

Colorado Independent Redistricting Commissions

Colorado Independent Redistricting Commissions Staff

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MEMORANDUM

June 23, 2021

TO: Members of the Colorado Independent Congressional Redistricting Commission

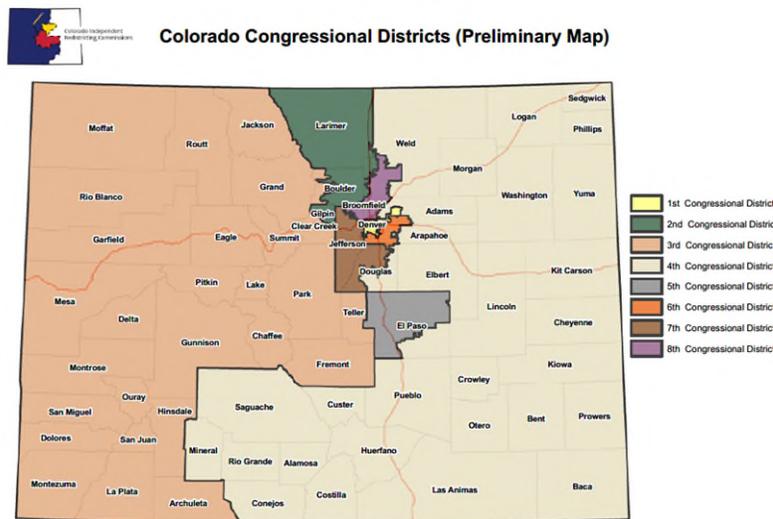
FROM: Colorado Independent Redistricting Commissions Staff

SUBJECT: Preliminary Congressional Plan

Summary

This memorandum and attachments provide context and information about the preliminary congressional redistricting map (preliminary plan) submitted by the Colorado Independent Congressional Redistricting Commission's (commission) nonpartisan commission staff (staff) on June 23, 2021.

Plan



Map prepared by Colorado Independent Redistricting Commissions Staff
June 23, 2021

Attachment A provides detailed maps of the preliminary plan.

Data Overview

The commission approved a data set to allow staff to prepare the preliminary plan. 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 plan using 2010 census blocks. This means the geometry used in the preliminary plan 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 44.3 of Article V of the Colorado Constitution requires the commission to adopt a redistricting plan that satisfies several criteria. These criteria are addressed below.

1. Precise Mathematical Population Equality

The Colorado Constitution requires the commission to make "a good-faith effort to achieve precise mathematical population equality between districts."¹ Mathematical population equality is also required by article XIV, section 2 of the U.S. Constitution, which states that "[r]epresentatives shall be apportioned among the several states according to their respective numbers. . . ."² The Supreme Court of the United States has held that the language in article XIV, section 2 of the U.S. Constitution, means that congressional districts in the same state must be as nearly equal in population as practicable.³ Therefore, the preliminary plan must come as close as possible to achieving equal population among the districts. The commission must justify any variance in population in the proposed congressional districts, no matter how small.⁴

Per the 2020 decennial census, Colorado has a population of 5,773,714 and was allotted a total of eight congressional districts. Thus, the target population of each proposed Colorado congressional district in the preliminary plan is 721,714.⁵

The preliminary plan achieves as close to "precise mathematical population equality" as possible. The total population of Colorado does not divide evenly into eight congressional

¹ "In adopting a congressional redistricting plan, the commission shall... [m]ake a good-faith effort to achieve precise mathematical population equality between districts, justifying each variance, no matter how small, as required by the constitution of the United States." Colo. Const. art. V, § 44.3 (1)(a). Mathematical population equality is more commonly known as the one-person, one-vote principle.

² U.S. Const. art. XIV, § 2.

³ *Wesberry v. Sanders*, 376 U.S. 1, 18 (1964).

⁴ Colo. Const. art. V, § 44.3 (1)(a).

⁵ 721,714 is referred to as the "target population" of each Colorado congressional district. The degree by which any district's population varies from the target population is referred to as a district's "deviation".

districts. Therefore, the proposed congressional districts in the preliminary plan cannot all meet the target population. However, the largest deviation from the target population in any district is one person. Attachment B provides a population summary of the eight proposed congressional districts in the preliminary plan.

2. Contiguity

Congressional districts must be contiguous.⁶ 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.⁷ The preliminary plan achieves contiguity because the entire area of each individual proposed congressional district is connected.

3. Voting Rights Act

The Colorado Constitution requires the commission to comply with the Voting Rights Act (VRA) in creating a congressional redistricting plan.⁸ 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."⁹ "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.¹⁰

Section 2 of the VRA is the section that would most likely apply to redistricting in Colorado.¹¹ 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.*¹²

Staff considered the VRA in drafting the preliminary plan. 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.¹³ "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."¹⁴ Staff is not certain that it is possible to draw a district where a minority group "is sufficiently large and geographically compact to constitute a majority."¹⁵ However, for purposes of this analysis, staff assumes that the first precondition is satisfied.

⁶ "Districts must be composed of contiguous geographic areas". Colo. Const. Art. V, § 44.3 (1)(a).

⁷ *Redistricting Law 2020*, National Conference of State Legislatures 2020 ed., pg. 77.

⁸ "Comply with the federal 'Voting Rights Act of 1965', 52 U.S.C. sec. 50301, as amended." Colo. Const. art. V, § 44.3 (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.

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

¹⁰ 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>.

¹¹ 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.

¹² 52 U.S.C. § 10301 (b).

¹³ *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986).

¹⁴ *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).

¹⁵ *Gingles*, 478 U.S. at 50.

The second precondition is that the minority group "show that it is politically cohesive."¹⁶ 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."¹⁷ Such a showing would require that a VRA expert analyze whether the majority voted as a bloc enabling it to defeat preferred minority candidates. Staff examined the area in which a potential minority majority district could be drawn. This potential district would include large areas of Denver, eastern Jefferson County, and western Adams County and Arapahoe County. All three of those areas have elected Democratic congressional representatives. Hence, staff does not believe that the majority is defeating the minorities' candidates of choice. 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.¹⁸

Attachment B provides information about race and ethnicity within each proposed congressional district in the preliminary plan.

4. Communities of Interest

The Colorado Constitution requires the commission, as much as is reasonably possible, to preserve whole "communities of interest."¹⁹ The constitution defines "community of interest" as "any group in Colorado that shares one or more substantial interests that may be the subject of federal 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."²⁰ 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.²¹

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

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Bethune-Hill v. Virginia State Bd. Of Elections*, 137 S. Ct. 788 (2017).

¹⁹ "As much as is reasonably possible, the commission's plan must preserve whole communities of interest." Colo. Const. art. V, § 44.3 (2)(a).

²⁰ Colo. Const. art. V, § 44 (3)(b)(I).

²¹ Colo. Const. art. V, § 44 (3)(b)(II).

include groups with "relationships with political parties, incumbents, or political candidates."²²

Staff received approximately 900 public comments between March 12, 2021, and June 13, 2021, many of which address communities of interest. Attachment C summarizes the public comments that staff received and considered in drawing the preliminary plan.

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."²³

The only counties that staff split into separate proposed congressional districts in the preliminary plan are the more populous counties along the Front Range. Boulder County has the smallest population of any county split into multiple proposed congressional districts by the preliminary plan, and Boulder County contains over 300,000 people.

Some cities and towns are in multiple counties. Generally, staff tried to keep these cities and towns in a single proposed congressional district, even if that meant splitting a county into multiple congressional districts. Staff did not keep such cities and towns in single congressional districts, at the expense of dividing counties into multiple proposed congressional districts, in two circumstances.

The first instance is where a portion of a city or town contains no population in a county. Cities and towns that are in multiple counties and have no population in at least one of the counties in which they are situated include Superior and Central City.

The second instance is where the majority of a city or town is situated in one county and there is a portion of the city or town that contains a very small population situated in a different county. Keeping such a city or town whole would require a county clerk to create a precinct composed of just that small population of the city or town in the county. It is possible that such a small precinct would not allow the votes cast in such precincts to be kept private. Examples of cities and towns situated in one county with portions of the city or town containing a very small population situated in a different county include Green Mountain Falls that has a population of only 28 persons in Teller County, Bow Mar that has a population of 277 people in Jefferson County, and Littleton that has a population of 28 people in Jefferson County.

Attachment D shows the counties, cities, and towns included in each congressional district, and notes those that staff split in the preliminary plan.

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 plan.²⁴ There are various mathematical formulas for comparing compactness.

²² Colo. Const. art. V, § 44 (3)(b)(III and IV).

²³ Colo. Const. art. V, § 44 (2)(a).

²⁴ Colo. Const. art. V, § 44.3 (2)(b).

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 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 plan. Attachment E provides the Reock and Polsby-Popper scores for each proposed congressional district in the preliminary plan. 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 a preliminary plan that is "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, Attachment F provides the results from the 2018 Attorney General's race for each district in the preliminary plan. 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 plan because it is the most competitive recent race with statewide voting data.

For a proposed district's political party registration, Attachment F provides voter registration data for each district in the preliminary plan.

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

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.*

²⁷ Colo. Const. art. V, § 44.3 (2)(b).

²⁸ "Hereafter, the commission shall, to the extent possible, maximize the number of politically competitive districts." Colo. Const. art. V, § 44.3 (3)(a).

²⁹ Colo. Const. art. V, § 44.3 (3)(d).

³⁰ *Id.*

Attachments

The following attachments report on various aspects of the preliminary plan. They are explained in more detail above.

Attachment A – Preliminary Plan Maps

Attachment B – Population Summary & Race and Ethnicity

Attachment C – Public Comments on Communities of Interest

Attachment D – Counties, Cities, and Towns

Attachment E – Compactness

Attachment F – Election Results & Voter Registration