

<p>COLORADO SUPREME COURT 2 East 14th Avenue   Denver, CO 80203</p>	
<p>Original Proceeding Pursuant to Article V, Section 44.5 of the Colorado Constitution</p>	
<p><b>In re Colorado Independent Congressional Redistricting Commission</b></p>	<p><b>▲ COURT USE ONLY ▲</b></p>
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<p><b>REPLY IN SUPPORT OF REQUEST TO ESTABLISH A SCHEDULE UNDER COLO. CONST. ART. V, § 44.5(1)</b></p>	

## CERTIFICATE OF COMPLIANCE

I certify that this reply complies with applicable requirements of C.A.R. 32, including formatting requirements set forth in these rules. I acknowledge that this petition may be stricken if it fails to comply with the requirements of C.A.R. 32.

*s/ Frederick R. Yarger*

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### AUTHORITIES

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## ARGUMENT

The Commission’s Petition seeks guidance from this Court as the Commission works to fulfill its constitutional obligations despite months-long delays in the Decennial Census due to the extraordinary circumstances of the COVID-19 pandemic. Specifically, the Commission has asked the Court to establish a schedule for judicial review under Article V, § 44.5(1) of the Colorado Constitution allowing the Commission to submit a final redistricting plan to this Court no later than October 28, 2021.

This Court accepted the Petition and invited interested parties to file briefs. Three parties did so. None of them disputes the extraordinary challenges posed by the delays in the Decennial Census, and none of them opposes the Commission’s proposed schedule. Br. of Colo. Independent Legislative Redistricting Comm’n at 12–13 (citing the “unusual, unforeseen, and uncontrollable circumstances caused by the pandemic” and noting the “constitutional authority” of the “Legislative Commission” and the “inherent authority” of this Court to adjust constitutional redistricting deadlines); Br. of Fair Lines Colo.

at 7 (“[T]he Court can modify the timing for its judicial review in light of the extraordinary conditions that affected the taking of the U.S. Census . . . .”); Br. of Colo. Sec’y of State at 20–21 (taking no position on the adjustment of interim redistricting deadlines and requesting only that this Court’s judicial review be completed by “the end of 2021”).

Given the broad agreement expressed by the parties, the Commission will not repeat the arguments in its Petition or respond to the arguments in the three recently filed briefs. The Commission submits this reply only to acknowledge and address concerns raised in the Secretary of State’s brief.

The Secretary requests that the Court complete its judicial review by “the end of 2021” so that the Secretary and Colorado’s other election officials have sufficient time to administer the 2022 election process. *E.g.*, Br. of Colo. Sec’y of State at 13–15, 20–21. The Commission agrees with the Secretary that the judicial review process should be completed by the end of the calendar year to “allow the 2022 primary and general elections to proceed as scheduled.” Pet. at 19–20.

As explained in the Petition, the Commission has carefully considered the constraints imposed by the pandemic and has specifically consulted the Secretary's office, as well as other Colorado election officials, to receive guidance regarding next year's election-related deadlines. *Id.* at 14. That guidance directly informed the Commission's proposed schedule.

Indeed, one primary goal of the proposed schedule—aside from ensuring a fully robust redistricting process and sufficient time for judicial review by this Court—is to ensure that delays imposed upon the Commission and this Court by the COVID-19 pandemic will not affect the Secretary's election-year work. *Id.* This is why the proposed schedule compresses a redistricting process that would normally take nearly ***nine months*** (from receipt of final census data to this Court's approval of a final plan) to ***less than four months***. This is an extraordinary compression of the Commission's schedule, requiring both the Commission and this Court to expedite their respective roles in the crucially important redistricting process. The Commission is approaching its work carefully and in full recognition of the

extraordinary circumstances of this year. It has considered the Secretary's concerns and has proposed a schedule that will give the Secretary the full amount of time she has requested to perform her election-related duties in 2022.

The Commission strongly believes it requires until October 28 (at the latest) to submit a final redistricting plan to this Court. This schedule will permit the Commission to use final data from the Decennial Census to prepare staff plans and a final plan for submission to this Court. And it will allow the Commission to receive robust public comment based on a staff plan drawn using final census data. The schedule therefore enables both the Commission and this Court to fulfill their important constitutional duties and carry out the will of the overwhelming majority of voters who approved Amendment Y.

## **CONCLUSION**

Because no party opposes the Petition, the Commission respectfully requests that the Court establish a schedule under Colo. Const. art. V, § 44.5(1) that permits the Commission to submit a final redistricting plan to this Court no later than October 28, 2021. The



Commission agrees that the judicial review process should be completed by the end of the calendar year.

Dated: July 23, 2021

Respectfully submitted,

*s/ Frederick R. Yarger*

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## CERTIFICATE OF SERVICE

I certify that on July 23, 2021, a true and correct copy of this **REPLY IN SUPPORT OF REQUEST TO ESTABLISH A SCHEDULE UNDER COLO. CONST. ART. V, § 44.5(1)** was filed with the Court via Colorado Courts E-Filing System, with e-service to the following:

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