

<p>SUPREME COURT, STATE OF COLORADO</p> <p>101 West Colfax Avenue, Suite 800 Denver, Colorado 80202</p>	
<p>Original Proceeding Pursuant to the Colorado Rules for Reapportionment Proceedings</p>	<p>▲ COURT USE ONLY ▲</p>
<p>IN RE REAPPORTIONMENT OF THE COLORADO GENERAL ASSEMBLY</p>	<p>Case No. 11SA282</p>
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<p>BRIEF IN SUPPORT OF RESUBMITTED PLAN</p>	

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I. INTRODUCTION

The Colorado Reapportionment Commission ("Commission") submits the following brief in support of the Resubmitted Plan for Districts for the Senate and House of Representatives ("Resubmitted Plan"). The Resubmitted Plan is consistent with the Opinion of the Colorado Supreme Court in this matter issued November 15, 2001 ("Opinion") and should be approved by the Court for the reasons stated herein, particularly as the Resubmitted Plan meets all relevant constitutional criteria.

II. THE RESUBMITTED PLAN IS CONSTITUTIONAL AND SHOULD BE APPROVED BY THIS COURT

A. The Court's Holding, Directions on Remand and the Commission's Compliance Therewith

In the Opinion, the Court held that the "Adopted Plan is not sufficiently attentive to county boundaries to meet the requirements of article V, section 47 (2)" and that "the Commission has not made an adequate showing that a less drastic alternative could not have satisfied the equal population requirement of article V, section 46." *In re Reapportionment of the Colorado General Assembly*, No. 11SA282 (Colo. Nov. 15, 2011), the Court returned the Adopted Plan to the Commission "for further consideration, modification, and resubmission with supporting materials... ." *Id.* at 12.

The Court recognized that "redrawing districts to minimize county and city splits may well require adjustments to other district boundaries," but made clear

that it is for the Commission, not the Court to redraw the apportionment map. *Id.* at 12-13. The Court directed the Commission to “determine how to formulate a plan that complies with article V, sections 46 and 47, in accordance with the guidance offered on remand in our 2002 opinion.” *See In re Reapportionment 2002*, 45 P.3d at 1254.” *Id.* at 13. As the Court stated in that opinion:

Our role in this proceeding is a narrow one: to measure the present reapportionment plan against the constitutional standards. The choice among alternative plans, each consistent with constitutional requirements, is for the Commission and not the Court. Issues concerning compactness, communities of interest, and which plan is preferred by a certain group of citizens, must remain within the scope of the Commission’s discretion. We do not redraw the reapportionment map for the Commission. *Id.* at 1253.

B. The Resubmitted Plan is Sufficiently Attentive to County Boundaries and Minimizes City Splits in Colorado Springs

1. Assignment of Whole Districts

In *In re Reapportionment 2002*, the Court stated: “On remand, the Commission must start with whole district assignment to counties that qualify for them.” 45 P.3d 1237, 1254 (Colo. 2002). The Commission has done so, as the chart below demonstrates.¹

¹ The Commission was advised of one error in the chart on page 5 of the Resubmitted Plan. For Weld County, the original Adopted Plan contained 2 whole districts and the Resubmitted Plan contains 3. Upon further examination, several of the numbers under the Adopted Plan Column were incorrect. This chart properly reflects the number of whole districts in both the Adopted and the Resubmitted Plans.

Senate				
County	Population	Pop/Ideal Dist	Adopted Plan	Resubmitted Plan
Adams	441,603	3.07	3	3
Arapahoe	565,298*	3.93	3	4
Boulder	294,567	2.05	2	2
Denver	600,158	4.18	4	4
Douglas	285,465	1.99	2	2
El Paso	622,263	4.33	4	4
Jefferson	534,543	3.72	3	3
Larimer	299,630	2.09	2	2
Mesa	146,723	1.02	1	1
Pueblo	159,063	1.11	1	1
Weld	252,825	1.76	1	1
*572,003 less 6,705 for enclaves within Denver				

House				
County	Population	Pop/Ideal Dist	Adopted Plan	Resubmitted Plan
Adams	441,603	5.17	5	5
Arapahoe	565,298*	7.31	6	7
Boulder	294,567	3.81	3	3
Denver	600,158	7.67	8	8
Douglas	285,465	3.69	3	3
El Paso	622,263	8.04	8	8
Jefferson	534,543	6.91	6	7
Larimer	299,630	3.87	3	3
Mesa	146,723	1.90	1	1
Pueblo	135,815**	1.76	1	1
Weld	252,825	3.27	2	3
*572,003 less 6,705 for enclaves within Denver				
**159,063 less 23,248 assigned to HD 62 to make Hispanic majority district				

No alternative plans presented to the Commission² created more whole districts within counties than the Resubmitted Plan. Affidavit of Jeremiah Barry, attached hereto as Exhibit 1, at ¶ 1.

2. County and City Divisions

Next, the Court stated: “When necessary to meet equal population requirements, the Commission may make county and city divisions.” *Id.* The

² For the Senate five plans and one amended plan were submitted to the Commission on remand, and for the House seven plans and two amended plans were submitted to the Commission.

Commission has minimized county divisions, as the charts below show. The Resubmitted Plan in the Senate contained ten counties that included more than one district, one county less than was approved in 2002.

Senate	
Plan	Total Number of Counties Containing More than One Senate District
2002 Approved Plan	11
Senate Resubmitted Plan Bv1	10
Senate Resubmitted Plan Cv2	10
Senate Resubmitted Plan Dv1	10
Resubmitted Plan	10

No plan reviewed by the Commission contained fewer than ten counties that included more than one district. In the House, the Resubmitted Plan contained 14 counties that included more than one district, whereas the 2002 approved plan had 17 such counties.³ Barry Affidavit at ¶2.

³As discussed more below, the Commission was operating under a schedule that provided that no new plans or amendments to plans were to be considered at its final meeting on November 29, 2011. At its final meeting on November 29, 2011, the Commission received a plan, Plan Gv1, that contained one fewer county division. First, as described below, this plan was not timely filed. Moreover, as discussed below, as that plan splits the Hispanic population of the San Luis Valley it does not satisfy the requirement to create a Hispanic majority district in the San Luis Valley.

House	
Plan	Total Number of Counties Containing More than One House District
2002 Approved Plan	17
House Resubmitted Plan Av3	15
House Resubmitted Plan Bv1	15
House Resubmitted Plan Cv1	15
House Resubmitted Plan Dv2	15
Resubmitted Plan	14
Plan Gv1	13

The Readopted Plan minimizes the splits of Colorado Springs in response to the objections acknowledged by the Court. The population of Colorado Springs is contained in four Senate Districts and six House Districts. No plan submitted to the Commission contained the population of Colorado Springs in fewer districts. Barry Affidavit at ¶3.

In addition to reducing the number of city splits in Colorado Springs in the House, the Resubmitted Plan eliminated city splits in Lafayette and in Grand Junction that were present in the Adopted Plan. Also, in the House in Arapahoe County, the Resubmitted Plan reduced the splits of Centennial from three to two and the splits of Aurora from six to five. Barry Affidavit at ¶4.

C. Response to Specific Objections to Adopted Plan

In the Opinion, the Court stated that it agreed with the “common theme” of the objections filed to the Adopted Plan that it was “not sufficiently attentive to county boundaries, and because it failed to minimize city splits in Colorado Springs.” Opinion at 10. Other than the Commission’s drawing of districts in Aurora, the Court did not expressly address any particular objection. In footnotes, the Court set forth the districts to which objections were raised. Opinion at 5, n. 1 and 2. Below, the Commission discusses how the Resubmitted Plan addresses those objections.

1. Senate Plan

Senate Districts 9-12

These four districts, within El Paso County, include portions of the City of Colorado Springs. Certain objectors have argued that the Commission should have drawn two senate districts within the borders of the City of Colorado Springs.⁴ First, such a configuration does not “minimize city splits in Colorado Springs” as directed by this court. Opinion at 10. The court has never before applied such an interpretation to Article V, Section 47 (2). Finally, due to the irregular borders of cities, it is nearly impossible to do so. Even the plan submitted by the opponents

⁴ The Commission is not certain if objectors will continue to make this argument. On page 9 of CCFR’s Sur-reply to Commission’s Reply, after stating that the Commission misconstrues CCFR’s argument regarding Colorado Springs, CCFR states: “Rather, the Commission must attempt to keep the residents of the city together in as few districts as possible.” The Commission has kept the residents of Colorado Springs in as few districts as possible.

and claiming to have drawn two districts wholly within Colorado Springs does not. Barry Affidavit at ¶15.

As discussed above, no alternative plan presented to the Commission placed the population of Colorado Springs in fewer than four districts. Thus, the Commission has minimized the number of splits of the City of Colorado Springs.

Senate District 16

The Town of Superior and certain individuals objected to the placement of a portion of Boulder County, including the Town of Superior, into a district that also contained parts of Jefferson, Gilpin and Clear Creek Counties. These objectors and Douglas County⁵ contended that the plan should have created two senate districts wholly within Boulder County.

The objectors did not and cannot deny that Boulder County received its full complement of whole ideal districts as directed by the Court. Rather they object to a portion of Boulder County being added to another district. Under the Resubmitted Plan, the Commission gave whole senate districts to Arapahoe County. This required the excess population of Denver County to be added to the excess population of Jefferson County in Senate District 16. Those populations

⁵ Douglas County's objection was based on the equal protection clause of the 14th Amendment to the United States Constitution, even though it received the two whole ideal districts to which it is entitled. To the extent Douglas County raises this legally unsound and unsupportable argument again, the Commission urges the Court to reject the argument for the reasons set forth in the Commission's Reply Brief in Support of Adopted Plan. Furthermore, Douglas County is not similarly situated to Boulder County in that its population is less than the size of two ideal districts unlike Boulder County whose population is in excess of the size of two ideal districts. Thus, unlike Boulder, there is no remainder population after creating two senate districts in Douglas County. Thus, Douglas County is not similarly situated and is not entitled to be treated the same as Boulder County under the Equal Protection Clause.

were added to Gilpin County. The resulting population was insufficient to form a full Senate District. Thus, a portion of Boulder County was added to Senate District 16 in order to equalize population.

Senate District 26

This district in Arapahoe County included a portion of Denver. Certain objectors argued that Arapahoe County was entitled to four whole senate districts. Under the Resubmitted Plan, the district no longer includes a portion of Denver and is wholly contained within Arapahoe County. Thus, Arapahoe County now contains four whole districts as requested by the objectors.

Senate Districts 31 and 32

These districts within Denver contain enclaves of other counties. One objector asserted under a “single county district” theory, that Denver should have three senate districts containing only Denver residents. Senate District 31 contains the enclaves of Arapahoe County that are not contiguous with the remainder of Arapahoe County. As the enclaves are required to be placed in a district with Denver, there is no way to draw a district without including this noncontiguous population of Arapahoe County. The Commission does not believe that any objector questioned placing these enclaves within District 31.

Under the Adopted Plan, Senate District 32 contained two enclaves of Jefferson County. Under the Resubmitted Plan, those enclaves are in Senate

District 16 that, as discussed above, already include portions of both Denver and Jefferson Counties.

Thus, Senate District 32 now does not include any population from Jefferson County. While the Commission does not agree with the single county district theory and does not believe that this court has ever approved such a theory, for other reasons, under the Resubmitted Plan, Denver has three “single county districts” as requested by the objector.

2. House Plan

House District 1

This district in southwest Denver includes the Jefferson County enclaves. Although identified by the Court as a district to which an objection was raised, the Commission does not believe that any party is objecting to this split of Jefferson County caused by the enclaves. An enclave of three persons must be joined with Denver and a portion of Bow Mar must be joined with either Denver or Arapahoe County. In order to protect the secrecy of the votes of the three-person enclave, the Commission chose to join both enclaves in House District 1.

House Districts 14 – 21

These are the House Districts in El Paso County that include a portion of Colorado Springs. Certain objectors argued that the population of Colorado Springs should be in six House Districts. Under the Adopted Plan, portions of Colorado Springs were contained in eight house districts. Under the Resubmitted

Plan, the population of Colorado Springs is contained in six house districts. No plan submitted to the Commission had the population of Colorado Springs in fewer than six districts. Barry Affidavit at ¶5.

As with the Senate Plan, certain objectors argued that districts should be drawn within the borders of Colorado Springs. As noted above, this court has never applied such an interpretation and, although objectors contend that they have drawn four House Districts within the city, they have not. *Id.*

House Districts 25, 38, and 56

Objectors requested seven whole districts in Jefferson County and seven whole districts in Arapahoe County. The Resubmitted Plan provides such whole districts. House District 25 is now wholly within Jefferson County. House District 38 is now wholly within Arapahoe County. House District 56 includes portions of both Adams and Arapahoe Counties, but all counties have been allocated all of their whole districts. Barry Affidavit at ¶6.

House Districts 58 and 59

Certain parties objected to the splits of San Miguel and Montezuma Counties. Under the Resubmitted Plan, neither county is split. Under the Resubmitted Plan, House District 58 is composed of whole counties. The only county split to form House District 59 is Gunnison County, which was necessary to equalize population. *See* Barry Affidavit at ¶7.

House District 63

Certain objectors argued that Weld County was entitled to three House Districts. Under the Resubmitted Plan, House District 63 is now wholly within Weld County, giving Weld County the three whole districts to which it is entitled.

House Districts 47, 64, and 65

Certain parties objected to the splits of Elbert County between House Districts 64 and 65 and of Las Animas County between House Districts 47 and 65. The splits of Elbert and Las Animas Counties have been eliminated in districts 47, 64, and 65. Both House District 64 and House District 65 are composed of whole counties. House District 47 now contains all of Otero County and the remaining portions of Pueblo County not in House Districts 46 or 62. That population was insufficient to form a House District. Fremont County was split in order to equalize population. *See Barry Affidavit at ¶8.*

House District 33

Although not identified in the Court's Order, the Town of Superior objected to it being placed with the City and County of Broomfield in House District 33. Under the Adopted Plan, when Weld County is given its three whole House Districts as required by the Order, it is impossible to join the City and County of Broomfield with portions of Weld County. Therefore, the City and County of Broomfield must be joined with portions of Boulder County. In order to reduce the splits of cities within Boulder County, it was necessary to place the Town of

Superior with the City and County of Broomfield. This was true in all plans reviewed by the Commission on November 28, 2011. Barry Affidavit at ¶9.

On November 29, 2011, Plan Gv1 was presented to the Commission. It redrew many of the House Districts and joined Grand and Jackson Counties with Larimer County. This Plan joined Broomfield with portions of Weld County rather than Boulder County. The redrawing of this portion of the state in Plan Gv1 did not result in fewer counties having more than one district. Barry Affidavit at ¶9.

D. The Resubmitted Plan Increases the Number of Competitive Districts

The Court recognized that non-constitutional considerations, such as the competitiveness of districts, may be considered by the Commission after all constitutional criteria are met. Opinion at 10. Under the Adopted Plan, a total of 33 districts were competitive. Under the Resubmitted Plan, 38 districts are competitive. Barry Affidavit at ¶10.

E. Alternative House Plan Gv1 Is Fatally Flawed and Must be Rejected

The Commission assumes that Alternative House Plan Gv1 will be attached to the briefs of one or more opponents to the Resubmitted Plan. The Commission addresses the procedural issues surrounding Gv1 below. More fundamentally, Gv1 suffers from a fatal flaw that renders it an invalid alternative to the Resubmitted Plan, even if the Court were otherwise to consider it.

The objectors may assert that Gv1 is constitutionally preferable because it splits one fewer county, Gunnison, than the Resubmitted Plan. Specifically, in

order to gain one fewer county division, Gv1 splits Saguache and Mineral Counties from House District 62. Barry Affidavit at ¶11.

As this Court well knows, objectors challenged the Adopted Plan in the 1992 Reapportionment on the basis that it violated the federal Voting Rights Act (“VRA”) in connection with its treatment of the San Luis Valley (“SLV”), which consists of Saguache, Alamosa, Conejos, Costilla, Mineral and Rio Grande Counties. An expert report by the expert retained by the Commission in 1992, Election Data Services, concluded that “[i]t is necessary to create districts that are more heavily Hispanic in the San Luis Valley than elsewhere in the state because of the degree of racially polarized voting found in this area of the state.” *See* EDS Report, attached hereto as Exhibit 2.

Despite the expert report and the objections from residents of the SLV, the 1992 Commission declined to make HD 60 (now HD 62) a majority-minority district in the SLV. This Court approved the 1992 Adopted Plan. Following the reapportionment, voters in HD 60 reelected the incumbent Anglo representative to the state legislature, maintaining the Anglo control of the seat that had existed since 1940. *See Sanchez v. Colorado*, 97 F.3d 1303, 1308 (10th Cir. 1996).

The State was sued in federal court by certain residents of the SLV for the Adopted Plan’s alleged violation of the VRA. An objector before the Commission and the lead plaintiff in the VRA litigation in federal court was Jennie Sanchez, a resident of Center, Colorado, Saguache County. The Tenth Circuit Court of

Appeals held that HD 60 of the Adopted Plan unlawfully diluted the voting strength of Hispanic voters in south central Colorado. *See Sanchez*, 97 F.3d at 1306 (10th Cir. 1996). In fact, in determining that the totality of the circumstances demonstrated that racially polarized voting existed in the SLV, the Tenth Circuit relied heavily on the testimony of Jennie Sanchez regarding her voting experiences in Saguache County. *Id.* at 1322-23.

The Tenth Circuit ordered the State to redraw the boundaries of the district consistent with section 2 of the Voting Rights Act of 1965. *Id.* at 1329. Section 2-2-208, C.R.S., attached hereto as Exhibit 3, describes the steps the State took to comply with *Sanchez*. An interim committee established by a house joint resolution conducted multiple public hearings in the SLV and elsewhere and created multiple plans before arriving at a final plan. Among other things, the committee heard testimony that residents of Center in Saguache County should be included in the new representative district 60 (now HD 62), and the final plan reflected this request. Barry Affidavit at ¶11.

The Commission retained Dr. Handley in connection with the 2002 reapportionment to perform a racial bloc voting analysis of the SLV. Dr. Handley concluded that “voting in the San Luis Valley and State House District 60 remains racially polarized.” *See Handley 2001 Report*, attached hereto as Exhibit 4. The 2002 reapportionment plan maintained the SLV district, which included Saguache County. Barry Affidavit at ¶11.

This Commission retained Dr. Handley to perform a racial bloc voting analysis of the SLV to determine whether a majority-minority district was still warranted. Dr. Handley reviewed the voting behavior of voters that resided in the six counties that made up the SLV, and the portions of Huerfano and Pueblo counties that made up HD 62. She concluded that “[v]oting in the San Luis Valley continues to be racially polarized and Hispanic voters are still politically cohesive in support of their preferred candidates.” *See* Handley 2011 Report, attached hereto as Exhibit 5, at p. 7.

The Adopted Plan maintained HD 62 as a majority-minority district that included Saguache and Mineral Counties. No opponent challenged the district.

The Hispanic population in Saguache and Mineral Counties makes up 12% of the Hispanic population of the San Luis Valley. Barry Affidavit at ¶12. Under Plan Gv1, these counties are now in a district that is 15.51% Hispanic. By carving Saguache County out of House District 62, and placing its Hispanic residents in an overwhelmingly Anglo district, Plan Gv1 is directly at odds with the rationale and factual underpinnings of the *Sanchez* case, the testimony of the residents of the SLV during the hearings to remedy the VRA violation, the remedial statute, the 2002 reapportionment and the findings and recommendations of three expert reports on racial bloc voting presented to the Commission in 1991, 2002 and 2011. The Hispanic population of these Saguache and Mineral Counties, who, as a result of VRA protections mandated by the federal court and state statute, presently are

able to elect representatives of their choice, would lose this ability under Plan Gv1. In fact, it is hard to imagine a starker departure from the protections of the Voting Rights Act. The Commission simply cannot reconfigure the VRA district on this basis, nor should the Court approve any plan with such a reconfigured district. There is no question that VRA litigation will ensue if Plan Gv1 were approved.

In addition, Plan Gv1 causes an almost 10% reduction in the number of Hispanics in HD 47, while at the same time changing the district from a highly competitive district where the Republican candidate for Treasurer received 3.64% more votes than the Democratic candidate under the Adopted Plan, to a district in which the Republican candidate received 11.82% more votes than the Democrat under Plan Gv1.

Because the VRA takes precedence over any state constitutional criteria, and because Plan Gv1 so clearly violates the VRA, for this reason alone, the Court must reject Plan Gv1.

F. The Commission's Consideration of Plans Was Proper

Opponents may argue that the Commission improperly did not consider Plan Gv1. Such an argument would be misplaced.

Neither the Constitution, nor any rules applicable to the Commission require the Commission to establish any particular schedule for the submission and consideration of maps and opponents cannot articulate a colorable claim to the contrary. Moreover, the Commission's treatment of the submittal and

consideration of plans on remand was consistent with the Commission's custom and practice throughout the reapportionment process.

During the regional phase of the Commission's work, the Commission established a schedule whereby plans were due to staff on Thursday so that staff could send maps and reports of the plans to all Commissioners and post the maps and reports on the Commission's website. At least eleven times during the process Commissioners from both political parties filed new plans with the staff over the weekend. Staff prepared the maps and reports and delivered them to the Commissioners at the Monday meetings. Barry Affidavit at ¶13.

During the phase in which the Commission adopted the initial final plan, a schedule was established whereby plans were due to staff on Wednesday, September 7. A meeting was scheduled for Monday, September 12 to discuss the plans. Another deadline for plans was set for Wednesday, September 14. A final meeting was scheduled for Monday, September 19. To avoid receiving plans the same day that the vote was to take place, no new plans or amendments were to be introduced on September 19. Barry Affidavit at ¶14.

The Commission's process on remand was no different from its earlier proceedings. After the issuance of the Opinion, Commissioners were each emailed a notice stating that resubmitted plans would be due by 5:00⁶ on Wednesday, November 23, that there would be a meeting on November 28 to discuss the plans,

⁶Later changed to 12:00 Noon.

and that there would be another meeting on November 30⁷ to vote on resubmitted plans. The email indicated that no new plans or amendments would be considered at the November 30 meeting. No date or time was specified as to when new plans or amendments were due. Barry Affidavit at ¶15.

Before the noon deadline on November 23, three Senate Plans and four House Plans were filed with Commission staff on behalf of Republican Commissioners. After November 23, and prior to the end of the Commission meeting on November 28, 2011, two amended plans and four amendments were submitted on behalf of Republican Commissioners. At the November 28, 2011 Commission meeting, the Commission voted to accept no further reapportionment plan amendments. November 29, 2011, Plan Gv1 was submitted to Commission staff on behalf of a Republican Commissioner. Barry Affidavit at ¶16.

It is unclear why the Republicans submitted multiple plans. Presumably, it was to show the Court that a constitutional plan could be drawn in more than one way. For whatever reason, Republicans did not submit Plan Gv1 or a plan substantially similar to it until after the submission of the plan ultimately adopted by the Commission and after the date by which all plans were to be submitted. Nothing prevented the Republicans from timely filing Plan Gv1. Indeed correspondence between the Commission staff and a map drawer for Commissioner Witwer makes clear that Republicans knew they had the

⁷Later changed to November 29.

opportunity to submit alternative maps before the Monday hearing. Barry Affidavit at ¶17.

In short, complaints about the process are ill-founded.

G. The Resubmitted Plan's Treatment of Incumbents was Proper

Objections may be raised about incumbents being drawn into districts together. First, under the Resubmitted Plan, both Democrat and Republican incumbents have been drawn into districts together. Democrat incumbents are together in three districts; Republicans incumbents are together in seven districts; and Republican and Democrat incumbents are together in four districts. Barry Affidavit at ¶18.

Second, there is no evidence that districts were drawn specifically to place Republican incumbents in certain districts, or to advantage any particular political party. Indeed, as this Court has recognized, the Commission cannot draw a perfect plan, and every plan will make someone unhappy. In fact, the Resubmitted Plan has affected both major parties negatively. For example,

- Democrats in the Stapleton neighborhood in Denver have tried throughout the Commission proceedings to prevent the separation of a part of the neighborhood into a district separate from the rest of the neighborhood. The Commission did not heed their requests either in the Adopted Plan or in the Resubmitted Plan. *See* Denver Post article, attached hereto as Exhibit 6.
- Representative Wilson, D-Glenwood Springs is now in a safe Republican district.
- Sal Pace – HD 46 went from a safe Democratic district to a toss-up district.
- HD 30 (HD 56 in the Adopted Plan), an open seat in Adams County went from a district that Cary Kennedy won 63 to 36% in the 2010 Treasurer's Race, to a highly competitive seat where Kennedy won 52 to 48%.

- SD 20 – Sen. Jahn (D-Wheat Ridge) was in a district that performed at nearly 60% on the 2010 Treasurer’s race under the Adopted Plan. Under the Resubmitted Plan, the district is highly competitive district.
- Sen. Nicholson (D-Gilpin County) went from a district where Kennedy won by 4.44% to a district where Kennedy lost the district by 2.05%. Essentially, this was a highly competitive district that leaned Democrat, and now is a district that leans Republican.
- SD 24 – Sen. Tochtrop (D-Adams) was in a highly competitive district where Kennedy won the district by 1.82% under the Adopted Plan. Under the resubmitted plan, Kennedy won the district by only .95%.
- SD 29 – Sen. Carroll (D-Aurora). As a Commissioner she had the opportunity to protect her district. Under the Adopted Plan, Kennedy won the district by 20%. Under the Resubmitted Plan, Kennedy won the district by 7.49%

At any rate, this Court has made clear that political considerations are not *per se* improper. *See In re Reapportionment 1992*, 828 P.2d 185, 199 (Colo. 1992). Only when partisan factors are allowed an importance equal to or greater than the proper constitutional is a plan defective. *Id.* As demonstrated above, the plan is constitutional. Therefore, even if political considerations drove the placement of certain incumbents in districts together (and there is no evidence of this), such considerations would not have diminished the validity of the Resubmitted Plan.

H. The Resubmitted Plan Meets Compactness and Contiguity Requirements

Article V, Section 47(1) requires the Commission to draw house and senate districts that are compact and contiguous. That section of the Colorado Constitution requires “the aggregate linear distance of all district boundaries shall be as short as possible.” Based on that provision and the hierarchy of

constitutional and statutory factors, the Commission has discretion to craft a plan that applies the principles of contiguity and compactness that results in a plan where the aggregate linear distance is as short as possible. The districts in the resubmitted plans meet these requirements.

Contiguous is defined as territory that is geographically connected. The territory within each house and senate district in the resubmitted plans is contiguous. Each district complies with the contiguity requirement.

This Court has always granted discretion either to the legislature or the Commission in complying with the compactness requirement because of the other principles governing reapportionment, especially districts with equal population and whole districts assigned to counties. *Acker v. Love*, 496 P.2d 75, 76 (Colo. 1972) (holding that compactness is judged in relation to other reapportionment principles such as population density, census enumeration districts and variations caused by geography and most importantly “county lines.”). Because other reapportionment principles take precedent over compactness, the Commission fulfilled this requirement by drawing districts with the shortest possible aggregate linear distance after applying the other reapportionment principles. In addition, the record of the Commission’s proceedings since the adopted plan was remanded is devoid of any evidence it was guided by illegal motives to either protect incumbents or inhibit specific groups of voters from having effective representation. *Id.* citing *Opinion to the Governor*, 221 A.2d 799 (802) (R.I. 1966)

(Holding that parties opposing a reapportionment plan must establish the body drafting the plan was motivated by illicit motives to gerrymander districts).

Although some plans before the Commission had shorter aggregate linear distance for all district boundaries, the Commission's resubmitted maps first, applied the principle of assigning whole districts to counties. *In re Reapportionment 2002*, 45 P.3d 1237, 1254 (Colo. 2002). By doing that and applying the other priority principle of equal representation within the five percent population deviation, the Commission adopted plans that have the fewest county splits and have the shortest possible aggregate linear distance for all district boundaries. Indeed, ignoring the county splits in the various plans, the average difference in the linear distance between the resubmitted house plan and the house plan with the least linear distance is a mere 6.97 miles per each of the 65 house districts for a total difference of 1,811.67 miles and only 3.90 miles for each of the 35 senate districts for a total difference of 545.44 miles. The Commission's plan complies with the compactness requirement.

I. The Court Needs to Take No Further Action Regarding Sequencing of Elections

As indicated in the Resubmitted Plan, the Commission discovered that newly appointed Senator Neville does not reside within the newly created Senate

District 22 as previously thought.⁸ Rather he resides in newly created Senate District 16. However, this fact will not require a change in the sequencing of the elections as contained in the Resubmitted Plan as the Commission previously believed. Section 2-2-504 (2), C.R.S., provides:

2-2-504. Holdover senators keep office - vacancies. (2) If any senator elected at the 2010 general election vacates his or her seat prior to the convening of the regular legislative session in 2013, such vacancy shall be filled from the district from which the senator was elected in accordance with section 1-12-203, C.R.S. If such vacancy occurs more than fifty-five days before the general election in 2012, there shall be an election at the general election in 2012 for the remainder of such senator's term from the senatorial district created by the commission. Nomination of candidates at such election shall be in accordance with article 4 of title 1, C.R.S.

Senator Kopp resigned as Senator of Senate District 22 more than fifty-five days prior to the general election in 2012. Pursuant to this section, there shall be an election from the newly created Senate District 22 at the general election in 2012 for the remaining two years of Senator Kopp's original term regardless of the Resubmitted Plan. Thus, contrary to the situation in *In re Reapportionment 1982*, 647 P.2d 191,198 (Colo. 1982), there will be a senator elected in 2012 to represent Senate District 22. Therefore, neither the Commission nor this Court needs to take any further action, including re-sequencing, in connection with the Resubmitted

⁸ As Senator Kopp resigned prior to the convening of the General Assembly in 2013, under 2-2-504 (2), C.R.S., Senator Neville was appointed from the existing Senate District 22. Under 1-12-204(3) (b), C.R.S., Senator Neville will serve the remainder of the term to which he was appointed by the Senate District 22 Republican Vacancy Committee. Senator Nicholson was elected in 2010 and under Section 2-2-504 (1), C.R.S., she is entitled to serve the full four-year term to which she was elected.

Plan. Moreover, this issue has no bearing on the Court's analysis of the Resubmitted Plan's constitutionality.

J. The Court's Treatment of City Divisions

Without any discussion, the Court appeared to equate city splits with county splits from a constitutional perspective. That is, the Opinion can be read to provide that the Commission's obligation to minimize city divisions is of equal constitutional priority as its obligation to minimize county divisions. The Commission respectfully submits that such a rule is not supported by the plain language of the Constitution or the Court's prior decisions.

Article V, Section 47 (2) provides:

Section 47. Composition of districts. (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. [emphasis added]*

Thus, the constitution expressly is concerned with the number of cities split, not the number of splits within any particular city. Moreover, Section 47(2) by its plain terms applies only to the "counties whose territory is contained in more than one district of the same house." The Court has recognized this distinction. *See In re Reapportionment*, 45 P.3d at 1249 ("In regard to the other counties and portions of counties *that do not qualify for a whole district*, the Commission *then* employs

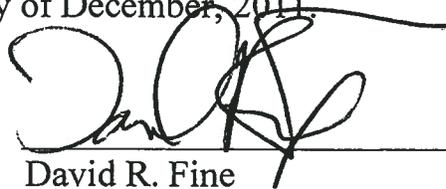
the further criteria of Article V, Section 47 in making county divisions to form districts: keeping division of cities and towns between districts to a minimum... .” (emphasis added). Additionally, in its directions on remand in the 2002 reapportionment, to which the Court in its Opinion has directed the parties here, the Court stated: *When divisions of counties must be made, the Commission may employ the other criteria of Section 47 in their preferential order: minimizing city divisions (Article V, Section 47 (2))... .”* (emphasis added).

Applying the above standard, the Court has never held a reapportionment plan unconstitutional solely on the basis of the number of city splits. The Commission urges the Court to confirm the legal standard regarding divisions of cities as set forth in *In re Reapportionment of 2002*.

III. CONCLUSION

For the foregoing reasons, the Commission respectfully requests that the Court approve the Resubmitted Plan.

Respectfully submitted this 8th day of December, 2011.



David R. Fine
Richard C. Kaufman

McKenna Long & Aldridge LLP

Jeremiah B. Barry
Kate Meyer

Colorado Reapportionment Commission

*Attorneys for the Colorado
Reapportionment Commission*

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of December, 2011, a true and correct copy of the foregoing **BRIEF IN SUPPORT OF RESUBMITTED PLAN** was filed with the Colorado Supreme Court by hand delivery and served via U.S. Mail to the following:

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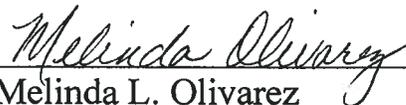

Melinda L. Olivarez

Exhibit 1

<p>SUPREME COURT, STATE OF COLORADO</p> <p>101 West Colfax Avenue, Suite 800 Denver, Colorado 80202</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Original Proceeding Pursuant to the Colorado Rules for Reapportionment Proceedings</p>	
<p>IN RE REAPPORTIONMENT OF THE COLORADO GENERAL ASSEMBLY</p>	<p style="text-align: center;">Case No. 11SA282</p>
<p>Attorneys for Colorado Reapportionment Commission:</p> <p>MCKENNA LONG & ALDRIDGE LLP David R. Fine, #16852 Richard C. Kaufman, #8343 1400 Wewatta Street, Suite 700 Denver, CO 80202-5556 Telephone: (303) 634-4000 Facsimile: (303) 634-4400</p> <p>COLORADO REAPPORTIONMENT COMMISSION Jeremiah B. Barry, #10400 Kate Meyer, #38059 Colorado Reapportionment Commission 1313 Sherman Street, Room 122 Denver, Colorado 80203 Telephone: (303) 866-3950 Facsimile: (303) 866-3945</p>	
<p style="text-align: center;">AFFIDAVIT OF JEREMIAH B. BARRY</p>	

Jeremiah B. Barry, having been duly sworn, states as follows:

1. As is shown by the tables below, the Resubmitted Plan allocates to all counties the full number of whole districts to which they are entitled. The tables originally filed with the Resubmitted Plans showed incorrect numbers for the Adopted Plan. These tables show the correct numbers on some of the Adopted Plan and for the House Districts in Weld County.

Senate				
County	Population	Pop/Ideal Dist	Adopted Plan	Resubmitted Plan
Adams	441,603	3.07	3	3
Arapahoe	565,298*	3.93	3	4
Boulder	294,567	2.05	2	2
Denver	600,158	4.18	4	4
Douglas	285,465	1.99	2	2
El Paso	622,263	4.33	4	4
Jefferson	534,543	3.72	3	3
Larimer	299,630	2.09	2	2
Mesa	146,723	1.02	1	1
Pueblo	159,063	1.11	1	1
Weld	252,825	1.76	1	1
*572,003 less 6,705 for enclaves within Denver				

House				
County	Population	Pop/Ideal Dist	Adopted Plan	Resubmitted Plan
Adams	441,603	5.17	5	5
Arapahoe	565,298*	7.31	6	7
Boulder	294,567	3.81	3	3
Denver	600,158	7.67	8	8
Douglas	285,465	3.69	3	3
El Paso	622,263	8.04	8	8
Jefferson	534,543	6.91	6	7
Larimer	299,630	3.87	3	3
Mesa	146,723	1.90	1	1
Pueblo	135,815**	1.76	1	1
Weld	252,825	3.27	2	3
*572,003 less 6,705 for enclaves within Denver				
**159,063 less 23,248 assigned to HD 62 to make Hispanic majority district				

None of the other plans reviewed by the Commission were able to allocate more whole districts to counties than the Resubmitted Plan.

2. As is shown by the chart below, the Resubmitted Plan in the Senate contained ten counties that included more than one district, one county less than was approved in 2002.

Senate	
Plan	Total Number of Counties Containing More than One Senate District
2002 Approved Plan	11
Senate Resubmitted Plan Bv1	10
Senate Resubmitted Plan Cv2	10
Senate Resubmitted Plan Dv1	10
Resubmitted Plan	10

No plan reviewed by the Commission contained fewer than ten counties that included more than one district.

In the House, the Resubmitted Plan contained 14 counties that included more than one district while the 2002 approved plan had seventeen such counties.

House	
Plan	Total Number of Counties Containing More than One House District
2002 Approved Plan	17
House Resubmitted Plan Av3	15
House Resubmitted Plan Bv1	15
House Resubmitted Plan Cv1	15
House Resubmitted Plan Dv2	15
Resubmitted Plan	14
House Resubmitted Plan Gv1	13

On November 29, 2011, at the last meeting of the Commission, the Commission was shown a plan, House Resubmitted Plan Gv1, that contained 13 counties that included more than one House District.

3. In the Resubmitted Plan, the population of Colorado Springs is limited to four Senate Districts and six House District. No other plan presented to the Commission had the population of Colorado Springs in fewer districts.

4. According to the City Splits Reports attached to each of the plans submitted to the Court, in the Adopted Plan for the House, the Cities of Lafayette and Grand Junction were divided into two districts while in the Resubmitted Plan, the Cities are wholly within one House District. In the Adopted Plan the City of Centennial is divided among three House Districts while in the Resubmitted Plan it is in two House Districts. Also, for the portions of Aurora that are in Arapahoe County, in the Adopted Plan the City of Aurora is in six House Districts while in the Resubmitted Plan it is in five House Districts. Under House Resubmitted Plan Gv1, for Arapahoe County, Centennial is in three House Districts and Aurora is in five House Districts.

5. Attached as Exhibit A to this Affidavit are maps of districts in Colorado Springs from Final Plan Senate 001v2 and Final Plan House 002v2 attached to the Statement in Opposition of Citizens for Fair Representation. The borders of Colorado Springs are shown in yellow. Circled in red are areas that are outside of

the borders of Colorado Springs that are included in districts alleged to be wholly within the borders of Colorado Springs. Under these plans, there are not two senate districts drawn wholly within the borders of Colorado Springs, not are there five House Districts drawn wholly within the borders of Colorado Springs.

6. Under the Resubmitted Plan, House District 25 is wholly within Jefferson County and House District 38 is wholly within Arapahoe County. As is shown by the chart in paragraph 1, each county received the full number of whole county assignments.

7. Under the Resubmitted Plan, House District 58 was created using only whole counties. The populations of the whole counties of Archuleta, La Plata, Hinsdale, San Juan, and Ouray is 69,396 or approximately 89% of the size of an ideal house district. Unless the San Luis Valley is divided, the only county bordering these whole counties is Gunnison. The total population of Gunnison County is 15,324. Adding that to the other whole counties would create a district that exceeded the ideal district size by too much. Thus, Gunnison County needed to be split to equalize the population of House District 59.

8. Under the Resubmitted Plan, Elbert and Las Animas Counties are whole. The population of Otero County plus the population of Pueblo County not already assigned to House District 46 or 62 is 72,341 or 93.50% of an ideal house district.

In order to equalize population, it was necessary to split Fremont County to complete House District 47.

9. Under the Adopted Plan, after three whole House Districts are drawn in Weld County, there is no population from Weld County to be joined with the City and County of Broomfield. Broomfield must be joined with portions of Boulder County. Under all of the Plans reviewed by the Commission on November 28, Superior was joined with Broomfield.

In House Resubmitted Plan Gv1 submitted on November 29, the House Districts in Weld and Larimer County were redrawn. Grand and Jackson Counties were joined with portions of Larimer County. Under that Plan, Broomfield was joined with portions of Weld County. The redrawing of these districts did not result in fewer counties containing more than one district.

10. Attached as Exhibit B are charts prepared by Commission Staff showing the number of competitive and highly competitive districts based upon the results of the 2010 State Treasurer's election for both the House and the Senate and for both the Adopted Plan and the Resubmitted Plan. Under the Adopted Plan, a total of 33 districts were considered competitive or highly competitive. Under the Resubmitted Plan, there are 38 such districts.

11. Plan Gv1 does not contain a split of Gunnison County as does the Resubmitted Plan. Plan Gv1 was only able to eliminate this split by moving

Mineral and Saguache Counties from the Hispanic Majority District in the San Luis Valley, House District 62.

In my position as Staff Attorney with the Office of Legislative Legal Services, I was assigned to staff the interim committee created to redraw six house districts surrounding the San Luis Valley following the Sanchez decision. Given the population according to the 1990 census, it was impossible to keep the San Luis Valley whole and to create a house district with a majority of Hispanics. In order to create such a district, the Committee split off the more Anglo portions of Saguache and Rio Grand Counties and split Huerfano County as is shown in Exhibit C. Witnesses, including Jeanne Sanchez, one of the plaintiffs in the Sanchez case, testified in favor of the Town of Center needing to be in the Hispanic majority district.

In 2001, I was on the Staff of the Colorado Reapportionment Commission. Exhibit C also contains a map showing the House Districts following the 2000 Census. Again, it was necessary to split off a small, largely Anglo portion of Saguache County and to split Huerfano County.

Also in Exhibit C is a thematic map showing the Hispanic percentages of the population by precinct.

12. According to the State Demographer's website, the Hispanic populations of Mineral and Saguache County comprise 12% of the total Hispanic population of the San Luis Valley.

13. During the regional phase of the Commission's work, the Commission established a schedule whereby plans were due to staff on Thursday so that staff could send maps and reports of the plans to all Commissioners and post the maps and reports on the website. On at least eleven times during the process Commissioners from both political parties filed new plans with the staff over the weekend. Staff prepared the maps and reports and delivered them to the Commissioners at the Monday meetings. Some Commissioners indicated that they were uncomfortable voting on plans that they received at the meeting.

14. During the phase where the Commission adopted the initial final plan, a schedule was established whereby plans were due to staff on Wednesday, September 7. A meeting was scheduled for Monday, September 12 to discuss the plans. Another deadline for plans was set for Wednesday, September 14. A final meeting was scheduled for Monday, September 19. To avoid receiving plans the same day that the vote was to take place, no new plans or amendments were to be introduced on September 19.

15. After the Order, for consideration of resubmitted plans, Commissioners were each emailed a notice stating that plans would be due by 5:001 on Wednesday, November 23, that there would be a meeting on November 28 to discuss the plans, and that there would be another meeting on November 30² to vote on resubmitted plans. The email indicated that no new plans or amendments would be considered at the November 30 meeting. No date or time was specified as to when new plans or amendments were due. Communication to all Commissioners indicated that no new plans or amendments would be considered at the final meeting of the Commission.

16. Prior to the noon deadline on November 23, three Senate Plans and four House Plans were filed with Commission staff on behalf of Republican Commissioners. At the November 28, 2011 Commission meeting, the Commission voted to accept no further reapportionment plan amendments. After November 23, and prior to the end of the Commission meeting on November 28, 2011, two amended plans and four amendments to other plans were submitted on behalf of Republican Commissioners. On November 29, 2011, House Resubmitted Plan Gv1 was submitted to Commission staff on behalf of a Republican Commissioner.

¹Later changed to 12:00 Noon.

²Later changed to November 29.

17. Attached as Exhibit D is a copy of an email from Amanda King of the Commission Staff to Cameron Lynch dated November 25 and Mr. Lynch's reply to Ms. King.

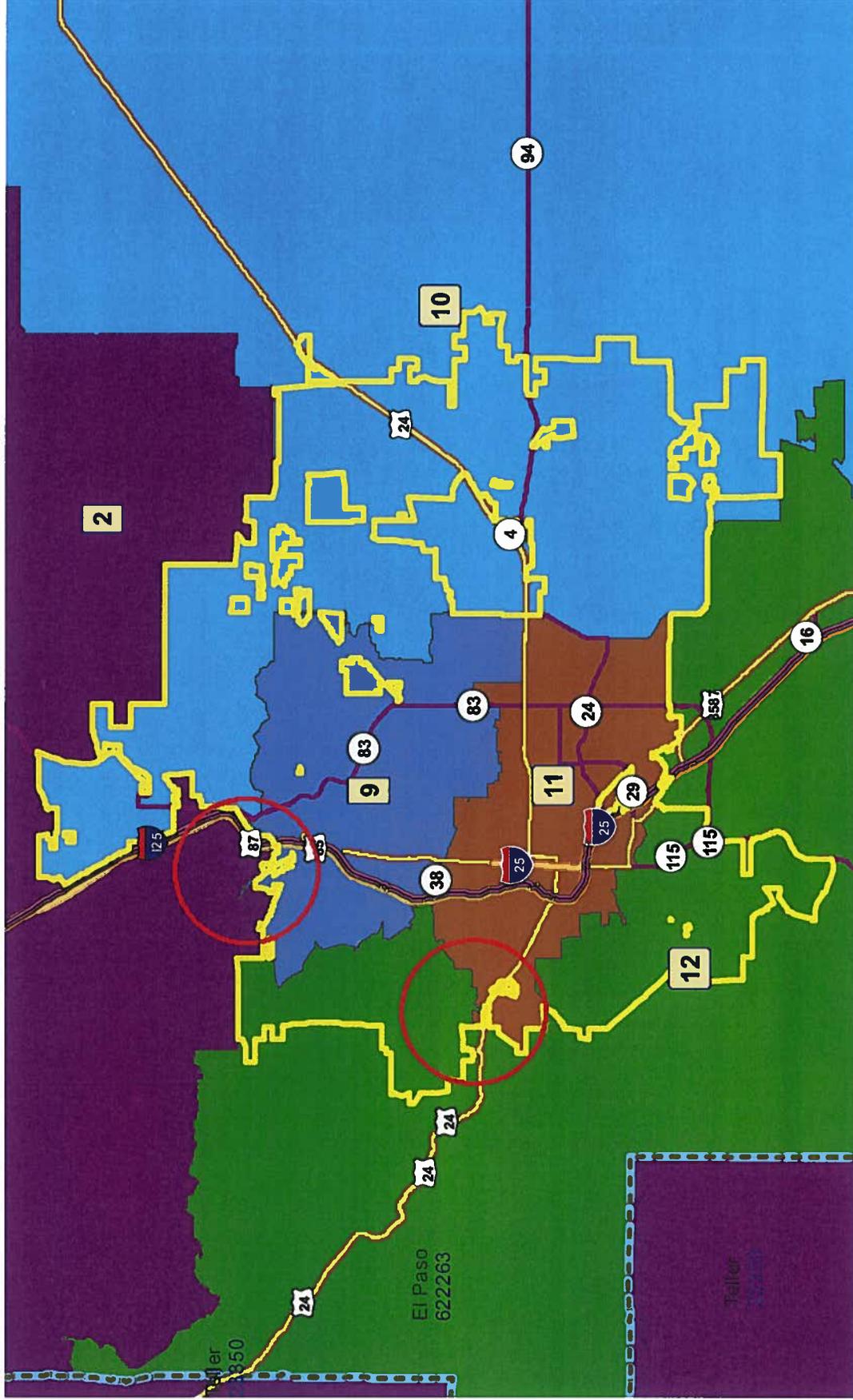
18. The chart below shows the House and Senate Districts in which two or more incumbent Representatives or Senators reside and their party affiliation according to the information available to the Commission.

Senate		
Resubmitted Plan		
District	Incumbent	Party
12	King	R
12	Cadman	R
16	Nicholson	D
16	Neville	R
20	Boyd	D
20	Jahn	D
31	Foster	D
31	Steadman	D

House		
Resubmitted Plan		
District	Incumbent	Party
13	Levy	D
13	Baumgardner	R
16	Liston	R
16	Joshi	R
19	Stephens	R
19	Looper	R
23	Summers	R
23	Kerr, A.	D
23	Tyler	D
37	Swalm	R
37	Balmer	R
46	Pace	D
46	Swerdfeger	R
51	Nikkel	R
51	DelGrosso	R
54	Scott	R
54	Bradford	R
56	Priola	R
56	Solano	D
65	Becker	R
65	Sonnenberg	R

Exhibit A

Final Plan Senate 001v2



2011 Colorado Reapportionment Commission
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Room 122
Denver, Colorado 80203

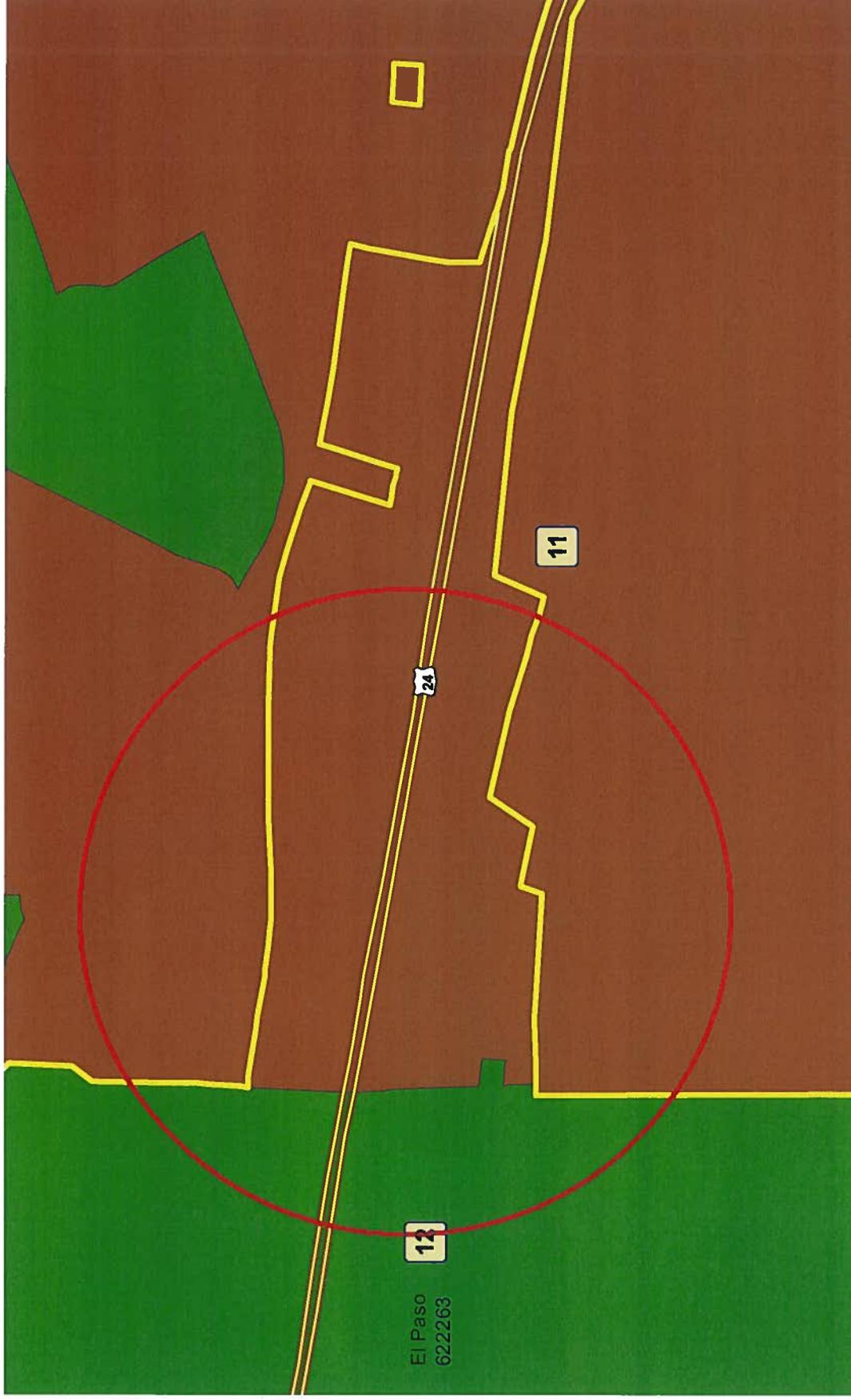


Legend

-  Colorado Springs

Map prepared by Reapportionment Commission Staff, December 7, 2011.

Final Plan Senate 001v2



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Denver, Colorado 80203

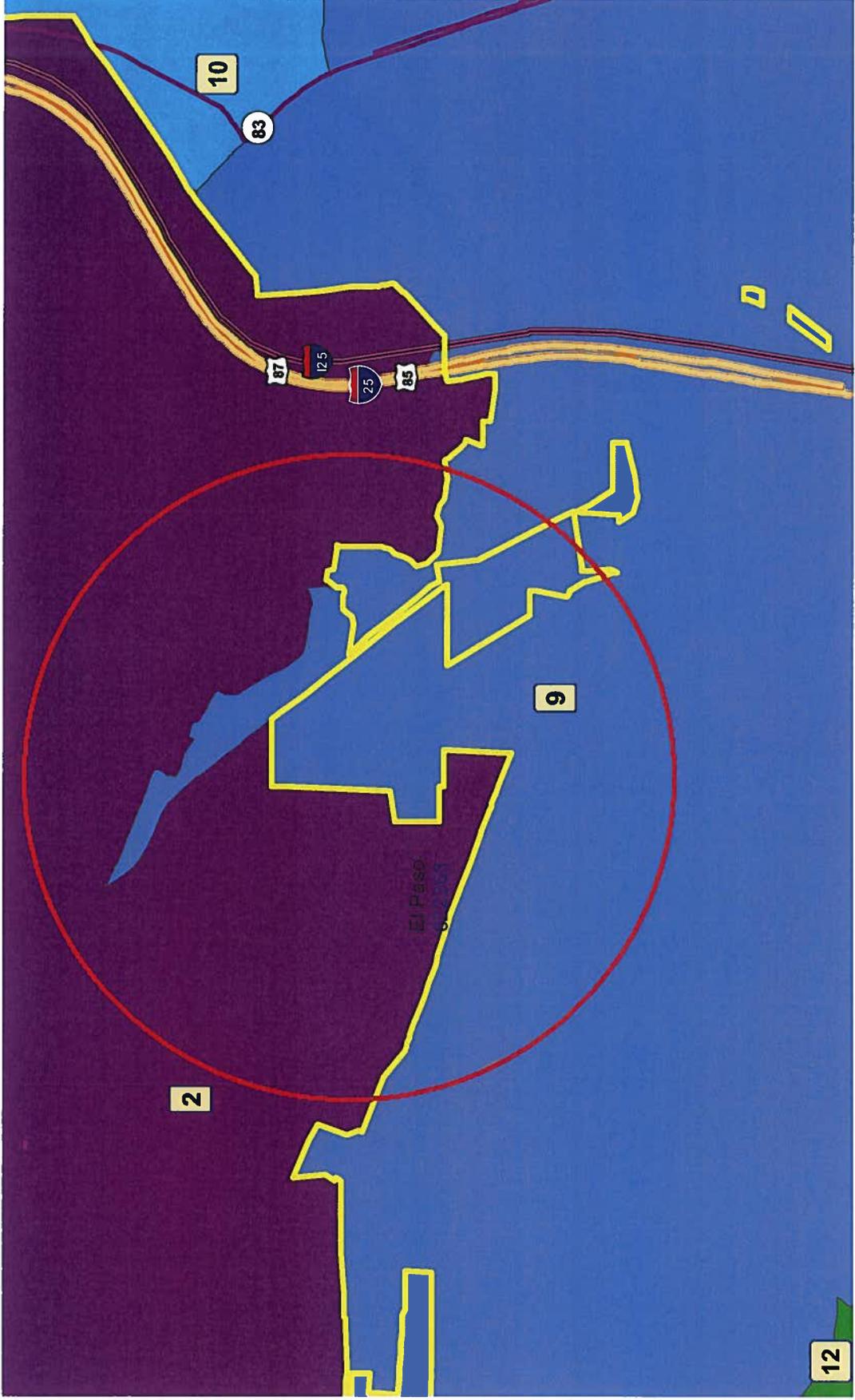


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 Colorado Springs

Map prepared by Reapportionment Commission Staff, December 7, 2011.

Final Plan Senate 001v2

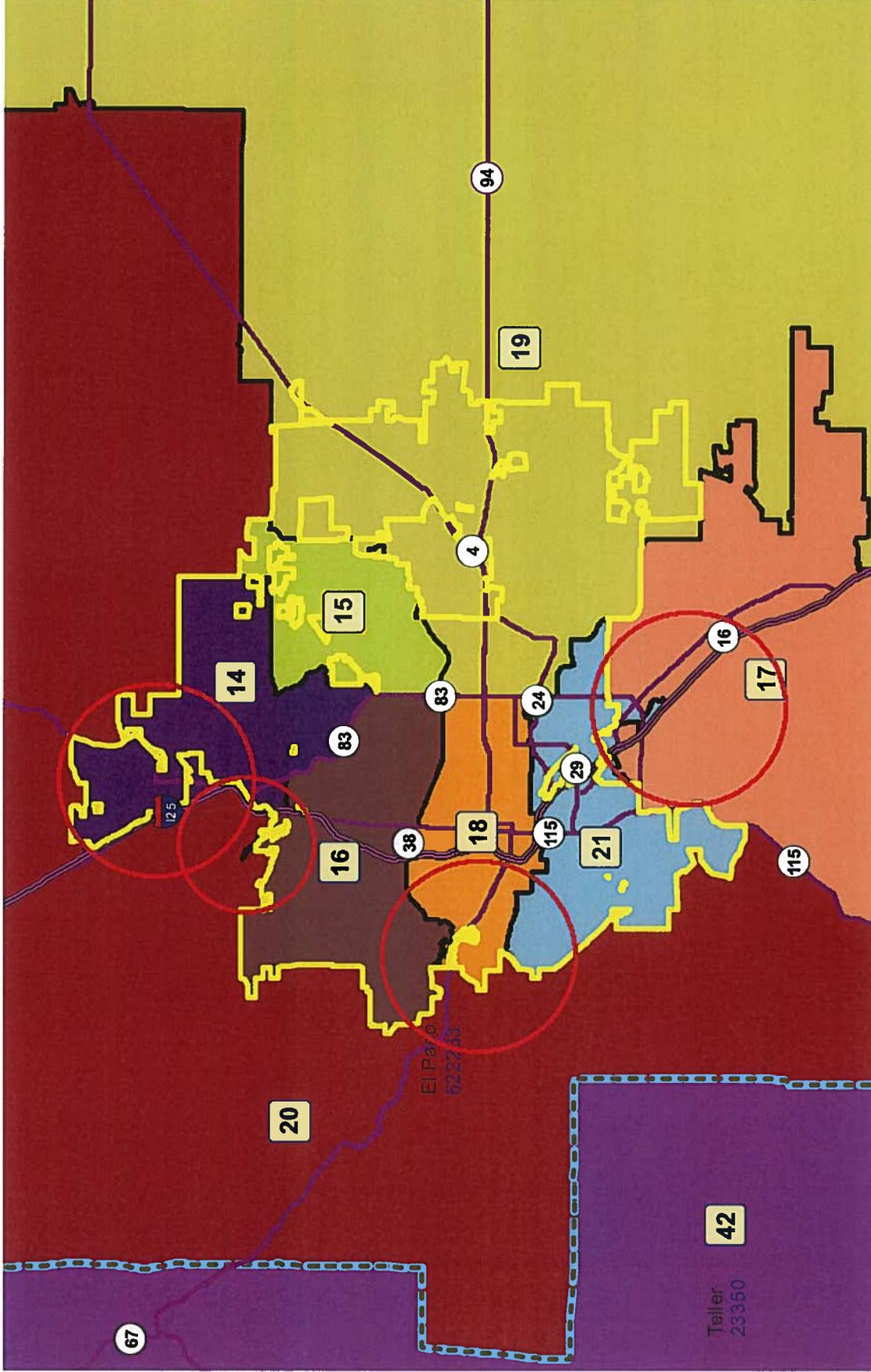


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Legend

-  Colorado Springs

Final Plan House 002v2



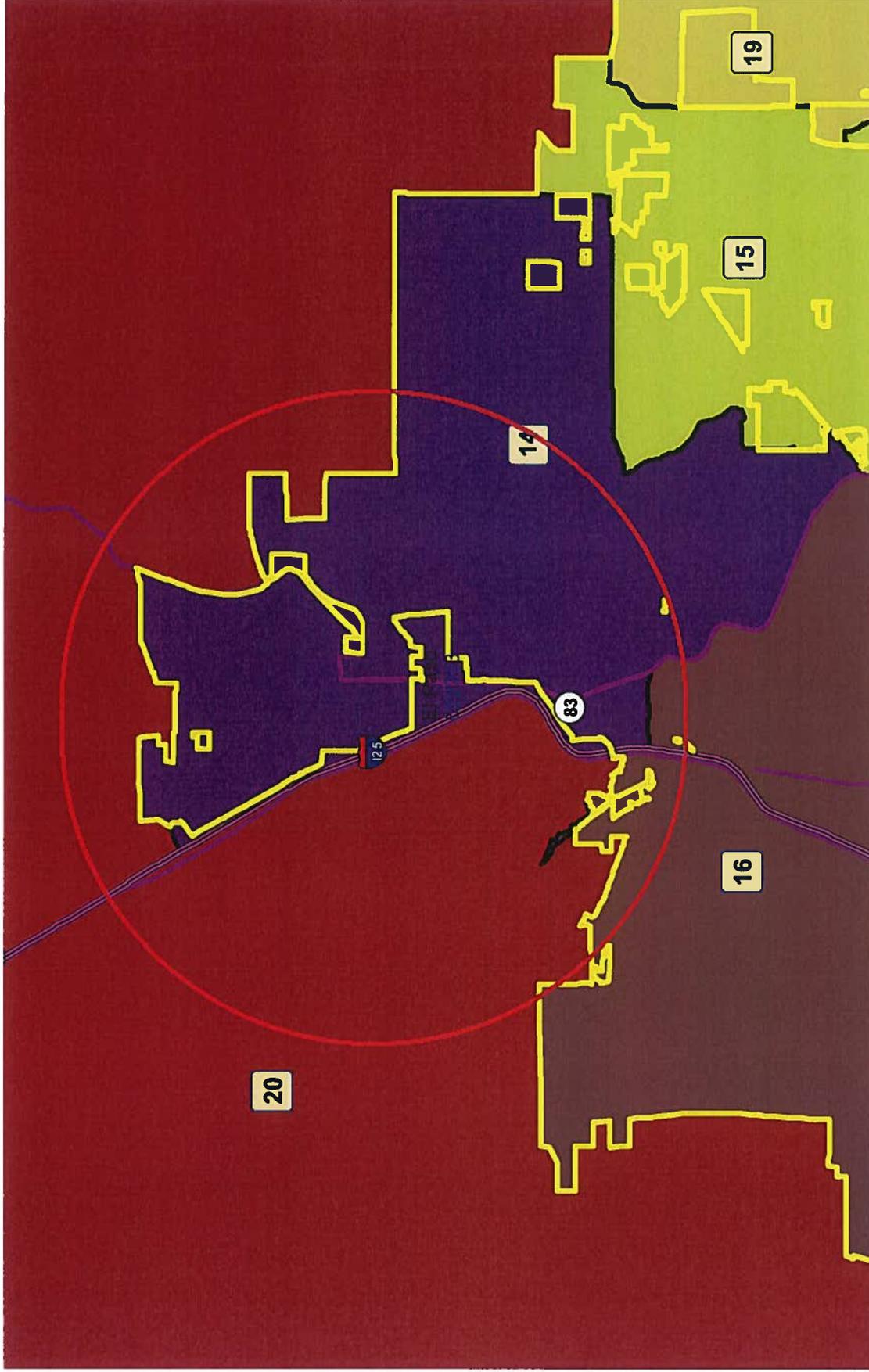
2011 Colorado Reapportionment Commission
1313 Sherman Street
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Denver, Colorado 80203
Map prepared by Reapportionment Commission Staff, December 7, 2011.



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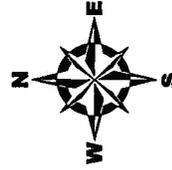
- Colorado Springs

Final Plan House 002v2

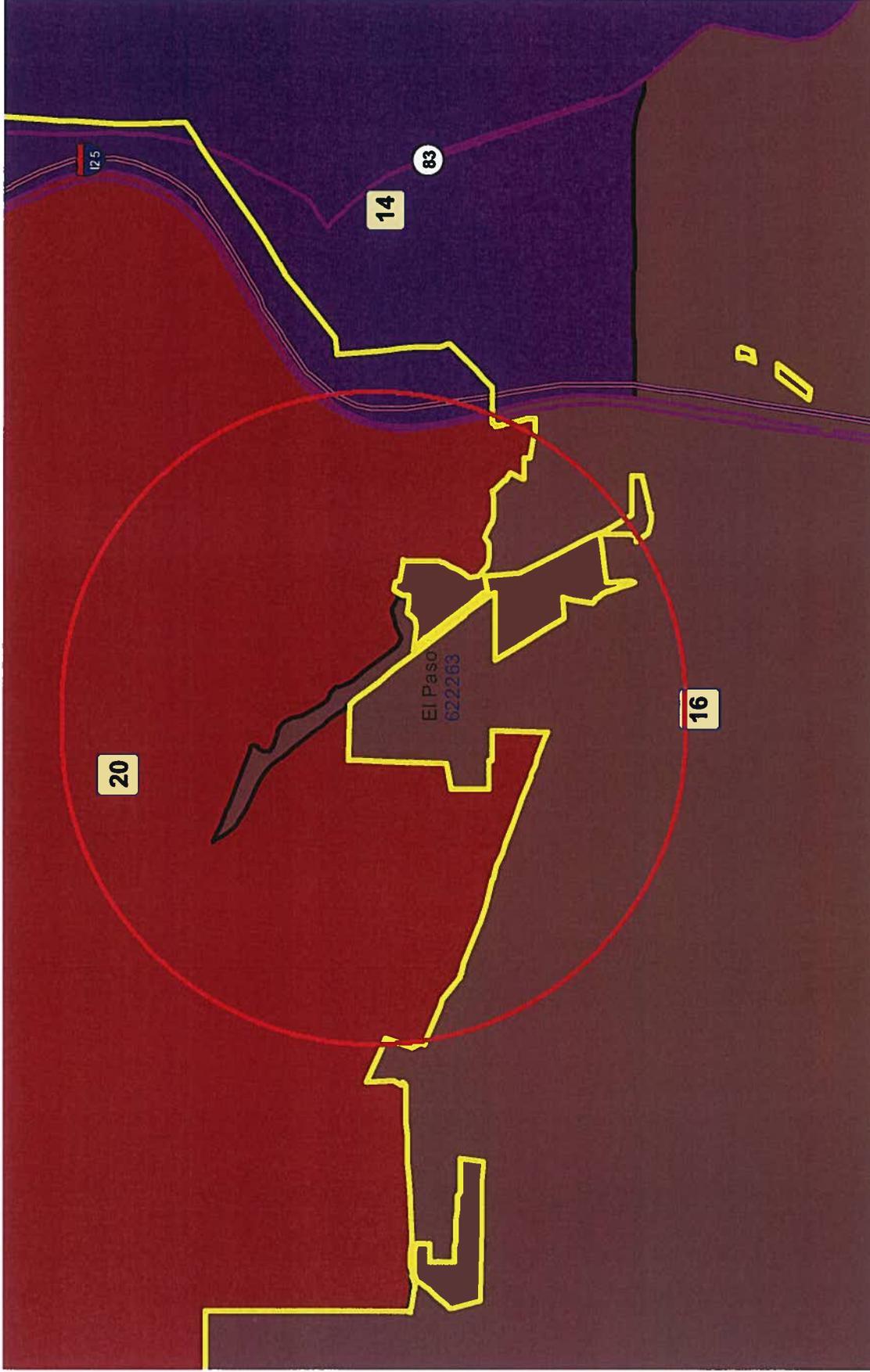


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Map prepared by Reapportionment Commission Staff, December 7, 2011.



Final Plan House 002v2



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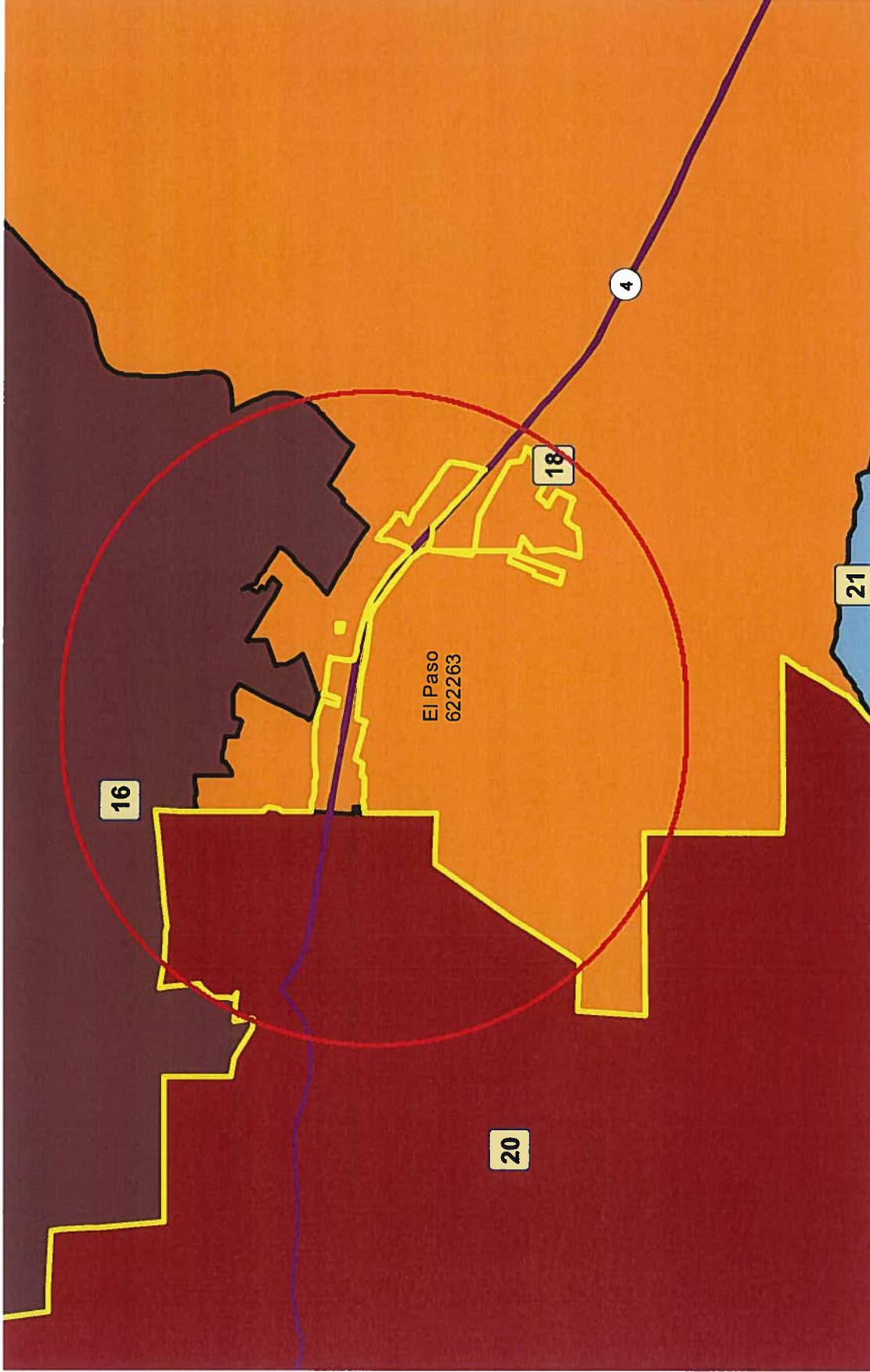


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Map prepared by Reapportionment Commission Staff, December 7, 2011.

Final Plan House 002v2



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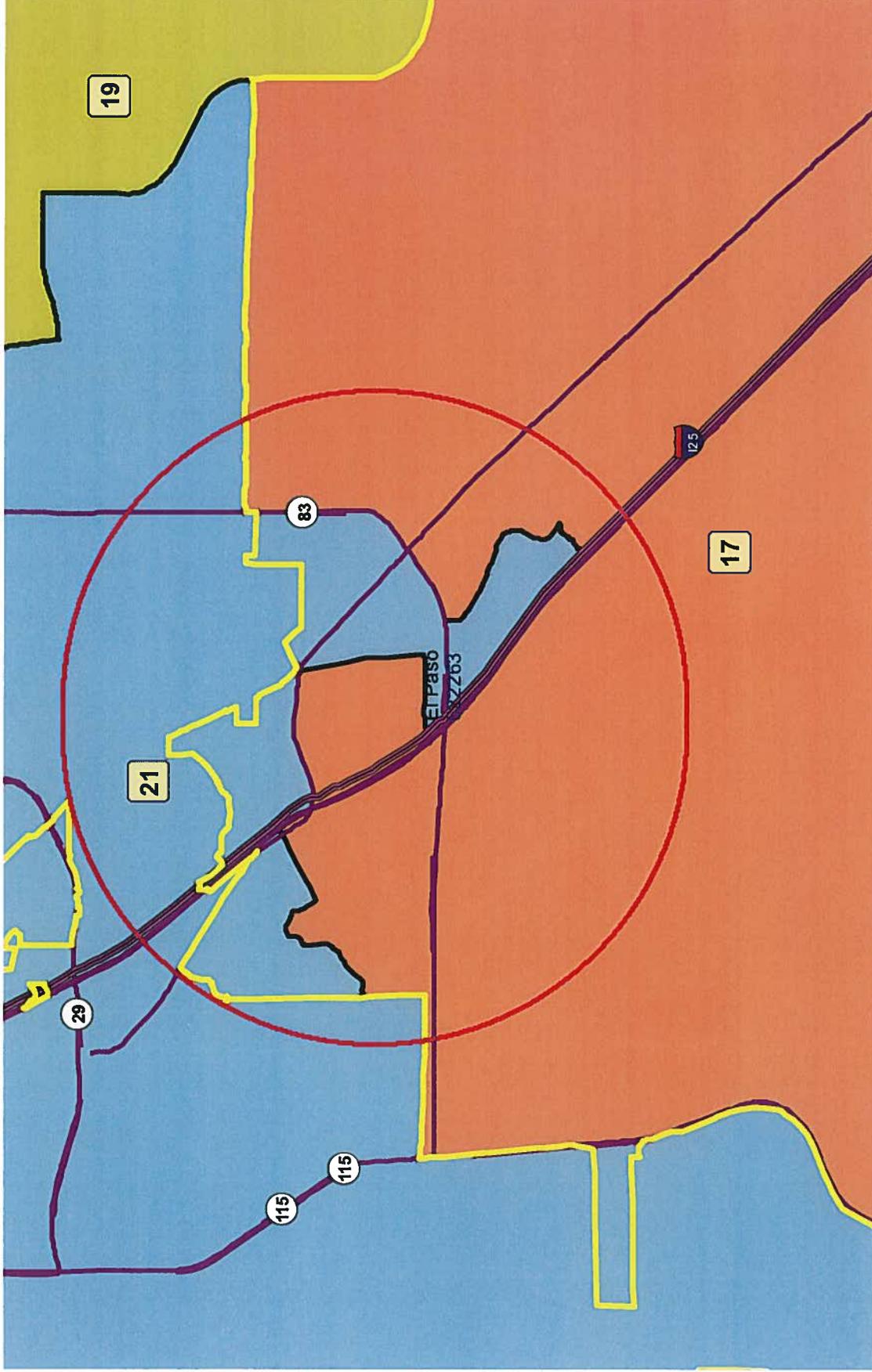
Legend

 Colorado Springs



Map prepared by Reapportionment Commission Staff, December 7, 2011.

Final Plan House 002v2



2011 Colorado Reapportionment Commission
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Legend

- Colorado Springs



Map prepared by Reapportionment Commission Staff, December 7, 2011.

Exhibit B

2010 State Treasurer Race - Kennedy (D) & Stapleton (R)
Senate Plan Comparison

Summary	All Races	Senate Final Plan			Existing Districts				
		All Races	Democrat	Republican	All Races	Democrat	Republican		
		35	16	19	35	16	19		
	Safe	24	10	14	23	10	13		
	Competitive	4	3	1	8	6	2		
	Highly Comp	7	3	4	4	0	4		
Senate District	Incumbent	Democrat Republican			Democrat Republican				
		0%	50%	100%	0%	50%	100%		
33	Johnston (D)	Safe - D	33	83.2%	16.8%	Safe - D	33	82.9%	17.1%
34	Guzman (D)	Safe - D	34	78.4%	21.6%	Safe - D	34	78.9%	21.1%
18	Heath (D)	Safe - D	18	76.5%	23.5%	Safe - D	18	77.6%	22.4%
31	Open	Safe - D	31	72.6%	27.4%	Safe - D	31	71.2%	28.8%
32	Aguilar (D)	Safe - D	32	63.3%	36.7%	Safe - D	32	66.1%	33.9%
29	Carroll (D)	Safe - D	29	59.9%	40.1%	Safe - D	29	62.5%	37.5%
17	Shaffer (D)	Safe - D	17	59.7%	40.3%	Safe - D	17	59.7%	40.3%
21	Steadman (D)	Safe - D	21	59.1%	40.9%	Competitive - D	21	54.3%	45.7%
3	Giron (D)	Safe - D	3	59.0%	41.0%	Safe - D	3	58.6%	41.4%
14	Bacon (D)	Safe - D	14	56.3%	43.7%	Safe - D	14	56.7%	43.3%
20	Jahn (D)	Competitive - D	20	54.7%	45.3%	Competitive - D	20	55.0%	45.0%
28	Williams (D)	Competitive - D	28	54.1%	45.9%	Competitive - D	28	54.8%	45.2%
11	Morse (D)	Competitive - D	11	53.7%	46.3%	Competitive - D	11	52.6%	47.4%
16	Open	Highly Comp - D	16	52.4%	47.6%	Competitive - D	16	53.0%	47.0%
24	Tochtrop (D)	Highly Comp - D	24	50.9%	49.1%	Competitive - D	24	53.6%	46.4%
19	Hudak (D)	Highly Comp - D	19	50.0%	50.0%	Highly Comp - R	19	49.7%	50.3%
26	Newell (D)	Highly Comp - R	26	50.0%	50.0%	Highly Comp - R	26	48.5%	51.5%
25	Hodge (D)	Highly Comp - R	25	49.3%	50.7%	Highly Comp - R	25	49.4%	50.6%
5	Schwartz (D)	Highly Comp - R	5	48.4%	51.6%	Highly Comp - R	5	49.3%	50.7%
35	Nicholson (D)	Highly Comp - R	35	48.1%	51.9%	Safe - D	35	65.3%	34.7%
8	White (R)	Competitive - R	8	45.5%	54.5%	Competitive - R	8	45.8%	54.2%
22	Kopp (R)	Safe - R	22	44.0%	56.0%	Safe - R	22	43.4%	56.6%
27	Spence (R)	Safe - R	27	43.9%	56.1%	Safe - R	27	44.7%	55.3%
13	Renfroe (R)	Safe - R	13	43.6%	56.4%	Safe - R	13	39.5%	60.5%
15	Lundberg (R)	Safe - R	15	43.0%	57.0%	Safe - R	15	42.3%	57.7%
23	Mitchell (R)	Safe - R	23	42.6%	57.4%	Competitive - R	23	45.3%	54.7%
6	Roberts (R)	Safe - R	6	42.1%	57.9%	Safe - R	6	42.1%	57.9%
12	King (R)	Safe - R	12	38.6%	61.4%	Safe - R	12	39.5%	60.5%
30	Harvey (R)	Safe - R	30	37.1%	62.9%	Safe - R	30	37.0%	63.0%
10	Cadman (R)	Safe - R	10	34.7%	65.3%	Safe - R	10	32.2%	67.8%
7	King (R)	Safe - R	7	32.4%	67.6%	Safe - R	7	32.3%	67.7%
4	Scheffel (R)	Safe - R	4	32.4%	67.6%	Safe - R	4	31.6%	68.4%

Senate District	Incumbent		Democrat			Republican			
			0%	50%	100%	0%	50%	100%	
2	Grantham (R)	Safe - R	2	31.7%	68.3%	Safe - R	2	43.2%	56.8%
1	Brophy (R)	Safe - R	1	30.3%	69.7%	Safe - R	1	30.8%	69.2%
9	Lambert (R)	Safe - R	9	29.1%	70.9%	Safe - R	9	30.9%	69.1%

Note: In "highly comp" (highly competitive) districts, voter shares for both candidates fall between 47.5 percent and 52.5 percent.

In "competitive" districts, voter shares fall between 45 and 47.5 percent for the trailing party and between 52.5 and 55 percent for the leading party.

In "safe" districts, voter shares are greater than 55 percent for either candidate.

2010 State Treasurer Race - Kennedy (D) & Stapleton (R)
House Plan Comparison

Summary	All Races	House Final Plan			Existing House Districts				
		All Races	Democrat	Republican	All Races	Democrat	Republican		
		65	32	33	65	31	34		
	Safe	43	20	23	49	27	22		
	Competitive	12	8	4	9	2	7		
	Highly Comp	10	4	6	7	2	5		
House District	Incumbent	Democrat			Republican				
		0%	50%	100%	0%	50%	100%		
8	McCann (D)	Safe - D	8	84.8%	15.2%	Safe - D	8	85.1%	14.9%
7	Williams (D)	Safe - D	7	80.3%	19.7%	Safe - D	7	79.2%	20.8%
4	Pabon (D)	Safe - D	4	78.8%	21.2%	Safe - D	4	78.5%	21.5%
5	Duran (D)	Safe - D	5	77.2%	22.8%	Safe - D	5	78.1%	21.9%
13	Hullingerhorst (D)	Safe - D	13	77.0%	23.0%	Safe - D	13	71.5%	28.5%
10	Kerr (D)/Summers (R)	Safe - D	10	74.1%	25.9%	Safe - D	10	75.3%	24.7%
2	Ferrandino (D)	Safe - D	2	72.7%	27.3%	Safe - D	2	79.1%	20.9%
6	Court (D)	Safe - D	6	69.6%	30.4%	Safe - D	6	68.0%	32.0%
56	Levy (D)	Safe - D	56	63.6%	36.4%	Competitive - D	56	52.8%	47.2%
46	Pace (D)	Safe - D	46	62.4%	37.6%	Safe - D	46	65.4%	34.6%
9	Miklosi (D)	Safe - D	9	61.8%	38.2%	Safe - D	9	63.1%	36.9%
34	Soper (D)	Safe - D	34	61.6%	38.4%	Safe - D	34	55.8%	44.2%
42	Fields (D)	Safe - D	42	59.4%	40.6%	Safe - D	42	63.9%	36.1%
1	Labuda (D)	Safe - D	1	59.4%	40.6%	Safe - D	1	58.3%	41.7%
62	Vigil (D)	Safe - D	62	58.7%	41.3%	Safe - D	62	59.4%	40.6%
53	Fischer (D)	Safe - D	53	58.1%	41.9%	Safe - D	53	56.7%	43.3%
41	Todd (D)	Safe - D	41	57.9%	42.1%	Safe - D	41	58.7%	41.3%
61	Wilson (D)	Safe - D	61	57.3%	42.7%	Safe - D	61	56.4%	43.6%
12	Jones (D)	Safe - D	12	57.0%	43.0%	Safe - D	12	65.9%	34.1%
32	Casso (D)	Safe - D	32	56.8%	43.2%	Safe - D	32	56.5%	43.5%
31	Solano (D)	Competitive - D	31	54.2%	45.8%	Highly Comp - R	31	48.3%	51.7%
52	Kefalas (D)	Competitive - D	52	54.2%	45.8%	Safe - D	52	56.7%	43.3%
28	Kerr (R)	Competitive - D	28	54.2%	45.8%	Safe - R	28	42.3%	57.7%
24	Schafer (D)	Competitive - D	24	54.2%	45.8%	Safe - D	24	56.7%	43.3%
23	Tyler (D)	Competitive - D	23	54.2%	45.8%	Competitive - D	23	54.8%	45.2%
11	Gardner (D)	Competitive - D	11	54.0%	46.0%	Safe - D	11	61.0%	39.0%
33	Beezley (R)	Competitive - D	33	53.6%	46.4%	Highly Comp - D	33	51.3%	48.7%
18	Lee (D)	Competitive - D	18	53.6%	46.4%	Safe - D	18	56.6%	43.4%
29	Ramirez (R)	Highly Comp - D	29	52.4%	47.6%	Highly Comp - D	29	51.8%	48.2%
35	Peniston (D)	Highly Comp - D	35	52.3%	47.7%	Safe - D	35	60.0%	40.0%
36	Ryden (D)	Highly Comp - D	36	51.0%	49.0%	Safe - D	36	57.2%	42.8%
26	Hamner (D)	Highly Comp - D	26	50.3%	49.7%	Safe - D	26	55.6%	44.4%
59	Brown (R)	Highly Comp - R	59	50.0%	50.0%	Competitive - R	59	46.5%	53.5%

House District	Incumbent		Democrat		Republican			Democrat		Republican	
			0%	50%	100%	0%		50%	100%		
3	Kagan (D)	Highly Comp - R	3	49.9%	50.1%	Safe - D	3	62.0%	38.0%		
40	Acree (R)	Highly Comp - R	40	49.8%	50.2%	Safe - R	40	39.2%	60.8%		
50	Young (D)	Highly Comp - R	50	49.5%	50.5%	Highly Comp - R	50	49.8%	50.2%		
47	Swerdfeger (R)	Highly Comp - R	47	49.2%	50.8%	Competitive - R	47	47.1%	52.9%		
17	Barker (R)	Highly Comp - R	17	48.1%	51.9%	Highly Comp - R	17	49.0%	51.0%		
27	Szabo (R)	Competitive - R	27	46.4%	53.6%	Competitive - R	27	47.3%	52.7%		
30	Priola (R)	Competitive - R	30	45.2%	54.8%	Highly Comp - R	30	49.6%	50.4%		
38	Conti (R)	Competitive - R	38	45.2%	54.8%	Competitive - R	38	46.9%	53.1%		
25	Gerou (R)	Competitive - R	25	45.2%	54.8%	Safe - R	25	44.8%	55.2%		
22	Summers (R)	Safe - R	22	44.3%	55.7%	Highly Comp - R	22	48.6%	51.4%		
37	Swalm (R)	Safe - R	37	43.6%	56.4%	Competitive - R	37	46.3%	53.7%		
60	Massey (R)	Safe - R	60	41.6%	58.4%	Safe - R	60	41.9%	58.1%		
51	DelGrosso (R)	Safe - R	51	41.5%	58.5%	Safe - R	51	41.3%	58.7%		
49	Nikkel (R)	Safe - R	49	41.2%	58.8%	Safe - R	49	41.6%	58.4%		
43	McNulty (R)	Safe - R	43	38.6%	61.4%	Safe - R	43	38.5%	61.5%		
21	Gardner (R)	Safe - R	21	38.1%	61.9%	Safe - R	21	36.9%	63.1%		
16	Liston (R)	Safe - R	16	36.9%	63.1%	Safe - R	16	40.2%	59.8%		
57	Becker (R)	Safe - R	57	36.7%	63.3%	Safe - R	57	39.6%	60.4%		
48	Vaad (R)	Safe - R	48	36.3%	63.7%	Safe - R	48	38.7%	61.3%		
63	Open	Safe - R	63	35.6%	64.4%	Safe - R	63	31.0%	69.0%		
55	Bradford (R)	Safe - R	55	35.5%	64.5%	Safe - R	55	33.0%	67.0%		
44	Holbert (R)	Safe - R	44	35.3%	64.7%	Safe - R	44	34.8%	65.2%		
64	McKinley (D)	Safe - R	64	34.1%	65.9%	Competitive - R	64	46.2%	53.8%		
39	Balmer (R)	Safe - R	39	32.8%	67.2%	Competitive - R	39	45.6%	54.4%		
58	Coram (R)	Safe - R	58	32.8%	67.2%	Safe - R	58	37.0%	63.0%		
15	Waller (R)	Safe - R	15	32.4%	67.6%	Safe - R	15	32.3%	67.7%		
45	Murray (R)	Safe - R	45	31.8%	68.2%	Safe - R	45	31.4%	68.6%		
65	Sonnenberg (R)	Safe - R	65	30.3%	69.7%	Safe - R	65	33.2%	66.8%		
14	Joshi (R)	Safe - R	14	30.3%	69.7%	Safe - R	14	32.0%	68.0%		
19	Looper (R)	Safe - R	19	30.0%	70.0%	Safe - R	19	34.8%	65.2%		
54	Scott (R)	Safe - R	54	29.7%	70.3%	Safe - R	54	30.9%	69.1%		
20	Stephens (R)	Safe - R	20	24.7%	75.3%	Safe - R	20	25.5%	74.5%		

Note: In "highly comp" (highly competitive) districts, voter shares for both candidates fall between 47.5 percent and 52.5 percent.

In "competitive" districts, voter shares fall between 45 and 47.5 percent for the trailing party and between 52.5 and 55 percent for the leading party.

In "safe" districts, voter shares are greater than 55 percent for either candidate.

2010 State Treasurer Race - Kennedy (D) & Stapleton (R)
Senate Plan Comparison

Summary	<i>Final Senate Resubmitted Plan</i>						<i>Existing Districts</i>						
	All Races		Democrat	Republican	All Races		Democrat	Republican	All Races		Democrat	Republican	
	35	17	18	35	16	19	21	9	12	23	10	13	
Safe	21	9	12	23	10	13	Competitive	5	3	2	8	6	2
Highly Comp	9	5	4	4	0	4							
Senate District	Incumbent	Safe - D	33	83.2%	16.8%	Safe - D	33	82.9%	17.1%				
34	Guzman (D)	Safe - D	34	78.2%	21.8%	Safe - D	34	78.9%	21.1%				
18	Heath (D)	Safe - D	18	76.3%	23.7%	Safe - D	18	77.6%	22.4%				
31	Open	Safe - D	31	69.8%	30.2%	Safe - D	31	71.2%	28.8%				
32	Aguilar (D)	Safe - D	32	68.7%	31.3%	Safe - D	32	66.1%	33.9%				
17	Shaffer (D)	Safe - D	17	59.8%	40.2%	Safe - D	17	59.7%	40.3%				
3	Giron (D)	Safe - D	3	59.0%	41.0%	Safe - D	3	58.6%	41.4%				
21	Steadman (D)	Safe - D	21	58.9%	41.1%	Competitive - D	21	54.3%	45.7%				
14	Bacon (D)	Safe - D	14	56.3%	43.7%	Safe - D	14	56.7%	43.3%				
11	Morse (D)	Competitive - D	11	53.8%	46.2%	Competitive - D	11	52.6%	47.4%				
29	Carroll (D)	Competitive - D	29	53.6%	46.4%	Safe - D	29	62.5%	37.5%				
28	Williams (D)	Competitive - D	28	52.6%	47.4%	Competitive - D	28	54.8%	45.2%				
26	Newell (D)	Highly Comp - D	26	51.2%	48.8%	Highly Comp - R	26	48.5%	51.5%				
22	Kopp (R)	Highly Comp - D	22	50.9%	49.1%	Safe - R	22	43.4%	56.6%				
24	Tochtrop (D)	Highly Comp - D	24	50.5%	49.5%	Competitive - D	24	53.6%	46.4%				
20	Jahn (D)	Highly Comp - D	20	50.3%	49.7%	Competitive - D	20	55.0%	45.0%				
19	Hudak (D)	Highly Comp - D	19	50.0%	50.0%	Highly Comp - R	19	49.7%	50.3%				
25	Hodge (D)	Highly Comp - R	25	49.9%	50.1%	Highly Comp - R	25	49.4%	50.6%				
16	Open	Highly Comp - R	16	48.9%	51.1%	Competitive - D	16	53.0%	47.0%				
5	Schwartz (D)	Highly Comp - R	5	48.4%	51.6%	Highly Comp - R	5	49.3%	50.7%				
35	Nicholson (D)	Highly Comp - R	35	48.1%	51.9%	Safe - D	35	65.3%	34.7%				
27	Spence (R)	Competitive - R	27	46.0%	54.0%	Safe - R	27	44.7%	55.3%				
8	White (R)	Competitive - R	8	45.5%	54.5%	Competitive - R	8	45.8%	54.2%				
13	Renfroe (R)	Safe - R	13	43.6%	56.4%	Safe - R	13	39.5%	60.5%				
15	Lundberg (R)	Safe - R	15	43.0%	57.0%	Safe - R	15	42.3%	57.7%				
23	Mitchell (R)	Safe - R	23	42.6%	57.4%	Competitive - R	23	45.3%	54.7%				
6	Roberts (R)	Safe - R	6	42.1%	57.9%	Safe - R	6	42.1%	57.9%				
30	Harvey (R)	Safe - R	30	37.1%	62.9%	Safe - R	30	37.0%	63.0%				
2	Grantham (R)	Safe - R	2	36.8%	63.2%	Safe - R	2	43.2%	56.8%				
12	King (R)	Safe - R	12	35.6%	64.4%	Safe - R	12	39.5%	60.5%				
10	Cadman (R)	Safe - R	10	34.4%	65.6%	Safe - R	10	32.2%	67.8%				
7	King (R)	Safe - R	7	32.4%	67.6%	Safe - R	7	32.3%	67.7%				
4	Scheffel (R)	Safe - R	4	32.4%	67.6%	Safe - R	4	31.6%	68.4%				
1	Brophy (R)	Safe - R	1	30.3%	69.7%	Safe - R	1	30.8%	69.2%				
9	Lambert (R)	Safe - R	9	28.6%	71.4%	Safe - R	9	30.9%	69.1%				

Senate District Incumbent	Democrat			Republican		
	0%	50%	100%	0%	50%	100%

Note: In "highly comp" (highly competitive) districts, voter shares for both candidates fall between 47.5 percent and 52.5 percent.

In "competitive" districts, voter shares fall between 45 and 47.5 percent for the trailing party and between 52.5 and 55 percent for the leading party.

In "safe" districts, voter shares are greater than 55 percent for either candidate.

2010 State Treasurer Race - Kennedy (D) & Stapleton (R)
House Plan Comparison

Summary	All Races	House Final Resubmitted Plan			Existing House Districts				
		All Races	Democrat	Republican	All Races	Democrat	Republican		
		65	34	31	65	35	30		
		Safe	41	18	23	45	20	25	
Competitive	16	12	4	13	11	2			
Highly Comp	8	4	4	7	4	3			
House District	Incumbent		Democrat	Republican		Democrat	Republican		
			0%	50%	100%	0%	50%	100%	
8	McCann (D)	Safe - D	8	84.8%	15.2%	Safe - D	8	84.5%	15.5%
7	Williams (D)	Safe - D	7	80.3%	19.7%	Safe - D	7	80.3%	19.7%
10	Kerr (D)/Summers (R)	Safe - D	10	79.4%	20.6%	Safe - D	10	75.4%	24.6%
4	Pabon (D)	Safe - D	4	78.8%	21.2%	Safe - D	4	78.7%	21.3%
5	Duran (D)	Safe - D	5	77.2%	22.8%	Safe - D	5	78.4%	21.6%
2	Ferrandino (D)	Safe - D	2	73.1%	26.9%	Safe - D	2	72.5%	27.5%
6	Court (D)	Safe - D	6	68.3%	31.7%	Safe - D	6	69.1%	30.9%
13	Hullinghorst (D)	Safe - D	13	68.0%	32.0%	Safe - D	13	74.7%	25.3%
42	Fields (D)	Safe - D	42	63.9%	36.1%	Safe - R	42	32.2%	67.8%
12	Jones (D)	Safe - D	12	63.3%	36.7%	Safe - D	12	59.3%	40.7%
9	Miklosi (D)	Safe - D	9	62.9%	37.1%	Competitive - D	9	53.4%	46.6%
32	Casso (D)	Safe - D	32	61.9%	38.1%	Safe - D	32	57.1%	42.9%
1	Labuda (D)	Safe - D	1	59.4%	40.6%	Safe - D	1	59.3%	40.7%
62	Vigil (D)	Safe - D	62	58.6%	41.4%	Safe - D	62	58.7%	41.3%
53	Fischer (D)	Safe - D	53	58.1%	41.9%	Safe - D	53	56.9%	43.1%
41	Todd (D)	Safe - D	41	57.9%	42.1%	Safe - D	41	57.7%	42.3%
46	Pace (D)	Safe - D	46	57.3%	42.7%	Safe - D	46	61.7%	38.3%
11	Gardner (D)	Safe - D	11	56.2%	43.8%	Safe - D	11	55.1%	44.9%
23	Tyler (D)	Competitive - D	23	54.7%	45.3%	Competitive - D	23	54.6%	45.4%
24	Schafer (D)	Competitive - D	24	54.6%	45.4%	Competitive - D	24	54.2%	45.8%
52	Kefalas (D)	Competitive - D	52	54.2%	45.8%	Safe - D	52	55.3%	44.7%
35	Peniston (D)	Competitive - D	35	53.9%	46.1%	Highly Comp - D	35	50.9%	49.1%
34	Soper (D)	Competitive - D	34	53.8%	46.2%	Safe - D	34	60.9%	39.1%
28	Kerr (R)	Competitive - D	28	53.6%	46.4%	Competitive - D	28	53.8%	46.2%
18	Lee (D)	Competitive - D	18	53.6%	46.4%	Competitive - D	18	54.7%	45.3%
36	Ryden (D)	Competitive - D	36	53.2%	46.8%	Competitive - D	36	52.8%	47.2%
31	Solano (D)	Competitive - D	31	53.0%	47.0%	Competitive - D	31	53.0%	47.0%
26	Hamner (D)	Competitive - D	26	52.8%	47.2%	Highly Comp - D	26	52.4%	47.6%
61	Wilson (D)	Competitive - D	61	52.7%	47.3%	Competitive - D	61	53.7%	46.3%
40	Acree (R)	Competitive - D	40	52.6%	47.4%	Highly Comp - R	40	47.9%	52.1%
29	Ramirez (R)	Highly Comp - D	29	52.5%	47.5%	Competitive - D	29	53.6%	46.4%
33	Beezley (R)	Highly Comp - D	33	52.2%	47.8%	Competitive - D	33	53.7%	46.3%
30	Priola (R)	Highly Comp - D	30	52.0%	48.0%	Safe - R	30	44.9%	55.1%
3	Kagan (D)	Highly Comp - D	3	50.9%	49.1%	Safe - D	3	61.8%	38.2%
50	Young (D)	Highly Comp - R	50	49.2%	50.8%	Highly Comp - D	50	50.9%	49.1%
47	Swerdfeger (R)	Highly Comp - R	47	48.2%	51.8%	Highly Comp - R	47	49.5%	50.5%
17	Barker (R)	Highly Comp - R	17	48.1%	51.9%	Highly Comp - R	17	49.0%	51.0%

House District	Incumbent		Democrat			Republican			
			0%	50%	100%	0%	50%	100%	
59	Brown (R)	Highly Comp - R	59	48.1%	51.9%	Highly Comp - D	59	50.2%	49.8%
27	Szabo (R)	Competitive - R	27	46.5%	53.5%	Competitive - R	27	46.5%	53.5%
38	Conti (R)	Competitive - R	38	45.7%	54.3%	Competitive - R	38	46.5%	53.5%
25	Gerou (R)	Competitive - R	25	45.2%	54.8%	Safe - R	25	42.7%	57.3%
37	Swalm (R)	Competitive - R	37	45.2%	54.8%	Safe - R	37	41.7%	58.3%
22	Summers (R)	Safe - R	22	43.1%	56.9%	Safe - R	22	44.1%	55.9%
51	DelGrosso (R)	Safe - R	51	41.4%	58.6%	Safe - R	51	41.7%	58.3%
49	Nikkel (R)	Safe - R	49	41.0%	59.0%	Safe - R	49	35.1%	64.9%
60	Massey (R)	Safe - R	60	40.6%	59.4%	Safe - R	60	43.7%	56.3%
21	Gardner (R)	Safe - R	21	39.9%	60.1%	Safe - R	21	36.9%	63.1%
56	Levy (D)	Safe - R	56	39.4%	60.6%	Safe - R	56	34.5%	65.5%
57	Becker (R)	Safe - R	57	38.7%	61.3%	Safe - R	57	37.9%	62.1%
43	McNulty (R)	Safe - R	43	38.6%	61.4%	Safe - R	43	38.5%	61.5%
63	Open	Safe - R	63	38.2%	61.8%	Competitive - D	63	52.8%	47.2%
16	Liston (R)	Safe - R	16	36.4%	63.6%	Safe - R	16	32.2%	67.8%
48	Vaad (R)	Safe - R	48	36.3%	63.7%	Safe - R	48	37.5%	62.5%
58	Coram (R)	Safe - R	58	36.0%	64.0%	Safe - R	58	31.8%	68.2%
20	Stephens (R)	Safe - R	20	35.8%	64.2%	Safe - R	20	25.1%	74.9%
55	Bradford (R)	Safe - R	55	35.6%	64.4%	Safe - R	55	31.9%	68.1%
44	Holbert (R)	Safe - R	44	35.3%	64.7%	Safe - R	44	35.3%	64.7%
64	McKinley (D)	Safe - R	64	34.7%	65.3%	Safe - R	64	33.8%	66.2%
65	Sonnenberg (R)	Safe - R	65	33.2%	66.8%	Safe - R	65	33.9%	66.1%
39	Balmer (R)	Safe - R	39	32.8%	67.2%	Safe - D	39	60.6%	39.4%
15	Waller (R)	Safe - R	15	31.8%	68.2%	Safe - R	15	28.8%	71.2%
45	Murray (R)	Safe - R	45	31.8%	68.2%	Safe - R	45	31.8%	68.2%
54	Scott (R)	Safe - R	54	28.5%	71.5%	Safe - R	54	40.2%	59.8%
14	Joshi (R)	Safe - R	14	28.0%	72.0%	Safe - R	14	35.1%	64.9%
19	Looper (R)	Safe - R	19	24.0%	76.0%	Safe - R	19	34.4%	65.6%

Note: In "highly comp" (highly competitive) districts, voter shares for both candidates fall between 47.5 percent and 52.5 percent.

In "competitive" districts, voter shares fall between 45 and 47.5 percent for the trailing party and between 52.5 and 55 percent

Exhibit C

State: CO

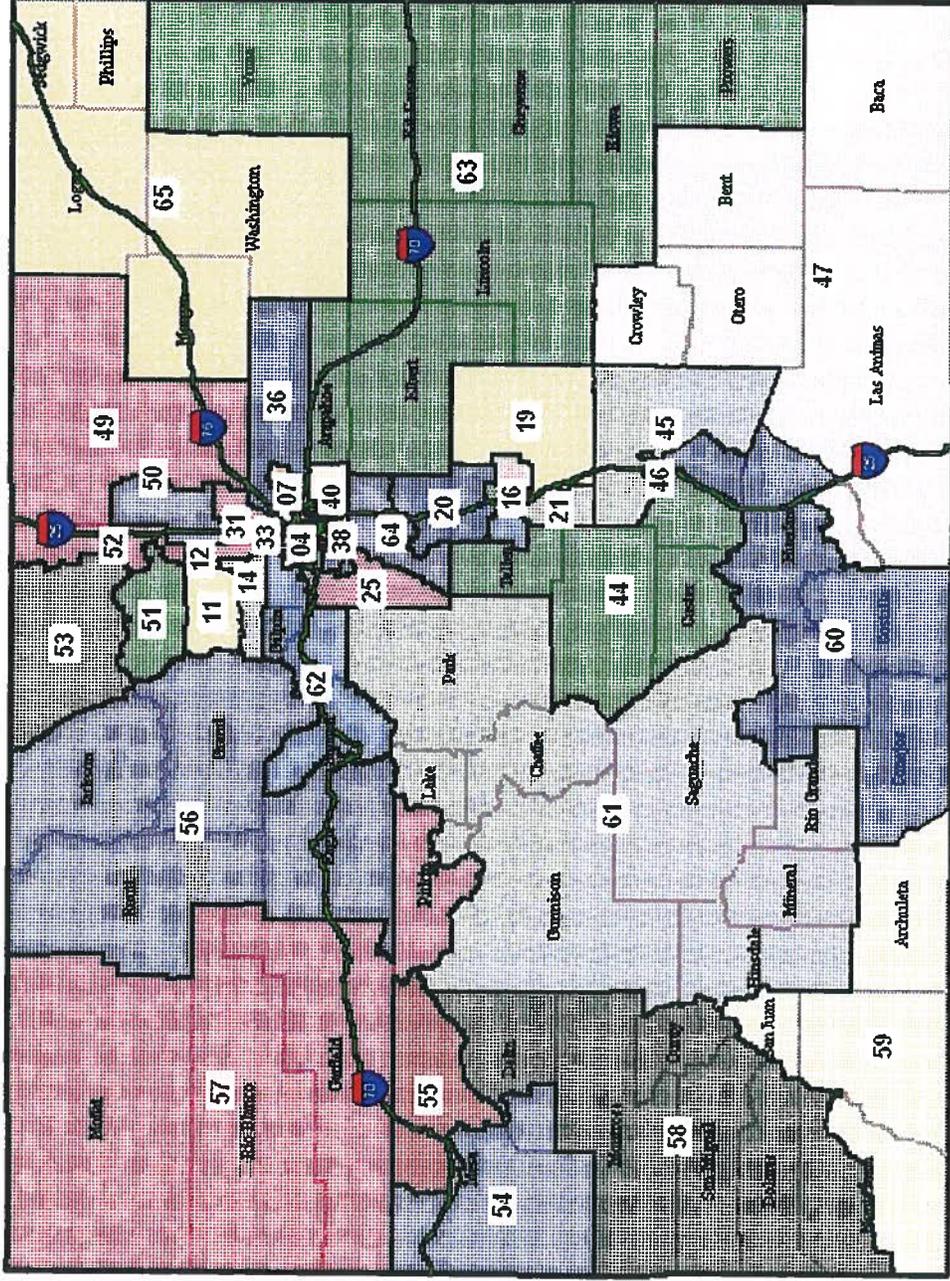
Colorado 1992 State House Districts - State House Districts

Map Layers

- State (Tiger)
- County (Tiger)
- 1992HseDist
- Interstate Highway

Miles
 0 10 20 30

Map Width
 392.03 Miles



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[Reports on 1992 State House Districts](#)

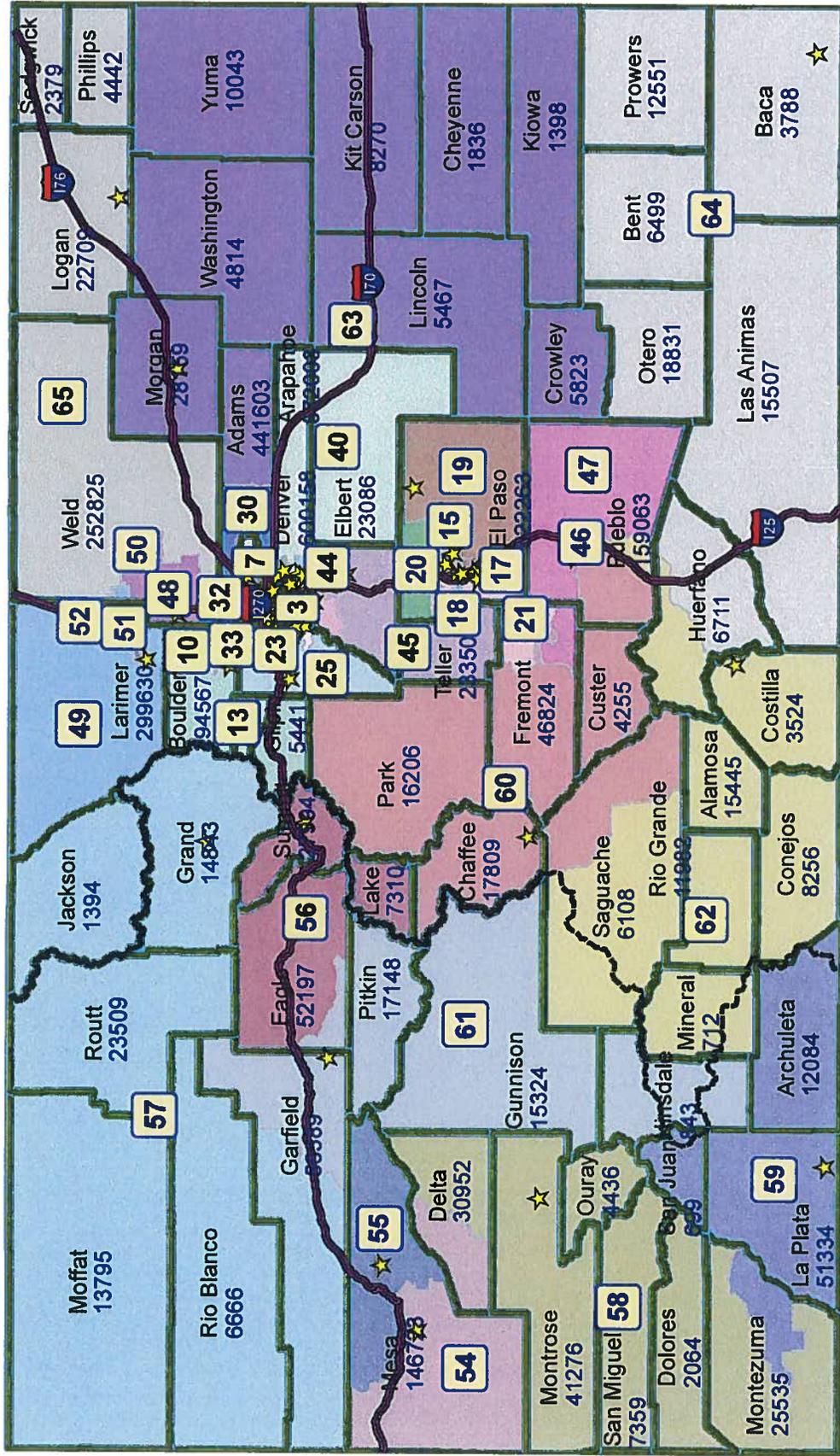
[Related Map: 2002 State House Districts](#)

[Email Comments to lcs.ga@state.co.us](#)

[Colorado Redistricting and Reapportionment](#)

Powered by [MapStudio for the Web](#)

2001 Approved House Districts

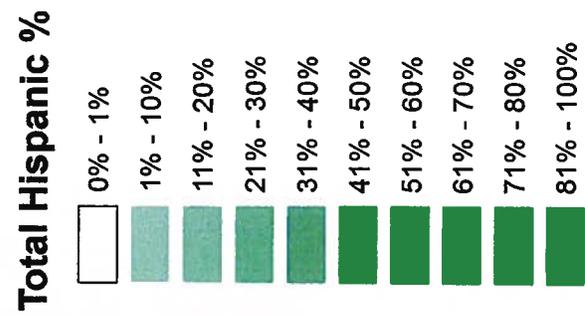
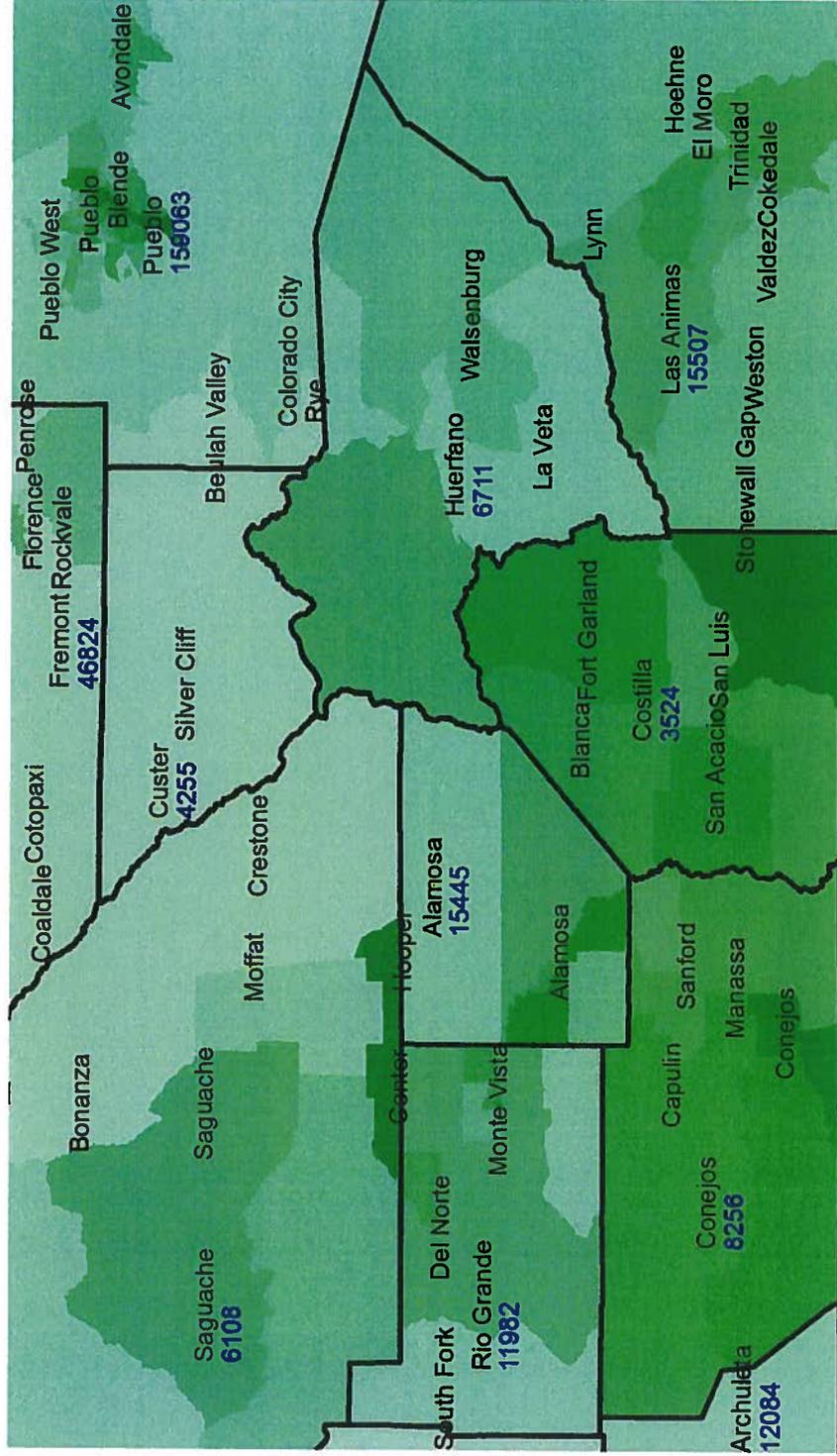


2011 Colorado Reapportionment Commission
 1313 Sherman Street
 Room 122
 Denver, Colorado 80203



Legend
 - - - - Continental Divide
 ★ Incumbents

Colorado Reapportionment Commission San Luis Valley Total Hispanic Population



2011 Colorado Reapportionment Commission
Legislative Service Building
Hearing Room A
Denver, Colorado 80203



Exhibit D

Re: Revised Witwer Map
cameron@polarisconsultingllc.com
to:
Amanda.King
11/25/2011 11:25 AM
Show Details

History: This message has been replied to.
Absolutely.

-----Original Message-----

From: "Amanda King" [Amanda.King@state.co.us]
Date: 11/25/2011 01:22 PM
To: "Cameron Lynch"
Subject: Re: Revised Witwer Map

okay. thanks. if you do end up submitting any additional plans after 5 p.m. today would you please send me a text at [REDACTED] so we can come in this weekend to process it. Thanks.



Amanda.

Please consider the environment before printing this message.

Cameron Lynch <cameron@polarisconsultingllc.com>

From;
To: Amanda King <Amanda.King@state.co.us>
Date: 11/25/2011 11:13 AM
Subject: Re: Revised Witwer Map

I don't believe so. Might get a commissioner with a wild hare but I doubt it.

Sent from my iPhone

On Nov 25, 2011, at 11:02 AM, Amanda King <Amanda.King@state.co.us> wrote:

Okay thanks. Do you guys think you will be submitting amendments over the weekend?

Amanda

<mime-attachment.gif> *Please consider the environment before printing this message.*

From: "cameron@polarisconsultingllc.com" <cameron@polarisconsultingllc.com>
To: Amanda.King@state.co.us
Date: 11/25/2011 10:57 AM

Subject: Revised Witwer Map

Moved one block in Greeley. Should be fixed now. Let me know if you have any questions or problems. Thanks.

Cameron[attachment "Witwer House Plan Revised 11-25 Shape File.zip" deleted by Amanda King/CLICS]

Exhibit 2

The Voting Rights Act and Redistricting in Colorado

The Voting Rights Act (hereinafter "VRA"), 42 U.S.C. §1973, is the primary statutory mechanism for enforcing the voting provisions of the Fourteenth and Fifteenth Amendments to the U.S. Constitution. The Act contains two significant provisions, §2 and §5, which effect the redistricting process.

Section 5 requires covered jurisdictions to "preclear" any change in their electoral laws, practices or procedures with the U.S. Department of Justice or the U.S. District Court for the District of Columbia before the change may be implemented. Colorado is not covered under §5 and is therefore not required to submit its redistricting plans for preclearance.

In contrast to the limited coverage of §5, §2 of the Act can be used to challenge "any voting qualification or prerequisite to voting or standard, practice or procedure anywhere in the United States." In 1982, Congress amended §2 of the VRA to reduce the burden of proof necessary to establish a violation. Prior to the 1982 amendments the U.S. Supreme Court had held that §2 simply mirrored the Fifteenth Amendment to the Constitution and as such required a showing of discriminatory purpose to establish a vote dilution violation. Mobile v. Bolden, 446 U.S. 55 (1980). The 1982 amendments eliminated the intent requirement and instead established that a §2 violation could be proven by showing that a challenged electoral practice had a discriminatory effect on minority voters.

The Senate Judiciary Committee Report accompanying amended §2 elaborated on the circumstances that may be probative of a finding of a racially discriminatory effect:

1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;
2. the extent to which voting in the elections of the state or political subdivisions is racially polarized;

3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;

4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;

5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health which hinder their ability to participate effectively in the political process;

6. whether political campaigns have been characterized by overt or subtle racial appeals;

7. the extent to which members of the minority group have been elected to public office in the jurisdiction;

Additional factors that in some cases have had probative value as part of plaintiffs' evidence to establish a violation are:

whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group;

whether the policy underlying the state or political subdivision's use of such voting qualifications, prerequisites to voting, or standard practice or procedure is tenuous.

The Supreme Court was presented with its first opportunity to interpret amended §2 in Thornburg v. Gingles, 478 U.S. 30 (1986). In discussing the plaintiffs' claim that the establishment of five multimember districts in the redistricting plan for the North Carolina State Senate and House of Representatives impaired black citizens' ability to elect representatives of their choice, a majority of the Court determined that although all nine Senate Report factors may be relevant they will not be dispositive unless the plaintiffs can establish three threshold factors:

1. the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single member district;

2. the minority group must be able to show that it is politically cohesive;

3. the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it - in the absence of special circumstances, such as the minority candidate running unopposed - usually to defeat the minority's preferred candidate.

The lower courts have subsequently applied the three part test outlined in Gingles to all challenges brought under §2, including challenges to single member districts. The Gingles factors are a necessary threshold but are usually not sufficient, in and of themselves, to prove a violation. If the three factors are satisfied the courts will review the totality of the circumstances to determine the existence of a voting rights violation. However, the failure to meet a single Gingles factor is usually fatal to a vote dilution claim.

In Gingles, the Supreme Court made it clear that the evidentiary "linchpin" of a minority vote dilution claim is racially polarized voting. The Court identified racial bloc voting as the foundation of two of the three elements of the results test; one, a racial bloc voting analysis is needed to determine whether the minority group is politically cohesive; and two, the analysis is required to determine if whites are voting sufficiently as a bloc to usually defeat minority-preferred candidates. If these two conditions are present, and if the minority group is sufficiently large and compact to constitute a majority of a single member district, then districts must be drawn to permit minority voters the opportunity to elect candidates of their choice.

In Gingles, the Court held that racially polarized voting exists when there is "a consistent relationship between race of the voter and the way in which the voter votes," or expressed differently, when "black voters and white voters vote differently." Racially polarized voting will not result in a §2 violation unless it denies to the minority community an opportunity to elect their preferred representatives. Therefore, a racial bloc voting analysis entails comparing the voting patterns of whites and minorities and determining the electoral success of the minority-preferred candidate.

The Tenth Circuit Court of Appeals had the opportunity to address a post-Gingles vote dilution claim in Sanchez v. Bond, 875 F.2d 1488 (10th Cir. 1989), a challenge to the election procedure used to elect county commissioners in Saguache County, Colorado. The Tenth Circuit held that Hispanic voters of Saguache County are not denied an equal opportunity to elect representatives of their choice. In reaching its decision, the court placed significant emphasis on factors that have been

deemed irrelevant in other circuits - the election of unopposed Hispanics and the election of Anglo Democrats in contests that did not include Hispanic candidates.

The Tenth Circuit held that the district court did not err in considering the election of unopposed Hispanic candidates to county-wide office as evidence of Anglo support for these candidates. The appellate court reasoned that "Gingles does not establish a per se rule against consideration of such evidence; it does caution against foreclosing claims on that basis alone." The Tenth Circuit court also held that it was not improper for the court to consider the election of three Anglo Democrats to the county commission as evidence of Hispanics' ability to elect candidates of their preference:

We do not believe that a per se rule against examining races that have only white candidates is implicit in Gingles. Such a rule would be clearly contrary to the plurality opinion, which views the race of the candidates as irrelevant in voting analysis. Moreover, such a rule is questionable in light of the language of §2, which seeks to give minorities equal opportunity to 'elect representatives of their choice'... Nothing in the statute indicates that the chosen representative of a minority group must be a minority.

Although the Tenth Circuit indicated that an analysis of election contests involving only white candidates is not impermissible, no other circuit has placed any evidentiary weight on the examination of an election without a viable minority candidate. Collins v. City of Norfolk, (4th Cir. 1989); Campos v. City of Baytown, (5th Cir. 1988); Citizens for a Better Gretna v. City of Gretna, La., (5th Cir. 1987); Gomez v. City of Watsonville, (9th Cir. 1989); Romero v. City of Pomona, (9th Cir. 1989); Solomon v. Liberty County, Fla., (11th Cir. 1990). In addition, the analysis accepted by the Supreme Court in Gingles did not contain any white only election contests.

There is no disputing the fact that an Anglo can be the minority-preferred candidate and the Tenth Circuit has expressly recognized this possibility. However, despite the Tenth Circuit's acceptance of white only elections, the key inquiry remains determining which election contests contain viable minority-preferred candidates and this is most apparent in elections in which minorities compete for office.

The tasks assigned to Election Data Services were to examine state legislative contests in the state of Colorado to determine if legally significant racial bloc voting exists and to ascertain the percentage minority population necessary in a district for minority voters to have the opportunity to elect candidates of choice. Areas with significant minority populations were

targeted for analysis in this study. All the election contests examined contained minority candidates.

The two widely used, standard analytic procedures for estimating the extent to which blacks and whites have voted differently are homogeneous precinct analysis and bivariate ecological regression analysis. These two estimation techniques were approved by the Supreme Court in Gingles.

Using these two statistical techniques, and a database that included the 1988 and 1990 general elections, we concluded on the basis of our analysis that very few of the Colorado state legislative contests were characterized by legally significant racial bloc voting. Because minority candidates are able to garner a large percentage of the white vote, districts in which Hispanics or blacks comprise a majority of the voters appear to be unnecessary in many areas of the state where minorities are concentrated. This is true despite the fact that minorities turnout to vote at a much lower rate than whites.

Whites frequently turnout to vote at higher rates than minorities, and Colorado is no exception to this rule. In the 1988 general election approximately 62 percent of the white voting age population turned out to vote, compared to approximately 40 percent of the Hispanic population and 29 percent of the black population. In the 1990 general election the disparity was even greater; about 49 percent of the whites, 23 percent of the Hispanics and 5 percent of the blacks turned out to vote.

If voting in Colorado was clearly polarized along racial/ethnic lines, given these relative rates of turnout, districts in which Hispanics comprised somewhere between 60 percent of the voting age population (presidential election years) and 70 percent of the voting age population (off-year elections) would be necessary to insure that Hispanics had an opportunity to elect their preferred candidates. For blacks these percentages would be even higher if only relative rates of turnout were considered: a district would have to be somewhere between 68 percent and 90 percent black in voting age population for black and white turnout to be equal on election day.

However, because voting does not appear to be racially polarized in many areas of the state, these equalizing percentages do not reflect the percentage minority population necessary to insure that minorities are being given the opportunity to elect their preferred candidates. Particularly in the Denver and Pueblo metropolitan areas of the state, it appears that minority candidates receive a large percentage of white "crossover" votes (in many cases, a majority of the white vote), making the creation of "supermajority" minority districts unnecessary.

In fact, the results of our analysis leads us to believe that districts in which minorities comprise between 40 and 50 percent of the population are usually sufficient to guarantee minorities the opportunity to elect candidates of their choice. And this can be seen in the number of districts with minority populations between 40 and 50 percent that are currently electing Hispanics and blacks to office in Colorado.

There are two areas of the state in which districts between 40 and 50 percent Hispanic in population do not appear to be sufficient to elect minority-preferred candidates: the Weld County area (House Districts 50 and 51), and the south-east/south-central area of the state (House Districts 43, 60 and 63). In these two areas, there was evidence of racially polarized voting in some of the state legislative elections examined. It may be necessary to create districts that have higher concentrations of Hispanics in them in these two areas of the state.

We conclude with two suggestions to offer as a result of our analysis. First, given the lack of racial bloc voting in the elections we examined, we feel that there is no need to do a disaggregation of votes down to the bloc level based on a racial bloc voting analysis. Second, our conclusions about the degree of racial bloc voting can only be tentative because in many instances there were no state legislative contests that included minority candidates to examine in the areas of concern. If more definitive conclusions on the degree of racial bloc voting in Colorado are desired, some local election returns will have to be included in the database (and possibly some white-versus-white elections examined as well).

Senate Districts

Senate districts with significant minority populations:

DISTRICT	PERCENT HISPANIC	PERCENT BLACK
2	29.5	.7
3	41.9	1.8
5	26.5	.5
16	20.0	.5
24	20.1	1.2
25	21.5	8.1
30	47.8	7.7
31	46.1	3.0
32	22.7	1.5
33	11.0	50.5

House Districts

House districts with significant minority populations:

DISTRICT	PERCENT HISPANIC	PERCENT BLACK
1	20.6	1.3
2	53.0	2.4
3	21.2	2.1
4	42.8	1.3
5	57.7	4.6
7	9.7	54.9
8	25.2	47.8
32	27.6	1.6
34	22.4	1.3
35	21.4	.9
41	32.9	2.3
42	44.0	1.6
43	43.0	.5
50	26.5	.7
51	21.1	.2
60	40.2	.3
63	23.8	.9

**Racial Bloc Voting Analysis Results
1988 General Election**

	Actual	Percent of Vote*		
		White	Black	Hispanic
Statewide				
Turnout	58.9	62.2	28.5	40.7
Congressional District 3				
Zartman (R)	21.2	25.7 (24.9)	NA	0.0 (7.3)
*Campbell (D)	78.8	74.3 (75.1)	NA	100.0 (92.7)
Turnout	59.9	60.4 (62.0)	NA	57.5 (91.4)
Congressional District 4				
Brown (R)	72.8	79.0	NA	NA
*Vigil (D)	27.2	21.0	NA	NA
Turnout	59.8	67.0	NA	18.4
State Senate District 25				
Gallegos (R)	46.8	58.7	NA	23.5
*Martinez (D)	53.2	41.3	NA	76.5
Turnout	46.8	54.3	NA	60.9
State House District 4				
Orr (R)	26.0	36.0	NA	0.0
*Mares (D)	74.0	64.0	NA	100.0
Turnout	54.6	73.5	NA	23.6

*Percentage estimates are based on bivariate ecological regression analysis. Estimates in parentheses are based on homogeneous precinct analysis.

Racial Bloc Voting Analysis Results
 1988 General Election
 (continued)

	Percent of Vote			
	Actual	White	Black	Hispanic
State House District 30				
Dunnell (R)	48.0	61.7	NA	39.6
*Deherrera (D)	52.0	38.3	NA	60.4
Turnout	47.5	57.2	NA	53.7
State House District 31				
Fleming (R)	56.5	66.3	NA	NA
*Romero (D)	43.5	33.7	NA	NA
Turnout	59.2	68.3	NA	NA
State House District 40				
Adkins (R)	70.8	71.9	NA	NA
*Martinez (D)	29.2	28.1	NA	NA
Turnout	62.6	70.0	NA	NA
State House District 53				
Wiggers (R)	49.2	37.4	NA	NA
*Williams (D)	50.8	62.6	NA	NA
Turnout	60.1	67.2	NA	NA

Racial Bloc Voting Analysis Results
1990 General Election

	Percent of Vote			
	Actual	White	Black	Hispanic
Statewide				
Turnout	43.7	49.0	5.0	23.2
Congressional District 1				
*Roemer (R)	35.8	44.2 (45.4)	0.0 (8.1)	0.0
Schroeder (D)	64.2	55.8 (54.6)	100.0 (91.9)	100.0
Turnout	39.5	52.0 (61.1)	23.1 (34.3)	6.6
Congressional District 3				
Ellis (R)	27.8	33.9 (33.0)	NA	0.0 (12.4)
*Campbell (D)	70.5	64.4 (65.2)	NA	100.0 (80.8)
Fields (I)	1.6	1.7 (1.8)	NA	1.3 (6.8)
Turnout	47.9	49.0 (50.0)	NA	43.5
State House District 2				
Kruse (R)	26.8	38.2	NA	0.0
*Hernandez (D)	73.2	61.8	NA	100.0
Turnout	30.1	51.1	NA	10.6
State House District 4				
Bailey (R)	25.4	30.8	NA	0.0
*Mares (D)	74.6	69.2	NA	100.0
Turnout	35.8	55.3	NA	NA

Racial Bloc Voting Analysis Results
1990 General Election
(continued)

	Percent of Vote			
	Actual	White	Black	Hispanic
State House District 14				
*Windham (R)	35.6	34.6	NA	NA
Rupert (D)	64.4	65.4	NA	NA
Turnout	57.4	69.0	NA	NA
State House District 18				
Ratterree (R)	68.7	73.3	NA	NA
*Raye (D)	31.3	26.7	NA	NA
Turnout	42.0	67.1	NA	NA
State House District 30				
Swayze (R)	44.5	55.4	NA	26.4
*Deherrera (D)	55.5	44.6	NA	73.6
Turnout	31.7	40.7	NA	39.3
State House District 43				
*Salaz (R)	59.9	77.0	NA	21.6
*Trujillo (D)	40.1	23.0	NA	78.4
Turnout	49.4	59.6	NA	34.6
State House District 44				
Arveschoug (R)	69.3	74.4	NA	NA
*Zamarripa (D)	30.7	25.6	NA	NA
Turnout	49.5	60.7	NA	NA

Racial Bloc Voting Analysis Results
 1990 General Election
 (continued)

	Percent of Vote			
	Actual	White	Black	Hispanic
State House				
District 50				
Sullivan (R)	51.3	55.2	NA	NA
*Cordova (D)	48.7	44.8	NA	NA
Turnout	31.8	43.1	NA	NA

Exhibit 3

C

West's Colorado Revised Statutes Annotated Currentness

Title 2. Legislative

General Assembly

▣ Article 2. General Assembly

▣ Part 2. Representative Districts--Apportionment (Refs & Annos)

→→ § 2-2-208. Redistricting

(1) The general assembly hereby finds:

(a) House of representatives district 60 currently includes the six counties that compose the San Luis valley, as well as Huerfano county and a portion of Las Animas county.

(b) Certain residents of the San Luis Valley filed a lawsuit against the state under section 2 of the federal "Voting Rights Act", 42 U.S.C. sec. 1973, alleging that the current boundaries of representative district 60 deny Hispanics the right to elect representatives of their choice.

(c) After the United States district court for the district of Colorado ruled in favor of the state, Sanchez v. State of Colorado, 861 F.Supp. 1516 (D.Colo. 1994), the United States tenth circuit court of appeals reversed the district court decision and ordered the state to redraw the boundaries of representative district 60 consistent with section 2 of the Voting Rights Act of 1965. Sanchez v. State of Colorado, 97 F.3d 1303 (10th Cir. 1996).

(d) House joint resolution 97-1045 established an interim committee to redraw the boundaries of representative districts 44, 45, 46, 47, 60, and 61 consistent with the opinion of the tenth circuit court of appeals.

(e) In September of 1997, the interim committee conducted public hearings in the affected areas. The committee heard testimony from residents of the San Luis valley and other parts of southern Colorado about regions that have common interests and regions where interests may conflict.

(f) Following the public hearings, the committee considered nine proposed plans of redistricting and voted to adopt five preliminary plans. Copies of the preliminary plans were distributed to interested parties and made available on the internet through the general assembly's home page.

(g) In October of 1997, the interim committee again conducted public hearings in the affected areas for comments on the five preliminary plans. The committee heard testimony that residents of Center in Saguache county should be included in the new representative district 60 and that representative district 46 in Pueblo should be drawn to keep communities with common interests together.

(h) The interim committee considered the testimony and discussed seven amendments to the preliminary plans before adopting its final recommendation to the second regular session of the sixty-first general assembly.

(2) The definition of areas to be included in each representative district is by reference to counties and to official

census tracts, census divisions, census block groups, and census blocks, created by the United States bureau of the census to which fixed population counts have been assigned as of the year 1990.

(3) The representative districts 44, 45, 46, 47, 60, and 61 are defined as follows:

(a) **District 44:** The counties of Custer, Fremont, and Teller and the following portions of Pueblo county: Block groups 1, 2, 3, 4, and 5 and blocks 642, 643A, 644, 645, 646, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, and 679 in tract 28.04; block group 2 and blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 140, 141, 144, 145, 146, 147, 148, 149, 150, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 195, 196, 197, and 199 in tract 28.06; and blocks 203, 204, 205, 206, 207, 208, 209, 315, 316A, 316B, 317, 318A, 318B, 318C, 318D, and 319 in tract 28.07.

(b) **District 45:** The following portions of Pueblo county: Tracts 9.03, 9.04, 9.05, 16, 17, 28.02, 29.03, 29.05, 33, and 34; block group 1 and blocks 201, 202, 203, 204, 216, 217, 218, 219, 220, 301, 302, 303, 304, 305, 306, 307, 308, and 309 in tract 1; block groups 1 and 2 and blocks 301, 302, 303, and 304 in tract 4; blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 111, 112, 116, 121, 122, 123, 140, 141, 213, 220, 221, 224, 301, 304, 305, 308, 309, 312, 313, 314, 318, 319, 322, 323, 324, 401, 402, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 418, and 421 in tract 5; blocks 322, 323, 324, 325, 326, 327, and 328 in tract 6; block groups 2, 3, and 4 and blocks 101, 102, 103, 104, 106, 124, 125, 126, 127, 128, and 129 in tract 9.02; block 101B in tract 13; blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 204, 212, 213, 220, 224, 225, 226, 227, and 228 in tract 15; block groups 1 and 2 and blocks 301, 302, 303, 304, 305, 306, 307, 310, 311, 312, 313, and 316 in tract 18; blocks 106, 107, 108, and 114 in tract 19; blocks 135, 136, 137, 138, 139, and 194 in tract 28.06; that part of tract 28.07 that is not in district 44; block groups 1, 2, 4, 5, 6, 7, 8, and 9 and blocks 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 399B, 699A, and 799 in tract 29.04; block group 2 and blocks 101A, 102, 103, 104, 105, 106, 107, 109, 110, 299A, 299B, and 299C in tract 30.01; blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 111A, 111B, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161A, 161B, 162, 163, 166, 167, 199A, and 199B in tract 30.03; blocks 102A, 102B, 102C, 103A, 103B, 104, 105, 106, 107, 108, 109, and 110 in tract 30.04; block groups 1 and 3 and blocks 201, 202, 203, 204, 205, 206, 207, 208, 209, 212, 223, 224, 225, 226, 227, 228, 401, 402, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 415, 416, 699, 901, 902, 903, 904, 905, 906, 910, 911, 912, 913, 914, 915, 920, 922, 923, 925, 999A, 999B, and 999C in tract 31.01; block groups 1, 3, and 7 and blocks 201, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 220, 222, 224, and 225 in tract 31.02; and blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 155, 156, 157, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 199A, 199B, 199C, and 199D in tract 32.

(c) **District 46:** The following portions of Pueblo county: Tracts 2, 3, 7, 14, 22, 23, 24, 25, 26, 27, 28.01, 28.08, and 29.01; those parts of tracts 1, 4, 5, 6, 15, 18, 19, and 29.04 that are not in district 45; block group 1 and blocks 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 216, 217, 219, 401, 402, 407, 412, 413, 417, 418, 419, 420, 421, and 422 in tract 8; block groups 2 and 3 in tract 13; block groups 3, 4, and 5 and blocks 208, 209, 210, 211, 212, 213, and 215 in tract 20; block groups 2 and 3 and blocks 102, 103, 104, 105, 106A, 106B, 110, and 113 in tract 21; and that part of tract 28.06 that is not in district 44 or 45.

(d) **District 47:** The counties of Baca, Bent, Crowley, Las Animas, and Otero and the following portion of Huerfano

county: Block groups 6 and 7 and blocks 123A, 167A, 168, 169, 170, 171, 172, 173, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 199B, 199C, 309A, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324A, 325A, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338A, 339A, 340, 341, 342A, 343A, 344A, 345A, 346, 347, 348, 349, 350A, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367A, 368A, 369A, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420A, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 503A, 503B, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549A, and 549B in tract 98.06; and blocks 119, 154, 155, 156, 157, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 199A, 199B, 199C, 199D, 201, 202, 203A, 209A, 211A, 212A, 213A, 214A, 214B, 214C, 215, 216A, 216B, 217, 218A, 218B, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248A, 249, 250, 251, 252, 253, 254, 255, 256A, 256B, 257A, 257B, 257C, 258A, 258B, 259, 260, 261, 262, 263, 264, 265, 266A, 266B, 267, 268A, 268B, 269, 270, 271, 272, 299A, 299B, 299C, 299D, 299E, 299F, 299G, 299H, 299J, 317, 318, 319, 320, 321, 322, 324, 326, 328, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 399A, 399B, 399C, and 399D in tract 98.07.

(e) **District 60:** The counties of Alamosa, Conejos, and Costilla and the following portions of Huerfano, Pueblo, Rio Grande, and Saguache Counties:

(I) Huerfano: Tract 98.08; and those parts of tracts 98.06 and 98.07 that are not in district 47.

(II) Pueblo: Those parts of tracts 9.02, 30.01, 30.03, 30.04, 31.01, 31.02, and 32 that are not in district 45; those parts of tracts 8, 20, and 21 that are not in district 46; that part of tract 28.04 that is not in district 44; and that part of tract 13 that is not in district 45 or 46.

(III) Rio Grande: Block group 1 and blocks 201, 202, 203, 204, 205, 206, 207, 208, 209, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 236, 237, 238, 239A, 239B, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 299 in tract 97.66; and block group 3 and blocks 101A, 101B, 101C, 101D, 102, 103A, 103B, 103C, 104A, 104B, 104C, 104D, 104E, 104F, 104G, 105, 106, 107A, 107B, 108A, 108B, 109, 110A, 110B, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139A, 139B, 139C, 140, 141, 142, 145, 146, 147, 148, 152, 153, 154, 155, 156, 157, 158, 159, 160, 199A, 199B, 199C, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215A, 215B, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 231, 232, 235A, 235B, 238, 239, 240, 241, 242, 243, 244, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416A, 416B, 416C, 417A, 417B, 418A, 418B, 418C, 419, 420, 421, 422, 423A, 423B, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457A, 457B, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472A, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 487, and 490 in tract 97.67.

(IV) Saguache: Block 366, 569, 571, 572, 573, 574, 578, 580, 581, 582, 583, 584, 596, 597, and 599C in tract 97.76; and block groups 2 and 3 and blocks 101, 102, 103, 104, 105, 106, 107, 108, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 199, 481, 484, 485, 486, 488, 489, 490, 491, 492, 493, 494, and 495 in tract 97.77.

(f) **District 61:** The counties of Chaffee, Gunnison, Hinsdale, Mineral, Lake, and Park and the following portions of

Pitkin, Rio Grande, and Saguache counties:

(I) That part of Pitkin county that is not in district 57.

(II) That part of Rio Grande county that is not in district 60.

(III) That part of Saguache county that is not in district 60.

(4) The county clerk and recorder of each county affected by the redistricting plan specified in this section shall establish precinct boundaries in accordance with section 1-5-101, C.R.S., so that no precinct includes territory in more than one representative, senatorial, or congressional district.

(5) The representative districts specified in this section shall be in effect for the 1998 general election and subsequent elections until a new redistricting plan is approved pursuant to article V, section 48, of the state constitution.

CREDIT(S)

Added by Laws 1998, Ch. 1, § 1, eff. Feb. 11, 1998.

C. R. S. A. § 2-2-208, CO ST § 2-2-208

Current through the end of the First Regular Session of the 68th General Assembly (2011)

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Exhibit 4

**PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK-PRODUCT**

**VOTING PATTERNS BY RACE/ETHNICITY IN
RECENT SAN LUIS VALLEY, COLORADO ELECTIONS**

Prepared by Dr. Lisa Handley
Principal, Frontier International Electoral Consulting

Introduction

Scope of Project In September 2001, I was retained by Holme Roberts & Owen, legal counsel to the Colorado Reapportionment Commission, to perform a racial bloc voting analysis of recent elections in the Colorado counties that make up the San Luis Valley and State House District 60.

In 1991, while employed by Election Data Services, Inc., I conducted a similar analysis for the state of Colorado on behalf of the 1990 Colorado Reapportionment Commission. After analyzing data from 1988 and 1990 elections in the San Luis Valley, I found that voting in the San Luis Valley was racially polarized. This conclusion was later confirmed by the Tenth Circuit Court of Appeals in *Sanchez v. State of Colorado*,¹ which, in addition to my analysis, also considered data from subsequent elections. The existence of racially polarized voting, along with other factors, led the *Sanchez* court to conclude that the failure to create a majority minority district in the San Luis Valley constituted a violation of Section 2 of the Voting Rights Act of 1965.²

This analysis was undertaken to determine if voting in the San Luis Valley and State House District 60 is still racially polarized. My analysis leads me to conclude that it is: Hispanic voters in the San Luis Valley and State House District 60 are still politically cohesive and Anglos still usually vote as a bloc against Hispanic-preferred candidates.

Professional Background and Experience I have extensive experience as a redistricting consultant. I have advised numerous jurisdictions and other clients on redistricting-related issues and served as an expert in dozens of redistricting and voting rights cases – including one person, one vote cases, voting rights cases and partisan gerrymandering cases. My clients have included the U.S. Department of Justice,

¹ 97 F.3d 1303 (10th Cir. 1996).

² The U.S. Supreme Court in *Thornburg v. Gingles*, 478 U.S. 30 (1986), required plaintiffs to demonstrate three threshold factors to establish a Section 2 violation:

- The minority group must be sufficiently large and geographically compact to constitute a majority in a single member district;
- The minority group must be politically cohesive;
- The minority group must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it – in the absence of special circumstances, such as the minority candidate running unopposed – usually to defeat the minority's preferred candidate.

If voting is racially polarized, then plaintiffs have successfully demonstrated the 2nd and 3rd factors: the minority community is politically cohesive and whites are usually bloc voting to defeat minority-preferred candidates.

scores of state and local jurisdictions and a number of national civil rights organizations, as well as such international organizations as the United Nations.

I have been a principal of Frontier International Electoral Consulting, a company which specializes in redistricting research and consulting, since co-founding the company in 1998. In addition, I have been actively involved in researching, writing and teaching on the subjects of redistricting and voting rights. I co-authored a book (*Minority Representation and the Quest for Voting Equality*), as well as numerous articles, on these topics. I have taught a number of political science and methodology courses, including a graduate seminar at George Washington University entitled "Representation, Redistricting and Voting Rights Issues." I received a Ph.D. in political science from George Washington University in 1991. (A copy of my curriculum vitae outlining my experience in greater detail can be found in Appendix A.)

Methodology

In *Thornburg v. Gingles*,³ the U.S. Supreme Court held that racially polarized voting exists when there is "a consistent relationship between race of the voter and the way in which the voter votes," or, put another way, when minority voters and white voters, considered separately, would have elected different candidates to office.

The voting patterns of white and minority voters must be estimated using statistical techniques because direct information about how individuals have voted is simply not available – the race of the voter is not, of course, obtainable from the ballot. I used two complementary statistical methods to measure the extent of racial bloc voting in general elections in Colorado: homogeneous precinct analysis and bivariate ecological regression. These two analytic procedures were employed by the expert in *Thornburg v. Gingles* and have the benefit of the Supreme Court's stamp of approval in this, as well as many subsequent cases. A description of the methodology used to produce estimates of voting patterns by race can be found in Appendix B to this report. (See Appendix B: Statistical Methodology Used to Analyze Voting Patterns by Race/Ethnicity.)

I examined four recent general election contests in Colorado. As is standard for this type of inquiry, I analyzed only contests that included minority candidates.⁴ Since the election district at issue is State House District 60, the most probative contests for determining the continued existence of racial bloc voting are the most recent legislative elections for this district. The 1998 and 2000 elections were the only two legislative contests held in State House District 60 as currently configured. Since both of these contests included a Hispanic candidate, these were the two legislative contests examined. Also analyzed were the two statewide contests in 1998 and 2000 in which an Hispanic candidate competed against an Anglo candidate: the 1998 race for Attorney General and the 2000 race for Secretary of State.⁵ My analysis focused on the voting patterns of Anglos and Hispanics residing in the eight counties that compose the San Luis Valley and State House District 60.⁶

³ 478 U.S. 30.

⁴ Elections that include minority candidates are the most probative in determining the existence of racial bloc voting – only evidence that white voters are willing to support minority candidates who are the choice of the minority community allows us to conclude that voting is not polarized. In discussing which elections are most probative, for example, the *Sanchez* court noted that Section 2's "guarantee of equal opportunity is not met when candidates favored by [minorities] can win, but only if the candidates are white." *Sanchez v. State of Colorado*, 97 F.3d 1303, 1321 (10th Cir. 1996).

⁵ There were no other statewide general election contests that included an Hispanic candidate in 1998 and 2000.

⁶ The eight counties that fall within the San Luis Valley and State House District 60 include Alamosa, Conejos, Costilla, Huerfano, Mineral, Pueblo, Rio Grande and Saguache. The racial bloc voting analysis compared the voting behavior of the Hispanic population to the voting behavior of the Anglo population in this area, since Hispanics are the only group protected under the Voting Rights Act of sufficient size and geographic concentration in the San Luis

Findings

1998 General Election Estimates of Anglo and Hispanic voting patterns in the two contests examined in 1998 – State House District 60 and Attorney General – can be found in Table 1, below. Competing in the 1998 general election for representative of the newly reconfigured State House District 60 was an Anglo Republican, Smith, and an Hispanic Democrat, Gagliardi. The Hispanic candidate won the election by 1300 votes. The data indicate that a large majority of Hispanic voters supported the Hispanic candidate (84.4% according to the regression analysis, 71.2% according to the homogeneous precinct analysis); white voters, on the other hand, appear to have supported the Anglo candidate.⁷

In the race for Attorney General, Hispanics in the eight county area studied overwhelmingly supported the Hispanic Democrat, Salazar, who won the contest both statewide and in this eight county region. Anglos appear to have divided their votes relatively evenly between the Hispanic candidate and his Anglo opponent – the regression analysis estimates that 47.4% of the white voters supported Salazar and 50.5% supported his opponent, Suthers; the homogenous precinct analysis estimates indicate that 51.9% of the whites supported Salazar and 44.4% supported Suthers.

Table 1: 1998 General Election: House District 60 and Attorney General

Election Contest & Candidates	Candidate Information		Actual Votes Received			Estimates of the Percent of Voters Voting for Each Candidate: regression (homogeneous) estimates	
	Party of Candidate	Race/Ethnicity of Candidate	Total Votes Received State or Districtwide	% of Total Votes Received State or Districtwide	% of Total Votes Received from Precincts*	Anglo Voters	Hispanic Voters
State House District 60							
Smith	Republican	Anglo	8096	45.4	44.4	79.7 (43.3)	13.7 (26.6)
Gagliardi	Democrat	Hispanic	9396	52.7	53.6	18.3 (50.0)	84.4 (71.2)
Minor Party Candidates			354	2.0	2.0	2.1 (6.7)	1.9 (2.2)
Attorney General							
Suthers	Republican	Anglo	601774	47.4	33.5	50.5 (44.4)	0.0 (5.3)
Salazar	Democrat	Hispanic	634159	50.0	64.9	47.4 (51.9)	100.0 (92.3)
Minor Party Candidates			33470	2.6	1.8	2.0 (3.6)	.6 (2.3)

* % of Total Votes Received from Precincts = percent of votes received on election day from precincts in the eight counties (or legislative district) under consideration. Early and absentee ballots were not considered because they cannot be attributed to a specific precinct; only those votes attributable to a specific geographic location (and therefore associated with an identifiable racial/ethnic composition) can be utilized in the statistical analyses. Given the relatively small percentage of absentee and early ballots cast, and the mostly large differences in the preferences of the Hispanic and Anglo voters, the exclusion of these votes from the analyses is unlikely to affect the results.

Valley to be of potential concern, as well as the only minority group sufficiently numerous to be able to produce reliable estimates of voting patterns.

⁷ The regression analysis indicates that 79.7% of the Anglos voted for the Anglo candidate; the homogeneous precinct analysis, however, indicates that only 43.3% of the Anglos voted for the Anglo candidate. Given the large percentage of Hispanics voting for the Hispanic candidate, and the fact that the Hispanic candidate only received a little over 50% of the vote, this means that a significant number of Anglos must have voted for the Anglo candidate. Therefore the 79.7% regression estimate for Anglo voters must be closer to the actual percentage of Anglo voters supporting the Anglo candidate.

2000 General Election Estimates of Anglo and Hispanic voting patterns in the two contests examined in 2000 are found below in Table 2. An Anglo Republican, Snook, ran against the Hispanic Democratic incumbent, Gagliardi, for State House District 60 in the 2000 general election. Despite the strong support the Hispanic incumbent received from Hispanic voters (86.0% according to the regression analysis, 64.4% according to the homogeneous precinct analysis), the Hispanic incumbent was defeated. This was because a large majority of the Anglo voters (85.5% according to the regression analysis, 62.8% according to the homogeneous precinct analysis) cast their ballot for his Anglo opponent.

The contest for Secretary of State was also polarized: Hispanics in the eight county area studied overwhelming supported the Hispanic Democrat, Martinez, but only about a third of the Anglos voted for Martinez (29.2% according to the regression analysis, 35.0 % according to the homogeneous precinct analysis). The Anglo Republican, Davidson, won the contest both statewide and in the eight county region examined.

Table 2: House District 60 and Secretary of State, 2000 General Election

Election Contest & Candidates	Candidate Information		Actual Votes Received			Estimates of the Percent of Voters Voting for Each Candidate: regression (homogeneous) estimates	
	Party of Candidate	Race/Ethnicity of Candidate	Total Votes Received State or Districtwide	% of Total Votes Received State or Districtwide	% of Total Votes Received from Precincts*	Anglo Voters	Hispanic Voters
State House District 60							
Snook	Republican	Anglo	9740	48.5	46.9	85.5 (62.8)	12.0 (32.0)
Gagliardi	Democrat	Hispanic	9649	48.0	49.3	9.5 (32.1)	86.0 (64.4)
Minor Party Candidates			695	3.5	3.7	4.9 (5.1)	2.4 (3.6)
Secretary of State							
Davidson	Republican	Anglo	893891	55.5	43.8	63.5 (56.2)	0.0 (5.4)
Martinez	Democrat	Hispanic	609366	37.8	51.4	29.2 (35.0)	100.0 (93.3)
Minor Party Candidates			108160	6.7	4.7	5.8 (8.8)	.7 (1.3)

* see asterisk under Table 1 above for an explanation of % of Total Votes Received from Precincts

Conclusion

In all four of the recent election contests studied, the Hispanic candidate was clearly the Hispanic-preferred candidate, hence Hispanics are still politically cohesive. In three of four elections studied, Anglo voters supported the Hispanic-preferred candidate's Anglo opponent, thus Anglo voters still usually vote as a bloc against the minority community's candidate of choice. On the basis of these findings, I conclude that voting in the San Luis Valley and State House District 60 remains racially polarized. An examination of local election data is unlikely to alter my conclusion given the consistent pattern of polarization found in these more probative election contests.

Appendix A

Vita
Lisa R. Handley

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Professional Experience

I have more than fifteen years of experience in the areas of redistricting and voting rights, both as a practitioner and an academician. I have advised numerous jurisdictions and other clients on redistricting and voting rights issues and have served as an expert witness in dozens of redistricting and voting rights cases. My clients have included the U.S. Department of Justice, scores of state and local jurisdictions and a number of national civil rights organizations, as well as the United Nations, the International Institute for Democracy and Electoral Assistance (IDEA) and the International Foundation for Election Systems (IFES). In addition, I have been actively involved in research, writing and teaching on the subjects of redistricting and voting rights. I have co-authored a book (Minority Representation and the Quest for Voting Equality), as well as numerous articles, and on these subjects and served as Lead Writer on the topic of boundary delimitation for a web-based global encyclopedia of election administration compiled by the United Nations, IDEA and IFES. I have taught a political science graduate seminar entitled Representation and Redistricting at George Washington University, as well as political science and methodology courses at the University of California, Irvine; James Madison University and the University of Virginia.

Present Employment

Principal, Frontier International Electoral Consulting LLC (since co-founding company in September of 1998). Frontier IEC provides redistricting services and products in the United States and to election officials worldwide. The company consults on redistricting planning, procedures and technology and conducts redistricting-related research and statistical analyses. Frontier IEC also offers software products for evaluating redistricting plans and measuring voting patterns. The company has offices in Washington D.C. and Germany.

Education

Ph.D. The George Washington University, Political Science, 1991

Previous Employment

Project Coordinator and Lead Writer on Boundary Delimitation, Administration and Cost of Elections (ACE) Project. As Project Coordinator (September 1998 – December 2000) of the ACE Project, I served as a liaison between the three partner international organizations – the United Nations, the International Foundation for Election Systems, and International IDEA – and I was responsible for the overall project management of ACE, a web-based global encyclopedia of election administration. As Lead Writer on

Boundary Delimitation (since September 1997), I was responsible for writing the original text on comparative redistricting for ACE, and I continue to supervise the updating and expansion of this text.

Senior Research Analyst and Statistical Consultant, Election Data Services, Inc. (November 1984 to August 1998). Election Data Services (E.D.S.) is a Washington D.C. political consulting firm specializing in redistricting and election administration. My work at E.D.S. focused on providing redistricting and voting rights consulting and litigation support to scores of state and local jurisdictions. In addition, I served as an expert witness in dozens of redistricting and voting rights cases.

Independent Consultant (1994 to 1998). I have served as an independent consultant and/or expert witness on redistricting and voting rights issues for, among others, the United Nations, International IDEA, the U.S. Department of Justice, the State of Alaska, the City of Miami Beach and several national civil rights organizations.

Adjunct Professor or Lecturer (1986 to 1996). I have taught political science and methodology courses at George Washington University (Department of Political Science, 1992-96); the University of Virginia (Department of Government and Foreign Affairs, 1988-90); James Madison University (Department of Political Science, Fall 1987) and the University of California, Irvine (School of Social Sciences, 1986-87).

Grants

National Science Foundation Grant (2000-2001) with Bernard Grofman to host an international conference on "Redistricting in a Comparative Perspective."

Publications

Book:

Minority Representation and the Quest for Voting Equality, Cambridge University Press, 1992 (with Bernard Grofman and Richard Niemi).

Electronic Publication:

"Boundary Delimitation" Topic Area for the Administration and Cost of Elections (ACE) Project, 1998. Published by the ACE Project on the ACE website (www.aceproject.org). The ACE Project is a joint venture of the United Nations, the International Foundation for Election Systems (IFES) and the International Institute for Democracy and Electoral Assistance (IDEA).

Articles:

"Drawing Effective Minority Districts: A Conceptual Framework and Some Empirical Evidence," North Carolina Law Review, forthcoming (with Bernard Grofman and David Lublin).

"A Guide to 2000 Redistricting Tools and Technology" in The Real Y2K Problem: Census 2000 Data and Redistricting Technology, edited by Nathaniel Persily, New York: Brennan Center, 2000.

"Using Geographic Information Systems for Redistricting," International IDEA, 2000. Part of a technical series on democracy assistance published by International IDEA.

"1990s Issues in Voting Rights," Mississippi Law Journal, 65 (2), Winter 1995 (with Bernard Grofman).

"Minority Turnout and the Creation of Majority-Minority Districts," American Politics Quarterly, 23 (2), April 1995 (with Kimball Brace, Richard Niemi and Harold Stanley).

"Identifying and Remediating Racial Gerrymandering," Journal of Law and Politics, 8 (2), Winter 1992 (with Bernard Grofman).

"The Impact of the Voting Rights Act on Minority Representation in Southern State Legislatures," Legislative Studies Quarterly, 16 (1), February 1991 (with Bernard Grofman).

"Minority Population Proportion and Black and Hispanic Congressional Success in the 1970s and 1980s," American Politics Quarterly, 17 (4), October 1989 (with Bernard Grofman).

"Black Representation: Making Sense of Electoral Geography at Different Levels of Government," Legislative Studies Quarterly, 14 (2), May 1989 (with Bernard Grofman).

"Minority Voting Equality: The 65 Percent Rule in Theory and Practice," Law and Policy, 10 (1), January 1988 (with Kimball Brace, Bernard Grofman and Richard Niemi).

"Does Redistricting Aimed to Help Blacks Necessarily Help Republicans?" Journal of Politics, 49 (1), February 1987 (with Kimball Brace and Bernard Grofman).

Chapters in Edited Volumes:

"Electing Minority-Preferred Candidates to Legislative Office: The Relationship Between Minority Percentages in Districts and the Election of Minority-Preferred Candidates," in Race and Redistricting in the 1990s, edited by Bernard Grofman; New York: Agathon Press, 1998 (with Bernard Grofman and Wayne Arden).

"Estimating the Impact of Voting-Rights-Related Districting on Democratic Strength in the U.S. House of Representatives," in Race and Redistricting in the 1990s, edited by Bernard Grofman; New York: Agathon Press, 1998 (with Bernard Grofman).

"Voting Rights in the 1990s: An Overview," in Race and Redistricting in the 1990s, edited by Bernard Grofman; New York: Agathon Press, 1998 (with Bernard Grofman and Wayne Arden).

"Racial Context, the 1968 Wallace Vote and Southern Presidential Dealignment: Evidence from North Carolina and Elsewhere," in Spatial and Contextual Models in Political Research, edited by Munroe Eagles; Taylor and Francis Publishing Co., 1995 (with Bernard Grofman).

"The Impact of the Voting Rights Act on Minority Representation: Black Officeholding in Southern State Legislatures and Congressional Delegations," in The Quiet Revolution: The Impact of the Voting Rights Act in the South, 1965-1990, eds. Chandler Davidson and Bernard Grofman, Princeton University Press, 1994 (with Bernard Grofman).

"Preconditions for Black and Hispanic Congressional Success," in United States Electoral Systems: Their Impact on Women and Minorities, eds. Wilma Rule and Joseph Zimmerman, Greenwood Press, 1992 (with Bernard Grofman).

Redistricting and Voting Rights Court Cases

I have served as a consultant and/or expert witness in the following cases:

Donald Moon v. Donald Beyer (1996) -- challenge to the third congressional district in Virginia

National Coalition on Black Voter Participation v. Glendening (1996) -- challenge to Maryland's implementation of the National Voter Registration Act

Johnson v. Mortham (1996) -- Florida congressional districts

Republican Party of Alaska v. Coghill (1996) -- challenge to change in the Alaska Republican primary process

Akhivgak v. City of Barrow (1995) -- challenge to Barrow, Alaska referendum result

Dansereau v. Coghill (1995) -- Alaska vote fraud suit challenging 1994 gubernatorial contest

Scott v. U.S. Department of Justice (1995) -- Florida state senate districts

Victor Diaz v. City of Miami Beach (1995) -- challenge to Miami Beach at-large elections for city commission

Hays v. State of Louisiana (1994) -- challenge to the fourth congressional district in Louisiana

Vera v. Richards (1994) -- Texas Congressional districts

Johnson v. Miller (1994) -- Georgia Congressional districts

Sinkfield v. Bennett (1993) -- Alabama Congressional districts

Maryland for Fair Representation v. Schaefer (1993) -- Maryland State Legislative districts

Torres v. Cuomo (1993) -- New York Congressional districts

Barnett v. Daley / Bonilla v. Chicago City Council (1992-4) -- Chicago City Council wards

Vecinos de Barrio Uno v. City of Holyoke (1993) -- Holyoke, Massachusetts, City Council districts

Gonzalez v. Monterey County, California (1992) -- Monterey County, California, Board of Supervisors

Phillip Langsdon v. Milsaps (1992) -- Tennessee State Legislative districts

The Fund for Accurate and Informed Representation v. Weprin (1992) -- New York State Assembly districts

DeGrandy v. Wetherell (1992) -- Florida State Legislative and Congressional districts

Nash v. Blunt (1992) -- Missouri State House districts

Smith v. Board of Supervisors of Brunswick County, Virginia (1992) -- Brunswick County, Virginia, Board of Supervisors districts

Black Political Task Force v. Connolly (1992) -- Massachusetts General Assembly redistricting

Mellow v. Mitchell / Nerch v. Mellow (1992) -- Pennsylvania Congressional districts

Quilter v. Voinovich (1992) -- Ohio State House and Senate districts

LaPaille v. Illinois Legislative Redistricting Commission (1992) -- Illinois State Legislative districts

People of the State of Illinois ex. rel. Burris v. Ryan (1991-92) -- Illinois State House districts

Jamerson et al. v. Womack (1992) -- Virginia State Senate districts

Good v. Austin (1991-92) -- Michigan Congressional districts

Neff v. Austin (1991-92) -- Michigan State Senate and State House districts

Terrazas v. Slagle (1991) -- Texas State Legislative districts

Mena v. Richards (1991) -- Texas State Legislative districts

Republican Party of Virginia et al. v. Wilder (1991) -- Virginia General Assembly districts

Williams v. State Board of Elections (1989) -- Cook County, Illinois, Judicial Election districts

Brown v. Board of Commissioners of Chattanooga, Tenn. (1988-89) -- Chattanooga, Tennessee, City Commission districts

The 5th Ward Precinct 1A Coalition and Progressive Association v. Jefferson Parish School Board (1988) -- Jefferson Parish, Louisiana, School Board districts

East Jefferson Parish Coalition for Leadership and Development v. Jefferson Parish (1987-88) -- Jefferson Parish, Louisiana, Parish Council districts

Roberts v. Wamser (1987-88) -- St. Louis, Missouri, voting equipment

Buckanaga v. Sisseton Independent School District (1987-88) -- Sisseton County, South Dakota, School Board districts

Griffin v. City of Providence (1986-87) -- Providence, Rhode Island, City Council districts

U.S. v. City of Los Angeles (1986) -- Los Angeles City Council districts

Latino Political Action Committee v. City of Boston (1984-85) -- Boston City Council districts

Ketchum v. Byrne (1984-85) -- Chicago City Council districts

South Carolina v. U.S. (1984) -- South Carolina State Senate districts

(last updated: February 2001)

Appendix B

Statistical Methodology Used to Analyze Voting Patterns by Race/Ethnicity

A racial bloc voting analysis entails comparing the voting patterns of whites and minorities. Because direct information about how individuals have voted is generally not available, some statistical techniques are required. Two widely used, standard analytic procedures for estimating the extent to which minorities and whites have voted differently are homogeneous precinct analysis (also called extreme case analysis) and bivariate ecological regression. These two techniques employed by the plaintiff's expert (Dr. Bernard Grofman) in *Thornburg v. Gingles*, the first U.S. Supreme Court case to consider the 1982 Amendments to the Voting Rights Act of 1965, and accepted by the *Gingles* Court.

Homogeneous Precinct or Extreme Case Analysis

The simplest method for estimating voting behavior by race is to examine "homogeneous" precincts within a particular jurisdiction. In a voting unit that is entirely of one race or ethnic group, all of the votes cast in that precinct can be attributed to that racial or ethnic group. For example, if there is a precinct with only Hispanic residents and voters in that precinct cast 80 percent of their ballots for the Hispanic candidate and 20 percent for the white candidate in a given election contest, then we know that 80 percent of the Hispanic voters voted for the Hispanic candidate.

It is not often the case that voting precincts are composed entirely of one race or ethnic group. For this reason, precincts are generally considered homogeneous if over 90 percent of the voting age population residing in the precinct are members of the same race/ethnic group.

After identifying precincts that are overwhelmingly one-race, the votes cast for different candidates in the precinct or a group of precincts where all of the voters are white are compared to precincts in which all or almost all of the voters are members of a specific minority group. The figures derived from these homogeneous voting units serve as estimates of the behavior of all the respective group members in that political jurisdiction.

One problem sometimes encountered when attempting to conduct a homogeneous precinct analysis is a practical one: in many political jurisdictions there may be an absence of precincts that can be considered homogeneous. A second disadvantage of homogeneous precinct analysis is that estimates are normally based on a small, possibly unrepresentative sample of the electorate: only the behavior of the voters (or potential voters) residing in homogeneous areas is examined. The electoral behavior of those residing in heterogeneous, or more "integrated" areas is ignored. It is possible that voters who do not live in racially homogeneous precincts vote differently than voters who live in segregated areas. For example, Hispanics in overwhelmingly Hispanic precincts may be, on average, lower in income and/or education than Hispanics living in more integrated areas and those differences may affect voting behavior. Of course, if the jurisdiction is highly segregated, and most voters reside in precincts that are roughly 90 to 100 percent one race, homogeneous precinct analysis provides a very accurate picture of voting behavior by race. In most political jurisdictions, however, only a small percentage of the precincts will be homogeneous.

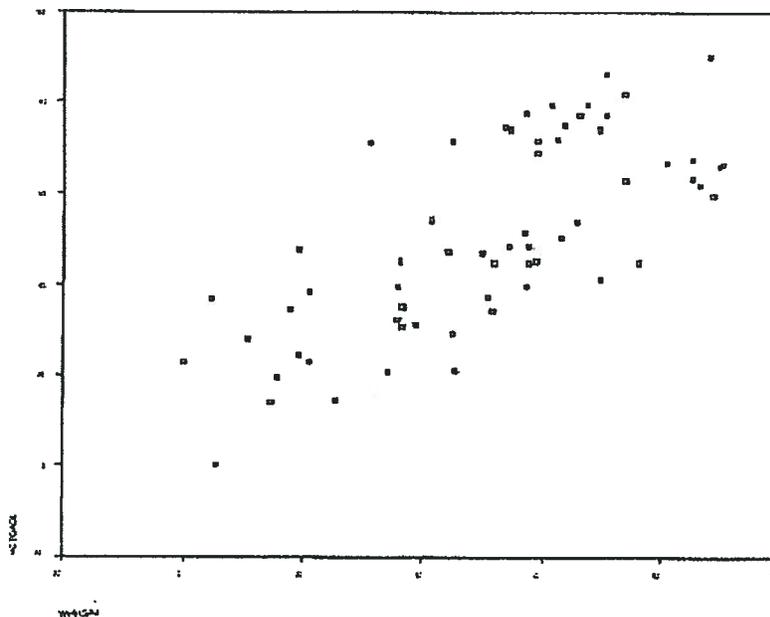
Bivariate Ecological Regression Analysis

The second standard method for determining voter behavior, bivariate ecological regression analysis, is available to supplement homogeneous precinct analysis. A major advantage of bivariate ecological regression analysis is that information about voting behavior in all of the precincts, not simply homogeneous precincts, in a political jurisdiction is incorporated into the database from which the

estimates of voting behavior by race will be derived. Furthermore, estimates of voting patterns by race can be produced even when no homogeneous precincts are available for analysis.

The adjective "ecological" refers to the type of data employed in the analysis. When the data reflects aggregates of individuals, such as precincts, rather than observations of separate individuals, the analysis is called "ecological." The technique is called "bivariate" ecological regression analysis because only two variables are used: the racial composition of the precincts and the votes cast for particular candidates (*Gingles* identifies the two variables as "the race of the voter" and "the way in which the voter votes").

The first step of the regression analysis is to plot points on a graph. The horizontal, or X axis, of the graph represents the percentage minority population in each precinct (the independent variable) and the vertical axis, or the Y axis, represents the percentage of voters in each precinct casting ballots for a given candidate (the dependent variable). Every precinct in the jurisdiction is placed within the graph (called a scattergram or scatterplot) according to its scores on these two coordinates. An example of a scatterplot of the 2000 general election in House District 60, plotting percent Hispanic voting age population (VAPHSP) on the horizontal axis and percent votes for Gagliardi (PCTGAGL) on the vertical axis follows:



Regression analysis provides a statistical means of describing and summarizing the relationship depicted on the graph between the two variables by calculating the formula for the line that best fits these data points. The "regression line" is the straight line that fits the points the "best," meaning no other straight line could be drawn such that the combined distances (or deviations) between each of these points and the line would be less than they are for this regression line.

It is possible to use the regression line to provide estimates of, for example, the percentages of Hispanics and white voters supporting any given candidate. These estimates are based on the "intercept," the point at

which the line crosses the Y axis, and the "slope." The intercept is the point at which X (percent Hispanic VAP) = 0, that is, the point at which there are no Hispanics in a precinct. The value of Y (votes for a given candidate) at this point represents the percent of non-Hispanics that supported the candidate. The other point that is of interest to us is the point at which X = 100, that is, the point at which 100% of the precinct is Hispanic. The value of Y at this point will be our estimate of the percentage of Hispanics that supported the candidate being considered. We find the value of the "right intercept" by adding the "left intercept" to 100 times the slope of the line.⁸

Two-equation Technique for Estimating Voting Behavior by Race The method described above for producing estimates of voting behavior by race is actually a simplified example of the analysis conducted in this case (as well as the analysis conducted by the expert in *Thornburg v. Gingles*).

In the analysis described above, two different denominators for the variables plotted are used: the denominator of the independent variable (the racial composition of the precinct -- i.e., percent Hispanic voting age population) is total voting age population; the denominator of the dependent variable (percent of the vote received by a given candidate) is total votes cast. Doing the analysis using different denominators can result in erroneous estimates because this approach assumes that the turnout rates of minorities and whites are essentially identical. Minorities often tend to turn out at lower rates than whites so a statistical approach referred to as the "two-equation technique" or "double regression" was used to produce more accurate estimates of minority and white voting behavior.

The two equation method produces two regressions and combines the results. The independent variable for both regressions is the Hispanic percentage of the voting age population of the precinct. The dependent variable for the first regression is the percentage of the voting age population that cast a ballot for a given candidate, Candidate A. The dependent variable for the second regression is the percentage of the voting age population who cast a ballot for any of the other candidates other than Candidate A. The two equations would yield estimates of (a) the percentage of Hispanic voting age population voting for Candidate A and (b) the percentage of Hispanic voting age population voting for candidates other than Candidate A. The percentage of *Hispanic voters* voting for Candidate A can then be calculated as (a) divided by (a) plus (b).

Comparing Ecological Regression and Homogeneous Precinct Analysis

The methods of ecological regression and homogeneous precinct analysis each have advantages and drawbacks. The principal advantage of homogeneous precinct analysis is its simplicity. It requires no statistical analysis, rather we look directly at the behavior of voters of a given race. The principal advantage of ecological regression is that it makes use of the information from all the precincts, both those that are racially homogeneous and those that are racially mixed. Ideally, both methods should be used, since each compensates for the potential flaws in the other.

⁸ The slope coefficient indicates how much the support for a given candidate varies with the racial composition of the precinct -- that is, the extent the scores for a dependent variable can be expected to change in response to changes in the scores for an independent variable.

Exhibit 5

Voting Patterns by Race/Ethnicity in Recent Elections in the San Luis Valley

Prepared by Dr. Lisa Handley
Principal, Frontier International Electoral Consulting

Scope of Project

I was retained by McKenna Long & Aldridge, legal counsel to the Colorado Reapportionment Commission, to perform a racial bloc voting analysis of recent elections (2008 and 2010) in the Colorado counties that make up the San Luis Valley. I have conducted similar analyses on behalf of the Colorado Reapportionment Commission in both 1991 and 2001.¹ This most recent analysis was undertaken to determine if voting in the San Luis Valley and State House District 62 is still racially polarized. My analysis leads me to conclude that it is: Hispanic voters in the San Luis Valley and State House District 62 are still politically cohesive and Anglos usually vote as a bloc against these Hispanic-preferred candidates.

Professional Background and Experience

I have advised numerous jurisdictions and other clients on voting rights-related issues and have served as an expert in dozens of voting rights and redistricting cases. My clients have included scores of state and local jurisdictions, a number of civil rights organizations, the U.S. Department of Justice, and such international organizations as the United Nations.

I have been actively involved in researching, writing and teaching on subjects relating to voting rights, including minority representation, electoral system design and redistricting. I co-authored a book, *Minority Representation and the Quest for Voting Equality* (Cambridge University Press, 1992), and numerous articles, as well as co-edited a volume (*Redistricting in Comparative Perspective*, Oxford University Press, 2008) on these subjects. I have taught several political science courses, both at the undergraduate and graduate level, related to representation and redistricting and have trained election commissions around the world on the basics of redistricting. I hold a Ph.D. in political science from George Washington University.

I have been a principal of Frontier International Electoral Consulting since co-founding the company in 1998. Frontier IEC specializes in providing electoral assistance in transitional democracies and post-conflict countries.

¹ My conclusion that voting was racially polarized in 1991 was later confirmed by the Tenth Circuit Court of Appeals in *Sanchez v. State of Colorado* (97 F.3d 1303 (10th Cir. 1996) which, in addition to my analysis, also considered data from subsequent elections. The existence of racially polarized voting, along with other factors, led the *Sanchez* court to conclude that the failure to create a majority minority district in the San Luis Valley constituted a violation of Section 2 of the Voting Rights Act of 1965.

Racial Bloc Voting Analysis

An election is racially polarized if minorities and whites, considered separately, would have elected different candidates (this is referred to as the "separate electorates test" in the seminal 1986 US Supreme Court decision *Thornburg v. Gingles*). An analysis of voting patterns by race serves as the foundation of two of the three elements of the "results test" as outlined in *Gingles*: a racial bloc voting analysis is needed to determine whether the minority group is politically cohesive; and the analysis is required to determine if whites are voting sufficiently as a bloc to usually defeat minority-preferred candidates.²

The voting patterns of white and minority voters must be estimated using statistical techniques because direct information about how individuals have voted is simply not available. I used three complementary statistical techniques to estimate voting patterns by race: homogeneous precinct analysis, bivariate ecological regression and ecological inference.³ Two of these analytic procedures – homogeneous precinct analysis and bivariate ecological regression – were employed by the plaintiffs' expert in *Thornburg v. Gingles* and have the benefit of the Supreme Court's approval in this case. These statistical methods have been used in most subsequent voting rights cases. The third technique, ecological inference, was developed after the Court considered *Gingles* and was designed to address the issue of out-of-bounds estimates (estimates that exceed 100 percent or are less than zero percent) which can arise in bivariate ecological regression analysis. Ecological inference analysis has been introduced and accepted in numerous district court proceedings.

Findings

I examined several recent general election contests in the San Luis Valley, beginning with the 2008 and 2010 state house contests held in State House District 62. (Both of these contests included a Hispanic candidate, Edward Vigil.) I also analyzed a number of statewide and

² The "results test" as interpreted by the Supreme Court in *Thornburg v. Gingles* requires plaintiffs to demonstrate three threshold factors to establish a §2 violation:

- The minority group must be sufficiently large and geographically compact to constitute a majority in a single member district;
- The minority group must be politically cohesive;
- The minority group must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it – in the absence of special circumstances, such as the minority candidate running unopposed – usually to defeat the minority's preferred candidate.

³ These three statistical approaches to measuring racial bloc voting are discussed in Bruce M. Clark and Robert Timothy Reagan, "Redistricting Litigation: An Overview of Legal, Statistical and Case-Management Issues" (Federal Judicial Center, 2002). For further explanation of homogenous precinct analysis and bivariate ecological regression see Bernard Grofman, Lisa Handley and Richard Niemi, *Minority Representation and the Quest for Voting Equality* (Cambridge University Press, 1992). See Gary King, *A Solution to the Ecological Inference Problem* (Princeton University Press, 1997) for a more detailed explanation of ecological inference.

congressional contests designed to investigate the voting patterns of Anglos and Hispanics in the San Luis Valley more generally. (Although the election contests encompassed more than simply San Luis Valley voters, my analysis looked only at the voting behavior of voters that resided in the six counties that make up the San Luis Valley as well as those portions of Huerfano and Pueblo counties that fall within House District 62.⁴)

Two congressional contests since 2008 included a Hispanic candidate in the San Luis Valley, the 2008 and 2010 race for the US Representative to District 3. I examined both of these contests. In addition, although neither of the top candidates were Hispanic, the gubernatorial contest in 2010 included a Hispanic candidate for Lieutenant Governor (Joseph Garcia) so I analyzed this contest. The US Senate races in 2008 and 2010 were also included in my analysis, in large part because the race for governor in 2010 was unusual (the contest included a weak Republican candidate and a strong third party candidate).

State House District 62 Table 1, below, lists estimates of the percentage of Anglo and Hispanic voters that voted for each of the candidates competing in the 2010 and 2008 state house contests.

Table 1: Voting Patterns by Race/Ethnicity in the 2008 and 2010 State House District 62 General Election Contests⁵

Contest and Candidates	Candidate Information		Estimate of the Percent of Anglo and Hispanic Voters Casting a Vote for Each of the Candidates					
	Party	Race	Anglo Voters			Hispanic Voters		
			Homogen Precinct (2 precincts)	Bivariate Regression	Ecological Inference	Homogen Precinct (1 precinct)	Bivariate Regression	Ecological Inference
2010 General								
Jackson	REP	Anglo	66.6	74.7	77.4	10.1	0.0	8.5
Vigil*	DEM	Hispanic	33.4	25.3	22.7	89.9	100.0	91.5
<i>Turnout</i>			73.1	68.2	67.5	60.3	21.7	20.9
2008 General								
Jackson	REP	Anglo	64.3	76.4	76.2	8.9	0.0	8.0
Vigil*	DEM	Hispanic	35.7	23.6	26.6	91.1	100.0	91.8
<i>Turnout</i>			76.4	75.3	71.7	57.4	35.6	36.9

⁴The six counties that fall within the San Luis Valley include Alamosa, Conejos, Costilla, Mineral, Rio Grande and Saguache. The racial bloc voting analysis focused on Hispanic voting behavior (compared to Anglo voting behavior) because Hispanics are the only minority group protected under the Voting Rights Act of sufficient size and geographic concentration in the San Luis Valley to be of potential concern, as well as the only minority group sufficiently numerous to be able to produce reliable estimates of voting patterns.

⁵The asterisk (*) beside a name in the table denotes the winning candidate in the San Luis Valley. (The candidate may not have won district or statewide, however.)

The same two candidates, Randy Jackson and Edward Vigil, competed in both the 2008 and 2010 state house general elections. Vigil is Hispanic; Jackson is Anglo. The overwhelming majority of Hispanic voters (90% or more) supported Vigil in both elections. A strong majority of Anglo voters (75% or more) supported his opponent, Jackson, in the 2008 and 2010 contests.

Both of these contests are very clearly racially polarized. However, because State House District 62 is majority Hispanic in composition (as a result of voting rights litigation in the 1990s) the Hispanic-preferred candidate, Vigil, won in 2008 and 2010.⁶

US House District 3 Table 2, below, contains the estimates of the percentage of Anglo and Hispanic voters that voted for each of the candidates competing in the 2010 and 2008 general election contest for US Representative from Congressional District 3.

Table 2: Voting Patterns by Race/Ethnicity in the 2008 and 2010 US House District 3 General Election Contests⁷

Contest and Candidates	Candidate Information		Estimate of the Percent of Anglo and Hispanic Voters Casting a Vote for Each of the Candidates					
	Party	Race	Anglo Voters			Hispanic Voters		
			Homogen Precinct (5 precincts)	Bivariate Regression	Ecological Inference	Homogen Precinct (1 precinct)	Bivariate Regression	Ecological Inference
2010 General								
Tipton	REP	Anglo	54.0	61.3	62.1	3.8	0.0	4.4
Salazar*	DEM	Hispanic	46.0	38.7	35.6	96.2	100.0	95.4
<i>Turnout</i>			70.0	64.8	62.9	59.6	18.0	19.2
2008 General								
Wolf	REP	Anglo	38.9	44.0	44.1	2.4	0.0	1.5
Salazar*	DEM	Hispanic	61.1	56.0	55.8	97.6	100.0	98.7
<i>Turnout</i>			81.2	78.4	75.8	67.0	35.9	35.7

These two contests included the same Hispanic candidate, John Salazar. His opponents were both Anglos: Wayne Wolf in 2008 and Scott Tipton in 2010. The contest in 2008 was not racially polarized: the majority of Anglos and the overwhelming majority of Hispanics supported the incumbent, Salazar.⁸ But in the off-presidential year election of 2010, with lower turnout rates for both groups (especially Hispanics), voting was clearly racially

⁶Despite comparable percentages of Hispanics and Anglos voting for Vigil in 2008 and 2010, his winning percentage declined slightly from 57.8% to 55.9% between 2008 and 2010. This was likely the result of the lower turnout rates in 2010 as compared to 2008, especially among potential Hispanic voters.

⁷ The asterisk (*) beside a name in the table denotes the winning candidate.

⁸ Salazar, of course, won the 2008 contest.

polarized. Over 95% of the Hispanics voting cast their ballot for Salazar; the majority of whites, however, supported his Anglo opponent, Tipton. Despite the presence of polarized voting in 2010, the Hispanic-preferred candidate carried the San Luis Valley – Salazar lost the congressional district as a whole, however.⁹

2010 Gubernatorial Contest in San Luis Valley Estimates of Anglo and Hispanic voting patterns in the 2010 gubernatorial contest in the San Luis Valley can be found in Table 3, below.

Table 3: Voting Patterns by Race/Ethnicity in the 2010 Gubernatorial General Election Contest¹⁰

Contest and Candidates	Candidate Information		Estimate of the Percent of Anglo and Hispanic Voters Casting a Vote for Each of the Candidates					
	Party	Race	Anglo Voters			Hispanic Voters		
			Homogen Precinct (5 precincts)	Bivariate Regression	Ecological Inference	Homogen Precinct (1 precinct)	Bivariate Regression	Ecological Inference
Maes/Tambor	REP	Anglo/Anglo	19.6	17.9	19.2	12.3	0.0	5.5
*Hickenlooper/Garcia	DEM	Anglo/Hispanic	45.2	39.8	40.2	83.2	100.0	92.4
Tancredo/Miller	ACP	Anglo/Anglo	35.1	42.1	41.0	4.5	0.0	2.5
<i>Turnout</i>			75.3	68.8	64.7	57.4	23.4	21.0

The presence of a weak Republican candidate (Dan Maes) and a strong third party candidate (Tom Tancredo, American Constitution Party) complicated the gubernatorial contest in 2010.

A very large majority of Hispanic voters supported the Democratic candidate, John Hickenlooper and his Hispanic running mate, Joseph Garcia. Anglo voters divided their support, with no candidate receiving a majority of the Anglo vote. In fact, it is difficult to determine who the first choice of Anglos in the San Luis Valley was because the estimates for Tancredo and Hickenlooper are very close (and the homogeneous precinct estimate, unlike the bivariate regression and ecological inference estimates, indicates that the plurality choice of white voters was the Democratic ticket for governor). However, if the two relatively more conservative Republican and ACP candidate votes are combined, then

⁹ The area included in my analysis (the six counties of the Valley as well as portions of Huerfano and Pueblo Counties) makes up 30% of the population of Congressional District 3.

¹⁰ The asterisk (*) beside a name in the table denotes the candidate that carried the San Luis Valley. (In this instance, this is also the candidate who won statewide.)

Hickenlooper would clearly not have been the choice of Anglo voters.¹¹ Hickenlooper and Garcia carried the San Luis Valley (as well as the state).

Additional Election Contests Because the presence of a third party candidate complicated the conclusions that could be drawn from the 2010 race for governor, I also examined the two US Senate contests held in 2008 and 2010 even though there were no Hispanic candidates running in these two contests. Table 4, below, indicates the results of my analyses.

Table 4: Voting Patterns by Race/Ethnicity in the 2008 and 2010 US Senate General Election Contests¹²

Contest and Candidates	Candidate Information		Estimate of the Percent of Anglo and Hispanic Voters Casting a Vote for Each of the Candidates					
	Party	Race	Anglo Voters			Hispanic Voters		
			Homogen Precinct (5 precincts)	Bivariate Regression	Ecological Inference	Homogen Precinct (1 precinct)	Bivariate Regression	Ecological Inference
2010 General								
Buck	REP	Anglo	52.1	59.6	62.6	11.9	0.0	6.2
Bennett*	DEM	Anglo	39.3	35.1	32.3	83.5	100.0	92.0
Minor candidates			8.6	5.2	5.4	4.5	4.4	4.9
<i>Turnout</i>			73.0	66.7	65.2	56.4	17.1	19.3
2008 General								
Schaffer	REP	Anglo	50.3	57.1	59.7	6.7	0.0	3.5
Udall*	DEM	Anglo	43.6	38.3	34.1	88.6	100.0	87.3
Minor candidates			6.2	4.6	4.7	4.7	7.1	6.3
<i>Turnout</i>			81.3	78.4	76.4	61.9	33.6	35.2

Both of the US Senate contests were polarized, with a very strong (well over 80%) majority of Hispanics in the San Luis Valley supporting the Democratic candidate in both years (Mark Udall in 2008 and Michael Bennett in 2010) and a majority of Anglo voters in the San Luis Valley supporting the Republican candidate in both years (Bob Schaffer in 2008 and Ken Buck in 2010). The Democratic candidate carried the majority Hispanic San Luis Valley (and the state) in both contests despite the presence of racially polarized voting.

¹¹ Tancredo was formerly a Republican Congressman from Colorado who ran as an ACP candidate after Dan Maes became the Republican nominee for Governor. He ran on a strong anti-immigration platform and commentators agree that his supporters were predominately voters who might otherwise have voted Republican. See, for example <http://blogs.denverpost.com/thespot/2010/07/26/tancredo-will-run-for-governor-as-american-constitution-party-candidate/12382/>; http://www.denverpost.com/election2010/ci_16506656; http://www.denverpost.com/news/ci_16023200; <http://www.politicsdaily.com/2010/10/22/national-conservative-group-endorses-tom-tancredo-for-governor/> and <http://www.csmonitor.com/USA/Elections/2010/1027/Is-Tom-Tancredo-the-next-governor-of-Colorado>.

¹² The asterisk (*) beside a name in the table denotes the candidate that carried the San Luis Valley.

Conclusion

Voting in the San Luis Valley continues to be racially polarized and Hispanic voters are still politically cohesive in support of their preferred candidates. In fact, Hispanics were strongly cohesive in all seven contests examined. In the vast majority of these contests (at least five of the seven elections examined), Anglo voters supported the opponent of the Hispanic-preferred candidate. In only one of the seven contests – the 2008 race for US House District 3 – was voting clearly not racially polarized. The Hispanic-preferred candidate carried the vote in the San Luis Valley in all instances,¹³ however, because both State House District 62 and the San Luis Valley are majority Hispanic in composition. I therefore conclude that maintaining districts in which Hispanics are a majority is essential to satisfy Section 2 of the Voting Rights Act.

¹³ Although John Salazar won a majority of the vote in the San Luis Valley, he was defeated in his bid for re-election in 2010 because the other areas of Congressional District 3 voted heavily for his opponent, Scott Tipton.

Exhibit 6

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stapleton influence

Former Mayor Webb sought to split legislative district to protect "African-American influence"

Posted: 12/04/2011 01:00:00 AM MST By Lynn Bartels
The Denver Post

Posted: 12/04/2011 01:00:00 AM MST

Former Denver Mayor Wellington Webb, who helped carve new legislative boundaries, angered some Stapleton residents by proposing a map that splits a section of the neighborhood.

Webb said Friday the move was done in order to protect "African-American influence" in House District 7. Webb, Denver's first black mayor, said other neighborhoods in the proposed district contain more minority voters.

But Stapleton resident Kelly Nordini, deputy chief of staff for former Gov. Bill Ritter, pointed to the area's neighborhood associations and schools.

"We're a taxing district, for Christ's sakes," she said. "Stapleton was clearly meant to be in one district."

The section of Stapleton that is impacted spreads over 20 blocks south of East 28th Avenue and east of Central Park Boulevard.

Among the roughly 1,700 people who live in that area: Nordini, Democratic Sen. Mike Johnston and two other Democrats who in 2010 ran against a Webb-backed legislative candidate for House District 7.

Webb said those blocks were picked because they bordered House District 8, and could be moved into it.

"The staffer that drafted it did not know of the Democratic 'cabal' that exists in that precinct," he wrote to Johnston, when the lawmaker last week raised the issue of keeping Stapleton whole.

New boundaries are drawn every 10 years, after the U.S. census, so that each district contains roughly the same population. District 7 is the only House seat in Denver that gained population, growing 32 percent, largely because of the development of the former Stapleton Airport.

"Everybody knew the district would have to shrink, but they hoped Stapleton would be united," Johnston said.

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Webb is vice chairman of the Colorado Reapportionment Commission, an 11-member group appointed to draw new legislative boundaries.

Both are Denver Democrats.

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Republicans proposed splitting Stapleton three ways, including pairing one section with a portion of west Denver.

Democrat Angela Williams, who was endorsed by Webb last year in her successful bid to represent District 7, said she initially was told by those drawing the Democrats' map that Stapleton might have to be split in half. She urged that it be kept whole.

The commission in August gave initial approval to a map that split off the 20 blocks of Stapleton. It signed off on all districts in September, but the Colorado Supreme Court on Nov. 15 rejected the House and Senate maps, saying too many counties were split.

Johnston wanted the commission when it met last week to revisit the Stapleton issue, but the group declined to accept any amendments.

Stapleton remained split in new maps adopted by the commission. Republicans are livid over the new boundaries, but clearly some Democrats aren't happy either.

If the new map survives another possible court challenge, House District 7 will cover about 100 blocks of Stapleton, north Park Hill, Montbello and Green Valley Ranch.

Neighborhoods it shed, including Hilltop and Crestmoor, will move to House District 8, represented by Rep. Beth McCann, or House District 6, represented by Rep. Lois Court.



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