CONFESSIONS

OF A

REAPPORTIONMENT

COMMISSIONER - 2011

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THE 2011 COLORADO STATE REAPPORTIONMENT COMMISSION

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PREFACE

On Monday, September 19, 2011, the Colorado Reapportionment Commission adopted its *final* redistricting plans for the Colorado state House of Representatives and the Colorado state Senate. The two plans were then forwarded to the Colorado Supreme Court for review for compliance with the Colorado state constitution.

It was shortly thereafter that I began writing this memoir. I did no work on the memoir prior to the adoption of the two *final* redistricting plans. I took no special notes, conducted no interviews, nor did I begin collecting written materials on the redistricting process in Colorado. Prior to September 19, 2011, I concentrated all my efforts on successfully completing my work as a member of the Reapportionment Commission.

This memoir is personal and opinionated. It consists of my immediate recollection of the important things that happened to me during the five months I served on the commission plus my evaluations of those events. Because I served as a member of the Republican Party on the commission, this account contains much information about the goals, deliberations, and strategy making of the five Republican members of the commission.

I am certain the Democratic Party members of the commission have contrasting and competing views of what happened and the significance of what happened. Hopefully one or two or more of them will take pen in hand, or fingers to the keyboard, and acquaint the people of Colorado with their side of the story.

THE COLORADO STATE CAPITOL BUILDING IN DENVER – Famous for its gold-plated dome, the Colorado capitol contains both houses of the state legislature - the state House of Representatives and the state Senate - as well as the governor's office. (Photo: Robert D. Loevy Collection)

CHAPTER ONE

STATE LEGISLATIVE REDISTRICTING IN COLORADO

In early May of 2011, I received a telephone call from the office of Michael Bender, chief justice of the state Supreme Court of Colorado. I was asked if I would be willing to accept appointment as a Republican to the 2011 Colorado Reapportionment Commission. I immediately responded in the affirmative, although I am certain I would have been given time to think the proposition over if I had asked for it.

Shortly thereafter, I drove to Denver, the state capital of Colorado, to be interviewed for the job by Chief Justice Bender. The interview went well. The chief justice suggested to me that serving on the Reapportionment Commission would be an exciting experience for a professor of political science who was nearing the end of a 43-year teaching career at Colorado College in Colorado Springs. He told me the appointment was mine once his office confirmed that I really was registered in the Republican Party in Colorado.

During our conversation, I mentioned to Chief Justice Bender that I would make it my goal while on the commission to work for the creation of *competitive* districts. These would be state legislative districts, in both the state House of Representatives and the state Senate, which would swing back and forth between the two major political parties rather than being safely Democratic or safely Republican.

Chief Justice Bender told me that he shared my agenda of wanting to see more *competitive* seats in both houses of the Colorado state legislature.

GETTING ORGANIZED

The first meeting of the 2011 Colorado Reapportionment Commission was held in Denver in the middle of May of 2011 in the State Museum building across the street from the state capitol building. The building is no longer a museum. It is used for committee hearings, mainly by the state legislature's Joint Budget Committee.

Most of the meetings of the Reapportionment Commission were held in a committee hearing room with the traditional horseshoe shaped raised bench behind which sat the eleven reapportionment commissioners. The Colorado state seal had been embossed on the leather backs of the high-backed chairs in which the commissioners sat.

Chief Justice Bender had appointed an unaffiliated voter to the Reapportionment Commission and named him the acting chair. In one of its first official acts, the 2011 commission unanimously voted the acting chair, Mario Carrera, a Denver-area Hispanic-language television executive, the permanent chair of the commission. As dictated by convention, Chairman Carrera sat at the center of the horseshoe.

The first two meetings of the 2011 Reapportionment Commission were devoted to educating the eleven new commissioners about the history of reapportionment and redistricting in Colorado.

THE COMMISSION IS INCORRECTLY NAMED

The Reapportionment Commission should be called the "Redistricting Commission."

Reapportionment is setting the number of representatives from each state legislative district and determining the number of voters each state legislator will represent. Since the early 1960s, however, the United States Supreme Court has required that all state House districts and all state Senate districts be "substantially equal" in terms of the numbers of voters represented.

Redistricting is redrawing the state legislative district boundary lines every ten years following the U.S. Census to conform to population changes. The Colorado state Reapportionment Commission only redraws district boundary lines. It no longer has anything to do with apportionment.

The fact the "Redistricting Commission" is mislabeled the "Reapportionment Commission" adds to voter confusion about redistricting.

GERRYMANDERING

Gerrymandering is the drawing of legislative district lines so that they favor one political party, the Democrats or the Republicans, over the other.

Gerrymandering is named for Elbridge Gerry, who drew a legislative district favoring his political party that, when touched up by a newspaper cartoonist, looked like a salamander.

Gerrymandering is the "great evil" that the Colorado state Reapportionment Commission was created to avoid - or at least limit.

REDISTRICTING HISTORY

Baker v. Carr – In 1962, the United States Supreme Court, under Chief Justice Earl Warren, declared legislative districts with different size populations to be unconstitutional. The court required that all state House of Representatives districts be "substantially equal" in population. Later on, the court required that all state Senate districts be "substantially equal" in population. This landmark decision became known by the nickname: **"One person, one vote!"**

Single-Member Districts – In the early 1960s, the voters of Colorado adopted a state constitutional amendment providing for the election of all state legislators, both state House of Representatives and state Senate, from single-member districts. The amendment favored the Republicans. The Democrats had made Denver a single large multi-member district, thus all the state legislators

from Denver were elected citywide and were Democrats. **IRONY:** Today, even though the City and County of Denver is divided into single-member districts for both the state House and the state Senate, Denver is now so Democratic that **all** the legislators from Denver in both houses are Democrats.

Voting Rights Act of 1965 – Denied the right to register and vote at the county courthouse in Selma, Alabama, civil rights demonstrators began a march from Selma to Montgomery, the Alabama state capital, to publicize their demand for voting rights. They began their march by walking across the Edmund Pettus Bridge leading out of Selma. At the other end of the bridge, the voting rights marchers were driven back by Alabama state police on horseback. The state troopers beat the marchers with night sticks and dispersed them with tear gas.

THE EDMUND PETTUS BRIDGE IN SELMA, ALABAMA – This bridge was the site of the civil rights demonstrations that produced the Voting Rights Act of 1965. (Photo: Robert D. Loevy)

Following the brutal suppression of the voting rights marchers at Selma, the U.S. Congress enacted and President Lyndon B. Johnson signed into law the Voting Rights Act of 1965.

- In Colorado, the Voting Rights Act of 1965 requires that no redistricting plan can discriminate against a minority group.
- Minorities, mainly Hispanics and African-Americans, cannot have their voting power reduced either by being *split apart* or by being *packed* all together.
- After the "One person, one vote!" mandate has been satisfied, minority voting rights are the most important consideration in redistricting in Colorado.

The Reapportionment Amendment – In 1974, Colorado voters adopted a state constitutional amendment that took the power to redistrict away from the state legislature and gave it to an eleven-member **Colorado Reapportionment Commission.** Four commissioners were to be appointed by the **state legislature**, three were to be appointed by the **governor**, and four were to be appointed by the **chief justice** of the state Supreme Court.

The 1974 Reapportionment Amendment also required that:

- Legislative districts be contiguous and compact.
- Legislative districts cross county boundary lines as little as possible.
- Legislative districts cross city boundary lines as little as possible.
- "Communities of interest," such as neighborhood groups in cities or farming and ranching groups in rural areas, be kept together.

The 1974 Reapportionment Amendment did **NOT** require that:

- Legislative districts be "competitive" and swing back and forth from election to election between the Democratic and Republican parties.

The Hobbs Decision – The Colorado state Supreme Court subsequently ruled, in the Hobbs decision, that all the requirements for redistricting discussed so far be ranked in the following order of priority:

1. "One person, one vote!" All state legislative districts must be substantially equal.
2. Minorities must be protected under the terms of the Voting Rights Act of 1965.
3. Counties must be "kept whole" as much as possible.
4. Cities must be "kept whole" as much as possible.
5. "Communities of interest" must be preserved.

REVELATION: The political parties in Colorado use the five redistricting priorities, ranked in order of importance in the Hobbs decision, to argue for and justify redistricting plans that further their partisan interests. Such arguments are a

sham, of course, because no one really cares very much about "counties kept whole" and "cities kept whole" and "keeping communities of interest together." But the political parties care very much about gaining electoral advantage over one another, even though that particular reality is rarely ever discussed publicly.

IMPACT OF COMPUTERS

Since adoption of the Reapportionment Amendment to the state constitution in 1974, improvements to computers and data processing have greatly increased the ability of skilled computer professionals to redistrict and **gerrymander** on behalf of a particular political party.

Computers can store and retrieve vast amounts of information about the electorate, such as numbers of registered voters per voting precinct, numbers of Democratic and Republican voters per precinct, numbers of minority voters per precinct, median family income per precinct, etc. Computers also can quickly compute the effects of adding or subtracting certain voting precincts from proposed legislative districts. As changes are made, computers instantly provide the new numbers of total voters, Democrats, Republicans, unaffiliated voters, minorities, etc., in the new district.

The Layered Look – Redistricting on computers is now so efficient that all the information about an area of Colorado can be presented on the computer screen at once. One layer will show geographic boundaries, a second will show party registration, a third will show numbers of minorities, etc. Those who redistrict with computers can see, all on one screen, exactly what to do and exactly how to do it. The end result is that advanced computers now make it possible to redistrict, and **gerrymander**, to perfection. Computers can be used to create:

1. Safe Democratic legislative districts that will always vote Democratic.
2. Safe Republican legislative districts that will always vote Republican.
3. *Competitive* or *swing* legislative districts that will shift back and forth between the two political parties from one election to another.
4. "Majority-minority" districts with enough minority voters to guarantee that a member of a minority group will be elected to the state legislature.

Democrats on the Reapportionment Commission quite naturally work to create as many Democratic safe seats as possible. Republicans of course work to create more Republican safe seats. Minority groups press for majority-minority districts. Reformers want to see more truly *competitive* seats.

The Colorado Reapportionment Commission thus is a lively place where the two major political parties clash with one another and work to gain advantages over each other. In the end, however, the commission must come up with workable redistricting plans for both the state House of Representatives and the state Senate.

CHAPTER TWO

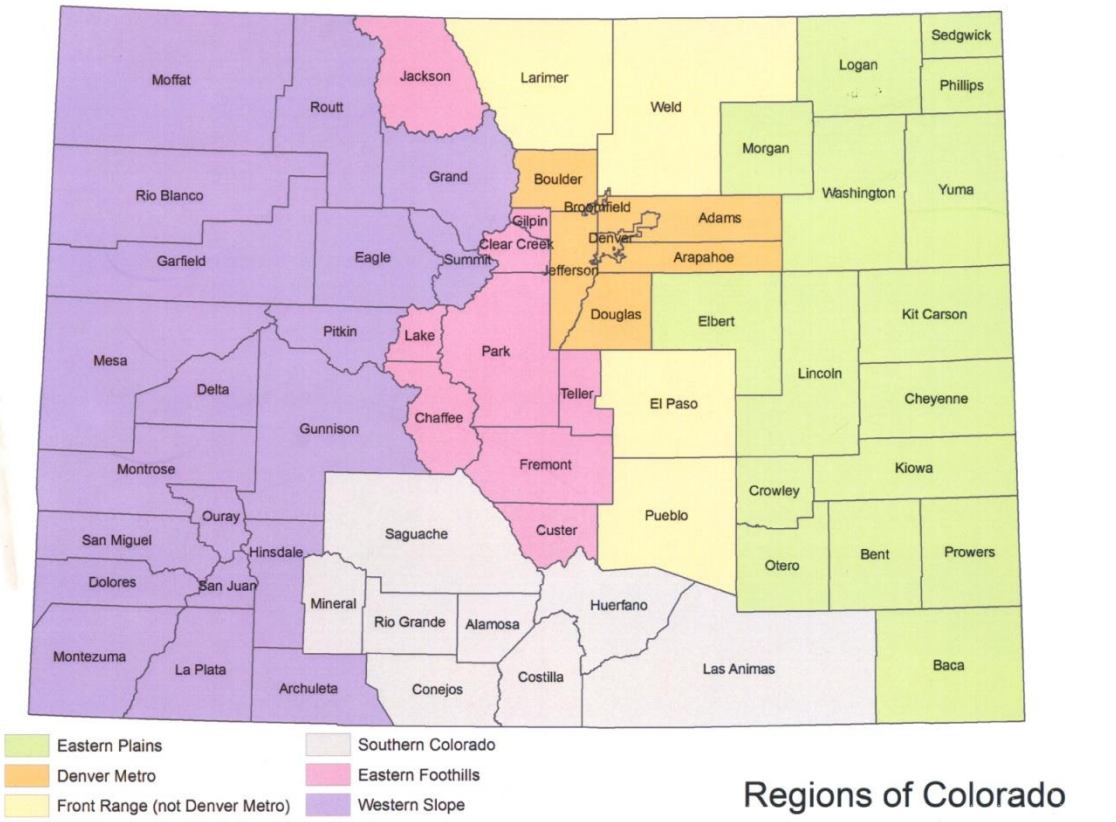
A PRIMER ON VOTING BEHAVIOR IN COLORADO

Knowing where the votes are is the first step in redistricting – and gerrymandering.

Those who would intelligently redistrict the seats in a state legislature, both the state House and the state Senate, have to learn the demographic and political realities of the particular state. Where does the vast majority of the electorate reside? Where are the major minority groups to be found? And, most important for gerrymandering, where are the greatest concentrations of Democrats and the largest numbers of Republicans?

REGIONS OF COLORADO

Colorado has traditionally been divided into six major regions, although there is no universal agreement on either the boundaries or the names of the six regions.



Source: Robert D. Loevy

RURAL AREAS

Southern Colorado is the oldest part of the state, having first been settled in 1851 by Hispanics moving up the Rio Grande river valley from New Mexico. Although one of the least populated parts of the state, Southern Colorado retains much of its Hispanic character.

The **Eastern Plains** are a major agricultural part of the state located on the high prairies along the eastern border of Colorado (adjoining Kansas, Nebraska, and Oklahoma). The Eastern Plains, similar to Southern Colorado, are lightly populated.

The **Western Slope** consists of all those counties in Colorado that have their county seat located west of the Continental Divide. The Rocky Mountains, which traverse Colorado from north to south, roughly follow the eastern boundary of the Western Slope as shown on this map. The major destination ski areas in Colorado, such as Aspen and Vail, are all located on the Western Slope.

The **Eastern Foothills** are one of the least remarked upon regions of Colorado. They occupy the mountainous areas of the state that are located east of the Continental Divide but are not in Southern Colorado or on the Front Range.

THE FRONT RANGE

To understand the final two regions of Colorado, **Denver Metro** and **Front Range – Not Denver Metro**, it is necessary to comprehend the concept of the Colorado **Front Range**.

The Front Range, as the term is typically used in Colorado, is not a mountain range. It is the highly populated strip of land at the eastern front of the Rocky Mountains that extends from Larimer and Weld counties on the North to Pueblo County on the South. In the middle of the Front Range lies the Denver metropolitan area **(Denver Metro)** and El Paso County, which contains the city of Colorado Springs.

The most important demographic fact to know about Colorado is this. At the time of the 2008 presidential election, approximately 82 percent of the electorate of Colorado lived on the Front Range. On the regional map of Colorado above, the Front Range consists of **Denver Metro** plus **Front Range – Not Denver Metro**.

Denver Metro is the most heavily-populated region of Colorado. In the 2008 election, almost 60 percent of the vote for president in Colorado was cast in the Denver metropolitan area. Denver Metro is made up of the City and County of Denver (a combined city and county government) as well as the surrounding suburban counties.

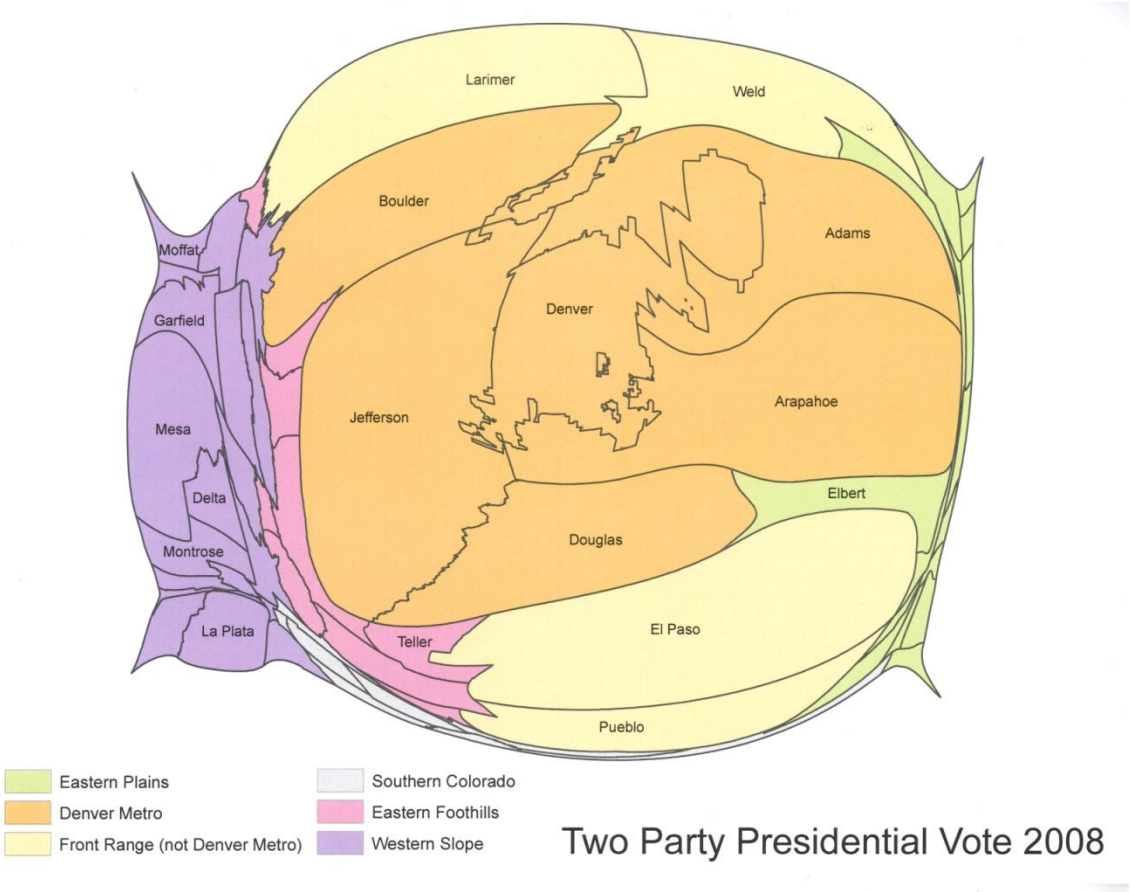
Front Range – Not Denver Metro is comprised of four counties. Two of those counties, Larimer County and Weld County, adjoin the Denver metropolitan area to the North. The two other counties, El Paso County and Pueblo County, adjoin Denver Metro to the South. Similar to the Eastern Foothills, Front Range – Not Denver Metro is hardly ever remarked upon or noticed. But it is a very important region of the state. El Paso County and Weld County in 2010 were increasing their voting populations at a very rapid rate – a rate faster than that in Denver Metro.

COMMISSION TAKES A REGIONAL APPROACH

The six regions of Colorado are an important part of legislative redistricting. The Reapportionment Commission studies, debates, and adopts redistricting plans on a regional basis.

VOTER CONCENTRATION IN COLORADO

What would Colorado look like if the state map were drawn to the number of voters in each county rather than the geographical size of each county? Take a look.



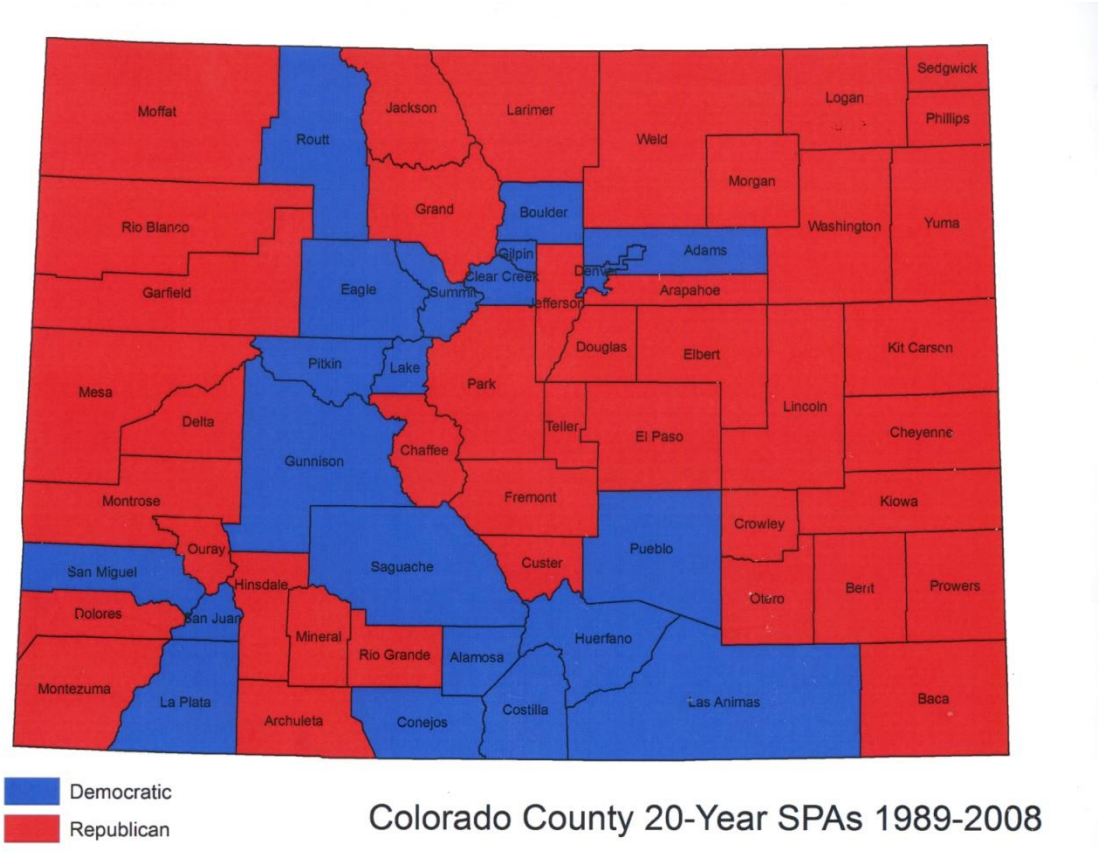
Source: Robert D. Loevy

This map sizes each Colorado county according to the total votes cast for the Democratic and Republican candidates for president of the United States in 2008. It illustrates perfectly the heavy concentration of Colorado's voting population on the Front Range and the general lack of voting population in the rural regions of the state.

Note that, outside the Front Range, the Western Slope has the largest number of voters of the rural regions. Note also that a finger of Elbert County, on the Eastern Plains, has enough voters to extend slightly into the Front Range.

TWENTY-YEAR VOTING PATTERNS

This next map shows the 20-year partisan voting patterns for Colorado counties from 1989 to 2008. It is based on a statistic named the Statewide Partisan Average (SPA), which averages together Democratic and Republican votes for U.S. president, U.S. senator, and state governor in Colorado elections over the 20-year period studied.



Source: Robert D. Loevy

This map illustrates the following general patterns in Colorado voting behavior over the 20 years from 1989 through 2008:

1. Most, but not all, of rural Colorado is Republican.
2. Southern Colorado, largely because of Hispanic tradition and culture, is mainly Democratic. Another reason for this is a general neglect on the

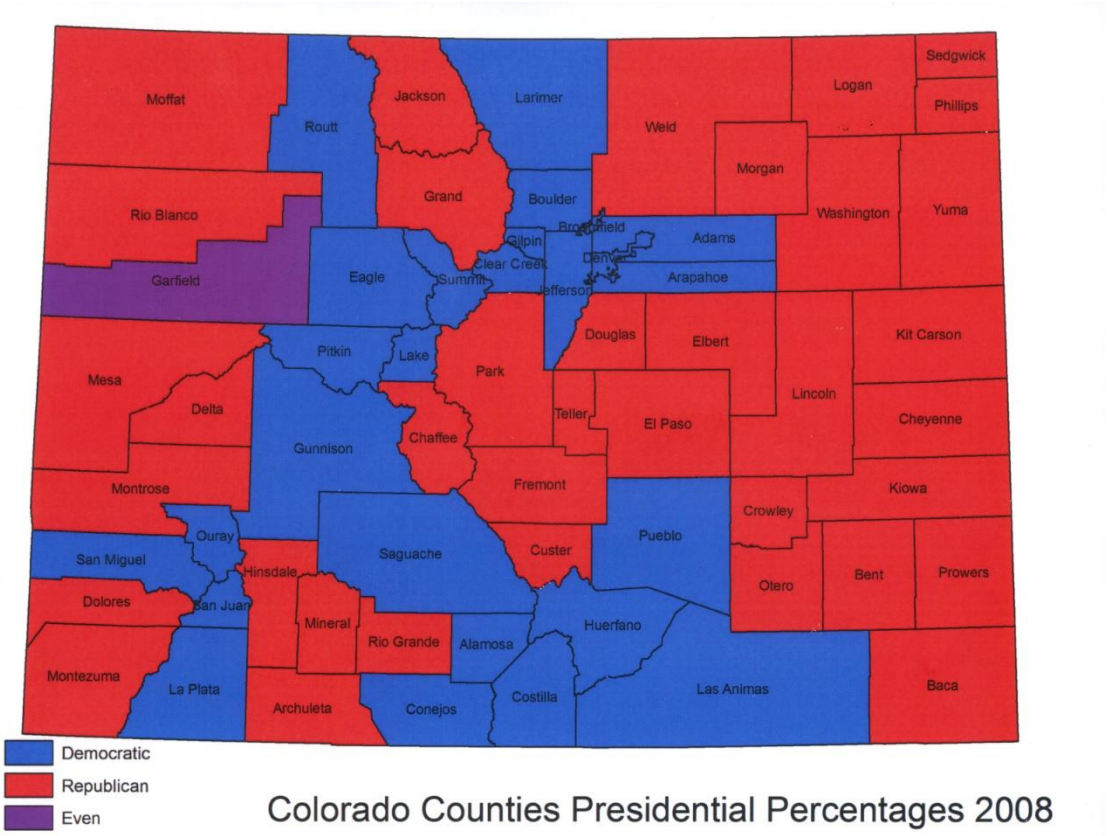
part of the Republican Party in Colorado toward issues of concern to Hispanic Coloradans. Commission Chairman Mario Carrera noted: "As an unaffiliated Hispanic voter formerly from the Democratic Party, I ask: 'What has the Republican Party done to [win the support of] Hispanic voters and welcome them into their tent?' On the other hand, I would also argue the Democratic Party has not done much either."[1]

3. On the Western Slope, it is mainly the destination ski counties, home to such famous resorts as Steamboat, Breckinridge, Vail, Aspen, Crested Butte, and Telluride, that vote Democratic.
4. On the Front Range, Democratic voting strength is centered in the City and County of Denver, Boulder County, and Adams County.
5. On the Front Range, Republican voting strength is concentrated in El Paso, Jefferson, Douglas, Arapahoe, Larimer, and Weld counties.

PRESIDENTIAL VOTE IN 2008

Colorado voted strongly Democratic in the 2008 presidential election, choosing Democratic candidate Barack Obama over Republican John McCain by a large margin of votes. Only four counties with Republican voting patterns from 1989 to 2008, however, shifted Democratic. They were Larimer, Jefferson, and Arapahoe counties on the Front Range and Ouray County in southwestern Colorado. A fifth county, normally-Republican Garfield County on the Western Slope, had a tie vote.

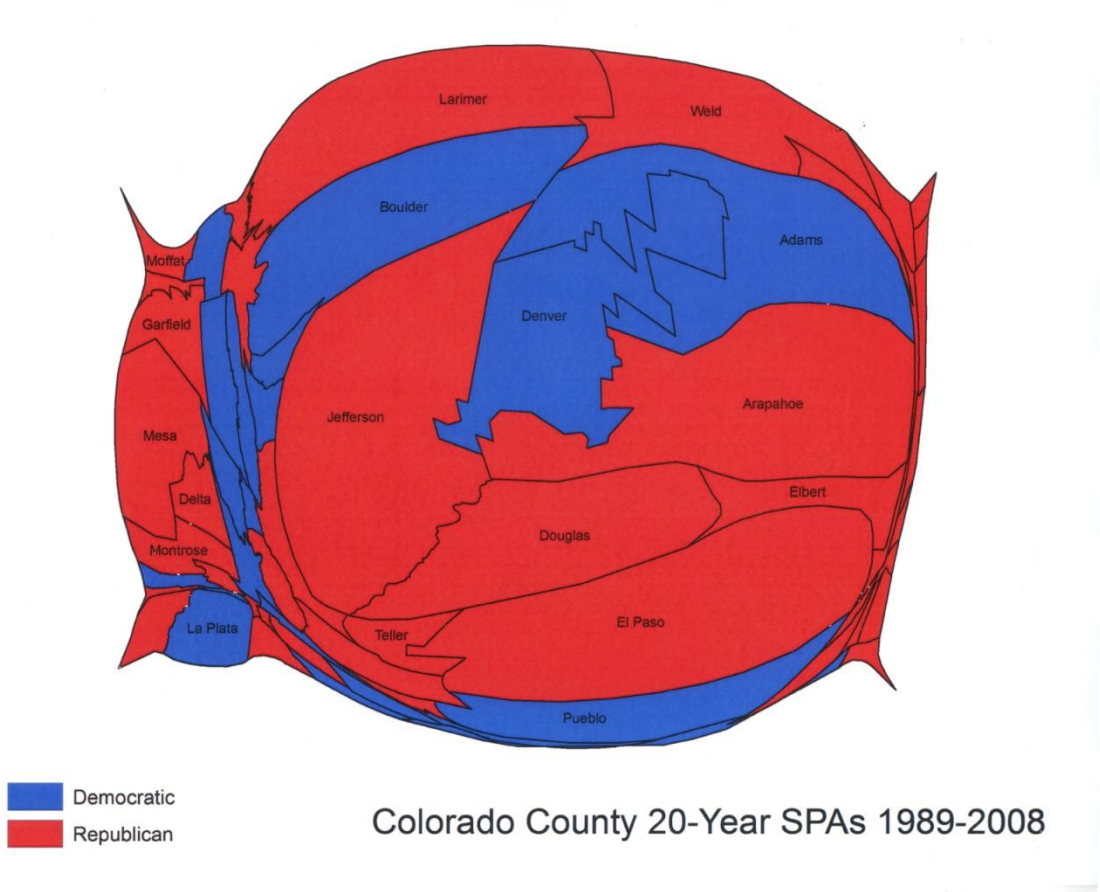
[1] Letter, Mario M. Carrera to Robert D. Loevy, December 16, 2011.



Source: Robert D. Loevy

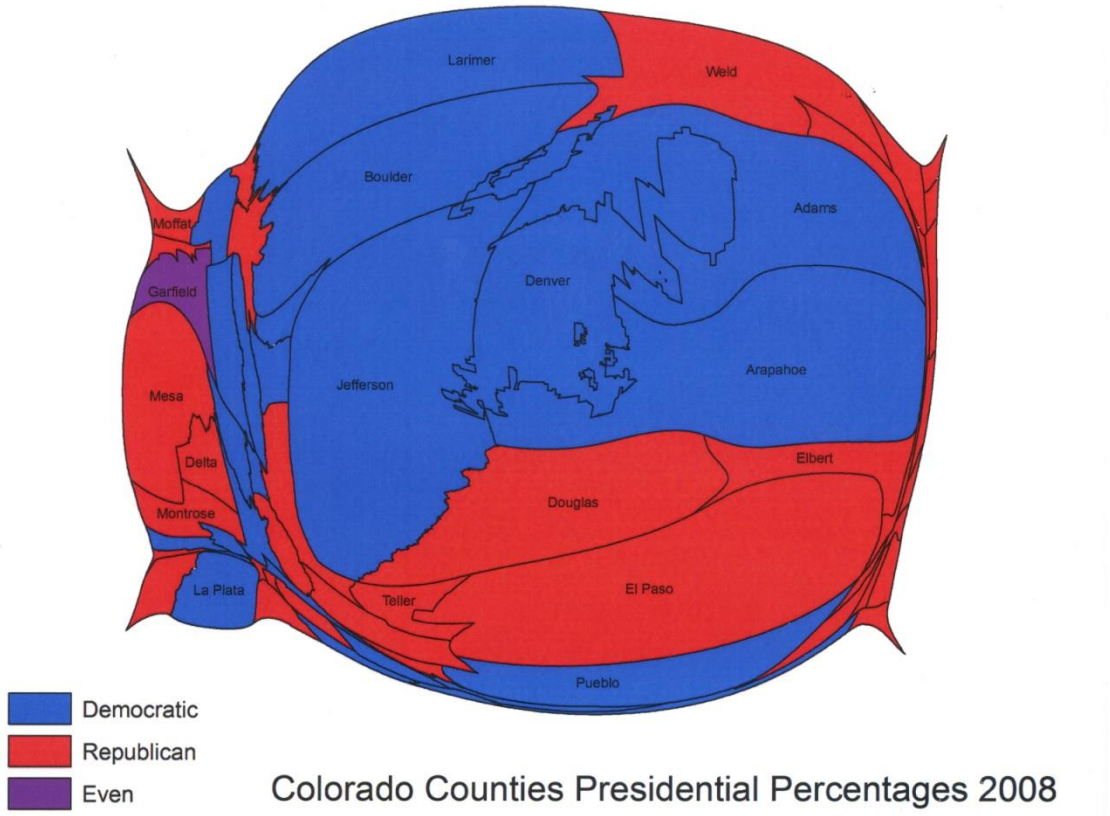
PARTISAN VOTE BY VOTING POPULATION

The two maps above are quite different when drawn by voting population rather than geography. Here is the map of 20-year voting patterns from 1989 to 2008 (with Colorado counties sized by their total numbers of Democratic and Republican voters in the 2008 presidential election).



Source: Robert D. Loevy

This 20-year pattern map definitely has more red (Republican) counties than blue (Democratic) counties. However, the map becomes considerably bluer (more Democratic) when, as in the following map, the results from the 2008 presidential election are used.



Source: Robert D. Loevy

There is considerably more blue (Democratic) on this map because three of the four counties that shifted from Republican to Democratic in the 2008 presidential election were populous Front Range counties, i.e., Larimer, Jefferson, and Arapahoe counties. The fourth county, Ouray County in southwestern Colorado, which has very few voters, is barely visible on this map. Garfield County on the Western Slope, which had a tie vote, is also little in evidence.

SIMILAR HOUSING CHOICES

A grim reality is revealed by these four Colorado voting maps. People tend to make **similar housing choices** when they buy a home. In other words, people tend to settle in neighborhoods populated by people similar to themselves. The result is that so-called safe-seats, in which one party or the other always wins the state legislative elections, are automatically created in many areas of the state. The general pattern in Colorado is this:

- Upscale and well-educated urban voters, skiers, and minorities (Hispanics and African-Americans) tend to create **Democratic safe seats.**

They are mainly found in the City and County of Denver, Boulder County, Southern Colorado, and the destination ski counties on the Western Slope.

- Working class voters in rural areas and outer suburbs are likely to form **Republican safe seats**. They are concentrated in El Paso, Douglas, and Weld Counties as well as in the rural counties (farming, ranching, and mining areas) of Colorado.
- **Competitive seats in Denver Metro**, also called swing seats, are most likely to be found in older suburban areas where minorities are beginning to settle. Jefferson, Adams, and Arapahoe counties, in the Denver metropolitan area, are the three populous counties that best meet this definition of being older suburbs with Hispanics and African-Americans moving in. Two of those three counties, Jefferson and Arapahoe counties, were the two major counties in Colorado that switched their support from the Republicans to the Democrats in the 2008 presidential election.
- **Competitive seats in the destination ski areas** are the result of combining Democratic ski areas with nearby Republican farming and ranching areas.

CONCLUSIONS FOR REDISTRICTING

1. Colorado is a genuine two-party state in which the Democratic and Republican parties each have a solid geographic base. This means each party automatically gets a number of safe-seats in each house of the state legislature.
2. There are two areas, however, where the two major parties have strong voter support and there is a "competitive" chance for either party to win seats in the state legislature. These two areas are the **close-in Denver suburbs** and the **destination ski resorts** on the Western Slope.
3. It is in these two competitive areas that the Democrats and the Republicans have the best chance of gerrymandering legislative district lines and thereby gaining a competitive advantage over the other party. The **close-in Denver suburbs** and the **destination ski resorts** thus are the major battlegrounds, but not the only battlegrounds, in Colorado state legislative redistricting politics.

CHAPTER THREE

VOTING MAPS:
WHERE GERRYMANDERING BEGINS

Gerrymandering is an art as well as a science.

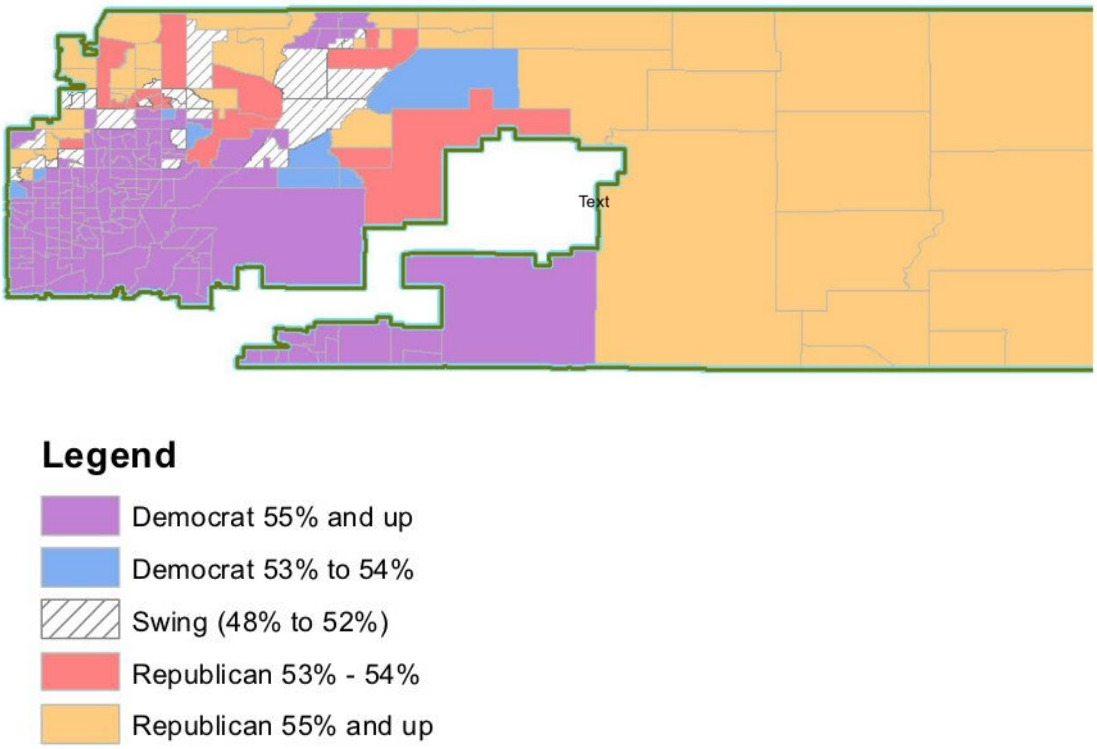
The science consists of having facility with numbers and knowing how to read voting maps. The voting maps show areas of Democratic strength, Republican strength, and "swing" areas where the two parties are somewhat evenly balanced against each other.

The art comes in drawing district lines that divide up the opposing party's voters in such a way that they rarely gain a solid majority in either a state House of Representatives district or a state Senate district.

ADAMS COUNTY

Adams County is a close-in suburb of Denver that occupies the northeastern portion of the Denver metropolitan area. It is a classic example of a county in which there is strong in-migration of minority voters.

WESTERN ADAMS COUNTY
DEMOCRATIC AND REPUBLICAN BREAKDOWN
BY VOTER REGISTRATION



Source: 2011 Colorado Reapportionment Commission Staff

This map shows the western portion of Adams County that adjoins the City and County of Denver. The areas closest to Denver are solidly Democratic (55 percent plus). The areas more distant from Denver, the outer suburbs and rural areas, are heavily Republican (55 percent plus).

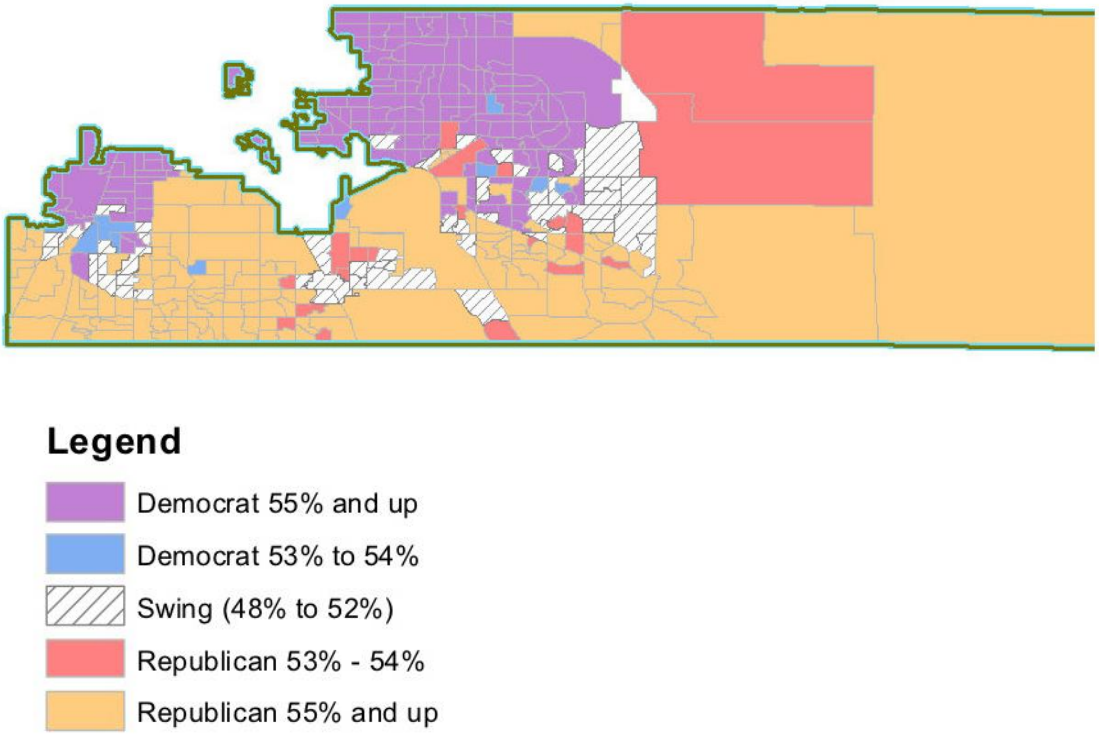
The areas between theses two extremes have a somewhat even balance of Democratic and Republican voters. They thus provide the best opportunities for gerrymandering. These areas also are rich hunting grounds for creating *competitive* state legislative districts.

Adams County can be classified as an industrial suburb. The part of the county north of Denver contains many warehouses as well as railroading, trucking, chemical, agricultural, and manufacturing facilities. This concentration of industrial activity in Adams County has given it a somewhat more Democratic flavor than that associated with most suburbs.

ARAPAHOE COUNTY

A similar county undergoing minority transition is Arapahoe County, which is situated in the southern and southeastern portions of Denver Metro. Arapahoe County is immediately to the southeast of the City and County of Denver.

WESTERN ARAPAHOE COUNTY
DEMOCRATIC AND REPUBLICAN BREAKDOWN
BY VOTER REGISTRATION



Source: 2011 Colorado Reapportionment Commission Staff

The almost-even presence of Democratic 55 percent plus areas and Republican 55 percent plus areas offers ample opportunities for gerrymandering in Arapahoe County. It is also a fruitful county for the creation of *competitive* districts.

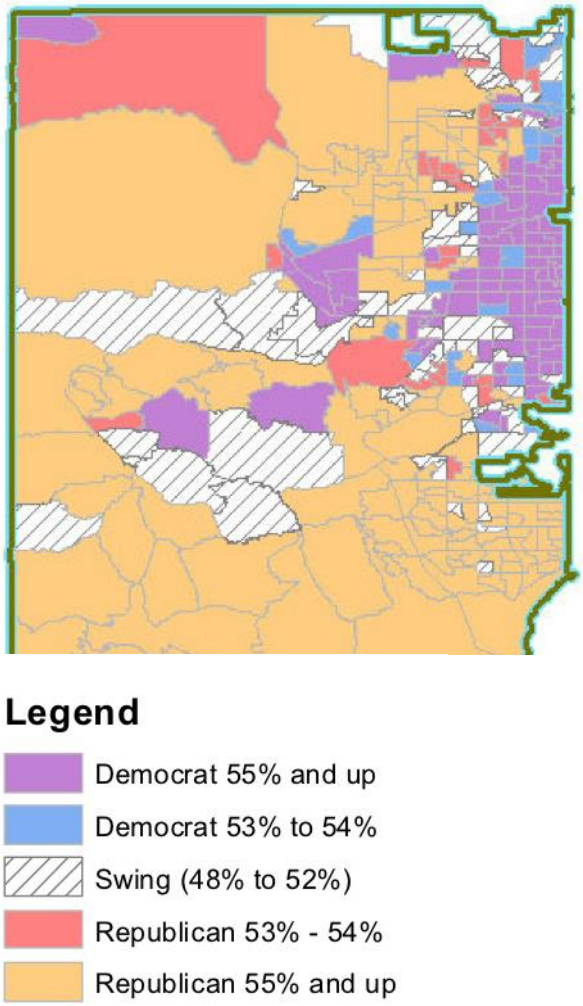
The large Democratic 55 percent plus area to the east of Denver is part of the city of Aurora, which is home to high percentages of minority voters.

Due to its large population and rich mixture of Democratic and Republican voters, Arapahoe County has long been a key swing county in Colorado politics.

JEFFERSON COUNTY

Located along the western border of the City and County of Denver, Jefferson County is a close-in suburb but extends westward into the scenic foothills of the Rocky Mountains.

NORTHERN JEFFERSON COUNTY
DEMOCRATIC AND REPUBLICAN BREAKDOWN
BY VOTER REGISTRATION



Source: 2011 Colorado Reapportionment Commission Staff

Jefferson County is similar to the two other Denver suburban counties, Adams and Arapahoe counties, in that it is a heavily populated county where Republicans and Democrats live in close proximity to one another. The northeastern portion of the county, with the City and County of Denver to the east,

is home to one of the larger groups of Hispanic voters in Colorado. These Hispanic neighborhoods are one of the principal sources of Democratic votes in Jefferson County.

Most of southern Jefferson County, not shown on this map, is lightly populated because it is in Pike National Forest.

THE BATTLEGROUND COUNTIES CLOSE-IN TO DENVER

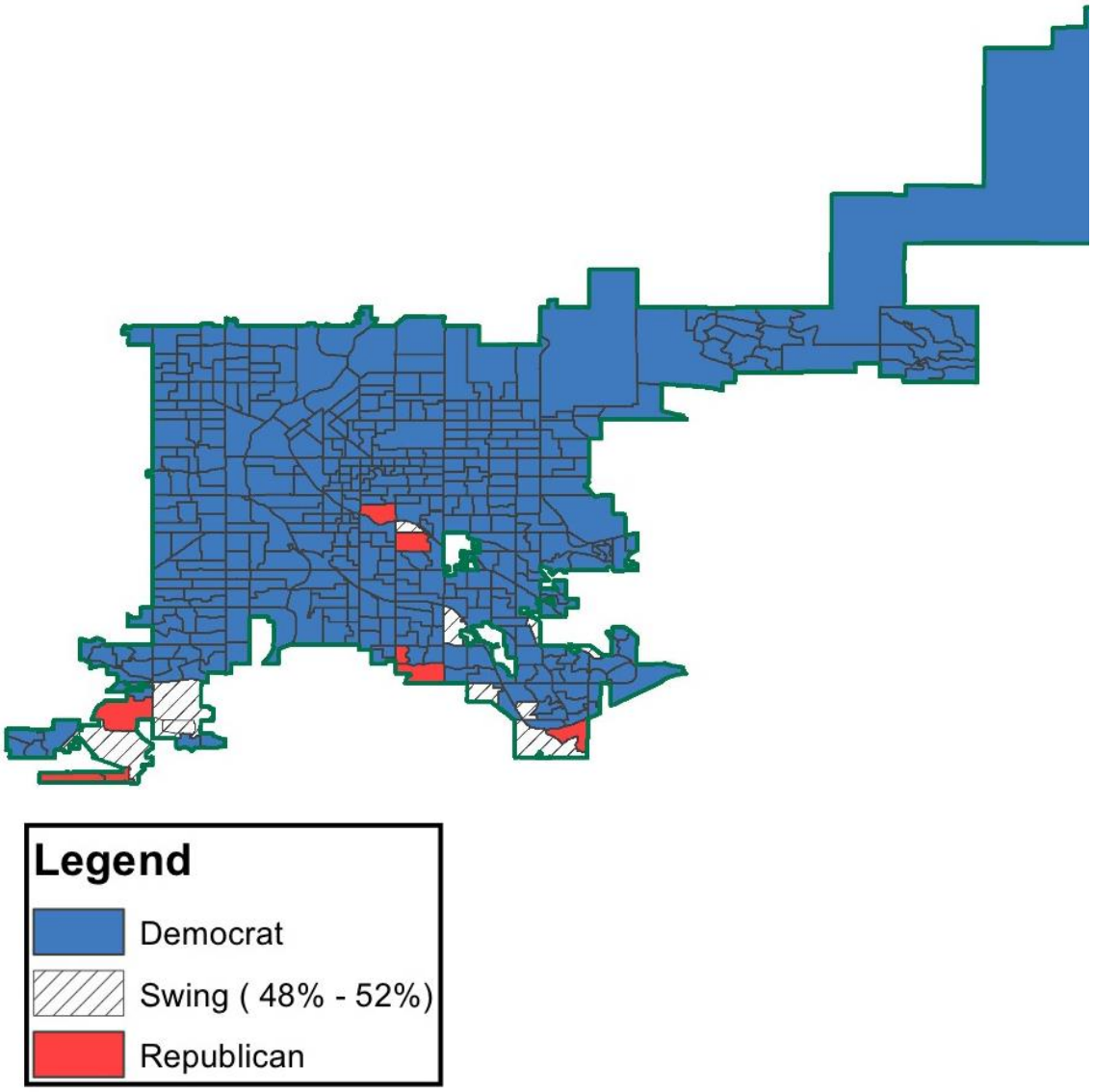
The three counties with maps shown above – Adams, Arapahoe, and Jefferson counties – constitute the major battleground between the Democratic and Republican parties where redistricting of the Colorado state legislature is concerned.

All three counties have large populations, with Democratic and Republican voters living close by one another. Large numbers of minority voters are moving into theses counties. In 2011, these three counties soon became one of the principal areas of partisan struggle in the state legislative redistricting process in Colorado.

NO PLACE FOR REPUBLICANS

Whereas some areas of Colorado are balanced politically between the Democrats and the Republicans, others are so solidly in the grip of one political party that all the state legislative seats in the area are safe seats for that one political party. This is the case in the City and County of Denver, which is so heavily Democratic that, in 2011, all the state representatives and all the state senators from there were Democrats.

CITY AND COUNTY OF DENVER: DEMOCRATIC AND REPUBLICAN BREAKDOWN BY VOTER REGISTRATION



Source: 2011 Colorado Reapportionment Commission Staff

When it comes to voter registration, the City and County of Denver is a sea of Democratic blue. Denver thus is the richest source of safe seats for the Democrats in the Colorado state House of Representatives and the Colorado state Senate.

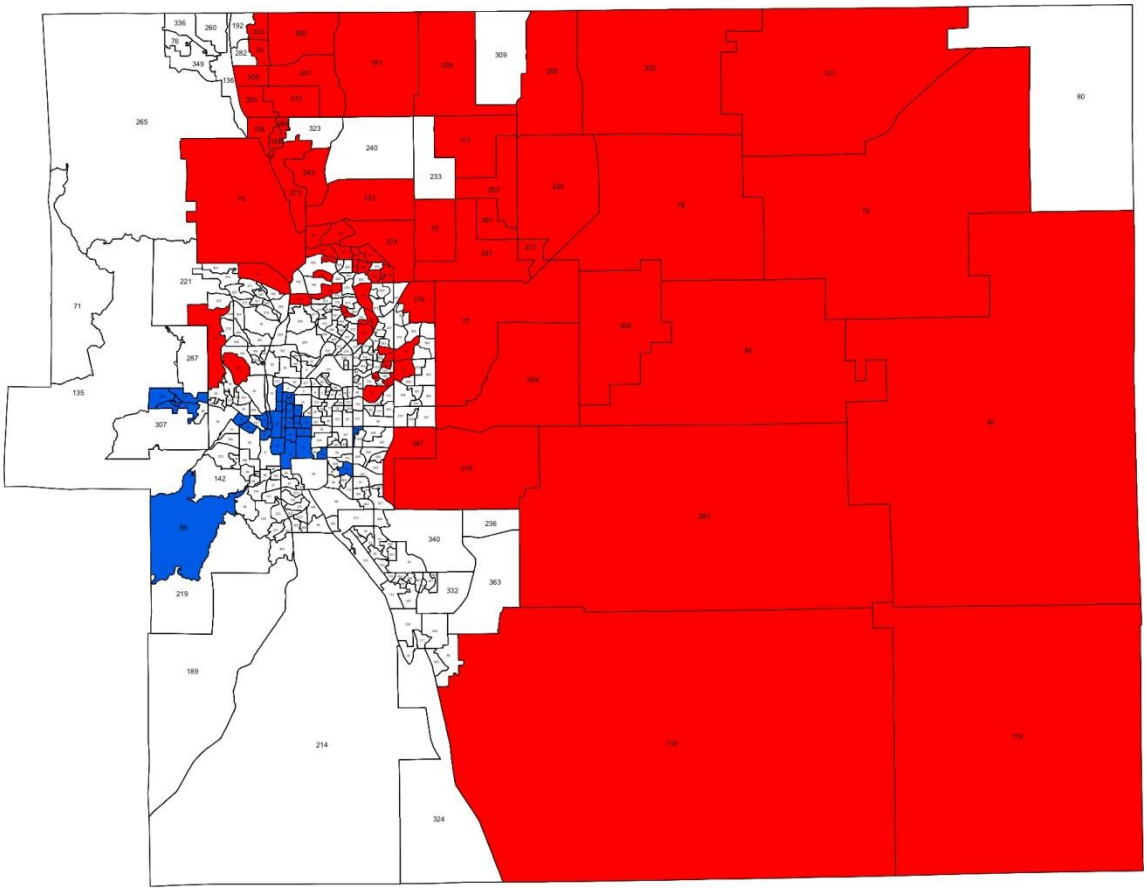
There are six Republican 52 percent plus voting precincts in south central and south Denver, along with five swing precincts, but that is not enough to make even one *competitive* legislative house district, let alone a Republican one.

A DEMOCRATIC SEAT IN A REPUBLICAN COUNTY

El Paso County, which contains the city of Colorado Springs, is the most Republican county in Colorado. In election after election, El Paso County delivers more votes for Republican candidates for statewide office (and president of the United States) than any other county in the state.

In the map below, red-colored precincts voted more than 75 percent Republican in the 2004 presidential election (Republican George W. Bush defeated Democrat John Kerry). White precincts voted 50 to 75 percent Republican. Only the blue precincts voted 50 percent or more Democratic.

EL PASO COUNTY
DEMOCRATIC AND REPUBLICAN BREAKDOWN
BY PRESIDENTIAL VOTE 2004

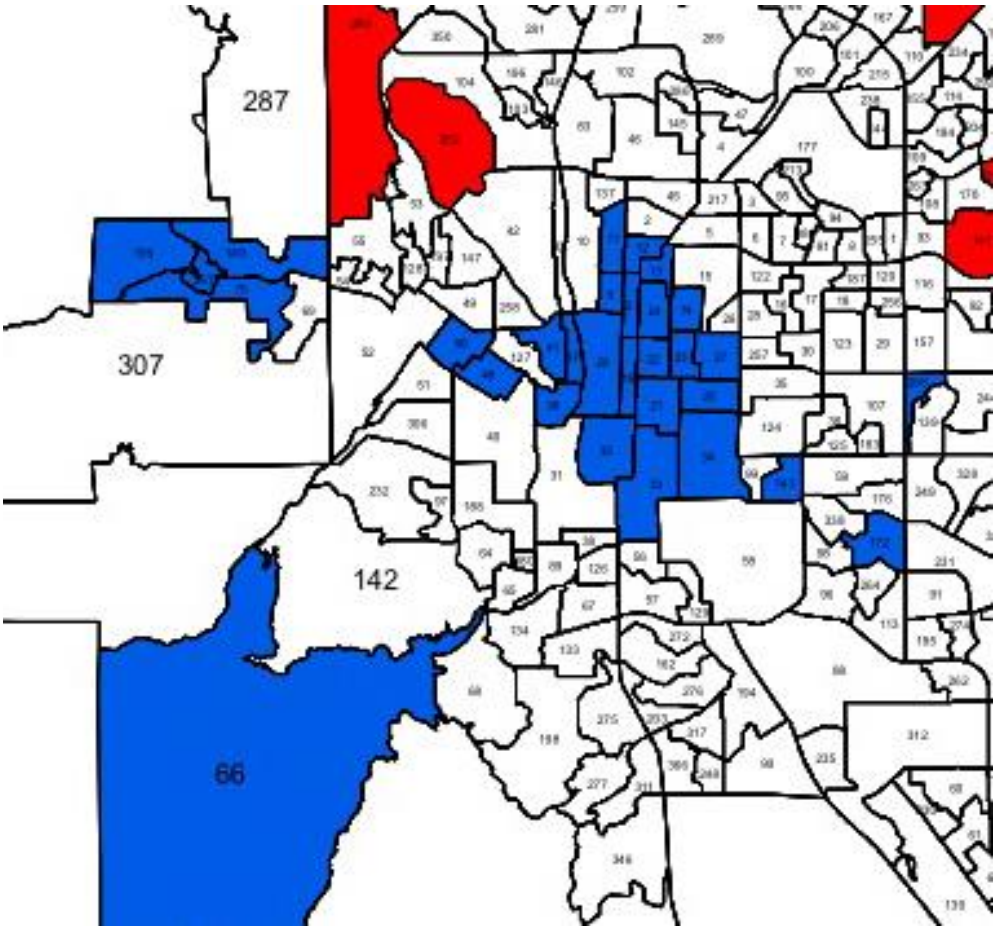


BLUE – 50% Plus Democratic WHITE – 50-75% Republican
RED – 75% Republican

Notice in the previous map that there is a small cluster of blue precincts (Democratic 50 percent plus) that stretches horizontally west to east from the small city of Manitou Springs to the center of Colorado Springs. There are enough Democratic voters there to gerrymander a Democratic state House of Representatives seat into the very heart of Republican El Paso County.

Here is a close-up of these Democratic precincts in and around downtown Colorado Springs.

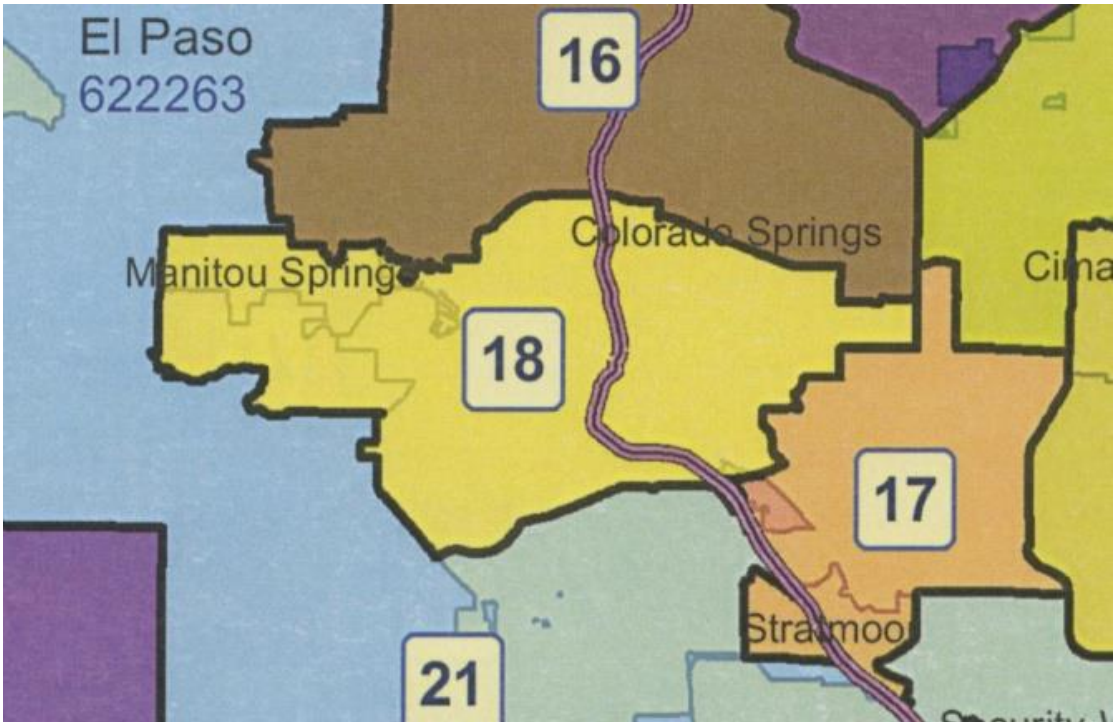
"BLUE" COLORADO SPRINGS



Source: Both El Paso County maps – El Paso County Clerk

And here below is House District 18, a strongly Democratic seat created by the Democrats in 2001 when the party had a controlling majority on the state Reapportionment Commission.

EL PASO COUNTY
HOUSE DISTRICT 18
FINAL HOUSE PLAN 2011



Source: 2011 Colorado Reapportionment Commission Staff

This is a gerrymandering technique called "Stacking." Democratic voters in Manitou Springs have been stacked together with Democratic voters around downtown Colorado Springs to create a safe seat for the Democrats in strongly Republican territory.

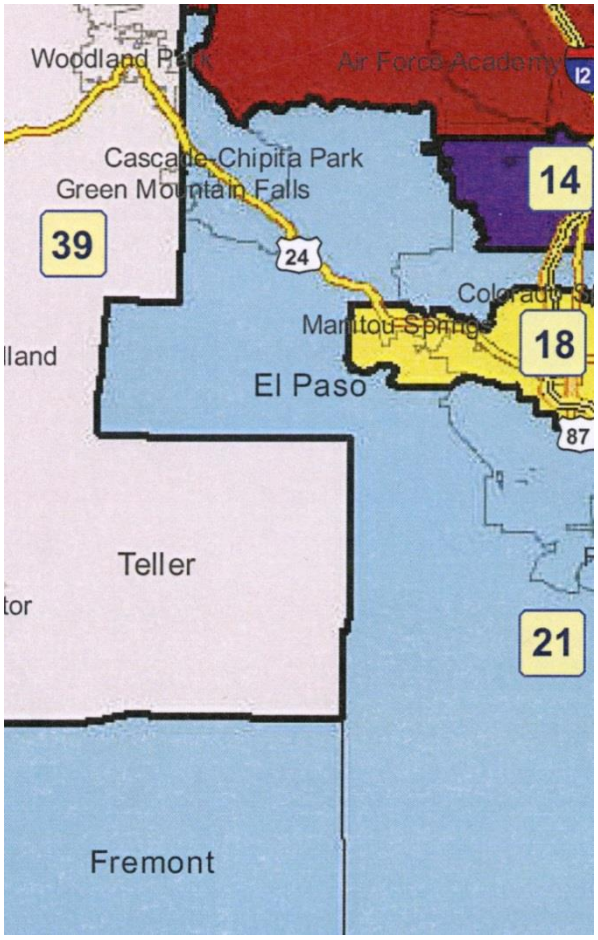
The purple line running north to south through House District 18 is Interstate 25. If the Republicans had been drawing the district lines, they would have run a district line right down I-25. That would have separated the Democrats in Manitou Springs and the Democrats in downtown Colorado Springs into two different state House districts, thus making it impossible for the Democrats to achieve a majority in either district.

This I-25 based gerrymandering technique by the Republicans, if it were used, is named "Cracking," because the goal is to crack the two groups of Democratic voters apart and thereby seriously dilute their voting power.

THE ULTIMATE GERRYMANDER

In 2011 the Democrats proposed a state House of Representatives district for El Paso County that extended from the center of Colorado Springs (close to the campus of the University of Colorado at Colorado Springs) all the way to the apple orchards of the town of Penrose in Fremont County. This was a distance of some fifty miles.

EL PASO AND FREMONT COUNTIES
HOUSE DISTRICT 21
PRELIMINARY HOUSE PLAN 2011



Source: 2011 Colorado Reapportionment Commission Staff

Why would the Democrats propose such an obviously gerrymandered district? Only the Democrats know for certain, but a likely reason was to create a district filled with Republican voters that would be so Republican that Republican

votes were being wasted. El Paso County and Fremont County are both strongly Republican. Drawing a district that stretched from the center of Colorado Springs to eastern Fremont County could have been an attempt to get as many Republican voters as possible into one legislative House district.

This gerrymandering technique is known as "Packing." By packing as many opposition party voters into a district as possible, you keep those voters out of other legislative districts that your party hopes to win. You let the opposition party win the seat in the legislature, but you try to use up as many opposition party voters as possible in the process.

A REVIEW OF REDISTRICTING LINGO

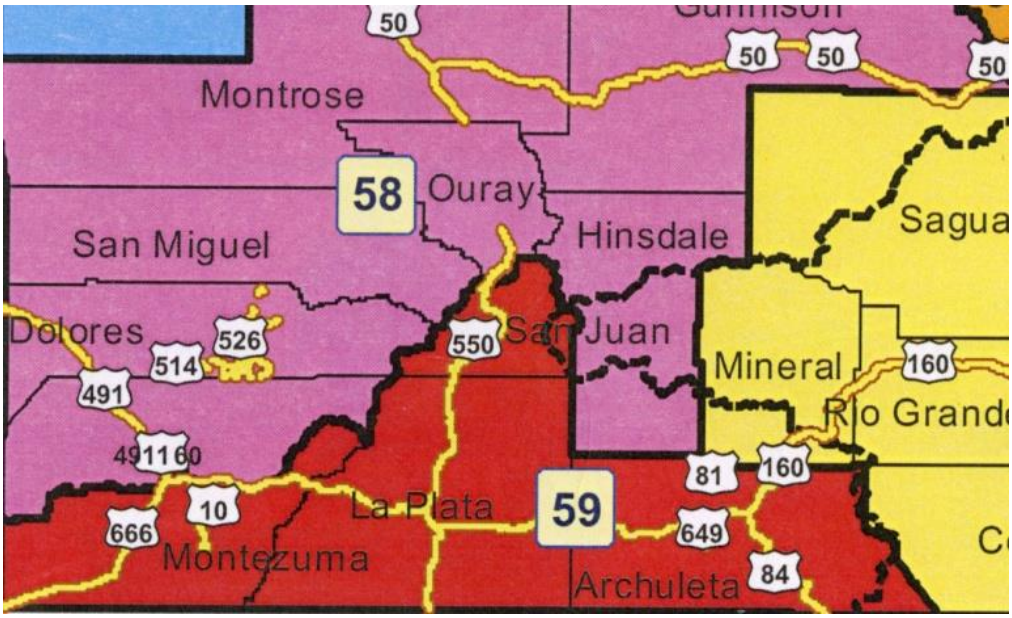
- Uniting groups of voters who support your political party into one legislative district to create a majority for your political party is called **STACKING**.
- Splitting opposition party voter groups apart so they are not a majority in a legislative district is called **CRACKING**.
- Jamming excessive numbers of opposition party voters into one district so they elect only one state representative or one state senator is called **PACKING**.

Redistricting professionals go about their business by stacking their own supporters and cracking and packing their opponent's voters. Their motto is: **"STACK, CRACK, and PACK."**

GERRYMANDERING IN DURANGO

Here is a map showing the Durango area in southwestern Colorado. The area has been districted to create a Republican-leaning House district.

SOUTHWESTERN COLORADO
HOUSE DISTRICT 59
PRELIMINARY HOUSE PLAN 2011
(REPUBLICAN DESIGN)

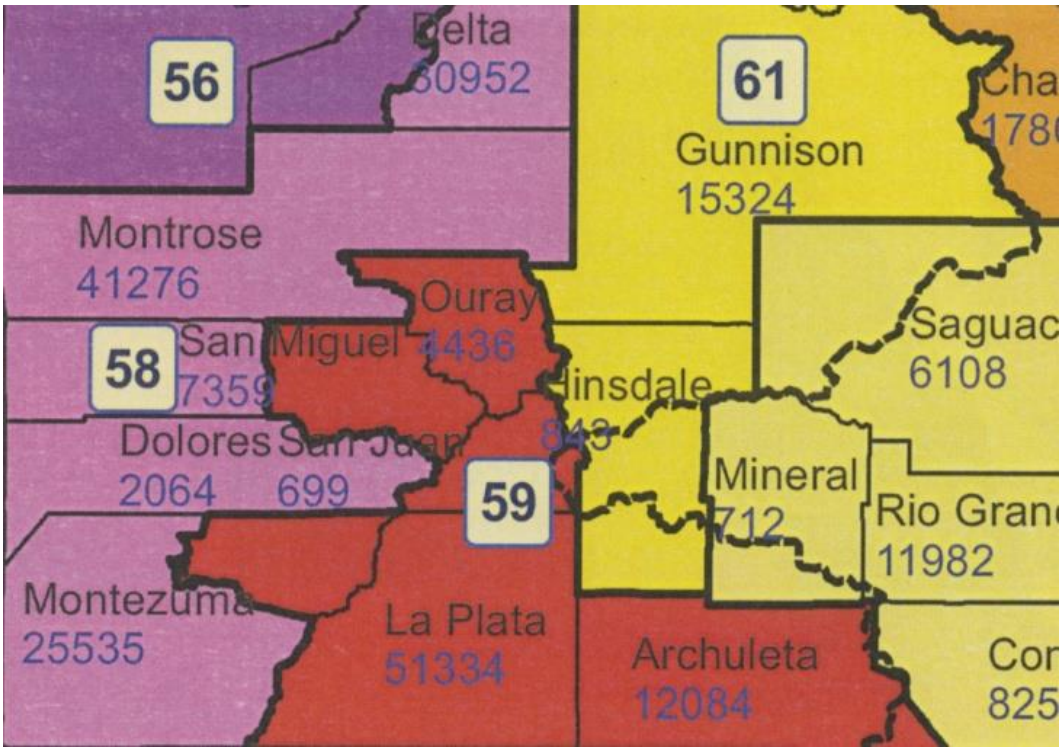


Source: 2011 Colorado Reapportionment Commission Staff

When House District 59 is drawn this way, Democratic strength in La Plata County (Durango) and San Juan County (Silverton) is counter-balanced by Republican majorities in Montezuma County (Cortez) and Archuleta County (Pagosa Springs). This House District 59 is a safe seat for the Republicans.

But look what happens when the Democrats draw the district lines.

SOUTHWESTERN COLORADO
HOUSE DISTRICT 59
FINAL HOUSE PLAN 2011
(DEMOCRATIC DESIGN)



Source: 2011 Colorado Reapportionment Commission Staff

Note the differences between the two maps. The Democratic map has eliminated much of Montezuma County (Cortez), a strong Republican area. More importantly, the Democratic map added eastern San Miguel County, an area that contains the town of Telluride, a major destination ski resort.

Similar to the other destination ski resorts on the Western Slope of Colorado, Telluride is strongly Democratic. When the Republican voters in Montezuma County were removed from House District 59, and the Democratic voters from Telluride were added in, a Republican House district suddenly became a House district in which the Democrats have a good chance of winning the seat.[2]

[2] For media coverage of this particular gerrymander, see Joe Hanel, "Goodbye, Cortez, hello Telluride," *Durango Herald,* September 19, 2011.

AN EVALUATION

- *Gerrymandering* can be used for a wide variety of purposes, but it is most often used to give one political party an electoral advantage over the other political party.
- Whether a particular *gerrymander* is good or bad depends on the viewpoint – and the *political party* membership – of the beholder.

One might suspect from reading this chapter that, as a Republican reapportionment commissioner, I condemn or am angry at the Democrats for some of the skillful Democratic gerrymanders described above. In fact, I do not condemn them and am not angry at them. Political parties have no choice but to work hard at gerrymandering legislative seats in their favor. If they do not, the opposition party will gerrymander them, and the first political party will lose ground in its efforts to elect majorities in both houses of the state legislature.

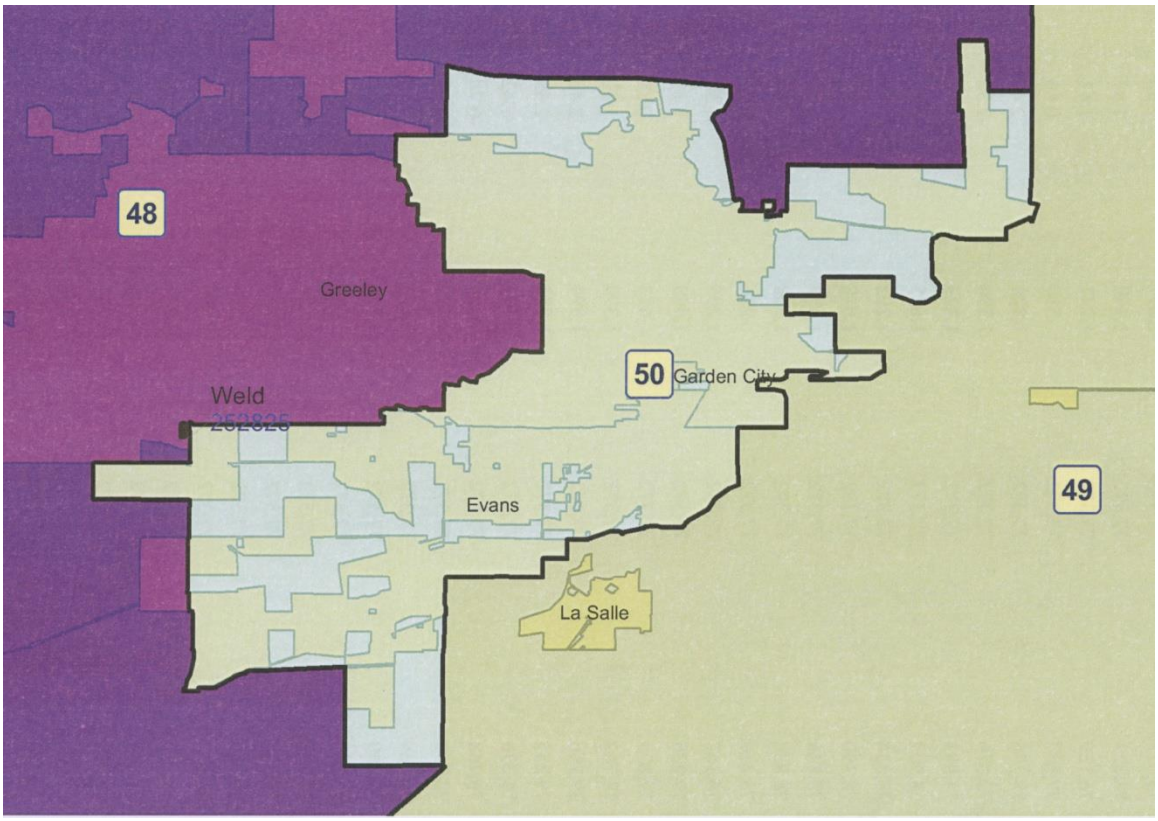
CHAPTER FOUR

GERRYMANDERING TO INCREASE MINORITY REPRESENTATION

Ever since the adoption of the Voting Rights Act of 1965, gerrymandering to benefit minority voters has been an integral part of the legislative redistricting process throughout the United States. In Colorado, the two major minorities to benefit from legally-required gerrymandering are Hispanics and African-Americans.

In 2011, Colorado state House of Representatives District 50 was intentionally designed to be a pro-Hispanic gerrymander.

WELD COUNTY
HOUSE DISTRICT 50
FINAL HOUSE PLAN 2011



Source: 2011 Colorado Reapportionment Commission Staff

House District 50 dodges here and there throughout eastern Greeley as well as in Garden City and Evans. It picks up clusters of Hispanic voters everywhere it goes. The end result is a state House of Representatives district that is 47 percent Hispanic and thereby has a good chance of electing a Hispanic representative to the state legislature.

Many observers would argue that House District 50 is the result of "gerrymandering for a good purpose," but House District 50 is a gerrymander nonetheless. It is a legislative district that has been drawn to favor one political group over others.

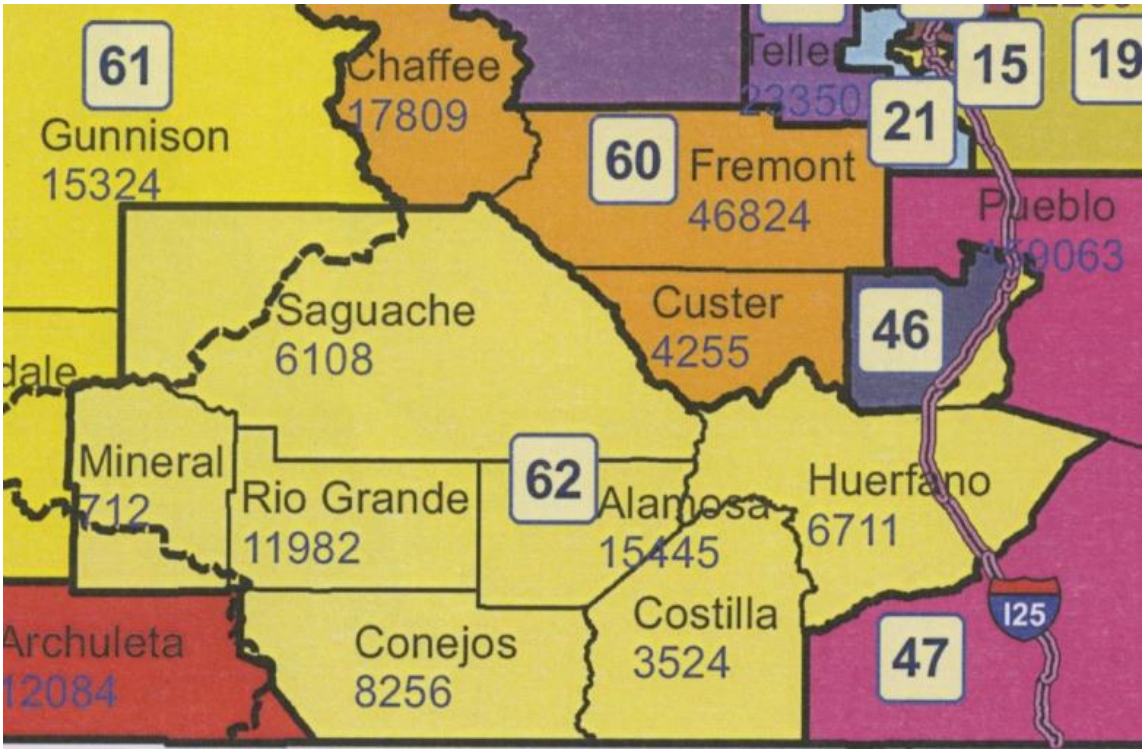
A COURT-ORDERED *GERRYMANDER*

In the 1990s, a voter in Southern Colorado filed suit under the Voting Rights Act of 1965. Her claim was that the Hispanic population in the San Luis Valley had been discriminated against in the redistricting for that area. In *Sanchez vs. Colorado*, the United States Court of Appeals ruled in her favor and ordered the drawing of a Hispanic-dominated seat in the state House of Representatives from Southern Colorado.

It turned out there were insufficient numbers of Hispanic voters in Southern Colorado to guarantee the creation of a House district that would be likely to elect a Hispanic to the state legislature. The solution was to extend House District 62 from the San Luis Valley to southern Pueblo, Colorado, by means of a narrow strip that traveled up the east side of Interstate 25 and then expanded to include a large group of Hispanic voters resident in south Pueblo.

This created, of course, an incredible gerrymander. Southern Colorado linked to Pueblo? The city of Alamosa, in the center of the San Luis Valley in Southern Colorado, is about 120 miles from the city of Pueblo. Check out House District 62 in the following map. The narrow extension to Pueblo is in the upper right-hand corner of the map (near the number 46).

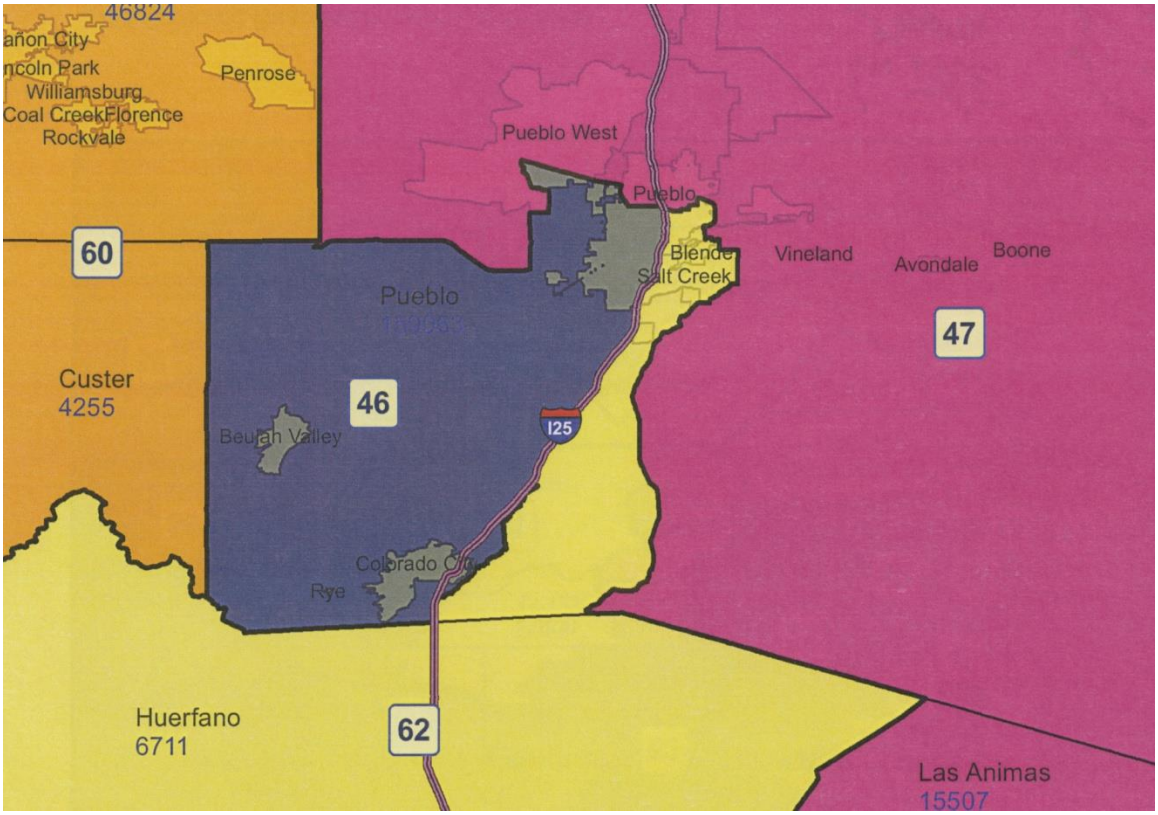
SOUTHERN COLORADO AND PUEBLO COUNTY
HOUSE DISTRICT 62
FINAL HOUSE PLAN 2011



Source: 2011 Colorado Reapportionment Commission Staff

Shown below is a close-up view of the narrow finger of House District 62 that makes its way up I-25 from the Huerfano County line to the city of Pueblo. Until it gets to the city of Pueblo, the narrow finger of land is largely unpopulated.

SOUTHERN COLORADO AND PUEBLO COUNTY
HOUSE DISTRICT 62 (DETAIL)
FINAL HOUSE PLAN 2011



Source: 2011 Colorado Reapportionment Commission Staff

It comes down to a question of *priorities*. The Colorado state Supreme Court ruled that fair representation for minorities, in this case Hispanic voters, was more important than "compactness" or "respecting county and city boundary lines."

Despite being an obvious gerrymander, House District 62 generated no critics or detractors on the 2011 Colorado State Reapportionment Commission. Democrats and Republicans on the commission all voted for this gerrymandered version of the district, as did the commission chair, who was an unaffiliated voter. House District 62 thus received unanimous support from all eleven commissioners.

The drawing of House District 62 highlights one important point, however. The Colorado state Supreme Court, through its decisions in redistricting cases such as *Sanchez vs. Colorado*, has a major role to play in redistricting in Colorado.

A PARTISAN CLASH OVER MINORITY VOTERS

Throughout the work of the 2011 Colorado State Reapportionment Commission, there was an underlying disagreement over the proper way to redistrict large concentrations of minority voters.

- Democrats wanted to divide up minority voters so they could be allied with non-minority Democrats to help the Democratic Party win multiple numbers of legislative districts.
- Spokespersons for minority groups, primarily Hispanics but some African-Americans, desired to keep minority voters together in one legislative district in order to improve the chances of electing a minority person to the state legislature.
- Republicans wanted to keep minorities together in one legislative district so that Democrats could only elect one minority Democratic legislator rather than two or three non-minority Democratic legislators with minority support.

It is important to note that minority group interests and Republican interests coincided on this issue. This allowed the Republicans to take the "high road" of arguing strongly for electing more minority candidates to the state legislature. The Republicans rarely bothered to mention, however, that electing more minorities would indirectly help the Republicans in their efforts to elect more Republicans to the state legislature.

This clash over the proper way to redistrict minorities in drawing state legislative district boundary lines produced the following *riddle.*

The Minority Voters Riddle:

A. Minority voters are best off if minorities are split apart to elect more Democrats, because Democrats of any ethnicity or race do the best job of representing the interests of minority voters in the state legislature.
B. No, minority voters are best off if minorities are kept together in one district, thereby electing an additional minority member to the state legislature.

The Democratic Party has generally pursued Option A in Colorado. Minorities have tended to argue for Option B.

The 2011 Colorado state Reapportionment Commission did not solve the riddle. It created a significant number of minority-advantaged seats in both the state House of Representatives and the state Senate, but probably not as many as it could have created if electing more minority legislators had been a top priority for both political parties.

CHAPTER FIVE

APPOINTMENTS TO THE 2011 COLORADO STATE REAPPORTIONMENT COMMISSION

The 1974 amendment to the Colorado state constitution that created the state Reapportionment Commission was very definite about how the eleven reapportionment commissioners were to be appointed to office:

- Party leaders in the Colorado state legislature would appoint four of the commissioners.
- The Colorado governor would appoint three commissioners.
- The chief justice of the Colorado state Supreme Court would appoint four commissioners.

The goal of this appointment process was to create a commission that would represent a wide-variety of interests throughout the state of Colorado rather than just the two major political parties – the Democrats and the Republicans. To further this goal, no more than six members of the commission could belong to one of the two major political parties.

There also was an attempt in the constitutional amendment to balance the commission geographically. There had to be at least one commissioner from each of Colorado's congressional districts, the districts from which winning candidates are elected to the United States House of Representatives in Washington, D.C. In order to soothe the tender feelings of Western Slope residents, who often feel they are left out when decisions are being made at the state capitol in Denver, at least one commissioner had to come from the Western Slope of Colorado.

LEGISLATIVE APPOINTMENTS

The 1974 constitutional amendment lodged the four legislative appointments in the leadership of both houses of the state legislature.

- The president of the Colorado state Senate would appoint one commissioner.
- The minority leader in the Colorado state Senate would appoint one commissioner.
- The speaker of the Colorado state House of Representatives would appoint one commissioner.
- The minority leader in the Colorado state House of Representatives would appoint one commissioner.

Notice that the legislative appointment procedure guaranteed each major political party at least two members of the Reapportionment Commission, because the legislative minority in each house was given an appointment as well as the legislative majority.

It is important to note also that the legislative leaders could appoint themselves if they wished to the Reapportionment Commission, and that had happened in past decades. In 2011, however, none of the leaders appointed themselves but instead named prominent members of their respective political parties.

The Colorado legislature, following the 2010 elections, was split in terms of political party control. The Democrats were in the majority in the state Senate and the Republicans were in the majority in the state House of Representatives. As would be expected:

- The state Senate majority leader appointed a Democrat. The state Senate minority leader appointed a Republican.
- The speaker of the state House of Representatives appointed a Republican. The minority leader in the state House of Representatives appointed a Democrat.

Partisan Score On The Commission So Far:

Democrats – 2 commissioners
Republicans – 2 commissioners

GUBERNATORIAL APPOINTMENTS

Colorado Governor John Hickenlooper, newly elected to the governor's office in 2010, had three appointments to make to the 2011 state Reapportionment Commission. All three of those appointments could have been Democrats, thereby giving the Democrats a giant start at gaining a controlling majority on the commission.

SURPRISE! In a totally unexpected and unprecedented move, Governor Hickenlooper did not appoint three Democrats. He appointed two Democrats and one Republican.

In retrospect, those appointments fit with the Hickenlooper persona. While serving as the mayor of Denver, he had intentionally pursued his policies and programs in a non-partisan manner. During his campaign for governor of Colorado, he appeared to have gone out of his way to not be overly partisan in his campaign style.

Partisan Score On The Commission So Far:

Democrats – 4 commissioners
Republicans – 3 commissioners

CHIEF JUSTICE APPOINTMENTS

Michael Bender, chief justice of the Colorado state Supreme Court, was empowered by the reapportionment amendment to make four appointments to the 2011 Colorado state Reapportionment Commission.

A SECOND SURPRISE! Chief Justice Bender could have appointed two more Democrats to the commission, thus giving the Democratic Party a 6 to 5 majority on the commission and complete control over the redistricting process for the Colorado state legislature in 2011.

But the chief justice did not do that. He appointed only one Democrat, two Republicans, and one unaffiliated voter to the Reapportionment Commission. Furthermore, the unaffiliated voter, Mario Carrera, was named the temporary chair of the commission.

Partisan Score On The Commission At The End:

Democrats – 5 commissioners
Republicans – 5 commissioners
Unaffiliated Voters – 1 commissioner

A UNIQUE SITUATION

Previous reapportionment commissions in Colorado had been dominated by one political party or the other – the Democrats or the Republicans – and had voted out gerrymandered plans greatly favoring that political party. There had never before been equal numbers of Democrats and Republicans on a reapportionment commission with an unaffiliated voter in position to cast the deciding vote when the commission members were evenly split along partisan lines.

The situation gave a great boost to the Republicans. This was a commission that should have been dominated by the Democrats, and the Democrats should have had an easy time cranking out redistricting plans for the state Senate and the state House of Representatives that were skillfully gerrymandered in the Democratic Party's favor. The unusual pattern of appointments by Governor John Hickenlooper and Chief Justice Michael Bender, however, created a commission on which the Republicans were suddenly on a level playing field with the Democrats.

Did Governor Hickenlooper and Chief Justice Bender meet together to produce this outcome? Perhaps their assistants gathered to make the necessary arrangements. I neither heard nor read that such meetings had ever taken place, so there was no way of knowing for sure.

But one thing was crystal clear. For the first time in the history of the Colorado Reapportionment Commission, prospects were good that the commission would produce a “fair” redistricting plan for the state legislature for the people of Colorado rather than one that strongly favored one political party over the other.

CHAPTER SIX

THE COMMISSION GOES TO WORK

The Colorado state constitution divides the work of the reapportionment commission into four main parts:

1. Adopt a *preliminary* redistricting plan for both the state Senate and the state House of Representatives. The 2011 commission spent the months of June and July accomplishing this first task.
2. Hold public hearings on the *preliminary* redistricting plan throughout the state of Colorado. The 2011 commission devoted the entire month of August to this second task, holding 25 public hearings in 32 days. The locations of the hearings ranged from Durango to Sterling and Steamboat Springs to Lamar.
3. Adopt *final* redistricting plans for the state Senate and state House. The two *final* plans are then forwarded to the state Supreme Court for a review of each plan's correspondence to U.S. and Colorado constitutional requirements. The 2011 commission adopted the *final* plans on September 19, and shortly thereafter the *final* plans were transmitted to the Colorado Supreme Court.
4. Make all changes ordered by the Colorado Supreme Court. The state Senate and state House redistricting plans, now tailored to court specifications, are sent to the Colorado secretary of state to be implemented in the upcoming state legislative elections.

GETTING ORIENTED

The 2011 Colorado state Reapportionment Commission held most of its meetings in the State Museum building across the street from the south entrance to the state capitol building. The State Museum building is currently used as the offices and hearing rooms for the state legislature's Joint Budget Committee.

The commissioners met in a typical legislative hearing room equipped with a raised horseshoe-shaped desk behind which the commissioners sat in a semi-circle and looked out with authority facing the audience. Persons testifying before the commission came forward out of the audience and sat comfortably at a wooden table while presenting their case. The general mood was businesslike and orderly but also easygoing and friendly.

The commissioners elected where to sit and did not arrange themselves according to political party membership, as is traditionally done at legislative

hearings in the national Congress in Washington, D.C. As a result, there was much friendly conversation between Democrats and Republicans on the commission during breaks in the meetings. The commissioners clearly were going out of their way not to become polarized along partisan lines in their interpersonal relationships.

The chair of the commission, as is customary, sat at the center of the horseshoe-shaped desk with an equal number of commissioners on each side of him.

The high-backed chairs in which the commissioners sat were exceedingly comfortable. Each chair had the Colorado state seal embossed in the leather upholstery of its high back.

Staff support was provided by Legislative Legal Services, the band of attorneys and legal researchers who ordinarily provide legal advice to and write legal memorandums for the state legislature. During the summer of 2011, they were temporarily renamed the Colorado State Reapportionment Commission Staff. Gerald Barry served as staff director.

At each meeting of the commission, a portable screen was set up and a portable projector brought in so that proposed redistricting maps could be projected for all to see and discuss. The staff became skilled at getting the right map up on the screen at the right time in order to facilitate the redistricting process.

The commission held only two orientation sessions before getting down to work and adopting a *preliminary* redistricting plan for each house of the state legislature.

The first orientation session was an organizing meeting at which the temporary chair of the commission, Mario Carrera, was unanimously elected permanent chair. That meant that Commissioner Carrera, an unaffiliated voter, would not only cast the swing vote between the five Democrats and the five Republicans on the commission but also would have the strongest voice in scheduling and guiding the work of the commission.

The second orientation session was designed to acquaint the commission members with some of the characteristics of the people of Colorado. The headline attraction at this meeting was Elizabeth Garner, the state demographer, who gave a PowerPoint lecture on new facts about Coloradans gleaned from the 2010 U.S. Census. Her main emphasis was on the growing influence of Hispanic voters in Colorado.

PHASE 1: ADOPTING THE *PRELIMINARY* PLAN

Once the two orientation sessions were out of the way, the commission jumped right into the process of adopting *preliminary* redistricting plans for the two houses of the state legislature. Over the three decades that the Reapportionment Amendment had been in effect in Colorado, it had become traditional for the Reapportionment Commission to use the *rules of procedure* of the Colorado state House of Representatives. This gave an advantage, particularly in the early going, to the eight members of the eleven-member commission who were either current state legislators or former state legislators.

I have to admit that, as one of the three commissioners with no prior state legislative experience, I made a number of mistakes because of my lack of familiarity with the procedural rules being used. At times, I later discovered, I had voted on redistricting plans without really knowing the gerrymandering tricks that had been hidden in them. At other times, I failed to oppose rule changes because I did not understand the ways in which such rule changes would advantage one political party over the other.

The commission took a *regional* approach to its work. First it redistricted Southern Colorado, then the Eastern Plains, next the Western Slope, etc. The commission finished its work in the most heavily-populated part of Colorado – the City and County of Denver and its surrounding suburbs.

STATE SENATE EASIER THAN STATE HOUSE

As a rule, the commission would first debate and adopt a state Senate redistricting map for a particular region. Once that job was successfully completed, the commission would discuss and approve a state House of Representatives map for the region. Agreement on state Senate maps seemed to come much more easily than on state House of Representatives maps, which seemed to be the reason the commission did the state Senate maps first.

There are about half as many state senators as state House members in Colorado (35 state senators to 65 state House members). That means that state Senate districts are about twice as large geographically as state House districts. This apparently made it easier for the commission to reach bipartisan agreement on state Senate redistricting plans rather than state House of Representatives redistricting plans.

Why was this so? My theory, based solely on observation, was that in the state House districts, which are more numerous and smaller in size, there were more opportunities for partisan gerrymandering. Moving just one neighborhood full of voters from one House district to another could change the partisan

character of a House district significantly. In the more populous state Senate districts, however, such gerrymandering tricks were more difficult to pull off. Therein lay the rationale, I surmised, for doing the easy Senate map first and the more-difficult House map second.

Individual commissioners introduced their various plans for redistricting a particular house of the state legislature in a particular region of the state. Every plan presented, from both Democrats and Republicans on the commission, was discussed and debated by the commissioners. After all the plans were introduced and all the commissioners had their say, the plans would be moved, one after the other, for adoption. The first plan to receive a majority vote (6 votes out of 11) would become the commission's official *preliminary* redistricting plan for that region.

WHAT'S THIS?

Prior to the 2011 Reapportionment Commission going to work on the *preliminary* plan, the commissioners adopted an operating procedure that "individual commissioners not have their names attached to the redistricting plans they were presenting for adoption." The reason given for the procedure was that it would "lessen the [partisan] bias in the [commission's] review of each map."[3]

That was a show stopper for me. Traditionally, bills presented for consideration by a state legislative body have the name of the sponsor printed near the top of the first page of the bill. In fact, often bills are known and identified by the names of their sponsors rather than their bill numbers.

This seemed like a step backwards away from the "transparency" that is currently so highly valued in governmental affairs. As the proposal was being discussed, I remember thinking: "What are my fellow commissioners trying to hide?"

I must admit that I was caught off guard by the proposal. After a brief debate, during which one or two commissioners questioned the reasons for the proposal, a commission majority voted it in.

After much thought, I finally concluded the commissioners did not want to be held individually responsible for the various gerrymandering "tricks" that might be hidden in their redistricting proposals. The linking of such tricks to an individual commissioner could possibly become an issue in a future election or reelection campaign.

The adoption of this "No Names" proposal made working on the commission more difficult for me. With no commissioner names on the various

[3] Letter, Mario M. Carrera to Robert D. Loevy, December 16, 2011.

proposals, it was impossible to tell at a glance whether a redistricting plan was a Democratic plan or a Republican plan. It also was much easier to mix up proposals with just numbers on them rather than more easily identifiable commissioner names.

REVELATION!!!

THE ULTIMATE SOURCE OF REDISTRICTING MAPS

I was shocked – shocked – to discover that most of the redistricting maps being introduced by the various commissioners were not being prepared by the individual commissioners themselves. Most of the maps were being drawn by *computer experts (in gerrymandering)* employed by the two major political parties – the Democrats and the Republicans.

"It's a marionette show," I concluded. The commissioners are portrayed by the press and appear to the public to be acting on their own behalf, but their "strings" are being manipulated by political party computer experts who are invisible to the public. This was the most upsetting discovery I made during my service on the 2011 Reapportionment Commission.

There was one notable exception to this situation. Commissioner Steve Tool, who had previously served in major appointed positions in Colorado state government, "personally spent well over 100 hours drawing maps on the computer system during the summer [of 2011]." He concocted redistricting plans for "both the House and Senate on the Eastern Plains, the Western Slope, the Larimer-Weld County area, the Boulder-Weld-Broomfield area, and the El Paso County area." Steve Tool did not introduce all the redistricting plans he drew for consideration by the commission, but he did introduce a number of them.[4]

HIDDEN FINANCING OF COMPUTER EXPERTS

Seeing that the vast majority of redistricting plans were being prepared by political party computer experts was quite disturbing. All the more disturbing was the fact that, at least on the Republican Party side, the computer experts (in gerrymandering) did not actually work directly for the Republican Party. The Republican "gerrymander gurus" were employed by so-called "independent

[4] E-mail, Steve Tool to Robert D. Loevy, December 16, 2011.

groups" that are able to raise and disburse political funds without being required to report either contributors or amounts contributed to the public.

I never learned the exact situation with computer experts (in gerrymandering) on the Democratic side of the game. I was told that the Democrats had such computer talent on board, but no one ever discussed how the cost of those computer experts was financed by the Democrats.

It would not surprise me to learn, however, that Democratic Party gerrymandering efforts were being financed by "independent groups" similar to those financing the Republican's efforts. Sadly, these "independent groups" are taking over much of the nuts-and-bolts work of Colorado politics and thereby putting that work out of the public view.

The most disturbing thought with all this was that the commission, when it voted on *preliminary* redistricting plans, was choosing between a Democratic plan, loaded with Democratic Party gerrymandering, or a Republican plan, crammed full of Republican Party gerrymandering. *There were no redistricting plans being seriously considered by the commission that came from non-partisan computer experts who were working to create a "fair" redistricting to benefit all the voters of Colorado.*

STAFF PLANS WERE IGNORED

In all fairness, it should be stated that, per instructions from the Reapportionment Commission, the commission staff was preparing *preliminary* redistricting plans for each house of the legislature in each region of the state. These plans were hardly ever mentioned by the commissioners, however, let alone introduced and debated at commission meetings. The commissioners collectively operated on the principle that only the Democratic plans and the Republican plans were significant and deserved consideration.

The staff *preliminary* plans, which were very well drawn, mainly adjusted the existing state legislative districts for the population changes that had occurred in Colorado from the 2000 U.S. Census to the 2010 U.S. Census. If there was more to the staff *preliminary* plans than that, I never heard about it because the staff *preliminary* plans were all but totally ignored by the commissioners.

The staff *preliminary* plans were not a complete waste, however. As Commission Chairman Mario Carrera later pointed out: "The staff maps allowed for [the commission] to have a better understanding of 'What if?' scenarios and the likely consequences of potential lines drawn."[5]

[5] Letter, Mario M. Carrera to Robert D. Loevy, December 16, 2011.

CHAPTER SEVEN

THE RISE OF "SUPER MARIO"[6]

A pattern, not unexpected, emerged as the 2011 Colorado state Reapportionment Commission began voting on its *preliminary* state legislative redistricting plans. The five Democrats on the commission voted as a bloc for the Democratic plans. The five Republicans, with somewhat less consistency than the Democrats, began voting as a bloc for the Republican plans.

As a result of this "five-to-five" even partisan split, the swing and winning vote on each *preliminary* redistricting map was being cast by the unaffiliated voter, Mario Carrera, who was serving as the commission chair.

Mario M. Carrera was a resident of Parker, a southern suburb of Denver. He was well-known in the Denver business community as a successful executive in the Spanish-language radio and television industry.

A SPOKESPERSON FOR UNAFFILIATED VOTERS

Chairman Carrera clearly saw himself as the unofficial spokesperson on the commission for Colorado's large number of unaffiliated voters. Here was a group of voters – close to one-third of the Colorado electorate – who went largely unrepresented in a political system dominated by the two major political parties – the Democrats and the Republicans.

In a letter sent to me after the 2011 Reapportionment Commission had concluded its work, Chairman Carrera highlighted his concerns for the role of unaffiliated voters in Colorado politics:

"We have come a long way since 1974 [when the state constitutional amendment creating the Reapportionment Commission was first adopted]. One item [needing consideration since that time] was the evolution of the ***unaffiliated voter*** over almost 40 years. If we review the growth of this voter block in our political system, we will find a need to reconsider basic assumptions of how we arrive at what we believe is our form of representative government…."

"The unaffiliated voter is likely higher-educated, higher-income, and extremely disappointed with the toxic and extreme partisanship on both sides of our political spectrum. Popular fundamentalism encouraged in our primaries for

[6] If you want to know who "Super Mario" is, take the advice of the *Denver Post* and ask your children or grandchildren about this character from a Nintendo computer game. *Denver Post*, September 21, 2011, p. 10B.

candidate selection feeds the leadership in congressional and state legislative seats to the detriment of sound fiscal and social policy. Partisan gridlock offers no solutions to complex problems…. Safe seats and a lack of competitiveness discourage participation in a democratic process…. This may be a good place to [pay more attention to] the growing role of unaffiliated voters."[7]

THE CHAIRMAN VOTES

At first glance, Chairman Carrera appeared to be siding with the Democrats over the Republicans. Fourteen *preliminary* maps were adopted by the commission, seven regional maps for the state Senate and seven regional maps for the state House of Representatives. Of the fourteen maps adopted, Mario Carrera voted for twelve Democratic maps and only two Republican maps.

At second glance, however, Chairman Carrera appeared to have been fair to both political parties:

- Some of the Democratic redistricting maps he voted for had Republican support.
- The two Republican maps he voted for were important and hard-fought ones. They were the two redistricting maps for the state House of Representatives that were for:
    (1) The destination ski counties on the Western Slope.
    (2) The Denver suburbs.

THE DEMOCRATS REACT

Although many observers would have argued that Mario Carrera's voting on the *preliminary* redistricting maps slightly favored the Democratic Party, the Democrats on the Reapportionment Commission did not react that way. The Democrats publicly criticized the Republicans for their "unfair" treatment of the Democrats because the Republicans won the two votes on the destination ski counties and the Denver suburbs.

- A major article quoting at length the Democrats slamming the Republicans appeared in a prominent position in the *Denver Post*.
- Former Denver Mayor Wellington Webb, the senior Democrat on the commission, read a major statement into the record at a commission meeting complaining the Republicans had gained too much and received an unfair advantage over the Democrats.

[7] Letter, Mario M. Carrera to Robert D. Loevy. December 16, 2011.

REVELATION!!!

NEVER SAY WIN

In a redistricting struggle, both political parties continually argue they are being treated unfairly by the other side.

It is a conscious and purposeful strategy. Always contend your side is losing. Pretend your political party is losing badly, and maybe things will go better for your party in future negotiations or court cases.

The press and the public may have been swayed by the Democrats loud charges of unfair treatment by the Republicans on the commission, but commission Chairman Mario Carrera was not. He did not change any of his votes. The *preliminary* redistricting maps for the Colorado state legislature for 2011 remained unchanged with the Republican gains in the destination ski counties and the Denver suburbs intact.

THE DEMOCRATS DOMINATED

The Democrats outperformed the Republicans in the adoption of the 2011 preliminary plan for state legislative redistricting in Colorado.

The Democrats:

- Caucused before the meetings of the commission and adopted a common strategy for the meeting.
- Introduced multiple plans for consideration by the commission but did not identify which one they wanted to adopt until the last minute before the plan was moved for adoption.
- Would discuss one plan at length, then they would move for adoption a different plan that had not been discussed very much, if at all.
- Always voted together along party lines. Except on one vote on a minority district, not one Democrat ever broke ranks with his or her Democratic colleagues and supported a Republican redistricting plan.

The Republicans were poorly organized compared to the Democrats.

The Republicans:

- Did not caucus together until halfway through the process of adopting the *preliminary* redistricting plan.
- Held caucuses only after one of the Republican commissioners (that was me) asked about caucuses and argued strongly for holding them.

- Usually presented only one redistricting plan for each house of the state legislature in each of the seven regions. When only one Republican plan was being presented per house and region, the Democrats had an easy time of studying, critiquing, and debunking that one Republican plan.
- The Republicans counted among their number three moderate Republicans who strongly supported the idea of a compromise plan that would get an 11 to 0 final vote. The plan was summed up by the slogan: "Let's go eleven-oh!" The hope was that all the Democrats and Republicans would vote in support of such a bipartisan plan. These three Republicans thus voted for a number of Democratic redistricting plans, particularly the state Senate and state House of Representatives plans for El Paso County (Colorado Springs).

"LET'S GO ELEVEN-OH"

The ringleader of the Republican effort to produce a compromise redistricting plan that all eleven commissioners could support was Commissioner Steve Tool from Windsor, Colorado. In an e-mail to me, Steve Tool described the situation:

"Some time in June I met with Chairman Carrera and suggested to him that he had a great opportunity to bring the commission together, through compromise, and create two maps [state Senate and state House] that could be supported 11-0. Later, I talked to fellow Democratic commissioners about my hope for an 11-0 vote understanding [for which] each side would need to compromise. The chairman [Mario Carrera] seemed to be interested in the idea of drawing [compromise] maps but never gave me any indication [of support]…."

"I believe that if one reviews the votes that were made over the seven months of work on various plans and other issues before the commission, you and I voted more often with the Democrats than any other Republicans. I tried to cooperate, and so did you! Conversely, you correctly pointed out … that the Democrats voted as a bloc in all but two instances."[8]

THE REPUBLICANS GET WITH IT

It is important to note things changed for the Republican members of the commission only after they finally began holding caucuses and planning a united party strategy. It was then that the Republicans scored their major victories of

[8] E-mail, Steve Tool to Robert D. Loevy, December 16, 2011.

adopting Republican-favoring maps for the state House of Representatives in the destination ski counties on the Western Slope and in the Denver suburbs.

THE *DE FACTO* LEADER OF THE REPUBLICANS

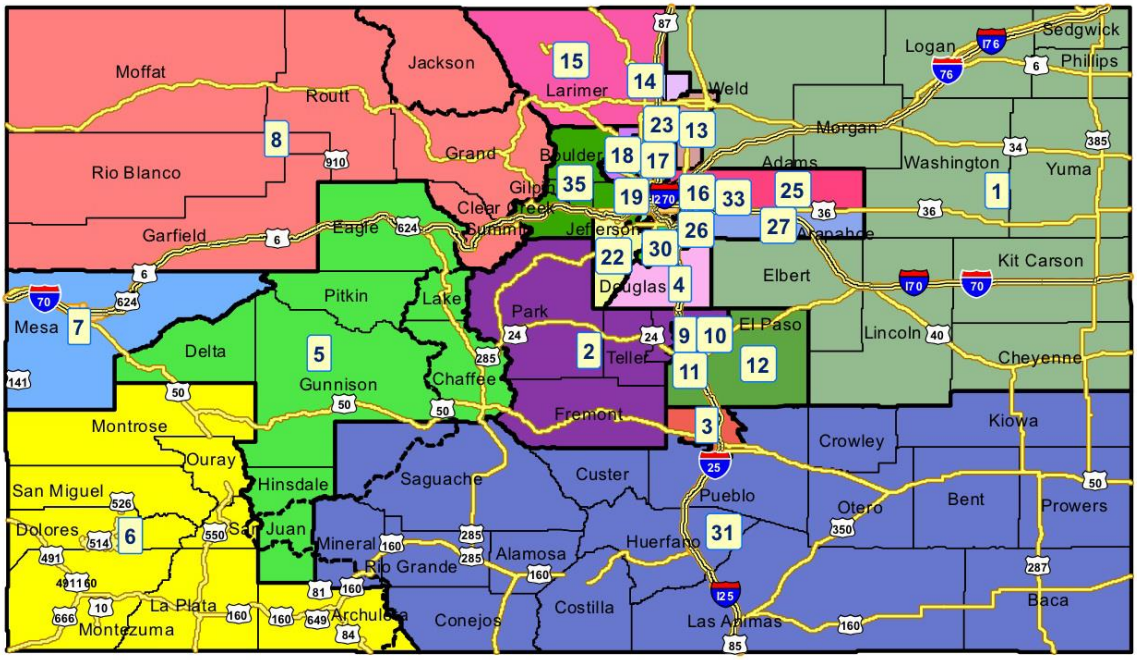
One of the Republicans on the commission, Mario Nicolais, was a Denver-area lawyer. From the very beginning, he appeared to be in close touch with the Republican computer experts (on gerrymandering). He was the main Republican commissioner bringing Republican plans to the table and defending them against Democratic criticism.

Because he was so well-organized and so clearly in touch with the leaders of the Colorado Republican Party, Mario Nicolais was the *de facto* leader of the Republicans on the 2011 Reapportionment Commission.

THE *PRELIMINARY* PRODUCT

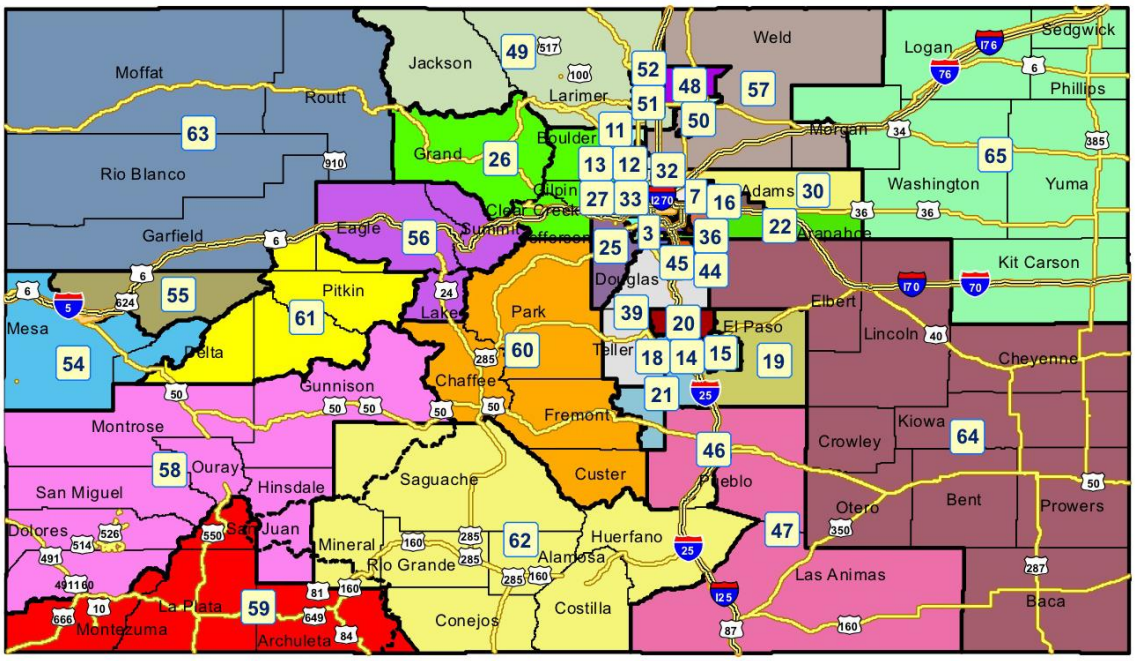
By August 1, 2011, the Colorado State Reapportionment Commission had done its state constitutional duty and completed a preliminary redistricting plan for the Colorado state Senate and a second plan for the Colorado state House of Representatives.

STATEWIDE *PRELIMINARY*
ADOPTED SENATE PLAN



Source: 2011 Colorado Reapportionment Commission Staff

STATEWIDE *PRELIMINARY*
ADOPTED HOUSE PLAN



Source: 2011 Colorado Reapportionment Commission Staff

CHAFFEE COUNTY COURT HOUSE – The first statewide public hearing of the 2011 Colorado State Reapportionment Commission was held in the county seat of Salida in this building in the county commissioners' meeting room. (Photo: Robert D. Loevy)

CHAPTER EIGHT

THE STATEWIDE PUBLIC HEARINGS ON THE *PRELIMINARY* PLAN

Exactly as specified in the 1974 Reapportionment Amendment to the Colorado state constitution, the 2011 Reapportionment Commission held public hearings throughout the state on the *preliminary* redistricting plans for the state Senate and state House of Representatives.

More than half the hearings were held outside the Front Range in rural Colorado, where only 18 percent of the state's voters live. Twenty-five public hearings were scheduled over a period of just 32 days. On week nights, the commissioners held hearings in major cities on the Front Range, all of them within easy driving distance of the Denver area, where most of the commissioners lived. On Fridays and Saturdays, the commissioners traveled on overnight excursions in order to have hearings take place in the most distant corners of Colorado.

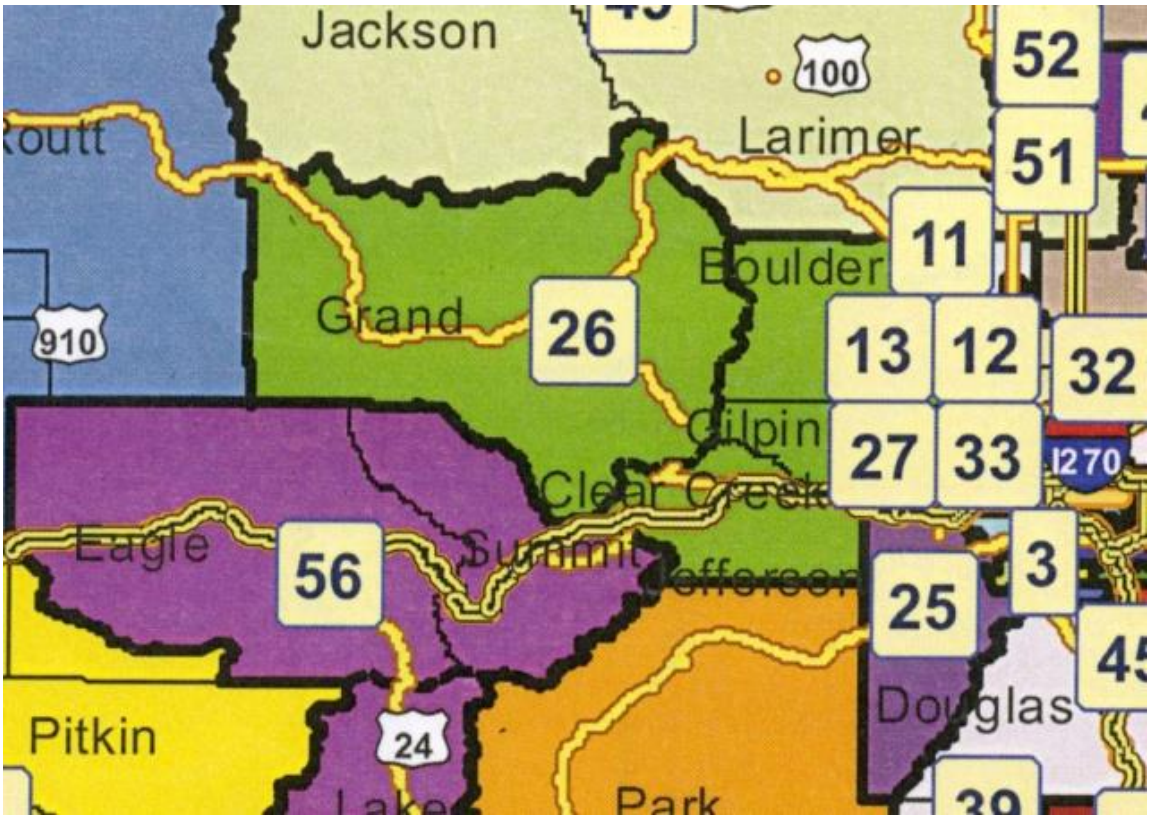
The public hearings were held in a wide variety of venues, from county commissioner meeting rooms (Salida and Glenwood Springs) to the Old Supreme Court Chamber in the state capitol building (City and County of Denver). In most cases, however, the public hearings were staged in a lecture hall or similar public space at the local community college.

As would be expected, many of the people who made presentations to the commission at these public hearings were political activists with strong loyalties to either the Democratic or Republican parties. There were others, however, who had real problems with the *preliminary* redistricting plans, and many of these concerns were not associated with partisan issues. There were also a number of presenters who took the opportunity to come to the statewide public hearings and sound off about their favorite political cause. It was occasionally a cause that had nothing whatsoever to do with redistricting.

Listed below are a few of the important things, not previously known to members of the commission, which were learned at the statewide public hearings.

DO NOT LINK GRAND COUNTY
WITH BOULDER COUNTY!

GRAND AND BOULDER COUNTIES
HOUSE DISTRICT 26
PRELIMINARY HOUSE PLAN 2011



Source: 2011 Colorado Reapportionment Commission Staff

The citizens of Grand County, particularly the Republicans, did not want to be grouped into the same state House of Representatives district with Boulder County. There were two reasons for this: (1) Grand County has a much smaller population than Boulder County and would be overwhelmed electorally by its populous neighbor to the east, and (2) Boulder County is one of the most liberal and Democratic counties in Colorado.

At the public hearings, however, the folks from Grand County were politic enough not to mention that they did not want to be linked with a community as liberal and progressive in its political outlook as Boulder County. They mainly made the argument that a state legislative district should not cross the Continental Divide, which serves as the border between Grand and Boulder counties. They said

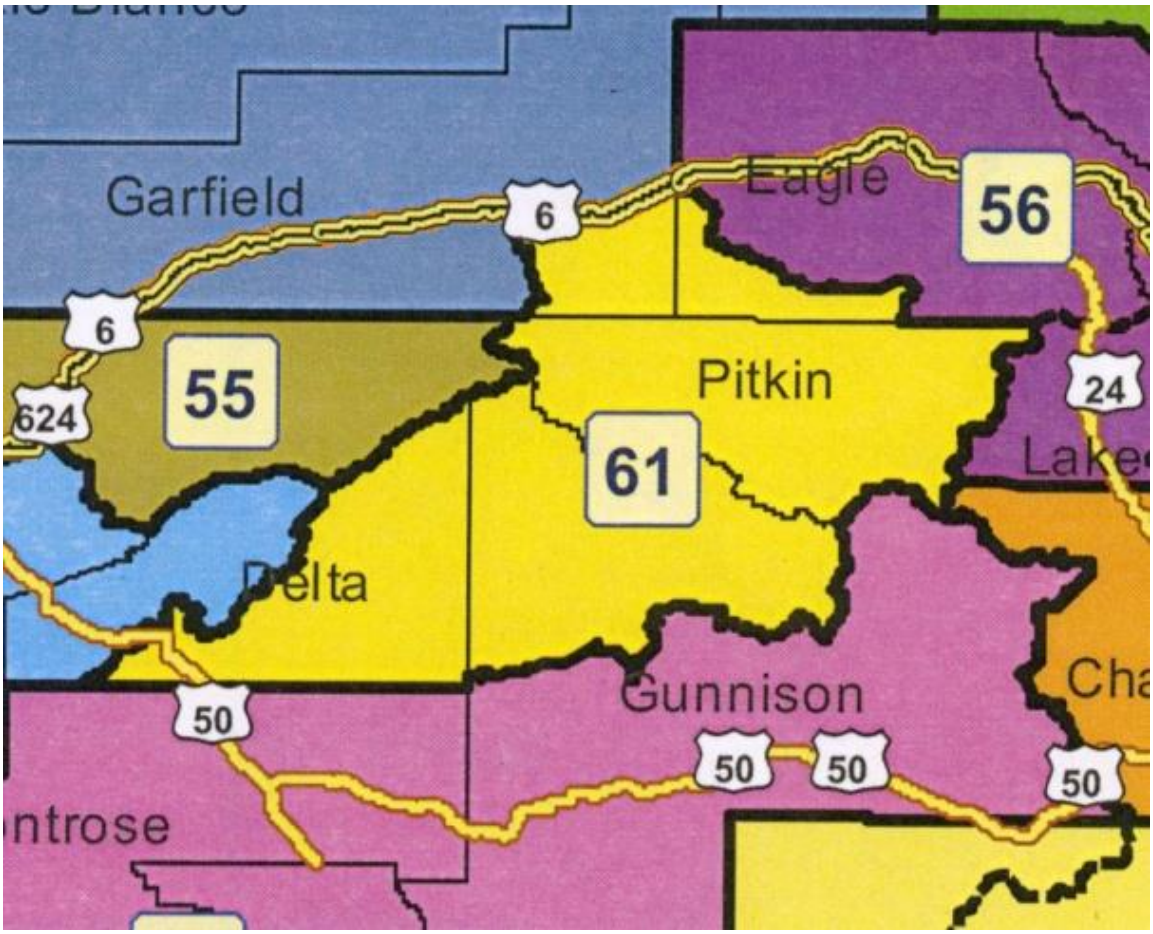
they wanted to be put in a legislative district made up of other counties on the Western Slope. These would be counties where people thought and lived like the people in Grand County did.

Republican leaders in Grand County felt so strongly about this issue that they made their case at a number of the statewide public hearings, some of them in counties fairly distant from Grand County.

The commissioners got the message. In the *final* state House of Representatives plan adopted by the commission, Grand County was separated from Boulder County and paired with counties on the Western Slope.

DO NOT JOIN CRESTED BUTTE
WITH DELTA COUNTY!

PITKIN, GUNNISON, AND DELTA COUNTIES
HOUSE DISTRICT 61
PRELIMINARY HOUSE PLAN 2011



Source: 2011 Colorado Reapportionment Commission Staff

The posh ski resort of Crested Butte is located in northern Gunnison County just under the number 61 in the map above. Similar to most of the other destination ski resorts in Colorado, Crested Butte is increasingly liberal and Democratic in its voting behavior.

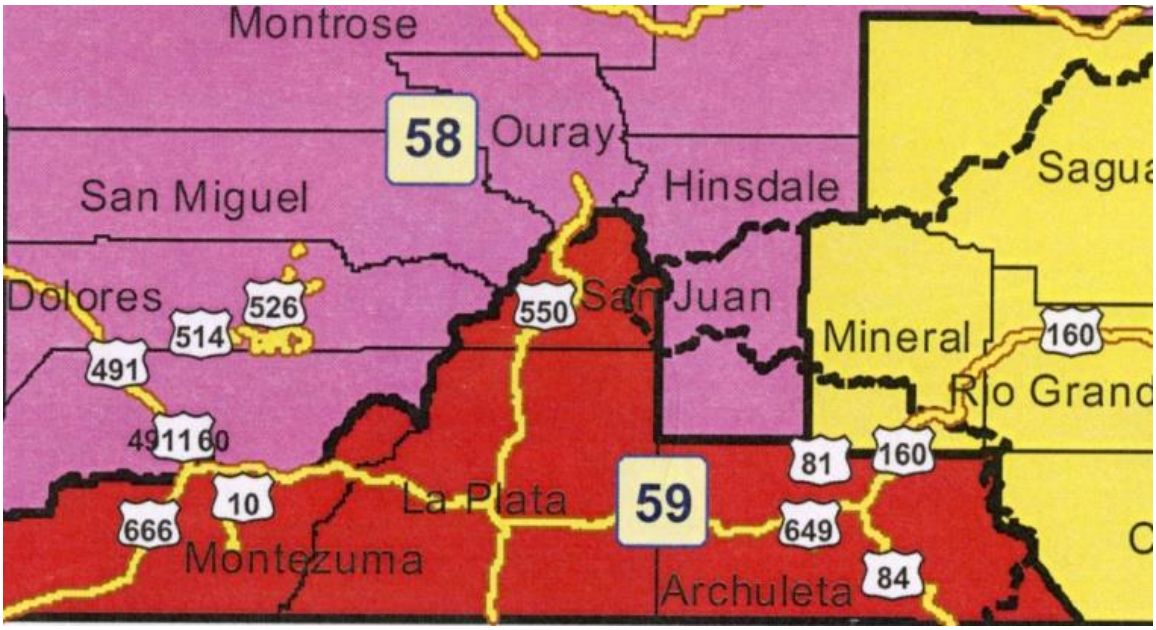
At the public hearing in Gunnison County, political leaders from Crested Butte asked not to be put in the same state House district with the voters in southeastern Delta County. The Democrats from Crested Butte had a good reason for making that argument. Delta County is mainly a farming, fruit-growing, and

ranching county, which makes it strongly Republican. If those Delta County Republicans were cut out of state House District 61, it would become a strongly Democratic district.

The Reapportionment Commission granted the wish of the Democrats from Crested Butte. In the *final* state House plan, southwestern Delta County was separated out of House District 61, thereby making the district considerably more Democratic.

SEPARATE THE TWO UTE INDIAN RESERVATIONS
SO EACH ONE HAS ITS OWN STATE REPRESENTATIVE!

MONTEZUMA, LA PLATA, AND ARCHULETA COUNTIES
HOUSE DISTRICT 59
PRELIMINARY HOUSE PLAN 2011



Source: 2011 Colorado Reapportionment Commission Staff

There are two Ute tribes of Native Americans in Colorado. Although their populations are relatively small, their two reservations taken together occupy almost half of three southwestern counties – Montezuma, La Plata, and Archuleta counties. One tribe is named the Southern Ute. The other is called the Ute Mountain Ute.

When up in Denver debating and adopting its *preliminary* state House of Representatives redistricting plan, the 2011 Reapportionment Commission

assumed that both Ute tribes would want to be joined together into one state House district. Although there was very little discussion of the matter, there was a largely unspoken assumption that the two Ute tribes would want to magnify their political influence by having all their voting members in one district. That was state House District 59 in the previous map.

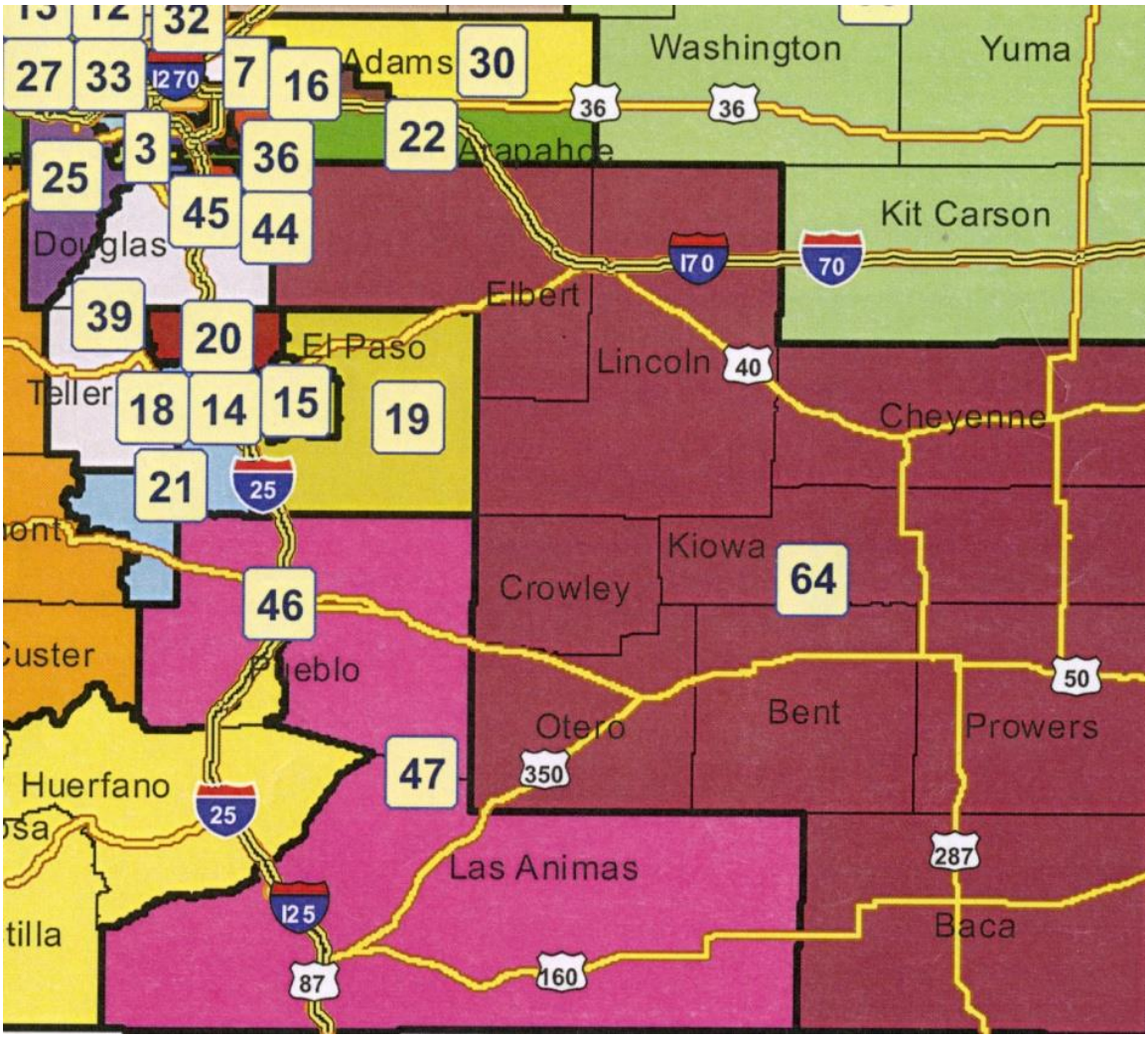
At the commission's public hearing in Durango, it was literally a jaw-dropping moment when representatives of the two Ute tribes asked that, as had been done in the past, one reservation be located in one House district and the other reservation be put in a different House district. The Ute spokespersons argued their cause would be best represented in the state House of Representatives if two members of the House, rather than just one, had Ute constituents.

Upon hearing the two Ute tribes' request, Commission Chairman Mario Carrera was so amazed and grateful that he made a brief comment on the value of the Reapportionment Commission holding statewide public hearings. "This is why we need to leave Denver and hold hearings around the state," Carrera said in so many words. "We would never have learned about this major problem if we had not held this hearing in Durango."

In the commission's *final* state House redistricting plan, one Ute reservation was placed in state House District 58 and the other remained in state House District 59.

DO NOT INCLUDE ELBERT COUNTY
WITH THE EASTERN PLAINS!

ELBERT COUNTY AND SOUTHEASTERN COLORADO
HOUSE DISTRICT 64
PRELIMINARY HOUSE PLAN 2011



Source: 2011 Colorado Reapportionment Commission Staff

The Eastern Plains counties of Colorado are some of the most lightly populated counties in the state. Mainly farming and ranching areas, the Eastern Plains counties have declined economically and population-wise along with much of the rest of the rural United States.

The great fear of political leaders in the Eastern Plains counties is that the Eastern Plains, or parts of it, will be lumped into the same state House of

Representatives district with a populous Front Range county. If that happened, the Eastern Plains farmers and ranchers likely would find themselves represented in the state House of Representatives by an urbanite from the Front Range county.

This leads us to the interesting case of Elbert County. It is situated under the number 22 at the top of the previous map. Elbert County traditionally has been considered an Eastern Plains county, and the eastern portion of the county still is very much farming and ranching country.

The western part of Elbert County, however, borders on Douglas County, one of the fastest-growing counties on the Front Range in terms of population. A great deal of low-grade urban sprawl, which is large houses on large lots, has spilled over from Douglas County into Elbert County. Low-grade urban sprawl is also called "ranchurbia."

Seeking to create an "all-Eastern Plains" state House district, the 2011 Reapportionment Commission took all the Eastern Plains counties in southeastern Colorado and put them into state House District 64. Aware of Elbert County's traditional image as an Eastern Plains county in good standing, the commission included Elbert County in House District 64 and thought nothing more about it.

At the statewide public hearing in the city of Lamar in Prowers County on the Eastern Plains, however, local political leaders asked not to be included in the same district with Elbert County. Their fear was this. Due to the rapid population growth in western Elbert County, they could end up represented in the state House of Representatives by someone from Elbert County. That person, instead of being a farmer or a rancher, might possibly commute to a professional office job somewhere in the Denver metropolitan area.

One of the most interesting things about this wariness of Elbert County on the part of Eastern Plains political leaders was that it was not at all partisan in nature. Democrats and Republicans alike lobbied the commission not to include Elbert County with the Eastern Plains. It became crystal clear that Eastern Plains citizens were much more fearful of being represented in the state legislature by someone from the Front Range rather than someone from a different political party.

When it adopted its *final* plan for the state House of Representatives, the Reapportionment Commission gave the Eastern Plains counties most of what they asked for. Elbert County was divided, and only the eastern rural part of Elbert County remained in House District 64 with southeastern Colorado. Much of the more-populated western portion of Elbert County, however, was added to a state House District which mainly represented the northeastern portion of the Eastern Plains.

BROOMFIELD CITY AND COUNTY BUILDING – The final statewide public hearing of the 2011 Colorado State Reapportionment Commission was held in Broomfield in this building in the council chamber. (Photo: Robert D. Loevy)

EVALUATION OF THE STATEWIDE PUBLIC HEARINGS

I found the statewide public hearings to be one of the most beneficial parts of serving on the 2011 Colorado State Reapportionment Commission. It was true, of course, that the public hearings were held under grueling time constraints, with a lot of driving involved. Also, the hearings could get very dull at times when an occasional presenter strayed far from the subject of state legislative redistricting.

The driving may have been long and hard, but this was the state of Colorado and most of the scenery was beautiful. Many of the cities and towns in which the public hearings took place, such as Durango and Steamboat Springs, were historic and picturesque. Front Range and Southern Colorado commissioners who attended all of the public hearings on the Western Slope enjoyed the great natural beauty of crossing the Continental Divide on six different occasions.

The statewide public hearings also provided an opportunity for the eleven reapportionment commissioners to get to know each other better. The atmosphere of the public hearings was less contentious in partisan terms than the commission

meetings in Denver where Democratic and Republican plans were being voted up or down in competition with one another. There were ample opportunities for social conversations that had nothing to do with redistricting politics.

On two wonderful occasions, Democratic and Republican commissioners dined together in an atmosphere of high cooperation and conviviality. The first gathering, for a home-cooked meal, was at the home of Commissioner Arnold Salazar in Alamosa, just prior to the Alamosa public hearing. The second commission get-together, hosted by Chairman Mario Carrera, was at a restaurant in Castle Rock before the public hearing in that community.

The most interesting part of the statewide public hearings, however, was getting to hear about and thus learn about the wide variety of problems and concerns facing my fellow Coloradans in their particular region of the state. The presentations were being made to us by the actual people who were experiencing those problems and concerns. It was fun and enlightening to both see and hear them.

Perhaps the most important aspect of the statewide public hearings was their impact on the people who attended and talked to us at them. I think they really appreciated official representatives of the state government in Denver coming out to some of the more remote parts of the state and paying attention to their needs and wants. Over and over again, I heard people in the more-distant locations say to me and my fellow commissioners: “Thank you so much for coming all the way out here and listening to us.”

CHAPTER NINE

THE RISE OF *COMPETITIVE* DISTRICTS

Sometime in May or June of 2011, during the earliest deliberations of the 2011 Reapportionment Commission, I asked the commission staff to do a study of the party affiliations of Colorado state legislators from 2002 through 2010. The study was done promptly, "per Commissioner Loevy's request." It revealed exactly what I knew it would reveal:

- There was very little party turnover in most of the seats in both houses of the state legislature from one election to another.
- As a result, there were an unusually high number of safe Democratic and safe Republican seats, but there were very few *competitive* seats that swung back and forth between the two major political parties.

The final figures for the entire decade looked like this:

PARTY AFFILIATIONS OF COLORADO STATE LEGISLATORS THROUGHOUT THE 2002, 2004, 2006, 2008, AND 2010 GENERAL ELECTIONS

	SENATE	**HOUSE**	**BOTH**
Safe Democratic	**16**	**26**	**42**
Safe Republican	**14**	**25**	**39**
***Competitive* (swing)**	**5**	**14**	**19**

Source: 2011 Colorado State Reapportionment Commission staff
Total figures calculated and chart drawn by Robert D. Loevy

Political scientists have long complained about the lack of partisan turnover in most state legislatures, and Colorado was no exception to the rule. The study I had requested showed that, over a ten-year period of five different legislative elections, only 19 of the 100 seats in both houses of the Colorado legislature had changed hands from one major political party to the other.

It was the other side of the coin that was most distressful. In 81 of the 100 seats, there had been absolutely no partisan change throughout the decade studied. It appeared that, back in 2001, the 2001 Reapportionment Commission had

gerrymandered the district lines in such a way that the vast majority of the seats were solidly controlled by either the Democrats or the Republicans.

I then requested a second study from the Reapportionment Commission staff, which was quickly prepared and circulated to the commission members. This study provided the two-party voter registration figures (Democratic and Republican) for both the safe seats and the competitive seats. The study used *only* Democratic and Republican registration data and did not include unaffiliated voters. The voter registration data was as of the 2010 general election.

The principles derived from this second study were quite simple and clear:

1. If a state Senate or state House of Representatives district registered 57 percent or more Democratic, it was a safe Democratic seat for the entire decade.
2. If a state Senate or state House of Representatives district registered 57 percent or more Republican, it was a safe Republican seat for the entire decade.
3. If a state Senate or state House of Representatives district was a *competitive* district, its voter registration fell in the range of 43 percent Democratic to 57 percent Democratic (or, to use the mirror image in a two-party system, 43 percent Republican to 57 percent Republican).

There was only one exception to these results. A legislative district in Grand Junction registered considerably more than 57 percent Republican but had elected a Democrat to go to the state legislature. Before the decade was over, however, the district switched back Republican. In all other cases, the three principles stated above proved true.

As a result of this second study, I pointed out to my fellow commissioners that, if they wanted to create more *competitive* districts in the Colorado state legislature, all they needed to do was fashion districts in which the two-party voter registration fell between 43 percent Democratic and 57 percent Democratic (or 43 to 57 percent Republican).

I further suggested, and talked up when finding the opportunity, the idea that both houses of the Colorado state legislature be gerrymandered in such a way that one-third of the seats were safe Democratic, one-third were safe-Republican, and one-third were *competitive.* Achieving such a ratio would constitute a considerable increase in *competitive* seats over the previous decade's redistricting.

COMPETITIVE SEATS AND VOTER PARTICIPATION

One of the main reasons I was for *competitive* seats was the effect they have on voter participation. In a safe-Democratic or a safe-Republican legislative district, the decision on who sits in the seat is made in the primary election. That is because, in a safe seat, whoever wins the primary is automatically elected in the general election.

Voter participation in party primaries is low, with the average voter turnout at about 30 percent.

In a *competitive* seat, however, the decision is made in the general election with the Democratic and Republican candidates running hard against each other. Instead of only registered voters from one political party participating, voters from the Democratic Party, the Republican Party, and unaffiliated voters are all coming out to the polls and voting.

Voter participation in general elections is high, with the average voter turnout at about 60 percent.

The following chart illustrates how four to five times as many voters will vote in a legislative election in a *competitive* district than in a safe-Democratic (or safe-Republican, for that matter) seat:

VOTER TURNOUT IN A SAFE-DEMOCRATIC SEAT

Precinct Population = 900 registered voters

Democrats	400 registered voters
Republicans	200 registered voters
Unaffiliated	300 registered voters

Democratic Party Primary (only registered Democrats can vote):

400 registered Democrats x 30 percent turnout = 120 voters voting

VOTER TURNOUT IN A *COMPETITIVE* SEAT

Precinct Population = 900 registered voters

Democrats	300 registered voters
Republicans	300 registered voters
Unaffiliated	300 registered voters

General Election (Democrats, Republicans, and unaffiliated can all vote):

900 registered voters x 60 percent turnout = 540 voters voting

It is easy to see why political scientists prefer *competitive* seats over safe seats. The number of voters voting in the general election is 540 whereas only 120 voters are voting in the party primary.

A MEETING WITH THE CHAIR

In mid-July of 2011, Chairman Mario Carrera asked to meet with me. We decided to meet during one of the morning breaks in the regular weekly meetings of the Reapportionment Commission. While the other commissioners were refilling their coffee cups and eating donuts, Chairman Carrera and I sat in two of the seats at the horseshoe-shaped table and chatted away.

Neither of us was interested in maintaining secrecy. We held our conversation in our normal tones of voice without concern for whether anyone else was listening. Some of the other commissioners were close enough to us that they could have listened in on the conversation if they had wanted to.

I explained to Chairman Carrera that I had been on public record ever since 1993 criticizing the Colorado state Reapportionment Commission for creating too

many safe Democratic and safe Republican seats.[9] I reemphasized my position, already clearly articulated to the 2011 Reapportionment Commission, that I considered the creation of more *competitive* seats as the most badly needed reform for the Colorado state legislature.

At that moment, Chairman Carrera told me that he was going to present his own redistricting plan, for both the state Senate and the state House of Representatives, when the time came for *final* adoption in September. He said his plan definitely would emphasize increasing the number of *competitive* districts in both houses.

I told him I would definitely support his plan when he presented it.

SETTING A STANDARD FOR COMPETITIVE DISTRICTS

As soon as Chairman Carrera told me he was going to support *competitive* districts, I began pressing for the commission to adopt a statistical standard by which to determine if a specific state Senate or state House district was competitive or not.

There were a number of ways to calculate such a statistical standard. My method, used earlier in this chapter, was based on two-party voter registration (Democrats and Republicans) in the district. Other members of the commission, however, preferred different methods of calculating competitiveness.

One preference was for using the Democratic and Republican election results in a recent hotly contested U.S. Senate race in Colorado between Democrat Michael Bennet, who was elected, and Republican Ken Buck. Others preferred using other close two-party statewide election contests, or perhaps averaging a number of recent hard-fought partisan contests together.

Chairman Mario Carrera appointed a two-person committee of reapportionment commissioners to review the situation and make a recommendation on how to measure *competitiveness*. The committee, composed of Republican Commissioner Gayle Berry and Democratic Commissioner Morgan Carroll, recommended a *competitiveness* standard, but it was never formally adopted by a commission majority. The recommendation, subsequently used by Chairman Carrera to measure *competitiveness*, was based on the results of the 2010 election for state treasurer. A district which voted between 45 percent and 55

[9] Thomas E. Cronin and Robert D. Loevy, *Colorado Politics And Government* (Lincoln, NE: University of Nebraska Press, 1993), pp. 161-162. Robert D. Loevy was main author of the chapter entitled "Electing The Legislature."

percent (for either the Republican or the Democratic candidate) was considered *competitive*.[10]

It soon became obvious that some of my fellow commissioners did not want to establish a statistical standard for determining the competitive character of state Senate and state House districts. I finally came to the opinion that these commissioners believed that was giving too much information about the redistricting process to the press and the public. It seemed to me that some of my colleagues thought they could do a better job of gerrymandering for their political party if the exact statistical definition of a *competitive* district remained murky and unclear.

So, in the end, *competitive* districts joined "keeping counties whole" and "keeping communities of interest together" as just one more great-sounding idea that could be used to cloak efforts to gerrymander districts in favor of a particular political party.

Some of the Republicans on the commission accused the Democrats of having their own special way of promoting *competitive* districts. "The Democrats love to turn Republican safe seats into *competitive* seats," so the argument went, "but the Democrats refuse to reciprocate and will never turn Democratic safe seats into *competitive* seats."

[10] Letter, Mario M. Carrera to Robert D. Loevy, December 16, 2011.

CHAPTER TEN

FINAL ADOPTION

After the August public hearings were successfully concluded, the 2011 Colorado State Reapportionment Commission met in early September to adopt *final* redistricting plans for the state Senate and the state House of Representatives.

Mario Carrera, the commission chair and an unaffiliated voter, announced that, with the help of the Reapportionment Commission staff, he was preparing his own *final* redistricting plans for the two houses of the state legislature.

This was a major development. It meant that, instead of choosing between a Democratic plan or a Republican plan, as had been done in the past, the 2011 commission would have on the table a neutral plan created under the guidance of an unaffiliated voter.

Chairman Carrera further announced that his final plan would reduce the number of Democratic safe seats and Republican safe seats in both the state Senate and the state House of Representatives. These safe seats would be replaced with *competitive* seats that either political party would have a good chance of winning.

THE CARRERA *COMPETITIVE*-SEAT STANDARD

Chairman Mario Carrera decided he would follow the recommendation of his committee that had set a standard for what was and was not a *competitive* legislative district. That standard used the results of the 2010 state treasurer election in Colorado. That had been a close race but had not garnered a great deal of news media attention. In that electoral contest, a relatively-unknown Republican had narrowly defeated the incumbent state treasurer, who was a Democrat.

Under the new Carrera standard, a legislative seat was determined to be a competitive seat if the Democratic candidate received between 45 and 55 percent of the two-party vote in the 2010 state treasurer's race.

While making-up his "Carrera redistricting plans" for the state Senate and state House, Chairman Carrera consulted with both the Democratic and Republican computer experts who had earlier composed the Democratic and Republican redistricting plans. I do not know the extent to which Chairman Carrera responded to the expressed desires of the party professionals.

More important to me, however, was the fact that Chairman Carrera appeared to be using the Reapportionment Commission staff in the preparation of his *final* plans. That suggested the possibility that at least some of the drawing of

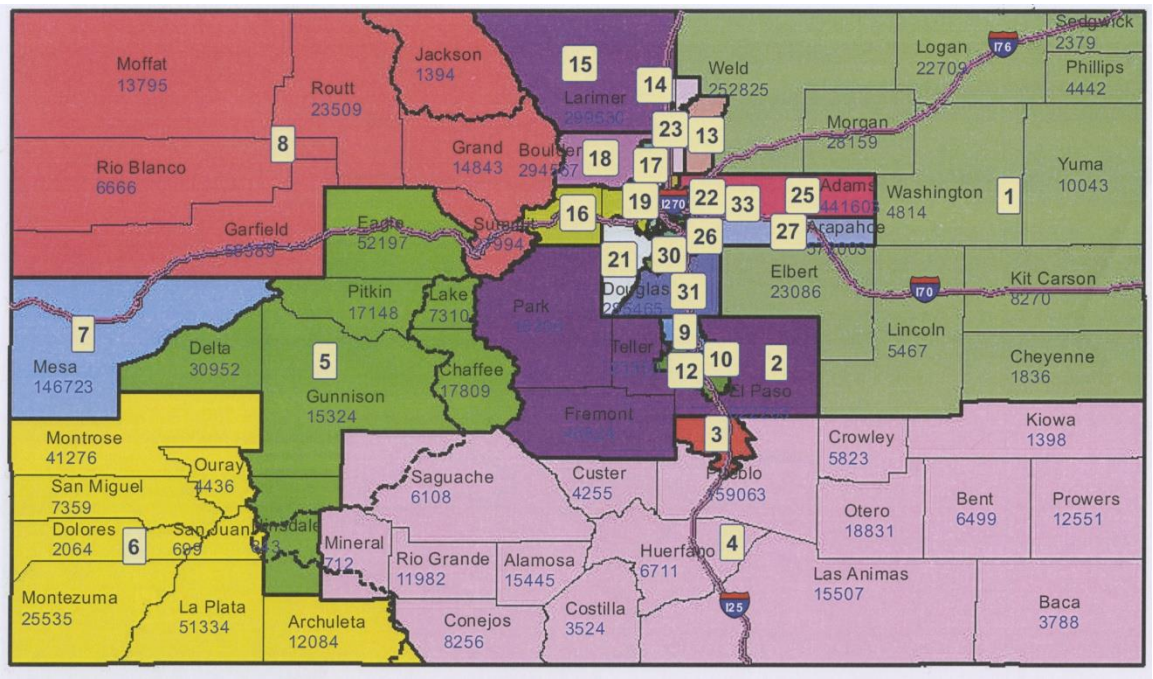
district boundary lines had been done by non-partisan experts on the commission staff.

Because of Chairman Carrera's unique position of power as the swing vote on the commission, all of the Democrats and a number of the Republicans went along with his *final* plan to increase the number of *competitive* districts and reduce the number of safe districts for both political parties.

- The Carrera *final* redistricting plan for the state Senate was adopted 9 to 2 with only Republicans voting in opposition.
- The Carrera *final* redistricting plan for the state House of Representatives was adopted 8 to 3, again with only Republicans in opposition.

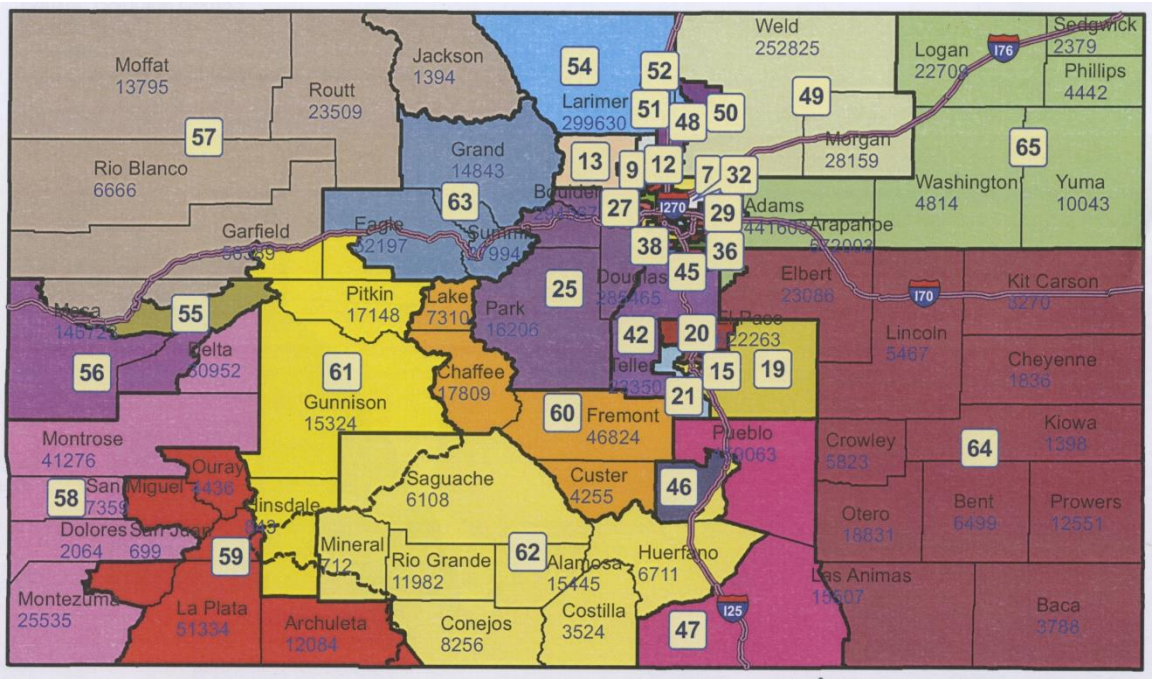
Here is what the *final* state Senate and state House maps looked like:

STATEWIDE *FINAL*
ADOPTED SENATE PLAN



Source: 2011 Colorado Reapportionment Commission Staff

STATEWIDE *FINAL*
ADOPTED HOUSE PLAN



Source: 2011 Colorado Reapportionment Commission Staff

WHO WON?

In line with the "Never Say Win" philosophy that tends to inspire both political parties on redistricting issues, neither the Democrats nor the Republicans claimed victory over the creation of the *final* state Senate and *final* state House of Representatives plans. The Democrats, all of whom voted for both the Senate and House plans, were largely silent on the matter. The Republicans who voted against the plan complained that it did not sufficiently respect county boundary lines, as required by the state constitution.

One of the Republicans who opposed both the state Senate and state House *final* plans was Commissioner Steve Tool. He explained: "I voted against those plans because I felt very strongly that they were unconstitutional because of unnecessary county and city splits. I put much testimony on the record to that point. I based my vote on reading the prior state Supreme Court opinions."[11]

The real winner in the adoption of the *final* plans appeared to be Reapportionment Commission Chairman Mario Carrera. His emphasis on *competitive* districts won him much favorable comment in the news media. The

[11] E-mail, Steve Tool to Robert D. Loevy, December 16, 2011.

Denver Post news story reporting on the commission's *final* plans trumpeted in a front-page, above-the-fold sub-headline: "33 House, Senate seats labeled as competitive.'"[12] A *Denver Post* editorial a few days later ran under the title: "Credit to Carrera for compromise on maps."[13]

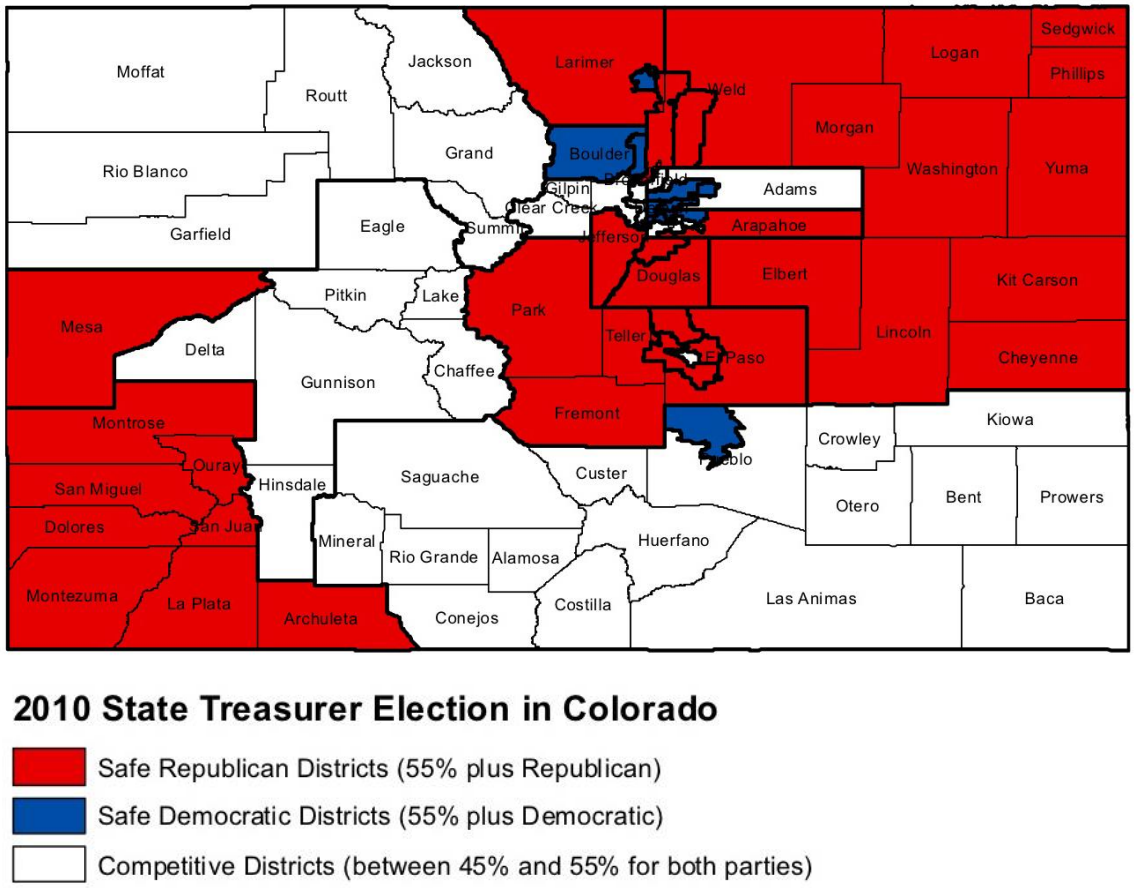
MAPPING *COMPETITIVE* DISTRICTS

Here is a series of maps showing the safe-Democratic, safe-Republican, and *competitive* seats as laid out in the Carrera-inspired *final* plans for the state Senate and the state House of Representatives:

[12] Tim Hoover, "Panel passes district maps," *Denver Post,* September 20, 2011, p. 1A.

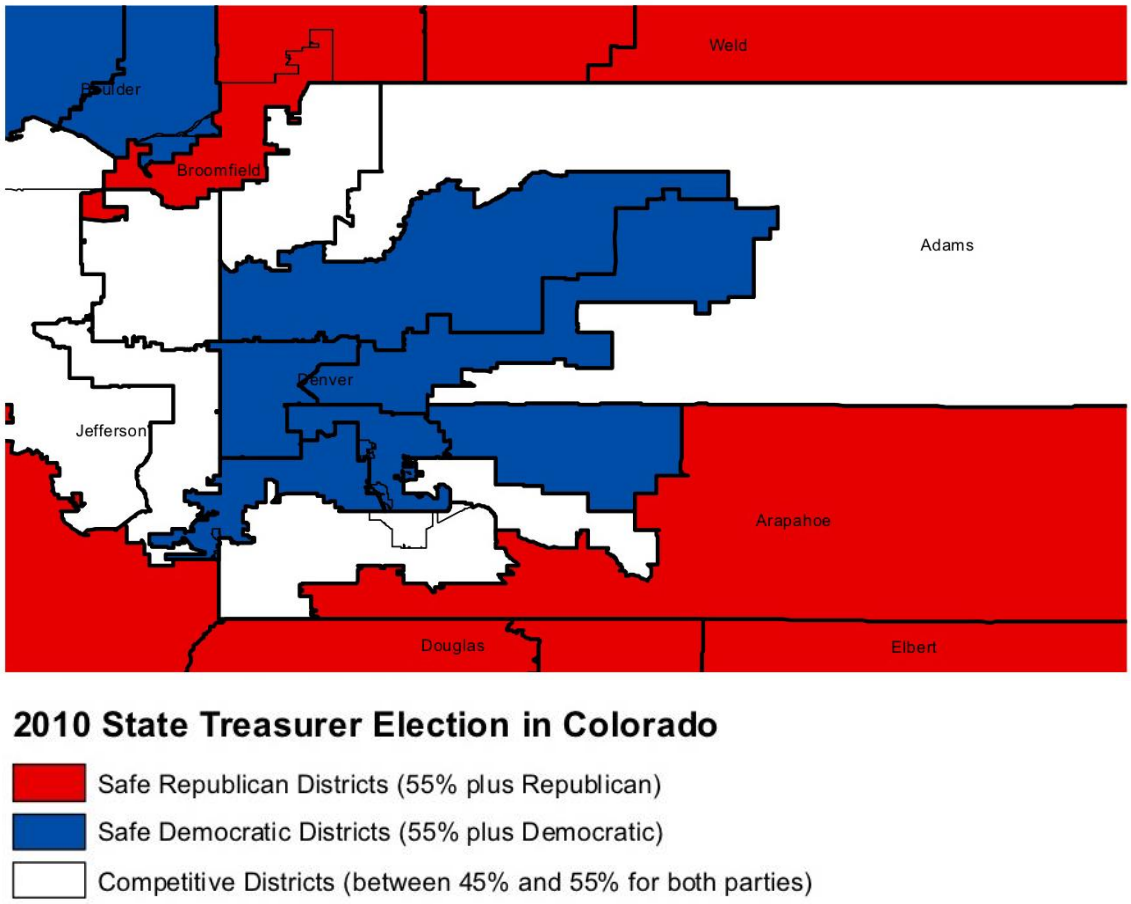
[13] "Credit to Carrera for compromise on maps," *Denver Post,* September 21, 2011, p. 10B.

STATEWIDE
SAFE DISTRICTS AND *COMPETITIVE* DISTRICTS
***FINAL* SENATE PLAN 2011**



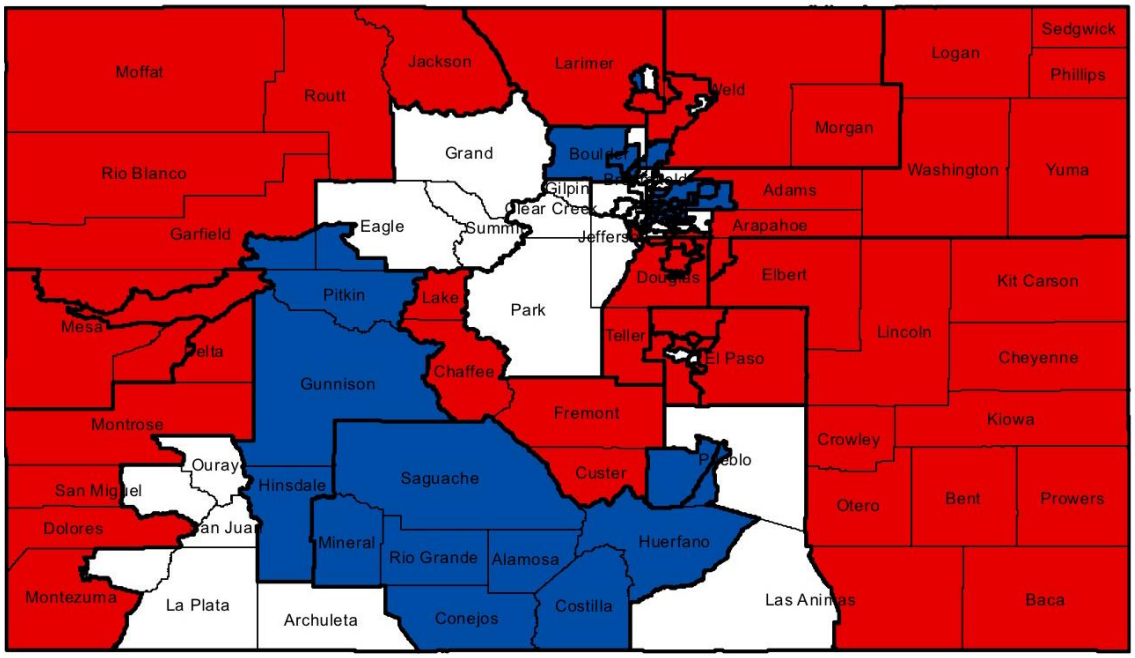
Source: 2011 Colorado Reapportionment Commission Staff

DENVER AREA
SAFE DISTRICTS AND *COMPETITIVE* DISTRICTS
***FINAL* SENATE PLAN 2011**



Source: 2011 Colorado Reapportionment Commission Staff

STATEWIDE
SAFE DISTRICTS AND *COMPETITIVE* DISTRICTS
***FINAL* HOUSE PLAN 2011**



2010 State Treasurer Election in Colorado

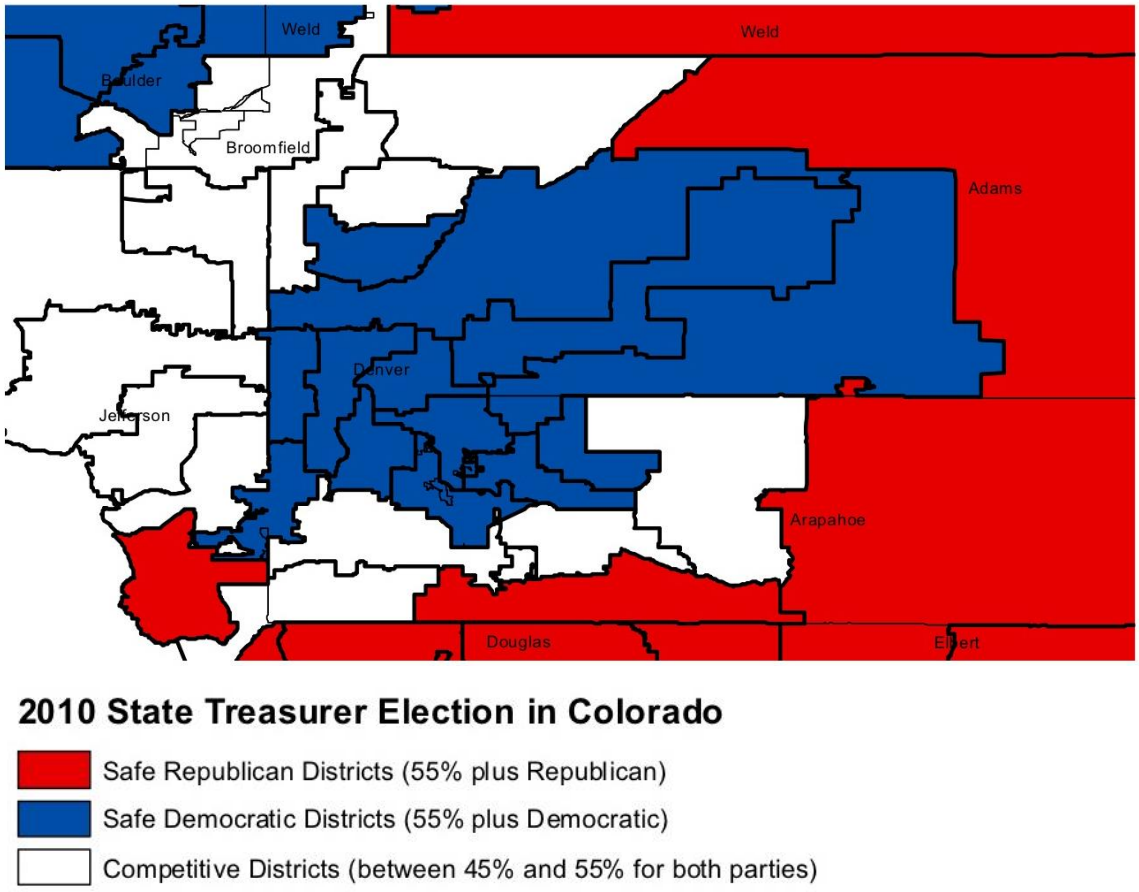
Safe Republican Districts (55% plus Republican)

Safe Democratic Districts (55% plus Democratic)

Competitive Districts (between 45% and 55% for both parties)

Source: 2011 Colorado Reapportionment Commission Staff

DENVER AREA
SAFE DISTRICTS AND *COMPETITIVE* DISTRICTS
***FINAL* HOUSE PLAN 2011**



Source: 2011 Colorado Reapportionment Commission Staff

ON TO THE STATE SUPREME COURT

The work of the 2011 Colorado State Reapportionment Commission was not over, however. The state constitutional provisions governing the redistricting process required that the *final* plans for both the state Senate and the state House of Representatives be sent to the Colorado State Supreme Court for final review as to their constitutionality.

The redistricting plans labeled *final* thus were anything but final.

The commissioners voted out their *final* redistricting plans on September 19, 2001. They received an almost two month vacation from redistricting duties while the state's highest court justices reviewed their work.

CHAPTER ELEVEN

HOW TO GET STEAMROLLERED

The Colorado Supreme Court carefully reviewed the *final* redistricting plans for the state Senate and the state House of Representatives that had been forwarded to it by the 2011 state Reapportionment Commission. The court held public hearings on the two plans, now known to many observers as the Carrera Plans. During the hearings, the Republican Party argued that better plans could be drawn that would have fewer districts splitting county boundary lines and city boundary lines.

In his efforts in his *final* plan to create additional *competitive* legislative districts in Colorado, Reapportionment Commission Chairman Mario Carrera had designed a number of districts that crossed county and city boundary lines. That was necessary to bring together separate groups of Democratic and Republican voters. Obviously, you need almost equal numbers of voters from both major political parties in order to draw a *competitive* district.

The Republicans believed they would get more Republican safe seats in both the state Senate and the state House of Representatives if the state Supreme Court ordered the Reapportionment Commission to follow county and city boundary lines more closely. The number of competitive districts would go down, it was hoped, and the number of Republican safe seats would go up.

In a split decision, the Colorado Supreme Court ruled in favor of the Republicans. It remanded the two *final* plans, the Carrera Plans, back to the Reapportionment Commission. The court ordered the commission to produce new plans for the state Senate and state House that followed county and city boundary lines more closely. The majority opinion noted that the commission could design competitive seats if it wished, but it could only do so after strict standards had been met on honoring county and city boundaries.

The Republicans were generally pleased with the state Supreme Court's decision. The Democrats received the news quietly. Supporters of *competitive* districts were greatly disappointed. State Supreme Count Chief Justice Michael Bender voted against remanding the Carrera Plans back to the commission. He joined a minority opinion arguing that *competitive* districts could at times prevail over city and county boundary line requirements.

Commission Chairman Mario Carrera believed that both political parties had prepared, from the beginning, to eventually argue the state legislative redistricting in court. Carrera noted that two of the Democratic appointees to the commission,

Morgan Carroll and Delores Atencio, were attorneys, as were two of the Republicans, commissioners Mario Nicolais and Rob Witwer.[14]

BACK TO THE PARTISAN DRAWING BOARDS

In a surprise development, Reapportionment Commission Chairman Mario Carrera said he would not be preparing a new set of state Senate and state House redistricting plans that would meet the high court's demand for keeping "counties whole" and "cities whole." Instead of drawing his own plans, as he had done with the *final* plans sent up to the state Supreme Court, Carrera said that this time around he would cast his votes after choosing among plans drawn by the Democrats and the Republicans.

This was bad news for me. It meant the winning plans for the state Senate and state House would be drawn by partisan computer experts, either the Democrats' or the Republicans' computer experts, whose major interest would be gerrymandering in behalf of their political party rather than creating large numbers of *competitive* districts.

The Supreme Court had made its ruling, however, and had to be obeyed. The Democratic and Republican gerrymandering gurus set to work drawing state Senate and state House of Representatives redistricting plans. There had been two sets of previous plans, the *preliminary* plans and the *final* plans. This third set of plans was labeled *resubmitted* plans.

When the 2011 state legislative redistricting process in Colorado was completed, Reapportionment Commission Chair Mario M. Carrera defended his decision to have the two political parties draw the final *resubmitted* maps. He wrote in a letter dated December 16, 2011:

"When the commission received word from the Court on the need to minimize county and city splits, I stayed on course and asked both Republican and Democratic map drawers to recognize the Court's mandate in the following order. The best maps with these items would get consideration for my vote:

-Minimize County and City Splits

-Increase or Maintain Competitive Districts

-Increase or Maintain Majority-Minority Influence Districts [15]

[14] Letter, Mario M. Carrera to Robert D. Loevy, December 16, 2011.

[15] Letter, Mario M. Carrera to Robert D. Loevy, December 16, 2011.

FINAL PROCEDURE FOR DEBATE AND ADOPTION

By this time in the 2011 state legislative redistricting process in Colorado, it was mid-November and would soon be Thanksgiving. The Reapportionment Commission therefore adopted the following schedule for debating and adopting its *resubmitted* plans.

- Each political party would submit all of its *resubmitted* redistricting plans for both houses of the state legislature by noon on the Wednesday before Thanksgiving. This would give the Reapportionment Commission staff all Wednesday afternoon and evening to process the plans (make final maps, compile election data, etc.) With a little luck and hard work, the commission staff might be able to finish all the needed tasks by late Wednesday night and then be able to spend the Thanksgiving holidays with family and friends.
- After the commission staff finished its work, the *resubmitted* redistricting plans would be distributed by e-mail to all eleven reapportionment commissioners by the Friday after Thanksgiving. This would give the commissioners all of Saturday and Sunday after Thanksgiving to review all the Democratic and Republican plans that had been submitted by the Wednesday noon deadline and processed by the commission staff.
- On the Monday after Thanksgiving, the Reapportionment Commission would meet at 11 A.M. to present arguments for the various *resubmitted* redistricting plans, both state Senate and state House, and debate them.
- On the Tuesday after Thanksgiving, the Reapportionment Commission would meet at 11 A.M. to choose by majority vote the *resubmitted* plan for the state Senate and the *resubmitted* plan for the state House of Representatives.

This final procedure for adoption of the *resubmitted* plans appeared both logical and fair to me. I particularly liked that it was designed to accommodate the desires of the commission staff to be able to enjoy some days off for Thanksgiving.

THE GREAT FLAW

As a student and teacher of Colorado state and local government, I knew that this would be a critical moment in the 2011 state legislative redistricting process. There is a great flaw in the state legislative redistricting process in Colorado, and it is simply this:

A political party with a six vote majority at the final meeting of the Reapportionment Commission can adopt any plan it wants to, no matter how loaded that plan is with gerrymandering and how irrelevant it is to all the previous work of the commission.

This flaw was more than evident ten-years earlier in the final days of the 2001 Reapportionment Commission. The Democrats had a six-vote majority and used it to vote in a last-minute plan that was strongly gerrymandered in favor of the Democrats. I contend that this Democratic-leaning legislative redistricting plan, adopted in 2001 but to be in effect for the following decade, was a major factor in the Democrats being able to take control of both houses of the Colorado state legislature in the 2004 elections.

So, as I sat down to review the nine redistricting plans (four for the state Senate, five for the state House) that had been turned in by the Wednesday noon deadline, I was expecting to see a brand-new Democratic plan filled with Democratic gerrymanders, just as had happened back in 2001.

MY WEEKEND PLAN REVIEW

I devoted all afternoon on the Saturday after Thanksgiving to reviewing the five Colorado House of Representatives plans that had been turned in by the Wednesday noon deadline. An early surprise was that there was only one Democratic plan for the state House. In previous rounds of plan submissions, the Democrats had submitted multiple numbers of plans and made it a mystery as to which plan they would attempt to get adopted during the commission meeting.

It took me about an hour to process each plan. I performed my routine mathematical calculation that told me the number of safe-Democratic, safe-Republican, and *competitive* seats for each plan. I also checked various locations on the maps where the two political parties were arguing over what should be done. I also perused each plan to see if major wishes expressed by citizens attending the statewide public hearings had been met.

On the Sunday after Thanksgiving, forsaking the Denver Broncos professional football game, I performed my little routine on the four plans proposed for the state Senate. Once again, the Democrats had turned in only one state Senate plan.

There was something very puzzling about the Democrats' *resubmitted* plans for the state Senate and state House. They did not make any sense. The state Supreme Court had called for fewer county splits and city splits, but both Democratic plans appeared to be keeping all the most controversial county splits

and city splits. It was almost as if the Democrats had decided to draw state Senate and state House redistricting plans that defied the Supreme Court!

Something else did not make sense either. Every e-mail I had received and every discussion I had with my fellow commissioners or the commission staff had emphasized the finality of the Wednesday before Thanksgiving noon deadline for submitting new plans. Were the Democrats really going to go with just these two obviously deficient plans, one for the state Senate and one for the state House? They had to have something up their sleeve, but I could not think what it would be or how they planned to do it.

I drove up to Denver on the Monday after Thanksgiving anticipating a very interesting and exciting meeting of the 2011 Colorado Reapportionment Commission.

THE "LATE" DEMOCRATIC *RESUBMITTED* PLANS

The mystery of the Democratic redistricting maps was quickly solved. When I arrived in Denver on Monday, November 28, 2011, for that day's meeting of the Reapportionment Commission, I was informed by my fellow Republican commissioners that the Democrats had submitted two brand-new maps, one for the state Senate and one for the state House.

Printed copies of the two new Democratic maps along with supporting statistical data were not available because the Reapportionment Commission staff had not had time to process the new maps. As the meeting came to order at 11 A.M., I knew the two new Democratic maps existed but had not been provided with printed copies of them.

Obviously, there was no opportunity for me to carry out my customary mathematical calculations on the new maps and form an intelligent opinion about them.

Even when printed copies of the new Democratic maps and the supporting statistical data became available, I could not review them because the Reapportionment Commission was in session. I had to pay attention to the debate and cast my votes on a variety of important motions.

DIFFERENT E-MAILS FOR DIFFERENT FOLKS

It turned out that e-mails to Republicans had consistently maintained the Wednesday before Thanksgiving deadline for turning in new maps but that an e-mail to one of the Democrats had said the deadline was not rigid and late maps

could be turned in. The e-mail to that one Democrat allowing new maps was not sent to any of the five Republican members of the commission.[16]

The facts of the case were debated, but in the end the only thing that mattered was that, in a pair of 6 to 5 party-line votes with Chairman Mario Carrera voting with the Democrats, the two new Democratic *resubmitted* maps were accepted on to the commission's agenda.

I know one thing for certain. I went through the entire Thanksgiving weekend thinking there was no question but that the noon Wednesday before Thanksgiving deadline was the most final of deadlines.

GETTING THE OTHER TEAM'S PLAYBOOK

I was particularly upset by the advantage that turning in late maps had given to the Democrats. From Friday of Thanksgiving on, the Democrats were able to study and review all of the Republican maps that had been turned in by the Wednesday deadline and distributed to commission members by e-mail. The Democrats thus had the opportunity to use the information in the Republican maps to design a better final map of their own. But the Republicans were never allowed to study and respond to the new and late *resubmitted* Democratic maps.

As I told the *Colorado Statesman*: "[The Democrats] outfoxed us…. They had five days to look at our map and design a map that was, in many ways, better. It's like a football team was handed [the other team's] playbook five days before they played the game next Saturday."[17]

I defined the new and after-deadline Democratic maps as better than the Republican maps because they split fewer counties and cities, the main issue over which the state Supreme Court had remanded the Carrera maps back to the commission for improvement.

A DIFFERING VIEW

Commission Chair Mario M. Carrera saw the issue of the disputed deadline for turning in new maps as mainly a result of the Republicans being less able than the Democrats at keeping up with commission procedures and operations. He reasoned:

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[16] For a good recap of the differing e-mails issue, see Tim Hoover, "GOP says timeline differed," *Denver Post*, December 1, 2011, p. 1B.

[17] Ernest Luning, "Dems win political game of reapportionment," *Colorado Statesman*, December 2, 2011.

"Finally, looking back now, the issue of the e-mails and deadlines was partly poor communication during the Thanksgiving Holiday crunch, a set of assumptions on established [commission] practices, and also a contention that you pointed out early in the process. There was a lack of a clear vision, strategy, and organization by Republicans…attempting to influence the process. From my perspective, the burden of responsibility and possible reflection to improve remains mostly with the latter [the Republicans].[18]

DECAPITATING GERRYMANDERING

In my view, the worst aspect of the surprise Democratic maps was that they gerrymandered ten incumbent Republicans in the state Senate and the state House into legislative districts with other Republican incumbents. This particular form of gerrymandering is particularly politically lethal because, when two Republicans are gerrymandered into the same district, either one of them retires or the two of them are forced to run against each other in a Republican primary. Whichever happens, five Republican incumbents lose their seats in the state legislature and, in some cases, have their political careers ended.

I call this particular technique "decapitating gerrymandering," because it has the effect of ending legislative careers, not by a vote of the people, but by a highly-criticized form of gerrymandering carried out by the opposition political party.

There is an honorable way for a political party to defeat an opposing party's state legislators. It is by recruiting strong candidates, raising money to finance their campaigns, holding political rallies, buying television advertising, and all the other widely accepted methods of electing candidates to office. In this honorable method, the voters decide which party's candidate will represent them in the state legislature.

The dishonorable way to defeat partisan opponents is by gerrymandering them into legislative seats occupied by one of their fellow political party members. Such an action is patently undemocratic. It terminates occupying a political office by a six-vote majority on the Reapportionment Commission rather than by a vote of the people.

AN ATTACK ON REPUBLICAN LEGISLATIVE LEADERS

Particularly upsetting to me was the fact that the last-minute decapitating gerrymanders by the Democrats on the 2011 Reapportionment Commission were

[18] Letter, Mario M. Carrera to Robert D. Loevy, December 16, 2011.

aimed squarely at the Republican leadership in both the Colorado state Senate and the Colorado state House of Representatives. For instance:

- Senate Minority Leader Bill Cadman of Colorado Springs was drawn into the same district as Republican Senator Keith King.
- House Majority Leader Amy Stephens, from El Paso County north of Colorado Springs, was gerrymandered into Republican Marsha Looper's district.
- House Republican Whip B. J. Nikkel of Loveland suddenly found herself occupying the same district as Republican state Representative Brian DelGrosso.[19]

Decapitating gerrymandering is bad enough when practiced on ordinary state legislators. It was particularly damaging when aimed at legislators who constituted about 50 percent of the top Republican leadership in both houses of the Colorado legislature in 2011.

A limited number of Democrats, four in all, were drawn into seats with other Democrats, but their number was small when compared with what was done to the Republicans. The fact was that more than 20 percent of the Republican members of the Colorado legislature, every one out of five, were drawn into seats held by other Republicans.

CUTTING OFF ALL FURTHER AMENDMENTS

For about three hours at the Monday, November 28, 2011, meeting of the Reapportionment Commission, the Democrats and the Republicans wrangled over the coercive procedural constraints the Democrats were forcing on the Republicans with their 6 to 5 vote majority:

- The Republicans pressed for allowing the Republicans to introduce new and late plans, as the Democrats had done, and holding the final vote later in the week. The Democrats rejected the idea.
- The Republicans asked to be able to amend the two new Democratic maps so that their most obnoxious characteristic, gerrymandering Republicans into legislative seats with other Republicans, could be removed. Such amendments might produce two final maps that all eleven commissioners could vote for. The Democrats were unresponsive.

[19] For a good rundown on the various legislative seats in which decapitating gerrymandering took place, see Tim Hoover, "Panel Oks Dems' map," *Denver* Post, November 30, 2011, p. 1A. Also see Tim Hoover, "GOP: District lines spiteful," *Denver Post*, December 3, 2011, p. 1B.

Finally, at about 3:30 P.M., the Democrats moved to cut off any further new maps or amendments to the existing maps. When this motion was passed by a 6 to 5 vote, the battle was over. The Democrats had successfully:

1. Wasted Republican time with decoy maps.
2. Introduced two brand-new maps after the Wednesday-after-Thanksgiving deadline and voted them on to the agenda.
3. Cut off the ability of the Republicans to introduce any new maps or amendments to the Democrats' maps.

On Tuesday, November 29, 2011, the Reapportionment Commission met at 11 A.M. In a meeting that lasted less than one-hour, the Democrats adopted both their new *resubmitted* state Senate map and their new *resubmitted* state House of Representatives map by duplicate margins of 6 votes to 5 votes.

PARTISAN REACTION

As would be expected, Republican political leaders in Colorado were quick to criticize and express outrage over the blatant partisanship and the extreme form of gerrymandering contained in the newly-adopted Democratic *resubmitted* plans:

- State Senator Keith King, one of the Republicans gerrymandered into a seat with another Republican senator, said: "This is the most unbelievable exercise I have ever seen in my 12 years in the legislature. This is the ugly side of partisan politics."[20]
- State Representative Amy Stephens, the majority leader (Republican) in the House, had also been gerrymandered into a seat with a Republican colleague. She called the Democrats' *resubmitted* plans a "political fiasco." She added: "We don't have any historic precedence for this. That's why it's so egregious."[21] Stephens also said the Democratic maps were "the gold standard of gerrymandering…. It hurts the voters. It hurts everybody. That's why you have people screaming for transparency when shenanigans like this go on."[22]
- State Representative B. J. Nikkel, the House Republican whip, accused the Democrats of being vindictive when they drew her into a district with another Republican. She explained: "They did go to pretty extreme lengths to go west and south of Loveland to carve me out of my district.

[20] John Schroyer, "Republicans Would Face Each Other In Primaries," *Colorado Springs Gazette*, November 30, 2011, p. A3.
[21] *Ibid.*
[22] Ernest Luning, "Open season on open seats for 2012 legislative races," *Colorado Statesman*, December 9, 2011.

There was no sensible or logical reason they would have needed to carve my precinct out…. It seems to be more spiteful than anything else."[23]

The Democrats, to their credit, were quick to answer the Republicans back. State Senator Morgan Carroll, a Democrat on the Reapportionment Commission from Aurora, argued that so many incumbents were drawn into the same legislative districts in order to reduce county and city splits. She noted: "Many of the incumbents we drew around (in the first set [Carrera set] of maps) forced additional city and county splits. It's just a fact."

Senator Carroll also noted that Democrats as well as Republicans were drawn into districts with other legislators. "It is just fiction to pretend we are only going to cry about Republicans being drawn together," she added. "There are Democrats and Republicans who are both unhappy about this, and I don't blame them."[24]

CHAIRMAN CARRERA'S RESPONSE

Commission Chairman Mario M. Carrera saw the Republicans as having brought the evils of decapitating gerrymandering down upon themselves. He noted that it was the Republican Party that challenged the *final* plans [Carrera plans] before the Colorado Supreme Court, even though both those plans (state Senate and state House) had received bi-partisan support when being passed by the Reapportionment Commission.

"Regrettably, in my opinion," Carrera wrote, "the knee-jerk reaction [of] … the Republican challenge via the Court specifically led to … a self-guillotining move." Carrera explained:

"Immediately following the Court opinion, I requested from our commission non-partisan staff an analysis with the commission's bi-partisan *final* plans (Carrera plans) in mind. It was the Republican Colorado Springs city splits challenge to our bi-partisan maps that forced the incumbency issue adversely affecting Republicans…. So the decapitating gerrymander was self-induced [by the Republicans] in order to meet the Court's mandate on the resubmission."[25]

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[23] Tim Hoover, "District lines spiteful," *Denver Post*, December 3, 2011, p. 1B.
[24] *Ibid.*
[25] Letter, Mario M. Carrera to Robert D. Loevy, December 16, 2011.

INCUMBENT COLORADO STATE LEGISLATORS DRAWN INTO THE SAME DISTRICT – DEMOCRATIC *RESUBMITTED* PLANS

Listed below are only those seats where sitting legislators were eligible to run against each other in the November 2012 elections. Doubled-up seats where one of the incumbent legislators was term limited or had announced plans not to run for reelection were not included.[26]

Colorado House of Representatives

Clare Levy, D-Boulder, with Randy Baumgardner, R-Hot Sulphur Springs

Majority Leader Amy Stephens, R-Monument, with state Rep. Marsha Looper, R-Calhan

Ken Summers, R-Lakewood, and Andy Kerr, D-Lakewood, with Max Tyler, D-Lakewood

Majority Whip B.J. Nikkel, R-Loveland, with Brian DelGrosso, R-Loveland

Ray Scott, R-Grand Junction, with Laura Bradford, R-Grand Junction

Jon Becker, R-Yuma, with Jerry Sonnenberg, R-Sterling

Colorado Senate

Minority Leader Bill Cadman, R-Colorado Springs, with Keith King, R-Colorado Springs

Jeanne Nicholson, D-Black Hawk, with Tim Neville, R-Littleton. (Because of sequencing of four-year state Senate terms of office, Neville must leave the legislature after the 2012 session and cannot run against Nicholson until her term is up in 2014.)

Totals

Republicans: 13 **Democrats: 4**

Republican Leaders: 3 **Democratic Leaders: 0**

[26] I developed this chart from information provided in the *Colorado Statesman*. See Ernest Luning, "Open season for open seats for 2012 legislative races," *Colorado Statesman*, December 9, 2011.

HIDDEN TREASURE

On Monday, November 28, 2011, the Reapportionment Commission adjourned that day's meeting at about 4 P.M. The Democrats had accomplished all they needed to do to guarantee passage of their two *resubmitted* maps the following morning.

I drove home from Denver to Colorado Springs, ate a nice dinner, and then at last had an opportunity to study in detail the two new and late Democratic maps. It was going to be an academic exercise with no real purpose, of course, because those two maps, one for the state Senate and one for the state House, were going to be ramrodded through the Reapportionment Commission by a 6-5 vote the next day.

As usual, I made it a point to run my mathematical test, based on the 2010 statewide treasurer race in Colorado, which revealed to me the number of Democratic safe seats, Republican safe seats, and *competitive* seats.

The results astounded me. Although the two Democratic maps were loaded with districts that gerrymandered large numbers of Republicans into seats with other Republicans, the maps also were packed with *competitive* legislative districts. In fact, by my particular form of reckoning, the Democratic *resubmitted* maps contained a total of 38 competitive districts, five more than the 33 in the Carrera maps that had been remanded back to the Reapportionment Commission by the state Supreme Court.

SAFE SEATS AND *COMPETITIVE* SEATS: STATE SENATE AND STATE HOUSE OF REPRESENTATIVES *RESUBMITTED* PLANS

State House of Representatives Plans:

Number	***Political Party***	***Safe Dem***	***Safe Rep***	***Competitive***
A v3	Republican	21	26	18
F v1	Democratic	18	23	24

State Senate Plans:

Number	***Political Party***	***Safe Dem***	***Safe Rep***	***Competitive***
C v2	Republican	11	14	10
E v1	Democratic	9	12	14

State House and State Senate Plans Combined:

Number	***Political Party***	***Safe Dem***	***Safe Rep***	***Competitive***
	Republican	32	40	28
	Democratic	27	35	38

Source: Robert D. Loevy

The 38 *competitive* seats in the two Democratic plans that were being railroaded through the commission compared particularly well with the number in the Republican maps (both of which had been submitted by the Wednesday noon deadline). The Republican maps, counting both houses of the state legislature, contained only 28 competitive seats, 10 fewer than the Democratic maps provided.

Even more amazing was the comparison of safe-Democratic seats to safe-Republican seats in the two new and late Democratic plans. The Republicans were granted 35 safe-seats to only 27 for the Democrats, an eight safe-seat advantage for the Republicans. The two Democratic maps put plenty of Republicans into the same seats as other Republicans, but they gave the Republicans a distinct eight-seat advantage where safe seats were concerned.

I have no knowledge of exactly what happened between Reapportionment Commission Chairman Mario Carrera and the Democrats on the commission. My inclination, however, is to give Chairman Carrera credit for the high number of 38 *competitive* seats in the two Democratic *resubmitted* plans. Comments that Chairman Carrera gave to the news media following the adoption of the two Democratic maps seemed to bear out this inclination.

The *Associated Press* reported: "The maps voted on Tuesday also include more districts that are considered competitive than the previous proposals, Carrera said. Thirty-eight districts would be considered competitive – 14 in the Senate and 24 in the House."[27]

Having been a major supporter of *competitive* legislative districts during my tenure on the 2011 Reapportionment Commission, I was very impressed that the two Democratic *resubmitted* plans contained 38 *competitive* seats. I sincerely regretted that such a strong set of maps for *competitive* seats had been combined with what I considered to be the worst gerrymandering in Colorado history. That, of course, was the forcing of so many Republicans into legislative districts with other sitting legislators.

As I told the *Colorado Statesman*: "That's why I'm so angry about the procedure, because the Democrats have a good map – I would describe it as the best map – in terms of *competitiveness*. Then to turn around and pull procedural pyrotechnics … [and jam] Republicans into the same districts - that's what has upset me."[28]

I later learned that the meeting I had with Commission Chair Mario M. Carrera the previous July had been a critical step in moving the 2011 Reapportionment Commission in the direction of adopting an increased number of *competitive* seats. Chairman Carrera wrote to me in a letter dated December 16, 2011:

"You should know that it was your service as Commissioner and our candid conversation in July where the seeds were planted for those 38 competitive seats now approved by our Colorado Supreme Court. For that, you have my profound gratitude, and the People of Colorado remain well served."[29]

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[27] Ivan Moreno, "Dems' Plans Get OK'd," *Colorado Springs Gazette*, November 30, 2011, p. A3.

[28] Ernest Luning, "Dems win political game of reapportionment," *Colorado Statesman*, December 2, 2011.

[29] Letter, Mario M. Carrera to Robert D. Loevy, December 16, 2011.

STATE SUPREME COURT APPROVAL

Similar to the *final* plans (Carrera Plans), the *resubmitted* plans for the state Senate and state House, adopted by the Democrats by twin 6 to 5 majorities, had to be submitted to the Colorado Supreme Court for final approval.

On Monday, December 12, 2011, the state Supreme Court affirmed the Democratic state Senate and state House plans. They would provide the district lines, gerrymanders, and competitive districts for the following ten years of state legislative elections.

CHAPTER TWELVE

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

1. The Colorado State Reapportionment Amendment of 1974 has been a total failure. The amendment was adopted with the express purpose of reducing political party control over the legislative redistricting process and putting an end to gerrymandering. The reality in 2011, however, was that one of Colorado's two major political parties, the Democrats, totally dominated the process and instituted one of the severest gerrymanders in state political history.

2. The use of computers in the redistricting process has enabled the two major political parties, when one or the other gains control of the Reapportionment Commission, to gerrymander with great skill and gain a strong advantage over the other political party in legislative elections.

3. The actual drawing of legislative district lines is done by computer experts employed in behalf of one or the other of the two major political parties. The redistricting maps introduced for consideration by the Reapportionment Commission thus are almost always drawn by party computer experts rather than the commissioners themselves. In the case of the Republican Party in Colorado in 2011, the computer experts worked for an independent interest group rather than the party itself. This permitted the operation and finances of the Republican redistricting effort to be shielded from public view.

4. The standards for redistricting set out in the Colorado state constitution – compactness, reduced crossing of county boundary lines, reduced crossing of city boundary lines, keeping communities of interest together, etc. – are important, but they are mainly used to cloak political party maneuvers to dominate state legislative elections. These redistricting standards do, however, somewhat limit the ability of the two major political parties to freely gerrymander.

5. Because voters make similar housing choices when purchasing a main residence, large areas of Colorado are inhabited by voters with similar demographic characteristics. As a result, a considerable number of

legislative districts in Colorado have to be drawn as safe-Democratic seats or safe-Republican seats. Only about one-third of the legislative districts in the state can be drawn to be *competitive* seats and swing between the two major political parties from one election to another.

6. The 2011 Colorado state Reapportionment Commission was unique in its partisan character because of the way in which the 2011 commission was appointed. Democratic Governor John Hickenlooper and Colorado Chief Justice Michael Bender did not just appoint Democrats to the commission. They appointed Republicans and one unaffiliated voter. The result was an evenly-balanced commission with five Democrats, five Republicans, and the one unaffiliated voter serving as chair of the commission and casting the deciding vote between the two major political parties.

7. The evenly-balanced Reapportionment Commission created in 2011 by Governor Hickenlooper and Colorado Supreme Court Justice Bender was not likely to be repeated in the appointment of future Reapportionment Commissions.

8. Making use of his unusual position of power over the commission, Chairman Mario Carrera decided to push for an increased number of *competitive* state Senate and state House of Representatives districts in the 2011 state legislative redistricting in Colorado.

9. Perhaps the most unusual characteristic of the 2011 Reapportionment Commission was that the chair of the commission was an unaffiliated voter. This raises the question: "When else in Colorado political party history has an unaffiliated voter wielded so much power over a political process that traditionally has been dominated by Democrats or Republicans or both?"

10. In the end, the evenly-balanced Reapportionment Commission was dominated by the Democrats by a six-to-five vote majority. That majority produced a final plan which produced three somewhat contradictory results:
    a. It created a total of 38 *competitive* seats.
    b. It gerrymandered ten Republican legislators into seats with other incumbent Republican legislators.

c. It provided for 35 Republican safe seats and 27 Democratic safe seats, eight more safe seats for the Republicans than for the Democrats.

11. The greatest flaw of the Colorado Reapportionment Commission is that, on the final days that the commission is in session, whichever political party has a six-vote majority can do whatever it wants and always does. These final actions can include procedural irregularities as well as instituting last minute gerrymanders that are extremely damaging to the other political party.

12. When a six-vote majority introduces brand-new redistricting plans at the final meetings of the Reapportionment Commission, it makes a mockery of the one-month long series of public hearings required of the Commission by the state constitution. Citizen concerns expressed in good faith at these hearings are often cast aside as these last-minute, gerrymander-loaded plans are rushed to adoption. As Commission Chairman Mario Carrera expressed it: "It is a dangerous precedent to ask for public input and opinion and then not allow for its reflection in the final document."[30]

RECOMMENDATIONS

1. Change the name of the Colorado State Reapportionment Commission to the Colorado State *Redistricting* Commission. The commission should be named for what it is actually doing.

2. Have the 11 members of the Redistricting Commission appointed by the Chief Justice of the state Supreme Court of Colorado. The system by which judges are appointed in Colorado (the Missouri Plan) is basically non-partisan and is renowned for producing high quality judicial leadership. Putting appointment of the Redistricting Commission exclusively in the Chief Justice holds the best promise of getting a truly non-partisan legislative redistricting process in Colorado.

3. Require the Chief Justice to appoint:
   Five Democrats
   Five Republicans

[30] Letter, Mario M. Carrera to Robert D. Loevy, December 16, 2011.

One unaffiliated voter to serve as commission chair. This would recreate in future redistricting commissions the beneficial partisan situation created by Governor Hickenlooper and state Chief Justice Bender in 2011.

4. Require the adoption of any and all redistricting maps by a two-thirds majority (8 out of 11 votes). The two-thirds majority also would be required for all procedural votes. This would guarantee protection for both political parties from gerrymandering undertaken by a simple majority of only six out of eleven votes. In other words, a minimum of two votes from both political parties would be necessary to adopt any redistricting plan.

5. In those instances where the Redistricting Commission cannot reach agreement on a state Senate or a state House plan for a particular portion of the state, the Chief Justice of the Colorado Supreme Court shall develop the final plan.

6. As is done under the present constitutional amendment, the Colorado Supreme Court will give final approval to the state Senate and state House of Representatives plans produced by the commission.

7. Provide highly-trained computer experts at state expense to make the various redistricting maps for the various members of the commission. This will prevent the commission from adopting maps produced by political party computer experts which are filled with hidden gerrymanders. These state-employed computer experts should be under the administrative direction of the Office of Legislative Legal Services operating as the staff of the Reapportionment Commission.

8. Maintain the constitutional requirements to have state legislative districts that are:
    i. Compact
    ii. Respect county boundary lines
    iii. Respect city boundary lines

   These requirements reduce the likelihood of gerrymandering and help represent the people of Colorado geographically.

9. Remove the constitutional requirement to have state legislative districts that represent:

i. Communities of interest

Communities of interest are likely to be artificially invented for the sole purpose of advancing political party advantage in redistricting.