes essential.

Importantly, Hispanic voters are not a monolith. In Colorado, 21.8% of the state population is Hispanic or Latino, just over 1.2 million people.<sup>3</sup> Their roots may be in all parts of Latin America, Central America, and Mexico. They live in all parts of the state, comprising both rural and urban constituencies. Nearly 80% of Colorado Hispanics were born in the state, many living in Colorado for generations,<sup>4</sup> while others may be recent arrivals. Given the disparate traditions, foods, and dialects, it is no wonder that Hispanic voters also have varied politics. Even while Latino voters were a key constituency to delivering the U.S. Congress and presidency to Democrats, Republicans

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<sup>3</sup> United States Census Bureau, *Quick Facts Colorado*, <https://www.census.gov/quickfacts/fact/table/CO/RHI725219#qf-headnote-b>

<sup>4</sup> Latinos Lead, *Latino Colorado*, At 5 (2019) [https://latinoslead.org/wp-content/uploads/2019/09/00\\_Latino-Colorado-Report.pdf](https://latinoslead.org/wp-content/uploads/2019/09/00_Latino-Colorado-Report.pdf) (p.5)

saw increasing support in the 2020 national election.<sup>5</sup> Approximately one in three Hispanic voters cast a vote for former President Trump in that election, while 71% voted for former President Obama in 2012.<sup>6</sup> For these reasons, Hispanic voters are a developing swing demographic.

Competitiveness among the political parties for Hispanic votes will require candidates in District 8 to communicate with, understand and address issues important to them and comments provided to the Commission reflect that sentiment. One such comment provided by Senior Pastor Emperatriz Lugo speaks to this directly: “. . . in many areas of Colorado, such as northern Adams County, Weld County, Pueblo County or El Paso County, Hispanic voters are increasingly receptive to two-party competition. We welcome it.”

With all other criteria being met, having Colorado’s new congressional district as a swing district with the Hispanic community being a key demographic demonstrates that what the voters hoped would occur with the passage of Amendment Y has become a reality in District 8. Candidates in that district won’t be able to rely upon party affiliation—if they want to be taken seriously, the candidate that does that won’t win.

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<sup>5</sup> <https://www.nytimes.com/2021/04/02/us/politics/trump-latino-voters-2020.html>

<sup>6</sup> *Id.* Krogstad, J, *et al*, *Hillary Clinton won Latino vote but fell below 2012 support for Obama*, (November 29, 2016) <https://www.pewresearch.org/fact-tank/2016/11/29/hillary-clinton-wins-latino-vote-but-falls-below-2012-support-for-obama/>

Should the Court decide to rewrite the map forwarded by the Commission generally or rewrite District 8, it would establish a precedent of judicial intervention in the Commission's work that would be unfortunate. The extensive public outreach by the Commission lends credibility to the final product as one that not only meets all constitutional criteria, but also has public input. A major rewrite of the Commission's work could call into question the value of the process and the final congressional boundaries. The voters wanted a Commission, independent of politics, to follow constitutional criteria and rewrite fair congressional boundaries without partisan consideration. That is what occurred: the process worked, the Commission delivered.

Finally, redrawing the boundaries of District 8 will affect other districts and will impact other required criteria in one or more of the districts. The delicate balance that was so well struck by the Commission should be preserved by this Court.

**II. This Court is constitutionally obligated to uphold the final districting map absent an abuse of discretion, which did not occur here.**

The Colorado Constitution requires that "[t]he Supreme Court shall approve the plan submitted unless it finds that the commission . . . abused its discretion in applying or failing to apply the criteria in section 44.3 of this

article V, in light of the record before the commission.” COLO. CONST. art. V, § 44.5(2).

When Colorado voters adopted Amendment Y, they created an independent, nonpartisan redistricting process. In this very first year, that process worked, resulting in maps that respect communities of interest are not gerrymandered to favor one political party over another, and address political competition.

Since the commission convened on March 15, 2021, it held 50 meetings, including 40 public hearings, before finally approving these maps. It received and considered over 5,000 public comments and 170 proposed maps. After months of debate and careful consideration, the commission overwhelmingly voted 11 to 1 to approve the final district plan. In doing so, the commission faithfully abided by the criteria the legislature imposed upon it and did not abuse its discretion. Without evidence of any kind of abuse of discretion, this Court “shall approve the plan submitted.” It need not, in this instance, set the precedent that it will substitute its opinion for that of this apolitical body.

**A. The Commission properly applied the required criteria.**

The Commission complied with every State Constitutional requirement because it faithfully applied the factors set forth in Section 44.3 of the

Colorado Constitution:

- **§ 44.3(1)(a):** The plan achieved remarkable population equality, as required by Section 44.3(1)(a). Six of the districts have a population of 721,714 people, and two have a population of 721,715.
- **§ 44.3(1)(b):** The plan complies with the federal Voting Rights Act, 52 U.S.C. § 10301, because the Commission's non-partisan staff concluded that Section 2 of the Voting Rights Act does not require creation of a majority-minority district or districts in this circumstance. The Commission did not receive any public comments that suggested otherwise.
- **§ 44.3(2)(a):** Consistent with the requirements of this subsection, the Commission gathered information about communities of interest throughout the state and has sought to keep key communities of interest, as defined in Amendment Y, as intact as reasonably possible. *Id.* § 44.3(2)(a). Although it was impossible to keep all of those communities intact, this public input informed the Commissioner's decisions and played a central role in the creation and approval of the Final Plan.
- **§ 44.3(2)(a):** The Commission and Non-Partisan Staff preserved whole

political subdivisions as much as reasonably possible. *Id.* §44.3(2)(a). When it was necessary to divide a whole political subdivision to maintain equal population between districts, the Commission kept key communities of interest together in the same district as much as reasonably possible. Of the 64 counties in Colorado, only eleven are split, and these splits are necessary to comply with other redistricting criteria. If municipalities are on the border of two counties, they have either been kept whole in a single district or split at the county line.

- **§ 44.3(2)(b):** The Commission and Non-Partisan staff kept the districts as compact as reasonably possible while also accounting for the constitutional factors.
- **§ 44.3(3)(c):** The plan maximizes political competitiveness. The Plan Maximizes Political Competitiveness. After considering other mandatory constitutional factors, the Commission maximized the number of politically competitive districts to the extent possible. *Id.* §44.3(3)(a). For example, the State’s newest district, District 8 which stretches along the high-growth corridors of the northern Front Range, “is by far the most competitive seat in the state, with Commerce City

and other heavily Democratic northern suburbs balanced out by conservative Greeley and nearby communities in the north.”<sup>7</sup>

- **§ 44.3(4)(a):** The Commission and the Non-Partisan Staff affirms that the Final Plan was not drawn for the purpose of protecting any incumbent members of the House of Representatives, any declared candidates, or any political parties.
- **§ 44.3(4)(b):** The Final Plan was not drawn for the purpose of, and does not result in, the denial or abridgement of the right of any citizen to vote on account of that person’s race or membership in a language minority group, including diluting the impact of that racial or language minority group’s electoral influence. There is no evidence in the record to prove otherwise.

This Court should not substitute its judgment for that of the Commission. The final product speaks for itself; the districts recommended by the Commission properly balance all the criteria required by the voters and resulted in a at least one very competitive district. The Court should defer to the decision of the Commission because there was no abuse of

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<sup>7</sup> Birkeland, Bente, CPR News, *Colorado’s Final Redistricting Congressional Map Could Give Democrats, GOP Equal Number Of Seats*, Sept. 29, 2021 (<https://www.cpr.org/2021/09/29/colorado-redistricting-congressional-final-map/>).

discretion, but also because the substantial public outreach of the Commission provided the public with the opportunity to influence its final product by going into communities and taking their input. This must have engendered some confidence in the public that their voices were heard that public confidence should be preserved.

### CONCLUSION

The Final Plan empowers Hispanic voters to decide key races in the State, thereby increasing their political influence and importance to both political parties. As ample evidence in the record supports the Commission's decision, Amici respectfully request that this Court conclude that the Commission complied with federal constitutional and statutory law in drawing the Final Plan; conclude that the Commission did not abuse its discretion in applying the criteria listed in section 44.3 of article V of the Constitution; approve the Final Plan; and order it to be filed with the Secretary of State.

Dated: October 8, 2021

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>th</sup> day of October, 2021, a true and correct copy of the foregoing **AMICUS CURIAE BRIEF OF THE COLORADO MULTI-ETHNIC COALITION AND THE HISPANIC CHURCHES OF THE CENTRAL DISTRICT/DISTRITO CENTRAL OF THE ASSEMBLIES OF GOD IN NORTHERN COLORADO** was e-filed with the Court through CCES electronic filing system, and e-served through CCES to the following:

*s/ Tari R. Rader*  
\_\_\_\_\_  
Tari R. Rader  
Legal Administrative Assistant