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COLORADO SUPREME COURT

2 East 14th Avenue
Denver, Colorado 80203

Original Proceeding Pursuant to Article V,
Section 48.3 of the Colorado Constitution

**In re: Colorado Independent
Legislative Redistricting Commission**

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Case No.: 2021SA305

**Brief of Interested Parties Colorado Republican Committee,
Colorado Republican State Senate Caucus, and Colorado
Republican State House Caucus in Support of the Colorado
Independent Legislative Redistricting Commission's Final Plans**

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with all requirements of Colorado Appellate Rules 28 and 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the applicable word limits set forth by the Court in its July 26, 2021 Order.

It contains **2,555** words (opening brief does not exceed 9,500 words).

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of Colorado Appellate Rules 28 and 32.

s/ Christopher O. Murray

Christopher O. Murray

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IDENTITY AND INTEREST OF THE PARTIES

This brief is jointly filed by the Colorado Republican Committee, the Colorado Republican State Senate Caucus, and the Colorado Republican State House Caucus as representatives of the Republican Party in Colorado. The Colorado Republican Committee (Committee) is an unincorporated non-profit association and a major political party under Colo. Rev. Stat. § 1-1-104(22). Its mission is to nominate and elect Republican candidates to offices across Colorado. The Republican State Senate and Republican State House Caucuses not only propose and work to pass legislation in Colorado, but also work through their campaign arms to elect Republicans to the state Senate and House.

Importantly, the Republican State Senate and Republican State House Caucuses supported and referred—along with their Democratic counterparts—Amendment Z to the people of Colorado in 2018. After its adoption, this amendment accomplished a constitutional overhaul of Colorado’s legislative-redistricting process. The Committee and the Republican State Senate and Republican State House Caucuses have a common interest in ensuring that Colorado adopts fair and constitutional plans in accordance with the Colorado Constitution.

ISSUES PRESENTED FOR REVIEW

1. Whether the Final Plans adopted by the Independent Legislative Redistricting Commission on October 11 and October 12, 2021, comply with the substantive criteria listed in article V, section 48.1 of the Colorado Constitution?

2. Whether the Independent Legislative Redistricting Commission properly exercised its discretion in applying the substantive criteria listed in article V, section 48.1 of the Colorado Constitution?

STATEMENT OF THE CASE

This case is a constitutionally circumscribed review of the final legislative-redistricting plans adopted by the Independent Legislative Redistricting Commission (Commission) by votes of 11-1 (for the State House Plan) and 12-0 (for the State Senate Plan). This Court is charged with reviewing the plans submitted for compliance with the substantive criteria for redistricting plans listed in article V, section 48.1 of the Colorado Constitution. The Court “[s]hall approve the plans submitted unless it finds that the commission . . . abused its discretion in applying or failing to apply the criteria listed in section 48.1 . . . in light of the record before the commission.” Colo. Const. art. V, § 48.3(2).

SUMMARY OF THE ARGUMENT

After four decades of partisan battle over redistricting, in 2018 Colorado Republicans agreed to a compromise with Colorado Democrats. The Commission and the process it—and the nonpartisan legislative staff aiding it—followed to produce the Final Plans before this Court is the fruit of that compromise. While the Final Plans are not perfect, and are not the maps Colorado Republicans would have drawn, they are a result of a faithful application of the agreed-upon constitutional criteria for redistricting by the Commission and should therefore be approved by this Court.

ARGUMENT

I. Standard of Review.

The Court “[s]hall approve the plans submitted unless it finds that the commission . . . abused its discretion in applying or failing to apply the criteria listed in section 48.1 . . . in light of the record before the commission.” Colo. Const. art. V, § 48.3(2). The abuse-of-discretion standard included in Amendment Z ensures that “the choice among alternative plans, each consistent with constitutional requirements, is for the Commission and not the Court.” *See In re Reapportionment of the Colo. Gen. Assembly*, 828 P.2d 185, 189 (Colo. 1992).

II. The Commission and the Constitutional Framework for Legislative-Redistricting Plans Is the Fruit of a Compromise Between Colorado’s Major Political Parties.

As recently noted by this Court, “For the last several decades, Colorado’s decennial redistricting process has been a tumultuous, politically fraught, and notoriously litigious affair.” *In re Interrogs. on S.B. 21-247*, 488 P.3d 1008, 1010 (Colo. 2021). Historically, partisan wrangling over district lines resulted in last-minute litigation, which forced the judiciary to “engage in an inherently political undertaking” of redrawing district lines. *Hall v. Moreno*, 270 P.3d 961, 964 (Colo. 2012). In 2018, Colorado’s major political parties came together to bring an end to this dysfunction. Under article XIX, section 2 of the Colorado Constitution, the General Assembly—with the House then controlled by a Democratic majority and the Senate then controlled by a Republican majority—unanimously referred two proposed constitutional amendments. These amendments, known as Amendments Y and Z, placed redistricting into the hands of independent commissions.

Relevant here, Amendment Z created the Commission whose work is at issue in this case. Amendment Z was designed to:

- Replace the Colorado Reapportionment Commission with a new commission, consisting of an equal number of members from each of the state’s two largest political parties and unaffiliated voters, to amend and approve state legislative-district maps drawn by nonpartisan legislative staff;

- Establish a process for selecting commissioners, new requirements for transparency and ethics, and a procedure for judicial review of commission maps; and
- Establish and prioritize the criteria the commission must use for adopting state legislative district maps.

Legis. Council, Colo. Gen. Assembly, Rsch. Pub. No. 702-2, 2018 State Ballot Information Booklet 23 (2018) (Blue Book).

In both the General Assembly’s consideration of Amendment Z, and in the arguments for and against Amendment Z’s adoption presented to the public, it is apparent legislators and the public understood that Amendment Z sought to limit the influence of partisan politics over legislative redistricting and to make the process more transparent and inclusive. *See, e.g., Legis. Redistricting & Legis. Reapportionment: Hearing on S.C.R. 18-004 & S.C.R. 18-005 Before the S. Comm. on State, Veterans, & Military Affairs, 71st Gen. Assemb., 2d Reg. Sess. (2018) (statement of Sen. Stephen Fenberg) (audio file available at <https://bit.ly/2YjgA2x>, at 4:48:40–4:49:40 (April 23, 2018)); Blue Book at 25 (Amendment Z “keep[s] political parties and politicians . . . from controlling the redistricting process”); *id.* at 26 (Amendment Z “reduces accountability” because commissions “are not even accountable to elected officials”).* Amendment Z was adopted with over 71% of the vote. *See Colo. Sec’y of State, 2018 Abstract of Votes Cast 69 (2018),*

<https://perma.cc/WXC5-3JPV>.

Amendment Z mitigates partisan intervention in the legislative-redistricting process by mandating a politically balanced commission. The Commission is made up of twelve commissioners—four from Colorado’s largest political party (currently the Democratic Party), four from Colorado’s second largest political party (currently the Republican Party), and four unaffiliated commissioners (Unaffiliated) who are not affiliated with any political party. It further requires that a legislative-redistricting map must be adopted by a supermajority of least eight commissioners, including at least two Unaffiliated commissioners. This requirement for political balance among commissioners, and the inability of the commissioners from the major political parties to approve a map on their own, “best achieve[s]” the “public’s interest in prohibiting political gerrymandering.” *See* Colo. Const. art. V, § 46(1)(b).

III. Colorado Republicans Honored Their Compromise and Only Intervened Before the Commission to Encourage Public Comment.

Colorado Republicans have stood by their compromise with Colorado Democrats: neither the Committee, nor the Republican State Senate or Republican State House Caucuses, have intervened in the legislative-redistricting process before the Commission, except to participate in public comment.

The Committee and the Republican State Senate and Republican State House Caucuses limited their participation in the legislative-redistricting process to the public-testimony phase before the Commission. Indeed, shortly after the Commission began its work, the Committee received a phone call from the Commission's communications staff informing the Committee of the Commission's desire that both major political parties ask their voters to participate at public hearings, submit testimony, and otherwise share their perspectives with the Commission. The Committee, with the assistance of the Republican State Senate and Republican State House Caucuses, encouraged Republicans across Colorado to participate in accordance with the Commission's expressed desire. Although it would have been within their rights to do so, neither the Committee, nor the Caucuses, retained a lobbyist to represent them before the Commission.

Colorado Republicans took this approach because, as officers, members, and staff of the Committee and the Caucuses have repeatedly said throughout the process, Republicans support the mission of the Commission to draw fair maps according to constitutional criteria agreed to by Republicans and Democrats, and an overwhelming

majority of Colorado voters.¹

IV. While Colorado Republicans Might Prefer Different Maps, the Court Should Approve the Final Plans Because the Commission Did Not Abuse Its Discretion.

The Commission was tasked with considering each of the constitutional criteria in article V, section 48.1 and applying these criteria in their Final Plans. Section 48.1 provides for eight criteria² and

¹ Republicans' respect for the legislative-redistricting process and for the independence and integrity of the Commission has, unfortunately, not been reciprocated. On October 7, the Colorado Democratic Party directly and personally attacked two Republican commissioners, baselessly accusing these commissioners of attempting to "shove through a last-minute set of maps to the Supreme Court that would fundamentally alter the make-up of the state senate and house" and claiming without evidence that these maps would "almost certainly ensur[e] control for Colorado Republicans over the next decade." *Redistricting Alert—Republican Commissioners Attempting to Gerrymander the State Senate and State House*, Colo. Democrats, <https://bit.ly/3b3DEZA> (last visited Oct. 22, 2021), attached as **Exhibit A**. This smear resulted in a slew of vitriolic comments being submitted to the Commission and foretells what to expect from the Democratic Party if this Court remands the Final Plans.

² These criteria are:

- (1) Draw geographically contiguous districts, making a good-faith effort to achieve mathematical population equality between districts, but in no event draw a map with more than five percent deviation between the most populous and the least populous district in each House. Colo. Const. art. V, § 48.1(1)(a).
- (2) Comply with the federal Voting Rights Act of 1965. § 48.1(1)(b).
- (3) Preserve whole communities of interest as much as possible. § 48.1(2)(a).

it is self-evident that satisfaction of all eight cannot be perfectly achieved in a manner agreed upon by all parties. Indeed, the 14—often conflicting—briefs of interested parties submitted to the Court on the final plan for congressional redistricting are illustrative of this point. *See Interested Party Briefing, In re Colo. Indep. Cong. Redistricting Comm’n*, No. 2021SA208 (Colo.). At bottom, Amendment Z charged the Commission with applying these criteria and establishing state Senate and House redistricting plans. The Commission accomplished this task, adopting its Final Plans by votes of 11-1 and 12-0, respectively. This Court should not accept the interested parties’ invitation to nitpick the Commission’s balancing of these constitutional criteria.

It is worth noting that the Final Plans are the product of a process that began with the creation of preliminary plans by nonpartisan legislative staff. *See Colo. Const. art. V, § 48.2(1)*. Based upon public

(4) Preserve whole political subdivisions as much as possible, including minimizing the number of divisions to such subdivisions. *Id.*

(5) Make all districts as compact as possible. § 48.1(2)(b).

(6) Maximize the number of competitive districts. § 48.1(3).

(7) Do not draw a map for the purpose of incumbent protection. § 48.1(4)(a).

(8) Do not draw a map that denies or abridges the right of any citizen to vote on account of the citizen’s race or membership in a language minority group. § 48.1(4)(b).

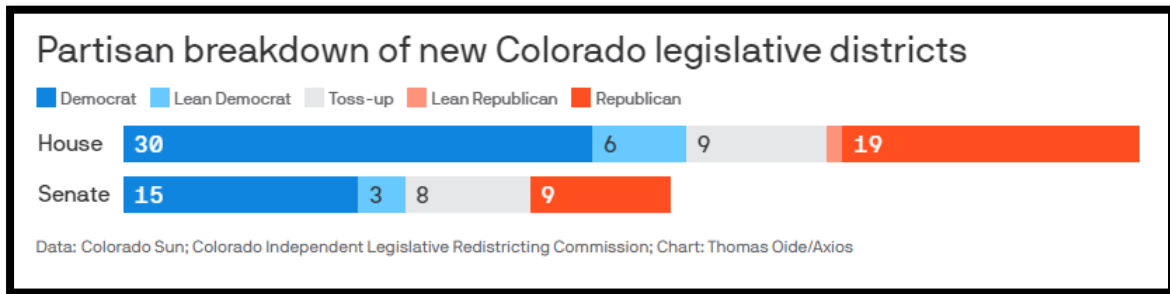
comment before the Commission, nonpartisan staff created additional plans for each chamber, which informed the Final Plans adopted.

§ 48.2(3). Nonpartisan staff faithfully executed their constitutional duties and vindicated the public's trust in them.

The Committee and the Republican State Senate and Republican State House Caucuses urge approval of the Final Plans, even though they could engage in the same second-guessing other interested parties are sure to indulge. These are not the maps Colorado Republicans would have drawn. For example, compactness (as required under article V, section 48.1(2)) was arguably not best applied in the Final Plan for the state House, as the city of Aurora (one of the most diverse in the nation) was split into eight House seats where six would have been possible. Map HP.008, Colo. Indep. Legis. Redistricting Comm'n, <https://bit.ly/3B0DDQF>. So too with competitiveness (as required under article V, section 48.1(3)). For both the state House and Senate, maps were submitted and discussed that would have included more competitive (and compact) seats in Arapahoe County, Jefferson County, and Adams County. Map HP.008, *supra* (House); Map SP.005, Colo. Indep. Legis. Redistricting Comm'n, <https://bit.ly/3Gcmzed> (Senate). A similar concern exists in the state House Final Plan for the area including Pueblo West, which was split in a way that does not fully

honor the communities of interest or minority influence there. Map HP.008, *supra*.

Colorado Republicans are also aware that a different application of the constitutional criteria might have resulted in legislative maps more advantageous to them in a purely political sense. For instance, many political commentators argue the Final Plans will benefit Colorado Democrats. The *Colorado Sun* published the chart below (created by *Axios*) to illustrate such an understanding:



John Frank, *Colorado Redistricting Gives Democrats Edge in State Legislature*, *Axios* (Oct. 14, 2021), <https://bit.ly/3EiA5LJ>.³

But perfection (and partisan satisfaction) is not the criteria for

³ See also Alex Burness, *Colorado's Redistricting Commission Picked New Maps for the State House and Senate. Here's What They Look Like*, *Denver Post* (Oct. 13, 2021), <https://dpo.st/2Zau9EW> (“Democrats would be poised to retain their current advantages in the state legislature, under new maps approved by an independent commission this week.”); Megan Verlee, *New State Legislative Maps Will Likely Maintain Democratic Control, If Court Approves*, *Colo. Pub. Radio* (Oct. 13, 2021), <https://bit.ly/3B2yGa2> (“New state legislative maps will likely maintain Democratic control, if court approve.”).

acceptance of the Final Plans. Rather, this Court is bound to approve (and the interested parties are bound to accept) the Final Plans unless the Commission “abused its discretion in applying or failing to apply the criteria, . . . in light of the record before the commission.” Colo. Const. art. V, § 48.3(2); *see also In re Interrogs. on S.B. 21-247*, 488 P.3d 1008, 1014–15 (Colo. 2021). And it did not.

In its Final Plans, the Commission explains how it worked in good faith, laboring to apply each of the constitutional criteria. *See* Final Legis. Redistricting Plans at 9–14. The record also demonstrates that no single group, individual, or political-party interest was favored over another. Because the Commission must make “policy judgment[s]” in light of a range of alternative “submissions” through which “interested persons . . . submit[ted] data, views, or arguments,” the Court should approve the Final Plans if supported by a “rational basis.” *Cf. Regular Route Common Carrier Conf. v. Pub. Utils. Comm’n*, 761 P.2d 737, 743 (Colo. 1988) (explaining review of deliberative policy judgments by government agencies). This is in line with the Court’s ruling earlier this year that voters vested the Commission with decisions—and the discretion to make them—on redistricting. *See In re Interrogs. on S.B. 21-247*, 488 P.3d at 1019–20.

The Commission did its job: it appropriately exercised its

discretion to apply the constitutional criteria and adopt the Final Plans.
This Court should approve the Final Plans.

CONCLUSION

For the foregoing reasons, the Colorado Republican Committee, Colorado Republican State Senate Caucus, and Colorado Republican State House Caucus honor their commitment to the 2018 compromise, which paved the way for the Independent Legislative Redistricting Commission, and ask the Court to approve the Final Plans.

REQUEST TO PARTICIPATE IN ORAL ARGUMENT

The Colorado Republican Committee, Colorado Republican State Senate Caucus, and Colorado Republican State House Caucus request leave to participate in the oral argument in this matter set for Monday, October 25 at 2:00 p.m.

Dated: October 22, 2021

Respectfully submitted,

s/ Christopher O. Murray

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CERTIFICATE OF SERVICE

I certify that on October 22, 2021, a true and correct copy of this Brief was filed with the Court and served via the Colorado Courts E-Filing System upon all counsel of record.

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EXHIBIT A

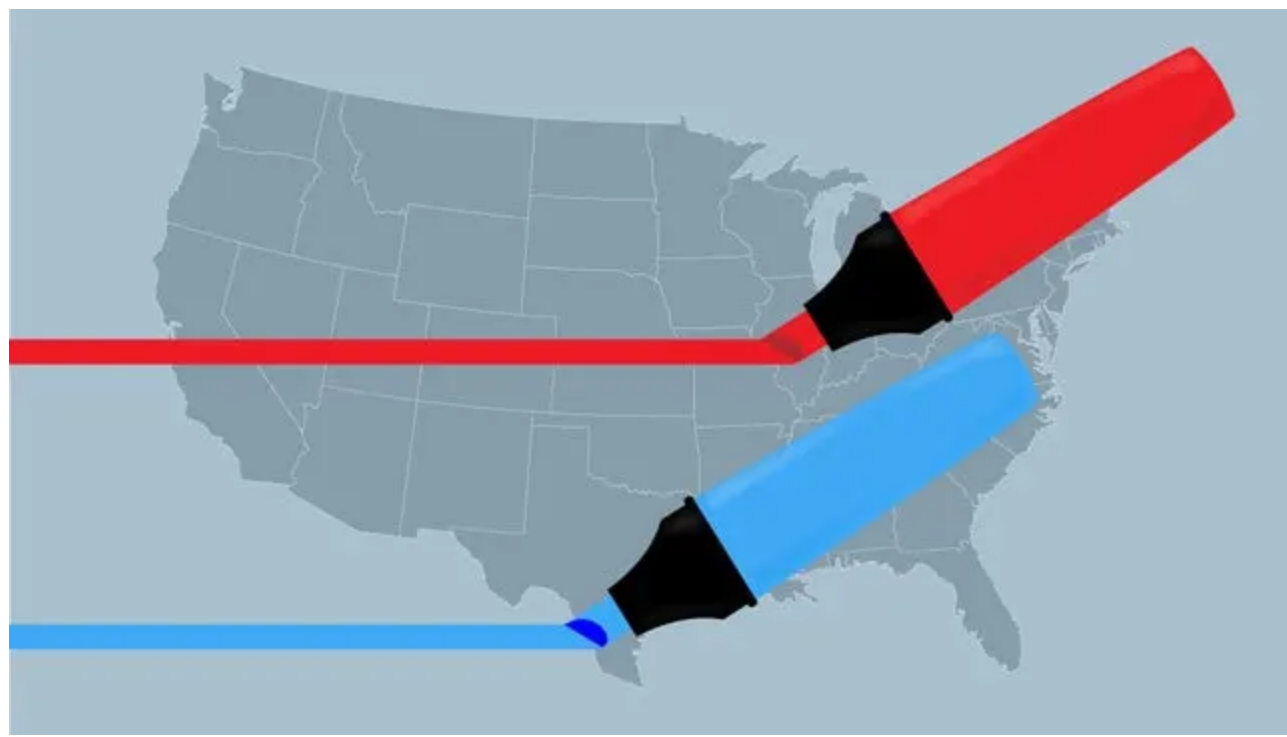
Brief of Interested Parties Colorado Republican
Committee, Colorado Republican State Senate Caucus
and Colorado Republican State House Caucus in
Support of the Colorado Independent Legislative
Redistricting Commissions Final Plan

(Colorado Democrats: Redistricting Alert)

🚨 REDISTRICTING ALERT 🚨 — Republican Commissioners Attempting to Gerrymander the State Senate and House

🚨 REDISTRICTING ALERT 🚨 — Republican Commissioners Attempting to Gerrymander the State Senate and House

David Pourshoushtari | Uncategorized | October 7, 2021 | 0



We're at a Red Alert. Republican Commissioners Hunter **Barnett** and Aislinn **Kottwitz**, who are members of the Legislative Redistricting Commission, are attempting to gerrymander the Colorado Senate and House, ensuring Republican control of the state assembly for the next decade.

What's Happening:

On Tuesday, nonpartisan, neutral redistricting staff submitted their final set of legislative maps to the commission, which would ensure fair representation for the people of Colorado, as they wanted.

But Republican legislative Redistricting Commissioners **Hunter Barnett** (R) and **Aislinn Kottwitz** (R) are working with non-disclosing and unregistered GOP operatives lobbying to shove through a last-minute set of maps to the Supreme Court that would fundamentally alter the make-up of the state senate and house, almost certainly ensuring control for Colorado Republicans over the next decade. This is a mockery of everything that Independent Redistricting Commissions are meant to stand for.

What Can You Do:

[Click here](#) or the link below to submit your comment to the commission right now and urge them to take a stand for transparency by rejecting any maps that could be tarnished by the ongoing, unreported lobbying to gerrymander legislative districts for the GOP.

Tell them to reject maps being pushed by Commissioners Barnett and Kottwitz and support maps drawn by nonpartisan staff.

https://redistricting.colorado.gov/public_comments/new

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