

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

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

In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiative
2017-2018 #50 (“Congressional
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 ▲

Attorney for Petitioner:
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Case No. _____

**PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE
SETTING BOARD CONCERNING PROPOSED INITIATIVE 2017-
2018 #50 (“CONGRESSIONAL 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 #50 (“Congressional Redistricting”).

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative 2017-2018 #50

Kathleen Curry and Toni Larson (hereafter “Proponents”) proposed Initiative 2017-2018 #50 (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 #50. On October 11, 2017, Petitioners Robert DuRay and Katina Banks filed a Motion for Rehearing, alleging that #50 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 feature 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 #50 (“CONGRESSIONAL 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:

LeeAnn Morrill
Office of the Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203

Ben Larson
Ireland Stapleton Pryor & Pascoe, PC
717 17th Street, Suite 2800
Denver, CO 80202

/s Erin Holweger _____



DATE FILED: October 25, 2017 3:09 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 #50 'Congressional 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 23rd day of October, 2017.



SECRETARY OF STATE

2017-2018 #50 – Original Draft

Proposed statutory initiative concerning Congressional 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

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 Colorado Revised Statutes, recreate and reenact, with amendments, 2-1-101 as follows:

2-1-101. Fair congressional districts for fair elections – legislative declaration. (1) THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE THAT, IN ORDER TO ENSURE FAIR CONGRESSIONAL REPRESENTATION, THE PRACTICE OF POLITICAL GERRYMANDERING, WHEREBY CONGRESSIONAL DISTRICTS ARE PURPOSEFULLY DRAWN TO FAVOR ONE POLITICAL PARTY OR INCUMBENT POLITICIAN OVER ANOTHER, OR TO ACCOMPLISH POLITICAL GOALS, MUST END.

(2) 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 CONGRESSIONAL DISTRICTS WITHOUT REGARD TO PARTISAN PRESSURES OR CONSIDERATIONS.

(3) 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.

(4) THE PEOPLE FURTHER FIND AND DECLARE THAT PUBLIC PARTICIPATION IN THE REDISTRICTING PROCESS IS A PRIORITY AND THAT THE INDEPENDENT CONGRESSIONAL

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.

SECTION 2. In Colorado Revised Statutes, 2-1-102, amend (1); and add (2) with amended and relocated provisions, as follows:

2-1-102. Fair criteria for determinations of congressional districts. (1) ~~In determining whether one or more of the ESTABLISHING congressional districts established in accordance with section 44 of article V of the state constitution are lawful and in adopting or enforcing any change to any such district, courts~~ THE INDEPENDENT CONGRESSIONAL REDISTRICTING COMMISSION AND ITS STAFF SHALL:

(a) ~~Shall utilize the following factors:~~(I) MAKE a good faith effort to achieve precise mathematical population equality between districts, justifying each variance, no matter how small, as required by the constitution of the United States. Each district shall consist of contiguous whole general election precincts. Districts shall not overlap.

(II) ~~COMPLY~~ COMPLY with the federal "Voting Rights Act of 1965", in particular 42 U.S.C. sec. 197352 U.S.C. sec. 10101; and

(III) NOT PREPARE ANY CONGRESSIONAL REDISTRICTING PLAN TO PURPOSEFULLY ADVANTAGE OR DISADVANTAGE ANY POLITICAL PARTY OR PERSON;

(b) ~~May, without weight to any factor, utilize~~CONSIDER THE FOLLOWING factors, WITHOUT WEIGHT TO ANY FACTOR ~~including but not limited to:~~

(I) The preservation of political subdivisions such as counties, cities, and towns. When county, city, or town boundaries are changed, adjustments, if any, in districts shall be as prescribed by law.

(II) The preservation of communities of interest, including RACIAL, ethnic, LANGUAGE GROUP, cultural, economic, trade area, geographic, and demographic factors; AND

(III) The compactness of each congressional district; and

(IV) ~~The minimization of disruption of prior district lines;~~

(c) AFTER ADHERING TO THE PROVISIONS OF SUBSECTION (1)(a) OF THIS SECTION AND AFTER CONSIDERING THE FACTORS LISTED IN SUBSECTION (1)(b) OF THIS SECTION, MAXIMIZE THE NUMBER OF POLITICALLY COMPETITIVE CONGRESSIONAL DISTRICTS.

(2) [Formerly 2-1-100.5] ~~The general assembly hereby finds and declares that~~ The state of Colorado shall be divided into districts pursuant to the official figures of the most recent decennial census of the United States. ~~The general assembly further finds and declares that~~ Such figures are the most reliable data that the state has available, and ~~that~~ the use of any other data or of any data adjustments may create a serious risk of inaccuracy and injustice in establishing congressional districts to represent the citizens of Colorado.

SECTION 3. In Colorado Revised Statutes, add 2-1-103, 2-1-104, 2-1-105, and 2-1-106 as follows:

2-1-103. Congressional districts – independent congressional redistricting commission - appointment. (1) THE RESPONSIBILITY OF THE GENERAL ASSEMBLY TO DIVIDE THE STATE INTO CONGRESSIONAL DISTRICTS ESTABLISHED IN ARTICLE V, SECTION 44 OF THE COLORADO CONSTITUTION SHALL BE CARRIED OUT BY AN INDEPENDENT COMMISSION TO BE KNOWN AS THE INDEPENDENT CONGRESSIONAL REDISTRICTING COMMISSION, WHICH IS HEREBY CREATED AND REFERRED TO IN THIS ARTICLE 1 AS THE “COMMISSION”.

(2) AFTER EACH FEDERAL CENSUS OF THE UNITED STATES, THE MEMBERS OF THE COMMISSION SHALL BE APPOINTED AND CONVENED AS PRESCRIBED IN THIS ARTICLE 1 TO DIVIDE THE STATE INTO AS MANY CONGRESSIONAL DISTRICTS AS THERE ARE REPRESENTATIVES IN CONGRESS APPORTIONED TO THIS STATE BY THE CONGRESS OF THE UNITED STATES FOR THE ELECTION OF ONE REPRESENTATIVE TO CONGRESS FROM EACH DISTRICT.

(3) 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 ARTICLE 1 AS THE "INDEPENDENT MEMBERS" OF THE COMMISSION OR THE "INDEPENDENT COMMISSIONERS". THE INDEPENDENT MEMBERS SHALL BE APPOINTED IN ACCORDANCE WITH SUBSECTION (7) OF THIS SECTION.

(4) ALL COMMISSIONERS MUST BE REGISTERED ELECTORS OF THE STATE OF COLORADO. NO COMMISSIONER MAY BE AN INCUMBENT MEMBER OF CONGRESS OR A CANDIDATE FOR CONGRESS. NO COMMISSIONER MAY SERVE SIMULTANEOUSLY AS A MEMBER OF THE COLORADO REAPPORTIONMENT COMMISSION OR ANY SUCCESSOR BODY RESPONSIBLE FOR DIVIDING THE STATE INTO SENATORIAL AND REPRESENTATIVE DISTRICTS OF THE GENERAL ASSEMBLY.

(5) (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.

(6) 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 ARTICLE 1, 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 (6)(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 (6)(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 (6)(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.

(7)(a) THE FOUR INDEPENDENT MEMBERS OF THE COMMISSION SHALL BE SELECTED AS PROVIDED IN THIS SUBSECTION (7).

(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 (3)(c) AND (4) 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 (7)(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 JUSTICES OR JUDGES WHO MOST RECENTLY RETIRED FROM THE COLORADO SUPREME COURT OR THE COLORADO COURT OF APPEALS, APPOINTED SEQUENTIALLY STARTING WITH THE MOST RECENT JUSTICE OR JUDGE TO RETIRE 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 JUSTICE OR JUDGE ALREADY APPOINTED TO THE PANEL. IF ANY OF THE THREE JUSTICES OR JUDGES WHO MOST RECENTLY RETIRED FROM THE COLORADO SUPREME COURT OR THE COLORADO COURT OF APPEALS 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 JUSTICE OR JUDGE WHO MOST RECENTLY RETIRED FROM THE COLORADO SUPREME COURT OR THE COLORADO COURT OF APPEALS AND WHO HAS NOT BEEN AFFILIATED WITHIN TWO YEARS PRIOR TO APPOINTMENT WITH THE SAME POLITICAL PARTY AS ANY JUSTICE OR JUDGE ALREADY APPOINTED TO THE PANEL. IF, AFTER CONSIDERING ALL JUSTICES AND JUDGES WHO HAVE RETIRED FROM THE COLORADO SUPREME COURT AND THE COLORADO COURT OF APPEALS, FEWER THAN THREE ELIGIBLE PARTICIPANTS FOR THE PANEL HAVE BEEN IDENTIFIED, THE SECRETARY OF STATE SHALL APPOINT THE MOST RECENTLY RETIRED DISTRICT COURT JUDGE WHO HAS NOT BEEN AFFILIATED WITHIN TWO YEARS PRIOR TO APPOINTMENT WITH THE SAME POLITICAL PARTY AS ANY PREVIOUS APPOINTEE TO THE PANEL AND WHO ACCEPTS SUCH APPOINTMENT. UPON REQUEST OF THE SECRETARY OF STATE, THE STATE COURT ADMINISTRATOR SHALL PROVIDE INFORMATION ABOUT JUSTICES AND JUDGES WHO RECENTLY RETIRED FROM THE COLORADO SUPREME COURT, THE COLORADO COURT OF APPEALS, AND THE STATE'S DISTRICT COURTS AS MAY BE NECESSARY FOR THE SECRETARY OF STATE TO PERFORM HIS OR HER DUTIES UNDER THIS SUBSECTION (7)(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 SERVICE RETIREMENT BENEFITS UNDER ARTICLE 51 OF TITLE 24.

(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 (3)(c) AND (4) 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 (5) 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 (7)(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 (7)(h)(II) AND (7)(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 (7)(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 (7)(h)(II) OF THIS SECTION TOTALS FOUR. THESE APPLICANTS SHALL BECOME THE INDEPENDENT MEMBERS OF THE COMMISSION.

(8) FOLLOWING THE SELECTION OF THE INDEPENDENT MEMBERS AS PROVIDED IN SUBSECTION (7) 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.

(9) IF EITHER OF THE STATE'S TWO LARGEST POLITICAL PARTIES FAILS TO MAKE AN APPOINTMENT TO THE COMMISSION BY A DATE REQUIRED IN SUBSECTION (6) OR SUBSECTION (8) 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 2-1-104 (9).

(10) 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.

2-1-104. 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 DIRECTOR OF RESEARCH OF THE LEGISLATIVE COUNCIL AND THE DIRECTOR OF THE OFFICE OF LEGISLATIVE LEGAL SERVICES 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 DISTRICT COURT AND THE SUPREME COURT PURSUANT TO SECTION 2-1-105 (6) AND (7).

(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 ARTICLE 1, OR PARTICIPATING IN COMMUNICATIONS PROHIBITED UNDER THIS ARTICLE 1;

(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, C.R.S.

(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, C.R.S. 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 CONGRESSIONAL

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, C.R.S., 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 2-1-102, OTHER THAN COMMISSION STAFF, IS A "PROFESSIONAL LOBBYIST" AS DEFINED IN SECTION 24-6-301(6), C.R.S., 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, C.R.S.

(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.

2-1-105. Preparation, amendment, and approval of plans. (1) THE COMMISSION SHALL BEGIN BY CONSIDERING A PLAN CREATED BY ITS STAFF ALONE. WITHIN THIRTY DAYS AFTER THE COMMISSION HAS BEEN CONVENED, OR THE NECESSARY CENSUS DATA ARE AVAILABLE, WHICHEVER IS LATER, COMMISSION STAFF SHALL PUBLISH A PRELIMINARY REDISTRICTING PLAN.

(2) 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.

(3) 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.

(4) SUBSEQUENT TO HEARINGS ON THE PRELIMINARY PLAN, THE NONPARTISAN STAFF SHALL PREPARE, PUBLISH ONLINE, AND PRESENT TO THE COMMISSION NO FEWER THAN THREE PLANS. THESE PLANS WILL BE KNOWN AS THE STAFF PLANS AND MUST BE NAMED AND NUMBERED SEQUENTIALLY FOR PURPOSES OF SUBSECTION (7) OF THIS SECTION. STAFF PLANS MUST BE PREPARED, PUBLISHED ONLINE, AND PRESENTED ON A TIMETABLE ESTABLISHED BY THE COMMISSION, EXCEPT EACH STAFF PLAN MUST 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 2-1-104 (9), 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.

(5) ANY COMMISSIONER OR GROUP OF COMMISSIONERS MAY REQUEST THE COMMISSION'S 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 (7) OF THIS SECTION.

(6) (a) NO LATER THAN SEPTEMBER 15 OF THAT SAME YEAR, THE COMMISSION SHALL ADOPT A FINAL PLAN, WHICH SHALL THEN BE SUBMITTED TO THE COLORADO SUPREME COURT FOR ITS REVIEW AND DETERMINATION IN ACCORDANCE WITH SUBSECTION (8) 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.

(7) IF FOR ANY REASON THE COMMISSION DOES NOT ADOPT A FINAL PLAN BY THE DATE SPECIFIED IN SUBSECTION (6) OF THIS SECTION, THE NONPARTISAN STAFF SHALL SUBMIT THE THIRD STAFF PLAN TO THE DISTRICT COURT. THE COURT MAY MAKE CHANGES TO THE PLAN SUBMITTED, BUT ONLY IF THE CHANGES IMPROVE COMPLIANCE WITH THE CRITERIA SPECIFIED IN SECTION 2-1-102. THE COURT MAY APPOINT A SPECIAL MASTER TO ASSIST THE COURT. NO LATER THAN OCTOBER 31, THE COURT SHALL APPROVE A CONGRESSIONAL REDISTRICTING PLAN, INCLUDING ITS FINDINGS REGARDING COMPLIANCE WITH THE CRITERIA SPECIFIED IN SECTION 2-1-102. UPON APPROVAL, THE COURT SHALL SUBMIT ITS PLAN AND ITS FINDINGS TO THE COLORADO SUPREME COURT FOR REVIEW PURSUANT TO SUBSECTION (8) OF THIS SECTION.

(8) (a) THE SUPREME COURT SHALL REVIEW THE SUBMITTED PLAN AND DETERMINE WHETHER THE PLAN COMPLIES WITH SECTION 2-1-102. 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 SECTION 2-1-102.

(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 CONGRESSIONAL DISTRICTS NO LATER THAN NOVEMBER 15 IF THE COMMISSION SUBMITS A FINAL PLAN TO THE SUPREME COURT PURSUANT TO SUBSECTION (6) OF THIS SECTION, AND NO LATER THAN DECEMBER 30 IF THE DISTRICT COURT SUBMITS A PLAN TO THE SUPREME COURT PURSUANT TO SUBSECTION (7) OF THIS SECTION. THE COURT SHALL ORDER THAT SUCH PLAN BE FILED WITH THE SECRETARY OF STATE NO LATER THAN SUCH DATE.

2-1-106. Severability. IF ANY PROVISION OF THIS ARTICLE 1 OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, SUCH INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS ARTICLE 1 THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS ARTICLE 1 ARE DECLARED TO BE SEVERABLE.

Proposed statutory initiative concerning Congressional Redistricting Reform

Designated Representatives:

Kathleen Curry
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Toni Larson
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RECEIVED

SEP 22 2017

S.WARD
9:18A.M.

Colorado Secretary of State

Text of Measure:

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

SECTION 1. In Colorado Revised Statutes, **recreate and reenact, with amendments,** 2-1-101 as follows:

2-1-101. Fair congressional districts for fair elections – legislative declaration. (1) THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE THAT, IN ORDER TO ENSURE FAIR CONGRESSIONAL REPRESENTATION, THE PRACTICE OF POLITICAL GERRYMANDERING, WHEREBY CONGRESSIONAL DISTRICTS ARE PURPOSEFULLY DRAWN TO FAVOR ONE POLITICAL PARTY OR INCUMBENT POLITICIAN OVER ANOTHER, OR TO ACCOMPLISH POLITICAL GOALS, MUST END.

(2) 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 CONGRESSIONAL DISTRICTS WITHOUT REGARD TO PARTISAN PRESSURES OR CONSIDERATIONS.

(3) 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.

(4) THE PEOPLE FURTHER FIND AND DECLARE THAT PUBLIC PARTICIPATION IN THE REDISTRICTING PROCESS IS A PRIORITY AND THAT THE INDEPENDENT CONGRESSIONAL

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.

SECTION 2. In Colorado Revised Statutes, 2-1-102, **amend** (1); and **add** ~~(2) with amended and relocated provisions,~~ with amended and relocated provisions (2) as follows:

2-1-102. Fair criteria for determinations of congressional districts. (1) ~~In determining whether one or more of the~~ ESTABLISHING congressional districts ~~established in accordance with section 44 of article V of the state constitution are lawful and in adopting or enforcing any change to any such district,~~ ~~courts~~ THE INDEPENDENT CONGRESSIONAL REDISTRICTING COMMISSION AND ITS STAFF SHALL:

(a) ~~Shall utilize the following factors:~~(I) MAKE a good faith effort to achieve precise mathematical population equality between districts, justifying each variance, no matter how small, as required by the constitution of the United States. Each district shall consist of contiguous whole general election precincts. Districts shall not overlap.

(II) ~~COMPLIANCE~~ COMPLY with the federal "Voting Rights Act of 1965", in particular ~~42 U.S.C. sec. 197352~~ U.S.C. sec. 10101; and

(III) NOT PREPARE ANY CONGRESSIONAL REDISTRICTING PLAN TO PURPOSEFULLY ADVANTAGE OR DISADVANTAGE ANY POLITICAL PARTY OR PERSON;

(b) ~~May, without weight to any factor, utilize~~ CONSIDER THE FOLLOWING factors, ~~WITHOUT WEIGHT TO ANY FACTOR~~ including but not limited to WITHOUT WEIGHT TO ANY FACTOR:

(I) The preservation of political subdivisions such as counties, cities, and towns. When county, city, or town boundaries are changed, adjustments, if any, in districts shall be as prescribed by law.

(II) The preservation of communities of interest, including RACIAL, ethnic, LANGUAGE GROUP, cultural, economic, trade area, geographic, and demographic factors; AND

(III) The compactness of each congressional district; and

(IV) ~~The minimization of disruption of prior district lines;~~

(c) ~~AFTER~~ AFTER ADHERING TO THE PROVISIONS OF SUBSECTION (1)(a) OF THIS SECTION AND AFTER CONSIDERING THE FACTORS LISTED IN SUBSECTION (1)(b) OF THIS SECTION, MAXIMIZE THE NUMBER OF POLITICALLY COMPETITIVE CONGRESSIONAL DISTRICTS.

(2) [~~Formerly 2-1-100.5~~] ~~The general assembly hereby finds and declares that~~ The state of Colorado shall be divided into districts pursuant to the official figures of the most recent decennial census of the United States. ~~The general assembly further finds and declares that~~ Such figures are the most reliable data that the state has available, and ~~that~~ the use of any other data or of any data adjustments may create a serious risk of inaccuracy and injustice in establishing congressional districts to represent the citizens of Colorado.

SECTION 3. Repeal of provision being relocated in this act. In Colorado Revised Statutes, repeal 2-1-100.5.

SECTION 34. In Colorado Revised Statutes, add 2-1-103, 2-1-104, 2-1-105, and 2-1-106 as follows:

2-1-103. Congressional districts – independent congressional redistricting commission - appointment. (1) THE RESPONSIBILITY OF THE GENERAL ASSEMBLY TO DIVIDE THE STATE INTO CONGRESSIONAL DISTRICTS ESTABLISHED IN ARTICLE V, SECTION 44 OF THE COLORADO CONSTITUTION SHALL BE CARRIED OUT BY AN INDEPENDENT COMMISSION TO BE KNOWN AS THE INDEPENDENT CONGRESSIONAL REDISTRICTING COMMISSION, WHICH IS HEREBY CREATED AND REFERRED TO IN THIS ARTICLE I AS THE “COMMISSION”.

(2) AFTER EACH FEDERAL CENSUS OF THE UNITED STATES, THE MEMBERS OF THE COMMISSION SHALL BE APPOINTED AND CONVENED AS PRESCRIBED IN THIS ARTICLE I TO DIVIDE THE STATE INTO AS MANY CONGRESSIONAL DISTRICTS AS THERE ARE REPRESENTATIVES IN CONGRESS APPORTIONED TO THIS STATE BY THE CONGRESS OF THE UNITED STATES FOR THE ELECTION OF ONE REPRESENTATIVE TO CONGRESS FROM EACH DISTRICT.

(3) 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 ARTICLE 1 AS THE "INDEPENDENT MEMBERS" OF THE COMMISSION OR THE "INDEPENDENT COMMISSIONERS". THE INDEPENDENT MEMBERS SHALL BE APPOINTED IN ACCORDANCE WITH SUBSECTION (7) OF THIS SECTION.

(4) ALL COMMISSIONERS MUST BE REGISTERED ELECTORS OF THE STATE OF COLORADO. NO COMMISSIONER MAY BE AN INCUMBENT MEMBER OF CONGRESS OR A CANDIDATE FOR CONGRESS. NO COMMISSIONER MAY SERVE SIMULTANEOUSLY AS A MEMBER OF THE COLORADO REAPPORTIONMENT COMMISSION OR ANY SUCCESSOR BODY RESPONSIBLE FOR DIVIDING THE STATE INTO SENATORIAL AND REPRESENTATIVE DISTRICTS OF THE GENERAL ASSEMBLY.

(5) (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.

(6) 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 ARTICLE 1, 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 (6)(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 (6)(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 (6)(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.

(7)(a) THE FOUR INDEPENDENT MEMBERS OF THE COMMISSION SHALL BE SELECTED AS PROVIDED IN THIS SUBSECTION (7).

(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 OF STATE'S WEBSITE. NO LATER THAN APRIL 1, THE SECRETARY OF STATE SHALL EXAMINE EACH APPLICATION, ISSUE AN ELIGIBILITY FINDING WHETHER THE APPLICANT MEETS THE QUALIFICATION SPECIFIED IN SUBSECTIONS (3)(c) AND (4) OF THIS SECTION, POST THE FINDING ON THE SECRETARY OF STATE'S WEBSITE, AND NOTIFY THE APPLICANT BY ELECTRONIC MAIL OF THE SECRETARY OF STATE'S FINDING. IF THE SECRETARY OF STATE FINDS THAT AN APPLICANT IS NOT ELIGIBLE, THEN THE SECRETARY OF STATE SHALL INCLUDE THE REASONS THEREFOR IN HIS OR HER FINDING. IF THE SECRETARY OF STATE 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 OF STATE'S ELECTRONIC MAIL NOTIFICATION, WHICH STATEMENT SHALL BE POSTED PROMPTLY WITH THE SECRETARY OF STATE'S FINDING. IF AN APPLICANT SUBMITS A STATEMENT DISPUTING THE SECRETARY OF STATE'S FINDING OF INELIGIBILITY, THE APPLICANT MAY BE CONSIDERED BY THE PANEL IN ACCORDANCE WITH SUBSECTION (7)(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~~MUST CONSIST OF THE THREE JUSTICES OR JUDGES WHO MOST RECENTLY RETIRED FROM THE COLORADO SUPREME COURT OR THE COLORADO COURT OF APPEALS, APPOINTED SEQUENTIALLY STARTING WITH THE MOST RECENT JUSTICE OR JUDGE TO RETIRE 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 JUSTICE OR JUDGE ALREADY APPOINTED TO THE PANEL. IF ANY OF THE THREE JUSTICES OR JUDGES WHO MOST RECENTLY RETIRED FROM THE COLORADO SUPREME COURT OR THE COLORADO COURT OF APPEALS 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 JUSTICE OR JUDGE WHO MOST RECENTLY RETIRED FROM THE COLORADO SUPREME COURT OR THE COLORADO COURT OF APPEALS AND WHO HAS NOT BEEN AFFILIATED WITHIN TWO YEARS PRIOR TO APPOINTMENT WITH THE SAME POLITICAL PARTY AS ANY JUSTICE OR JUDGE ALREADY APPOINTED TO THE PANEL. IF, AFTER CONSIDERING ALL JUSTICES AND JUDGES WHO HAVE RETIRED FROM THE COLORADO SUPREME COURT AND THE COLORADO COURT OF APPEALS, FEWER THAN THREE ELIGIBLE PARTICIPANTS FOR THE PANEL HAVE BEEN IDENTIFIED, THE SECRETARY OF STATE SHALL APPOINT THE MOST RECENTLY RETIRED DISTRICT COURT JUDGE WHO HAS NOT BEEN AFFILIATED WITHIN TWO YEARS PRIOR TO APPOINTMENT WITH THE SAME POLITICAL PARTY AS ANY PREVIOUS APPOINTEE TO THE PANEL AND WHO ACCEPTS SUCH APPOINTMENT. UPON REQUEST OF THE SECRETARY OF STATE, THE STATE COURT ADMINISTRATOR SHALL PROVIDE INFORMATION ABOUT JUSTICES AND JUDGES WHO RECENTLY RETIRED FROM THE COLORADO SUPREME COURT, THE COLORADO COURT OF APPEALS, AND THE STATE'S DISTRICT COURTS AS MAY BE NECESSARY FOR THE SECRETARY OF STATE TO PERFORM HIS OR HER DUTIES UNDER THIS SUBSECTION (7)(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 MUST NOT AFFECT A MEMBER'S SERVICE RETIREMENT BENEFITS UNDER ARTICLE 51 OF TITLE 24.

(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 (3)(c) AND (4) 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 (5) 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 (7)(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 (7)(h)(II) AND (7)(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 (7)(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 (7)(h)(II) OF THIS SECTION TOTALS FOUR. THESE APPLICANTS SHALL BECOME THE INDEPENDENT MEMBERS OF THE COMMISSION.

(8) FOLLOWING THE SELECTION OF THE INDEPENDENT MEMBERS AS PROVIDED IN SUBSECTION (7) 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.

(9) IF EITHER OF THE STATE'S TWO LARGEST POLITICAL PARTIES FAILS TO MAKE AN APPOINTMENT TO THE COMMISSION BY A DATE REQUIRED IN SUBSECTION (6) OR SUBSECTION (8) 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 2-1-104 (9).

(10) 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.

2-1-104. 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 DIRECTOR OF RESEARCH OF THE LEGISLATIVE COUNCIL AND THE DIRECTOR OF THE OFFICE OF LEGISLATIVE LEGAL SERVICES 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 DISTRICT COURT AND THE SUPREME COURT PURSUANT TO SECTION 2-1-105 (6) AND (7).

NEWS ISSUES THE SOLUTION FAIR DISTRICTS CO. FIN 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!

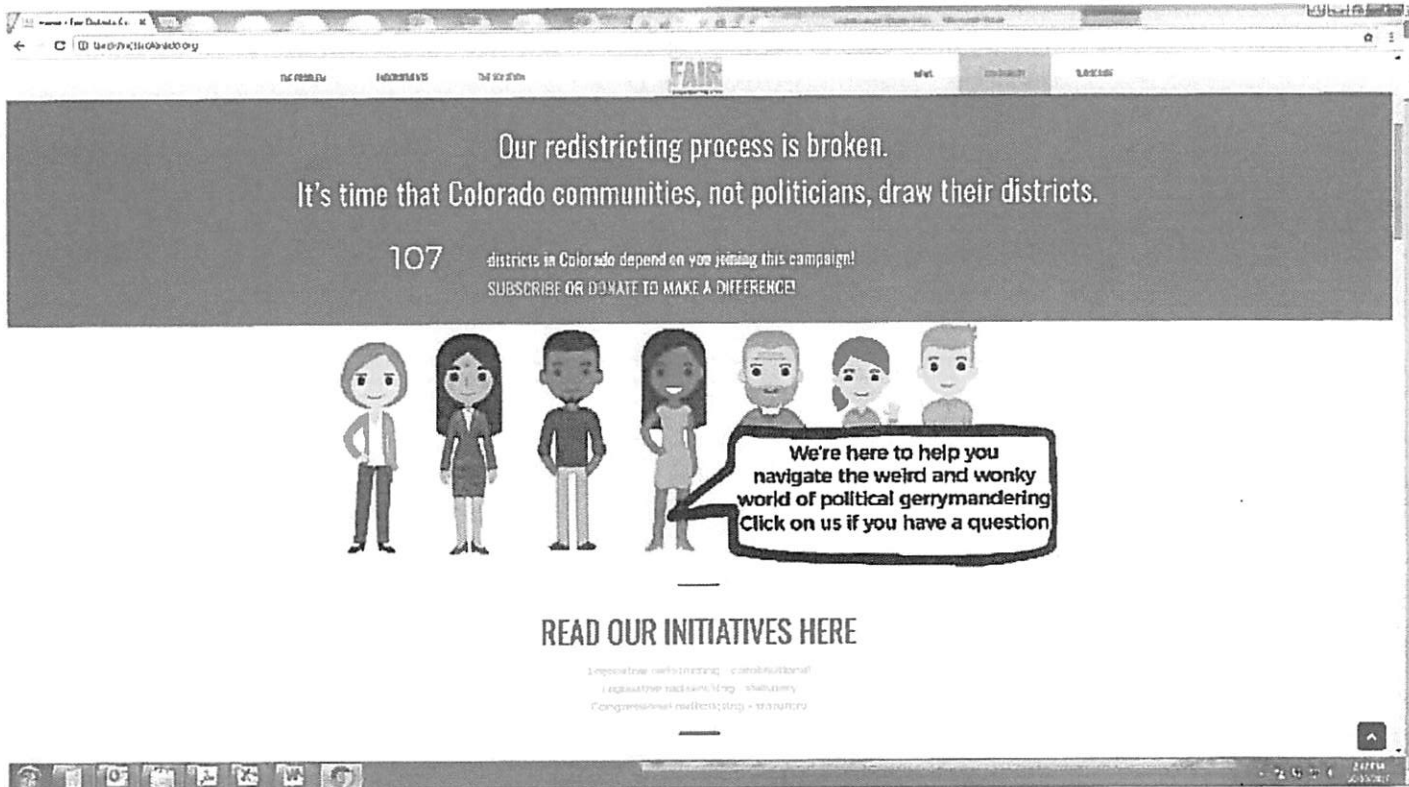
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OCT 11 2017

S. WARD

2:15 P.M.

Colorado Secretary of State



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





CONTACT

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Denver, CO 80203

DISCLAIMER

Fair Districts Colorado is a Colorado issue committee dedicated to the approval of redistricting reforms 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

One voice, please.

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 bi-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](#)

CONTACT | DISCLAIMER | REDESIGNING NEWS

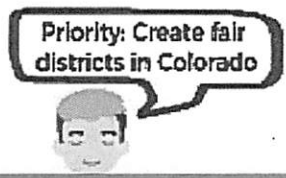
Standards for Redistricting

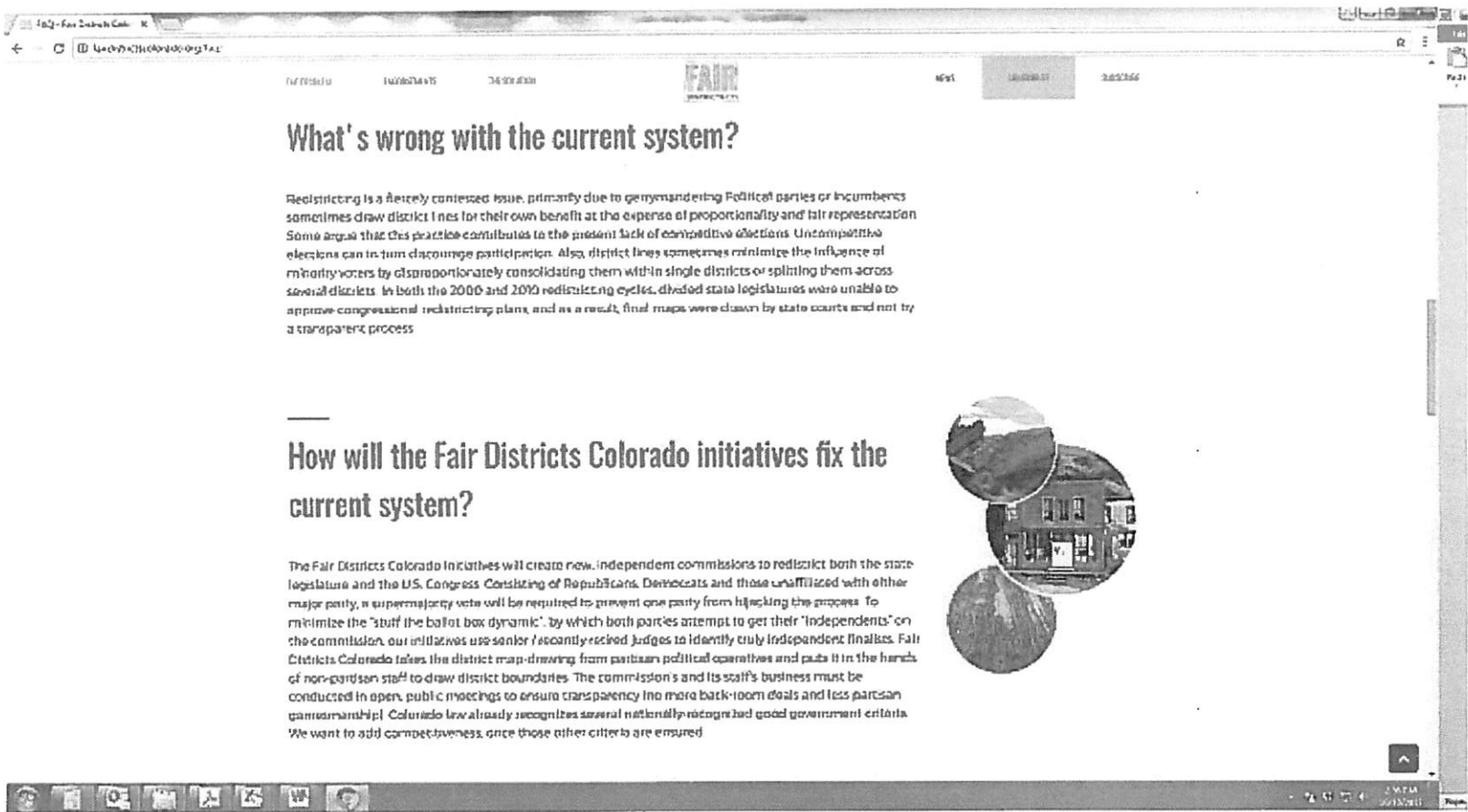


- Adhere to all Constitution and Voting Rights Act requirements
- Promote adherence with nationally recognized, neutral, good government criteria, such as
 - o Communities of Interest
 - o County and City Integrity
 - o Compactness
- Make all districts as equal in population as possible within an established 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





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.

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 commissions and its staff's business must be conducted in open, public meetings to ensure transparency (no more back-room deals and less partisan gerrymanship). Colorado law already recognizes several nationally-recognized good government criteria. We want to add competitiveness, once those other criteria are ensured.



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OCT 17 2017

S-WARD
1:30 P.M.

COLORADO TITLE SETTING BOARD

Colorado Secretary of State

IN THE MATTER OF THE TITLE, BALLOT TITLE, AND SUBMISSION CLAUSE FOR
INITIATIVE 2017-2018 #50

PROPONENTS' RESPONSE IN OPPOSITION TO MOTION FOR REHEARING

Kathleen Curry and Toni Larson, registered electors of the State of Colorado and the proponents of Initiative 2017-2018 #50 ("Initiative #50"), 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 #50 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." *Id.* at 176.

Here, as reflected in its title, ballot title, and submission clause (collectively, the "Title"), the single subject of Initiative #50 is congressional redistricting in Colorado. More specifically, Initiative #50 establishes an Independent Congressional Redistricting Commission ("Commission") and, directly related thereto, sets forth Commission 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 #50 are connected to its single subject of congressional 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 #50. *See id.*

Movants incorrectly contend that Initiative #50 contains multiple subjects. Movants first argue that Initiative #50's provisions addressing how congressional redistricting plans are approved by the Colorado Supreme Court constitute a separate subject. The premise of Movants' argument is that Initiative #50 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 #50 does nothing to change the role of the Colorado Supreme Court in approving redistricting plans.

Movants' next argument is that Initiative #50's prohibition against incumbent members of congress and candidates for congress from sitting on the Commission is a second subject. However, the inclusion of qualifications for congressional redistricting commissioners is directly connected to the single subject of congressional redistricting. Movants try to manufacture a second subject by arguing that the very logical prohibition against members of or candidates for congress from drawing their own districts violates the United States Constitution. As an initial matter, the purpose of the Title Board's review is not to determine whether Initiative #50 conflicts with the U.S. Constitution, which is not a single subject question.

Regardless, the assumption of a constitutional conflict is incorrect. Initiative #50 does nothing to change the U.S. Constitution's qualifications for running for congress. Any person meeting the age, citizenship, and residency requirements can run for congress. Initiative #50 simply says they cannot also serve on the Commission. Movants' analysis is backwards because a qualification for sitting on the Commission is not also a qualification to run for congress. Any person who wants to run for congress is free to not sit on the Commission or even to resign from the Commission.

To accept Movants' argument would mean that any requirement for holding a state public office that prohibits holding other public office would violate the U.S. Constitution. For example, in arguing against Initiative #48, Movants recognize that Colorado judges cannot hold public office other than judiciary (citing Colo. Const. art. VI, § 18) and therefore Colorado judges cannot also be congress persons. Does that mean that this requirement for holding a judgeship in Colorado creates a backdoor qualification for United States Congress and is unconstitutional? The answer is no, because any person who otherwise meets the qualifications to run for congress is free to not be a judge in Colorado.

In short, the prohibition against congress persons and congressional candidates from sitting on the Commission is not a second subject. Accordingly, the Title Board should affirm the Title setting for Initiative #50 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 #50 plainly states that, to the extent possible, the commission shall maximize the number of competitive districts. Proposed C.R.S. § 2-1-102(1)(c). 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 #50.

Dated: October 17, 2017

Respectfully submitted,

s/ Benjamin J. Larson
Kelley B. Duke
Benjamin J. Larson
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717 Seventeenth Street, Suite 2800
Denver, Colorado 80202
E-mail: kduke@irelandstapleton.com
blarson@irelandstapleton.com

*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 17th 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

Benjamin J. Larson
Benjamin J. Larson

Ballot Title Setting Board

Proposed Initiative 2017-2018 #50¹

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

A change to the Colorado Revised Statutes concerning federal congressional redistricting, and, in connection therewith, establishing a congressional redistricting commission to perform the responsibility of the state legislature to redraw congressional boundaries following each federal census; specifying 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; establishing factors for the commission to use in drawing districts; requiring the commission to consider political competitiveness after all other factors; prohibiting drawing plans to purposefully advantage or disadvantage any political party or person; developing procedures to be followed by the commission, including requiring that the commission's work be done in public meetings and requiring nonpartisan staff of the commission to prepare and present plans; requiring the agreement of at least 8 of 12 commissioners to approve any action of the commission; and specifying procedures for the finalization and approval of a plan.

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

Shall there be A change to the Colorado Revised Statutes concerning federal congressional redistricting, and, in connection therewith, establishing a congressional redistricting commission to perform the responsibility of the state legislature to redraw congressional boundaries following each federal census; specifying 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; establishing factors for the commission to use in drawing districts; requiring the commission to consider political competitiveness after all other factors; prohibiting drawing plans to purposefully advantage or disadvantage any political party or person; developing procedures to be followed by

¹ Unofficially captioned "**Congressional Redistricting**" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

the commission, including requiring that the commission's work be done in public meetings and requiring nonpartisan staff of the commission to prepare and present plans; requiring the agreement of at least 8 of 12 commissioners to approve any action of the commission; and specifying procedures for the finalization and approval of a plan?

Hearing October 4, 2017:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 2:27 p.m.

Rehearing October 18, 2017:

Motion for Rehearing denied except to the extent that the Board made changes to the titles.

Hearing adjourned 3:00 p.m.

(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-MUST~~ 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. DATE FILED: October 25, 2017 3:29 PM

(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 ARTICLE 1, OR PARTICIPATING IN COMMUNICATIONS PROHIBITED UNDER THIS ARTICLE 1;

(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, ~~C.R.S.~~

(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, ~~C.R.S.~~ 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 CONGRESSIONAL 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, ~~C.R.S.~~, 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 2-1-102, OTHER THAN COMMISSION STAFF, IS A "PROFESSIONAL LOBBYIST" AS DEFINED IN SECTION 24-6-301(6), ~~C.R.S.~~, 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, ~~C.R.S.~~

(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.

2-1-105. Preparation, amendment, and approval of plans. (1) THE COMMISSION SHALL BEGIN BY CONSIDERING A PLAN CREATED BY ITS STAFF ALONE. WITHIN THIRTY DAYS AFTER THE COMMISSION HAS BEEN CONVENED, OR THE NECESSARY CENSUS DATA ARE AVAILABLE, WHICHEVER IS LATER, COMMISSION STAFF SHALL PUBLISH A PRELIMINARY REDISTRICTING PLAN.

(2) 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.

(3) 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.

(4) SUBSEQUENT TO HEARINGS ON THE PRELIMINARY PLAN, THE NONPARTISAN STAFF SHALL PREPARE, PUBLISH ONLINE, AND PRESENT TO THE COMMISSION NO FEWER THAN THREE PLANS. THESE PLANS WILL BE KNOWN AS THE STAFF PLANS AND MUST BE NAMED AND NUMBERED SEQUENTIALLY FOR PURPOSES OF SUBSECTION (7) OF THIS SECTION. STAFF PLANS MUST BE PREPARED, PUBLISHED

ONLINE, AND PRESENTED ON A TIMETABLE ESTABLISHED BY THE COMMISSION, EXCEPT EACH STAFF PLAN MUST 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 2-1-104 (9), 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.

(5) ANY COMMISSIONER OR GROUP OF COMMISSIONERS MAY REQUEST THE COMMISSION'S 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 (7) OF THIS SECTION.

(6) (a) NO LATER THAN SEPTEMBER 15 OF THAT SAME YEAR, THE COMMISSION SHALL ADOPT A FINAL PLAN, WHICH SHALL THEN BE SUBMITTED TO THE COLORADO SUPREME COURT FOR ITS REVIEW AND DETERMINATION IN ACCORDANCE WITH SUBSECTION (8) 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.

(7) IF FOR ANY REASON THE COMMISSION DOES NOT ADOPT A FINAL PLAN BY THE DATE SPECIFIED IN SUBSECTION (6) OF THIS SECTION, THE NONPARTISAN STAFF SHALL SUBMIT THE THIRD STAFF PLAN TO THE DISTRICT COURT. THE COURT MAY MAKE CHANGES TO THE PLAN SUBMITTED, BUT ONLY IF THE CHANGES IMPROVE COMPLIANCE WITH THE CRITERIA SPECIFIED IN SECTION 2-1-102. THE COURT MAY APPOINT A SPECIAL MASTER TO ASSIST THE COURT. NO LATER THAN OCTOBER 31, THE COURT SHALL APPROVE A CONGRESSIONAL REDISTRICTING PLAN, INCLUDING ITS FINDINGS REGARDING COMPLIANCE WITH THE CRITERIA SPECIFIED IN SECTION 2-1-102. UPON APPROVAL, THE COURT

SHALL SUBMIT ITS PLAN AND ITS FINDINGS TO THE COLORADO SUPREME COURT FOR REVIEW PURSUANT TO SUBSECTION (8) OF THIS SECTION.

(8) (a) THE SUPREME COURT SHALL REVIEW THE SUBMITTED PLAN AND DETERMINE WHETHER THE PLAN COMPLIES WITH SECTION 2-1-102. 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 SECTION 2-1-102.

(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 CONGRESSIONAL DISTRICTS NO LATER THAN NOVEMBER 15 IF THE COMMISSION SUBMITS A FINAL PLAN TO THE SUPREME COURT PURSUANT TO SUBSECTION (6) OF THIS SECTION, AND NO LATER THAN DECEMBER ~~30~~20 IF THE DISTRICT COURT SUBMITS A PLAN TO THE SUPREME COURT PURSUANT TO SUBSECTION (7) OF THIS SECTION. THE COURT SHALL ORDER THAT SUCH PLAN BE FILED WITH THE SECRETARY OF STATE NO LATER THAN SUCH DATE.

2-1-106. Severability. IF ANY PROVISION OF THIS ARTICLE 1 OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, SUCH INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS ARTICLE 1 THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS ARTICLE 1 ARE DECLARED TO BE SEVERABLE.

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SEP 22 2017 9:18A.M.

Colorado Secretary of State

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

SECTION 1. In Colorado Revised Statutes, **recreate and reenact, with amendments, 2-1-101** as follows:

2-1-101. Fair congressional districts for fair elections – legislative declaration. (1) THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE THAT, IN ORDER TO ENSURE FAIR CONGRESSIONAL REPRESENTATION, THE PRACTICE OF POLITICAL GERRYMANDERING, WHEREBY CONGRESSIONAL DISTRICTS ARE PURPOSEFULLY DRAWN TO FAVOR ONE POLITICAL PARTY OR INCUMBENT POLITICIAN OVER ANOTHER, OR TO ACCOMPLISH POLITICAL GOALS, MUST END.

(2) 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 CONGRESSIONAL DISTRICTS WITHOUT REGARD TO PARTISAN PRESSURES OR CONSIDERATIONS.

(3) 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.

(4) THE PEOPLE FURTHER FIND AND DECLARE THAT PUBLIC PARTICIPATION IN THE REDISTRICTING PROCESS IS A PRIORITY AND THAT THE INDEPENDENT CONGRESSIONAL 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.

SECTION 2. In Colorado Revised Statutes, 2-1-102, **amend (1); and add with amended and relocated provisions (2)** as follows:

2-1-102. Fair criteria for determinations of congressional districts. (1) ~~In determining whether one or more of the~~ ESTABLISHING congressional districts ~~established in accordance with section 44 of article V of the state constitution are lawful and in adopting or enforcing any change to any such district, courts~~ THE INDEPENDENT CONGRESSIONAL REDISTRICTING COMMISSION AND ITS STAFF SHALL:

(a) ~~Shall utilize the following factors:~~(I) MAKE a good faith effort to achieve precise mathematical population equality between districts, justifying each variance, no matter how small, as required by the constitution of the United States. Each district shall consist of contiguous whole general election precincts. Districts shall not overlap.

(II) ~~COMPLIANCE COMPLY~~ with the federal "Voting Rights Act of 1965", in particular ~~42 U.S.C. sec. 197352~~ U.S.C. sec. 10101; and

(III) NOT PREPARE ANY CONGRESSIONAL REDISTRICTING PLAN TO PURPOSEFULLY ADVANTAGE OR DISADVANTAGE ANY POLITICAL PARTY OR PERSON;

(b) ~~May, without weight to any factor, utilize~~ CONSIDER THE FOLLOWING factors, ~~including but not limited to~~ WITHOUT WEIGHT TO ANY FACTOR:

(I) The preservation of political subdivisions such as counties, cities, and towns. When county, city, or town boundaries are changed, adjustments, if any, in districts shall be as prescribed by law.

(II) The preservation of communities of interest, including RACIAL, ethnic, LANGUAGE GROUP, cultural, economic, trade area, geographic, and demographic factors; AND

(III) The compactness of each congressional district; and

(IV) ~~The minimization of disruption of prior district lines;~~

(c) AFTER ADHERING TO THE PROVISIONS OF SUBSECTION (1)(a) OF THIS SECTION AND AFTER CONSIDERING THE FACTORS LISTED IN SUBSECTION (1)(b) OF THIS SECTION, MAXIMIZE THE NUMBER OF POLITICALLY COMPETITIVE CONGRESSIONAL DISTRICTS.

(2) [Formerly 2-1-100.5] ~~The general assembly hereby finds and declares that~~ The state of Colorado shall be divided into districts pursuant to the official figures of the most recent decennial census of the United States. ~~The general assembly further finds and declares that~~ Such figures are the most reliable data that the state has available, and ~~that~~ the use of any other data or of any data adjustments may create a serious risk of inaccuracy and injustice in establishing congressional districts to represent the citizens of Colorado.

SECTION 3. Repeal of provision being relocated in this act. In Colorado Revised Statutes, repeal 2-1-100.5.

SECTION 4. In Colorado Revised Statutes, add 2-1-103, 2-1-104, 2-1-105, and 2-1-106 as follows:

2-1-103. Congressional districts – independent congressional redistricting commission - appointment. (1) THE RESPONSIBILITY OF THE GENERAL ASSEMBLY TO DIVIDE THE STATE INTO CONGRESSIONAL DISTRICTS ESTABLISHED IN ARTICLE V, SECTION 44 OF THE COLORADO CONSTITUTION SHALL BE CARRIED OUT BY AN INDEPENDENT COMMISSION TO BE KNOWN AS THE INDEPENDENT CONGRESSIONAL REDISTRICTING COMMISSION, WHICH IS HEREBY CREATED AND REFERRED TO IN THIS ARTICLE 1 AS THE “COMMISSION”.

(2) AFTER EACH FEDERAL CENSUS OF THE UNITED STATES, THE MEMBERS OF THE COMMISSION SHALL BE APPOINTED AND CONVENED AS PRESCRIBED IN THIS ARTICLE 1 TO DIVIDE THE STATE INTO AS MANY CONGRESSIONAL DISTRICTS AS THERE ARE REPRESENTATIVES IN CONGRESS APPORTIONED TO THIS STATE BY THE CONGRESS OF THE UNITED STATES FOR THE ELECTION OF ONE REPRESENTATIVE TO CONGRESS FROM EACH DISTRICT.

(3) 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 ARTICLE 1 AS THE “INDEPENDENT MEMBERS” OF THE COMMISSION OR THE “INDEPENDENT COMMISSIONERS”. THE INDEPENDENT MEMBERS SHALL BE APPOINTED IN ACCORDANCE WITH SUBSECTION (7) OF THIS SECTION.

(4) ALL COMMISSIONERS MUST BE REGISTERED ELECTORS OF THE STATE OF COLORADO. NO COMMISSIONER MAY BE AN INCUMBENT MEMBER OF CONGRESS OR A CANDIDATE FOR CONGRESS. NO COMMISSIONER MAY SERVE SIMULTANEOUSLY AS A MEMBER OF THE COLORADO REAPPORTIONMENT COMMISSION OR ANY SUCCESSOR BODY RESPONSIBLE FOR DIVIDING THE STATE INTO SENATORIAL AND REPRESENTATIVE DISTRICTS OF THE GENERAL ASSEMBLY.

(5) (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.

(6) 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 ARTICLE 1, 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 (6)(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 (6)(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 (6)(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.

(7)(a) THE FOUR INDEPENDENT MEMBERS OF THE COMMISSION SHALL BE SELECTED AS PROVIDED IN THIS SUBSECTION (7).

(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 OF STATE'S WEBSITE. NO LATER THAN APRIL 1, THE SECRETARY OF STATE SHALL EXAMINE EACH APPLICATION, ISSUE AN ELIGIBILITY FINDING WHETHER THE APPLICANT MEETS THE QUALIFICATION SPECIFIED IN SUBSECTIONS (3)(c) AND (4) OF THIS SECTION, POST THE FINDING ON THE SECRETARY OF STATE'S WEBSITE, AND NOTIFY THE APPLICANT BY ELECTRONIC MAIL OF THE SECRETARY OF STATE'S FINDING. IF THE SECRETARY OF STATE FINDS THAT AN APPLICANT IS NOT ELIGIBLE, THEN THE SECRETARY OF STATE SHALL INCLUDE THE REASONS THEREFOR IN HIS OR HER FINDING. IF THE SECRETARY OF STATE 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 OF STATE'S ELECTRONIC MAIL NOTIFICATION, WHICH STATEMENT SHALL BE POSTED PROMPTLY WITH THE SECRETARY OF STATE'S FINDING. IF AN APPLICANT SUBMITS A STATEMENT DISPUTING THE SECRETARY OF STATE'S FINDING OF INELIGIBILITY, THE APPLICANT MAY BE CONSIDERED BY THE PANEL IN ACCORDANCE WITH SUBSECTION (7)(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 MUST CONSIST OF THE THREE JUSTICES OR JUDGES WHO MOST RECENTLY RETIRED FROM THE COLORADO SUPREME COURT OR THE COLORADO COURT OF APPEALS, APPOINTED SEQUENTIALLY STARTING WITH THE MOST RECENT JUSTICE OR JUDGE TO RETIRE 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 JUSTICE OR JUDGE ALREADY APPOINTED TO THE PANEL. IF ANY OF THE THREE JUSTICES OR JUDGES WHO MOST RECENTLY RETIRED FROM THE COLORADO SUPREME COURT OR THE COLORADO COURT OF APPEALS 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 JUSTICE OR JUDGE WHO MOST RECENTLY RETIRED FROM THE COLORADO SUPREME COURT OR THE COLORADO COURT OF APPEALS AND WHO HAS NOT BEEN AFFILIATED WITHIN TWO YEARS PRIOR TO APPOINTMENT WITH THE SAME POLITICAL PARTY AS ANY JUSTICE OR JUDGE ALREADY APPOINTED TO THE PANEL. IF, AFTER CONSIDERING ALL JUSTICES AND JUDGES WHO HAVE RETIRED FROM THE COLORADO SUPREME COURT AND THE COLORADO COURT OF APPEALS, FEWER THAN THREE ELIGIBLE PARTICIPANTS FOR THE PANEL HAVE BEEN IDENTIFIED, THE SECRETARY OF STATE SHALL APPOINT THE MOST RECENTLY RETIRED DISTRICT COURT JUDGE WHO HAS NOT BEEN AFFILIATED WITHIN TWO YEARS PRIOR TO APPOINTMENT WITH THE SAME POLITICAL PARTY AS ANY PREVIOUS APPOINTEE TO THE PANEL AND WHO ACCEPTS SUCH APPOINTMENT. UPON REQUEST OF THE SECRETARY OF STATE, THE STATE COURT ADMINISTRATOR SHALL PROVIDE INFORMATION ABOUT JUSTICES AND JUDGES WHO RECENTLY RETIRED FROM THE COLORADO SUPREME COURT, THE COLORADO COURT OF APPEALS, AND THE STATE'S DISTRICT COURTS AS MAY BE NECESSARY FOR THE SECRETARY OF STATE TO PERFORM HIS OR HER DUTIES UNDER THIS SUBSECTION (7)(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 MUST NOT AFFECT A MEMBER'S SERVICE RETIREMENT BENEFITS UNDER ARTICLE 51 OF TITLE 24.

(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 (3)(c) AND (4) 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 (5) 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 (7)(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 (7)(h)(II) AND (7)(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 (7)(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 (7)(h)(II) OF THIS SECTION TOTALS FOUR. THESE APPLICANTS SHALL BECOME THE INDEPENDENT MEMBERS OF THE COMMISSION.

(8) FOLLOWING THE SELECTION OF THE INDEPENDENT MEMBERS AS PROVIDED IN SUBSECTION (7) 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.

(9) IF EITHER OF THE STATE'S TWO LARGEST POLITICAL PARTIES FAILS TO MAKE AN APPOINTMENT TO THE COMMISSION BY A DATE REQUIRED IN SUBSECTION (6) OR SUBSECTION (8) 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 2-1-104 (9).

(10) 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.

2-1-104. 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 DIRECTOR OF RESEARCH OF THE LEGISLATIVE COUNCIL AND THE DIRECTOR OF THE OFFICE OF LEGISLATIVE LEGAL SERVICES 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 DISTRICT COURT AND THE SUPREME COURT PURSUANT TO SECTION 2-1-105 (6) AND (7).

(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 MUST 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 ARTICLE 1, OR PARTICIPATING IN COMMUNICATIONS PROHIBITED UNDER THIS ARTICLE 1;

(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.

(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. 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 CONGRESSIONAL 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, 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 2-1-102, OTHER THAN COMMISSION STAFF, IS A "PROFESSIONAL LOBBYIST" AS DEFINED IN SECTION 24-6-301(6), 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.

(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.

2-1-105. Preparation, amendment, and approval of plans. (1) THE COMMISSION SHALL BEGIN BY CONSIDERING A PLAN CREATED BY ITS STAFF ALONE. WITHIN THIRTY DAYS AFTER THE

COMMISSION HAS BEEN CONVENED, OR THE NECESSARY CENSUS DATA ARE AVAILABLE, WHICHEVER IS LATER, COMMISSION STAFF SHALL PUBLISH A PRELIMINARY REDISTRICTING PLAN.

(2) 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.

(3) 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.

(4) SUBSEQUENT TO HEARINGS ON THE PRELIMINARY PLAN, THE NONPARTISAN STAFF SHALL PREPARE, PUBLISH ONLINE, AND PRESENT TO THE COMMISSION NO FEWER THAN THREE PLANS. THESE PLANS WILL BE KNOWN AS THE STAFF PLANS AND MUST BE NAMED AND NUMBERED SEQUENTIALLY FOR PURPOSES OF SUBSECTION (7) OF THIS SECTION. STAFF PLANS MUST BE PREPARED, PUBLISHED ONLINE, AND PRESENTED ON A TIMETABLE ESTABLISHED BY THE COMMISSION, EXCEPT EACH STAFF PLAN MUST 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 2-1-104 (9), 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.

(5) ANY COMMISSIONER OR GROUP OF COMMISSIONERS MAY REQUEST THE COMMISSION'S 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 (7) OF THIS SECTION.

(6) (a) NO LATER THAN SEPTEMBER 15 OF THAT SAME YEAR, THE COMMISSION SHALL ADOPT A FINAL PLAN, WHICH SHALL THEN BE SUBMITTED TO THE COLORADO SUPREME COURT FOR ITS REVIEW AND DETERMINATION IN ACCORDANCE WITH SUBSECTION (8) 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.

(7) IF FOR ANY REASON THE COMMISSION DOES NOT ADOPT A FINAL PLAN BY THE DATE SPECIFIED IN SUBSECTION (6) OF THIS SECTION, THE NONPARTISAN STAFF SHALL SUBMIT THE THIRD STAFF PLAN TO THE DISTRICT COURT. THE COURT MAY MAKE CHANGES TO THE PLAN SUBMITTED, BUT ONLY IF THE CHANGES IMPROVE COMPLIANCE WITH THE CRITERIA SPECIFIED IN SECTION 2-1-102. THE COURT MAY APPOINT A SPECIAL MASTER TO ASSIST THE COURT. NO LATER THAN OCTOBER 31, THE COURT SHALL APPROVE A CONGRESSIONAL REDISTRICTING PLAN, INCLUDING ITS FINDINGS REGARDING COMPLIANCE WITH THE CRITERIA SPECIFIED IN SECTION 2-1-102. UPON APPROVAL, THE COURT SHALL SUBMIT ITS PLAN AND ITS FINDINGS TO THE COLORADO SUPREME COURT FOR REVIEW PURSUANT TO SUBSECTION (8) OF THIS SECTION.

(8) (a) THE SUPREME COURT SHALL REVIEW THE SUBMITTED PLAN AND DETERMINE WHETHER THE PLAN COMPLIES WITH SECTION 2-1-102. 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 SECTION 2-1-102.

(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 CONGRESSIONAL DISTRICTS NO LATER THAN NOVEMBER 15 IF THE COMMISSION SUBMITS A FINAL PLAN TO THE SUPREME COURT PURSUANT TO SUBSECTION (6) OF THIS SECTION, AND NO LATER THAN DECEMBER 20 IF THE DISTRICT COURT SUBMITS A PLAN TO THE SUPREME COURT PURSUANT TO SUBSECTION (7) OF THIS SECTION. THE COURT SHALL ORDER THAT SUCH PLAN BE FILED WITH THE SECRETARY OF STATE NO LATER THAN SUCH DATE.

2-1-106. Severability. IF ANY PROVISION OF THIS ARTICLE 1 OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, SUCH INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS ARTICLE 1 THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS ARTICLE 1 ARE DECLARED TO BE SEVERABLE.



**Colorado
Legislative
Council
Staff**

Initiative # 50

**INITIAL FISCAL
IMPACT STATEMENT**

Date: October 4, 2017

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

LCS TITLE: CONGRESSIONAL REDISTRICTING

Fiscal Impact Summary	FY 2018-19	FY 2020-21	FY 2021-2022
State Revenue			
State Expenditures	<u>\$0</u>	<u>\$158,823</u>	<u>\$499,385</u>
General Fund	0	158,823	\$499,385

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

Each state is granted representatives in the U.S. Congress based on the state's share of the total U.S. population. Every ten years following the U.S. Census, the state's congressional districts must be redrawn so that each district has equal population. Currently in Colorado, the General Assembly is responsible for dividing the state into congressional districts. This initiative creates the Independent Congressional Redistricting Commission (Commission) and requires the commission to create an equal congressional redistricting plan, thus removing this responsibility from the General Assembly.

Commission membership and 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 of 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 retired justices or 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, filling a vacancy, and the process for recommending redistricting plan changes to staff, and it 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 is to 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 congressional plan review and approval. The Commission must be convened by the Governor no later than May 15th in the redistricting year. Staff must prepare at least three congressional district plans to be published online and presented to the Commission. The Commission staff must publish a preliminary redistricting plan within 30 days of the convening of the Commission or publishing of the U.S. Census data, whichever is later. Within 45 days of publishing the preliminary plan, the Commission must hold statewide public hearings. 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.

The Commission must adopt a final plan by September 15 and must submit the final plan to the Colorado Supreme Court for review. If the Commission does not adopt a final plan, the third staff plan is submitted to the district court for review and approval. Following district court approval, the Supreme Court can then approve the plan or return the plan to the Commission with instructions for submitting a revised plan. The Supreme Court must adopt a final plan by December 20, 2021 and file the plan with the SOS

State Expenditures

Based on the estimated cost of congressional redistricting under current law, **Initiative 50 is expected to increase state General Fund expenditures for congressional redistricting by \$158,823 in FY 2020-21 and \$499,385 in FY 2021-22.** In addition, Judicial Department workload is potentially increased. These impacts are shown in Table 1 and described below.

Cost Components	FY 2018-19	FY 2020-21	FY 2021-22
Personal Services	-	(\$11,508)	\$271,139
FTE	-	(0.5 FTE)	2.3 FTE
Operating Expenses and Capital Outlay Costs	-	3,625	7,711
Travel and Per Diem	-	39,163	117,489
Professional Services/Legal Services	-	51,756	129,390
Computer Equipment and Software	-	50,139	26,548
Retired Judge/Justice Application Panel	-	15,876	0
Special Session	-	0	(125,000)
Benefits and Leased Space	-	9,772	72,108
TOTAL	-	\$158,823	\$499,385

Personal Services. Under current law, congressional redistricting plans are prepared by the General Assembly with nonpartisan legislative staff support during the legislative session (January to May). Under current law, for FY 2020-21, it is estimated that 1.7 FTE are needed. Under Initiative 50, in FY 2020-21, 1.2 FTE are needed. This results in an overall reduction of 0.5 FTE and associated costs in FY 2020-21. Under Initiative 50, in FY 2021-22, additional staff are needed due to the requirement that staff draw the congressional redistricting plans and provide staff support to this newly created commission. This requires 2.3 FTE for four months in FY 2021-22. This work includes legal, research, program assistance, and GIS staff and associated operating and capital outlay costs shown in Table 1.

Travel and per diem. Under current law, it is assumed that an interim committee will hold public meetings regarding the redistricting plan. By creating an independent commission that must hold meetings in each district, funds are needed to pay for travel expense reimbursements and per diem for staff and commission members. Under Initiative 50, costs increase for additional meetings compared to current reapportionment costs and for additional staff to attend the meetings.

Professional/legal services. Professional and legal consultation may be sought during the drawing of congressional redistricting plans under Initiative 50. This includes legal support concerning rulemaking, open records requests, and for redistricting plans.

Computer equipment and software. The initiative will require additional, laptops, GIS and mapping software, printers and printing costs, projectors, and a server required for staff to develop the redistricting plans. Computer equipment costs are expected to increase by \$50,139 in FY 2020-21 compared with the current process due to staff computer hardware and software needs and \$26,548 in FY 2021-22 due to printing costs.

Retired judge/justice panel. Under Initiative 50, the Secretary of State is required to form and pay for the expenses of a panel of three retired judges or justices to review the independent commissioner applications. This increases costs 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.

Initiative # 50

Special Session. Under current law, it is assumed a special legislative session will be held in 2021 to pass the congressional redistricting plan prior to the start of the 2022 election cycle. A special session costs \$25,000 per day and five days are assumed. Under Initiative 50, the plan will be approved by the Commission and no special session is required, resulting in a savings of \$125,000.

Judicial Department. Under Initiative 50, if the Commission fails to approve a plan and submit it to the Supreme Court, the third staff plan is submitted to the district court. This potentially increases district court workload in the Judicial Department in FY 2021-22 to review and approve a congressional redistricting plan. Under current law, court intervention may occur if the General Assembly fails to approve a congressional redistricting plan. Therefore any increase in district court workload is expected to be minimal and will not require additional appropriations.

Employee benefits and leased space. Employee benefits and leased space for staff are estimated to cost \$9,772 in FY 2020-21 and \$72,108 in FY 2021-22. This includes health, life, and dental insurance and six 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	Legislative Council
Judicial	Secretary of State

Abstract of Initiative 50: Congressional 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 and the abstract will be included in the ballot information booklet that is prepared for the initiative.

State expenditures. Overall Initiative 50 increases state expenditures by creating the Independent Congressional Redistricting Commission and the shifting the responsibility of drawing congressional district plans every ten years from the General Assembly to the newly created commission. Overall, this shift in responsibilities is expected to increase state expenditures by \$158,823 FY 2020-21 and \$449,385 in FY 2021-22.

Ballot Title Setting Board

Proposed Initiative 2017-2018 #50¹

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

A change to the Colorado Revised Statutes concerning federal congressional redistricting, and, in connection therewith, establishing a congressional redistricting commission to perform the responsibility of the state legislature to redraw congressional boundaries following each federal census; specifying 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; establishing criteria to be used in drawing districts, including political competitiveness; prohibiting drawing plans to purposefully advantage or disadvantage any political party or person; developing procedures to be followed by the commission, including requiring that the commission's work be done in public meetings and requiring nonpartisan staff of the commission to prepare and present plans; requiring the agreement of at least 8 of 12 commissioners to approve any action of the commission; and specifying procedures for the finalization and approval of a plan.

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

Shall there be a change to the Colorado Revised Statutes concerning federal congressional redistricting, and, in connection therewith, establishing a congressional redistricting commission to perform the responsibility of the state legislature to redraw congressional boundaries following each federal census; specifying 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; establishing criteria to be used in drawing districts, including political competitiveness; prohibiting drawing plans to purposefully advantage or disadvantage any political party or person; developing procedures to be followed by the commission, including requiring that the commission's work be done in public meetings and requiring nonpartisan staff of the commission to prepare and present

¹ Unofficially captioned "Congressional Redistricting" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

plans; requiring the agreement of at least 8 of 12 commissioners to approve any action of the commission; and specifying procedures for the finalization and approval of a plan?

Hearing October 4, 2017:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 2:27 p.m.

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Robert David DuRay and Katina Banks, Objectors

vs.

Kathleen Curry and Toni Larson, Proponents.

RECEIVED S. WARD
OCT 11 2017 2:15 P.M.

Colorado Secretary of State

MOTION FOR REHEARING ON INITIATIVE 2017-2018 #50

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 #50 ("Colorado Redistricting Commission").

The Title Board set a title for #50 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 a change to the Colorado Revised Statutes concerning federal congressional redistricting, and, in connection therewith, establishing a congressional redistricting commission to perform the responsibility of the state legislature to redraw congressional boundaries following each federal census; specifying 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; establishing criteria to be used in drawing districts, including political competitiveness; prohibiting drawing plans to purposefully advantage or disadvantage any political party or person; developing procedures to be followed by the commission, including requiring that the commission's work be done in public meetings and requiring nonpartisan staff of the commission to prepare and present plans; requiring the agreement of at least 8 of 12 commissioners to approve any action of the commission; and specifying procedures for the finalization and approval of a plan?

I. Initiative #50 violates the Constitution's single subject requirement.

A. Initiative #50 converts the Supreme Court's appellate review to a de novo trial on the merits before the Court.

Initiative #50 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 #50 states:

The Supreme Court shall review the submitted plan and determine whether the plan complies with section 2-1-102. 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 section 2-1-102.**

Proposed C.R.S. § 2-1-105(8)(a) (emphasis added). Thus, parties will now be able to produce and present "any" new evidence to sustain the map 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 congressional redistricting plan is firmly established. The Supreme Court will “apply an abuse of discretion standard” to determine if the lower court drew district lines that are “manifestly unreasonable, arbitrary, or unfair.” *Hall v. Moreno*, 2012 CO 14 ¶54 (Colo. 2011). In its review, the Court assesses the proceedings below only to determine if the lower court’s “findings are supported by the record.” *Id.* at ¶100. The Court will not address an argument about a map’s district lines if “the record is inadequate for any conclusion to be reached” concerning its merits. *Beauprez v. Avalos*, 42 P.3d 642, 650 (Colo. 2002).

That limit on judicial consideration of evidentiary matters will be obliterated. Instead, Initiative #50 expands the Court’s role to provide for the “production and presentation” of “any” evidence to justify a map’s district lines. Proposed C.R.S. § 2-1-105(8)(a).

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. Initiative #50 sets a new condition on eligibility to serve in federal office service – non-membership on the redistricting commission.

Initiative #50 prohibits “an incumbent member of congress or a candidate for congress” from also serving as a member of the redistricting commission. Proposed C.R.S. § 2-1-105(4). It thus seeks to change the qualifications for members of the U.S. House of Representatives and U.S. Senators, as both are members of “congress.”¹

The qualifications to serve in Congress are beyond the reach of the state’s voters. It was “the Framers’ intent that neither Congress nor the States should possess the power to supplement the exclusive qualifications set forth in the text of the Constitution.” *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 827 (1995). Those qualifications relate to age (at least 25 for a member of the House and at least 30 for a member of the Senate), citizenship (at least 7 years for a member of the House and at least 9 years for a member of the Senate), and residence in the state

¹ Article 1, § 1 of the United States Constitution provides that all legislative power is vested in “a congress of the United States, which shall consist of a Senate and a House of Representatives.”

to be represented. U.S. Const., art. I, § 2, cl. 2; § 3, cl. 3. The attempt to add to any other qualification, including non-service on a state's redistricting commission, is a separate subject that violates Colo. Const., Article V, § 1(5.5).

Adding changes to the qualifications of a governmental official to hold office is clearly its own subject. *In re Title for 1999-2000 #104*, 987 P.2d 249, 257 (Colo. 1999) (qualifications of appointed judges was a subject separate from qualification of executive branch officials who perform a function related to the judiciary, the judicial performance commission). Here, changing the eligibility criteria for a person to be a candidate or member of Congress does not run clearly and necessarily from a measure about the procedures by which congressional district lines are drawn.

Moreover, because a state has no power to limit the qualifications to be satisfied in order to serve in federal elective office or to run for federal elective office, this provision has no actual function except to serve as an artificial lure to voters. A proposed initiative does not pass the single subject test where it includes provisions that promote "uninformed voting" on a lengthy or complex initiative. *In re Title for "Public Rights in Waters II,"* 898 P.2d 1076, 1079 (Colo. 1995). Bait-and-switch provisions that obfuscate other elements of an initiative were one of the drafting techniques that the single subject requirement was intended to avoid. *Id.* Thus, this provision represents a prohibited second subject.

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 political parties serving as the 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 C.R.S. § 2-1-103(3)(a), (b) (appointing authority is either party chairperson or party leadership, whatever is authorized by parties' own 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.² They are counting on the Title Board's silence on this issue, as exemplified by their tactical use of anti-political party rhetoric:

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

- “Our citizen initiatives take map drawing out of the hands of political insiders....”³
- “It’s time that Colorado communities, not politicians, draw their districts.”⁴
- “[P]oliticians and political appointees must be removed from the redistricting process....”⁵
- “Political parties or incumbents sometimes draw district lines for their own benefit at the expense of proportionality and fair representation.”⁶
- “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.”⁷

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.”⁸ If that’s not a sign that voters and petition signers need more information about #50 – 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 about redistricting.

Further, Proponents even state that the entire issue of redistricting is “weird and wonky.”⁹ 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 #50 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 #50 has a provision that “includes” competitiveness in the criteria to be used. In truth, competitiveness is applied only “after” all other criteria are either met or considered. Proposed C.R.S. § 2-1-102(1)(c). In other words, competitiveness within districts may never actually be utilized by the commission under #50.

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

⁴ See footnote 3.

⁵ <http://fairdistrictscolorado.org/the-solution/> (last viewed October 10, 2017) (attached).

⁶ <http://fairdistrictscolorado.org/faq/> (last viewed October 10, 2017) (attached).

⁷ See footnote 3.

⁸ See footnote 3.

⁹ 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 #50, competitiveness is no more likely to be used for district line drawing than it is under current Supreme Court doctrine which embraces competitiveness as a redistricting criterion. *Moreno, supra*, 2012 CO 14 at ¶52 (“consideration of competitiveness is consistent with the ultimate goal of maximizing fair and effective representation”).

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 #50.

RESPECTFULLY SUBMITTED this 11th day of October, 2017.

RECHT KORNFELD, P.C.



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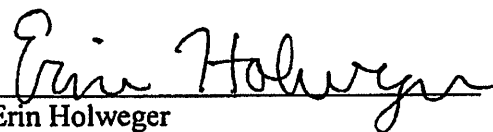
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CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the MOTION FOR REHEARING ON INITIATIVE 2017-2018 #50 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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