

SUPREME COURT OF COLORADO  
 2 East 14th Ave.  
 Denver, CO 80203

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Original Proceeding  
 Pursuant to Colo. Rev. Stat. § 1-40-107(2)  
 Appeal from the Ballot Title Board

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In the Matter of the Title, Ballot Title, and  
 Submission Clause for Proposed Initiative  
 2017-2018 #48 (“State Legislative  
 Redistricting”)

**Petitioners: Robert DuRay and Katina  
 Banks**

v.

**Respondents: Kathleen Curry and Toni  
 Larson**

**and**

**Title Board: SUZANNE STAIERT;  
 SHARON EUBANKS; and GLENN  
 ROPER**

▲ COURT USE ONLY ▲

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Case No. \_\_\_\_\_

**PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE  
 SETTING BOARD CONCERNING PROPOSED INITIATIVE 2017-  
 2018 #48 (“STATE LEGISLATIVE REDISTRICTING”)**

Robert DuRay and Katina Banks (“Petitioners”), registered electors of the State of Colorado, through undersigned counsel, respectfully petition this Court pursuant to C.R.S. § 1-40-107(2), to review the actions of the Title Setting Board with respect to the title, ballot title, and submission clause set for Initiative 2017-2018 #48 (“State Legislative Redistricting”).

## **STATEMENT OF THE CASE**

### **A. Procedural History of Proposed Initiative 2017-2018 #48**

Kathleen Curry and Toni Larson (hereafter “Proponents”) proposed Initiative 2017-2018 #48 (the “Proposed Initiative”). Review and comment hearings were held before representatives of the Offices of Legislative Council and Legislative Legal Services. Thereafter, the Proponents submitted final versions of the Proposed Initiative to the Secretary of State for purposes of submission to the Title Board, of which the Secretary or his designee is a member.

A Title Board hearing was held on October 4, 2017, at which time a title was set for 2017-2018 #48. On October 11, 2017, Petitioners Robert DuRay and Katina Banks filed a Motion for Rehearing, alleging that #48 contained multiple subjects and the titles set were prejudicial, incomplete, and misleading and failed to reflect the complete intent of the Proponents and the central features of the

Proposed Initiative. The rehearing was held on October 18, 2017, at which time the Title Board granted in part and denied in part the Motion for Rehearing.

## **B. Jurisdiction**

Petitioner is entitled to a review before the Colorado Supreme Court pursuant to C.R.S. § 1-40-107(2). Petitioner timely filed the Motion for Rehearing with the Title Board. *See* C.R.S. § 1-40-107(1). Additionally, Petitioner timely filed this Petition for Review within five days from the date of the hearing on the Motion for Rehearing. C.R.S. § 1-40-107(2).

As required by C.R.S. § 1-40-107(2), attached to this Petition for Review are certified copies of: (1) the draft, amended, and final versions of the initiatives filed by the Proponents; (2) the original ballot titles set for this measure; (3) the Motion for Rehearing filed by the Petitioner; and (4) the rulings on the Motion for Rehearing as reflected by the titles and ballot title and submission clauses set by the Board. Petitioner believes that the Title Board erred in denying certain aspects of the Motion for Rehearing. As such, this matter is properly before this Court.

## **GROUND FOR APPEAL**

The titles set by the Title Board violate the legal requirements imposed upon the Board to set clear and accurate titles. The following is an advisory list of issues to be addressed in Petitioner's brief:

1. The titles fail to describe a central element of the initiative, namely that the measure gives legal authority to the state's two largest political parties to appoint two-thirds of members of the redistricting commission, rather than to public officers or any person with constitutionally accountable powers or duties.

### **PRAYER FOR RELIEF**

Petitioner respectfully requests that, after consideration of the parties' briefs, this Court determine that the titles set for the Proposed Initiative is insufficient as a matter of law and direct the Title Board to accurately describe the measure in said titles.

Respectfully submitted this 25th day of October, 2017.

*/s/ Mark Grueskin*

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**ATTORNEY FOR PETITIONERS**

**CERTIFICATE OF SERVICE**

I, Erin Holweger, hereby affirm that a true and accurate copy of the **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2017-2018 #48 (“STATE LEGISLATIVE REDISTRICTING”)** was sent this day, October 25, 2017, via first class U.S. mail, postage pre-paid to Counsel for the Title Board and to Counsel for the Proponents at:

Matthew Grove  
Office of the Attorney General  
1300 Broadway, 6th Floor  
Denver, CO 80203

Benjamin Larson  
Ireland Stapleton Pryor & Pascoe, PC  
717 17<sup>th</sup> Street, Suite 2800  
Denver, CO 80202

*/s Erin Holweger*

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DATE FILED: October 25, 2017 3:18 PM

# STATE OF COLORADO

DEPARTMENT OF  
STATE

## CERTIFICATE

I, **WAYNE W. WILLIAMS**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the original text, amended text, final text, initial fiscal impact statement, abstract, motion for rehearing, proponents' response in opposition to motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2017-2018 #48 'State Legislative Redistricting'" .....

..... **IN TESTIMONY WHEREOF** I have unto set my hand .....  
and affixed the Great Seal of the State of Colorado, at the  
City of Denver this 23<sup>rd</sup> day of October, 2017.

A handwritten signature in blue ink that reads "Wayne W. Williams".

SECRETARY OF STATE

**2017-2018 #48 – Original Draft**

**Proposed constitutional initiative concerning Legislative Redistricting Reform**

**Designated Representatives:**

Kathleen Curry  
54542 US Highway 50, Gunnison, CO 81230  
970-209-5537  
kathleencurry@montrose.net

Toni Larson  
League of Women Voters of Colorado  
1410 Grant, Suite B204, Denver, Co 80203  
303-863-0437  
Toni.Larson@gmail.com

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Colorado Secretary of State

S.WARD 9:18 A.M.

**Text of Measure:**

*Be it Enacted by the People of the State of Colorado:*

**SECTION 1.** In the constitution of the state of Colorado, amend section 46 of article V as follows:

**Section 46. Fair legislative districts for fair elections – legislative declaration.** (1) (a) THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE THAT, IN ORDER TO ENSURE FAIR LEGISLATIVE REPRESENTATION IN THE STATE SENATE AND THE STATE HOUSE OF REPRESENTATIVES, THE PRACTICE OF POLITICAL GERRYMANDERING, WHEREBY LEGISLATIVE DISTRICTS ARE PURPOSEFULLY DRAWN TO FAVOR ONE POLITICAL PARTY OR INCUMBENT POLITICIAN OVER ANOTHER, OR TO ACCOMPLISH POLITICAL GOALS, MUST END.

(b) THE PUBLIC'S INTEREST IN PROHIBITING POLITICAL GERRYMANDERING IS BEST ACHIEVED BY CREATING A NEW AND INDEPENDENT COMMISSION THAT IS POLITICALLY BALANCED, PROVIDES REPRESENTATION TO VOTERS NOT AFFILIATED WITH EITHER OF THE STATE'S TWO LARGEST PARTIES, AND UTILIZES NONPARTISAN LEGISLATIVE STAFF TO DIVIDE THE STATE INTO LEGISLATIVE DISTRICTS WITHOUT REGARD TO PARTISAN PRESSURES OR CONSIDERATIONS.

(c) THE PEOPLE FURTHER FIND AND DECLARE THAT THE CITIZENS OF COLORADO ARE BEST SERVED BY DRAWING DISTRICTS USING FAIR CRITERIA, BY DRAWING DISTRICTS THAT DO NOT ADVANTAGE OR DISADVANTAGE ANY POLITICAL PARTY, AND BY MAXIMIZING THE NUMBER OF POLITICALLY COMPETITIVE DISTRICTS.

(d) THE PEOPLE FURTHER FIND AND DECLARE THAT PUBLIC PARTICIPATION IN THE REDISTRICTING PROCESS IS A PRIORITY AND THAT THE INDEPENDENT LEGISLATIVE REDISTRICTING COMMISSION SHOULD ACT TRANSPARENTLY, HOLD ALL HEARINGS IN AN OPEN, PUBLIC FORUM, AFFORD THE PUBLIC AN OPPORTUNITY TO ENGAGE THROUGH PUBLIC COMMENT, AND BE ACCOUNTABLE, REPRESENTATIVE, RESPONSIVE, AND INDEPENDENT.

(2) The state shall be divided into as many senatorial and representative districts as there are members of the senate and house of representatives respectively, each district in each house having a population as nearly equal as may be, as required by the constitution of the United States, but in no event shall there be more than five percent deviation between the most populous and the least populous district in each house.

**SECTION 2.** In the constitution of the state of Colorado, amend section 47 of article V as follows:

**Section 47. Composition of districts.** (1) Each district shall be as compact in area as possible and the aggregate linear distance of all district boundaries shall be as short as possible. Each district shall consist of contiguous whole general election precincts. Districts of the same house shall not overlap.

(2) Except when necessary to meet the equal population requirements of ~~section 46~~ SECTION 46 (2) OF THIS ARTICLE, no part of one county shall be added to all or part of another county in forming districts. Within counties whose territory is contained in more than one district of the same house, the number of cities and towns whose territory is contained in more than one district of the same house shall be as small as possible. When county, city, or town boundaries are changed, adjustments, if any, in legislative districts shall be as prescribed by law.

(3) Consistent with the provisions of this section and ~~section 46~~ SECTION 46 (2) of this article, communities of interest, including RACIAL, ethnic, LANGUAGE GROUP, cultural, economic, trade area, geographic, and demographic factors, shall be preserved within a single district wherever possible.

(4) (a) IN DEVELOPING A PLAN FOR REDRAWING THE DISTRICTS OF THE MEMBERS OF THE GENERAL ASSEMBLY, THE INDEPENDENT LEGISLATIVE REDISTRICTING COMMISSION SHALL COMPLY WITH THE FEDERAL "VOTING RIGHTS ACT OF 1965", IN PARTICULAR 52 U.S.C. SEC. 10101.



(b) TO THE EXTENT POSSIBLE AFTER MEETING THE OTHER REQUIREMENTS OF THIS SECTION, THE COMMISSION SHALL MAXIMIZE THE NUMBER OF POLITICALLY COMPETITIVE LEGISLATIVE DISTRICTS.

(c) LEGISLATIVE REDISTRICTING PLANS SHALL NOT BE DRAWN TO PURPOSEFULLY ADVANTAGE OR DISADVANTAGE ANY POLITICAL PARTY OR PERSON.

**SECTION 3.** In the constitution of the state of Colorado, repeal and reenact, with amendments, section 48 of article V as follows:

**Section 48. Revision and alteration of districts – independent legislative redistricting commission.** (1) THE RESPONSIBILITY OF DIVIDING THE STATE INTO SENATORIAL AND REPRESENTATIVE DISTRICTS SHALL BE CARRIED OUT BY AN INDEPENDENT COMMISSION TO BE KNOWN AS THE INDEPENDENT LEGISLATIVE REDISTRICTING COMMISSION, WHICH IS HEREBY CREATED AND REFERRED TO IN THIS SECTION AND SECTIONS 48.3 AND 48.5 OF THIS ARTICLE AS THE “COMMISSION”.

(2) THE COMMISSION CONSISTS OF TWELVE MEMBERS WHO HAVE THE FOLLOWING QUALIFICATIONS:

(a) FOUR MEMBERS MUST BE REGISTERED WITH THE STATE'S LARGEST POLITICAL PARTY AND APPOINTED BY THE CHAIRPERSON OF THAT PARTY, OR BY THE LEADERSHIP OF THAT PARTY IN SUCH MANNER AS THE PARTY MAY PROVIDE BY RULE.

(b) FOUR MEMBERS MUST BE REGISTERED WITH THE STATE'S SECOND LARGEST POLITICAL PARTY AND APPOINTED BY THE CHAIRPERSON OF THAT PARTY, OR BY THE LEADERSHIP OF THAT PARTY IN SUCH MANNER AS THE PARTY MAY PROVIDE BY RULE.

(c) FOUR MEMBERS MUST HAVE EACH BEEN UNAFFILIATED WITH ANY POLITICAL PARTY OR REGISTERED WITH A POLITICAL PARTY OTHER THAN THE STATE'S TWO LARGEST POLITICAL PARTIES FOR AT LEAST THE TWO YEARS PRIOR TO THE MEMBER'S APPOINTMENT. SUCH MEMBERS ARE REFERRED TO IN THIS SECTION AND SECTIONS 48.3 AND 48.5 OF THIS ARTICLE AS THE “INDEPENDENT MEMBERS” OF THE COMMISSION OR THE “INDEPENDENT COMMISSIONERS”. THE INDEPENDENT MEMBERS SHALL BE APPOINTED IN ACCORDANCE WITH SUBSECTION (6) OF THIS SECTION.

(3) ALL COMMISSIONERS MUST BE REGISTERED ELECTORS OF THE STATE OF COLORADO. NO COMMISSIONER MAY BE AN INCUMBENT MEMBER OF THE GENERAL ASSEMBLY OR A CANDIDATE FOR THE GENERAL ASSEMBLY.

(4) (a) NO MORE THAN THREE MEMBERS OF THE COMMISSION MAY RESIDE IN ANY SINGLE CONGRESSIONAL DISTRICT. AT LEAST ONE MEMBER MUST RESIDE IN EACH CONGRESSIONAL DISTRICT.

(b) AT LEAST ONE MEMBER OF THE COMMISSION MUST RESIDE IN EACH OF THE FOLLOWING TWO AREAS OF THE STATE. ANY REFERENCE IN THIS SECTION TO A "GEOGRAPHIC AREA" REFERS TO THESE AREAS:

(I) WEST OF THE CONTINENTAL DIVIDE; AND

(II) EAST OF THE CONTINENTAL DIVIDE AND EITHER SOUTH OF EL PASO COUNTY'S SOUTHERN BOUNDARY OR EAST OF ARAPAHOE COUNTY'S EASTERN BOUNDARY.

(5) THE TWO LARGEST POLITICAL PARTIES SHALL EACH SUBMIT THREE OF THEIR FOUR APPOINTMENTS TO THE SECRETARY OF STATE ACCORDING TO THE FOLLOWING SCHEDULE IN THE YEAR FOLLOWING THAT IN WHICH THE FEDERAL CENSUS IS TAKEN. IN THIS SECTION AND SECTION 48.3 OF THIS ARTICLE, SUCH YEAR IS REFERRED TO AS THE "REDISTRICTING YEAR". UNTIL EACH CONGRESSIONAL DISTRICT AND GEOGRAPHIC AREA IS REPRESENTED ON THE COMMISSION, NO APPOINTMENT SHALL BE MADE BY ANY APPOINTING AUTHORITY TO A DISTRICT OR GEOGRAPHIC AREA ALREADY REPRESENTED ON THE COMMISSION.

(a) BY MARCH 10, THE LARGEST POLITICAL PARTY SHALL SUBMIT ONE APPOINTMENT.

(b) AFTER THE APPOINTMENT PURSUANT TO SUBSECTION (5)(a) OF THIS SECTION AND BY MARCH 17, THE SECOND LARGEST POLITICAL PARTY SHALL SUBMIT TWO APPOINTMENTS. EACH PERSON APPOINTED MUST RESIDE IN A DIFFERENT CONGRESSIONAL DISTRICT OR DIFFERENT GEOGRAPHIC AREA THAN THE OTHER PERSON APPOINTED AND THE PERSON PREVIOUSLY APPOINTED BY THE LARGEST POLITICAL PARTY.

(c) AFTER THE APPOINTMENTS PURSUANT TO SUBSECTION (5)(b) OF THIS SECTION AND BY MARCH 24, THE LARGEST POLITICAL PARTY SHALL SUBMIT TWO APPOINTMENTS. EACH PERSON APPOINTED MUST RESIDE IN A DIFFERENT CONGRESSIONAL DISTRICT OR DIFFERENT GEOGRAPHIC AREA THAN THE OTHER PERSON APPOINTED AND THE PERSONS PREVIOUSLY APPOINTED.

(d) AFTER THE APPOINTMENTS PURSUANT TO SUBSECTION (5)(c) OF THIS SECTION AND BY MARCH 31, THE SECOND LARGEST PARTY SHALL SUBMIT ONE APPOINTMENT. THE PERSON APPOINTED MUST RESIDE IN A DIFFERENT CONGRESSIONAL DISTRICT OR DIFFERENT GEOGRAPHIC AREA THAN THE PERSONS PREVIOUSLY APPOINTED.

(6) (a) THE FOUR INDEPENDENT MEMBERS OF THE COMMISSION SHALL BE SELECTED AS PROVIDED IN THIS SUBSECTION (6) OF THIS SECTION.

(b) NO LATER THAN FEBRUARY 1 OF THE REDISTRICTING YEAR, THE SECRETARY OF STATE SHALL ESTABLISH AND ANNOUNCE AN APPLICATION PROCESS FOR PERSONS DESIRING TO SERVE AS INDEPENDENT MEMBERS OF THE COMMISSION. THE PROCESS MUST INCLUDE AN APPLICATION FORM THAT MUST BE SUBMITTED ELECTRONICALLY TO THE SECRETARY OF STATE. IN ADDITION, THE SECRETARY OF STATE SHALL CONSULT AND COORDINATE WITH THE STATE'S COUNTY CLERK AND RECORDERS TO DEVELOP AND IMPLEMENT A PROGRAM TO ADVERTISE AND ENCOURAGE APPLICATIONS FROM ELIGIBLE PERSONS FROM ACROSS THE STATE.

(c) APPLICATIONS MUST BE SUBMITTED NO LATER THAN MARCH 20 OF THE REDISTRICTING YEAR. WITHIN THREE BUSINESS DAYS THEREAFTER, THE SECRETARY OF STATE SHALL POST ALL APPLICATIONS ON THE SECRETARY'S WEBSITE. NO LATER THAN APRIL 1, THE SECRETARY SHALL EXAMINE EACH APPLICATION, ISSUE AN ELIGIBILITY FINDING WHETHER THE APPLICANT MEETS THE QUALIFICATION SPECIFIED IN SUBSECTIONS (2)(c) AND (3) OF THIS SECTION, POST THE FINDING ON THE SECRETARY'S WEBSITE, AND NOTIFY THE APPLICANT BY ELECTRONIC MAIL OF THE SECRETARY'S FINDING. IF THE SECRETARY FINDS THAT AN APPLICANT IS NOT ELIGIBLE, THEN THE SECRETARY SHALL INCLUDE THE REASONS THEREFOR IN HIS OR HER FINDING. IF THE SECRETARY FINDS THAT AN APPLICANT IS NOT ELIGIBLE, THE APPLICANT MAY WITHDRAW HIS OR HER APPLICATION OR SUBMIT A BRIEF STATEMENT DISPUTING THE FINDING WITHIN THREE BUSINESS DAYS AFTER THE DATE OF THE SECRETARY'S ELECTRONIC MAIL NOTIFICATION, WHICH STATEMENT SHALL BE POSTED PROMPTLY WITH THE SECRETARY'S FINDING. IF AN APPLICANT SUBMITS A STATEMENT DISPUTING THE SECRETARY'S FINDING OF INELIGIBILITY, THE APPLICANT MAY BE CONSIDERED BY THE PANEL IN ACCORDANCE WITH SUBSECTION (6)(f) OF THIS SECTION IF THE PANEL DETERMINES THAT THE APPLICANT IS ELIGIBLE.

(d) NO LATER THAN MARCH 20 OF THE REDISTRICTING YEAR, THE SECRETARY OF STATE SHALL APPOINT A PANEL TO REVIEW THE APPLICATIONS. THE PANEL SHALL CONSIST OF THE THREE SENIOR JUDGES MOST RECENTLY APPOINTED TO PERFORM TEMPORARY JUDICIAL DUTIES PURSUANT TO THE PROVISIONS OF SECTION 5 (3) OF ARTICLE VI, APPOINTED SEQUENTIALLY STARTING WITH THE MOST RECENTLY APPOINTED SENIOR JUDGE WHO HAS BEEN AFFILIATED WITH THE SAME POLITICAL PARTY OR UNAFFILIATED WITH ANY POLITICAL PARTY FOR THE TWO YEARS PRIOR TO APPOINTMENT, EXCEPT THAT NO APPOINTEE, WITHIN TWO YEARS PRIOR TO APPOINTMENT, SHALL HAVE BEEN AFFILIATED

WITH THE SAME POLITICAL PARTY AS A SENIOR JUDGE ALREADY APPOINTED TO THE PANEL. IF ANY OF THE THREE MOST RECENTLY APPOINTED SENIOR JUDGES IS UNABLE OR UNWILLING TO SERVE ON THE PANEL OR HAS BEEN AFFILIATED WITHIN TWO YEARS PRIOR TO APPOINTMENT WITH A POLITICAL PARTY ALREADY REPRESENTED ON THE PANEL, THEN THE SECRETARY OF STATE SHALL APPOINT THE NEXT MOST RECENTLY APPOINTED SENIOR JUDGE WHO HAS NOT BEEN AFFILIATED WITHIN TWO YEARS PRIOR TO APPOINTMENT WITH THE SAME POLITICAL PARTY AS ANY SENIOR JUDGE ALREADY APPOINTED TO THE PANEL. UPON REQUEST OF THE SECRETARY OF STATE, THE COURT ADMINISTRATOR APPOINTED PURSUANT TO SECTION 5 (3) OF ARTICLE VI SHALL PROVIDE INFORMATION ABOUT RECENTLY APPOINTED SENIOR JUDGES AS MAY BE NECESSARY FOR THE SECRETARY OF STATE TO PERFORM HIS OR HER DUTIES UNDER THIS SUBSECTION (6)(d).

(e) THE SECRETARY OF STATE SHALL REIMBURSE MEMBERS OF THE PANEL FOR NECESSARY TRAVEL AND OTHER REASONABLE EXPENSES INCURRED IN THE PERFORMANCE OF THEIR DUTIES AND SHALL COMPENSATE MEMBERS OF THE PANEL FOR EACH DAY THAT THE PANEL MEETS IN AN AMOUNT EQUAL TO ONE-TWENTIETH OF THE MONTHLY SALARY THEN CURRENTLY APPLICABLE TO ASSOCIATE JUSTICES OF THE COLORADO SUPREME COURT. SUCH REIMBURSEMENT AND COMPENSATION SHALL NOT AFFECT A MEMBER'S JUDICIAL SERVICE RETIREMENT BENEFITS.

(f) IN ONE OR MORE PUBLIC HEARINGS CONDUCTED IN ACCORDANCE WITH PROCEDURES DETERMINED BY THE PANEL, THE PANEL SHALL SELECT TWENTY ELIGIBLE APPLICANTS IT RECOMMENDS FOR APPOINTMENT AS INDEPENDENT MEMBERS OF THE COMMISSION, OR SUCH LESSER NUMBER AS THERE ARE TOTAL ELIGIBLE APPLICANTS. THE NONPARTISAN RESEARCH STAFF OF THE GENERAL ASSEMBLY SHALL PROVIDE STAFF ASSISTANCE TO THE PANEL FOR SUCH MEETINGS UPON THE REQUEST OF ANY MEMBER OF THE PANEL. THE PANEL MAY DETERMINE THE ELIGIBILITY OF ANY APPLICANT WHOSE QUALIFICATIONS UNDER SUBSECTIONS (2)(c) AND (3) OF THIS SECTION ARE IN QUESTION. THE PANEL SHALL RECOMMEND THOSE APPLICANTS THAT IT FINDS TO BE THE MOST QUALIFIED TO PERFORM THE DUTIES OF THE COMMISSION, AND, TO THE EXTENT PRACTICAL, RECOMMEND APPLICANTS WHO REPRESENT COLORADO'S RACIAL, ETHNIC, AND GEOGRAPHIC DIVERSITY, TAKING INTO CONSIDERATION THE GEOGRAPHIC REPRESENTATION REQUIREMENTS OF SUBSECTION (4) OF THIS SECTION AND THE GEOGRAPHIC REPRESENTATION OF THE SIX COMMISSIONERS PREVIOUSLY APPOINTED BY THE TWO LARGEST POLITICAL PARTIES. TO THE EXTENT POSSIBLE, THE PANEL SHALL RECOMMEND AN ODD NUMBER OF APPLICANTS GREATER THAN TWO FROM EACH UNREPRESENTED CONGRESSIONAL DISTRICT AND EACH UNREPRESENTED GEOGRAPHIC

AREA. MEMBERS OF THE PANEL SHALL HAVE NO EX PARTE COMMUNICATIONS REGARDING THE PERFORMANCE OF THEIR DUTIES UNDER THIS SUBSECTION (6)(f).

(g) THE PANEL SHALL ISSUE ITS RECOMMENDATIONS NO LATER THAN APRIL 23 OF THE REDISTRICTING YEAR. THE PANEL SHALL FORWARD ITS RECOMMENDATIONS TO THE DIRECTOR OF RESEARCH OF THE LEGISLATIVE COUNCIL, TO THE CHAIRPERSONS OF THE TWO LARGEST POLITICAL PARTIES, TO THE SIX COMMISSIONERS PREVIOUSLY APPOINTED BY THE TWO LARGEST POLITICAL PARTIES, AND TO THE SECRETARY OF STATE; WHO SHALL PROMPTLY POST THE PANEL'S RECOMMENDATIONS ON THE SECRETARY OF STATE'S WEBSITE.

(h) (I) NO LATER THAN APRIL 30 OF THE REDISTRICTING YEAR, THE SIX COMMISSIONERS PREVIOUSLY APPOINTED BY THE TWO LARGEST POLITICAL PARTIES SHALL, IN ONE OR MORE PUBLIC MEETINGS HELD AFTER NOTICE, SELECT THE COMMISSION'S FOUR INDEPENDENT MEMBERS FROM THE APPLICANTS RECOMMENDED BY THE PANEL IN ACCORDANCE WITH SUBSECTIONS (6)(h)(II) AND (6)(h)(III) OF THIS SECTION. THE NONPARTISAN RESEARCH STAFF OF THE GENERAL ASSEMBLY SHALL PROVIDE STAFF ASSISTANCE FOR THE MEETINGS.

(II) FOR EACH CONGRESSIONAL DISTRICT AND GEOGRAPHIC AREA NOT REPRESENTED ON THE COMMISSION BY ANY OF THE SIX COMMISSIONERS, THE COMMISSIONERS APPOINTED BY EACH POLITICAL PARTY SHALL, AS A GROUP, BEGINNING WITH THE COMMISSIONERS APPOINTED BY THE LARGEST POLITICAL PARTY, TAKE TURNS REMOVING ONE APPLICANT FROM THE LIST OF RECOMMENDED APPLICANTS WHO RESIDE IN THAT CONGRESSIONAL DISTRICT OR GEOGRAPHIC AREA UNTIL THERE IS ONLY ONE APPLICANT REMAINING, WHO SHALL BECOME A MEMBER OF THE COMMISSION.

(III) UPON COMPLETING THE SELECTION OF MEMBERS PURSUANT TO SUBSECTION (6)(h)(II) OF THIS SECTION, IF NECESSARY TO COMPLETE THE SELECTION OF FOUR INDEPENDENT MEMBERS, THE INDEPENDENT MEMBERS OF THE COMMISSION SHALL BE SELECTED AS FOLLOWS. THE COMMISSIONERS APPOINTED BY EACH POLITICAL PARTY SHALL, AS A GROUP, BEGINNING WITH THE COMMISSIONERS APPOINTED BY THE LARGEST POLITICAL PARTY, TAKE TURNS REMOVING ONE APPLICANT FROM THE REMAINING LIST OF RECOMMENDED APPLICANTS UNTIL THE TOTAL NUMBER OF APPLICANTS REMAINING PLUS THE NUMBER OF APPLICANTS SELECTED PURSUANT TO SUBSECTION (6)(h)(II) OF THIS SECTION TOTALS FOUR. THESE APPLICANTS SHALL BECOME THE INDEPENDENT MEMBERS OF THE COMMISSION.

(7) FOLLOWING THE SELECTION OF THE INDEPENDENT MEMBERS AS PROVIDED IN SUBSECTION (6) OF THIS SECTION, THE TWO LARGEST POLITICAL PARTIES SHALL EACH SUBMIT THEIR REMAINING APPOINTMENT TO THE SECRETARY OF STATE ACCORDING TO THE FOLLOWING SCHEDULE:

(a) BY MAY 3, THE LARGEST POLITICAL PARTY SHALL SUBMIT ITS APPOINTMENT. IF ANY CONGRESSIONAL DISTRICT OR GEOGRAPHIC AREA IS UNREPRESENTED ON THE COMMISSION AT THE TIME OF THE APPOINTMENT, THE PERSON APPOINTED MUST RESIDE IN AN UNREPRESENTED CONGRESSIONAL DISTRICT OR GEOGRAPHIC AREA.

(b) AFTER THE LARGEST POLITICAL PARTY SUBMITS ITS REMAINING APPOINTMENT AND BY MAY 5, THE SECOND LARGEST POLITICAL PARTY SHALL SUBMIT ITS APPOINTMENT. IF ANY CONGRESSIONAL DISTRICT OR GEOGRAPHIC AREA IS UNREPRESENTED ON THE COMMISSION AT THE TIME OF THE APPOINTMENT, THE PERSON APPOINTED MUST RESIDE IN AN UNREPRESENTED CONGRESSIONAL DISTRICT OR GEOGRAPHIC AREA.

(8) IF EITHER OF THE STATE'S TWO LARGEST POLITICAL PARTIES FAILS TO MAKE AN APPOINTMENT TO THE COMMISSION BY A DATE REQUIRED IN SUBSECTION (5) OR SUBSECTION (7) OF THIS SECTION, THEN SUCH APPOINTMENT IS FORFEITED, AND THE NUMBER OF COMMISSIONERS COMPRISING THE COMMISSION IS REDUCED ACCORDINGLY. A REDUCTION IN THE NUMBER OF COMMISSIONERS COMPRISING THE COMMISSION DOES NOT AFFECT THE MINIMUM NUMBER OF AFFIRMATIVE VOTES OF COMMISSIONERS REQUIRED TO APPROVE A MOTION AS SPECIFIED IN SECTION 4 (9).

(9) FOR PURPOSES OF THIS SECTION, THE STATE'S TWO LARGEST POLITICAL PARTIES SHALL BE DETERMINED BY THE NUMBER OF REGISTERED ELECTORS AFFILIATED WITH EACH POLITICAL PARTY IN THE STATE ACCORDING TO VOTER REGISTRATION DATA PUBLISHED BY THE SECRETARY OF STATE FOR THE EARLIEST DAY IN JANUARY OF THE REDISTRICTING YEAR FOR WHICH SUCH DATA IS PUBLISHED.

**SECTION 4.** In the constitution of the state of Colorado, add sections 48.3 and 48.5 to article V as follows:

**Section 48.3. Commission organization – procedures – transparency – voting requirements.** (1) THE GOVERNOR SHALL CONVENE THE COMMISSION NO LATER THAN MAY 15 OF THE REDISTRICTING YEAR, APPOINTING A TEMPORARY CHAIRPERSON FROM THE COMMISSION'S MEMBERS. UPON CONVENING, THE COMMISSION SHALL ELECT A CHAIR AND A VICE-CHAIR, WHO

MUST NOT BE MEMBERS OF THE SAME POLITICAL PARTY, AND SUCH OTHER OFFICERS AS IT DETERMINES.

(2) THE DIRECTORS OF THE NONPARTISAN RESEARCH AND LEGAL STAFFS OF THE GENERAL ASSEMBLY SHALL APPOINT NONPARTISAN STAFF FROM THEIR RESPECTIVE OFFICES AS NEEDED TO ASSIST THE COMMISSION. AS FAR IN ADVANCE AS NECESSARY TO ENABLE THE COMMISSION TO BEGIN ITS WORK IMMEDIATELY UPON CONVENING, THE NONPARTISAN STAFF SHALL ACQUIRE AND PREPARE ALL NECESSARY RESOURCES, INCLUDING HARDWARE, SOFTWARE, AND DEMOGRAPHIC, GEOGRAPHIC, AND POLITICAL DATABASES.

(3) THE COMMISSION MAY RETAIN LEGAL COUNSEL IN ALL ACTIONS AND PROCEEDINGS IN CONNECTION WITH THE PERFORMANCE OF ITS POWERS, DUTIES, AND FUNCTIONS, INCLUDING REPRESENTATION OF THE COMMISSION BEFORE THE SUPREME COURT PURSUANT TO SECTION 48.5 (7) OF THIS ARTICLE.

(4) THE GENERAL ASSEMBLY SHALL APPROPRIATE SUFFICIENT FUNDS FOR THE COMPENSATION AND PAYMENT OF THE EXPENSES OF THE COMMISSION AND ITS STAFF. THE COMMISSION AND ITS STAFF SHALL HAVE ACCESS TO STATISTICAL INFORMATION COMPILED BY THE STATE AND ITS POLITICAL SUBDIVISIONS AND NECESSARY FOR ITS DUTIES. STATE AGENCIES AND POLITICAL SUBDIVISIONS SHALL COMPLY WITH REQUESTS FROM THE COMMISSION AND ITS STAFF FOR SUCH STATISTICAL INFORMATION.

(5) THE COMMISSION SHALL ADOPT RULES TO GOVERN ITS ADMINISTRATION AND OPERATION, INCLUDING BUT NOT LIMITED TO THE FOLLOWING:

(a) MAINTENANCE OF A RECORD OF THE COMMISSION'S ACTIVITIES AND PROCEEDINGS, INCLUDING A RECORD OF WRITTEN AND ORAL TESTIMONY RECEIVED, AND OF THE COMMISSION'S DIRECTIONS TO NONPARTISAN STAFF ON PROPOSED CHANGES TO ANY PLAN AND THE COMMISSION'S RATIONALE FOR SUCH CHANGES;

(b) THE PROCESS FOR REMOVING COMMISSIONERS FOR VIOLATING PUBLIC DISCLOSURE OR OPEN MEETINGS PROVISIONS OF THIS SECTION, OR PARTICIPATING IN COMMUNICATIONS PROHIBITED UNDER THIS SECTION;

(c) PROVIDING FOR ANY VACANCY CREATED BY THE DEATH, RESIGNATION, OR REMOVAL OF A COMMISSIONER, OR OTHERWISE, WHICH SHALL BE FILLED BY THE RESPECTIVE APPOINTING

AUTHORITY. MEMBERS OF THE COMMISSION SHALL HOLD OFFICE UNTIL APRIL 30 OF THE NEXT REDISTRICTING YEAR.

(d) THE PROCESS FOR RECOMMENDING CHANGES TO PLANS SUBMITTED TO THE COMMISSION BY NONPARTISAN STAFF; AND

(e) THE ADOPTION OF A STATEWIDE MEETING AND HEARING SCHEDULE.

(6) (a) EXCEPT AS PROVIDED IN SUBSECTION (6)(b) OF THIS SECTION, THE COMMISSION IS SUBJECT TO THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24, COLORADO REVISED STATUTES, OR ANY SUCCESSOR ACT.

(b) MAPS IN DRAFT FORM AND NOT SUBMITTED TO THE COMMISSION ARE NOT PUBLIC RECORDS SUBJECT TO DISCLOSURE. WORK PRODUCT AND COMMUNICATIONS BETWEEN COMMISSION STAFF ARE SUBJECT TO DISCLOSURE ONCE A PLAN IS SUBMITTED TO THE SUPREME COURT.

(7) (a) THE COMMISSION IS SUBJECT TO THE OPEN MEETINGS PROVISIONS OF THE "COLORADO SUNSHINE ACT OF 1972" CONTAINED IN PART 4 OF ARTICLE 6 OF TITLE 24, COLORADO REVISED STATUTES, OR ANY SUCCESSOR ACT. FURTHERMORE, COMMUNICATIONS OUTSIDE OF A PUBLIC MEETING RELATING TO COMMISSION BUSINESS THAT INVOLVE MORE THAN THREE COMMISSIONERS ARE PROHIBITED.

(b) EXCEPT AS PROVIDED IN SUBSECTIONS (7)(c) AND (7)(d) OF THIS SECTION, COMMISSIONERS SHALL NOT COMMUNICATE WITH THE COMMISSION'S STAFF ON THE MAPPING OF LEGISLATIVE DISTRICTS UNLESS THE COMMUNICATION IS DURING A PUBLIC MEETING OR HEARING OF THE COMMISSION.

(c) THE COMMISSION'S STAFF MEMBERS SHALL NOT HAVE ANY COMMUNICATIONS ABOUT THE CONTENT OR DEVELOPMENT OF ANY PLAN OUTSIDE OF PUBLIC HEARINGS WITH ANYONE EXCEPT OTHER STAFF MEMBERS. STAFF SHALL REPORT TO THE COMMISSION ANY ATTEMPT BY ANYONE TO EXERT INFLUENCE OVER THE DRAFTING OF PLANS.

(d) ONE OR MORE STAFF MAY BE DESIGNATED TO COMMUNICATE WITH COMMISSIONERS REGARDING ADMINISTRATIVE MATTERS, THE DEFINITION AND SCOPE OF WHICH SHALL BE DETERMINED BY THE COMMISSION.

(e) ANY COMMISSIONER WHO PARTICIPATES IN A COMMUNICATION PROHIBITED IN THIS SECTION SHALL BE REMOVED FROM THE COMMISSION AND REPLACED WITHIN SEVEN DAYS ACCORDING TO COMMISSION RULES.



(f) AT THE DIRECTION OF THE COMMISSION, ITS STAFF MAY CONSULT WITH EXPERTS RETAINED BY THE COMMISSION. WORK PRODUCT AND COMMUNICATIONS BETWEEN COMMISSION STAFF AND SUCH EXPERTS ARE SUBJECT TO DISCLOSURE UNDER THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24, COLORADO REVISED STATUTES, OR ANY SUCCESSOR ACT, ONCE A PLAN IS SUBMITTED TO THE SUPREME COURT.

(g) SUBJECT TO AVAILABLE APPROPRIATIONS, THE COMMISSION SHALL MAKE USE OF REASONABLY AVAILABLE CURRENT TECHNOLOGY TO FACILITATE PUBLIC INPUT AND COMMENT ON THE WORK OF THE COMMISSION.

(8) ANY PERSON WHO RECEIVES COMPENSATION FOR ADVOCATING TO THE COMMISSION OR ITS MEMBERS CONCERNING THE ADOPTION OF ANY PLAN, ANY AMENDMENT TO A PLAN, PLAN APPROACH, OR MANNER OF COMPLIANCE WITH ANY OF THE PLAN CRITERIA SET FORTH IN SECTION 47 OF THIS ARTICLE, OTHER THAN COMMISSION STAFF, IS A "PROFESSIONAL LOBBYIST" AS DEFINED IN SECTION 24-6-301(6), COLORADO REVISED STATUTES, OR ANY SUCCESSOR STATUTE, AND SHALL COMPLY WITH THE REQUIREMENTS APPLICABLE TO PROFESSIONAL LOBBYISTS, INCLUDING REGISTRATION AND FILING DISCLOSURE STATEMENTS, CONTAINED IN PART 3 OF ARTICLE 6 OF TITLE 24, COLORADO REVISED STATUTES, OR ANY SUCCESSOR STATUTES.

(9) ANY MOTION ADOPTED BY THE COMMISSION, INCLUDING THE ELECTION OF ITS OFFICERS AND THE AMENDMENT OR APPROVAL OF ANY PLAN, REQUIRES THE AFFIRMATIVE VOTE OF AT LEAST EIGHT COMMISSIONERS, INCLUDING THE AFFIRMATIVE VOTE OF AT LEAST ONE INDEPENDENT COMMISSIONER.

(10) THE COMMISSION SHALL NOT VOTE UPON A FINAL PLAN UNTIL AT LEAST 72 HOURS AFTER IT HAS BEEN PROPOSED TO THE COMMISSION IN A PUBLIC MEETING OR AMENDED BY THE COMMISSION, WHICHEVER OCCURS LATER, UNLESS COMMISSIONERS UNANIMOUSLY WAIVE SUCH REQUIREMENT.

**Section 48.5. Preparation, amendment, and approval of plans.** (1) (a) THE COMMISSION SHALL BEGIN BY CONSIDERING PLANS CREATED BY ITS STAFF ALONE. PRIOR TO THE COMMISSION'S CONSIDERATION OF A PRELIMINARY PLAN, ITS NONPARTISAN STAFF SHALL PREPARE AND PRESENT TO THE COMMISSION NO FEWER THAN FOUR PLANS. THESE PLANS SHALL BE KNOWN AS THE STAFF PLANS AND MUST BE NAMED AND NUMBERED SEQUENTIALLY FOR PURPOSES OF SUBSECTION (2) OF THIS SECTION. THE STAFF PLANS SHALL BE PREPARED, PUBLISHED ONLINE, AND PRESENTED ON A TIMETABLE ESTABLISHED BY THE COMMISSION, EXCEPT EACH STAFF PLAN SHALL BE PRESENTED TO

THE COMMISSION NO FEWER THAN TEN DAYS AFTER THE PRESENTATION OF ANY PREVIOUS STAFF PLAN, AND EACH STAFF PLAN MUST BE PRESENTED TO THE COMMISSION NO FEWER THAN 24 HOURS AFTER IT HAS BEEN PUBLISHED ONLINE. STAFF SHALL KEEP EACH PLAN PREPARED CONFIDENTIAL UNTIL IT IS PUBLISHED ONLINE. THE COMMISSION MAY, UPON MOTION ADOPTED IN ACCORDANCE WITH SECTION 48.3 (9) OF THIS ARTICLE, ADOPT CERTAIN PROVISIONS, ELEMENTS, OR TECHNIQUES, SUCH AS PLAN COMPONENTS, ELEMENTS OF PUBLIC TESTIMONY, OR A DEFINITION OF COMPETITIVENESS, TO WHICH STAFF SHALL ADHERE IN DEVELOPING A STAFF PLAN.

(b) THE COMMISSION SHALL ENSURE THE PUBLIC HAS ADEQUATE OPPORTUNITY TO COMMENT DURING THE MAP DEVELOPMENT PROCESS. AT A MINIMUM, THE COMMISSION SHALL AFFORD THE PUBLIC AN OPPORTUNITY TO COMMENT AFTER THE PUBLICATION OF EACH STAFF PLAN AND SHALL ENSURE THE PUBLIC HAS THE ABILITY TO COMMENT TO THE COMMISSION THROUGH ELECTRONIC MAIL OR OTHER ELECTRONIC MEANS THROUGHOUT THE REDISTRICTING PROCESS.

(c) ANY MEMBER OF THE COMMISSION OR GROUP OF MEMBERS MAY REQUEST STAFF TO PREPARE ADDITIONAL PLANS OR AMENDMENTS TO PLANS. ANY SUCH REQUEST MUST BE MADE IN A PUBLIC HEARING OF THE COMMISSION BUT DOES NOT REQUIRE COMMISSION APPROVAL. PLANS OR AMENDMENTS DEVELOPED IN RESPONSE TO SUCH REQUESTS ARE SEPARATE FROM STAFF PLANS FOR PURPOSES OF SUBSECTION (2) OF THIS SECTION.

(2) WITHIN ONE HUNDRED THIRTEEN DAYS AFTER THE COMMISSION HAS BEEN CONVENED OR THE NECESSARY CENSUS DATA ARE AVAILABLE, WHICHEVER IS LATER, THE COMMISSION SHALL PUBLISH A PRELIMINARY PLAN. IF FOR ANY REASON THE COMMISSION DOES NOT APPROVE A PRELIMINARY PLAN FOR BOTH HOUSES BY SUCH DATE, THEN THE COMMISSION SHALL PUBLISH THE FOURTH STAFF PLAN AS THE COMMISSION'S PRELIMINARY PLAN. IF THE COMMISSION APPROVES DISTRICTS FOR ONE HOUSE OF THE GENERAL ASSEMBLY BUT NOT THE OTHER HOUSE, THEN THE PLAN FOR THE APPROVED HOUSE SHALL BE PUBLISHED AS THE PRELIMINARY PLAN FOR THAT HOUSE, AND THE FOURTH STAFF PLAN FOR THE HOUSE FOR WHICH THE COMMISSION DID NOT ADOPT A PLAN SHALL BE PUBLISHED AS THE PRELIMINARY PLAN FOR THAT HOUSE.

(3) FOLLOWING THE ADOPTION OF A PRELIMINARY PLAN AND PRIOR TO THE HOLDING OF PUBLIC HEARINGS ON ANY PRELIMINARY PLAN, THE COMMISSION SHALL POST THE PLAN ELECTRONICALLY FOR PUBLIC INSPECTION.

(4) WITHIN FORTY-FIVE DAYS AFTER THE DATE OF THE PUBLICATION OF THE PRELIMINARY PLAN, THE COMMISSION SHALL COMPLETE PUBLIC HEARINGS ON THE PRELIMINARY PLAN IN SEVERAL PLACES THROUGHOUT THE STATE. THE COMMISSION SHALL HOLD NO FEWER THAN THREE HEARINGS IN EACH CONGRESSIONAL DISTRICT, AND THE COMMISSION MUST CONDUCT AT LEAST ONE HEARING IN PERSON IN EACH CONGRESSIONAL DISTRICT. OTHER HEARINGS MAY BE CONDUCTED REMOTELY, THROUGH VIDEO-CONFERENCE OR OTHER AVAILABLE TECHNOLOGY. IN NO CASE, HOWEVER, SHALL THE COMMISSION CONDUCT FEWER THAN TWO IN-PERSON HEARINGS WEST OF THE CONTINENTAL DIVIDE OR FEWER THAN TWO IN-PERSON HEARINGS FROM SOUTH OF EL PASO COUNTY AND EAST OF THE CONTINENTAL DIVIDE.

(5) SUBSEQUENT TO HEARINGS ON THE PRELIMINARY PLAN, THE COMMISSION SHALL RECONVENE. ANY MEMBER OF THE COMMISSION OR GROUP OF MEMBERS MAY REQUEST THE COMMISSION'S STAFF TO PREPARE ADDITIONAL PLANS OR AMENDMENTS TO PLANS, BUT SUCH REQUESTS MUST BE MADE IN A PUBLIC HEARING OF THE COMMISSION.

(6) (a) NO LATER THAN ONE HUNDRED TWENTY-THREE DAYS PRIOR TO THE DATE ESTABLISHED IN STATUTE FOR PRECINCT CAUCUSES IN THE SECOND YEAR FOLLOWING THE YEAR IN WHICH THE CENSUS WAS TAKEN OR, IF THE ELECTION LAWS DO NOT PROVIDE FOR PRECINCT CAUCUSES, NO LATER THAN ONE HUNDRED TWENTY-THREE DAYS PRIOR TO THE DATE ESTABLISHED IN STATUTE FOR THE EVENT COMMENCING THE CANDIDATE SELECTION PROCESS IN SUCH YEAR, THE COMMISSION SHALL FINALIZE ITS PLAN AND SUBMIT THE SAME TO THE COLORADO SUPREME COURT FOR REVIEW AND DETERMINATION IN ACCORDANCE WITH SUBSECTION (7) OF THIS SECTION.

(b) THE COMMISSION MAY ADJUST THE DEADLINES SPECIFIED IN THIS SECTION IF CONDITIONS OUTSIDE OF THE COMMISSION'S CONTROL REQUIRE SUCH AN ADJUSTMENT TO ENSURE ADOPTING A FINAL PLAN AS REQUIRED BY THIS SUBSECTION (6).

(c) THE COMMISSION MAY GRANT ITS STAFF THE AUTHORITY TO MAKE TECHNICAL, DE MINIMIS ADJUSTMENTS TO THE ADOPTED PLAN PRIOR TO ITS SUBMISSION TO THE SUPREME COURT.

(d) IF FOR ANY REASON THE COMMISSION DOES NOT APPROVE A FINAL PLAN FOR BOTH HOUSES OF THE GENERAL ASSEMBLY BY THE DATE REQUIRED, THEN THE COMMISSION SHALL SUBMIT THE PRELIMINARY PLAN AS THE COMMISSION'S FINAL PLAN. IF THE COMMISSION APPROVES DISTRICTS FOR ONE HOUSE OF THE GENERAL ASSEMBLY BUT NOT THE OTHER HOUSE, THEN THE PLAN FOR THE APPROVED HOUSE SHALL BE SUBMITTED AS THE FINAL PLAN FOR THAT HOUSE, AND THE

PRELIMINARY PLAN SHALL BE SUBMITTED AS THE FINAL PLAN FOR THE HOUSE FOR WHICH THE COMMISSION DID NOT APPROVE DISTRICTS.

(7) (a) THE SUPREME COURT SHALL REVIEW THE SUBMITTED PLAN AND DETERMINE WHETHER THE PLAN COMPLIES WITH SECTIONS 46 (2) AND 47 OF THIS ARTICLE. THE COURT'S REVIEW AND DETERMINATION SHALL TAKE PRECEDENCE OVER OTHER MATTERS BEFORE THE COURT. THE SUPREME COURT SHALL ADOPT RULES FOR SUCH PROCEEDINGS AND FOR THE PRODUCTION AND PRESENTATION OF SUPPORTIVE EVIDENCE FOR SUCH PLAN. ANY LEGAL ARGUMENTS OR EVIDENCE CONCERNING SUCH PLAN SHALL BE SUBMITTED TO THE SUPREME COURT PURSUANT TO THE SCHEDULE ESTABLISHED BY THE COURT. THE SUPREME COURT SHALL EITHER APPROVE THE PLAN OR RETURN THE PLAN TO THE COMMISSION WITH THE COURT'S REASONS FOR DISAPPROVAL UNDER SECTIONS 46 (2) AND 47 OF THIS ARTICLE.

(b) IF THE PLAN IS RETURNED, THE COURT SHALL SPECIFY A DATE BY WHICH THE COMMISSION MUST SUBMIT A REVISED PLAN TO THE COURT. NO LATER THAN SUCH DATE, THE COMMISSION SHALL SUBMIT A REVISED PLAN TO THE COURT THAT CONFORMS TO THE COURT'S REQUIREMENTS. IF THE COMMISSION FAILS TO SUBMIT A REVISED PLAN TO THE COURT BY THE DATE REQUIRED, THE COMMISSION'S STAFF SHALL, WITHIN TWO BUSINESS DAYS THEREAFTER, SUBMIT A REVISED PLAN TO THE COURT THAT CONFORMS TO THE COURT'S REQUIREMENTS.

(c) THE SUPREME COURT SHALL APPROVE A PLAN FOR THE REDRAWING OF SENATORIAL AND REPRESENTATIVE DISTRICTS BY A DATE THAT WILL ALLOW SUFFICIENT TIME FOR SUCH PLAN TO BE FILED WITH THE SECRETARY OF STATE NO LATER THAN FIFTY-FIVE DAYS PRIOR TO THE DATE ESTABLISHED IN STATUTE FOR PRECINCT CAUCUSES IN THE SECOND YEAR FOLLOWING THE YEAR IN WHICH THE CENSUS WAS TAKEN OR, IF THE ELECTION LAWS DO NOT PROVIDE FOR PRECINCT CAUCUSES, NO LATER THAN FIFTY-FIVE DAYS PRIOR TO THE DATE ESTABLISHED IN STATUTE FOR THE EVENT COMMENCING THE CANDIDATE SELECTION PROCESS IN SUCH YEAR. THE COURT SHALL ORDER THAT SUCH PLAN BE FILED WITH THE SECRETARY OF STATE NO LATER THAN SUCH DATE.

2017-2018 #48 – Amended Draft

Proposed constitutional initiative concerning Legislative Redistricting Reform

**Designated Representatives:**

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RECEIVED

SEP 22 2017

Colorado Secretary of State

S. WARD 9:18 A.M.

**Text of Measure:**

*Be it Enacted by the People of the State of Colorado:*

**SECTION 1.** In the constitution of the state of Colorado, **amend** section 46 of article V as follows:

**Section 46. Fair legislative districts for fair elections – legislative declaration.** (1) (a) THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE THAT, IN ORDER TO ENSURE FAIR LEGISLATIVE REPRESENTATION IN THE STATE SENATE AND THE STATE HOUSE OF REPRESENTATIVES, THE PRACTICE OF POLITICAL GERRYMANDERING, WHEREBY LEGISLATIVE DISTRICTS ARE PURPOSEFULLY DRAWN TO FAVOR ONE POLITICAL PARTY OR INCUMBENT POLITICIAN OVER ANOTHER, OR TO ACCOMPLISH POLITICAL GOALS, MUST END.

(b) THE PUBLIC'S INTEREST IN PROHIBITING POLITICAL GERRYMANDERING IS BEST ACHIEVED BY CREATING A NEW AND INDEPENDENT COMMISSION THAT IS POLITICALLY BALANCED, PROVIDES REPRESENTATION TO VOTERS NOT AFFILIATED WITH EITHER OF THE STATE'S TWO LARGEST PARTIES, AND UTILIZES NONPARTISAN LEGISLATIVE STAFF TO DIVIDE THE STATE INTO LEGISLATIVE DISTRICTS WITHOUT REGARD TO PARTISAN PRESSURES OR CONSIDERATIONS.

(c) THE PEOPLE FURTHER FIND AND DECLARE THAT THE CITIZENS OF COLORADO ARE BEST SERVED BY DRAWING DISTRICTS USING FAIR CRITERIA, BY DRAWING DISTRICTS THAT DO NOT ADVANTAGE OR DISADVANTAGE ANY POLITICAL PARTY, AND BY MAXIMIZING THE NUMBER OF POLITICALLY COMPETITIVE DISTRICTS.

(d) THE PEOPLE FURTHER FIND AND DECLARE THAT PUBLIC PARTICIPATION IN THE REDISTRICTING PROCESS IS A PRIORITY AND THAT THE INDEPENDENT LEGISLATIVE REDISTRICTING COMMISSION SHOULD ACT TRANSPARENTLY, HOLD ALL HEARINGS IN AN OPEN, PUBLIC FORUM, AFFORD THE PUBLIC AN OPPORTUNITY TO ENGAGE THROUGH PUBLIC COMMENT, AND BE ACCOUNTABLE, REPRESENTATIVE, RESPONSIVE, AND INDEPENDENT.

(2) The state shall be divided into as many senatorial and representative districts as there are members of the senate and house of representatives respectively, each district in each house having a population as nearly equal as may be, as required by the constitution of the United States, but in no event shall there be more than five percent deviation between the most populous and the least populous district in each house.

**SECTION 2.** In the constitution of the state of Colorado, amend section 47 of article V as follows:

**Section 47. Composition of districts.** (1) Each district shall be as compact in area as possible and the aggregate linear distance of all district boundaries shall be as short as possible. Each district shall consist of contiguous whole general election precincts. Districts of the same house shall not overlap.

(2) Except when necessary to meet the equal population requirements of ~~section 46~~ SECTION 46 (2) OF THIS ARTICLE V, no part of one county shall be added to all or part of another county in forming districts. Within counties whose territory is contained in more than one district of the same house, the number of cities and towns whose territory is contained in more than one district of the same house shall be as small as possible. When county, city, or town boundaries are changed, adjustments, if any, in legislative districts shall be as prescribed by law.

(3) Consistent with the provisions of this section and ~~section 46~~ SECTION 46 (2) of this article V, communities of interest, including RACIAL, ethnic, LANGUAGE GROUP, cultural, economic, trade area, geographic, and demographic factors, shall be preserved within a single district wherever possible.

(4) (a) IN DEVELOPING A PLAN FOR REDRAWING THE DISTRICTS OF THE MEMBERS OF THE GENERAL ASSEMBLY, THE INDEPENDENT LEGISLATIVE REDISTRICTING COMMISSION SHALL COMPLY WITH THE FEDERAL "VOTING RIGHTS ACT OF 1965", IN PARTICULAR 52 U.S.C. SEC. 10101.

(b) TO THE EXTENT POSSIBLE AFTER MEETING THE OTHER REQUIREMENTS OF THIS SECTION, THE COMMISSION SHALL MAXIMIZE THE NUMBER OF POLITICALLY COMPETITIVE LEGISLATIVE DISTRICTS.

(c) LEGISLATIVE REDISTRICTING PLANS SHALL NOT BE DRAWN TO PURPOSEFULLY ADVANTAGE OR DISADVANTAGE ANY POLITICAL PARTY OR PERSON.

**SECTION 3.** In the constitution of the state of Colorado, **repeal and reenact, with amendments, section 48 of article V as follows:**

**Section 48. Revision and alteration of districts – independent legislative redistricting commission.** (1) THE RESPONSIBILITY OF DIVIDING THE STATE INTO SENATORIAL AND REPRESENTATIVE DISTRICTS SHALL BE CARRIED OUT BY AN INDEPENDENT COMMISSION TO BE KNOWN AS THE INDEPENDENT LEGISLATIVE REDISTRICTING COMMISSION, WHICH IS HEREBY CREATED AND REFERRED TO IN THIS SECTION AND SECTIONS 48.3 AND 48.5 OF THIS ARTICLE V AS THE “COMMISSION”.

(2) THE COMMISSION CONSISTS OF TWELVE MEMBERS WHO HAVE THE FOLLOWING QUALIFICATIONS:

(a) FOUR MEMBERS MUST BE REGISTERED WITH THE STATE'S LARGEST POLITICAL PARTY AND APPOINTED BY THE CHAIRPERSON OF THAT PARTY, OR BY THE LEADERSHIP OF THAT PARTY IN SUCH MANNER AS THE PARTY MAY PROVIDE BY RULE.

(b) FOUR MEMBERS MUST BE REGISTERED WITH THE STATE'S SECOND LARGEST POLITICAL PARTY AND APPOINTED BY THE CHAIRPERSON OF THAT PARTY, OR BY THE LEADERSHIP OF THAT PARTY IN SUCH MANNER AS THE PARTY MAY PROVIDE BY RULE.

(c) FOUR MEMBERS MUST HAVE EACH BEEN UNAFFILIATED WITH ANY POLITICAL PARTY OR REGISTERED WITH A POLITICAL PARTY OTHER THAN THE STATE'S TWO LARGEST POLITICAL PARTIES FOR AT LEAST THE TWO YEARS PRIOR TO THE MEMBER'S APPOINTMENT. SUCH MEMBERS ARE REFERRED TO IN THIS SECTION AND SECTIONS 48.3 AND 48.5 OF THIS ARTICLE V AS THE “INDEPENDENT MEMBERS” OF THE COMMISSION OR THE “INDEPENDENT COMMISSIONERS”. THE INDEPENDENT MEMBERS SHALL BE APPOINTED IN ACCORDANCE WITH SUBSECTION (6) OF THIS SECTION.

(3) ALL COMMISSIONERS MUST BE REGISTERED ELECTORS OF THE STATE OF COLORADO. NO COMMISSIONER MAY BE AN INCUMBENT MEMBER OF THE GENERAL ASSEMBLY OR A CANDIDATE FOR THE GENERAL ASSEMBLY.

(4) (a) NO MORE THAN THREE MEMBERS OF THE COMMISSION MAY RESIDE IN ANY SINGLE CONGRESSIONAL DISTRICT. AT LEAST ONE MEMBER MUST RESIDE IN EACH CONGRESSIONAL DISTRICT.

(b) AT LEAST ONE MEMBER OF THE COMMISSION MUST RESIDE IN EACH OF THE FOLLOWING TWO AREAS OF THE STATE. ANY REFERENCE IN THIS SECTION TO A "GEOGRAPHIC AREA" REFERS TO THESE AREAS:

(I) ~~WEST~~ WEST OF THE CONTINENTAL DIVIDE; AND

(II) ~~EAST~~ EAST OF THE CONTINENTAL DIVIDE AND EITHER SOUTH OF EL PASO COUNTY'S SOUTHERN BOUNDARY OR EAST OF ARAPAHOE COUNTY'S EASTERN BOUNDARY.

(5) THE TWO LARGEST POLITICAL PARTIES SHALL EACH SUBMIT THREE OF THEIR FOUR APPOINTMENTS TO THE SECRETARY OF STATE ACCORDING TO THE FOLLOWING SCHEDULE IN THE YEAR FOLLOWING THAT IN WHICH THE FEDERAL CENSUS IS TAKEN. IN THIS SECTION AND SECTION 48.3 OF THIS ARTICLE V, SUCH YEAR IS REFERRED TO AS THE "REDISTRICTING YEAR". UNTIL EACH CONGRESSIONAL DISTRICT AND GEOGRAPHIC AREA IS REPRESENTED ON THE COMMISSION, NO APPOINTMENT SHALL BE MADE BY ANY APPOINTING AUTHORITY TO A DISTRICT OR GEOGRAPHIC AREA ALREADY REPRESENTED ON THE COMMISSION.

(a) BY MARCH 10, THE LARGEST POLITICAL PARTY SHALL SUBMIT ONE APPOINTMENT.

(b) AFTER THE APPOINTMENT PURSUANT TO SUBSECTION (5)(a) OF THIS SECTION AND BY MARCH 17, THE SECOND LARGEST POLITICAL PARTY SHALL SUBMIT TWO APPOINTMENTS. EACH PERSON APPOINTED MUST RESIDE IN A DIFFERENT CONGRESSIONAL DISTRICT OR DIFFERENT GEOGRAPHIC AREA THAN THE OTHER PERSON APPOINTED AND THE PERSON PREVIOUSLY APPOINTED BY THE LARGEST POLITICAL PARTY.

(c) AFTER THE APPOINTMENTS PURSUANT TO SUBSECTION (5)(b) OF THIS SECTION AND BY MARCH 24, THE LARGEST POLITICAL PARTY SHALL SUBMIT TWO APPOINTMENTS. EACH PERSON APPOINTED MUST RESIDE IN A DIFFERENT CONGRESSIONAL DISTRICT OR DIFFERENT GEOGRAPHIC AREA THAN THE OTHER PERSON APPOINTED AND THE PERSONS PREVIOUSLY APPOINTED.

(d) AFTER THE APPOINTMENTS PURSUANT TO SUBSECTION (5)(c) OF THIS SECTION AND BY MARCH 31, THE SECOND LARGEST PARTY SHALL SUBMIT ONE APPOINTMENT. THE PERSON APPOINTED MUST RESIDE IN A DIFFERENT CONGRESSIONAL DISTRICT OR DIFFERENT GEOGRAPHIC AREA THAN THE PERSONS PREVIOUSLY APPOINTED.



(6) (a) THE FOUR INDEPENDENT MEMBERS OF THE COMMISSION SHALL BE SELECTED AS PROVIDED IN THIS SUBSECTION (6) OF THIS SECTION.

(b) NO LATER THAN FEBRUARY 1 OF THE REDISTRICTING YEAR, THE SECRETARY OF STATE SHALL ESTABLISH AND ANNOUNCE AN APPLICATION PROCESS FOR PERSONS DESIRING TO SERVE AS INDEPENDENT MEMBERS OF THE COMMISSION. THE PROCESS MUST INCLUDE AN APPLICATION FORM THAT MUST BE SUBMITTED ELECTRONICALLY TO THE SECRETARY OF STATE. IN ADDITION, THE SECRETARY OF STATE SHALL CONSULT AND COORDINATE WITH THE STATE'S COUNTY CLERK AND RECORDERS TO DEVELOP AND IMPLEMENT A PROGRAM TO ADVERTISE AND ENCOURAGE APPLICATIONS FROM ELIGIBLE PERSONS FROM ACROSS THE STATE.

(c) APPLICATIONS MUST BE SUBMITTED NO LATER THAN MARCH 20 OF THE REDISTRICTING YEAR. WITHIN THREE BUSINESS DAYS THEREAFTER, THE SECRETARY OF STATE SHALL POST ALL APPLICATIONS ON THE SECRETARY'S WEBSITE. NO LATER THAN APRIL 1, THE SECRETARY SHALL EXAMINE EACH APPLICATION, ISSUE AN ELIGIBILITY FINDING WHETHER THE APPLICANT MEETS THE QUALIFICATION SPECIFIED IN SUBSECTIONS (2)(c) AND (3) OF THIS SECTION, POST THE FINDING ON THE SECRETARY'S WEBSITE, AND NOTIFY THE APPLICANT BY ELECTRONIC MAIL OF THE SECRETARY'S FINDING. IF THE SECRETARY FINDS THAT AN APPLICANT IS NOT ELIGIBLE, THEN THE SECRETARY SHALL INCLUDE THE REASONS THEREFOR IN HIS OR HER FINDING. IF THE SECRETARY FINDS THAT AN APPLICANT IS NOT ELIGIBLE, THE APPLICANT MAY WITHDRAW HIS OR HER APPLICATION OR SUBMIT A BRIEF STATEMENT DISPUTING THE FINDING WITHIN THREE BUSINESS DAYS AFTER THE DATE OF THE SECRETARY'S ELECTRONIC MAIL NOTIFICATION, WHICH STATEMENT SHALL BE POSTED PROMPTLY WITH THE SECRETARY'S FINDING. IF AN APPLICANT SUBMITS A STATEMENT DISPUTING THE SECRETARY'S FINDING OF INELIGIBILITY, THE APPLICANT MAY BE CONSIDERED BY THE PANEL IN ACCORDANCE WITH SUBSECTION (6)(f) OF THIS SECTION IF THE PANEL DETERMINES THAT THE APPLICANT IS ELIGIBLE.

(d) NO LATER THAN MARCH 20 OF THE REDISTRICTING YEAR, THE SECRETARY OF STATE SHALL APPOINT A PANEL TO REVIEW THE APPLICATIONS. THE PANEL SHALL CONSIST OF THE THREE SENIOR JUDGES MOST RECENTLY APPOINTED TO PERFORM TEMPORARY JUDICIAL DUTIES PURSUANT TO THE PROVISIONS OF SECTION 5 (3) OF ARTICLE VI, APPOINTED SEQUENTIALLY STARTING WITH THE MOST RECENTLY APPOINTED SENIOR JUDGE WHO HAS BEEN AFFILIATED WITH THE SAME POLITICAL PARTY OR UNAFFILIATED WITH ANY POLITICAL PARTY FOR THE TWO YEARS PRIOR TO APPOINTMENT, EXCEPT THAT NO APPOINTEE, WITHIN TWO YEARS PRIOR TO APPOINTMENT, SHALL HAVE BEEN AFFILIATED

WITH THE SAME POLITICAL PARTY AS A SENIOR JUDGE ALREADY APPOINTED TO THE PANEL. IF ANY OF THE THREE MOST RECENTLY APPOINTED SENIOR JUDGES IS UNABLE OR UNWILLING TO SERVE ON THE PANEL OR HAS BEEN AFFILIATED WITHIN TWO YEARS PRIOR TO APPOINTMENT WITH A POLITICAL PARTY ALREADY REPRESENTED ON THE PANEL, THEN THE SECRETARY OF STATE SHALL APPOINT THE NEXT MOST RECENTLY APPOINTED SENIOR JUDGE WHO HAS NOT BEEN AFFILIATED WITHIN TWO YEARS PRIOR TO APPOINTMENT WITH THE SAME POLITICAL PARTY AS ANY SENIOR JUDGE ALREADY APPOINTED TO THE PANEL. UPON REQUEST OF THE SECRETARY OF STATE, THE COURT ADMINISTRATOR APPOINTED PURSUANT TO SECTION 5 (3) OF ARTICLE VI SHALL PROVIDE INFORMATION ABOUT RECENTLY APPOINTED SENIOR JUDGES AS MAY BE NECESSARY FOR THE SECRETARY OF STATE TO PERFORM HIS OR HER DUTIES UNDER THIS SUBSECTION (6)(d).

(e) THE SECRETARY OF STATE SHALL REIMBURSE MEMBERS OF THE PANEL FOR NECESSARY TRAVEL AND OTHER REASONABLE EXPENSES INCURRED IN THE PERFORMANCE OF THEIR DUTIES AND SHALL COMPENSATE MEMBERS OF THE PANEL FOR EACH DAY THAT THE PANEL MEETS IN AN AMOUNT EQUAL TO ONE-TWENTIETH OF THE MONTHLY SALARY THEN CURRENTLY APPLICABLE TO ASSOCIATE JUSTICES OF THE COLORADO SUPREME COURT. SUCH REIMBURSEMENT AND COMPENSATION SHALL NOT AFFECT A MEMBER'S JUDICIAL SERVICE RETIREMENT BENEFITS.

(f) IN ONE OR MORE PUBLIC HEARINGS CONDUCTED IN ACCORDANCE WITH PROCEDURES DETERMINED BY THE PANEL, THE PANEL SHALL SELECT TWENTY ELIGIBLE APPLICANTS IT RECOMMENDS FOR APPOINTMENT AS INDEPENDENT MEMBERS OF THE COMMISSION, OR SUCH LESSER NUMBER AS THERE ARE TOTAL ELIGIBLE APPLICANTS. THE NONPARTISAN RESEARCH STAFF OF THE GENERAL ASSEMBLY SHALL PROVIDE STAFF ASSISTANCE TO THE PANEL FOR SUCH MEETINGS UPON THE REQUEST OF ANY MEMBER OF THE PANEL. THE PANEL MAY DETERMINE THE ELIGIBILITY OF ANY APPLICANT WHOSE QUALIFICATIONS UNDER SUBSECTIONS (2)(c) AND (3) OF THIS SECTION ARE IN QUESTION. THE PANEL SHALL RECOMMEND THOSE APPLICANTS THAT IT FINDS TO BE THE MOST QUALIFIED TO PERFORM THE DUTIES OF THE COMMISSION, AND, TO THE EXTENT PRACTICAL, RECOMMEND APPLICANTS WHO REPRESENT COLORADO'S RACIAL, ETHNIC, AND GEOGRAPHIC DIVERSITY, TAKING INTO CONSIDERATION THE GEOGRAPHIC REPRESENTATION REQUIREMENTS OF SUBSECTION (4) OF THIS SECTION AND THE GEOGRAPHIC REPRESENTATION OF THE SIX COMMISSIONERS PREVIOUSLY APPOINTED BY THE TWO LARGEST POLITICAL PARTIES. TO THE EXTENT POSSIBLE, THE PANEL SHALL RECOMMEND AN ODD NUMBER OF APPLICANTS GREATER THAN TWO FROM EACH UNREPRESENTED CONGRESSIONAL DISTRICT AND EACH UNREPRESENTED GEOGRAPHIC

AREA. MEMBERS OF THE PANEL SHALL HAVE NO EX PARTE COMMUNICATIONS REGARDING THE PERFORMANCE OF THEIR DUTIES UNDER THIS SUBSECTION (6)(f).

(g) THE PANEL SHALL ISSUE ITS RECOMMENDATIONS NO LATER THAN APRIL 23 OF THE REDISTRICTING YEAR. THE PANEL SHALL FORWARD ITS RECOMMENDATIONS TO THE DIRECTOR OF RESEARCH OF THE LEGISLATIVE COUNCIL, TO THE CHAIRPERSONS OF THE TWO LARGEST POLITICAL PARTIES, TO THE SIX COMMISSIONERS PREVIOUSLY APPOINTED BY THE TWO LARGEST POLITICAL PARTIES, AND TO THE SECRETARY OF STATE, WHO SHALL PROMPTLY POST THE PANEL'S RECOMMENDATIONS ON THE SECRETARY OF STATE'S WEBSITE.

(h) (I) NO LATER THAN APRIL 30 OF THE REDISTRICTING YEAR, THE SIX COMMISSIONERS PREVIOUSLY APPOINTED BY THE TWO LARGEST POLITICAL PARTIES SHALL, IN ONE OR MORE PUBLIC MEETINGS HELD AFTER NOTICE, SELECT THE COMMISSION'S FOUR INDEPENDENT MEMBERS FROM THE APPLICANTS RECOMMENDED BY THE PANEL IN ACCORDANCE WITH SUBSECTIONS (6)(h)(II) AND (6)(h)(III) OF THIS SECTION. THE NONPARTISAN RESEARCH STAFF OF THE GENERAL ASSEMBLY SHALL PROVIDE STAFF ASSISTANCE FOR THE MEETINGS.

(II) FOR EACH CONGRESSIONAL DISTRICT AND GEOGRAPHIC AREA NOT REPRESENTED ON THE COMMISSION BY ANY OF THE SIX COMMISSIONERS, THE COMMISSIONERS APPOINTED BY EACH POLITICAL PARTY SHALL, AS A GROUP, BEGINNING WITH THE COMMISSIONERS APPOINTED BY THE LARGEST POLITICAL PARTY, TAKE TURNS REMOVING ONE APPLICANT FROM THE LIST OF RECOMMENDED APPLICANTS WHO RESIDE IN THAT CONGRESSIONAL DISTRICT OR GEOGRAPHIC AREA UNTIL THERE IS ONLY ONE APPLICANT REMAINING, WHO SHALL BECOME A MEMBER OF THE COMMISSION.

(III) UPON COMPLETING THE SELECTION OF MEMBERS PURSUANT TO SUBSECTION (6)(h)(II) OF THIS SECTION, IF NECESSARY TO COMPLETE THE SELECTION OF FOUR INDEPENDENT MEMBERS, THE INDEPENDENT MEMBERS OF THE COMMISSION SHALL BE SELECTED AS FOLLOWS. THE COMMISSIONERS APPOINTED BY EACH POLITICAL PARTY SHALL, AS A GROUP, BEGINNING WITH THE COMMISSIONERS APPOINTED BY THE LARGEST POLITICAL PARTY, TAKE TURNS REMOVING ONE APPLICANT FROM THE REMAINING LIST OF RECOMMENDED APPLICANTS UNTIL THE TOTAL NUMBER OF APPLICANTS REMAINING PLUS THE NUMBER OF APPLICANTS SELECTED PURSUANT TO SUBSECTION (6)(h)(II) OF THIS SECTION TOTALS FOUR. THESE APPLICANTS SHALL BECOME THE INDEPENDENT MEMBERS OF THE COMMISSION.

(7) FOLLOWING THE SELECTION OF THE INDEPENDENT MEMBERS AS PROVIDED IN SUBSECTION (6) OF THIS SECTION, THE TWO LARGEST POLITICAL PARTIES SHALL EACH SUBMIT THEIR REMAINING APPOINTMENT TO THE SECRETARY OF STATE ACCORDING TO THE FOLLOWING SCHEDULE:

(a) BY MAY 3, THE LARGEST POLITICAL PARTY SHALL SUBMIT ITS APPOINTMENT. IF ANY CONGRESSIONAL DISTRICT OR GEOGRAPHIC AREA IS UNREPRESENTED ON THE COMMISSION AT THE TIME OF THE APPOINTMENT, THE PERSON APPOINTED MUST RESIDE IN AN UNREPRESENTED CONGRESSIONAL DISTRICT OR GEOGRAPHIC AREA.

(b) AFTER THE LARGEST POLITICAL PARTY SUBMITS ITS REMAINING APPOINTMENT AND BY MAY 5, THE SECOND LARGEST POLITICAL PARTY SHALL SUBMIT ITS APPOINTMENT. IF ANY CONGRESSIONAL DISTRICT OR GEOGRAPHIC AREA IS UNREPRESENTED ON THE COMMISSION AT THE TIME OF THE APPOINTMENT, THE PERSON APPOINTED MUST RESIDE IN AN UNREPRESENTED CONGRESSIONAL DISTRICT OR GEOGRAPHIC AREA.

(8) IF EITHER OF THE STATE'S TWO LARGEST POLITICAL PARTIES FAILS TO MAKE AN APPOINTMENT TO THE COMMISSION BY A DATE REQUIRED IN SUBSECTION (5) OR SUBSECTION (7) OF THIS SECTION, THEN SUCH APPOINTMENT IS FORFEITED, AND THE NUMBER OF COMMISSIONERS COMPRISING THE COMMISSION IS REDUCED ACCORDINGLY. A REDUCTION IN THE NUMBER OF COMMISSIONERS COMPRISING THE COMMISSION DOES NOT AFFECT THE MINIMUM NUMBER OF AFFIRMATIVE VOTES OF COMMISSIONERS REQUIRED TO APPROVE A MOTION AS SPECIFIED IN SECTION 48.3 (9) OF THIS ARTICLE V.

(9) FOR PURPOSES OF THIS SECTION, THE STATE'S TWO LARGEST POLITICAL PARTIES SHALL BE DETERMINED BY THE NUMBER OF REGISTERED ELECTORS AFFILIATED WITH EACH POLITICAL PARTY IN THE STATE ACCORDING TO VOTER REGISTRATION DATA PUBLISHED BY THE SECRETARY OF STATE FOR THE EARLIEST DAY IN JANUARY OF THE REDISTRICTING YEAR FOR WHICH SUCH DATA IS PUBLISHED.

**SECTION 4.** In the constitution of the state of Colorado, add sections 48.3 and 48.5 to article V as follows:

**Section 48.3. Commission organization – procedures – transparency – voting requirements.** (1) THE GOVERNOR SHALL CONVENE THE COMMISSION NO LATER THAN MAY 15 OF THE REDISTRICTING YEAR, APPOINTING A TEMPORARY CHAIRPERSON FROM THE COMMISSION'S MEMBERS. UPON CONVENING, THE COMMISSION SHALL ELECT A CHAIR AND A VICE-CHAIR, WHO

MUST NOT BE MEMBERS OF THE SAME POLITICAL PARTY, AND SUCH OTHER OFFICERS AS IT DETERMINES.

(2) THE DIRECTORS OF THE NONPARTISAN RESEARCH AND LEGAL STAFFS OF THE GENERAL ASSEMBLY SHALL APPOINT NONPARTISAN STAFF FROM THEIR RESPECTIVE OFFICES AS NEEDED TO ASSIST THE COMMISSION. AS FAR IN ADVANCE AS NECESSARY TO ENABLE THE COMMISSION TO BEGIN ITS WORK IMMEDIATELY UPON CONVENING, THE NONPARTISAN STAFF SHALL ACQUIRE AND PREPARE ALL NECESSARY RESOURCES, INCLUDING HARDWARE, SOFTWARE, AND DEMOGRAPHIC, GEOGRAPHIC, AND POLITICAL DATABASES.

(3) THE COMMISSION MAY RETAIN LEGAL COUNSEL IN ALL ACTIONS AND PROCEEDINGS IN CONNECTION WITH THE PERFORMANCE OF ITS POWERS, DUTIES, AND FUNCTIONS, INCLUDING REPRESENTATION OF THE COMMISSION BEFORE THE SUPREME COURT PURSUANT TO SECTION 48.5 (7) OF THIS ARTICLE V.

(4) THE GENERAL ASSEMBLY SHALL APPROPRIATE SUFFICIENT FUNDS FOR THE COMPENSATION AND PAYMENT OF THE EXPENSES OF THE COMMISSION AND ITS STAFF. THE COMMISSION AND ITS STAFF SHALL HAVE ACCESS TO STATISTICAL INFORMATION COMPILED BY THE STATE AND ITS POLITICAL SUBDIVISIONS AND NECESSARY FOR ITS DUTIES. STATE AGENCIES AND POLITICAL SUBDIVISIONS SHALL COMPLY WITH REQUESTS FROM THE COMMISSION AND ITS STAFF FOR SUCH STATISTICAL INFORMATION.

(5) THE COMMISSION SHALL ADOPT RULES TO GOVERN ITS ADMINISTRATION AND OPERATION, INCLUDING BUT NOT LIMITED TO THE FOLLOWING:

(a) MAINTENANCE OF A RECORD OF THE COMMISSION'S ACTIVITIES AND PROCEEDINGS, INCLUDING A RECORD OF WRITTEN AND ORAL TESTIMONY RECEIVED, AND OF THE COMMISSION'S DIRECTIONS TO NONPARTISAN STAFF ON PROPOSED CHANGES TO ANY PLAN AND THE COMMISSION'S RATIONALE FOR SUCH CHANGES;

(b) THE PROCESS FOR REMOVING COMMISSIONERS FOR VIOLATING PUBLIC DISCLOSURE OR OPEN MEETINGS PROVISIONS OF THIS SECTION, OR PARTICIPATING IN COMMUNICATIONS PROHIBITED UNDER THIS SECTION;

(c) PROVIDING FOR ANY VACANCY CREATED BY THE DEATH, RESIGNATION, OR REMOVAL OF A COMMISSIONER, OR OTHERWISE, WHICH SHALL BE FILLED BY THE RESPECTIVE APPOINTING

AUTHORITY. MEMBERS OF THE COMMISSION SHALL HOLD OFFICE UNTIL APRIL 30 OF THE NEXT REDISTRICTING YEAR.

(d) THE PROCESS FOR RECOMMENDING CHANGES TO PLANS SUBMITTED TO THE COMMISSION BY NONPARTISAN STAFF; AND

(e) THE ADOPTION OF A STATEWIDE MEETING AND HEARING SCHEDULE.

(6) (a) EXCEPT AS PROVIDED IN SUBSECTION (6)(b) OF THIS SECTION, THE COMMISSION IS SUBJECT TO THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24, COLORADO REVISED STATUTES, OR ANY SUCCESSOR ACT.

(b) ~~MAPS~~-MAPS IN DRAFT FORM AND NOT SUBMITTED TO THE COMMISSION ARE NOT PUBLIC RECORDS SUBJECT TO DISCLOSURE. WORK PRODUCT AND COMMUNICATIONS BETWEEN COMMISSION STAFF ARE SUBJECT TO DISCLOSURE ONCE A PLAN IS SUBMITTED TO THE SUPREME COURT.

(7) (a) THE COMMISSION IS SUBJECT TO THE OPEN MEETINGS PROVISIONS OF THE "COLORADO SUNSHINE ACT OF 1972" CONTAINED IN PART 4 OF ARTICLE 6 OF TITLE 24, COLORADO REVISED STATUTES, OR ANY SUCCESSOR ACT. FURTHERMORE, COMMUNICATIONS OUTSIDE OF A PUBLIC MEETING RELATING TO COMMISSION BUSINESS THAT INVOLVE MORE THAN THREE COMMISSIONERS ARE PROHIBITED.

(b) EXCEPT AS PROVIDED IN SUBSECTIONS (7)(c) AND (7)(d) OF THIS SECTION, COMMISSIONERS SHALL NOT COMMUNICATE WITH THE COMMISSION'S STAFF ON THE MAPPING OF LEGISLATIVE DISTRICTS UNLESS THE COMMUNICATION IS DURING A PUBLIC MEETING OR HEARING OF THE COMMISSION.

(c) THE COMMISSION'S STAFF MEMBERS SHALL NOT HAVE ANY COMMUNICATIONS ABOUT THE CONTENT OR DEVELOPMENT OF ANY PLAN OUTSIDE OF PUBLIC HEARINGS WITH ANYONE EXCEPT OTHER STAFF MEMBERS. STAFF SHALL REPORT TO THE COMMISSION ANY ATTEMPT BY ANYONE TO EXERT INFLUENCE OVER THE DRAFTING OF PLANS.

(d) ONE OR MORE STAFF MAY BE DESIGNATED TO COMMUNICATE WITH COMMISSIONERS REGARDING ADMINISTRATIVE MATTERS, THE DEFINITION AND SCOPE OF WHICH SHALL BE DETERMINED BY THE COMMISSION.

(e) ANY COMMISSIONER WHO PARTICIPATES IN A COMMUNICATION PROHIBITED IN THIS SECTION SHALL BE REMOVED FROM THE COMMISSION AND REPLACED WITHIN SEVEN DAYS ACCORDING TO COMMISSION RULES.

(f) AT THE DIRECTION OF THE COMMISSION, ITS STAFF MAY CONSULT WITH EXPERTS RETAINED BY THE COMMISSION. WORK PRODUCT AND COMMUNICATIONS BETWEEN COMMISSION STAFF AND SUCH EXPERTS ARE SUBJECT TO DISCLOSURE UNDER THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24, COLORADO REVISED STATUTES, OR ANY SUCCESSOR ACT, ONCE A PLAN IS SUBMITTED TO THE SUPREME COURT.

(g) SUBJECT TO AVAILABLE APPROPRIATIONS, THE COMMISSION SHALL MAKE USE OF REASONABLY AVAILABLE CURRENT TECHNOLOGY TO FACILITATE PUBLIC INPUT AND COMMENT ON THE WORK OF THE COMMISSION.

(8) ANY PERSON WHO RECEIVES COMPENSATION FOR ADVOCATING TO THE COMMISSION OR ITS MEMBERS CONCERNING THE ADOPTION OF ANY PLAN, ANY AMENDMENT TO A PLAN, PLAN APPROACH, OR MANNER OF COMPLIANCE WITH ANY OF THE PLAN CRITERIA SET FORTH IN SECTION 47 OF THIS ARTICLE V, OTHER THAN COMMISSION STAFF, IS A "PROFESSIONAL LOBBYIST" AS DEFINED IN SECTION 24-6-301(6), COLORADO REVISED STATUTES, OR ANY SUCCESSOR STATUTE, AND SHALL COMPLY WITH THE REQUIREMENTS APPLICABLE TO PROFESSIONAL LOBBYISTS, INCLUDING REGISTRATION AND FILING DISCLOSURE STATEMENTS, CONTAINED IN PART 3 OF ARTICLE 6 OF TITLE 24, COLORADO REVISED STATUTES, OR ANY SUCCESSOR STATUTES.

(9) ANY MOTION ADOPTED BY THE COMMISSION, INCLUDING THE ELECTION OF ITS OFFICERS AND THE AMENDMENT OR APPROVAL OF ANY PLAN, REQUIRES THE AFFIRMATIVE VOTE OF AT LEAST EIGHT COMMISSIONERS, INCLUDING THE AFFIRMATIVE VOTE OF AT LEAST ONE INDEPENDENT COMMISSIONER.

(10) THE COMMISSION SHALL NOT VOTE UPON A FINAL PLAN UNTIL AT LEAST ~~72~~ SEVENTY-TWO HOURS AFTER IT HAS BEEN PROPOSED TO THE COMMISSION IN A PUBLIC MEETING OR AMENDED BY THE COMMISSION, WHICHEVER OCCURS LATER, UNLESS COMMISSIONERS UNANIMOUSLY WAIVE SUCH REQUIREMENT.

**Section 48.5. Preparation, amendment, and approval of plans.** (1) (a) THE COMMISSION SHALL BEGIN BY CONSIDERING PLANS CREATED BY ITS STAFF ALONE. PRIOR TO THE COMMISSION'S CONSIDERATION OF A PRELIMINARY PLAN, ITS NONPARTISAN STAFF SHALL PREPARE AND PRESENT TO THE COMMISSION NO FEWER THAN FOUR PLANS. EXCEPT AS PROVIDED IN SUBSECTION (1) (d) OF THIS SECTION. THESE PLANS SHALL BE KNOWN AS THE STAFF PLANS AND MUST BE NAMED AND NUMBERED SEQUENTIALLY FOR PURPOSES OF SUBSECTION (2) OF THIS SECTION. THE STAFF PLANS

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OCT 11 2017

S.WARD  
2:15PM

Colorado Secretary of State

DATE FILED: October 25, 2017 3:19 PM

FAIR DISTRICTS CO.

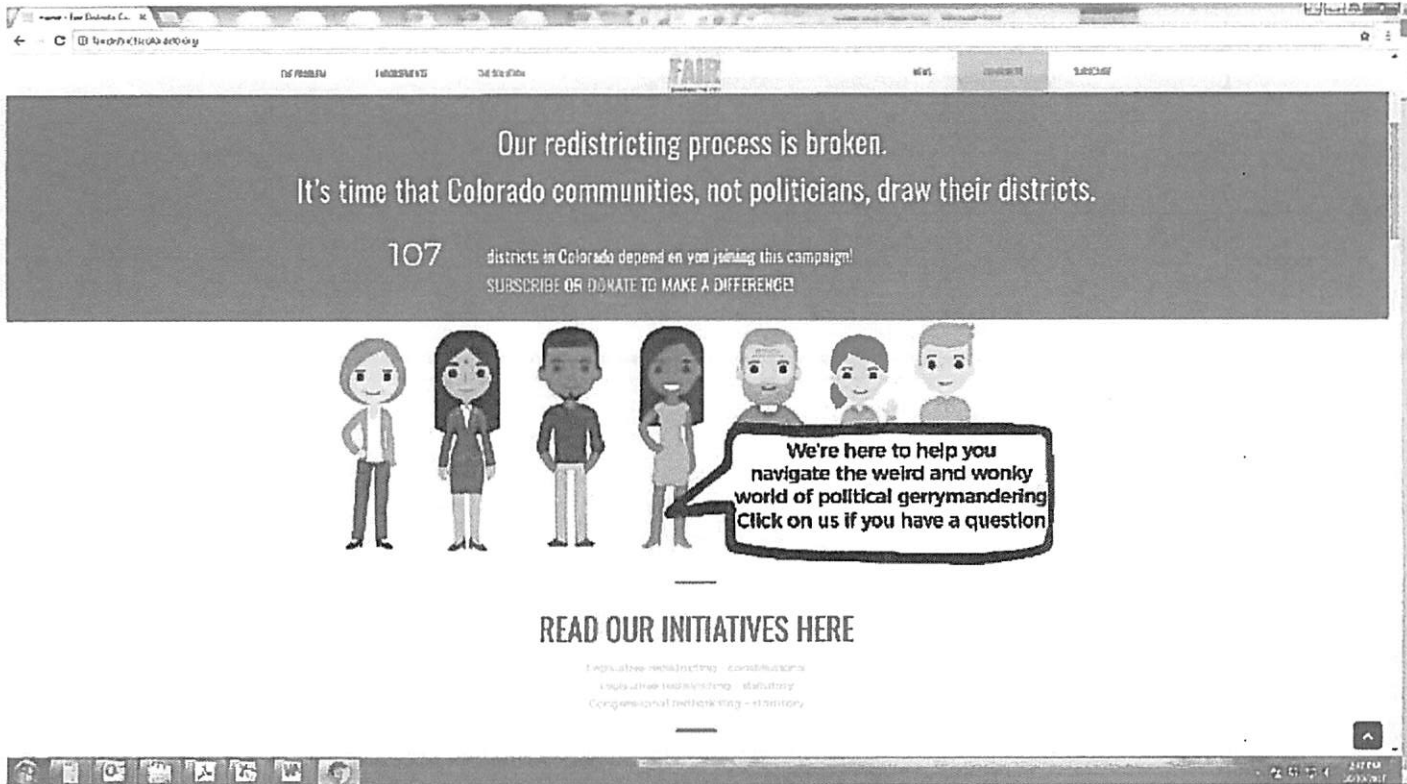
THE PROCESS MEMBERSHIP GET INVOLVED NEWS CONTACT SUPPORT

BACKROOM

Our redistricting process is broken.  
It's time that Colorado communities, not politicians, draw their districts.

107 districts in Colorado depend on you joining this campaign!  
SUBSCRIBE OR DONATE TO MAKE A DIFFERENCE!







## READ OUR INITIATIVES HERE

- Legislative redistricting - constitutional
- Legislative redistricting - statutory
- Congressional redistricting - statutory

## WHAT IS GERRYMANDERING?

The dividing of a state into congressional or legislative districts so as to give one political party a majority in many districts while concentrating the voting strength of the other party into as few districts as possible

I have no idea what you're talking about



**CONTACT**

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Address  
1401 N Grant St, Ste B204  
Denver, CO 80203

**DISCLAIMER**

Fair Districts Colorado is a Colorado issue committee dedicated to the approval of redistricting reform in Colorado. Contributions to FDC are subject to public disclosure. Corporate, union, trade association and personal contributions are accepted and there are no limits. Fair Districts Fair Elections does not accept contributions from foreign entities. Contributions to FDC are not deductible as charitable contributions for federal income tax purposes.

**REDISTRICTING NEWS**



Supreme Court to hear WI redistricting case



Signatures filed Ohio redistricting



Resurrecting redistricting reform in Indiana



### A UNIFIED EFFORT FOR FAIR DISTRICTS IN COLORADO

## Help us give voters a voice!

The undemocratic practice of gerrymandering ignores your voice because in Colorado, voters don't pick their politicians. Politicians pick their voters.

Our tri-partisan effort includes members of the Democratic party, Republican party, and those unaffiliated with either major party. Our initiatives aim to end the practice of backroom-dealing and shady politics where political operatives, in smoke-filled rooms, decide the outcome of elections before you even cast your ballot.

Our citizen initiatives take map drawing out of the hands of political insiders and shine a light on the redistricting process by creating a more open, public process. It also gives unaffiliated voters and non-major parties a real opportunity to engage, yielding far more competitive and common-sense districts.

[Frequently Asked Questions](#)

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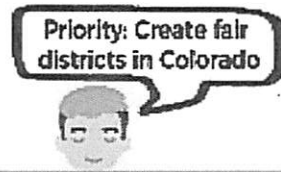
## Standards for Redistricting



- Adhere to all Constitution and Voting Rights Act requirements
- Promote adherence with nationally recognized, neutral, good government criteria, such as
  - o Communities of Interest
  - o County and city integrity
  - o Compactness
- Make all districts as equal in population as possible within an established minimal range of deviation
- Prohibit districts from being drawn for the purpose of favoring or discriminating against a political party or candidate
- Use nonpartisan, professional staff to draw maps, instead of political professionals

## Priorities for Redistricting Reform

- Redistricting should be done by an independent commission consisting of Republicans, Democrats, and non-major party members.
- The commission should reflect Colorado's geographic and racial/ethnic diversity
- The commission should create competitive districts, where possible
- The commission should be required to obtain a supermajority in order to pass any map.
- The commission should be subject to transparency measures, such as citizen participation,



FAIR DISTRICTS COLORADO

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## What's wrong with the current system?

Redistricting is a fiercely contested issue, primarily due to gerrymandering. Political parties or incumbents sometimes draw district lines for their own benefit at the expense of proportionality and fair representation. Some argue that this practice contributes to the present lack of competitive elections. Uncompetitive elections can in turn discourage participation. Also, district lines sometimes minimize the influence of minority voters by disproportionately consolidating them within single districts or splitting them across several districts. In both the 2000 and 2010 redistricting cycles, divided state legislatures were unable to approve congressional redistricting plans, and as a result, final maps were drawn by state courts and not by a transparent process.

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## How will the Fair Districts Colorado initiatives fix the current system?

The Fair Districts Colorado Initiatives will create new, independent commissions to redistrict both the state legislature and the U.S. Congress. Consisting of Republicans, Democrats and those unaffiliated with either major party, a supermajority vote will be required to prevent one party from hijacking the process. To minimize the "stuff the ballot box dynamic", by which both parties attempt to get their "Independents" on the commission, our initiatives use senior / recently retired judges to identify truly independent finalists. Fair Districts Colorado takes the district map-drawing from partisan political operatives and puts it in the hands of non-partisan staff to draw district boundaries. The commission's and its staff's business must be conducted in open, public meetings to ensure transparency (no more back-room deals and less partisan gerrymandering). Colorado law already recognizes several nationally recognized good government criteria. We want to add competitiveness, once those other criteria are ensured.



2:46 PM 10/27/11

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OCT 17 2017

S. WARD  
1:30 P.M.

COLORADO TITLE SETTING BOARD

Colorado Secretary of State

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IN THE MATTER OF THE TITLE, BALLOT TITLE, AND SUBMISSION CLAUSE FOR  
INITIATIVE 2017-2018 #48

---

**PROPONENTS' RESPONSE IN OPPOSITION TO MOTION FOR REHEARING**

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Kathleen Curry and Toni Larson, registered electors of the State of Colorado and the proponents of Initiative 2017-2018 #48 ("Initiative #48"), through counsel, Ireland Stapleton Pryor & Pascoe, PC, hereby respond in opposition to the Motion for Rehearing filed by Robert DuRay and Katina Banks ("Movants"), stating as follows:

**I. Initiative #48 Has a Single Subject.**

A proposed initiative comports with the single subject requirement of Article V, section 1(5.5) of the Colorado Constitution "if the initiative tends to effect or to carry out one general object or purpose." *In re Title, Ballot Title, and Submission Clause for 2013-2014 #89*, 328 P.3d 172, 177 (Colo. 2014). "An initiative meets this requirement as long as the subject matter of the initiative is necessarily or properly connected. Stated differently, so long as an initiative encompasses related matters it does not violate the single subject requirement." *Id.* (internal citations and quotations omitted) (emphasis in original). In addressing the single subject issue, it is improper for the Title Board to consider the merits of the proposed initiative or to review its "efficacy, construction, or future application." *In* at 176.

Here, as reflected in its title, ballot title, and submission clause (collectively, the "Title"), the single subject of Initiative #48 is state legislative redistricting in Colorado. More specifically, Initiative #48 restructures and renames the current Reapportionment Commission that is responsible for state legislative redistricting and, directly related thereto, sets forth eligibility requirements, appointment processes, redistricting criteria, and processes for adopting redistricting maps. This subject is not an overly broad or overreaching category, and all of the subsections of Initiative #48 are connected to its single subject of state legislative redistricting in Colorado. *See In re #89*, 328 P.3d at 177. Consequently, Colorado voters will not be surprised by any of the provisions of Initiative #48. *See id.*

Movants incorrectly contend that Initiative #48 contains multiple subjects. Movants first argue that Initiative #48's provisions addressing how state legislative redistricting plans are approved by the Colorado Supreme Court constitute a separate subject. The premise of Movants' argument is that Initiative #48 changes the Colorado Supreme Court from a court of appellate review to a trial court in approving redistricting plans. This argument is false because the language Movants rely upon to make this argument is unchanged from the existing constitutional language for the approval of plans drawn by the Reapportionment Commission, which currently reads:

**The supreme court shall adopt rules for such proceedings and for the production and presentation of supportive evidence for such plan. Any legal arguments or evidence concerning such plan shall be submitted to the supreme court pursuant to the schedule established by the court.**

Colo. Const. art. V, § 48 (emphasizing the identical language as emphasized by Movants). In short, Movants' argument is based on a misinterpretation of the language emphasized above because Initiative #48 does nothing to change the language from its current form.

Movants next argue that the use of senior judges to nominate the independent commissioners constitutes a second subject. However, outlining the appointment process for state legislative redistricting commissioners is directly related to the single subject of state legislative redistricting. Movants nevertheless assert that utilizing senior judges to select a pool of 20 candidates to serve as independent commissioners is a second subject because the Colorado Constitution prevents judges from holding public office other than judicial. Mot. for Rehearing at 3 (citing Colo. Const. art. VI, § 18). This argument is flawed for several reasons.

First, the underlying premise of a constitutional conflict is unfounded. Movants cite no relevant authority for the proposition that the appointment role of senior judges constitutes "public office other than judiciary" under Colorado law. The only authority cited is an inapposite case in which the Arizona Supreme Court concluded that serving as a redistricting commissioner constituted public office. Mot. for Rehearing at 3-4 (citing *Adams v. Comm'n on Appellate Court Appointments*, P.3d 367, 370-71 (2011)). The court's analysis was based on the plain language of the constitutional provision in question, which clearly indicated that serving on the Arizona redistricting commission constituted holding "public office."

In contrast, here the issue is not whether serving as a redistricting commissioner constitutes public office because the senior judges are not the redistricting commissioners and they do not sit on the Independent Legislative Redistricting Commission ("Commission")—the senior judges merely recommend candidates for the Commission.<sup>1</sup> Additionally, Movants ignore that the judiciary already plays a more direct role in nominating commissioners to the Reapportionment Commission, given that Colo. Const. art. V, Sec. 48(1)(b) requires the Chief Justice of the Colorado Supreme Court to nominate four of the eleven members of the Reapportionment Commission. Because the nominating role of the judiciary contemplated by

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<sup>1</sup> Even if senior judges were being asked to sit on the Commission, Proponents doubt whether, under Colorado law, such role would be considered holding "public office other than judiciary," because it is common for judges in Colorado to sit on outside commissions. For example, judges sit on the Colorado Commission on Criminal & Juvenile Justice (the "CCCJJ"), a commission established by the General Assembly pursuant to H.B. 07-1358. See CCCJJ 2016 Annual Report at pp. viii, 3, available at [https://cdpsdocs.state.co.us/ccjj/Resources/Report/2016-12\\_CCJJAnnRpt.pdf](https://cdpsdocs.state.co.us/ccjj/Resources/Report/2016-12_CCJJAnnRpt.pdf); see also C.R.S. § 16-11.3-101. Other than judges, the CCCJJ is filled with commissioners from the other branches of state government and from outside of state government. *Id.* at vii-viii.



Initiative #48 already exists in the Colorado Constitution, Movants' argument of a constitutional conflict is meritless.

Aside from the incorrect assumption of a constitutional conflict, Movants argument is not compelling because, like the 1974 Amendment No. 9 that required the Chief Justice to nominate four members of the Reapportionment Commission, Initiative #48 proposes to change the Colorado Constitution and therefore the question of a constitutional conflict is moot. *In re Interrogatories Propounded by Senate Concerning House Bill 1078*, 536 P.2d 308, 315-16 (1975) (rejecting argument that Chief Justice's nomination role was unconstitutional). Regardless, the question of a constitutional conflict is a legal question that goes to the merits of Initiative #48 and is not a single subject issue.

Finally, Movants' reliance on *In re Title, Ballot Title, & Submission Clause for 2015-2016 #132*, 2016 CO 55 is misplaced. In #132, the court took issue with changing the distinct and narrow role of the existing Colorado Supreme Court Nominating Commission. *Id.* at ¶¶ 19, 24-25. Nowhere in #132 did the court make a wholesale prohibition against using an entire branch of government to nominate officials on a public commission, which is the interpretation Movants give of #132.

Accordingly, the Title Board should affirm the Title setting for Initiative #48 because it has a single subject.

## II. The Title Is Not Misleading.

Ballot titles must be brief, while at the same time being fair and not misleading. C.R.S. § 1-40-106(3)(b); *In re Second Initiated Constitutional Amendment*, 613 P.2d 867 (Colo. 1980). The Title Board has considerable discretion in resolving "the interrelated problems of length, complexity, and clarity" in setting titles. *In re Proposed Initiative Concerning State Personnel Sys.*, 691 P.2d 1121, 1125 (Colo. 1984).

Movants first contend that the title is misleading because it does not state who the appointing authorities are for the eight non-independent commissioners. Mot. for Rehearing at 4. This argument lacks merit because, for the sake of brevity, the title does not describe the appointing authorities of any of the commissioners, whether independent or not. The title does, however, clearly describe the commissioners' respective association or non-association with Colorado's two largest political parties and therefore fairly addresses the political composition of the Commission.

Movants next contend that the title is misleading because it purportedly mischaracterizes how political competitiveness is considered in drawing plans. Mot. for Rehearing at 5. Movants argue that the title suggests that competitiveness is a requirement and always applied by the Commission. *Id.* The title does not suggest as much. Rather, the title states that political competitiveness is added to the "criteria" used by the Commission. "Criteria" and its singular "criterion" are defined as "standard(s) on which a judgment or decision may be based." *Merriam-Webster.com*, 2017, available at <https://www.merriam-webster.com> (last visited Oct. 14, 2017) (emphasis added). By definition, "criteria" to be considered are not requirements.

If anything, the use of the word "criteria" in the title undersells the role that competitiveness plays in the Commission's considerations. Initiative #48 plainly states that, to the extent possible, the commission shall maximize the number of competitive districts. Proposed Art. V, § 47(4)(b). Accordingly, Movants' concerns are unfounded because the title properly balances brevity with clarity.

WHEREFORE, Kathleen Curry and Toni Larson respectfully request that the Title Board deny the Motion for Rehearing and affirm the title setting for Initiative #48.

Dated: October 17, 2017

Respectfully submitted,

/s/ Benjamin J. Larson

Kelley B. Duke

Benjamin J. Larson

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***Attorneys for Proponents Kathleen Curry and  
Toni Larson***

**CERTIFICATE OF SERVICE**

I hereby affirm that a true and accurate copy of the foregoing **PROPONENTS' RESPONSE IN OPPOSITION TO MOTION FOR REHEARING** was sent this 17<sup>th</sup> day of October, 2017, via first class U.S. mail, postage pre-paid or email to Movants at:

Robert DuRay  
Katina Banks  
c/o Mark Grueskin  
1600 Stout Street, Suite 1000  
Denver, CO 80202  
[mark@rklawpc.com](mailto:mark@rklawpc.com)

Benjamin J. Larson  
Benjamin J. Larson

**Ballot Title Setting Board**

**Proposed Initiative 2017-2018 #48<sup>1</sup>**

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution concerning state legislative redistricting, and, in connection therewith, renaming the commission that redraws state legislative boundaries; changing the qualifications and methods of appointment of members of the commission; providing for the appointment of 12 commissioners, 4 of whom are registered with the state's largest political party, 4 of whom are registered with the state's second largest political party, and 4 of whom are not registered with either of the state's two largest political parties; requiring the commission to consider political competitiveness, to the extent possible, after meeting the other requirements for redistricting; prohibiting drawing plans to purposefully advantage or disadvantage any political party or person; specifying procedures that the commission must follow, including requiring that the commission's work be done in public meetings and requiring the nonpartisan staff of the commission to prepare and present plans; and requiring the agreement of at least 8 of 12 commissioners to approve any action of the commission.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution concerning state legislative redistricting, and, in connection therewith, renaming the commission that redraws state legislative boundaries; changing the qualifications and methods of appointment of members of the commission; providing for the appointment of 12 commissioners, 4 of whom are registered with the state's largest political party, 4 of whom are registered with the state's second largest political party, and 4 of whom are not registered with either of the state's two largest political parties; requiring the commission to consider political competitiveness, to the extent possible, after meeting the other requirements for redistricting; prohibiting drawing plans to purposefully advantage or disadvantage any political party or person; specifying procedures that the commission must follow, including requiring that the commission's work be done in public meetings and requiring the nonpartisan staff of the commission to prepare and present plans; and requiring the agreement of at least 8 of 12 commissioners to approve any action of the commission?

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<sup>1</sup> Unofficially captioned "State Legislative Redistricting" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

*Hearing October 4, 2017:  
Single subject approved; staff draft amended; titles set.  
Hearing adjourned 1:56 p.m.*

*Rehearing October 18, 2017:  
Motion for Rehearing denied except to the extent that the Board made changes to the titles.  
Hearing adjourned 2:24 p.m.*

SHALL BE PREPARED, PUBLISHED ONLINE, AND PRESENTED ON A TIMETABLE ESTABLISHED BY THE COMMISSION, EXCEPT EACH STAFF PLAN SHALL BE PRESENTED TO THE COMMISSION NO FEWER THAN TEN DAYS AFTER THE PRESENTATION OF ANY PREVIOUS STAFF PLAN, AND EACH STAFF PLAN MUST BE PRESENTED TO THE COMMISSION NO FEWER THAN ~~24-TWENTY-FOUR~~ HOURS AFTER IT HAS BEEN PUBLISHED ONLINE. STAFF SHALL KEEP EACH PLAN PREPARED CONFIDENTIAL UNTIL IT IS PUBLISHED ONLINE. THE COMMISSION MAY, UPON MOTION ADOPTED IN ACCORDANCE WITH SECTION 48.3 (9) OF THIS ARTICLE V, ADOPT CERTAIN PROVISIONS, ELEMENTS, OR TECHNIQUES, SUCH AS PLAN COMPONENTS, ELEMENTS OF PUBLIC TESTIMONY, OR A DEFINITION OF COMPETITIVENESS, TO WHICH STAFF SHALL ADHERE IN DEVELOPING A STAFF PLAN.

(b) THE COMMISSION SHALL ENSURE THE PUBLIC HAS ADEQUATE OPPORTUNITY TO COMMENT DURING THE MAP DEVELOPMENT PROCESS. AT A MINIMUM, THE COMMISSION SHALL AFFORD THE PUBLIC AN OPPORTUNITY TO COMMENT AFTER THE PUBLICATION OF EACH STAFF PLAN AND SHALL ENSURE THE PUBLIC HAS THE ABILITY TO COMMENT TO THE COMMISSION THROUGH ELECTRONIC MAIL OR OTHER ELECTRONIC MEANS THROUGHOUT THE REDISTRICTING PROCESS.

(c) ANY MEMBER OF THE COMMISSION OR GROUP OF MEMBERS MAY REQUEST STAFF TO PREPARE ADDITIONAL PLANS OR AMENDMENTS TO PLANS. ANY SUCH REQUEST MUST BE MADE IN A PUBLIC HEARING OF THE COMMISSION BUT DOES NOT REQUIRE COMMISSION APPROVAL. PLANS OR AMENDMENTS DEVELOPED IN RESPONSE TO SUCH REQUESTS ARE SEPARATE FROM STAFF PLANS FOR PURPOSES OF SUBSECTION (2) OF THIS SECTION.

(d) THE COMMISSION MAY ADOPT A PRELIMINARY PLAN AT ANY TIME AFTER PRESENTATION OF THE FIRST STAFF PLAN, IN WHICH CASE THE STAFF DOES NOT NEED TO PREPARE OR PRESENT ADDITIONAL STAFF PLANS.

(2) WITHIN ONE HUNDRED ~~THIRTEEN-THREE~~ DAYS AFTER THE COMMISSION HAS BEEN CONVENED OR THE NECESSARY CENSUS DATA ARE AVAILABLE, WHICHEVER IS LATER, THE COMMISSION SHALL PUBLISH A PRELIMINARY PLAN. IF FOR ANY REASON THE COMMISSION DOES NOT APPROVE A PRELIMINARY PLAN FOR BOTH HOUSES BY SUCH DATE, THEN THE COMMISSION SHALL PUBLISH THE FOURTH STAFF PLAN AS THE COMMISSION'S PRELIMINARY PLAN. IF THE COMMISSION APPROVES DISTRICTS FOR ONE HOUSE OF THE GENERAL ASSEMBLY BUT NOT THE OTHER HOUSE, THEN THE PLAN FOR THE APPROVED HOUSE SHALL BE PUBLISHED AS THE PRELIMINARY PLAN FOR THAT HOUSE, AND

THE FOURTH STAFF PLAN FOR THE HOUSE FOR WHICH THE COMMISSION DID NOT ADOPT A PLAN SHALL BE PUBLISHED AS THE PRELIMINARY PLAN FOR THAT HOUSE.

(3) FOLLOWING THE ADOPTION OF A PRELIMINARY PLAN AND PRIOR TO THE HOLDING OF PUBLIC HEARINGS ON ANY PRELIMINARY PLAN, THE COMMISSION SHALL POST THE PLAN ELECTRONICALLY FOR PUBLIC INSPECTION.

(4) WITHIN FORTY-FIVE DAYS AFTER THE DATE OF THE PUBLICATION OF THE PRELIMINARY PLAN, THE COMMISSION SHALL COMPLETE PUBLIC HEARINGS ON THE PRELIMINARY PLAN IN SEVERAL PLACES THROUGHOUT THE STATE. THE COMMISSION SHALL HOLD NO FEWER THAN THREE HEARINGS IN EACH CONGRESSIONAL DISTRICT, AND THE COMMISSION MUST CONDUCT AT LEAST ONE HEARING IN PERSON IN EACH CONGRESSIONAL DISTRICT. OTHER HEARINGS MAY BE CONDUCTED REMOTELY, THROUGH VIDEO-CONFERENCE OR OTHER AVAILABLE TECHNOLOGY. IN NO CASE, HOWEVER, SHALL THE COMMISSION CONDUCT FEWER THAN TWO IN-PERSON HEARINGS WEST OF THE CONTINENTAL DIVIDE OR FEWER THAN TWO IN-PERSON HEARINGS FROM SOUTH OF EL PASO ~~COUNTY~~COUNTY AND EAST OF THE ~~CONTINENTAL~~CONTINENTAL DIVIDE~~DIVIDE~~.

(5) SUBSEQUENT TO HEARINGS ON THE PRELIMINARY PLAN, THE COMMISSION SHALL RECONVENE. ANY MEMBER OF THE COMMISSION OR GROUP OF MEMBERS MAY REQUEST THE COMMISSION'S STAFF TO PREPARE ADDITIONAL PLANS OR AMENDMENTS TO PLANS, BUT SUCH REQUESTS MUST BE MADE IN A PUBLIC HEARING OF THE COMMISSION.

(6) (a) NO LATER THAN ONE HUNDRED TWENTY-THREE DAYS PRIOR TO THE DATE ESTABLISHED IN STATUTE FOR PRECINCT CAUCUSES IN THE SECOND YEAR FOLLOWING THE YEAR IN WHICH THE CENSUS WAS TAKEN OR, IF THE ELECTION LAWS DO NOT PROVIDE FOR PRECINCT CAUCUSES, NO LATER THAN ONE HUNDRED TWENTY-THREE DAYS PRIOR TO THE DATE ESTABLISHED IN STATUTE FOR THE EVENT COMMENCING THE CANDIDATE SELECTION PROCESS IN SUCH YEAR, THE COMMISSION SHALL FINALIZE ITS PLAN AND SUBMIT THE SAME TO THE COLORADO SUPREME COURT FOR REVIEW AND DETERMINATION IN ACCORDANCE WITH SUBSECTION (7) OF THIS SECTION.

(b) THE COMMISSION MAY ADJUST THE DEADLINES SPECIFIED IN THIS SECTION IF CONDITIONS OUTSIDE OF THE COMMISSION'S CONTROL REQUIRE SUCH AN ADJUSTMENT TO ENSURE ADOPTING A FINAL PLAN AS REQUIRED BY THIS SUBSECTION (6).

(c) THE COMMISSION MAY GRANT ITS STAFF THE AUTHORITY TO MAKE TECHNICAL, DE MINIMIS ADJUSTMENTS TO THE ADOPTED PLAN PRIOR TO ITS SUBMISSION TO THE SUPREME COURT.

(d) IF FOR ANY REASON THE COMMISSION DOES NOT APPROVE A FINAL PLAN FOR BOTH HOUSES OF THE GENERAL ASSEMBLY BY THE DATE REQUIRED, THEN THE COMMISSION SHALL SUBMIT THE PRELIMINARY PLAN AS THE COMMISSION'S FINAL PLAN. IF THE COMMISSION APPROVES DISTRICTS FOR ONE HOUSE OF THE GENERAL ASSEMBLY BUT NOT THE OTHER HOUSE, THEN THE PLAN FOR THE APPROVED HOUSE SHALL BE SUBMITTED AS THE FINAL PLAN FOR THAT HOUSE, AND THE PRELIMINARY PLAN SHALL BE SUBMITTED AS THE FINAL PLAN FOR THE HOUSE FOR WHICH THE COMMISSION DID NOT APPROVE DISTRICTS.

(7) (a) THE SUPREME COURT SHALL REVIEW THE SUBMITTED PLAN AND DETERMINE WHETHER THE PLAN COMPLIES WITH SECTIONS 46 (2) AND 47 OF THIS ARTICLE V. THE COURT'S REVIEW AND DETERMINATION SHALL TAKE PRECEDENCE OVER OTHER MATTERS BEFORE THE COURT. THE SUPREME COURT SHALL ADOPT RULES FOR SUCH PROCEEDINGS AND FOR THE PRODUCTION AND PRESENTATION OF SUPPORTIVE EVIDENCE FOR SUCH PLAN. ANY LEGAL ARGUMENTS OR EVIDENCE CONCERNING SUCH PLAN SHALL BE SUBMITTED TO THE SUPREME COURT PURSUANT TO THE SCHEDULE ESTABLISHED BY THE COURT. THE SUPREME COURT SHALL EITHER APPROVE THE PLAN OR RETURN THE PLAN TO THE COMMISSION WITH THE COURT'S REASONS FOR DISAPPROVAL UNDER SECTIONS 46 (2) AND 47 OF THIS ARTICLE V.

(b) IF THE PLAN IS RETURNED, THE COURT SHALL SPECIFY A DATE BY WHICH THE COMMISSION MUST SUBMIT A REVISED PLAN TO THE COURT. NO LATER THAN SUCH DATE, THE COMMISSION SHALL SUBMIT A REVISED PLAN TO THE COURT THAT CONFORMS TO THE COURT'S REQUIREMENTS. IF THE COMMISSION FAILS TO SUBMIT A REVISED PLAN TO THE COURT BY THE DATE REQUIRED, THE COMMISSION'S STAFF SHALL, WITHIN TWO BUSINESS DAYS THEREAFTER, SUBMIT A REVISED PLAN TO THE COURT THAT CONFORMS TO THE COURT'S REQUIREMENTS.

(c) THE SUPREME COURT SHALL APPROVE A PLAN FOR THE REDRAWING OF SENATORIAL AND REPRESENTATIVE DISTRICTS BY A DATE THAT WILL ALLOW SUFFICIENT TIME FOR SUCH PLAN TO BE FILED WITH THE SECRETARY OF STATE NO LATER THAN ~~FIFTY-FIVE~~SIXTY-EIGHT DAYS PRIOR TO THE DATE ESTABLISHED IN STATUTE FOR PRECINCT CAUCUSES IN THE SECOND YEAR FOLLOWING THE YEAR IN WHICH THE CENSUS WAS TAKEN OR, IF THE ELECTION LAWS DO NOT PROVIDE FOR PRECINCT CAUCUSES, NO LATER THAN FIFTY-FIVE DAYS PRIOR TO THE DATE ESTABLISHED IN STATUTE FOR THE EVENT COMMENCING THE CANDIDATE SELECTION PROCESS IN SUCH YEAR. THE COURT SHALL ORDER THAT SUCH PLAN BE FILED WITH THE SECRETARY OF STATE NO LATER THAN SUCH DATE.



*Be it Enacted by the People of the State of Colorado:*

Colorado Secretary of State

**SECTION 1.** In the constitution of the state of Colorado, amend section 46 of article V as follows:

**Section 46. Fair legislative districts for fair elections – legislative declaration.** (1) (a) THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE THAT, IN ORDER TO ENSURE FAIR LEGISLATIVE REPRESENTATION IN THE STATE SENATE AND THE STATE HOUSE OF REPRESENTATIVES, THE PRACTICE OF POLITICAL GERRYMANDERING, WHEREBY LEGISLATIVE DISTRICTS ARE PURPOSEFULLY DRAWN TO FAVOR ONE POLITICAL PARTY OR INCUMBENT POLITICIAN OVER ANOTHER, OR TO ACCOMPLISH POLITICAL GOALS, MUST END.

(b) THE PUBLIC'S INTEREST IN PROHIBITING POLITICAL GERRYMANDERING IS BEST ACHIEVED BY CREATING A NEW AND INDEPENDENT COMMISSION THAT IS POLITICALLY BALANCED, PROVIDES REPRESENTATION TO VOTERS NOT AFFILIATED WITH EITHER OF THE STATE'S TWO LARGEST PARTIES, AND UTILIZES NONPARTISAN LEGISLATIVE STAFF TO DIVIDE THE STATE INTO LEGISLATIVE DISTRICTS WITHOUT REGARD TO PARTISAN PRESSURES OR CONSIDERATIONS.

(c) THE PEOPLE FURTHER FIND AND DECLARE THAT THE CITIZENS OF COLORADO ARE BEST SERVED BY DRAWING DISTRICTS USING FAIR CRITERIA, BY DRAWING DISTRICTS THAT DO NOT ADVANTAGE OR DISADVANTAGE ANY POLITICAL PARTY, AND BY MAXIMIZING THE NUMBER OF POLITICALLY COMPETITIVE DISTRICTS.

(d) THE PEOPLE FURTHER FIND AND DECLARE THAT PUBLIC PARTICIPATION IN THE REDISTRICTING PROCESS IS A PRIORITY AND THAT THE INDEPENDENT LEGISLATIVE REDISTRICTING COMMISSION SHOULD ACT TRANSPARENTLY, HOLD ALL HEARINGS IN AN OPEN, PUBLIC FORUM, AFFORD THE PUBLIC AN OPPORTUNITY TO ENGAGE THROUGH PUBLIC COMMENT, AND BE ACCOUNTABLE, REPRESENTATIVE, RESPONSIVE, AND INDEPENDENT.

(2) The state shall be divided into as many senatorial and representative districts as there are members of the senate and house of representatives respectively, each district in each house having a population as nearly equal as may be, as required by the constitution of the United States, but in no event shall there be more than five percent deviation between the most populous and the least populous district in each house.

**SECTION 2.** In the constitution of the state of Colorado, amend section 47 of article V as follows:

**Section 47. Composition of districts.** (1) Each district shall be as compact in area as possible and the aggregate linear distance of all district boundaries shall be as short as possible. Each district shall consist of contiguous whole general election precincts. Districts of the same house shall not overlap.

(2) Except when necessary to meet the equal population requirements of ~~section 46~~ SECTION 46 (2) OF THIS ARTICLE V, no part of one county shall be added to all or part of another county in forming districts. Within counties whose territory is contained in more than one district of the same house, the number of cities and towns whose territory is contained in more than one district of the same house shall be as small as possible. When county, city, or town boundaries are changed, adjustments, if any, in legislative districts shall be as prescribed by law.

(3) Consistent with the provisions of this section and ~~section 46~~ SECTION 46 (2) of this article V, communities of interest, including RACIAL, ethnic, LANGUAGE GROUP, cultural, economic, trade area, geographic, and demographic factors, shall be preserved within a single district wherever possible.

(4) (a) IN DEVELOPING A PLAN FOR REDRAWING THE DISTRICTS OF THE MEMBERS OF THE GENERAL ASSEMBLY, THE INDEPENDENT LEGISLATIVE REDISTRICTING COMMISSION SHALL COMPLY WITH THE FEDERAL "VOTING RIGHTS ACT OF 1965", IN PARTICULAR 52 U.S.C. SEC. 10101.

(b) TO THE EXTENT POSSIBLE AFTER MEETING THE OTHER REQUIREMENTS OF THIS SECTION, THE COMMISSION SHALL MAXIMIZE THE NUMBER OF POLITICALLY COMPETITIVE LEGISLATIVE DISTRICTS.

(c) LEGISLATIVE REDISTRICTING PLANS SHALL NOT BE DRAWN TO PURPOSEFULLY ADVANTAGE OR DISADVANTAGE ANY POLITICAL PARTY OR PERSON.

**SECTION 3.** In the constitution of the state of Colorado, **repeal and reenact, with amendments,** section 48 of article V as follows:

**Section 48. Revision and alteration of districts – independent legislative redistricting commission.** (1) THE RESPONSIBILITY OF DIVIDING THE STATE INTO SENATORIAL AND REPRESENTATIVE DISTRICTS SHALL BE CARRIED OUT BY AN INDEPENDENT COMMISSION TO BE KNOWN AS THE INDEPENDENT LEGISLATIVE REDISTRICTING COMMISSION, WHICH IS HEREBY CREATED AND REFERRED TO IN THIS SECTION AND SECTIONS 48.3 AND 48.5 OF THIS ARTICLE V AS THE "COMMISSION".

(2) THE COMMISSION CONSISTS OF TWELVE MEMBERS WHO HAVE THE FOLLOWING QUALIFICATIONS:

(a) FOUR MEMBERS MUST BE REGISTERED WITH THE STATE'S LARGEST POLITICAL PARTY AND APPOINTED BY THE CHAIRPERSON OF THAT PARTY, OR BY THE LEADERSHIP OF THAT PARTY IN SUCH MANNER AS THE PARTY MAY PROVIDE BY RULE.

(b) FOUR MEMBERS MUST BE REGISTERED WITH THE STATE'S SECOND LARGEST POLITICAL PARTY AND APPOINTED BY THE CHAIRPERSON OF THAT PARTY, OR BY THE LEADERSHIP OF THAT PARTY IN SUCH MANNER AS THE PARTY MAY PROVIDE BY RULE.

(c) FOUR MEMBERS MUST HAVE EACH BEEN UNAFFILIATED WITH ANY POLITICAL PARTY OR REGISTERED WITH A POLITICAL PARTY OTHER THAN THE STATE'S TWO LARGEST POLITICAL PARTIES FOR AT LEAST THE TWO YEARS PRIOR TO THE MEMBER'S APPOINTMENT. SUCH MEMBERS ARE REFERRED TO IN THIS SECTION AND SECTIONS 48.3 AND 48.5 OF THIS ARTICLE V AS THE "INDEPENDENT MEMBERS" OF THE COMMISSION OR THE "INDEPENDENT COMMISSIONERS". THE INDEPENDENT MEMBERS SHALL BE APPOINTED IN ACCORDANCE WITH SUBSECTION (6) OF THIS SECTION.

(3) ALL COMMISSIONERS MUST BE REGISTERED ELECTORS OF THE STATE OF COLORADO. NO COMMISSIONER MAY BE AN INCUMBENT MEMBER OF THE GENERAL ASSEMBLY OR A CANDIDATE FOR THE GENERAL ASSEMBLY.

(4) (a) NO MORE THAN THREE MEMBERS OF THE COMMISSION MAY RESIDE IN ANY SINGLE CONGRESSIONAL DISTRICT. AT LEAST ONE MEMBER MUST RESIDE IN EACH CONGRESSIONAL DISTRICT.

(b) AT LEAST ONE MEMBER OF THE COMMISSION MUST RESIDE IN EACH OF THE FOLLOWING TWO AREAS OF THE STATE. ANY REFERENCE IN THIS SECTION TO A "GEOGRAPHIC AREA" REFERS TO THESE AREAS:

(I) WEST OF THE CONTINENTAL DIVIDE; AND

(II) EAST OF THE CONTINENTAL DIVIDE AND EITHER SOUTH OF EL PASO COUNTY'S SOUTHERN BOUNDARY OR EAST OF ARAPAHOE COUNTY'S EASTERN BOUNDARY.

(5) THE TWO LARGEST POLITICAL PARTIES SHALL EACH SUBMIT THREE OF THEIR FOUR APPOINTMENTS TO THE SECRETARY OF STATE ACCORDING TO THE FOLLOWING SCHEDULE IN THE YEAR FOLLOWING THAT IN WHICH THE FEDERAL CENSUS IS TAKEN. IN THIS SECTION AND SECTION

48.3 OF THIS ARTICLE V, SUCH YEAR IS REFERRED TO AS THE "REDISTRICTING YEAR". UNTIL EACH CONGRESSIONAL DISTRICT AND GEOGRAPHIC AREA IS REPRESENTED ON THE COMMISSION, NO APPOINTMENT SHALL BE MADE BY ANY APPOINTING AUTHORITY TO A DISTRICT OR GEOGRAPHIC AREA ALREADY REPRESENTED ON THE COMMISSION.

(a) BY MARCH 10, THE LARGEST POLITICAL PARTY SHALL SUBMIT ONE APPOINTMENT.

(b) AFTER THE APPOINTMENT PURSUANT TO SUBSECTION (5)(a) OF THIS SECTION AND BY MARCH 17, THE SECOND LARGEST POLITICAL PARTY SHALL SUBMIT TWO APPOINTMENTS. EACH PERSON APPOINTED MUST RESIDE IN A DIFFERENT CONGRESSIONAL DISTRICT OR DIFFERENT GEOGRAPHIC AREA THAN THE OTHER PERSON APPOINTED AND THE PERSON PREVIOUSLY APPOINTED BY THE LARGEST POLITICAL PARTY.

(c) AFTER THE APPOINTMENTS PURSUANT TO SUBSECTION (5)(b) OF THIS SECTION AND BY MARCH 24, THE LARGEST POLITICAL PARTY SHALL SUBMIT TWO APPOINTMENTS. EACH PERSON APPOINTED MUST RESIDE IN A DIFFERENT CONGRESSIONAL DISTRICT OR DIFFERENT GEOGRAPHIC AREA THAN THE OTHER PERSON APPOINTED AND THE PERSONS PREVIOUSLY APPOINTED.

(d) AFTER THE APPOINTMENTS PURSUANT TO SUBSECTION (5)(c) OF THIS SECTION AND BY MARCH 31, THE SECOND LARGEST PARTY SHALL SUBMIT ONE APPOINTMENT. THE PERSON APPOINTED MUST RESIDE IN A DIFFERENT CONGRESSIONAL DISTRICT OR DIFFERENT GEOGRAPHIC AREA THAN THE PERSONS PREVIOUSLY APPOINTED.

(6)(a) THE FOUR INDEPENDENT MEMBERS OF THE COMMISSION SHALL BE SELECTED AS PROVIDED IN THIS SUBSECTION (6) OF THIS SECTION.

(b) NO LATER THAN FEBRUARY 1 OF THE REDISTRICTING YEAR, THE SECRETARY OF STATE SHALL ESTABLISH AND ANNOUNCE AN APPLICATION PROCESS FOR PERSONS DESIRING TO SERVE AS INDEPENDENT MEMBERS OF THE COMMISSION. THE PROCESS MUST INCLUDE AN APPLICATION FORM THAT MUST BE SUBMITTED ELECTRONICALLY TO THE SECRETARY OF STATE. IN ADDITION, THE SECRETARY OF STATE SHALL CONSULT AND COORDINATE WITH THE STATE'S COUNTY CLERK AND RECORDERS TO DEVELOP AND IMPLEMENT A PROGRAM TO ADVERTISE AND ENCOURAGE APPLICATIONS FROM ELIGIBLE PERSONS FROM ACROSS THE STATE.

(c) APPLICATIONS MUST BE SUBMITTED NO LATER THAN MARCH 20 OF THE REDISTRICTING YEAR. WITHIN THREE BUSINESS DAYS THEREAFTER, THE SECRETARY OF STATE SHALL POST ALL APPLICATIONS ON THE SECRETARY'S WEBSITE. NO LATER THAN APRIL 1, THE SECRETARY SHALL

EXAMINE EACH APPLICATION, ISSUE AN ELIGIBILITY FINDING WHETHER THE APPLICANT MEETS THE QUALIFICATION SPECIFIED IN SUBSECTIONS (2)(c) AND (3) OF THIS SECTION, POST THE FINDING ON THE SECRETARY'S WEBSITE, AND NOTIFY THE APPLICANT BY ELECTRONIC MAIL OF THE SECRETARY'S FINDING. IF THE SECRETARY FINDS THAT AN APPLICANT IS NOT ELIGIBLE, THEN THE SECRETARY SHALL INCLUDE THE REASONS THEREFOR IN HIS OR HER FINDING. IF THE SECRETARY FINDS THAT AN APPLICANT IS NOT ELIGIBLE, THE APPLICANT MAY WITHDRAW HIS OR HER APPLICATION OR SUBMIT A BRIEF STATEMENT DISPUTING THE FINDING WITHIN THREE BUSINESS DAYS AFTER THE DATE OF THE SECRETARY'S ELECTRONIC MAIL NOTIFICATION, WHICH STATEMENT SHALL BE POSTED PROMPTLY WITH THE SECRETARY'S FINDING. IF AN APPLICANT SUBMITS A STATEMENT DISPUTING THE SECRETARY'S FINDING OF INELIGIBILITY, THE APPLICANT MAY BE CONSIDERED BY THE PANEL IN ACCORDANCE WITH SUBSECTION (6)(f) OF THIS SECTION IF THE PANEL DETERMINES THAT THE APPLICANT IS ELIGIBLE.

(d) NO LATER THAN MARCH 20 OF THE REDISTRICTING YEAR, THE SECRETARY OF STATE SHALL APPOINT A PANEL TO REVIEW THE APPLICATIONS. THE PANEL SHALL CONSIST OF THE THREE SENIOR JUDGES MOST RECENTLY APPOINTED TO PERFORM TEMPORARY JUDICIAL DUTIES PURSUANT TO THE PROVISIONS OF SECTION 5 (3) OF ARTICLE VI, APPOINTED SEQUENTIALLY STARTING WITH THE MOST RECENTLY APPOINTED SENIOR JUDGE WHO HAS BEEN AFFILIATED WITH THE SAME POLITICAL PARTY OR UNAFFILIATED WITH ANY POLITICAL PARTY FOR THE TWO YEARS PRIOR TO APPOINTMENT, EXCEPT THAT NO APPOINTEE, WITHIN TWO YEARS PRIOR TO APPOINTMENT, SHALL HAVE BEEN AFFILIATED WITH THE SAME POLITICAL PARTY AS A SENIOR JUDGE ALREADY APPOINTED TO THE PANEL. IF ANY OF THE THREE MOST RECENTLY APPOINTED SENIOR JUDGES IS UNABLE OR UNWILLING TO SERVE ON THE PANEL OR HAS BEEN AFFILIATED WITHIN TWO YEARS PRIOR TO APPOINTMENT WITH A POLITICAL PARTY ALREADY REPRESENTED ON THE PANEL, THEN THE SECRETARY OF STATE SHALL APPOINT THE NEXT MOST RECENTLY APPOINTED SENIOR JUDGE WHO HAS NOT BEEN AFFILIATED WITHIN TWO YEARS PRIOR TO APPOINTMENT WITH THE SAME POLITICAL PARTY AS ANY SENIOR JUDGE ALREADY APPOINTED TO THE PANEL. UPON REQUEST OF THE SECRETARY OF STATE, THE COURT ADMINISTRATOR APPOINTED PURSUANT TO SECTION 5 (3) OF ARTICLE VI SHALL PROVIDE INFORMATION ABOUT RECENTLY APPOINTED SENIOR JUDGES AS MAY BE NECESSARY FOR THE SECRETARY OF STATE TO PERFORM HIS OR HER DUTIES UNDER THIS SUBSECTION (6)(d).

(e) THE SECRETARY OF STATE SHALL REIMBURSE MEMBERS OF THE PANEL FOR NECESSARY TRAVEL AND OTHER REASONABLE EXPENSES INCURRED IN THE PERFORMANCE OF THEIR DUTIES AND

SHALL COMPENSATE MEMBERS OF THE PANEL FOR EACH DAY THAT THE PANEL MEETS IN AN AMOUNT EQUAL TO ONE-TWENTIETH OF THE MONTHLY SALARY THEN CURRENTLY APPLICABLE TO ASSOCIATE JUSTICES OF THE COLORADO SUPREME COURT. SUCH REIMBURSEMENT AND COMPENSATION SHALL NOT AFFECT A MEMBER'S JUDICIAL SERVICE RETIREMENT BENEFITS.

(f) IN ONE OR MORE PUBLIC HEARINGS CONDUCTED IN ACCORDANCE WITH PROCEDURES DETERMINED BY THE PANEL, THE PANEL SHALL SELECT TWENTY ELIGIBLE APPLICANTS IT RECOMMENDS FOR APPOINTMENT AS INDEPENDENT MEMBERS OF THE COMMISSION, OR SUCH LESSER NUMBER AS THERE ARE TOTAL ELIGIBLE APPLICANTS. THE NONPARTISAN RESEARCH STAFF OF THE GENERAL ASSEMBLY SHALL PROVIDE STAFF ASSISTANCE TO THE PANEL FOR SUCH MEETINGS UPON THE REQUEST OF ANY MEMBER OF THE PANEL. THE PANEL MAY DETERMINE THE ELIGIBILITY OF ANY APPLICANT WHOSE QUALIFICATIONS UNDER SUBSECTIONS (2)(c) AND (3) OF THIS SECTION ARE IN QUESTION. THE PANEL SHALL RECOMMEND THOSE APPLICANTS THAT IT FINDS TO BE THE MOST QUALIFIED TO PERFORM THE DUTIES OF THE COMMISSION, AND, TO THE EXTENT PRACTICAL, RECOMMEND APPLICANTS WHO REPRESENT COLORADO'S RACIAL, ETHNIC, AND GEOGRAPHIC DIVERSITY, TAKING INTO CONSIDERATION THE GEOGRAPHIC REPRESENTATION REQUIREMENTS OF SUBSECTION (4) OF THIS SECTION AND THE GEOGRAPHIC REPRESENTATION OF THE SIX COMMISSIONERS PREVIOUSLY APPOINTED BY THE TWO LARGEST POLITICAL PARTIES. TO THE EXTENT POSSIBLE, THE PANEL SHALL RECOMMEND AN ODD NUMBER OF APPLICANTS GREATER THAN TWO FROM EACH UNREPRESENTED CONGRESSIONAL DISTRICT AND EACH UNREPRESENTED GEOGRAPHIC AREA. MEMBERS OF THE PANEL SHALL HAVE NO EX PARTE COMMUNICATIONS REGARDING THE PERFORMANCE OF THEIR DUTIES UNDER THIS SUBSECTION (6)(f).

(g) THE PANEL SHALL ISSUE ITS RECOMMENDATIONS NO LATER THAN APRIL 23 OF THE REDISTRICTING YEAR. THE PANEL SHALL FORWARD ITS RECOMMENDATIONS TO THE DIRECTOR OF RESEARCH OF THE LEGISLATIVE COUNCIL, TO THE CHAIRPERSONS OF THE TWO LARGEST POLITICAL PARTIES, TO THE SIX COMMISSIONERS PREVIOUSLY APPOINTED BY THE TWO LARGEST POLITICAL PARTIES, AND TO THE SECRETARY OF STATE, WHO SHALL PROMPTLY POST THE PANEL'S RECOMMENDATIONS ON THE SECRETARY OF STATE'S WEBSITE.

(h) (I) NO LATER THAN APRIL 30 OF THE REDISTRICTING YEAR, THE SIX COMMISSIONERS PREVIOUSLY APPOINTED BY THE TWO LARGEST POLITICAL PARTIES SHALL, IN ONE OR MORE PUBLIC MEETINGS HELD AFTER NOTICE, SELECT THE COMMISSION'S FOUR INDEPENDENT MEMBERS FROM THE APPLICANTS RECOMMENDED BY THE PANEL IN ACCORDANCE WITH SUBSECTIONS (6)(h)(II) AND

(6)(h)(III) OF THIS SECTION. THE NONPARTISAN RESEARCH STAFF OF THE GENERAL ASSEMBLY SHALL PROVIDE STAFF ASSISTANCE FOR THE MEETINGS.

(II) FOR EACH CONGRESSIONAL DISTRICT AND GEOGRAPHIC AREA NOT REPRESENTED ON THE COMMISSION BY ANY OF THE SIX COMMISSIONERS, THE COMMISSIONERS APPOINTED BY EACH POLITICAL PARTY SHALL, AS A GROUP, BEGINNING WITH THE COMMISSIONERS APPOINTED BY THE LARGEST POLITICAL PARTY, TAKE TURNS REMOVING ONE APPLICANT FROM THE LIST OF RECOMMENDED APPLICANTS WHO RESIDE IN THAT CONGRESSIONAL DISTRICT OR GEOGRAPHIC AREA UNTIL THERE IS ONLY ONE APPLICANT REMAINING, WHO SHALL BECOME A MEMBER OF THE COMMISSION.

(III) UPON COMPLETING THE SELECTION OF MEMBERS PURSUANT TO SUBSECTION (6)(h)(II) OF THIS SECTION, IF NECESSARY TO COMPLETE THE SELECTION OF FOUR INDEPENDENT MEMBERS, THE INDEPENDENT MEMBERS OF THE COMMISSION SHALL BE SELECTED AS FOLLOWS. THE COMMISSIONERS APPOINTED BY EACH POLITICAL PARTY SHALL, AS A GROUP, BEGINNING WITH THE COMMISSIONERS APPOINTED BY THE LARGEST POLITICAL PARTY, TAKE TURNS REMOVING ONE APPLICANT FROM THE REMAINING LIST OF RECOMMENDED APPLICANTS UNTIL THE TOTAL NUMBER OF APPLICANTS REMAINING PLUS THE NUMBER OF APPLICANTS SELECTED PURSUANT TO SUBSECTION (6)(h)(II) OF THIS SECTION TOTALS FOUR. THESE APPLICANTS SHALL BECOME THE INDEPENDENT MEMBERS OF THE COMMISSION.

(7) FOLLOWING THE SELECTION OF THE INDEPENDENT MEMBERS AS PROVIDED IN SUBSECTION (6) OF THIS SECTION, THE TWO LARGEST POLITICAL PARTIES SHALL EACH SUBMIT THEIR REMAINING APPOINTMENT TO THE SECRETARY OF STATE ACCORDING TO THE FOLLOWING SCHEDULE:

(a) BY MAY 3, THE LARGEST POLITICAL PARTY SHALL SUBMIT ITS APPOINTMENT. IF ANY CONGRESSIONAL DISTRICT OR GEOGRAPHIC AREA IS UNREPRESENTED ON THE COMMISSION AT THE TIME OF THE APPOINTMENT, THE PERSON APPOINTED MUST RESIDE IN AN UNREPRESENTED CONGRESSIONAL DISTRICT OR GEOGRAPHIC AREA.

(b) AFTER THE LARGEST POLITICAL PARTY SUBMITS ITS REMAINING APPOINTMENT AND BY MAY 5, THE SECOND LARGEST POLITICAL PARTY SHALL SUBMIT ITS APPOINTMENT. IF ANY CONGRESSIONAL DISTRICT OR GEOGRAPHIC AREA IS UNREPRESENTED ON THE COMMISSION AT THE TIME OF THE APPOINTMENT, THE PERSON APPOINTED MUST RESIDE IN AN UNREPRESENTED CONGRESSIONAL DISTRICT OR GEOGRAPHIC AREA.

(8) IF EITHER OF THE STATE'S TWO LARGEST POLITICAL PARTIES FAILS TO MAKE AN APPOINTMENT TO THE COMMISSION BY A DATE REQUIRED IN SUBSECTION (5) OR SUBSECTION (7) OF THIS SECTION, THEN SUCH APPOINTMENT IS FORFEITED, AND THE NUMBER OF COMMISSIONERS COMPRISING THE COMMISSION IS REDUCED ACCORDINGLY. A REDUCTION IN THE NUMBER OF COMMISSIONERS COMPRISING THE COMMISSION DOES NOT AFFECT THE MINIMUM NUMBER OF AFFIRMATIVE VOTES OF COMMISSIONERS REQUIRED TO APPROVE A MOTION AS SPECIFIED IN SECTION 48.3 (9) OF THIS ARTICLE V.

(9) FOR PURPOSES OF THIS SECTION, THE STATE'S TWO LARGEST POLITICAL PARTIES SHALL BE DETERMINED BY THE NUMBER OF REGISTERED ELECTORS AFFILIATED WITH EACH POLITICAL PARTY IN THE STATE ACCORDING TO VOTER REGISTRATION DATA PUBLISHED BY THE SECRETARY OF STATE FOR THE EARLIEST DAY IN JANUARY OF THE REDISTRICTING YEAR FOR WHICH SUCH DATA IS PUBLISHED.

**SECTION 4.** In the constitution of the state of Colorado, add sections 48.3 and 48.5 to article V as follows:

**Section 48.3. Commission organization – procedures – transparency – voting requirements.** (1) THE GOVERNOR SHALL CONVENE THE COMMISSION NO LATER THAN MAY 15 OF THE REDISTRICTING YEAR, APPOINTING A TEMPORARY CHAIRPERSON FROM THE COMMISSION'S MEMBERS. UPON CONVENING, THE COMMISSION SHALL ELECT A CHAIR AND A VICE-CHAIR, WHO MUST NOT BE MEMBERS OF THE SAME POLITICAL PARTY, AND SUCH OTHER OFFICERS AS IT DETERMINES.

(2) THE DIRECTORS OF THE NONPARTISAN RESEARCH AND LEGAL STAFFS OF THE GENERAL ASSEMBLY SHALL APPOINT NONPARTISAN STAFF FROM THEIR RESPECTIVE OFFICES AS NEEDED TO ASSIST THE COMMISSION. AS FAR IN ADVANCE AS NECESSARY TO ENABLE THE COMMISSION TO BEGIN ITS WORK IMMEDIATELY UPON CONVENING, THE NONPARTISAN STAFF SHALL ACQUIRE AND PREPARE ALL NECESSARY RESOURCES, INCLUDING HARDWARE, SOFTWARE, AND DEMOGRAPHIC, GEOGRAPHIC, AND POLITICAL DATABASES.

(3) THE COMMISSION MAY RETAIN LEGAL COUNSEL IN ALL ACTIONS AND PROCEEDINGS IN CONNECTION WITH THE PERFORMANCE OF ITS POWERS, DUTIES, AND FUNCTIONS, INCLUDING REPRESENTATION OF THE COMMISSION BEFORE THE SUPREME COURT PURSUANT TO SECTION 48.5 (7) OF THIS ARTICLE V.



(4) THE GENERAL ASSEMBLY SHALL APPROPRIATE SUFFICIENT FUNDS FOR THE COMPENSATION AND PAYMENT OF THE EXPENSES OF THE COMMISSION AND ITS STAFF. THE COMMISSION AND ITS STAFF SHALL HAVE ACCESS TO STATISTICAL INFORMATION COMPILED BY THE STATE AND ITS POLITICAL SUBDIVISIONS AND NECESSARY FOR ITS DUTIES. STATE AGENCIES AND POLITICAL SUBDIVISIONS SHALL COMPLY WITH REQUESTS FROM THE COMMISSION AND ITS STAFF FOR SUCH STATISTICAL INFORMATION.

(5) THE COMMISSION SHALL ADOPT RULES TO GOVERN ITS ADMINISTRATION AND OPERATION, INCLUDING BUT NOT LIMITED TO THE FOLLOWING:

(a) MAINTENANCE OF A RECORD OF THE COMMISSION'S ACTIVITIES AND PROCEEDINGS, INCLUDING A RECORD OF WRITTEN AND ORAL TESTIMONY RECEIVED, AND OF THE COMMISSION'S DIRECTIONS TO NONPARTISAN STAFF ON PROPOSED CHANGES TO ANY PLAN AND THE COMMISSION'S RATIONALE FOR SUCH CHANGES;

(b) THE PROCESS FOR REMOVING COMMISSIONERS FOR VIOLATING PUBLIC DISCLOSURE OR OPEN MEETINGS PROVISIONS OF THIS SECTION, OR PARTICIPATING IN COMMUNICATIONS PROHIBITED UNDER THIS SECTION;

(c) PROVIDING FOR ANY VACANCY CREATED BY THE DEATH, RESIGNATION, OR REMOVAL OF A COMMISSIONER, OR OTHERWISE, WHICH SHALL BE FILLED BY THE RESPECTIVE APPOINTING AUTHORITY. MEMBERS OF THE COMMISSION SHALL HOLD OFFICE UNTIL APRIL 30 OF THE NEXT REDISTRICTING YEAR.

(d) THE PROCESS FOR RECOMMENDING CHANGES TO PLANS SUBMITTED TO THE COMMISSION BY NONPARTISAN STAFF; AND

(e) THE ADOPTION OF A STATEWIDE MEETING AND HEARING SCHEDULE.

(6) (a) EXCEPT AS PROVIDED IN SUBSECTION (6)(b) OF THIS SECTION, THE COMMISSION IS SUBJECT TO THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24, COLORADO REVISED STATUTES, OR ANY SUCCESSOR ACT.

(b) MAPS IN DRAFT FORM AND NOT SUBMITTED TO THE COMMISSION ARE NOT PUBLIC RECORDS SUBJECT TO DISCLOSURE. WORK PRODUCT AND COMMUNICATIONS BETWEEN COMMISSION STAFF ARE SUBJECT TO DISCLOSURE ONCE A PLAN IS SUBMITTED TO THE SUPREME COURT.

(7) (a) THE COMMISSION IS SUBJECT TO THE OPEN MEETINGS PROVISIONS OF THE "COLORADO SUNSHINE ACT OF 1972" CONTAINED IN PART 4 OF ARTICLE 6 OF TITLE 24, COLORADO REVISED

STATUTES, OR ANY SUCCESSOR ACT. FURTHERMORE, COMMUNICATIONS OUTSIDE OF A PUBLIC MEETING RELATING TO COMMISSION BUSINESS THAT INVOLVE MORE THAN THREE COMMISSIONERS ARE PROHIBITED.

(b) EXCEPT AS PROVIDED IN SUBSECTIONS (7)(c) AND (7)(d) OF THIS SECTION, COMMISSIONERS SHALL NOT COMMUNICATE WITH THE COMMISSION'S STAFF ON THE MAPPING OF LEGISLATIVE DISTRICTS UNLESS THE COMMUNICATION IS DURING A PUBLIC MEETING OR HEARING OF THE COMMISSION.

(c) THE COMMISSION'S STAFF MEMBERS SHALL NOT HAVE ANY COMMUNICATIONS ABOUT THE CONTENT OR DEVELOPMENT OF ANY PLAN OUTSIDE OF PUBLIC HEARINGS WITH ANYONE EXCEPT OTHER STAFF MEMBERS. STAFF SHALL REPORT TO THE COMMISSION ANY ATTEMPT BY ANYONE TO EXERT INFLUENCE OVER THE DRAFTING OF PLANS.

(d) ONE OR MORE STAFF MAY BE DESIGNATED TO COMMUNICATE WITH COMMISSIONERS REGARDING ADMINISTRATIVE MATTERS, THE DEFINITION AND SCOPE OF WHICH SHALL BE DETERMINED BY THE COMMISSION.

(e) ANY COMMISSIONER WHO PARTICIPATES IN A COMMUNICATION PROHIBITED IN THIS SECTION SHALL BE REMOVED FROM THE COMMISSION AND REPLACED WITHIN SEVEN DAYS ACCORDING TO COMMISSION RULES.

(f) AT THE DIRECTION OF THE COMMISSION, ITS STAFF MAY CONSULT WITH EXPERTS RETAINED BY THE COMMISSION. WORK PRODUCT AND COMMUNICATIONS BETWEEN COMMISSION STAFF AND SUCH EXPERTS ARE SUBJECT TO DISCLOSURE UNDER THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24, COLORADO REVISED STATUTES, OR ANY SUCCESSOR ACT, ONCE A PLAN IS SUBMITTED TO THE SUPREME COURT.

(g) SUBJECT TO AVAILABLE APPROPRIATIONS, THE COMMISSION SHALL MAKE USE OF REASONABLY AVAILABLE CURRENT TECHNOLOGY TO FACILITATE PUBLIC INPUT AND COMMENT ON THE WORK OF THE COMMISSION.

(8) ANY PERSON WHO RECEIVES COMPENSATION FOR ADVOCATING TO THE COMMISSION OR ITS MEMBERS CONCERNING THE ADOPTION OF ANY PLAN, ANY AMENDMENT TO A PLAN, PLAN APPROACH, OR MANNER OF COMPLIANCE WITH ANY OF THE PLAN CRITERIA SET FORTH IN SECTION 47 OF THIS ARTICLE V, OTHER THAN COMMISSION STAFF, IS A "PROFESSIONAL LOBBYIST" AS DEFINED IN SECTION 24-6-301(6), COLORADO REVISED STATUTES, OR ANY SUCCESSOR STATUTE, AND SHALL

COMPLY WITH THE REQUIREMENTS APPLICABLE TO PROFESSIONAL LOBBYISTS, INCLUDING REGISTRATION AND FILING DISCLOSURE STATEMENTS, CONTAINED IN PART 3 OF ARTICLE 6 OF TITLE 24, COLORADO REVISED STATUTES, OR ANY SUCCESSOR STATUTES.

(9) ANY MOTION ADOPTED BY THE COMMISSION, INCLUDING THE ELECTION OF ITS OFFICERS AND THE AMENDMENT OR APPROVAL OF ANY PLAN, REQUIRES THE AFFIRMATIVE VOTE OF AT LEAST EIGHT COMMISSIONERS, INCLUDING THE AFFIRMATIVE VOTE OF AT LEAST ONE INDEPENDENT COMMISSIONER.

(10) THE COMMISSION SHALL NOT VOTE UPON A FINAL PLAN UNTIL AT LEAST SEVENTY-TWO HOURS AFTER IT HAS BEEN PROPOSED TO THE COMMISSION IN A PUBLIC MEETING OR AMENDED BY THE COMMISSION, WHICHEVER OCCURS LATER, UNLESS COMMISSIONERS UNANIMOUSLY WAIVE SUCH REQUIREMENT.

**Section 48.5. Preparation, amendment, and approval of plans.** (1) (a) THE COMMISSION SHALL BEGIN BY CONSIDERING PLANS CREATED BY ITS STAFF ALONE. PRIOR TO THE COMMISSION'S CONSIDERATION OF A PRELIMINARY PLAN, ITS NONPARTISAN STAFF SHALL PREPARE AND PRESENT TO THE COMMISSION NO FEWER THAN FOUR PLANS, EXCEPT AS PROVIDED IN SUBSECTION (1) (d) OF THIS SECTION. THESE PLANS SHALL BE KNOWN AS THE STAFF PLANS AND MUST BE NAMED AND NUMBERED SEQUENTIALLY FOR PURPOSES OF SUBSECTION (2) OF THIS SECTION. THE STAFF PLANS SHALL BE PREPARED, PUBLISHED ONLINE, AND PRESENTED ON A TIMETABLE ESTABLISHED BY THE COMMISSION, EXCEPT EACH STAFF PLAN SHALL BE PRESENTED TO THE COMMISSION NO FEWER THAN TEN DAYS AFTER THE PRESENTATION OF ANY PREVIOUS STAFF PLAN, AND EACH STAFF PLAN MUST BE PRESENTED TO THE COMMISSION NO FEWER THAN TWENTY-FOUR HOURS AFTER IT HAS BEEN PUBLISHED ONLINE. STAFF SHALL KEEP EACH PLAN PREPARED CONFIDENTIAL UNTIL IT IS PUBLISHED ONLINE. THE COMMISSION MAY, UPON MOTION ADOPTED IN ACCORDANCE WITH SECTION 48.3 (9) OF THIS ARTICLE V, ADOPT CERTAIN PROVISIONS, ELEMENTS, OR TECHNIQUES, SUCH AS PLAN COMPONENTS, ELEMENTS OF PUBLIC TESTIMONY, OR A DEFINITION OF COMPETITIVENESS, TO WHICH STAFF SHALL ADHERE IN DEVELOPING A STAFF PLAN.

(b) THE COMMISSION SHALL ENSURE THE PUBLIC HAS ADEQUATE OPPORTUNITY TO COMMENT DURING THE MAP DEVELOPMENT PROCESS. AT A MINIMUM, THE COMMISSION SHALL AFFORD THE PUBLIC AN OPPORTUNITY TO COMMENT AFTER THE PUBLICATION OF EACH STAFF PLAN AND SHALL ENSURE THE PUBLIC HAS THE ABILITY TO COMMENT TO THE COMMISSION THROUGH ELECTRONIC MAIL OR OTHER ELECTRONIC MEANS THROUGHOUT THE REDISTRICTING PROCESS.

(c) ANY MEMBER OF THE COMMISSION OR GROUP OF MEMBERS MAY REQUEST STAFF TO PREPARE ADDITIONAL PLANS OR AMENDMENTS TO PLANS. ANY SUCH REQUEST MUST BE MADE IN A PUBLIC HEARING OF THE COMMISSION BUT DOES NOT REQUIRE COMMISSION APPROVAL. PLANS OR AMENDMENTS DEVELOPED IN RESPONSE TO SUCH REQUESTS ARE SEPARATE FROM STAFF PLANS FOR PURPOSES OF SUBSECTION (2) OF THIS SECTION.

(d) THE COMMISSION MAY ADOPT A PRELIMINARY PLAN AT ANY TIME AFTER PRESENTATION OF THE FIRST STAFF PLAN, IN WHICH CASE THE STAFF DOES NOT NEED TO PREPARE OR PRESENT ADDITIONAL STAFF PLANS.

(2) WITHIN ONE HUNDRED THREE DAYS AFTER THE COMMISSION HAS BEEN CONVENED OR THE NECESSARY CENSUS DATA ARE AVAILABLE, WHICHEVER IS LATER, THE COMMISSION SHALL PUBLISH A PRELIMINARY PLAN. IF FOR ANY REASON THE COMMISSION DOES NOT APPROVE A PRELIMINARY PLAN FOR BOTH HOUSES BY SUCH DATE, THEN THE COMMISSION SHALL PUBLISH THE FOURTH STAFF PLAN AS THE COMMISSION'S PRELIMINARY PLAN. IF THE COMMISSION APPROVES DISTRICTS FOR ONE HOUSE OF THE GENERAL ASSEMBLY BUT NOT THE OTHER HOUSE, THEN THE PLAN FOR THE APPROVED HOUSE SHALL BE PUBLISHED AS THE PRELIMINARY PLAN FOR THAT HOUSE, AND THE FOURTH STAFF PLAN FOR THE HOUSE FOR WHICH THE COMMISSION DID NOT ADOPT A PLAN SHALL BE PUBLISHED AS THE PRELIMINARY PLAN FOR THAT HOUSE.

(3) FOLLOWING THE ADOPTION OF A PRELIMINARY PLAN AND PRIOR TO THE HOLDING OF PUBLIC HEARINGS ON ANY PRELIMINARY PLAN, THE COMMISSION SHALL POST THE PLAN ELECTRONICALLY FOR PUBLIC INSPECTION.

(4) WITHIN FORTY-FIVE DAYS AFTER THE DATE OF THE PUBLICATION OF THE PRELIMINARY PLAN, THE COMMISSION SHALL COMPLETE PUBLIC HEARINGS ON THE PRELIMINARY PLAN IN SEVERAL PLACES THROUGHOUT THE STATE. THE COMMISSION SHALL HOLD NO FEWER THAN THREE HEARINGS IN EACH CONGRESSIONAL DISTRICT, AND THE COMMISSION MUST CONDUCT AT LEAST ONE HEARING IN PERSON IN EACH CONGRESSIONAL DISTRICT. OTHER HEARINGS MAY BE CONDUCTED REMOTELY, THROUGH VIDEO-CONFERENCE OR OTHER AVAILABLE TECHNOLOGY. IN NO CASE, HOWEVER, SHALL THE COMMISSION CONDUCT FEWER THAN TWO IN-PERSON HEARINGS WEST OF THE CONTINENTAL DIVIDE OR FEWER THAN TWO IN-PERSON HEARINGS FROM SOUTH OF EL PASO COUNTY AND EAST OF THE CONTINENTAL DIVIDE.

(5) SUBSEQUENT TO HEARINGS ON THE PRELIMINARY PLAN, THE COMMISSION SHALL RECONVENE. ANY MEMBER OF THE COMMISSION OR GROUP OF MEMBERS MAY REQUEST THE COMMISSION'S STAFF TO PREPARE ADDITIONAL PLANS OR AMENDMENTS TO PLANS, BUT SUCH REQUESTS MUST BE MADE IN A PUBLIC HEARING OF THE COMMISSION.

(6) (a) NO LATER THAN ONE HUNDRED TWENTY-THREE DAYS PRIOR TO THE DATE ESTABLISHED IN STATUTE FOR PRECINCT CAUCUSES IN THE SECOND YEAR FOLLOWING THE YEAR IN WHICH THE CENSUS WAS TAKEN OR, IF THE ELECTION LAWS DO NOT PROVIDE FOR PRECINCT CAUCUSES, NO LATER THAN ONE HUNDRED TWENTY-THREE DAYS PRIOR TO THE DATE ESTABLISHED IN STATUTE FOR THE EVENT COMMENCING THE CANDIDATE SELECTION PROCESS IN SUCH YEAR, THE COMMISSION SHALL FINALIZE ITS PLAN AND SUBMIT THE SAME TO THE COLORADO SUPREME COURT FOR REVIEW AND DETERMINATION IN ACCORDANCE WITH SUBSECTION (7) OF THIS SECTION.

(b) THE COMMISSION MAY ADJUST THE DEADLINES SPECIFIED IN THIS SECTION IF CONDITIONS OUTSIDE OF THE COMMISSION'S CONTROL REQUIRE SUCH AN ADJUSTMENT TO ENSURE ADOPTING A FINAL PLAN AS REQUIRED BY THIS SUBSECTION (6).

(c) THE COMMISSION MAY GRANT ITS STAFF THE AUTHORITY TO MAKE TECHNICAL, DE MINIMIS ADJUSTMENTS TO THE ADOPTED PLAN PRIOR TO ITS SUBMISSION TO THE SUPREME COURT.

(d) IF FOR ANY REASON THE COMMISSION DOES NOT APPROVE A FINAL PLAN FOR BOTH HOUSES OF THE GENERAL ASSEMBLY BY THE DATE REQUIRED, THEN THE COMMISSION SHALL SUBMIT THE PRELIMINARY PLAN AS THE COMMISSION'S FINAL PLAN. IF THE COMMISSION APPROVES DISTRICTS FOR ONE HOUSE OF THE GENERAL ASSEMBLY BUT NOT THE OTHER HOUSE, THEN THE PLAN FOR THE APPROVED HOUSE SHALL BE SUBMITTED AS THE FINAL PLAN FOR THAT HOUSE, AND THE PRELIMINARY PLAN SHALL BE SUBMITTED AS THE FINAL PLAN FOR THE HOUSE FOR WHICH THE COMMISSION DID NOT APPROVE DISTRICTS.

(7) (a) THE SUPREME COURT SHALL REVIEW THE SUBMITTED PLAN AND DETERMINE WHETHER THE PLAN COMPLIES WITH SECTIONS 46 (2) AND 47 OF THIS ARTICLE V. THE COURT'S REVIEW AND DETERMINATION SHALL TAKE PRECEDENCE OVER OTHER MATTERS BEFORE THE COURT. THE SUPREME COURT SHALL ADOPT RULES FOR SUCH PROCEEDINGS AND FOR THE PRODUCTION AND PRESENTATION OF SUPPORTIVE EVIDENCE FOR SUCH PLAN. ANY LEGAL ARGUMENTS OR EVIDENCE CONCERNING SUCH PLAN SHALL BE SUBMITTED TO THE SUPREME COURT PURSUANT TO THE SCHEDULE ESTABLISHED BY THE COURT. THE SUPREME COURT SHALL EITHER APPROVE THE PLAN OR

RETURN THE PLAN TO THE COMMISSION WITH THE COURT'S REASONS FOR DISAPPROVAL UNDER SECTIONS 46 (2) AND 47 OF THIS ARTICLE V.

(b) IF THE PLAN IS RETURNED, THE COURT SHALL SPECIFY A DATE BY WHICH THE COMMISSION MUST SUBMIT A REVISED PLAN TO THE COURT. NO LATER THAN SUCH DATE, THE COMMISSION SHALL SUBMIT A REVISED PLAN TO THE COURT THAT CONFORMS TO THE COURT'S REQUIREMENTS. IF THE COMMISSION FAILS TO SUBMIT A REVISED PLAN TO THE COURT BY THE DATE REQUIRED, THE COMMISSION'S STAFF SHALL, WITHIN TWO BUSINESS DAYS THEREAFTER, SUBMIT A REVISED PLAN TO THE COURT THAT CONFORMS TO THE COURT'S REQUIREMENTS.

(c) THE SUPREME COURT SHALL APPROVE A PLAN FOR THE REDRAWING OF SENATORIAL AND REPRESENTATIVE DISTRICTS BY A DATE THAT WILL ALLOW SUFFICIENT TIME FOR SUCH PLAN TO BE FILED WITH THE SECRETARY OF STATE NO LATER THAN SIXTY-EIGHT DAYS PRIOR TO THE DATE ESTABLISHED IN STATUTE FOR PRECINCT CAUCUSES IN THE SECOND YEAR FOLLOWING THE YEAR IN WHICH THE CENSUS WAS TAKEN OR, IF THE ELECTION LAWS DO NOT PROVIDE FOR PRECINCT CAUCUSES, NO LATER THAN FIFTY-FIVE DAYS PRIOR TO THE DATE ESTABLISHED IN STATUTE FOR THE EVENT COMMENCING THE CANDIDATE SELECTION PROCESS IN SUCH YEAR. THE COURT SHALL ORDER THAT SUCH PLAN BE FILED WITH THE SECRETARY OF STATE NO LATER THAN SUCH DATE.



**Colorado  
Legislative  
Council  
Staff**

**Initiative # 48**

**INITIAL FISCAL  
IMPACT STATEMENT**

**Date:** October 4, 2017

**Fiscal Analyst:** Chris Creighton (303-866-5834)  
Ryan Long (303-866-2066)

**LCS TITLE:** STATE LEGISLATIVE REDISTRICTING

<b>Fiscal Impact Summary</b>	<b>FY 2018-2019</b>	<b>FY 2020-2021</b>	<b>FY 2021-2022</b>
<b>State Revenue</b>			
<b>State Expenditures</b>	<u>\$0</u>	<u>\$169,895</u>	<u>\$161,785</u>
General Fund	0	169,895	161,785

**Note:** This *initial* fiscal impact estimate has been prepared for the Title Board. If the initiative is placed on the ballot, Legislative Council Staff may revise this estimate for the Blue Book Voter Guide if new information becomes available.

**Summary of Measure**

Every 10 years following the U.S. Census the Colorado Reapportionment Commission must create and approve a legislative district plan for the Colorado House of Representatives and Colorado State Senate. This initiative replaces the 11-member Colorado Reapportionment Commission with the 12-member Independent Legislative Redistricting Commission (Commission). The new Commission is responsible for approving a state legislative redistricting plan using draft plans prepared by nonpartisan legislative staff.

**Commission membership selection.** The Commission consists of 12 members, of which 4 members must be registered with the state's largest political party, 4 members must be registered with the state's second largest political party, and 4 members must be unaffiliated or registered with a party other than the state's two largest parties (independent members). Commission members must be Colorado registered voters and cannot be a member or candidate for the General Assembly. At least one member must reside in each state congressional district and no more than three members may reside in the same congressional district.

**Large political party member selection.** The two largest political parties alternate appointing their first three members to the Commission. This must occur by March 31 in the year following the U.S Census, and will next occur in 2021. After the first three appointments for the large political parties, four independent members are appointed (see below). Then the fourth commission member is appointed for the state's largest party on May 3 and May 5 for the state's second largest party.

**Independent commission member selection.** To select the four independent members, the Secretary of State (SOS) is required to coordinate with county clerks to create an application process to solicit independent member applications. Once received, the SOS must review applicants and issue an eligibility finding. The SOS is then required to form a panel of senior judges to select twenty eligible independent member applicants through one or more public hearings. The four independent members are then selected from the pool of twenty applicants by the previously appointed commissioners in a public hearing. This must occur by April 30th.

**Commission requirements.** The Commission must adopt rules regarding the maintenance of records, the process for removing commissioners, filing a vacancy, and the process for recommending redistricting plan changes to staff, and must approve a statewide meeting and hearing schedule. Any motion by the Commission requires eight votes, including one vote from an independent commissioner. The Commission is authorized to retain legal counsel and is subject to the Colorado Open Records Act. The Commission will be staffed by the nonpartisan research and legal staff of the General Assembly and funding to cover the costs of the Commission and its staff must be provided by the General Assembly.

**Commission plan review and approval.** The commission must be convened by the Governor no later than May 15th in the redistricting year. Prior to the commission considering a preliminary plan, nonpartisan staff must prepare and present at least four state legislative district plans. These plans must be published online and presented to the Commission. The Commission must allow for public comment on all plans through email or other electronic communication. After allowing for public comment, the Commission must select a preliminary plan and must hold public hearings on the preliminary plan after posting it online. At least three public hearings are required in each congressional district. Some of these hearings may be held through video conferencing. However, at least one in-person hearing is required in each district. In addition, two in-person hearings are required west of the Continental Divide and two in-person hearings are required south of El Paso County and east of the Continental Divide.

After the public hearings the Commission is required to finalize a plan and submit it to the Colorado Supreme Court for review. The Supreme Court can approve or return the plan to the Commission with instructions for submitting a revised plan. The next state legislative district plan must be approved and filed with the SOS no later than December 29, 2021.

## State Expenditures

Based on preliminary costs for state legislative redistricting under current law, **this initiative is projected to increase state General Fund expenditures by \$169,895 and 0.2 FTE in FY 2020-21 and \$161,785 and 1.2 FTE in FY 2021-22.** These costs are summarized in Table 1 and discussed below.

Cost Components	FY 2018-19	FY 2020-21	FY 2021-22
Personal Services	-	\$11,879	\$101,181
FTE	-	0.2 FTE	1.2 FTE
Operating Expenses & Capital Outlay	-	3,664	475
Computer Equipment and Software	-	126,600	6,170
Travel and Per Diem	-	9,727	29,180
Senior Judge Application Panel	-	15,876	0
Benefits and Leased Space	-	2,149	24,779
<b>TOTAL</b>	-	<b>\$169,895</b>	<b>\$161,785</b>



**Personal Services and operating costs.** Under the current legislative redistricting process, legislative district plans are drawn by the Reapportionment Commission in the interim (between legislative sessions). Staff support for this commission is provided by nonpartisan legislative staff. The current process is projected to last seven months and require 4.6 FTE (1.3 FTE in FY 2020-21; 3.3 in FY 2021-22). Under this initiative, the new Independent Legislative Redistricting Commission will require a total of 6.0 FTE for eight months, 1.5 FTE in FY 2020-21 and 4.5 FTE in FY 2021-22. Overall, state redistricting costs are increased due to the increased length of the process and need for more staff to complete the process outlined in the initiative. There will be a net increase of 0.2 FTE in FY 2020-21 and 1.2 FTE in FY 2021-22. Costs for these staff and related operating expenses are shown in Table 1.

**Travel and per diem.** Under current law, several meetings and public hearings are held as a part of the redistricting process to seek public input on new district plans. These meetings are held throughout the state and funds are needed to pay for travel expense reimbursements and per diem for staff and commission members. Under this initiative, costs will increase for additional staff and the twelfth commissioner to travel and to hold additional public hearings.

**Computer Equipment and Software.** GIS and mapping software, and printing services are needed to prepare the state redistricting plans. Computer equipment costs are expected to increase \$126,600 in FY 2020-21 for GIS and other mapping software and \$6,170 in FY 2021-22 for the printing of redistricting maps for public meetings compared to current reapportionment costs.

**Panel of senior judges.** Under Initiative 48, the Secretary of State is required to form and pay for the expenses of a panel of three senior judges to review the independent commissioner applications. This will increase costs to the Secretary of State in FY 2020-21 by \$15,876. This includes salary and travel expenses for each of the three judges. It is assumed that these costs will be paid with existing revenue to and appropriations from the Secretary of State Cash Fund.

**Employee benefits and leased space.** Employee benefits and leased space for staff are estimated to cost \$2,149 in FY 2020-21 and \$24,779 in FY 2021-22. This includes health, life, and dental insurance and eight months of leased space for redistricting staff.

## Effective Date

If approved by voters, the ballot initiative takes effect upon proclamation of the Governor within 30 days of the official canvas of votes at the 2018 general election.

## State and Local Government Contacts

Clerks  
Judicial Department

Legislative Council  
Secretary of State

## **Abstract of Initiative 48: State Legislative Redistricting**

**This initial fiscal estimate, prepared by the nonpartisan Director of Research of the Legislative Council as of October 2017, identifies the following impacts:**

The abstract includes estimates of the fiscal impact of the initiative. If this initiative is to be placed on the ballot, Legislative Council Staff will prepare new estimates as part of a fiscal impact statement, which includes an abstract of that information. All fiscal impact statements are available at [www.ColoradoBlueBook.com](http://www.ColoradoBlueBook.com) and the abstract will be included in the ballot information booklet that is prepared for the initiative.

***State expenditures.*** Under the current legislative redistricting process, legislative district plans for the Colorado House of Representatives and Colorado Senate are drawn by the Reapportionment Commission following the decennial census. Initiative 48 replaces the Reapportionment Commission with the newly created Independent Legislative Redistricting Commission. Overall, Initiative 48 increases state expenditures by \$169,895 in FY 2020-21 and \$161,785 in FY 2021-22.

## **Ballot Title Setting Board**

### **Proposed Initiative 2017-2018 #48<sup>1</sup>**

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution concerning state legislative redistricting, and, in connection therewith, renaming the commission that redraws state legislative boundaries; changing the qualifications and methods of appointment of members of the commission; providing for the appointment of 12 commissioners, 4 of whom are registered with the state's largest political party, 4 of whom are registered with the state's second largest political party, and 4 of whom are not registered with either of the state's two largest political parties; adding political competitiveness to the criteria used by the commission; prohibiting drawing plans to purposefully advantage or disadvantage any political party or person; specifying procedures that the commission must follow, including requiring that the commission's work be done in public meetings and requiring the nonpartisan staff of the commission to prepare and present plans; and requiring the agreement of at least 8 of 12 commissioners to approve any action of the commission.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution concerning state legislative redistricting, and, in connection therewith, renaming the commission that redraws state legislative boundaries; changing the qualifications and methods of appointment of members of the commission; providing for the appointment of 12 commissioners, 4 of whom are registered with the state's largest political party, 4 of whom are registered with the state's second largest political party, and 4 of whom are not registered with either of the state's two largest political parties; adding political competitiveness to the criteria used by the commission; prohibiting drawing plans to purposefully advantage or disadvantage any political party or person; specifying procedures that the commission must follow, including requiring that the commission's work be done in public meetings and requiring the nonpartisan staff of the commission to prepare and present plans; and requiring the agreement of at least 8 of 12 commissioners to approve any action of the commission?

*Hearing October 4, 2017:*

*Single subject approved; staff draft amended; titles set.*

*Hearing adjourned 1:56 p.m.*

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<sup>1</sup> Unofficially captioned "State Legislative Redistricting" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

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Robert David DuRay and Katina Banks, Objectors

RECEIVED

S. WARD

OCT 11 2017

2:15 P.M.

vs.

Kathleen Curry and Toni Larson, Proponents.

Colorado Secretary of State

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**MOTION FOR REHEARING ON INITIATIVE 2017-2018 #48**

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Robert DuRay and Katina Banks, registered electors of the State of Colorado, through legal counsel, Recht Kornfeld P.C., object to the Title Board's title and ballot title and submission clause set for Initiative 2017-18 #48 relating to state legislative reapportionment.

The Title Board set a title for #48 on October 4, 2017. At the hearing held in connection with this proposed initiative, the Board designated and fixed the following ballot title and submission clause:

*Shall there be an amendment to the Colorado constitution concerning state legislative redistricting, and, in connection therewith, renaming the commission that redraws state legislative boundaries; changing the qualifications and methods of appointment of members of the commission; providing for the appointment of 12 commissioners, 4 of whom are registered with the state's largest political party, 4 of whom are registered with the state's second largest political party, and 4 of whom are not registered with either of the state's two largest political parties; adding political competitiveness to the criteria used by the commission; prohibiting drawing plans to purposefully advantage or disadvantage any political party or person; specifying procedures that the commission must follow, including requiring that the commission's work be done in public meetings and requiring the nonpartisan staff of the commission to prepare and present plans; and requiring the agreement of at least 8 of 12 commissioners to approve any action of the commission?*

**I. Initiative #48 violates the Constitution's single subject requirement.**

**A. Initiative #48 converts appellate review to a de novo trial on the merits before the Supreme Court.**

Initiative #48 mandates that the Supreme Court abandon its historic role as an appellate court, authorizing the parties' "production and presentation of supportive evidence" for the plan

presented. In describing the Supreme Court's consideration of the Commission's plan, Initiative #48 states:

The Supreme Court shall review the submitted plan and determine whether the plan complies with sections 46(2) and 47 of this article V. The court's review and determination shall take precedence over other matters before the court. **The Supreme Court shall adopt rules for such proceedings and for the production and presentation of supportive evidence for such plan. Any legal arguments or evidence concerning such plan shall be submitted to the supreme court pursuant to the schedule established by the court.** The supreme court shall either approve the plan or return the plan to the commission with the court's reasons for disapproval under sections 46(2) and 47 of this article V.

Proposed Art. V, § 48.5(7)(a) (emphasis added). Thus, parties will now be able to produce and present "any" new evidence to sustain the maps presented.

This change in the Supreme Court's role – to base its decision on non-record evidence – runs contrary to the very essence of an appellate court. "Evidence which was not presented to the trial court will not be considered on review." *In re Petition of Edison*, 637 P.2d 362, 363 (Colo. 1981). Providing evidence to the Supreme Court for it to weigh, evaluate, and use for the first time in the proceeding is a radical departure from the fundamental task of an appeal.

Introducing new evidence is not even permitted in original proceedings before the Supreme Court pursuant to Colorado Appellate Rule 21. Where a party invokes the Court's jurisdiction and then supplements its trial court record with new documents for the Court's review, the Supreme Court will reject those additional materials and resort only to the record developed below.

We find this procedure unacceptable. This is another case where a party fails to comply with well established procedures in the trial court and requests, if not expects, this court to act as the fact finder to whom relevant and important evidence is presented for the first time. We decline to consider the additional evidence.... Simply stated, we will not consider issues and evidence presented for the first time in original proceedings.

*Panos Inv. Co. v. District Court of Cty. of Larimer*, 662 P.2d 180, 182 (Colo. 1983).

There is a strong and well-understood reason for restricting the role of an appellate court to its historic role: the "orderly administration of justice." *Id.* Even the parties' use of additional affidavits before the Supreme Court does not meet this fundamental element of acceptable appellate practice that is necessary to foster an orderly justice system. *Bond v. District Court*, 682 P.2d 33, 39 n.2 (Colo. 1984). There are important reasons for prohibiting new evidence on appeal, including the fact that such new evidence is "not subject to cross-examination." *Cf. City & County of Broomfield v. Farmers Reservoir & Irrigation Co.*, 235 P.3d 296, 297 (Colo. 2010)

("tables and calculations [that] were not introduced at trial" constituted "new evidence" and were properly excluded from appellate review).

Any change to the long-standing, well-accepted role of the Supreme Court as an appellate body is a change that would surely surprise voters. The Court's historic role in assessing a commission's legislative reapportionment plan is firmly established. **"Our role in this proceeding is a narrow one:** we measure the Adopted Plan against the constitutional standards, according to the hierarchy of federal and state criteria we have previously identified.... **Our review must be swift and limited in scope** so that elections may proceed on schedule." *In re Reapportionment of the Colo. Gen. Assembly*, 332 P.3d 108, 110 (Colo. 2011) (emphasis added) (citations omitted).

Even more to the point, Initiative #48 gives the Court a new, substantive role in evaluating evidence and applying it for the purpose of justifying the House and Senate maps' district lines. The proponents ignore the fact this role has always been one for the Commission and the Commission alone. "We do not redraw the apportionment map for the Commission." *Id.* Neither has the Court, based on evidence the Commission never saw, been asked to conjure up reasons, based on that new evidence, to justify the districts drawn.

When an initiative's proponents change an operating and fundamental tenet underlying a second governmental body in order to advance a redistricting measure, their proposal violates the single subject requirement in the Colorado Constitution. *In re Title, Ballot Title & Submission Clause for Initiative 2015-2016 #132*, 2016 CO 55 ¶¶24-25 (Colo. 2016) citing *In re Title, Ballot Title & Submission Clause, & Summary for 1997-1998 #64*, 960 P.2d 1192, 1196 (Colo. 1998) (altering the powers of a separate commission furthered a distinct purpose). Therefore, this measure should be returned to its proponents to comply with the single subject requirement.

**B. #48 violates Article VI concerning the prohibition on other public offices to be held by judges.**

Initiative #48 sets up a panel of senior judges who screen the non-major political party commissioners. This panel is so central to the measure, as Proponents admit on their website. "To minimize the 'stuff the ballot box dynamic', by which both parties attempt to get their 'independents' on the commission, **our initiatives use senior/recently retired judges to identify truly independent finalists.**"<sup>1</sup>

Under Initiative #48, the secretary of state appoints the panel of senior judges. Proposed Art. V, § 48(6)(d). They are compensated based on a formula that reflects their regular compensation level as well as coverage of their travel and expenses. *Id.*, § 48(6)(e). As a matter of law, senior judges are categorized and treated as "judges." C.R.S. § 13-5.5-102(13).

The Colorado Constitution provides, "No justice or judge of a court of record shall accept designation or nomination for any public office other than judicial without first resigning from his judicial office." Colo. Const., art. VI, § 18. "Any other public office" includes an appointment to a redistricting panel such as this one. *Adams v. Comm'n on Appellate Court*

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<sup>1</sup> <http://fairdistrictscolorado.org/faq/> (last viewed October 10, 2017) (attached) (emphasis added).

*Appointments v. State Compensation Ins. Fund*, 254 P.3d 367, 371 (Az. 2011) (irrigation district directors could be appointed to Arizona redistricting commission as it was an “other public office”).

Where the nature of the public appointment of officials who screen potential members of the commission is at odds with voter expectations for such officials, the proposal violates the single subject requirement. That was the Supreme Court’s reasoning in #132, *supra*, striking a measure on single subject grounds that “add[ed] to the Nominating Commission’s otherwise apolitical role of recommending judicial appointments the new and inherently political task of recommending members for the reconfigured Reapportionment Commission.” 2016 CO 55 at ¶25.

Initiative #48 is a far greater incursion into neutral decision making, as it mandates the participation of certain persons who may be serving as judges in pending matters. Much like last year’s initiatives, this measure “run[s] the risk of surprising voters with a ‘surreptitious’ change not anticipated by the seemingly neutral requirement that the [specified officials] recommend candidates for appointment to the Redistricting Commission.” *Id.* at ¶26. As such, it violates the single subject requirement and should be returned to the Proponents.

## **II. The titles fail to inform voters of certain central elements of the measure and thus are deficient.**

### **A. The titles are silent as to appointing authorities for two-thirds of the commission.**

The ballot title fails to state that the representatives of the two largest political parties on the commission are appointed by the two parties themselves. Proposed Art. V, § 48(2)(a), (b) (appointees named by party chairpersons or party leadership, depending on the authority provided in political parties’ rules). In a measure that is billed as creating an “independent” commission, the fact that the Proponents have handed over a governmental function as important as redistricting to a private entity – a political club – is something voters would presumably be interested in knowing. Yet, the titles are silent on this key issue.

At least under current law, the appointments are made by constitutional officers – members of the general assembly, the governor, and the chief justice. All of these officers take oaths to uphold the Constitution of the United States and the Constitution of the State of Colorado. Further, all must act in a manner that is consistent with statutes that provide for public official accountability.

But political parties are answerable only to the political insiders that the Proponents rail against in their measure. Ironically, the Proponents’ website shows the mascots of the two major political parties dividing up Colorado.<sup>2</sup> They are counting on the Title Board’s silence on this issue, as exemplified by their tactical use of anti-political party rhetoric:

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<sup>2</sup> <http://fairdistrictscolorado.org/> (last viewed October 10, 2017) (attached).

- “Our citizen initiatives take map drawing out of the hands of political insiders....”<sup>3</sup>
- “Our initiatives aim to end the practice of backroom dealing and shady politics where political operatives, in smoke-filled rooms, decide the outcome of elections before you even cast your ballot.”<sup>4</sup>
- “It’s time that Colorado communities, not politicians, draw their districts.”<sup>5</sup>
- “[P]oliticians and political appointees must be removed from the redistricting process....”<sup>6</sup>
- “Political parties or incumbents sometimes draw district lines for their own benefit at the expense of proportionality and fair representation.”<sup>7</sup>

How important is this information? Proponents’ website depicts a character who literally says about the potential for gerrymandering of districts, “I have no idea what you’re talking about.”<sup>8</sup> If that’s not a sign that voters and petition signers need more information about #48 – and specifically, who will be making the appointments to the commission, nothing could be. After all, those voters and petition signers aren’t likely to have the benefit of the evidently necessary “crash course” YouTube video the Proponents’ cartoon spokesman is about to watch concerning redistricting.

Further, Proponents even state that the entire issue of redistricting is “weird and wonky.”<sup>9</sup> An under-descriptive ballot title does not address what Proponents admit is the very real possibility of voter misunderstanding of this initiative.

At bare minimum, voters should know #48 allocates important authority to partisan insiders who, according to Proponents, are motivated to use their power (and presumably their roles as governmental appointing authorities) for political advantage. A ballot title is invalid where it is “so general that it does not contain sufficient information to enable voters to determine intelligently whether to support or oppose the initiative.” *In re Title, Ballot Title and Submission Clause for 2015-2016 #73*, 2016 CO 24, ¶34 (Colo. 2016). This title suffers from that very malady.

**B. The title inaccurately indicates the commission will consider competitiveness on par with other redistricting criteria.**

The title indicates that #48 has a provision that “adds” competitiveness to the criteria to be used. In truth, competitiveness is applied only “to the extent possible” and only “after meeting the other requirements of this section.” Proposed Art. V, § 47(4)(b). In other words, competitiveness within districts may never actually be utilized by the commission under #48.

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<sup>3</sup> <http://fairdistrictscolorado.org/the-problem/> (last viewed October 10, 2017) (attached).

<sup>4</sup> See footnote 3.

<sup>5</sup> See footnote 2.

<sup>6</sup> <http://fairdistrictscolorado.org/the-solution/> (last viewed October 10, 2017) (attached).

<sup>7</sup> See footnote 1.

<sup>8</sup> See footnote 2.

<sup>9</sup> See footnote 2.



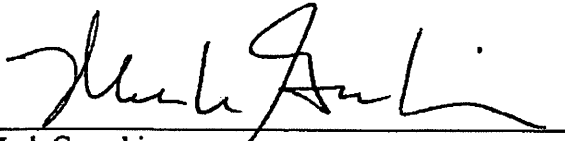
The ballot title, however, suggests competitiveness is a given in establishing lines for all districts. That is flatly incorrect. Because of the way in which Proponents drafted #48, competitiveness is no more likely to be used for district line drawing than it is under current Supreme Court doctrine wherein competitiveness is an acceptable non-constitutional factor that may be used in redistricting if all constitutional criteria are satisfied. *In re Reapportionment, supra*, 332 P.3d at 111.

Where the title misstates the substance of the proposed initiative by omitting a central element of the provision being described, the Board errs. #73, *supra*, 2015 CO 24 at ¶35. This title should state that competitiveness is the final factor the commission can consider and that it *can do so only if every other factor is satisfied*.

WHEREFORE, the titles set October 4, 2017 should be reversed, due to the single subject violations addressed herein and corrected to address a lack of needed information and material misrepresentations about #48.

RESPECTFULLY SUBMITTED this 11<sup>th</sup> day of October, 2017.

RECHT KORNFELD, P.C.



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**CERTIFICATE OF SERVICE**

I hereby affirm that a true and accurate copy of the MOTION FOR REHEARING ON INITIATIVE 2017-2018 #48 was sent this day, October 11, 2017 via first class U.S. mail, postage pre-paid to the proponents' counsel at:

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Erin Holweger