

SUPREME COURT OF COLORADO

2 East 14th Avenue, Denver, Colorado, 80203

Original Proceeding Pursuant to § 2-2-507(2.5)(b),
C.R.S.

**In re Proposed Changes to Borders Between
State Legislative Districts**

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Case No.: **2022 SA 28**

**COLORADO INDEPENDENT LEGISLATIVE REDISTRICTING
COMMISSION'S BRIEF IN RESPONSE TO
SECRETARY OF STATE'S PETITION TO ADJUST BORDERS
BETWEEN STATE LEGISLATIVE DISTRICTS**

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with all requirements of C.A.R. 32, including all formatting requirements set forth therein. I further certify that this brief complies with the Court’s February 3, 2022 briefing order, as it contains 1,640 words.

I acknowledge that this brief may be stricken if it fails to comply with any of the requirements of C.A.R. 32.

Dated: February 17, 2022

s/ Richard C. Kaufman

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INTRODUCTION

In 2018, the Colorado electorate enacted Amendment Z to the Colorado Constitution. *In re Colorado Indep. Legislative Redistricting Comm’n*, 2021 CO 76, ¶¶ 1-8. Amendment Z replaced the Colorado Reapportionment Commission (“CRC”) with the Colorado Independent Legislative Redistricting Commission (the “Commission”) with the specific object of eliminating partisan politics from the redistricting process. *Id.* The Commission is charged with adopting two redistricting plans – one plan for the sixty-five districts in the Colorado House of Representatives, and a separate plan for the thirty-five districts in the Colorado Senate. *Id.* Each plan must be submitted to the Colorado Supreme Court for review and approval. *Id.*

Beginning in March 30, 2021, the Commission held 35 public hearings across the state of Colorado to gather and analyze relevant information in preparing the plans, held 45 meetings and numerous subcommittee meetings, received and considered thousands of comments submitted by citizens, and considered more than 55 proposed plans. The Commission adopted a plan for the House by a vote of 11 to 1, and a Senate plan by a unanimous vote, and submitted the plans to the Court on October 15, 2021. After briefing and oral argument, the Court approved the plans on November 15, 2021. *Id.*

After receiving the Secretary of State’s Petition dated February 3, 2022 (the “Petition”), the Commission noticed a public meeting and invited public comment at

that meeting. The Commission held the public meeting on February 11, 2022. At the meeting, the Commission considered the Secretary of State's proposed adjustments and received a report from nonpartisan staff regarding staff analysis of the requested adjustments.

The Commission voted to approve the proposed adjustments, with the exception of the proposed amendment shown in Exhibit N. The proposed amendment described in Exhibit N would create a split in the City of Longmont boundary, which the Commission sought to avoid in drafting its final plan, and would not adopt as an adjustment. Exhibit N; Petition at 25.

ISSUE FOR REVIEW

Whether the proposed adjustments requested by the Colorado Secretary of State in the Petition should be implemented as adjustments to the final Colorado House and Senate plans previously adopted by the Commission on October 11, 2021 and October 12, 2021, respectively, and approved by this Court on November 15, 2021.

SUMMARY OF THE ARGUMENT

The Commission approves the adjustments proposed by the Secretary of State, with the exception of the proposed amendment shown in Exhibit N. The proposed amendment described in Exhibit N would create a political subdivision split regarding

the City of Longmont boundary, which the Commission sought to avoid in drafting its final plans, and the Commission would therefore not adopt such an adjustment.

STANDARD OF REVIEW

Section 2-2-507, C.R.S., is a statutory provision that references and purports to implement Amendment Z. The Petition is based on only one subsection of the statute, Section 2-2-507(2.5), which refers to requested adjustments due to split residential parcels. The subsection states that, after receiving and evaluating a requested change from a county clerk and recorder:

If the secretary of state believes that the border should be moved, the secretary of state shall propose moving the border between the two districts to a visible feature normally relied upon by the United States census bureau such that the border:

- (I) Does not split a residential parcel;
- (II) Moves the remaining portion of the residential parcel into the least populated of the two districts; except that, if the border is a border between both senatorial and representative districts, the remaining portion of the residential parcel shall be moved into the least populated of the two representative districts;
- (III) Would not result in a violation of section 48.1 (1)(a) of article V of the state constitution based upon the latest national census;
- (IV) Minimizes the impact on the affected community for purposes of establishing polling locations; and

- (V) Minimizes changes in distances from the redistricting plan approved by the Colorado supreme court.

C.R.S. § 2-2-507(2.5)(a). The statute further provides that “[i]f the supreme court determines that the assignments made by the secretary of state satisfy the criteria established in subsection (2.5)(a) of this section, the supreme court may approve said assignments.” C.R.S. § 2-2-507(2.5)(b).

In addition to the language of the statute, the Commission further believes that, even though the statute refers only to a requirement that a proposed adjustment not violate article V, section 48.1(a) regarding population deviation, any requested adjustments must also satisfy all constitutional requirements applicable to proposed plans in the first instance. *See, e.g., In re Colorado Indep. Legislative Redistricting Comm’n*, 2021 CO 76, ¶ 11 (Commission must propose plans consistent with constitutional requirements); *In re Interrogatories on Senate Bill 21-247 Submitted by Colorado Gen. Assembly*, 2021 CO 37, ¶ 32 (in examining the interaction between a statute and a constitutional amendment, the Court’s inquiry focuses on whether the two provisions necessarily conflict). Accordingly, the Commission believes that any requested adjustment must be approved by the Commission based on a determination that such adjustment satisfies all constitutional criteria. Colo. Const. art. V, § 48.1; *In re Colorado Indep. Legislative Redistricting Comm’n*, 2021 CO 76, ¶¶ 10-11.

ARGUMENT

I. THE COMMISSION APPROVES OF AND ENDORSES THE REQUESTED ADJUSTMENTS, EXCEPT THE ADJUSTMENT DESCRIBED IN EXHIBIT N.

On February 3, 2022, the Secretary of State filed the Petition to Adjust Borders Between State Legislative Districts with the Colorado Supreme Court citing C.R.S. § 2-2-507 as authority. The Court issued an Order directing that briefs in response to the Petition be filed by February 17, 2022. The Commission's nonpartisan staff analyzed the border adjustments requested in the Petition to determine whether the adjustments complied with the constitutional requirements found in the Colorado Constitution at article V, section 48.1, *et seq.* The Commission met on Friday, February 11, 2022, to consider the nonpartisan staff's analysis, the individual border adjustments found in the Petition, and any public comment.

The Commission voted to approve, and therefore endorses, all the requested adjustments except the one described in Exhibit N. *See* Petition at 25; Ex. N. The Commission determined that the requested adjustments, with the exception of Exhibit N, satisfy the constitutional criteria that the Commission applied in preparing the plans. Specifically, the requested adjustments: do not cause more than a five percent deviation between the most populous and the least populous districts, as the resultant population changes caused by the requested adjustments range from zero to less than 15 person changes, Colo. Const. art. V, § 48.1(1)(a); do not materially alter

the Voting Rights Act of 1965 analysis previously completed, *id.*, § 48.1(1)(b); do not materially alter the communities of interest or political subdivision analysis previously completed (except as noted regarding Exhibit N), *id.*, § 48.1(2)(a); do not materially alter the compactness analysis, *id.*, § 48.1(2)(b); do not materially alter the competitiveness analysis, *id.*, § 48.1(3)(a); do not result in protection of any incumbent or candidate, *id.*, § 48.1(4)(a); and do not materially alter the analysis regarding denial or abridgement of the right of any citizen to vote based on race or membership in a language minority group, *id.*, § 48.1(4)(b).

Based on this analysis, the Commission approves, and therefore endorses, all the requested adjustments except the one found in Exhibit N.

II. THE COMMISSION DETERMINED THAT THE ADJUSTMENT REQUESTED IN EXHIBIT N WOULD CREATE AN ADDITIONAL POLITICAL SUBDIVISION SPLIT, AND IT WOULD THEREFORE NOT APPROVE THE ADJUSTMENT.

As noted above at page 8, in addition to the language of the statute, the Commission believes that any requested adjustments must also satisfy all constitutional requirements applicable to proposed plans in the first instance. *See, e.g., In re Colorado Indep. Legislative Redistricting Comm'n*, 2021 CO 76, ¶ 11 (Commission must propose plans consistent with constitutional requirements); *In re Interrogatories on Senate Bill 21-247 Submitted by Colorado Gen. Assembly*, 2021 CO 37, ¶ 32 (in examining the interaction between a statute and a constitutional amendment, the Court's inquiry

focuses on whether the two provisions necessarily conflict). Accordingly, the Commission believes that any requested adjustment must be approved by the Commission based on a determination that such adjustment satisfies the constitutional criteria. Colo. Const. art. V, § 48.1; *In re Colorado Indep. Legislative Redistricting Comm'n*, 2021 CO 76, ¶¶ 10-11.

The proposed adjustment described in Exhibit N, and the Petition at 25, results in a split of the City of Longmont, which is inconsistent with the Commission's application of article V, section 48.1(2)(a), which requires the Commission to preserve whole "communities of interest and political subdivisions such as counties, cities, and towns." The border between Senate District 17 and 23, adopted by the Commission and approved by this Court, follows the city boundaries of Longmont, thus preserving that city whole as required by the Colorado Constitution. The Petition focuses on the boundaries of specific census blocks, but section 48.1(2)(a) requires the Commission to maintain cities whole where possible. The requested change therefore is not consistent with the Commission's criteria, and is not approved as proposed. The Commission respectfully requests that this Court reject the proposed adjustment in this instance.

The Commission's nonpartisan staff believes that an adjustment similar to that proposed in Exhibit N could be made that does not result in a split of the City of Longmont boundary while still achieving the adjustment requested by the Secretary of

State. The Commission’s counsel and the Secretary of State’s counsel conferred regarding such a modification, and counsel understands that the Secretary of State may wish to modify the proposal described in Exhibit N.

CONCLUSION

The Commission approves the adjustments proposed by the Secretary of State, with the exception of the proposed amendment shown in Exhibit N. The proposed amendment described in Exhibit N would create a political subdivision split regarding the City of Longmont boundary, which the Commission sought to avoid in drafting its final plans, and the Commission therefore would not adopt such an adjustment.

Respectfully submitted this 17th day of February, 2022.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 17th day of February, 2022, a true and correct copy of the foregoing **COLORADO INDEPENDENT LEGISLATIVE REDISTRICTING COMMISSION'S BRIEF IN RESPONSE TO SECRETARY OF STATE'S PETITION TO ADJUST BORDERS BETWEEN STATE LEGISLATIVE DISTRICTS** was served via the Court Electronic Filing System, upon the following, as well as any other counsel appearing of record at the time of filing:

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