

COLORADO SUPREME COURT
2 East 14th Avenue
Denver, CO 80203

Original Proceeding Pursuant to
Article V, Section 44.5 of the Constitution of
the State of Colorado

In re:

Petitioner:

Colorado Independent Congressional
Redistricting Commission

PHILIP J. WEISER, Attorney General
LEEANN MORRILL, #38742

First Assistant Attorney General*

GRANT T. SULLIVAN, #40151

Assistant Solicitor General*

PETER G. BAUMANN, #51620

Campaign Finance Enforcement Fellow*

Ralph L. Carr Colorado Judicial Center

1300 Broadway, 6th Floor

Denver, CO 80203

Telephone: (720) 508-6152

FAX: (720) 508-6041

E-Mail: leeann.morrill@coag.gov

grant.sullivan@coag.gov

peter.baumann@coag.gov

*Counsel of Record

Attorneys for the Colorado Secretary of State

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Case No. 2021SA208

BRIEF OF THE COLORADO SECRETARY OF STATE

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28, or C.A.R. 28.1, including all formatting requirements set forth in these rules. Specifically, I certify that:

The brief complies with the applicable word limit set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

It contains 3,724 words.

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b)

For each issue raised by the appellant, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1 and C.A.R. 32.

s/ Peter G. Baumann

PETER G. BAUMANN, #51620

Campaign Finance Enforcement Fellow

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ISSUE PRESENTED FOR REVIEW

Consistent with this Court’s Order dated July 15, 2021, the Secretary of State files this brief addressing “the practical impact of delaying final review of” congressional redistricting plans “on the conduct of the 2022 elections.”

STATEMENT OF THE CASE

I. Background

In 2018, Colorado voters adopted Amendments Y and Z, constitutional amendments which established an Independent Congressional Redistricting Commission and an Independent Legislative Redistricting Commission respectively. *See generally In re Interrogatories on S.B. 21-247 Submitted by the Colo. General Assembly*, 2021 CO 37, ¶¶ 13–18 (discussing congressional and legislative redistricting processes established by the Amendments). Taken together, the Amendments represented a dramatic shift in how Colorado would approach redistricting following the 2020 census and in preparation for the 2022 election cycle.

Among other things, the Amendments prescribe a detailed timeline for the establishment, consideration, and adoption of legislative and congressional maps. Given that the 2022 elections will occur under the contours of the adopted maps, Amendment Y provides that the final stage in this process for congressional redistricting—the filing of a final, approved map with the Secretary of State—must occur “no later than December 15,” Colo. Const. art. V, § 44.5(5). Similarly, Amendment Z provides that the state legislative map “shall” be approved by this Court and filed with the Secretary “no later than December 29.” Colo. Const. art. V, § 48.3(5).

Working backwards, December 15 and 29 are the last in a series of interim deadlines established by the Amendments. Some, like the deadline for the development of a preliminary map for public comment, apply to the commissions. *See generally* Colo. Const. art. V, §§ 44.4, 48.2 (establishing processes for development and adoption of preliminary, staff, and final proposed plans by the redistricting commissions). The commissions have the ability to adjust these deadlines if conditions outside of their control make such adjustments necessary for the

commissions to deliver a final plan to this Court. Colo. Const. art. V, §§ 44.4(5)(c), 48.2(5)(c).

Other deadlines, including the December 15 and 29 deadlines for ordering that final maps be filed with the Secretary, apply to this Court. *See generally* Colo. Const. art. V, §§ 44.5, 48.3 (establishing process for supreme court review of final maps). The constitutional sections establishing these deadlines do not include language authorizing the commissions, or anyone else, to adjust those dates.

Earlier this year this Court addressed the disruption to this schedule caused by the Census Bureau’s inability to deliver final census data to Colorado and other states in April as required by federal law. *In re Interrogatories on S.B. 21-247 Submitted by the Colo. General Assembly*, 2021 CO 37, ¶ 21 (citing 13 U.S.C. § 141(c)). The Court acknowledged that “the delay of the 2020 census data makes it difficult for the commissions to both make use of the up-to-date census data and submit plans within the constitutionally mandated timelines.” *In re Interrogatories on S.B. 21-247 Submitted by the Colo. General Assembly*, 2021 CO 37, ¶ 21.

II. The Petition

On July 13, 2021, the Independent Congressional Redistricting Commission filed a petition initiating this action. Pet for Jud. Review & Request for this Court to Establish a Schedule Under Colo. Const. Art. V, § 44.5(1), No. 2021SA208 (Colo. July 13, 2021) (“Pet.”). The Petition establishes several notable facts.

First, the Petition recognizes that while the congressional commission may adjust deadlines that apply to its work, it may not adjust the deadlines that apply to this Court’s review and approval of the congressional map. *Id.* at 8. Second, it notes that Colorado is one of the few states with the technological ability to use the “legacy format” data the Census Bureau intends to release on August 16, as opposed to needing to wait for the final, non-legacy format data on September 30. *Id.* at 18. Nonetheless, and finally, it acknowledges that the commission is unlikely to be able to submit a final plan to this Court for its review and approval by September 1, 2021. *Id.* at 15.

In light of these facts, the Petition asks this Court to establish a revised schedule for the Court’s review and approval of the proposed

congressional map. *Id.* at 26. The Petition offers two alternatives.

Under the congressional commission's preferred schedule, the Court would receive a final plan from the commission no later than October 28. *Id.* at 16. Under the second proposal, the commission would "take additional, more restrictive measures" to adopt a final plan "as close to" the constitutionally prescribed date of September 1 as possible. *Id.*

III. The Secretary's Role in Implementing the Final Maps

In a sense, Amendments Y and Z establish a relay, in which decennial congressional and legislative maps are passed from one player to the next prior to implementation. The first stage of the process is conducted by the commissions. Consistent with their obligations, the commissions prepare preliminary plans, solicit public feedback and comment, prepare and approve staff plans, and ultimately submit a final proposed plan to this Court. *See* Colo. Const. art. V §§ 44.4; 48.2.

At this point, the Court takes up the baton. Specifically, it reviews the plans submitted by the commissions, entertaining submissions from interested parties who may object to the plans, and either approves

those plans or returns them to the commissions. *Id.* §§ 44.5; 48.3. Once it approves the final maps, it orders those plans to be filed with the Secretary of State. *Id.*

The last leg in this relay is the complicated and multi-stage process of implementing the final, approved maps for the rapidly approaching 2022 elections. Once final maps are approved, Colorado county clerks and the Secretary's office must translate the plans approved by the Court into county-level precincts, assign individual voters to their assigned precincts (and thus, to their assigned congressional and legislative districts) within the state's voter database, and prepare the maps for use in the election.

Under the best of circumstances, this time-consuming process must happen quickly. Candidates seeking to petition onto the 2022 major party primary ballots may begin collecting signatures in their respective districts on January 18, 2022. § 1-4-801(5), C.R.S. (2020). And counties are otherwise required to have their new precinct maps completed by January 31, 2021. § 1-5-103(1).

Thus, Amendments Y and Z envision a smooth, successive process with defined roles. The commissions develop the maps and solicit public feedback. This Court reviews and approves those maps under a strict set of guidelines. County clerks and the Secretary take the final, approved maps and ensure the 2022 elections occur under their bounds.

ARGUMENT

The Secretary takes no position as to the flexibility of certain interim deadlines in Amendments Y and Z. The deadlines to file final, approved maps with the Secretary, however, are inflexible. Practically speaking, final, approved maps must be filed with the Secretary no later than the end of December 2021. Any later would require the June 2022 primary election date to be adjusted. Even if such an adjustment could occur without leading to confusion and disenfranchisement, the federal calendar provides no more than a month of flexibility into which the primary could be moved.

From a practical perspective, any schedule which results in the Secretary receiving maps in 2022 is likely to interfere with Colorado's ability to conduct the orderly, timely, and accurate elections for which it

is known. Any schedule entered by the Court should ensure that final, approved maps are filed with the Secretary by the end of 2021.

I. The later deadlines established by the Amendments are subject to less flexibility than their predecessors.

Although Amendments Y and Z establish many deadlines, those deadlines are not uniformly flexible. Instead, the Amendments reflect the relative significance of the later deadlines. For starters, the Amendments outline only a general timeline for the commissions to develop a preliminary plan. *See* Colo. Const. art. V, §§ 44.4(1), 48.2(1). Many of the subsequent deadlines applicable to the commissions' work are established by the constitutional text, but the Amendments explicitly authorize the commissions to adjust those deadlines "if conditions outside the commission's control require such an adjustment." *See id.* §§ 44.4(5)(c), 48.2(5)(c).

As the deadlines begin to approach the end of the redistricting year, however, the flexibility offered by the Amendments disappears. Once a plan has been filed with this Court, the Court "shall" approve or return the plans submitted by the congressional and legislative

commissions by November 1 and November 15, respectively. *Id.*

§§ 44.5(4)(a), 48.3(4)(a). If the Court returns the plans, the commissions have a condensed schedule to consider and adopt a new plan. *Id.*

§§ 44.5(4)(b)–(c), 48.3(4)(b)–(c). And finally, the Court “shall approve plans” for the congressional and legislative districts “no later than” December 15 and December 29, respectively. *Id.* §§ 44.5(5), 48.3(5).

Unlike the constitutional sections applicable to the commissions, those relevant to this Court’s review contain no explicit mechanism by which the Court may adjust these deadlines. The Court is empowered, however, to adopt rules related to its “review and determination” of the congressional and legislative maps, and to establish a “schedule” upon which to hear arguments related to that review and determination. *Id.* §§ 44.5(1), 48.3(1). But this grant of flexibility as to the Court’s review and determination does not extend to the deadline for the Court’s approval of final maps or its order that such maps be filed with the Secretary. That mandate is found in separate subsections, *id.* §§ 44.5(5), 48.3(5), and states that the Court “shall” approve the maps and order them filed with the Secretary “no later than” December 15

(congressional) and December 29 (legislative). *See Patterson Recall Comm., Inc. v. Patterson*, 209 P.3d 1210, 1218 (Colo. App. 2009) (concluding that the word “shall” when used in constitutional provisions is presumed to have a mandatory meaning).

This increasingly inflexible structure is driven by the 2022 election calendar, which also is largely inflexible. The 2022 elections, including the primary election, must occur under the boundaries established by these maps. As the redistricting process approaches the elections, flexibility must give way to predictability so that the Secretary, county clerks, candidates, and political parties can prepare for the primary and general elections.

“Ballots and elections do not magically materialize. They require planning, preparation, and studious attention to detail if the fairness and integrity of the electoral process is to be observed.” *Perry v. Judd*, 471 Fed. App’x 219, 226 (4th Cir. 2012)); *see also Garcia v. Griswold*, No. 20-cv-1268-WJM, 2020 WL 4926051, at *4 (D. Colo. Aug. 21, 2020). Whereas early deadlines can be flexible without disrupting the electoral process, the latter dates must occur as scheduled “if some order, rather

than chaos, is to accompany the democratic processes.” *Storer v. Brown*, 415 U.S. 724, 730 (1974).

Any schedule established by the Court must reflect this tiered flexibility and ensure that final, approved maps are filed with the Secretary of State by the end of 2021.

II. Failure to file final, approved maps with the Secretary before the end of 2021 will require the June 2022 primary to be moved.

As the Secretary previously outlined for this Court, the delivery of final maps is the first step in a complicated process by which the Secretary of State’s office and Colorado’s county clerks digest the maps and apply them to the upcoming election. *See generally In re: Interrogatory on SB 21-247 Submitted by the Colo. General Assembly, Br. of the Colo. Secretary of State, No. 2021SA146* (May 13, 2021). Once the statewide boundaries are set, county election officials must reconfigure precinct boundaries so that no precinct overlaps with congressional or state legislative district boundaries and so that each precinct continues to meet the statutory target of just 1,500 voters per precinct. Decl. of Dwight Shellman (“Shellman Decl.”), ¶ 6 *attached as*

Ex. A. This time-consuming task requires the manual re-assignment of voters displaced by precincts that are modified based on new congressional or legislative boundaries. *Id.* ¶ 7.

Under the best of circumstances, with all final maps filed with the Secretary by December 29, 2021, finishing this work before the counties' January 31, 2022 deadline for approving new precincts, § 1-5-103(1), would be a challenge. *Id.* ¶ 9. If the maps are delayed, this challenge becomes virtually impossible, and the June 2022 election would need to be delayed.

This is because administering the earliest stages of Colorado's elections is akin to carefully positioning a domino set—after the first have begun to fall, it becomes virtually impossible to shift later deadlines without imperiling the remainder of the election calendar. County clerks, for example, must provide the county chairpersons of major political parties a list of voters eligible to participate in precinct caucuses by February 8, 2022. § 1-3-101(3)(a); Shellman Decl. ¶¶ 10–12. This is the first step in the major party caucus process, in which precinct caucuses nominate delegates to county assemblies, where

delegates are nominated to state assemblies. *See* § 1-4-602(1)(a)(1).

Delayed adoption of precinct boundaries will cause county clerks to miss the initial deadline. If so, major party precinct caucuses, currently scheduled by law for March 1, 2022, § 1-3-102(1)(a)(I), cannot occur as scheduled. This would, in turn, delay county and state assemblies.

Setting aside the caucuses, the June 28, 2022 primary election itself establishes deadlines that would be virtually impossible to meet if maps are not delivered on time. The Secretary must deliver the ballot order and content to county clerks by April 29, 2022, 60 days before the primary election. § 1-5-203(1)(a). And to comply with the federal Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), 52 U.S.C. § 20302(a)(8)(A), ballots must be printed in time to be mailed to eligible military and overseas voters by May 14, 2022—45 days before the June 28, 2022 primary election, § 1-8.3-110(1).

The following is a non-exhaustive list of statutory deadlines related to the June 28, 2022 primary election that would likely need to be revised if maps are not filed with the Secretary by the end of 2021:

- **January 18, 2022:** first day to circulate major party candidate petitions. § 1-4-801(5).
- **January 31, 2022:** last day to complete changes in boundaries of, or to create new, precincts for partisan elections. § 1-5-103(1).
- **February 7, 2022:** first day to circulate minor party candidate petitions. § 1-4-802(1)(d)(II).
- **February 28, 2022:** last day for county clerks to submit their election plans to the Secretary of State for the primary election. § 1-7.5-105(1.3).
- **March 1, 2022:** Republican and Democratic Party precinct caucuses must occur on this date. § 1-3-102(1)(a)(I).
- **March 15, 2022:** last day to file major party candidate petitions. § 1-4-801(5)(a).
- **April 4, 2022:** last day to file minor party candidate petitions. § 1-4-802(1)(f)(II).
- **April 16, 2022:** last day to hold major or minor party state assemblies. § 1-4-601(1).
- **April 20, 2022:** last day for each political party to file with the Secretary the certificates of designation of each assembly that nominated candidates for any national or state office or for member of the general assembly. § 1-4-604(6)(a).
- **April 22, 2022:** last day for a write-in candidate to file an affidavit of intent for the primary election. § 1-4-1102(1).
- **April 26, 2022:** last day for election judges to be certified to the relevant designated election officials. § 1-6-104(1).

- **April 29, 2022:** last day for the Secretary to deliver the certified Primary Election ballot order and content to county clerks. § 1-5-203(1)(a).
- **May 14, 2022:** deadline for county clerks to transmit primary election ballots to military and overseas voters. § 1-8.3-110(1).
- **May 14, 2022:** first day a county clerk may begin issuing ballots for the primary election to eligible electors who request one in person at the clerk's office. § 1-7.5-107(2.7).
- **May 19, 2022:** first day an unaffiliated candidate may circulate or obtain signatures on a petition for nomination for the General Election. § 1-4-802(1)(d)(I).
- **May 27, 2022:** ballots for the primary election must be printed and in possession of the county clerk. § 1-5-402(1).
- **May 27, 2022:** county clerks must begin issuing ballots for the primary election to eligible electors who request one in person at the county clerk's office. § 1-7.5-107(2.7).
- **June 6, 2022:** first day that mail ballots for the primary election may be mailed to non-military and overseas voters. § 1-7.5-107(3)(a)(I).
- **June 10, 2022:** last day to send out initial mail ballots for the primary election. § 1-7.5-107(3)(a)(I).
- **June 20–28, 2022:** the minimum number of required voter service and polling centers must be open for the primary election during these dates. § 1-7.5-107(4.5)(c).
- **June 21, 2022:** first day the minimum number of required Drop Boxes must be open for the primary election. § 1-7.5-107(4.3)(b).
- **June 28, 2022:** primary election. §§ 1-4-101(1), 1-7-101(1).

The Secretary, county clerks, political parties, and potential candidates are already planning around these deadlines. And any delay in delivery of the final legislative and congressional maps to the Secretary will require adjustments. Such adjustments will be complicated by the cascading nature of the dates. For example, the Secretary must approve each county's primary election plan "within 15 days of receiving that plan." § 1-7.5-105(2)(a). Those plans, in turn, are due to the Secretary "no later than one hundred twenty days prior to the election." § 1-7.5-105(1). This means that the date by which the Secretary must approve a county's election plan is contingent on the date on which she receives that plan, which itself is contingent on the date of the primary election.

Similarly, major party candidates petitioning onto the primary election ballot must submit their petitions to the Secretary of State no later than March 15, 2022. § 1-4-801(5)(a). But candidates can begin circulating those petitions on January 18, 2022. *Id.*

If the final maps are not filed with the Secretary until 2022, these deadlines will be impossible to meet. Because of the cascading and

interrelated nature of these deadlines, any delay would leave the Secretary and the General Assembly scrambling to rearrange their carefully positioned dominos after the first have already begun to fall.¹ This, in turn, would threaten the ability of the Secretary, county clerks, and the General Assembly to ensure that each eligible voter is able to cast primary and general election ballots in 2022.

The safest way to ensure the 2022 elections proceed as planned is to require that final, approved maps be filed with the Secretary by the December 15 and 29, 2021 deadlines mandated by Amendments Y and Z, respectively. Colo. Const. art. V, §§ 44.5(5), 48.3(5). The Petition apparently assumes that the final congressional maps will be filed with the Secretary by the end of 2021. *See, e.g.*, Pet. at 19 (“Even if the Commission submits its final plan on the last possible day, this Court will have over two months to review and approve a final redistricting

¹ In a worst-case scenario, a candidate may later be deemed ineligible for office in the district in which she collected petition signatures. Such a situation could result in ineligible candidates appearing on ballots, votes for those ineligible candidates being counted, and ensuing election contests. *See Hanlen v. Gessler*, 2014 CO 24, ¶¶ 36–39.

plan *before the end of the calendar year.*") (emphasis added). The Secretary urges the Court to adopt a schedule that ensures this is the case.

III. The state has a narrow window within which it could adjust the date of the 2022 primary election.

If final, approved maps are not filed with the Secretary by the end of 2021, the June 28, 2022 primary election will need to be pushed to a later date. As a practical matter, the mechanics of moving the election will be difficult. Given that the initial deadlines related to the June 28, 2022, primary arise as early as January 18, 2022, there will be only a couple of weeks between when the delay in receiving the maps becomes apparent and before the deadline dominos begin to fall. Moving the primary during this time would require significant effort and alignment from many parties.

Even if these parties are able to move the primary, such an adjustment would impose significant administrative burdens on the Secretary and county clerks, who will be tasked with shifting numerous

statutory and regulatory deadlines that currently contemplate a June 28, 2022 primary.

Finally, even assuming that those administrative burdens can be navigated, the June 28, 2022 primary election can be delayed by *no more than one month* if Colorado is to comply with its obligations under federal law.

Under federal law, the 2022 general election must occur on November 8, 2022. 2 U.S.C. § 7. That deadline is inflexible. And under UOCAVA, the state must mail eligible military and overseas voters a general election ballot no later than September 24, 2022. 52 U.S.C. § 20302(a)(8)(A). To meet this deadline, Colorado must adhere to the existing general election ballot certification deadline of September 12, 2022. Decl. of Hilary Rudy (“Rudy Dec.”) ¶ 9, *attached as Ex. B*. The Secretary anticipates that to comply with these federal deadlines, the primary election can occur no later than July 26, 2022. *Id.* ¶ 10.

The UOCAVA deadlines that impose these constraints are inflexible. During past election cycles, the federal government has closely monitored states’ election activity to ensure their ability to

certify an election ballot in time to transmit them to overseas UOCAVA voters. *See, e.g.*, Letter from Lema Bashir, Trial Attorney, U.S. Department of Justice, to Secretary of State Wayne Williams (May 1, 2018), *attached as Ex. C*.

Thus, even if the General Assembly and the Governor are able, presumably through the invocation of a special session, to mitigate a delay in the implementation of final, approved maps by enacting statutory changes to move the primary election—and even if the Secretary, county clerks, and countless other officials are able to move that election and its dozens of associated dates once the delay becomes known—moving the primary election can accomplish only so much. At most the primary election can be pushed back by four weeks. Any schedule entered by the Court should reflect this urgency.

CONCLUSION

While the Secretary of State takes no position on the propriety of adjusting certain intermediary deadlines found in Amendments Y and Z, she respectfully requests that the schedule established by the Court ensures that the ultimate deadlines for final, approved congressional

and legislative maps to be filed with her office remain no later than the end of 2021.

Respectfully submitted on this 22nd day of July, 2021.

PHILIP J. WEISER
Attorney General

/s/ Peter G. Baumann

LEEANN MORRILL, 38742

First Assistant Attorney General*

GRANT T. SULLIVAN, 40151

Assistant Solicitor General*

PETER G. BAUMANN, 51620*

Campaign Finance Enforcement

Fellow

Public Officials Unit

State Services Section

Attorneys for Jena Griswold, Colorado

Secretary of State

*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing **BRIEF OF THE COLORADO SECRETARY OF STATE** upon all counsel entered in this matter via CCEF, at Denver, Colorado this 22nd day of July, 2021.

s/ Xan Serocki

Xan Serocki

DATE FILED: July 22, 2021 10:33 AM

Exhibit A to
Brief of the Secretary of State
Declaration of Dwight Shellman

No. 2021SA208
July 22, 2021

<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203</p>	
<p>Original Proceeding Pursuant to Article VI, Section 3 of the Constitution of the State of Colorado</p>	
<p>In re: Petitioner Colorado Independent Congressional Redistricting Commission</p>	
<p>PHILIP J. WEISER, Attorney General LEEANN MORRILL, 38742 First Assistant Attorney General* GRANT T. SULLIVAN, 40151 Assistant Solicitor General* PETER G. BAUMANN, 51620 Campaign Finance Enforcement Fellow* Ralph L. Carr Colorado Judicial Center 1300 Broadway, 6th Floor Denver, CO 80203 Telephone: (720) 508-6152 FAX: (720) 508-6041 E-Mail: leeann.morrill@coag.gov grant.sullivan@coag.gov peter.baumann@coag.gov *Counsel of Record <i>Attorneys for the Colorado Secretary of State</i></p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p style="text-align: center;">Case No. 2021SA208</p>
<p>DECLARATION OF DWIGHT SHELLMAN</p>	

I, Dwight Shellman, declare as follows:

1. I am the County Regulation and Support Manager of the Elections Division of the Colorado Department of State.

2. In my role, I oversee and support the activities and operations of the county clerks and election staff members of Colorado's sixty-four counties, as they plan and prepare for and conduct elections in compliance with state and federal laws. Before joining the Secretary of State's office in 2013, I served as the Elections Manager of Pitkin County from 2010–2013. In that role I was primarily responsible for conducting all county elections in compliance with federal and state statutes, and performing the work necessary to complete the redistricting process at the county level following the 2010 decennial census.

3. The statements in this declaration are based on my own personal knowledge, including information gathered by employees of the Secretary of State's Office, and including my personal experience with redistricting in Pitkin County after the 2010 decennial census.

4. Redistricting after a decennial census is a complex undertaking that requires substantial amounts of work at both the state and county levels.

5. From the perspective of county election staff, the Colorado Supreme Court's final approval of new congressional and state legislative districts is only the first step in the process. For all practical purposes, the new districts do not exist until county election officials complete the analysis and data entry necessary to translate the new congressional and legislative district boundaries from lines on maps approved by the Supreme Court into residence address points in the address libraries of the statewide voter registration and election management system, SCORE. This work is necessary to assign every voter in the county to the correct federal, state, county and local districts in which they are eligible to vote.

6. County-level redistricting work chiefly consists of reconfiguring precinct boundaries so that:

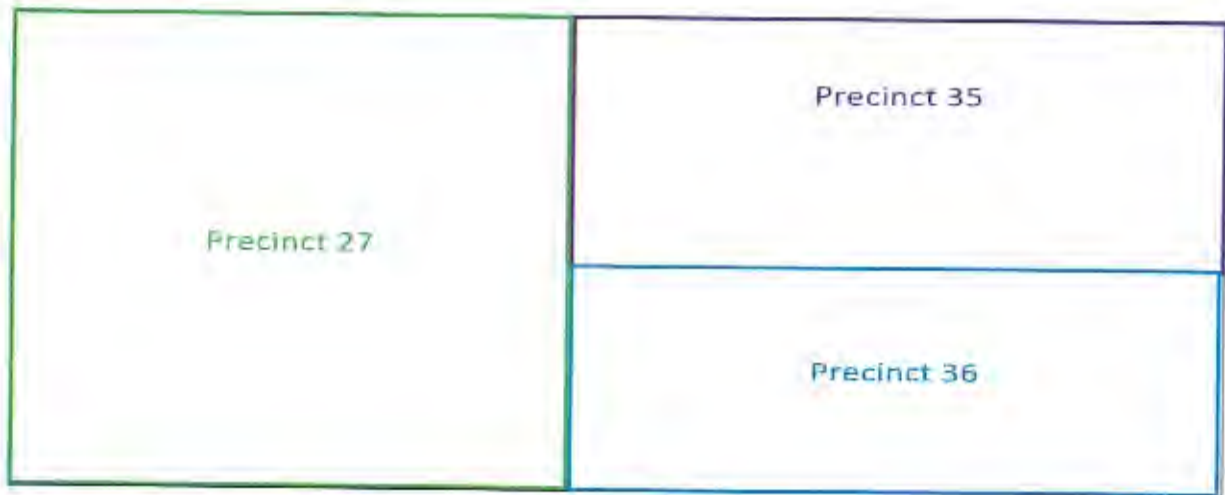
- a. Each precinct contains no more than 1,500 active voters (or 2,000 active voters if the Board of County Commissioners so chooses). In other words, counties must configure their precincts on the basis of active registered voter counts rather

than the number of individuals who reside in the precinct as reflected in the most recent census.

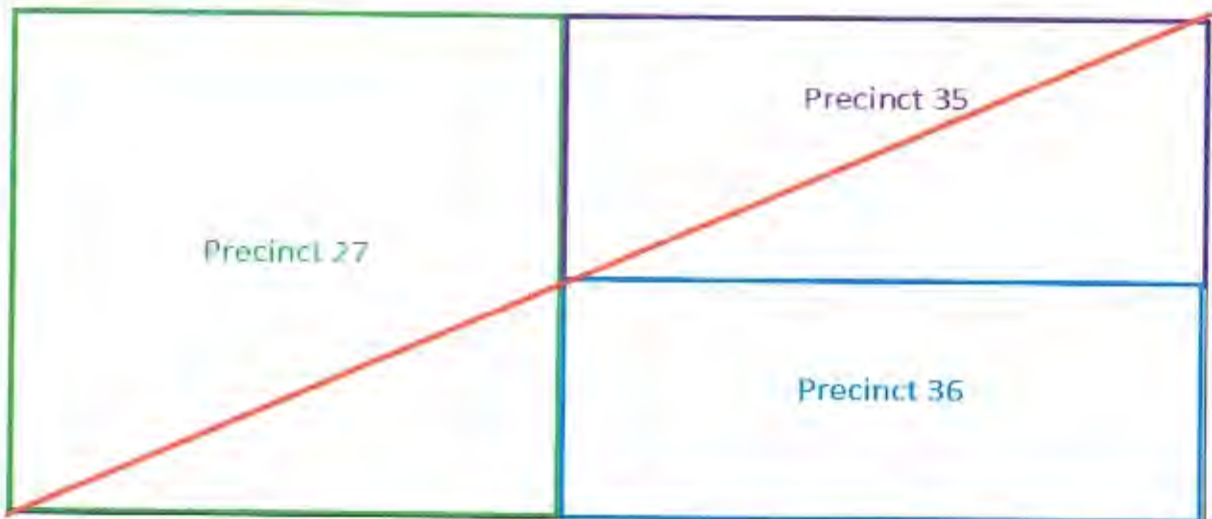
- b. Each precinct is wholly contained within one congressional, one state house of representatives, and one state senate district. In other words, precinct boundaries cannot overlap congressional or state legislative district boundaries.

7. If any new congressional or legislative district boundary transects an existing precinct boundary, the county must modify the existing precinct boundary to align with the new district boundary, then create a new precinct to hold the addresses of the former precinct that are now situated in the new district, then manually re-assign the individual addresses from the former to the new precinct in SCORE, on a line-by-line basis. These steps are graphically illustrated in Figures A, B and C, below:

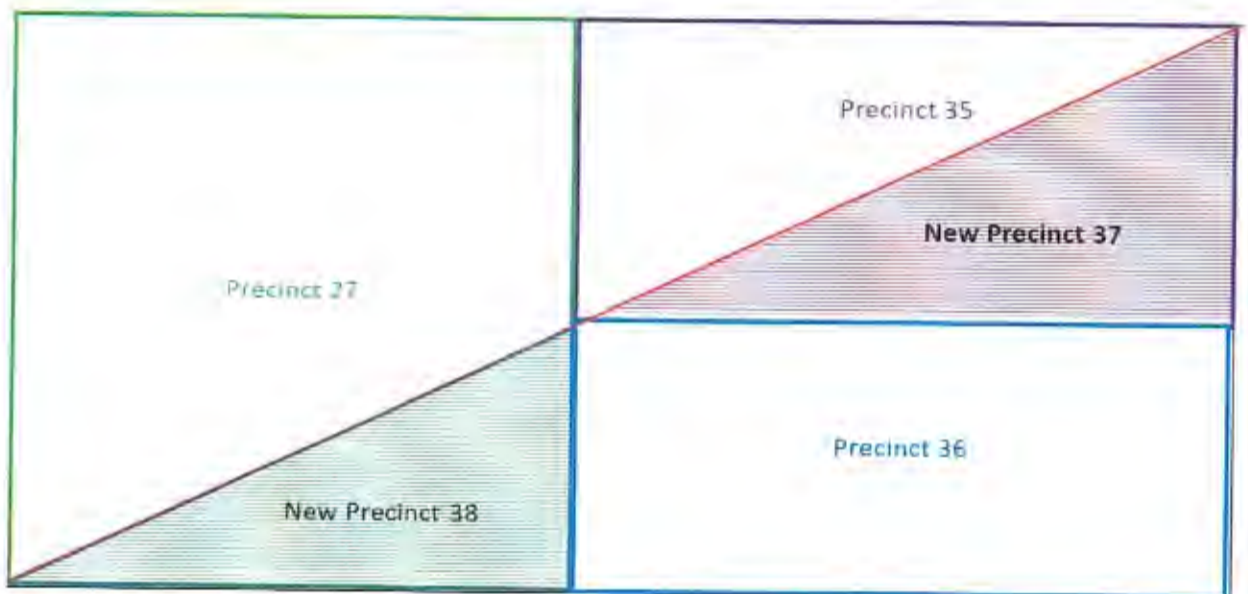
- a. **Figure A:** Map of existing Precincts 27, 35 and 36 in a portion of a fictional county:



- b. **Figure B:** The new congressional district boundary (depicted in red) transects existing Precincts 27 and 35:



c. **Figure C:** The county must create new precincts (numbered 37 and 38 in this example) to hold the addresses that were formerly assigned to Precincts 27 and 35 and are now located in the new congressional district. The county then modifies SCORE's address libraries to i) dissociate the addresses in the shaded areas from their former precincts, and ii) assign them to the newly created precincts:



8. The illustrations above demonstrate an instance in which a county must align two existing precincts to one type of new district boundary. They vastly oversimplify the complexity of redistricting at

the county level, because in reality counties must align all precinct boundaries with three different types of new district boundaries – congressional, state senate and state house. Furthermore, the illustrated examples do not address any of the complexities arising from the plethora of local political subdivisions – such as cities and towns, school districts, and the various types of special districts organized under Title 32 of the Colorado Revised Statutes - that county officials and staff must reckon with as they right-size precincts and align precinct boundaries.

9. Counties must perform county-level redistricting work accurately. Errors and mistakes in SCORE's address libraries can seriously and adversely affect the integrity of election outcomes, because SCORE is the fundamental engine for administering all elections in the state of Colorado. If a county's address libraries are wrong in SCORE, the Secretary of State or a county clerk may unwittingly certify for the primary election ballot a candidate who is not eligible to hold the office in question; SCORE may generate incorrect ballot styles for a specific election by erroneously including or omitting

ballot contests that individual voters either are or are not eligible to vote on; and election judges may issue incorrect ballot styles to some or all voters. Very serious address library errors may completely invalidate the outcome of an election, in whole or in part.

10. If the 2020 census data had not been delayed by six months, current law provides a 6-week period of time for counties to complete their redistricting work:

- a. Almost 5 weeks, from the December 29, 2021 deadline for the Supreme Court to finally approve the new legislative districts, until the January 31, 2022 deadline for boards of county commissioners to approve new precinct maps; and
- b. One additional week, from the time the county commissioners approve the new precinct maps, until the February 8, 2022 deadline for county clerks to provide the county chairpersons of the major political parties with precinct caucus lists, i.e., a list of voters eligible to participate in precinct caucuses on March 1, 2022.

Counties must complete all data entry to update SCORE's

address libraries in this approximate one-week period in order to generate precinct caucus lists by the statutory deadline.

11. County election officials will not know if they need to reconfigure existing voting precincts for multiple congressional and state legislative districts until this Court approves the final plans of redistricting. They cannot know the number of precinct boundaries affected unless and until the new district maps are approved and released. Since no one currently knows the full scope of the county-level redistricting work that will be required in any given county, all counties need the full 6 weeks afforded by current law to complete their work.

a. Six weeks is sufficient to complete county-level redistricting work for counties wholly situated in only one congressional, state senate and state house district. While these counties must also adjust their precincts to contain no more than 2,000 active voters, by definition they will not be required to conform existing precinct boundaries to new congressional or legislative district boundaries.

b. Six weeks is barely sufficient for counties situated in more than one congressional, state senate and/or state house district. These multi-district counties contain proportionally larger shares of Colorado's population, so there is a higher likelihood that the boundaries of at least one and possibly all three types of districts will change somewhere within their borders. Multi-district counties may need to adjust dozens or hundreds of precinct boundaries to conform to the final plans of redistricting ultimately approved by this Court. However, because SCORE does not support geospatial functionality, even the largest and most technologically adept county election department must perform the manual data entry necessary to ensure that thousands of individual addresses are assigned to the correct precincts in SCORE, and that SCORE's address libraries accurately and completely conform to new legislative and precinct boundaries depicted as lines on maps. It is simply not

reasonable to expect any multi-district county to accurately complete the complex analysis and volume of data entry necessary in less than six weeks after the Court approves the final redistricting plans.

12. If the Supreme Court does not approve the final congressional and legislative redistricting plans until after December 29, 2021, many counties will not be able to complete their redistricting work in time to hold precinct caucuses on March 1, 2022 and the primary election on June 28, 2022.

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13. If the Supreme Court does not approve final redistricting plans by December 29, 2021, the General Assembly will need to amend Title 1 to delay the 2022 precinct caucuses and primary election in order to provide sufficient time for counties to complete their redistricting work.

I declare under penalty of perjury under the law of Colorado that the foregoing is true and correct.

Executed on this 21st day of July, 2021 in Denver, Colorado.


Dwight Shellman

DATE FILED: July 22, 2021 10:33 AM

Exhibit C to
Brief of the Secretary of State

Letter from Lema Bashir

No. 2021SA208

July 22, 2021



U.S. Department of Justice
Civil Rights Division

*Voting Section - NWB
950 Pennsylvania Ave, NW
Washington, DC 20530*

May 1, 2018

The Honorable Wayne W. Williams
Secretary of State
1700 Broadway, Suite 200
Denver, Colorado 80290

Dear Secretary Williams:

We write to you as the chief elections official for the State of Colorado regarding the State's plans for compliance with the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), 52 U.S.C. §§ 20301 et seq. UOCAVA requires that states transmit validly-requested absentee ballots to military and overseas voters not later than 45 days before an election for federal office when the request is received at least 45 days before the election. As you know, the 45-day advance transmission deadline for Colorado's June 26, 2018, federal primary election is May 12, 2018.

As part of our nationwide UOCAVA enforcement efforts, we have communicated with your office about several current legal challenges to the qualifications of candidates seeking to run for state and federal offices in Colorado that may impact the State's UOCAVA compliance efforts in this year's federal primary elections. We appreciate your office's keeping us apprised of the status of these matters and the extent to which they may affect the State's ability to transmit certified ballots by the federal law deadline.

We understand that the last day for certifying candidates for the June 26, 2018, federal primary election was April 27, 2018, and that the State's ballot preparation processes would ordinarily permit timely mailing of the ballots if candidates are certified by Wednesday, May 2, 2018. We encourage your office to take all steps necessary to comply with UOCAVA deadlines to avoid any potential harm to Colorado voters who are overseas or engaged in active-duty military service.

We appreciate your office's efforts to comply with UOCAVA, and would respectfully ask that we continue to be apprised of relevant developments.

Sincerely,

A handwritten signature in black ink, appearing to read "Lema Bashir", written in a cursive style.

Lema Bashir
Trial Attorney

DATE FILED: July 22, 2021 10:33 AM

Exhibit B to
Brief of the Secretary of State

Declaration of Hilary Rudy

No. 2021SA208
July 22, 2021

<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203</p>	
<p>Original Proceeding Pursuant to Article VI, Section 3 of the Constitution of the State of Colorado</p>	
<p>In re: Interrogatory on SB 21-247 Submitted by the Colorado General Assembly</p>	
<p>PHILIP J. WEISER, Attorney General LEEANN MORRILL, 38742 First Assistant Attorney General* GRANT T. SULLIVAN, 40151 Assistant Solicitor General* PETER G. BAUMANN, 51620 Campaign Finance Enforcement Fellow* Ralph L. Carr Colorado Judicial Center 1300 Broadway, 6th Floor Denver, CO 80203 Telephone: (720) 508-6152 FAX: (720) 508-6041 E-Mail: leeann.morrill@coag.gov grant.sullivan@coag.gov peter.baumann@coag.gov *Counsel of Record <i>Attorneys for the Colorado Secretary of State</i></p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p>Case No. 2021SA146</p>
<p>DECLARATION OF HILARY RUDY</p>	

I, Hilary Rudy, declare as follows:

1. I am the Deputy Director of Elections at the Colorado Department of State.

2. In my role, I oversee elections operations, including ballot access, county support, and the statewide voter registration support team.

3. The statements in this declaration are all based on my own personal knowledge, including information gathered by employees of the Secretary of State's Office.

4. If final legislative and congressional district maps are not filed with the Secretary of State by the end of 2021, it will affect the election timeline beginning with the January 18, 2022 date at which major party candidates can begin circulating petitions to gain access to the ballot. It will result in uncertainty around candidate qualifications and the processes for partisan candidates to be placed on the June 28, 2022 primary ballot.

5. Colorado law requires state legislative candidates to reside within the district they seek to represent. If we do not know the updated legislative boundaries, the eligibility of candidates to run for a state legislative seat or state board of education district may be uncertain.

6. We may need to move the June 28, 2022 state primary election to ensure sufficient time for candidates to access the ballot and counties to conduct pre-election work. This would require a legislative change, which may or may not occur before the initial January 2022 elections deadlines that precede the June 28, 2022 primary election. Because so many election-related dates are tied to the date of the primary election, moving the election after these dates have already begun to occur will increase voter confusion and uncertainty.

7. Moving the date of the state primary election alters the schedule for ballot certification, county vendors, state systems, and post-election activities.

8. Moving the primary election would result in downstream consequences heading into the November 8, 2022 general election. The later we need to move the state primary election, the greater the risk that a post-primary election contest would interfere with the ballot certification deadline for the general election.

9. The ballot certification for the general election cannot be adjusted. Federal law requires states to send ballots to military and

overseas voters 45 days before the general election. 52 U.S.C. § 20302(a)(8)(A). Colorado's ballot certification deadline cannot be pushed back if Colorado is to meet this federal requirement. If Colorado fails to meet this deadline, it may be subject to federal penalties, including but not limited to burdensome monitoring and litigation by the U.S. Department of Justice.

10. In order to maintain the existing ballot certification deadline of September 12, 2022, under no circumstances can Colorado's primary election occur after July 26, 2022.

11. The general election date cannot be adjusted because it is set by federal law.

I declare under penalty of perjury under the law of Colorado that the foregoing is true and correct.

Executed on this 13th day of May, 2021 in Denver, Colorado.

/s/Hilary Rudy

Hilary Rudy