

Final
STAFF SUMMARY OF MEETING

COMMITTEE ON JOINT SELECT COMMITTEE ON REDISTRICTING

Date:	01/26/2011	ATTENDANCE
Time:	04:05 PM to 05:07 PM	Brophy X
Place:	SCR 356	Carroll X
		Coram X
		Nikkel X
This Meeting was called to order by		Pabon X
<u>Representative Balmer</u>		Scheffel X
		Schwartz *
This Report was prepared by		Vigil X
<u>Christie Lee</u>		Balmer X
		Heath *

X = Present, E = Excused, A = Absent, * = Present after roll call

Bills Addressed:	Action Taken:
Discussion of Logistics	Witness Testimony and/or Committee Discussion Only
Congressional Redistricting Overview	Witness Testimony and/or Committee Discussion Only

04:05 PM -- Discussion of Logistics

Representative Balmer called the committee to order and explained that Co-chair Heath was still chairing his other committee, Senate State Affairs. He talked about holding one of the congressional district hearings in Grand Junction rather than in Glenwood Springs. Senator Carroll talked about swapping Grand Junction for Glenwood Springs as opposed to adding both. Representative Balmer stated that he believes there should not be four meetings in Congressional District 3, when there are no more than two being held in any other district. He explained that staff would assist the members in arranging travel. Representative Pabon talked about a conflict the Democrats have with the March 5 hearing in Colorado Springs. Representative Balmer said that he would discuss moving that meeting with Senator Heath. Representative Balmer also announced that the software training for members and staff would be held on February 15 and 16, from 5 to 9 p.m.

04:12 PM -- Congressional Redistricting Overview

Jeremiah Barry, Office of Legislative Legal Services, gave a presentation on redistricting and distributed a handout (Attachment A). He talked about the differences between redistricting and reapportionment. Mr. Barry explained the ideal district size, which in Colorado would be three districts of 718,456 people and four districts of 718,457 people. Mr. Barry explained the law surrounding reapportionment, which was provided in the handout, and mentioned that Colorado was about 200,000 people short of picking up an eighth seat following the 2010 census.

04:26 PM

Mr. Barry talked about the courts' involvement in redistricting and case law, including the case *Baker v. Carr*, 369 U.S. 186 (1962), and other cases listed on page two of the handout. He explained that of the 43 states that had more than one congressional district, 17 had an overall population deviation among districts of between 0 and 1 person.

04:33 PM

Mr. Barry talked about the Reapportionment Commission that is created in the state constitution and further outlined beginning on page four of the handout.

04:38 PM

Mr. Barry explained the various laws that apply to redistricting provided on page six of the handout. He discussed the Voting Rights Act and gerrymandering, and explained the concepts of stacking, packing, and fracturing. Mr. Barry explained that the only federal law the committee needs to be concerned about is equalizing population among the districts. However, he stated that traditional redistricting principles should be followed and explained the following traditional principles:

- districts should be contiguous;
- county and/or municipal boundaries should be preserved (the courts have decided that a county should be preserved over a municipality if there is a discrepancy);
- districts should be compact;
- communities of interest must be preserved; and
- the number of politically competitive districts should be protected.

He briefly discussed the traditional redistricting principals in other states that are not used in Colorado, including the preservation of core districts and the protection of incumbents.

05:02 PM

Mr. Barry showed some examples of districts in other states. Representative Balmer asked Mr. Barry to talk about single point contiguity. Senator Schwartz asked about water. Mr. Barry responded.

05:07 PM

Senator Heath apologized for being in committee at the beginning and the committee adjourned.

**BACKGROUND ON CONGRESSIONAL
REDISTRICTING IN COLORADO
PART I**

I. DEFINITIONS

- a. "Reapportionment" means the allocation of seats in a legislative body (such as Congress) between established districts (such as states) where the district boundaries do not change, but the number of members per district does.
- b. "Redistricting" means the drawing of new political district boundaries.
- c. "Ideal district size" means the total population divided by the number of districts.
- d. "Deviation" means the difference from that ideal district size.
- e. "Overall range of deviation" means the difference in population from the largest to the smallest district expressed as either an absolute or a percentage.

II. REAPPORTIONMENT

2 U.S.C. sec. 2a: "the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions, no State to receive less than one Member."

Massachusetts v. Mosbacher, 785 F. Supp. 230 (D. Mass. 1992), rev'd *Franklin v. Massachusetts*, 505 U.S. 788 (1992)

President not an "agency" for purposes of Administrative Procedures Act. Counting overseas military personnel at their "usual residence" not inconsistent with text and history of census.

Utah v. Evans, 143 F. Supp. 2d 1290 (D. Utah 2001), aff'd 536 U.S. 452 (2002)

Counting federal employees living overseas while not counting missionaries living overseas did not violate the Free Exercise Clause or the Religious Freedom Restoration Act. The decision to include only federal employees living overseas was a rational exercise of the Secretary of Commerce's discretion.

III. REDISTRICTING

a. Why do we have to do it?

i. State Constitution

Article V, Section 44. Representatives in congress. The general assembly shall 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. **When a new apportionment shall be made by congress, the general assembly shall divide the state into congressional districts accordingly.**

ii. Case law

Baker v. Carr, 369 U.S. 186 (1962)

A state statute on apportionment that deprived plaintiffs of equal protection of the laws in violation of the Fourteenth Amendment presented a justiciable constitutional cause of action, and the right asserted was within reach of judicial protection under the Fourteenth Amendment, and did not present a nonjusticiable political question.

Gray v. Sanders, 372 U.S. 368 (1963)

"The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing-one person, one vote."

Reynolds v. Sims, 377 U.S. 533 (1964)

In drawing legislative districts, the "overriding objective must be substantial equality of population among the various districts, so that the vote of any citizens is approximately equal in weight to that of any other citizen in the State."

Wesberry v. Sanders, 376 U.S. 1 (1964)

The population of congressional districts in the same state must be as nearly equal in population as practicable.

White v. Regester, 412 U.S. 755 (1973)

Insofar as the District Court's judgment rested on the conclusion that the population differential [percentage deviation] of 9.9% ... made out a prima facie equal protection violation under the Fourteenth Amendment, absent special justification, the court was in error.

Larios v. Cox, 300 F. Supp. 2d 1320 (N.D.Ga. 2004), *aff'd* 542 U.S. 947 (2004)

State legislative reapportionment plans, which deviated from population equality by a total of 9.98%, were tainted by arbitrariness or discrimination, and no legitimate, consistently applied state policies justified such deviations, and therefore plans violated one person, one vote principle under the Equal Protection Clause; plans intentionally and systematically underpopulated certain districts, based on their location, for partisan advantage, while correspondingly overpopulating other districts, and underpopulated the districts held by incumbents of one party while pitting incumbents of the other party against each other.

b. Who does it?

i. State legislative districts - Reapportionment Commission

Article V, Section 48. Revision and alteration of districts - reapportionment commission. (1) (a) After each federal census of the United States, the senatorial districts and representative districts shall be established, revised, or altered, and the members of the senate and the house of representatives apportioned among them, by a Colorado reapportionment commission consisting of eleven members, to be appointed and having the qualifications as prescribed in this section. Of such members, four shall be appointed by the legislative department, three by the executive department, and four by the judicial department of the state.

(b) The four legislative members shall be the speaker of the house of representatives, the minority leader of the house of representatives, and the majority and minority leaders of the senate, or the designee of any such officer to serve in his or her stead, which acceptance of service or designation shall be made no later than April 15 of the year following that in which the federal census is taken. The three executive members shall be appointed by the governor between April 15 and April 25 of such year, and the four judicial members shall be appointed by the chief justice of the Colorado supreme court between April 25 and May 5 of such year.

(c) Commission members shall be qualified electors of the state of Colorado. No more than four commission members shall be members of the general assembly. No more than six commission members shall be affiliated with the same political party. No more than four commission members shall be residents of the same congressional district, and each congressional district shall have at least one resident as a commission member. At least one commission member shall reside west of the continental divide.

(d) Any vacancy created by the death or resignation of a member, or otherwise, shall be filled by the respective appointing authority. Members of the commission shall hold office until their reapportionment and redistricting plan is implemented. No later than May 15 of the year of their appointment, the governor shall convene the commission and appoint a temporary chairman who shall preside until the commission elects its own officers.

(e) Within one hundred thirteen days after the commission has been convened or the necessary census data are available, whichever is later, the commission shall publish a preliminary plan for reapportionment of the members of the general assembly and shall hold public hearings thereon in several places throughout the state within forty-five days after the date of such publication. No later than one hundred twenty-three days prior to the date established in statute for precinct caucuses in the second year following the year in which the census was taken or, if the election laws do not provide for precinct caucuses, no later than one hundred twenty-three days prior to the date established in statute for the event

commencing the candidate selection process in such year, the commission shall finalize its plan and submit the same to the Colorado supreme court for review and determination as to compliance with sections 46 and 47 of this article. Such 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; except that the final submission must be made no later than ninety days prior to the date established in statute for precinct caucuses in the second year following the year in which the census was taken or, if the election laws do not provide for precinct caucuses, no later than ninety days prior to the date established in statute for the event commencing the candidate selection process in such year. The supreme court shall either approve the plan or return the plan and the court's reasons for disapproval to the commission. If the plan is returned, the commission shall revise and modify it to conform to the court's requirements and resubmit the plan to the court within the time period specified by the court. The supreme court shall approve a plan for the redrawing of the districts of the members of the general assembly by a date that will allow sufficient time for such plan to be filed with the secretary of state no later than fifty-five days prior to the date established in statute for precinct caucuses in the second year following the year in which the census was taken or, if the election laws do not provide for precinct caucuses, no later than fifty-five days prior to the date established in statute for the event commencing the candidate selection process in such year. The court shall order that such plan be filed with the secretary of state no later than such date. The commission shall keep a public record of all the proceedings of the commission and shall be responsible for the publication and distribution of copies of each plan.

(f) The general assembly shall appropriate sufficient funds for the compensation and payment of the expenses of the commission members and any staff employed by it. The commission shall have access to statistical information compiled by the state or its political subdivisions and necessary for its reapportionment duties.

ii. Congressional districts - General Assembly or Court

Article V, Section 44. Representatives in congress. The general assembly shall 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. When a new apportionment shall be made by congress, the general assembly shall divide the state into congressional districts accordingly.

c. What laws apply?

- i. U. S. Constitution Fourteenth Amendment Sec. 2 - "Representatives shall be apportioned among the several states according to their respective numbers, . . ."
- ii. U.S. Constitution Fourteenth Amendment Sec. 1, "nor shall any state . . . deny to any person within its jurisdiction the equal protection of the law."
- iii. Voting Rights Act of 1965, 42 U.S.C. secs. 1971, 1973 to 1973bb-1

42 U.S.C. § 1973. Denial or abridgement of right to vote on account of race or color through voting qualifications or prerequisites; establishment of violation

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b (f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

42 U.S.C. § 1973b. Suspension of the use of tests or devices in determining eligibility to vote

(f) Congressional findings of voting discrimination against language minorities; prohibition of English-only elections; other remedial measures

(1) The Congress finds that voting discrimination against citizens of language minorities is pervasive and national in scope. Such minority citizens are from environments in which the dominant language is other than English. In addition they have been denied equal educational opportunities by State and local governments, resulting in severe disabilities and continuing illiteracy in the English language. The Congress further finds that, where State and local officials conduct elections only in English, language minority citizens are excluded from participating in the electoral process. In many areas of the

country, this exclusion is aggravated by acts of physical, economic, and political intimidation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting English-only elections, and by prescribing other remedial devices.

(2) No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote because he is a member of a language minority group.

d. What other criteria might be applied - traditional redistricting principles

i. Colorado constitutional provisions for state legislative districts

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

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

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

ii. 1991 Reapportionment Commission criteria

Preservation of politically competitive districts

iii. Other states

- a. Preservation of core districts
- b. Protection of incumbents