



Colorado Independent Redistricting Commissions Staff

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MEMORANDUM

June 29, 2021

TO: Members of the Colorado Independent Legislative Redistricting Commission

FROM: Colorado Independent Redistricting Commissions Staff

SUBJECT: Preliminary Legislative Plans

Summary

This memorandum and attachments provide context and information about the preliminary legislative redistricting maps (preliminary plans) submitted by the Colorado Independent Legislative Redistricting Commission's (commission) nonpartisan commission staff (staff) on June 29, 2021.

Plans

Attachment A provides detailed maps of the preliminary Colorado House of Representatives plan, and Attachment B provides detailed maps of the preliminary Colorado Senate plan.

Data Overview

The commission approved a data set to allow staff to prepare the preliminary plans. Because the U.S. Census Bureau will not release the official redistricting data until August 2021, the commission decided that proceeding with preliminary data gives the commission the best chance of completing their work and receiving valuable feedback without delaying the 2022 election calendar.

Staff created the data set using data from the Colorado State Demography Office and using the recently released state resident population from the U.S. Census Bureau as a benchmark. The state resident population, as released by the U.S. Census Bureau, is 5,773,714. The preliminary data comes from the U.S. Census Bureau's American Community Survey and state population forecasts, and the data's distribution is based on the U.S. Census Bureau's Master Address File.

Staff prepared the preliminary plans using 2010 census blocks. This means the geometry used in the preliminary plans does not align exactly with the 2020 census blocks that will be used for the final maps. When the U.S. Census Bureau releases the full block-level redistricting data in August, staff will prepare maps for the commission using this final data on 2020 census blocks.

Constitutional Requirements

Section 48.1 of Article V of the Colorado Constitution requires the commission to adopt legislative redistricting plans that satisfy several criteria. These criteria are addressed below.

1. Mathematical Population Equality

The Colorado Constitution requires the commission to “[m]ake a good-faith effort to achieve mathematical population equality between districts, as required by the constitution of the United States, but in no event shall there be more than five percent deviation between the most populous and the least populous district in each house.”¹

Per the 2020 decennial census, Colorado has a population of 5,773,714. The Colorado House of Representatives consists of sixty-five members and the Colorado Senate consists of thirty-five members.² Therefore, the target population of each proposed Colorado House of Representatives district is 88,826 and the target population of each proposed Colorado Senate district is 164,963.³

The preliminary plans comply with Colorado’s constitutional standards by making a good-faith effort to achieve mathematical population equality and not exceeding the five percent deviation standard.

In the Colorado House of Representatives preliminary plan, the most populous district is 2,178 people (or 2.45 percent) over the ideal district size and the least populous district is 2,256 people (or 2.54 percent) under the ideal district size. Taken together, these proposed districts have a deviation of 4.99 percent, which is less than the maximum constitutionally permitted 5 percent deviation.

In the Colorado Senate preliminary plan, the most populous district is 3,828 people (or 2.32 percent) over the ideal district size and the least populous district is 4,050 people (or 2.46 percent) under the ideal district size. Taken together, these two proposed districts have a deviation of 4.78 percent, which is less than the maximum constitutionally permitted 5 percent deviation.

Attachments C and D provide population summaries of the legislative districts in the preliminary plans.

¹ Colo. Const. art. V, § 48.1 (1)(a).

² Colo. Const. art. V, § 45.

³ 88,826 and 164,963 are referred to as the “target population” or “ideal district population” of each Colorado House of Representatives district and Senate district, respectively. The degree by which any district’s population varies from the target population is referred to as a district’s “deviation”.

2. Contiguity

Legislative districts must be contiguous.⁴ This means that all parts of a district must be connected, and it must be possible to travel to all parts of a district without ever leaving it.⁵ The preliminary plans achieve contiguity because the entire area of each proposed legislative district is connected.

3. Voting Rights Act

The Colorado Constitution requires the commission to comply with the Voting Rights Act (VRA) in creating legislative redistricting plans.⁶ The VRA prohibits a state from enacting a redistricting plan that "results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color" or because a person is "a member of a language minority group."⁷ "Denial or abridgement" has been defined to include any procedure, including redistricting, that diminishes the ability of any citizen to elect their preferred candidate on account of race, color, or membership in a language minority.⁸

Section 2 of the VRA is the section of the VRA that would most likely apply to redistricting in Colorado.⁹ A violation of Section 2 may be established if:

*based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of ... [a racial, color, or language minority class] ... in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.*¹⁰

Staff considered the VRA in drafting the preliminary plans. The Supreme Court of the United States found in *Thornburg v. Gingles* that three preconditions to a VRA Section 2 violation must be met to state a claim.¹¹

"First, 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."¹² Sanchez v. Colorado required the creation of a Hispanic majority districting including the San Luis Valley. The redistricting commissions in 2001 and 2011 both retained VRA experts who concluded that there was still racial bloc voting in the San Luis Valley that justified a "minority majority" district including the San Luis Valley.¹³ Furthermore, the Colorado Constitution appears to require the commission to continue to draw such a district.¹⁴

⁴ "Districts must be composed of contiguous geographic areas". Colo. Const. art. V, § 48.1 (1)(a).

⁵ *Redistricting Law 2020*, National Conference of State Legislatures 2020 ed., pg. 77.

⁶ "Comply with the federal 'Voting Rights Act of 1965', 52 U.S.C. sec. 50301, as amended." Colo. Const. art. V, § 48.1 (1)(b). The federal "Voting Rights Act of 1965" was recodified and moved. The citation in the Colorado Constitution is incorrect. Section 2 of the VRA is now 52 U.S.C. 10301.

⁷ 52 U.S.C. § 10301 (a); see also, *Redistricting Law 2020*, pg. 15 (internal citations omitted).

⁸ 52 U.S.C. § 10301 (b); see also, Whitaker, L. Paige, "Congressional redistricting and the Voting Rights Act: A legal overview," *Congressional Research Service*, p. 2, <https://fas.org/sgp/crs/misc/R42482.pdf>.

⁹ Either a party cannot use the other sections of the Voting Rights Act as the basis of a claim against redistricting in Colorado or those sections most likely would not like apply in Colorado due to historical precedent. See, *Redistricting Law 2020*, pp. 43-44.

¹⁰ 52 U.S.C. § 10301 (b).

¹¹ *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986).

¹² *Id.* at 50. For purposes of this analysis, the minority group must be 50% or more of the citizen voting age population. *Bartlett v. Strickland*, 556 U.S. 1, 27 (2009).

¹³ *Sanchez v. Colorado*, 97 F.3d 1303 (10th Cir. 1996).

¹⁴ See Colo. Const. art. V, § 48.1 (4)(b).

The second precondition is that the minority group "show that it is politically cohesive."¹⁵ Such a showing would require that a VRA expert examine the voting patterns of the minority group. Even without this expert examination, staff assumes that the second precondition is met for the purposes of this analysis.

The third and final precondition is that the "the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it...to defeat the minority's preferred candidate."¹⁶ Such a showing would require that a VRA expert analyze whether the majority voted as a bloc enabling it to defeat preferred minority candidates. The commission has retained a VRA expert who will conduct an analysis of voting patterns in various locations of the state to determine if the minority and the white majority vote as a bloc. Because of the uncertainty of the preliminary data used for these plans and the fact that it would require providing two additional analyses, it was thought best to have the VRA expert produce a report after the final census data is received.

Furthermore, courts have interpreted the Equal Protection Clause of the 14th Amendment of the U.S. Constitution as prohibiting drawing districts predominately on the basis of race, unless compliance with the VRA is required.¹⁷

Attachments E and F provide information about race and ethnicity within each proposed legislative district in the preliminary plans.

4. Communities of Interest

The Colorado Constitution requires the commission, as much as is reasonably possible, to preserve whole "communities of interest."¹⁸ The constitution defines "community of interest" as "any group in Colorado that shares one or more substantial interests that may be the subject of state legislative action, is composed of a reasonably proximate population, and thus should be considered for inclusion within a single district for purposes of ensuring its fair and effective representation."¹⁹ The constitution provides examples of shared public policy concerns, including those of:

- agricultural areas;
- education issues;
- employment issues;
- environmental issues;
- industrial areas;
- public health issues;
- rural areas;
- trade areas;
- transportation issues;
- urban areas;
- water needs and supplies; and
- issues of demonstrable regional significance.²⁰

¹⁵ *Thornburg*, 478 U.S. at 50.

¹⁶ *Id.*

¹⁷ *Bethune-Hill v. Virginia State Bd. Of Elections*, 137 S. Ct. 788 (2017).

¹⁸ "As much as is reasonably possible, the commission's plan must preserve whole communities of interest." Colo. Const. art. V, § 48.1 (2)(a).

¹⁹ Colo. Const. art. V, § 46 (3)(b)(I).

²⁰ Colo. Const. art. V, § 46 (3)(b)(II).

In defining communities of interest, the constitution states that groups that "may comprise a community of interest include racial, ethnic, and language minority groups," but do not include groups with "relationships with political parties, incumbents, or political candidates."²¹

Staff received approximately 1,00 public comments between March 12, 2021, and June 18, 2021, many of which address communities of interest. Attachment G summarizes the public comments that staff received and considered in drawing the preliminary plans.

5. Political Subdivisions

The Colorado Constitution requires the commission, as much as is reasonably possible, to preserve "whole political subdivisions, such as counties, cities, and towns."²² The constitution also requires

[t]o facilitate the efficient and effective provision of governmental services, with regard to any county, city, city and county, or town whose population is less than a district's permitted population, the commission shall presume that such county, city, city and county, or town should be wholly contained within a district; except that a division of such county, city, city and county, or town is permitted where, based on a preponderance of the evidence in the record, a community of interest's legislative issues are more essential to the fair and effective representation of residents of the district. When the commission divides a county, city, city and county, or town, it shall minimize the number of divisions of that county, city, city and county, or town.²³

Generally, staff tried to keep counties, cities, and towns as together as reasonably possible.

Attachments H and I show the counties, cities, and towns included in each legislative district, and note those that staff split in the preliminary plans.

6. Compactness

The Colorado Constitution requires the commission to create districts that are as "compact as is reasonably possible" and staff considered compactness in drafting the preliminary plans.²⁴ There are various mathematical formulas for comparing compactness.

One measure of compactness is the Reock score.²⁵ A Reock score measures the compactness of a district by comparing the area of a district to the area of the smallest possible circle that could enclose the district's geometry. A district's Reock score can fall between zero and one, with a score closer to one indicating a more compact district.

Another measure of compactness is the Polsby-Popper score.²⁶ This score compares the area of the district to the area of a circle with a circumference equal in length to the

²¹ Colo. Const. art. V, § 46 (3)(b)(III and IV).

²² Colo. Const. art. V, § 48.1 (2)(a).

²³ *Id.*

²⁴ Colo. Const. art. V, § 48.1 (2)(b).

²⁵ Stephen Ansolabehere & Maxwell Palmer, *A Two-Hundred Year Statistical History of the Gerrymander*, *Ohio State Law Journal*, vol. 77, no. 4 (2016), 741-762.

²⁶ *Id.*

perimeter of the district. As with a Reock Score, a Polsby-Popper score can fall between zero and one, with a score closer to one indicating a more compact district.

Staff chose to use both the Reock score and the Polsby-Popper score to analyze each district's compactness in the preliminary plans. Attachments J and K provide the Reock and Polsby-Popper scores for each proposed legislative district in the preliminary plans. These scores will be more useful when examining multiple proposed plans.

After attempting to satisfy the requirements that are constitutionally required to be prioritized over compactness, staff drafted preliminary plans that are "as compact as reasonably possible."²⁷

7. Competitive Districts

The Colorado Constitution requires the commission, having met the requirements described above, "to the extent possible, [to] maximize the number of politically competitive districts."²⁸ The constitution defines competitiveness for this purpose as "having a reasonable potential for the party affiliation of the district's representative to change at least once between federal decennial censuses."²⁹ The constitution further specifies that "[c]ompetitiveness may be measured by factors such as a proposed district's past election results, a proposed district's political party registration data, and evidence-based analyses of proposed districts."³⁰

For the consideration of a proposed district's past election results, Attachments L and M provide the results from the 2018 Attorney General's race. The 2018 Attorney General's election was the closest statewide election during the most recent non-presidential general election year. The qualities of that election make it a helpful election in measuring the competitiveness of the proposed districts in the preliminary plans because it is the most competitive recent race with statewide voting data. Also included in Attachments L and M are the results from the 2020 United States Senate race and voter registration by political party for each district.

Due to the preliminary nature of the data staff used to draft the preliminary plans and the fact that the competitiveness of districts has the lowest constitutional priority of the factors that must be considered in drafting the preliminary plans, staff did not prioritize the competitiveness of the districts in the preliminary plans.

²⁷ Colo. Const. art. V, § 48.1 (2)(b).

²⁸ "Thereafter, the commission shall, to the extent possible, maximize the number of politically competitive districts." Colo. Const. art. V, § 48.1 (3)(a).

²⁹ Colo. Const. art. V, § 48.1 (3)(d).

³⁰ *Id.*

Attachments

Table 1 shows the attachments for the Colorado House of Representatives and Colorado Senate, which report on various aspects of the preliminary plans. They are explained in more detail above.

	Colorado House of Representatives	Colorado Senate
Preliminary Plan Maps	Attachment A	Attachment B
Population Summary	Attachment C	Attachment D
Race and Ethnicity	Attachment E	Attachment F
Public Comments on Communities of Interest	Attachment G	Attachment G
Counties, Cities, and Towns	Attachment H	Attachment I
Compactness	Attachment J	Attachment K
Election Results & Voter Registration	Attachment L	Attachment M