



### **MUTUAL POLITICAL DISARMAMENT: HOW TWO REFORM GROUPS OVERCAME DIFFERENCES TO CREATE FAIRER DISTRICTS IN COLORADO, 2015–2021**

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#### SYNOPSIS

In Colorado, as in most US states, politicians long controlled the process of drawing federal- and state-level legislative districts and manipulated district boundaries to secure political advantage. Dismayed by the tug-of-war that the process unleashed during the 2001 and 2011 redistricting cycles, in March 2015 a bipartisan group of former legislators assembled a coalition to promote adoption of an independent citizen redistricting commission. The coalition could pursue two routes to enactment: either it could get its proposal onto the ballot through Colorado’s citizen initiative process, or it could try to win support in both chambers of the state legislature. Both routes were difficult, and success depended on offering a model that would appeal to political heavyweights, advocacy groups, both major parties, and a growing contingent of politically independent voters. The Democratic Party was all but certain to control the next redistricting process, and it would not give up that advantage without a fight. To succeed, Fair Districts Colorado would have to cooperate and compromise with the party’s progressive wing. After collaborating with progressives to create a shared proposal and after launching a statewide communications campaign, well-connected coalition members were able to convince all members of both of the legislative chambers to put two constitutional amendments for an independent redistricting process in front of voters, who approved them in a landslide in 2018. In 2021, the inaugural Colorado Independent Congressional and Legislative Redistricting Commissions convened and created maps that scored well on metrics of competitiveness and representation despite having to work under challenging time constraints as well as pandemic-related logistical complications.

## INTRODUCTION

During the final week of January 2018, members of two government reform coalitions gathered in Denver, Colorado. Centrist group Fair Districts Colorado and liberal-leaning coalition People Not Politicians had each separately drafted proposals for independent commissions to oversee redistricting—a process involving the redrawing of state and congressional electoral districts after the decennial national census. The aim was to curtail a system that authorized the party with the largest number of seats in the legislature to configure boundaries that preserved its own political power. However, because of Colorado’s laws on competing initiatives, the groups had to negotiate a version both could accept—or risk failure.<sup>1</sup>

The mood in the room was uneasy. Businessman Kent Thiry recalled: “When people walked in that day, they wouldn’t even shake hands. I mean, in some cases, they knew they hated one another, but they had never met.”

Tensions ran deep. Just two years earlier, several activists who later allied with People Not Politicians had challenged the legality of Fair Districts’ proposed redistricting amendment at the state supreme court—and won, barring the amendment from the 2016 ballot. The decision forced Fair Districts to rework its text and its strategy. Now, in 2018, People Not Politicians had introduced rival proposals.

Because Colorado was a swing state in national elections, redistricting was always hard-fought, with Republicans and Democrats angling to craft district maps that would benefit their own party. However, with shifts in the state’s political climate, an opening for reform had appeared, and both People Not Politicians and Fair Districts sought to capitalize on the opportunity.

When it became clear that neither coalition was going to withdraw its proposals, Bernie Buescher, a former Colorado secretary of state and founder of Fair Districts, reached out to attorney Mark Grueskin, a leading member of People Not Politicians. The two coalition leaders negotiated the terms of an in-person meeting between their teams, with the aim of finding a way their ideas could move forward.

Even if the groups found common ground, they would face an uphill battle to place a unity proposal on the ballot. There were two possible routes, neither of them easy to navigate. One was to secure approval from the state’s Initiatives and Title Board before a looming April 2018 deadline and then begin an expensive signature-gathering campaign to qualify the text for the November election. The alternative was to convince at least two-thirds of each chamber in the state’s bicameral—and divided—legislature to support the proposal, an approach that would require politicians to cede control over a process that gave them a political advantage.

The stakes were high. The meeting of the coalitions would determine whether the two groups could create a legally sound compromise proposal acceptable to the rival reformers at the table, to influential Democratic and Republican leaders, and to the voting public.

## THE CHALLENGE

In the United States, where most elected officials are selected in plurality-winner elections held in single-member districts, the manipulation of geographic boundaries for partisan advantage—or gerrymandering—had been a problem since the foundation of the republic, when the term was originally coined.<sup>2</sup> In 1812, the *Boston Gazette* knitted the name of Massachusetts governor Elbridge Gerry with the word *salamander*, a lizardlike amphibian, to describe the shape of boundaries Gerry had signed into law. By the early 2000s, two centuries later, the practice had become entrenched in the American political system and, with the advent of new technologies, increasingly sophisticated in its execution, thereby attracting increasing levels of ire from all corners of the political spectrum.

With rare exceptions, the act of redistricting of federal congressional districts and state legislative maps was the responsibility of state legislators, who had intrinsic conflicts of interest in the matter. Partisan redistricting made it possible for incumbent lawmakers to protect themselves and their parties by redrawing maps in ways that advantaged or disadvantaged members of one party or another at the expense of fair representation.

In a gerrymandered system, political outcomes were essentially predetermined. Gerrymandering reduced the ability of a state's minority groups or parties to have real stakes in the legislative process by strategically dividing communities into different districts in which they would have reduced shares of the vote or by packing communities all into a single district, thereby diluting their overall voting power.<sup>3</sup> Politicians in the resulting so-called safe seats were at low risk of being ousted by candidates who represented viewpoints closer to the statewide political median. In short, the majority party in a state legislature could pick and choose the voters in their districts to best suit their reelection chances.<sup>4</sup> By the twenty-first century, new data analysis techniques had made these calculations much easier than they were in 1812, and had facilitated extreme gerrymandering by partisan legislators.<sup>5</sup>

Colorado was no exception to the national pattern. Its state legislature was solely responsible for creating congressional districts, and although a constitutional amendment adopted by Colorado voters in 1974 required the bipartisan Colorado Reapportionment Commission to draw state legislative maps, that body was by no means insulated from political maneuvering (text box 1).<sup>6</sup>

Colorado had no shortage of well-publicized controversies regarding redistricting. In 2003, two years after the previous redistricting cycle, the Republican-led General Assembly enacted what became known as the “midnight gerrymander.”<sup>7</sup> As the *Rocky Mountain News* reported, “The debate was so rancorous that lawmakers met in face-to-face shouting matches, an upset staffer wept during a hearing and Democrats were barred from speaking.”<sup>8</sup> The swiftly passed new set of congressional maps, engineered to benefit Republicans, won support on a party-line vote, but it was ultimately deemed unconstitutional by

### **Text Box 1: The Colorado Legislative Reapportionment Commission**

Created by constitutional amendment in 1974, the Colorado Legislative Reapportionment Commission oversaw the drawing of district maps for the Colorado General Assembly in 1981, 1991, 2001, and 2011. Thereafter, the assembly retained the power to draw congressional districts until adoption of the Colorado Independent Redistricting Commissions in 2018.

Each cycle, the commission was required to have 11 members: 1 selected by each of the legislative majority and minority leaders (4 in total), 3 appointed by the governor, and 4 appointed by the chief justice of the Colorado Supreme Court.

Certain restrictions applied to the commission: No more than four members could be legislators, and no more than six could be members of the same political party. Despite those stipulations, a majority of members were appointed by politicians, who had vested interests in redistricting. The structure effectively allowed for one political party to control the process if none of the appointing bodies opted to select an unaffiliated member or members, which meant that input by the other party and unaffiliated members could be effectively ignored. As such, the commission lacked the independence and protections of a citizen redistricting commission.

the Colorado Supreme Court, which held that lines could be redrawn only during the two-year period after the US census.<sup>9</sup> Republicans appealed the decision to the US Supreme Court, which rejected the case in a 9–0 decision in 2007.<sup>10</sup> The earlier map remained in force.

A subsequent 2004 law set forth new criteria for court-drawn congressional districts if the legislature failed to agree on a plan—a scheme that again favored Republicans. The law was repealed by Democrats in 2010—before it could be applied to maps drawn for the next cycle—only for Republicans to introduce a bill the following year that would have reinstated many of the 2004 provisions.<sup>11</sup> In 2011, two nonprofits that were each aligned with the respective political parties hired consultants to influence the Legislative Reapportionment Commission.<sup>12</sup> And at the Colorado Supreme Court, Republicans unsuccessfully challenged the state’s 2011 congressional districts, which favored Democratic candidates more than the previous map had.<sup>13</sup>

On October 30, 2015, with the constant tug-of-war over district lines fresh in political memory, a small group of former legislators—including Democrats Buescher and Mark Ferrandino and Republicans Frank McNulty and Rob Witwer—gathered for lunch to discuss unfinished business from their time in the legislature. Witwer, who had served on the 2011 reapportionment commission, had previously told Buescher and McNulty that he felt Republicans had been shortchanged by the most-recent boundaries, which triggered a larger discussion about redistricting reform.

“We made a kind of back-of-the-napkin list of the principles we felt would go into good redistricting,” said Buescher, adding that such principles were further fleshed out in later meetings. That group, soon to be joined by political strategist and former state senator Josh Penry and Democrat-turned-

independent Kathleen Curry,<sup>14</sup> also a former legislator, would go on to become best known as Fair Districts, though when formalized in 2016, the group was initially named End Gerrymandering Now.<sup>15</sup>

At the time, independent redistricting commissions remained a fairly new concept in the United States. Several states had long-standing commissions that were *technically* independent but in reality were appointed by or consisted of sitting lawmakers and other key party leaders. Only Arizona and California had adopted the truly independent citizen-redistricting-commission model, both via ballot initiative—in 2000 and 2008, respectively.

Several features distinguished that model from the models most US states used, wherein members were appointed by partisan politicians or party leaders. The new, independent commissions consisted of equal numbers of members of the two major parties as well as at least one independent commissioner. Commissioners were selected primarily by entities with nonpartisan bona fides—such as the Commission on Appellate Court Appointments in Arizona or panels of auditors in California (appendix A). Rules and structures encouraged bipartisan cooperation, and the model contained strict restrictions and stringent criteria to ensure political insiders would neither infiltrate nor unduly influence the commission. Finally, the model emphasized procedures that expanded transparency and opportunities for public feedback, features missing in previous redistricting efforts.

Shifting away from a partisan system would not be easy, however, even though independent boundary delimitation was the norm in many democracies with similar electoral systems.<sup>16</sup> Parties and legislators did not necessarily have any incentive to change the rules, and those in the majority were likely to oppose any reform that reduced their own ability to hold power. Getting heavyweights from the Republican and Democratic ranks to agree to a sort of mutual disarmament wherein both parties relinquished potential political advantage in favor of a level playing field was potentially the most difficult task of all: with the support of neither party, a proposal would face an uphill battle against a united establishment; with the support of only one party, a reform campaign could look like a ploy to secure political power.

Further, in Colorado, designing a legally and mechanically independent commission presented its own set of politically delicate issues, such as deciding how the state's demography should be represented on the commission itself (text box 2). There was always a risk that structural and procedural choices could be manipulated to benefit a single party, politician, or community above others.

Moreover, the complex process of redistricting was a subject to which most Americans felt indifferent, a point a later underscored in a Pew Research Center trust poll.<sup>17</sup> In Colorado, advocates who wanted to grow public support for redistricting reform—and foster trust that a new model would represent an improvement and not a political power play—had a difficult and expensive task to accomplish. The issue was inherently political, and a diverse coalition with cross-ideological buy-in was essential to sway voters and partisan luminaries.

**Text Box 2:**

**Considerations for Creating an Independent Citizen Redistricting Commission**

A nonexhaustive list of some of the tough questions reformers faced when designing an independent body to oversee redistricting in Colorado included the following:

- Which parties would be represented on the commission, and how many members of each?
- How would unaffiliated or independent voters be represented on the commission?
- How could geographic and demographic diversity of commissioners be ensured?
- By what process would commissioners be appointed, and could the appointing entity itself be trusted to function independent of partisan pressure?
- What restrictions or qualifications, if any, would be considered in the selection of commissioners?
- How would the commission be staffed and funded?
- Would the commission be statutory or constitutional?
- Which redistricting criteria would the commission prioritize, and in what order (text box 3)?
- What kind of data and public input would the commission be allowed—or required—to consider when drawing maps?
- Would the commission be responsible for all or some combination of state legislative district maps, congressional district maps, and/or maps for other districted offices?
- Would the commission bear sole responsibility for drawing the maps, or would its recommendations merely be advisory to the legislature?
- Would the commission's adoption of maps require a simple majority vote, a supermajority vote, and/or at least one member of each party?

Collaboration among advocacy groups, large and small donors, civic organizations, and officials with large networks, such as current or former governors, could help generate interest, but persuading members of a broad coalition to get behind a single message and approach would be difficult, according to Buescher.

Despite the many potential challenges, the leaders of Fair Districts saw ways to get a proposal for independent redistricting in front of voters. First, Colorado had a citizen-initiated constitutional amendment process through which individuals and organizations could petition to send proposed amendments to voters in a statewide election. At the time, passage required only a simple majority.<sup>18</sup> From 2000 to 2014, 10 of the 36 amendments posed to voters in that way had passed successfully.<sup>19</sup> The legislature could similarly pose amendments to voters with a two-thirds vote in each chamber.

Moreover, the political makeup of the state was in flux, a circumstance that created another favorable set of opportunities. Statewide voting increasingly trended toward Democrats, though Republicans still held a single-seat majority in the state senate. Facing the likely eventual Democratic takeover of the



legislature, Republicans became increasingly inclined to adopt any reform that enabled them to retain influence in the Congressional redistricting process. Additionally, independent voters—registered to vote as unaffiliated with any party—made up an increasing share of the population.<sup>20</sup> Both major parties sought the approval of that key bloc, which opened an opportunity for political independents to secure a place on the commission and play a role in the process.

Still, several additional challenges stood in the way. Though Fair Districts' organizers agreed on core principles, it would be difficult to convince political parties, civic groups, advocacy organizations, and other powerful players that the proposal was both fair and necessary. For a coalition to grow, the draft language had to be perceived by all sides as unbiased and functional. Potential coalition partners would also have to agree to work with people who had previously opposed their efforts in other policy areas.

Further, both of the two routes to securing a place on the ballot were arduous. Even if a broad coalition agreed to back a single proposal, winning the requisite two-thirds support in each of the chambers of the legislature was unlikely in a highly polarized era. The citizen initiative process, the alternative route, would require submission to the Initiatives and Title Board, a body with a twofold duty: to create a title that fairly reflected the content of the proposed amendment and to determine whether a proposal met the state's constitutional single-subject requirement that the text of a measure "concern only one subject and one distinct purpose."<sup>21</sup> Only after Title Board approval could a group begin the costly process of gathering the minimum 98,492 signatures required to secure a proposed amendment a ballot slot and face down any opponents who challenged the measure's legality in the state supreme court.<sup>22</sup> Finally, in either instance, Fair Districts would then have to campaign on behalf of the ballot measure and persuade voters that opponents' views were ill founded.

## FRAMING A RESPONSE

After the October 2015 meeting of former lawmakers, the movement to reform the state's redistricting processes began to gain traction. Even at that early point, the founders of Fair Districts considered change via the legislature a nonviable option, given that the future looked favorable for the Democrats, who held a majority in the state house and were the favorites to take the senate by the next redistricting cycle. As such, it was unlikely that the party would willingly give up the chance to draw boundaries in its favor. As Republican former house speaker McNulty recalled, "The Democratic infrastructure didn't see the need to come to the table." Instead, the goal was to put a constitutional amendment proposal on the 2016 ballot by using the state's citizen initiative process.

Veteran ballot initiative proponent and Fortune 500 company CEO Kent Thiry, who would later contribute hundreds of thousands of dollars to the reform effort,<sup>23</sup> noted three key considerations in designing a ballot initiative: "You have to think of it first in terms of mechanics: make sure you create something that works. Second, it has to be legal. And third, you have to think of

it from a marketing point of view.” In other words, Fair Districts would have to present a viable proposal that would pass legal muster and would appeal to both voters and political gatekeepers.

With respect to the first criterion—a workable proposal—there were few precedents. Former Colorado house speaker McNulty said, “We looked at Iowa, California, the academic work that was out there on redistricting that hadn’t yet been implemented, and we attempted to bring in the best ideas from all of those different redistricting processes.” Several common components of the Arizona and California models attracted the drafters’ attention—namely, representation for political independents in addition to an evenly balanced pool of party-affiliated members, as well as selection of the commissioners through a process widely perceived to be neutral and nonpartisan.

With respect to Thiry’s second criterion—navigating the legal process—several of those working with the coalition were deeply familiar with the intricacies of ballot access, most notably former Colorado Secretary of State Buescher. Fair Districts’ insider knowledge meant the coalition was well equipped to navigate the procedures for getting a viable proposal on the 2016 general election ballot.

Finally, with respect to the third criterion, Fair Districts would fundraise and prep its connections for a statewide campaign to sell the prospective amendments to voters. As former legislators, the coalition’s leaders had strong ties with the three major political groups in the state: Republicans, Democrats, and unaffiliated, or independent, voters. They also had extensive relationships with civic organizations, advocacy groups, major donors, and chambers of commerce, all valuable for mustering voter support.

## GETTING DOWN TO WORK

With such a major shift in the allocation of power in Colorado at stake, Fair Districts’ ambitious plans necessitated flexibility, according to Kathleen Curry, the coalition’s unaffiliated member, who was a strong advocate for the rights of independent voters. “They’re going to fight you tooth and nail every step of the way,” Curry said. “That’s exactly what you have to anticipate: that the two parties would not publicly endorse this, and that there would be lots of disgruntled and dissatisfied partisans. But we knew that going in.”

In the long run, flexibility indeed proved central to success. The vision proposed for the 2016 ballot was significantly different from what was ultimately enacted by voters in 2018.

### *Conceptualization*

The coalition’s main proposal for the 2016 election, assigned the temporary number 132 by the Title Board, called for a single commission to draw both state legislative districts and congressional districts rather than separate commissions for these two levels of elected office.<sup>24</sup> The structure drew on elements of both the California and Arizona models, including an open



application process for state residents; appointment of an initial subset of commissioners, who would then select the remainder of their colleagues; and a rule barring the commission from considering the addresses of incumbent legislators in the drawing of district lines. (See comparison of the Arizona, California, and proposed 2016 Colorado redistricting commissions in appendix A.)

Under Proposal 132, Colorado state legislators would directly appoint the four Republican and four Democratic members of the commission.<sup>25</sup> A pool of unaffiliated voters would be selected from public applications by the Colorado Supreme Court Nominating Commission, an entity already established in the state constitution. From that pool, the eight partisan commissioners would appoint the final four members of the commission. Of the 12 commissioners, at least one member would have to reside in each congressional district, with additional requirements to ensure representation of the rural areas west of the Continental Divide and south of El Paso County.

When the commission assembled, any motion would require the support of at least eight members. The Legislative Council Staff, the nonpartisan research arm of the Colorado General Assembly, would assist in drawing the maps. And rules required that district lines be drawn in such a way as to preserve the geographies of cities and towns in addition to communities of interest—meaning, areas consisting of language-minority citizens or distinct regions with shared economic bases.

Even though Fair Districts' 2016 proposal was similar to the model that would eventually be approved by voters in 2018, there were important differences in the latter—notably in 1) specification of some of the criteria commissioners and staff had to respect in drawing maps; 2) use of new and independent temporary panels to oversee commission appointments; 3) a reduced role for legislators in the process; and 4) designation of separate commissions for legislative and congressional districts.

### *Building the Coalition*

Building a critical mass of support for the proposal from across the political spectrum was essential, Fair Districts' leaders said. The reform effort's coalition-building strategy leveraged the networks and know-how of the former politicians who had played an instrumental role from the outset and who persuaded several prominent politicians from both major parties to join. The initial group of former legislators garnered the support of prior governors Dick Lamm, a Democrat, and Bill Owens, a Republican; former legislative leaders from both parties; and other key figures across Colorado.<sup>26</sup>

However, not all of the people Fair Districts aimed to involve signed on to the effort in 2016. For example, influential Latino advocacy groups questioned whether the cross-partisan nature of the coalition and the model that Fair Districts was proposing were simply ploys to advance partisan interests or dilute minority voting strength. "I was told to my face that we couldn't trust Frank

McNulty, that any process he was involved in was certain to be right leaning,” said Buescher, the Democratic former secretary of state, about his experience conducting outreach. He added, “I suspect Frank was told that any project Bernie Buescher was involved in couldn’t be trusted and was going to be left leaning.”

State Democrats were split on the proposal, a rift that caused major problems going forward. The part of the proposal that provoked concern had to do with a prohibition on drawing districts with the explicit purpose of bolstering the voting strength of a racial or language-minority group, which many Democrats felt put key constituencies at risk. Some chalked it up to poor representation at the proposal’s inception. “There were, I’m sorry, a bunch of white guys sitting around the table deciding our politics on redistricting moving forward,” said then state representative and Colorado Black Caucus chair Angela Williams after the proposal had already begun the Title Board review process.<sup>27</sup>

The Democratic leaders of Fair Districts found themselves playing defense. “We had to start this. We should have done a better job of outreach, and I overlooked some of that,” former house speaker Ferrandino said in a December 2015 *Durango Herald* interview.<sup>28</sup> “But now that it’s out there, if you raise some legitimate concerns, we’re willing to try and address those and fix those.” Quoted in the same article, Buescher added, “If people choose to participate, and ask for changes, we’ll listen to them.”

However, in the eyes of prominent Colorado Democrats and progressives, Fair Districts’ response amounted to too little too late. Democratic Party elected officials and associates of the party and its factions would later oppose Fair Districts as the organization went through the process of getting its proposal on the ballot.

### *The Fight at the State Supreme Court*

Beginning in December 2015, Fair Districts began submitting multiple variations of its core concept to the Colorado Initiatives and Title Board. Colorado’s constitution required that any bill or ballot proposal contain only one subject—and that the single subject be clearly expressed in the title. “One of the strategies is to get a couple of measures going so that you can get a good title,” said Buescher, adding: “If you lose on the single-subject rule in one iteration, you have another chance.” In other words, there was always a possibility that in interpreting the state’s single-subject rule, the Title Board might deny ballot access for a complex issue. Therefore, submission of multiple similar proposed amendments with intentional policy differences gave organizations additional chances at ballot access, honing their arguments and shifting their strategy based on the board’s response.

Ultimately, Proposal 132<sup>29</sup>—which would have authorized a new commission to oversee both congressional and legislative redistricting—and Proposal 133<sup>30</sup>—creating a commission for legislative maps only—were approved by the Ballot Title Board in April 2016, thereby clearing Fair Districts

to begin a signature-gathering petition process for final placement on the ballot. But the board's decisions were quickly challenged in the State Supreme Court by Donna Johnson, a former Democratic legislative aide and state senator, and Mark Grueskin, an attorney long associated with progressive causes.<sup>31</sup>

The opposition argued that both proposals violated the state's single-subject requirement and were therefore ineligible for the ballot. On July 5, 2016, the court ruled in favor of the plaintiffs, stating that both proposals combined changes to the constitutional role of the existing Supreme Court Nominating Commission with a replacement for the Legislative Apportionment Commission.<sup>32</sup> As a result, neither complied with the single-subject requirement. Further, the court decided, Proposal 132's reassignment of congressional reapportionment from the legislature to the new commission amounted to an additional subject.

The process of signature gathering for Proposal 132 had already begun when the Title Board's approval was thrown out.<sup>33</sup> With the window for submission and consideration of proposed amendments now long since closed, Fair Districts' proposals could not go in front of voters in 2016.

Former legislator Kathleen Curry, one of the designated representatives for the measures submitted to the Title Board, blamed a faction of the state Democratic Party for the proposals' invalidation. "The establishment has too much to lose if the people have a stronger voice," Curry said in a statement to the media while ensuring supporters that the fight was not over. "We look forward to working with individuals and community organizations across the state as we move forward with efforts toward the 2018 ballot."<sup>34</sup>

The friction between Fair Districts and the Democratic Party's progressive wing would continue. Grueskin and other progressives formed a redistricting reform advocacy coalition of their own called People Not Politicians. In the meantime, Fair Districts had to refresh its proposal and reconsider its strategy.

### *Regrouping, Reworking, and Strategizing*

Between the court's 2016 decision and the window for submission of proposals for the 2018 ballot, several important developments occurred. In the 2016 general election, Colorado voters approved a measure that created new distribution requirements for collecting signatures for citizen-initiated constitutional amendments: at least 2% of all registered voters in each state senate district would now have to sign petitions for a measure to reach the ballot. (Before 2016, the requirement stipulated signatures from anywhere in Colorado equal to 5% of votes cast in the most recent election for secretary of state.) Additionally, the threshold for all proposed constitutional amendments was raised from a simple majority to 55% of all votes.<sup>35</sup>

Fair Districts continued building support for its reform, which it had to modify to address the challenges raised by the single-subject ruling. According to attorney Bill Hobbs, a former deputy secretary of state who joined the effort to craft a new proposal, "We knew from the Supreme Court decision that instead

of one measure that embraced congressional and state legislative redistricting, we needed to break it into two measures: one for congressional redistricting and one for state legislative redistricting.” Drafting then began anew, with the group working to create a credible, functional, legal, and passable model under the new requirements.

A breakthrough moment occurred in 2017, when businessman and organizer Thiry became an official backer of Fair Districts.<sup>36</sup> A well-known figure in the electoral reform space, Thiry had been a driving force behind the successful Let Colorado Vote primary reform initiative in the 2016 election and had been involved with the earlier campaign to create California’s Independent Citizen Redistricting Commission.<sup>37</sup> He shared both resources and valuable strategic experience.

For ballot initiative campaigns to survive and pass, Thiry said, reformers had to be aggressive. To his mind, many nonprofits and good-government advocates lacked the skills to compete in an inherently political arena. In Thiry’s words, the difference between winning and losing was a coalition’s willingness to play *tackle* football, as opposed to *touch* football. “Our opponents will lie. And our one thing is that we never lie. But we’re willing to shine a light on hypocrisy and willing to counterattack,” he said. “You’ve got to punch back. And when you do, a whole lot of people will stop criticizing you.” Thiry’s campaign savvy, resources, and credibility would prove to be major factors in the ultimate success of redistricting reform in the state.

### *The Two Coalitions*

Having completed its proposals, Fair Districts again began the Initiatives and Title Board process, starting with initial submissions for separate proposals to create legislative and congressional redistricting commissions in September 2017.<sup>38</sup> But this time, the group’s proposal was not the only one under consideration—in December 2017, the new progressive coalition, People Not Politicians, submitted its own proposals for two distinct commissions in direct competition with Fair Districts’ filings.<sup>39</sup>

Ellen Dumm, who spearheaded People Not Politicians’ community outreach and coalition-building efforts, said many of the coalition’s members had worked together on prior election reform efforts. For example, Grueskin had led arguments against Fair Districts’ proposals at the Supreme Court in 2016. And among the coalition’s backers were Common Cause, Padres & Jóvenes Unidos, the National Association for the Advancement of Colored People, and the American Civil Liberties Union, as well as the progressive New Era Colorado Foundation and ProgressNow Colorado.<sup>40</sup> In short, many of the people who opposed—or declined to support—Fair Districts’ 2016 measure now aligned with the progressives’ concurrent proposals.

People Not Politicians’ vision for redistricting reform had much in common with Fair Districts’ proposals but with a few key differences—primarily in the details of the criteria that would govern preparation of district maps. To

guard against the possibility that the US Supreme Court might weaken redistricting protections for minority groups as set forth in the Voting Rights Act, People Not Politicians sought to write its proposal in a way that would ensure those same criteria would be considered going forward. People Not Politicians argued that Fair Districts' proposals lacked language to that effect.

All of the major players in the government reform and advocacy space were effectively committed to one side or the other, thereby splitting support for redistricting reform along centrist, or center-right, and liberal lines. And neither side, it appeared, had any intention of backing down against a looming deadline: the last day for filing a general election proposal with the secretary of state was April 6, 2018.<sup>41</sup>

Further complicating matters were Colorado's laws on competing initiatives. If both groups' sets of proposed amendments were presented to voters in November and both were successful, then the measure with the most affirmative votes would supersede the other on any conflicting points.<sup>42</sup> The proposals were similar enough that such a scenario would likely set up a long legal battle and lead to an uncertain future for the commissions' structures and functions. But even riskier, said Thiry, was the potential to confuse and alienate voters with such similar amendments: "People end up saying, 'Well, we don't know which one is better. So, we're just going to vote no on both.'"

Fair Districts had a difficult choice. It could barrel forward with its own proposals with newfound financial backing while facing headwinds in the form of another likely court challenge and coordinated opposition on the campaign trail, and if its measures were thrown out or defeated, it would not be practical to again delay until the 2020 election, with 2021 redistricting set to begin only months afterward.<sup>43</sup> Or, alternatively, Fair Districts could seek compromise with a group that had vehemently opposed its proposals in the past.

In search of a solution, Buescher, the Democratic former secretary of state who had been with Fair Districts since the beginning, called Martha Tierney, a friend and associate who was general counsel for the state Democratic Party. Tierney advised Buescher to reach out to People Not Politicians and negotiate common ground.

Conscious of time constraints, Buescher and People Not Politicians' Grueskin soon agreed to assemble leaders from each coalition in the same room—about 25 people in total. Thiry volunteered his company's Denver corporate offices as the venue.

During the inaugural meeting in late January 2018, apprehension clouded the air. For the first time, the two adversarial groups were seated around the same table, and no one was sure what the result would be. As the meeting commenced, Buescher offered an olive branch to the more liberal faction. "I looked at what you put together, and there's a lot of stuff in here I like," he recalled saying to Grueskin, when he related the story in a 2020 TEDx talk.<sup>44</sup> According to Buescher, Grueskin replied, "Bernie, you should like it. We stole 85% of it from you."

That simple, tension-breaking moment elicited a laugh from the room. “It was that light touch and a little bit of laughter that started the whole process off on a good foot,” said Buescher. Meeting in person enabled the groups to build trust and consensus on what should or should not be featured in a future ballot initiative.

Two issues important to the progressive contingent were preservation of at-risk sections of the federal Voting Rights Act and that communities of interest not be diluted among many districts. On Fair Districts’ part, it was imperative that the amendments be written in such a way that any maps drawn by the commissions would not be easy to overturn via litigation and that rural communities, towns, and cities would not be divided. Both sides compromised and made concessions, but the final product was something everyone involved in the discussions could support. Crucially, preservation of both communities of interest and political subdivisions received equal prioritization in the ranking of criteria that would govern maps (text box 3).

On March 27, 2018, the two groups formally announced that they had created joint proposals for separate legislative and congressional redistricting commissions.<sup>45</sup> Though they filed the proposals with the Title Board, the newly aligned groups also decided to try the alternative route that Fair Districts had earlier considered implausible: sending the prospective amendments through the legislature for immediate placement on the ballot. That approach required two-

### **Text Box 3: Redistricting Criteria**

No matter whether redistricting takes place under the auspices of a state legislature or a commission, the bodies drawing district maps must adhere to certain criteria; for example, districts must be equal in population size.

Federal and state laws prioritized some criteria over others, so that no single consideration could outweigh one that ranked above it. For the independent redistricting commissions convened in 2021, criteria for legislative redistricting were prioritized as follows:

- Districts had to be equal in population.
- Districts had to comply with requirements set out in Section 2 of the Voting Rights Act of 1965.
- Communities of interest—such as areas with large Spanish-speaking populations—and political subdivisions—such as counties and towns—were not to be split between districts unless absolutely necessary.
- Districts had to be as compact “as reasonably possible,” meaning that it would be inappropriate for the commission to draw a winding, narrow district around the state to connect certain communities.
- The commission was to maximize the number of politically competitive districts.
- Additionally, maps would not be considered legal if drawn to protect incumbent lawmakers or declared candidates or if they resulted in the denial or abridgment of the right to vote for racial- or language-minority groups.



thirds of each chamber for approval but if successful, would enable the groups to nail down political support for their issue and circumvent the expensive and time-consuming signature-gathering process.

*Through the Legislature*

With cross-partisan agreement on the proposal language, the once-imposing legislative option suddenly seemed viable. Because so many political insiders were involved in the process, legislative leadership had been kept consistently informed on the status of the proposals by coalition members and lobbyists regarding the negotiations and progress of the proposed amendments. “We just let them know we were working on this: ‘If we have anything, we’ll bring it to you,’” former speaker McNulty said.

With leadership of both major parties receiving feedback that said yes, the other party supported the measure as did their own party’s allies, legislators who might have ordinarily opposed a change in the status quo were inclined to believe that the measure was as fair and as balanced as the coalitions made it out to be. “We had Republicans and Democrats who were very active, who already had credibility with their respective parties,” said Hobbs. “Both the Republicans and the Democrats worked their party members really strongly, telling them this was a good thing and not something to be feared.”

Also working in the coalitions’ favor were a number of factors that placed pressure on the legislature to support the amendments. The campaign had the backing of virtually all major election advocacy groups in the state, high-profile elected officials, and major funders, including Republican and Democratic donors. Thiry’s support carried special weight because Thiry had a reputation for effectiveness—the 2016 campaign he led to change primaries in the state was successful despite opposition from party leaders.<sup>46</sup>

Polling—duly shared with legislators—also indicated that redistricting reform would likely pass with or without legislative support. A poll conducted before the 2018 election showed that 78% of Colorado voters—majorities of Democrats, Republicans, and independents—supported the reform.<sup>47</sup> If legislators opposed the new commissions, the parties risked alienating unaffiliated voters as well as major supporters who would otherwise be on their side.

With sponsorship from the leaders of both political parties, the proposals passed in the state senate on April 30, 2018, and in the state house of representatives seven days later—in both instances, with unanimous support.<sup>48</sup> After years of hard work and dealmaking, reformers had secured spots on the ballot for their proposed amendments. (See timeline in text box 4.)

#### **Text Box 4: Timeline of Major Events**

- October 2015: A group of former state legislators gathers for lunch to discuss unfinished business, thereby forming the basis for a cross-partisan coalition in support of fair redistricting, known as End Gerrymandering Now.
- April 2016: End Gerrymandering Now’s proposal for a new commission to oversee legislative and congressional redistricting is approved by the State Initiatives and Title Board.
- July 2016: The state supreme court overturns the Title Board’s approval of the End Gerrymandering Now proposal.
- September 2017: End Gerrymandering Now is reconstituted as Fair Districts Colorado. The coalition submits new proposals to the Title Board.
- December 2017: People Not Politicians, led by many of the same individuals who opposed the End Gerrymandering Now proposal in 2016, submits its own proposals to the Title Board.
- January 2018: Negotiations between Fair Districts and People Not Politicians begin.
- March 2018: Fair Districts and People Not Politicians publicly announce the creation of their joint proposals.
- April–May 2018: Proposed amendments crafted by Fair Districts and People Not Politicians pass both chambers of the Colorado General Assembly with unanimous support.
- August 2018: Fair Districts and People Not Politicians announce the formation of a merged coalition called Fair Maps Colorado to campaign on behalf of proposed Amendments Y and Z in the general election.
- November 2018: Amendments Y and Z each pass with more than 71% of the vote.
- August 2020: The submission period for applications to serve on the commissions created by the amendments begins.
- March 2021: The independent redistricting commissions are appointed, and work begins.
- November 2021: The Colorado Supreme Court approves the final district maps drawn by the commissions, and the maps go into effect for the next election.

#### *The Campaign and the 2018 Election*

In August 2018, Fair Districts and People Not Politicians announced the formation of a merged group—Fair Maps Colorado—to campaign in support of their proposed amendments.<sup>49</sup> Amendment Y and Amendment Z would create independent congressional and legislative redistricting commissions, respectively. Coalition members shared resources and talking points, together strategizing on how to get their message out and determining which speakers would resonate with this or that particular region or group. “You have certain people go speak on the western slopes of Colorado, and you have other people speak in downtown Denver,” said Thiry, emphasizing the importance of such a

strategy. “So, as much as we always build a tripartisan coalition, each part of the coalition goes to its own tribe too.”

The campaign messaging focused primarily on principles of fairness and on reduction of conflicts of interest. “We’re not going to go out and try to persuade people that this is going to make everything better,” said Thiry. “We’re going to say it’s patently unfair. It’s un-American. And by the way, we think it could improve decision-making.” One advertisement, starring actress Jennifer Lawrence, assured voters that Amendments Y and Z would “end gerrymandering by taking the power to draw maps away from politicians and party bosses.”<sup>50</sup>

Because the measures had the support of the entire legislature and all living former governors, the major parties did not oppose the amendments. In fact, there was almost no opposition to their movement in the 2018 election. Only one group, the State Ballot Issue Committee, was formally against the issue.<sup>51</sup> Its founder, Douglas Bruce, argued that judges on the appointment panels were appointed overwhelmingly by Democrats, that the use of the term *communities of interest* in the criteria allowed factors like race to “override neutral principles,” and that commissioners would be “stooges” for the legislative staff, who were hired by partisan politicians.<sup>52</sup>

The summary of opposing arguments listed in the 2018 Colorado Blue Book, the ballot information pamphlet prepared for statewide elections by the Colorado legislature, included (1) that appointed commissioners would be unaccountable, (2) that the random selection used in the commissioner appointment process could result in unqualified or partisan commissioners, and (3) that the language used was generally too vague.<sup>53</sup> But according to campaign finance reports, no money was spent on the “No” campaign compared with \$4.83 million spent on the “Yes” campaign, sourced from large and small donors from both inside and outside the state.<sup>54</sup> On Election Day, both amendments passed with more than 71% of the vote.<sup>55</sup>

With the campaign a cross-partisan success and Amendments Y and Z embedded in the state constitution, the reformers’ commissions would now be put to the test: redrawing the electoral maps, a process triggered by the decennial census, was slated to take place in early 2021.

The commission application process began in August 2020, and the two independent citizen commissions were fully appointed by March 2021.<sup>56</sup> Applicants were not required to have any particular experience, so after membership was settled, the commissions hosted educational briefings to inform membership about the complicated process about to take place.

The commissions were responsible not only for drawing and approving district maps but also for conducting outreach, hosting public input sessions, and reviewing comments and proposals by voters. The nonpartisan Colorado Legislative Council staff assisted both commissions with their work—especially with drawing initial map proposals for adjustment by the commissions, a process familiar to the office because the council had played a similar role in past

redistricting cycles. To maximize efficiency, the commissions held many hearings together, shared resources, and designated member subcommittees. Commissioners familiar with GIS software and demographic data joined a committee in charge of reviewing proposed maps, and those with communications and logistics experience worked on an events committee that coordinated public meetings.

## OVERCOMING OBSTACLES

Although both commissions ultimately succeeded in passing maps with cross-partisan support, the process of developing new maps took much more time and effort than envisioned, stretching members' capacity. Some commissioners "put in hundreds of hours of time in addition to the time we actually met," said congressional commission chair Carly Hare. Other unanticipated problems further intensified the difficulties involved in the redistricting process: stringent timelines, a pandemic, partisan scrutiny, and disparate handling of a problem known as *prison gerrymandering*.

Constitutionally enshrined deadlines for redistricting raised several logistical concerns. Appointed in March of the redistricting year, several commissioners interviewed said that with limited precedent regarding ways to run and operate such a commission, the time allotted for the ramp-up to operations, including trainings, briefings, adoption of bylaws, scheduling, and so forth, was not nearly sufficient. By comparison, California's commissioners were decided by August of the year prior, which left roughly seven additional months for preparation.<sup>57</sup>

Further, some commissioners said the timeline restricted their ability to get to know one another on an individual level, and to build trust and understanding. "We had conversations in the last two meetings that we should have had in the first meeting," Hare said. Democratic legislative commissioner Robin Schepper offered a similar view: "I think if we had been able to have more meals together and spend more time with each other, there would have been more camaraderie and trust." Adjusting official dates, however, would have required another constitutional amendment.

All of those issues grew even more complex with the onset of the COVID-19 pandemic. On its own, the pandemic presented unexpected logistical and technological hurdles for conducting public hearings. According to legislative commission chair Carlos Perez, the pandemic also complicated outreach to tribal communities, which were hit particularly hard by the virus.<sup>58</sup> Furthermore, crucial US census data required for redistricting did not materialize on time due to pandemic-related complications and was unavailable to the commissions at the outset of their convening.<sup>59</sup>

With date-based milestones baked into the constitutional language, the commissions had no choice but to conduct hearings and draw maps referencing placeholder data, sourced in part from the state demographer. By the time the official redistricting data was released on August 12, 2021, the commissions had already held 23 joint public hearings.<sup>60</sup> With a September 1 deadline for

submission of congressional maps to the court for approval and a September 15 deadline for state legislative maps, there was little time for adjustment, but the commissioners went to great lengths to keep the remaining work in the public eye. “The penultimate meeting lasted 11 hours and 45 minutes,” Hare said. “It was almost one o’clock when I went to bed that night.”

Additional troubles arose early on with the congressional commission chairmanship of Danny Moore, a Republican from Arapahoe County. After his selection as chair, news outlets reported that Moore had falsely claimed on social media that the 2020 election had been stolen and that he had boosted conspiracy theories about the COVID-19 pandemic.<sup>61</sup>

Several commissioners issued statements questioning Moore’s ability to be impartial or to serve as a trusted as chair of the commission. “We should get a chair of this commission who can reflect in every way the nonpartisan nature of what this commission is supposed to be,” said Moore’s fellow Republican commissioner Bill Leone in an article in the *Denver Post*.<sup>62</sup> Moore was ultimately removed from the position in an 11–0–1 vote, with Moore himself abstaining. Unaffiliated commissioner Hare was then selected as chair for the duration of the commission’s operation.

As the public hearing and comment period wore on, the *Denver Gazette* reported that there appeared to be party-coordinated efforts to persuade the commissions to draw maps in a certain way.<sup>63</sup> But commissioners responded that citizens had every right to organize and advocate for their communities—or parties. “If you think the Republican Party and the Democratic Party are going to not be part of the process, that’s just unrealistic,” said Democratic legislative commissioner Schepper.

Chair of the state legislative redistricting commission Perez concurred with this view. “A group of citizens get together. They have a particular interest, and they have a first amendment right to association and to petition your government,” Perez said. He added that commissioners recognized when comments were duplicative, and they weighed the comments accordingly.

The rules pushed influence efforts into public channels and closed the door to backroom persuasion—a deliberate design choice by the drafters. “We made it very difficult for members of the commission to informally conspire with partisans and pop out of the last meeting and say, ‘Voilà, here’s the map,’ and then jam it through,” said political strategist Josh Penry, who assisted in drafting the measures.

One final, unforeseen development was a divergence between the two commissions on a key policy that affected local population counts. In 2020, the Colorado General Assembly passed a law designed to combat a practice sometimes known as *prison gerrymandering*, counting incarcerated people as residents of the areas in which they lived while serving their sentences instead of the addresses where they had most recently resided prior to sentencing.

Because incarcerated people were disproportionately from urban areas, the prison-gerrymandering practice generally resulted in loss of representation in

urban areas and gains in rural regions, where prisons were typically located.<sup>64</sup> By passing the Colorado Accurate Residence for Redistricting Act, the Democratic-led legislature sought to reverse that trend.<sup>65</sup> However, the Colorado Supreme Court ruled that the redistricting commissions—not the legislature—had the authority to determine where incarcerated people would be counted as residents.<sup>66</sup>

In a vote of 10–2, the Legislative Commission opted to count incarcerated people as residents of their most recent previous residential address, but the congressional commission failed to pass a similar resolution.<sup>67</sup> Congressional commission chair Hare called the decision her biggest disappointment. “If people who are incarcerated at the time of the census count are counted in the geographies in which they are serving, it is inauthentic to the actual reality of communities where they are from. It changes the reality of how resources will be allocated for that next 10 years.” Offering a different perspective, Republican congressional commissioner Leone commented: “Prisoners, like students, are counted where they are residing at the time of the census because they are part of that community and impact the community. That residence generates demand for roads, water, utilities, police, energy, and other infrastructure.”

Ultimately, Hare acknowledged that the split decision stemmed in part from simple mathematics: with smaller and more numerous districts for state legislative office, reallocation of individuals had the potential to affect state representation far more than it shaped representation at the congressional level, where all 5.8 million Colorado residents were spread across eight districts. “The truth of the matter is that the entire debate wouldn’t move the needle one tiny fraction of a percentage point,” commented Leone. “It was an unimportant debate to have, honestly, but for whatever reason, it attracted a lot of attention.” Ultimately, the Supreme Court left the decision to the commissions’ discretion, and each commissioner voted for what each felt made the most sense, Leone said, adding: “The legislative commission decided to follow the legislature’s directive, and it did. We counted prisoners differently.”

## ASSESSING RESULTS

Despite the many challenges the commissions faced, Colorado’s 2021-cycle district maps passed with bipartisan support and received favorable scores from nongovernmental organizations that analyze states’ legislative and congressional maps for partisan fairness and accurate representation.

Analysts used several measures to assess performance: the *efficiency gap* (whether packing voters of one party into a few districts resulted in a much larger number of wasted votes for that party—votes above the threshold needed to win—than for the other party); *partisan bias* (difference between the parties’ share of districts in a hypothetical tied election); the difference between a party’s median vote share and its mean vote share; whether margins of victory were lopsided (one party carried fewer districts and its margin in those districts was



lopsided); and threshold-related asymmetry in the distribution of votes across districts (sometimes called *declination*).<sup>68</sup>

In April 2022, Democracy Docket, an online progressive election news and civil rights platform, compared Colorado and other states that adopted redistricting commissions with states where partisans drafted boundaries and noted a reduction in bias when an independent body was in charge of preparing the maps.<sup>69</sup> However, it noted that Colorado's new maps, while more equitable than its 2012 maps on some measures, actually favored Republicans slightly more than the 2012 maps did. It reported: "Although the map has a smaller efficiency gap and declination, it is more skewed toward Republicans under the partisan bias and mean-median measures."<sup>70</sup>

In June 2022, FiveThirtyEight, a polling aggregation website, analyzed congressional maps across the United States. Colorado scored among the four states that showed the least bias (1) with regard to how many extra seats one party was given over another based on vote share and (2) according to an efficiency-gap metric that aims to quantify the phenomenon by measuring "how efficient a map is at converting votes into seats for a given party."<sup>71</sup> By those measures, the maps tilted slightly toward the Republican Party, but the efficiency gap was relatively low.

Following an A-to-F scale, Princeton University's Gerrymandering Project gave Colorado's congressional redistricting commission an A grade in September 2023 in terms of partisan fairness, but C grades in terms of competitiveness and the compactness or logic of the geography included.<sup>72</sup> (For full disclosure, Innovations for Successful Societies is also a program of Princeton University but is unrelated to the Gerrymandering Project.) In October 2023, Common Cause gave the commissions' work a B grade, praising the maps drawn by the commissioners but faulting the commissions for failing to draw a majority-Latino district and for holding too few hearings after the official data had been released.<sup>73</sup>

That so few districts were competitive attracted concern, but many of those close to the reform process noted that it had been very difficult to prioritize competitiveness, given legal requirements and Colorado's political geography.<sup>74</sup>

Former deputy Colorado secretary of state Bill Hobbs, who assisted in drafting the final measure, counted himself among the proponents of competitive districts as a component of a strong democracy. But, he said, anytime that redistricting took place, "you have all these other factors, all these other criteria that are critically important." Criteria that could not be sacrificed, he argued, included equal population and requirements that flowed from the Voting Rights Act. "The districts have to be contiguous, and they ought to be compact, and you want to preserve communities of interest," Hobbs added. "In order to really maximize competitiveness, something there has to give. And there are really strong reasons they don't."

Princeton University redistricting expert Sam Wang said that a state's political geography shaped competitiveness, adding "There's an upper bound to

how much competition there can be.” Wang explained that Americans tended to self-sort into areas with ideologically similar residents, which made it difficult to create competitive districts in areas dominated largely by one of the two major parties.<sup>75</sup> Nonetheless, Wang said, Colorado was above the national average with regard to the competitiveness of its districts, with 25% of its eight congressional seats considered “competitive,” compared with 8% nationwide.<sup>76</sup> In 2022, about 18% of state senate races were also competitive.<sup>77</sup>

## REFLECTIONS

Some of the ingredients of Colorado’s success in introducing independent redistricting commissions depended on conditions only partly replicable elsewhere, whereas others were easily portable. Among the latter, some related to strategy and tactics, and others pertained to the reform proposals themselves.

The victory of Colorado’s 2018 redistricting amendments was due partly to fortuitous timing and the existence of two avenues for amending the constitution in a general election—a vote of both chambers of the legislature, or through the citizen initiative process. Those conditions were not always present in other states, where margins of support for each of the two main parties were not as close, or the pathways to adoption were more limited. (Text box 5)

*Avenues for change.* A primary tactic at play in Colorado—in the form of a well-funded, credible threat to circumvent the legislature and send a constitutional amendment directly to the people—was replicable only in states in which such a tactic represented a viable legal path to reform. In 2024, 18 states allowed for citizen-initiated constitutional amendments to reach the ballot.<sup>78</sup> Of them, four—Arizona, California, Colorado, and Michigan—had already instituted independent citizen redistricting commissions.<sup>79</sup> Reformers in a fifth state—Ohio—were poised to send a similar model to a statewide vote later in that year.<sup>80</sup>

A few states allowed for statutes to be adopted by popular vote, though any commission created by statute, as opposed to via constitutional amendment, would be far easier for a partisan legislative body to modify in its favor. Such was the case in Utah, where a politician-appointed redistricting commission approved by voters in 2018 was rendered fully advisory by the Republican-controlled legislature, which rejected the commission’s recommendations in 2021.<sup>81</sup>

*Coalition-building.* Other factors that shaped Colorado’s success, such as the character and tactics of the reform coalition or specific features of the reform proposal, were more easily replicable and yielded potentially useful lessons.

A balanced coalition with a core group of reform-minded ex-lawmakers was a valuable starting point. Recently retired legislators did not face as much political pressure to fall in line with party policy as did their counterparts seeking reelection every few years, but they generally remained well-connected and possessed a keen understanding of redistricting and lawmaking processes.

### Text Box 5: Nonreferendum Opportunities for Reform

In states where constitutions do not provide for citizen ballot initiatives, reformers might find other avenues for pursuing redistricting reform.

1) In states with elected supreme courts that wield power to strike down maps, legislators may be more open to independent redistricting when the composition of the court changes. A shift in the ideological makeup of the state's supreme court due to an election, a vacancy, or an appointment can increase the likelihood that a party or group long gerrymandered into a nonrepresentative minority can successfully sue to adjust legislative or congressional maps.

For example, in September 2023, Wisconsin Republicans—who had for more than a decade benefited from one of the most partisan gerrymanders in the country—found themselves in a situation in which their handpicked legislative districts would likely be struck down and replaced with fairer maps. In an effort to preserve their advantage, Republicans submitted a bill to bring the state closer in line to neighboring Iowa. The Iowa model gave the nonpartisan state agency that assisted with legislative drafting and research the authority to draw initial maps, modifiable only if the legislature rejects the agency's maps a certain number of times.

Although that particular proposal would have left the ultimate power to draw maps in the hands of the party in the legislative majority, the fact that Republicans felt pressure to offer any form of concession represented a significant shift in rhetoric away from the prior 12 years, during which the party had aggressively gerrymandered and during which, therefore, reform had never gained traction.

2) Alternatively, if a state government is divided between two parties in such a way that neither party has a clear advantage prior to redistricting or if shifting demographics indicate that a party that has a path to the majority could lose its control by the next redistricting cycle, both parties may find themselves in a position to negotiate for a level playing field.

3) Similarly, if political independents represent a growing portion of the population and if both of the major parties seek the votes of that unaffiliated bloc, there may be an incentive for partisans to include nonaffiliated voters in the redistricting process.

In the future, having a negotiation-ready commission proposal may prove to be a key tool for reformers in single-party-dominated states where ideological shifts in the legislative, executive, or judicial branches suddenly occur.

Sources: 1) Baylor Spears, "Assembly Republicans announce plans to introduce Iowa-style redistricting process," Wisconsin Examiner, September 12, 2023, at <https://wisconsinexaminer.com/2023/09/12/assembly-republicans-announce-plans-to-introduce-iowa-style-redistricting-process/> 2) Wisconsin Watch, "Wisconsin's Assembly maps are more skewed than ever — what happens in 2023?," PBS Wisconsin, December 7, 2022, <https://pbswisconsin.org/news-item/wisconsins-assembly-maps-are-more-skewed-than-ever-what-happens-in-2023/> 3) Wisconsin AB 415 (2023), <https://docs.legis.wisconsin.gov/2023/related/proposals/ab415> and 4) National Conference of State Legislatures, "The 'Iowa Model' for Redistricting," March 25, 2021, <https://www.ncsl.org/redistricting-and-census/the-iowa-model-for-redistricting>

"Trust comes only from having a relationship in which that trust is developed," said Fair Districts' McNulty. "So, being in the legislature together, you fight over certain things. You work together on certain things. You find people you can trust to be honest with you about differences and to be honest with you about things they agree with you on."

Assuming members could find common ground on core principles, a coalition of former legislators had the built-in advantage of being able to leverage its connections with parties, civic groups, and advocacy organizations to enable the coalition to grow and to draw advice from those most affected by reapportionment, as well as to keep these stakeholders informed. “It helped to withstand some of these partisan attacks as they began to arise later, when people realized that this thing was starting to get legs underneath it,” McNulty said. “So, having outside good government groups and election interest groups that were a part of the conversation early on mattered a great deal to withstanding some of that early political fire.”

Because parties and legislators—even those in uncompetitive races—relied on large donors and listened to what those donors wanted, the reform coalition prioritized convincing those donors—especially partisan donors—to make their financial support contingent on legislative support for independent redistricting, which increased politicians’ willingness to adopt the reforms, said Fair Districts backer Kent Thiry. Thiry also noted that not all donors were on the same footing: “If you go to big partisan donors and you get a million dollars from each, that’s worth as much as five million from the others, you’re sending a serious message.”

Showing that reform had strong public support was especially important when it came to influencing decision-makers who were still on the fence and hadn’t yet made up their minds. Polling could be helpful, said Thiry, though he cautioned that it was important to invest time in survey design as a way of ensuring that respondents understood the subject matter: “It’s so important to write the questions in such a way that you’ll get a legitimate response.”

As the Colorado case illustrated, a campaign to change a state’s redistricting processes could face setbacks that postpone reform for years, and in the United States, any reform not ready in advance of an upcoming redistricting cycle would have to wait another decade for implementation. “I think starting as soon as possible after the census is necessary,” said Amber McReynolds, a former Denver election official and election reform advocate who served as an unaffiliated member of the legislative commission. “The argument that there should be a level playing field is more compelling when no one is quite sure what the makeup of a state will be 10 years down the line,” she added.

*Policy design.* Key to designing a commission for independence and impartiality was structuring it in such a way that no party could dominate the others. In US states, that could be accomplished by ensuring a commission had an evenly matched number of major party—meaning, Republican and Democratic—commissioners—even if a 50/50 split didn’t exactly match the state’s political makeup. “The drawing of districts is the one chance for all communities in a state to have some chance at representation,” Princeton University redistricting expert Sam Wang said. “So, to have the process controlled by any one party would then remove that one chance for those

groups to be represented.” In other words, splitting partisan control evenly was a matter of each major party providing a check on the other.

Another core component of independent citizen redistricting commissions was the inclusion of multiple independent or unaffiliated commissioners, whose presence might elevate fairness and who could serve as tiebreakers should the major-party members deadlock. In 2021, California and Colorado each had four independent commissioners in addition to evenly matched Republicans and Democrats; Michigan had five. Arizona had only a single commissioner unaffiliated with either major party, and the model proved more problematical, said Wang. “Having one tiebreaking commissioner leads to a lot of attention focused on that commissioner,” Wang added. “One can often find positive or negative news stories about that commissioner, and then that commissioner becomes the focus of attention.”

Including independent members on the commission also ensured that unaffiliated voters had a voice. Independents made up a significant and rising percentage of the voting-age population in the United States.<sup>82</sup> “You couldn’t have these maps prepared and settled on by 50% of the registered voters,” said former legislator Kathleen Curry, alluding to the fact that Republican and Democratic registration had gone down in proportion to unaffiliated voters in Colorado. “The interests of unaffiliated voters would not have been taken into consideration.”

However, finding the best way to incorporate the voice of unaffiliated voters posed some difficult challenges. Although established political parties usually had the infrastructure to recruit and train people who could speak to the interests of affiliated voters, the selection of unaffiliated members had to rest on procedures carefully designed to prevent bias, including—in the case of Colorado—the use of randomized processes at some stages and the seating of a panel of retired judges to assist (text box 6). “It took a lot of work for us to get to a process for choosing unaffiliated commissioners we felt would be extraordinarily difficult for folks to subvert,” said former Colorado secretary of state and Fair Districts co-founder Bernie Buescher.

In other jurisdictions, where best to vest responsibility for selecting commissioners might depend on context. “A selection process managed by the state government requires a bureau or a state official or an entity trusted enough by different groups in the state that a process overseen by the entity will be perceived as legitimate,” Wang said. “For example, in California, the selection process is managed in large part by the state auditor’s office, which has a reputation for high integrity.”

When it came to how the commissioners might vote, Wang recommended a supermajority requirement for the passage of final maps. “A supermajority voting rule, by its nature, creates pressure for cross-partisan compromise by either winning over independents or crafting a bipartisan plan.” Colorado required 8 of the 12 commissioners—including at least 2 unaffiliated

### **Text Box 6: Summary of the Colorado Independent Legislative and Congressional Redistricting Commissions as Enacted in 2018**

The 2018 constitutional amendments required each commission to have 12 members: 4 from each of the state's two largest political parties and 4 unaffiliated voters. Each commission would also have to include at least one member from each congressional district and at least one member from the less-populated, western part of the state.\* In addition, the appointing bodies had to ensure that the commission mirrored the state's demographic makeup.

Selection of commissions took place through a multistep process, beginning with a public application period. Nonpartisan legislative staff vetted applications for accuracy. For each commission, a panel of retired judges was convened and randomly drew a pool of applicants from each of three main groups: 300 applicants from the largest party, 300 applicants from the second-largest party, and 450 unaffiliated voters.

From that initial pool of 1,050, the judicial panel then reviewed applications and narrowed the pool to 50 applicants from each group, for a total of 150. Six initial members—two from each of the main groups—were then drawn at random to be the first members of the commission.

From the initial randomly drawn applicant pool, the majority and minority leaders of each legislative chamber—four individuals—then each selected 10 party-affiliated applicants and submitted them to the judicial panel. The panel reviewed the lists and picked one applicant from each party leader's list to be the next four members of the commission.

The judicial panel then selected the 2 final unaffiliated members from the initial pool of 450.

\*Although each congressional district had to be represented, any district in the sparsely populated west was likely to spill over into other parts of the state, thereby creating the possibility that no commission member would come from the western region. To obviate such a situation, the rules mandated inclusion of one commission member from the western part of the state.

members—to vote in favor of the final approval of district maps; a simple majority was required for implementing rules and procedures; and election of the chair or vice chair required an affirmative vote of at least 8 members.

*Work process.* Some procedural requirements were baked into the constitutional amendments, but others would be decided on by the commissions themselves. Amber McReynolds, an unaffiliated member of the state legislative redistricting commission, encouraged future reformers to build detailed implementation plans or guidance into the design of a commission. “Starting to think about those mechanics that come into play if independent redistricting passes is really important. People are going to have questions about that. It might even affect how they vote on the measure if they understand what the after-process looks like.”

Carly Hare, the unaffiliated chair of the congressional redistricting commission, recommended that future commissions have a longer period between commissioner selection and final approval of maps than Colorado allotted—in order to account for the overall workload, particularly with regard to getting the commission up and running. “It took a lot more time than I think



was proposed in the amendment,” she said. Prior to her role as chair, Hare had worked in the area of dynamic group facilitation for 30 years. She encouraged dedicating time early on to team-building and trust-building exercises. “The dissonance will always be there, but you can manage conflict better if you spend some of that energy at the outset by asking, ‘Who are we?’ ‘Where do you come from?’ ‘What are your approaches to conflict management?’”

Robin Schepper, a Democratic member of the legislative redistricting commission, emphasized the importance of giving commissioners the time and space to learn and understand the best practices of redistricting—and of redistricting software. “You are very beholden to staff,” she said, “if you do not know how to draw maps yourself.”

In addition to timeline, education, and workload considerations, commissioner pay was also an essential factor to consider. “Not paying people is like an unpaid summer internship or the low compensation that comes with extended jury service,” Wang said. “You’re selecting for people who have the resources to volunteer, and that can be exclusionary.” Colorado commissioners received \$200 per day of active service, a flat rate determined by the legislature. The pay did not cover the additional time most commissioners worked during off hours.<sup>83</sup>

*Consultation and accessibility.* Inclusion was an important factor in the commissions’ day-to-day operations. To gather input and promote trust and transparency, the commissions conducted more hearings across the state than they were constitutionally required to hold. Their aim was to make the public comment period as accessible as possible. “We allowed people to submit comments—not only written comments but also verbal testimony—at hearings,” said McReynolds. “It was an all-inclusive process. We went all hours of the day. We had weekend hearings and hearings at night as well as during the day. That was by design.” Varying the dates and times of meetings and providing for in-person and online options for Coloradans to submit comments and map design input allowed for participation across age, ability, and class lines.

The commissions also made a concerted effort to mitigate confusion. As part of their communications campaign, they created an informational video they called “Redistricting 101.” “We played this video before every meeting to explain the process and who’s on the commission and what we’re trying to accomplish and what the goals are,” said Carlos Perez, chair of the legislative commission. Future commissions could likewise promote understanding with easily digestible educational materials.

Ellen Dumm, who led People Not Politicians’ community outreach and coalition-building efforts, argued it was crucial that people perceive the process as fair and open and as free from partisan influence as possible. “Voters want to know it’s the least partisan that it can get,” Dumm said.

*Strategy.* In a polarized political climate, any proposed changes in redistricting rules will attract pushback. In states in which one party dominates, politicians who already have influence over the voting rules “are not going to

unilaterally disarm and give up their power over redistricting,” said political strategist Josh Penry. However, former Republican legislator Frank McNulty added a cautionary reminder for partisans seeking to control the process indefinitely. “You have the power to draw your congressional districts now, but with one shift of one election, that’s gone,” McNulty said. “And it’s gone for 10 years. If you have these neutral criteria in place, if you have a fair commission in place, then the product will necessarily be fairer for everyone.”

Core reform leaders stressed that success was most likely to flow from opportunistically picking up good-faith support from individuals within the parties, not from targeting the parties themselves. “The folks in the middle are swayed by good-government arguments,” McNulty suggested. “Partisans couldn’t care less about good government.”

In reflecting on the experience as a whole, Buescher looked back to the undergraduate courses he took on political philosophy. “There are a lot of justifications for not doing the right thing,” Buescher said. “This type of redistricting, I believe, is the right thing. And at the end of the day, I think it is one step in creating or reversing the trend where people feel that the political process is rigged against them. Tough argument, tough battle. But you’re not going to get a legislature to take this up on its own and bring it forward. It’s got to come from, in our case, retired legislators or civic groups or other interested individuals.”

**Appendix A: Comparison of Independent Redistricting Processes in Arizona and California and the 2016 Fair Districts Proposal in Colorado**

State	Partisan Composition	Appointment Process Summary	Commission Rules and Procedure Summary
Arizona	2 Republicans 2 Democrats 1 unaffiliated	<p>Applicants are required to have had the same partisan affiliation for at least three years prior to applying. During the same time period, applicants may not have been non-school-board elected officials, party officials, or lobbyists. Applicants must be committed to conducting duties in an “honest, independent and impartial fashion and to upholding public confidence in the integrity of the redistricting process.”</p> <p>The Commission on Appellate Court Appointments or its politically balanced designee accepts applications and creates a pool of 25 nominees: 10 from each of the major parties and 5 unaffiliated voters.</p> <p>Legislative majority and minority leadership in each chamber selects one major party member from the pool to serve on the commission. Of those four, no more than two may reside in the same county.</p> <p>At a meeting called by the secretary of state, the initial pool of four members selects the fifth unaffiliated member from a list of five provided by the Commission on Appellate Court Appointments to serve as chair. If the initial four members fail to make an appointment, the Commission on Appellate Court Appointments selects the independent chair.</p>	<p>Three members, including the chair and vice chair, constitute a quorum. Three affirmative votes are required for any official action. Meetings must be open to the public.</p> <p>After the commission draws initial maps, there is a 30-day public comment period, during which legislators may make suggestions as well.</p> <p>Criteria to be considered when drawing district lines are compliance with the federal Voting Rights Act; equal populations; compactness and contiguousness; preservation of communities of interest; use of existing geographic and city, town, and county boundaries; and competitiveness to the extent that it does not affect other goals.</p> <p>The commission may not use partisan data in the initial stages but may do so later to check for compliance with criteria. Political incumbency cannot be considered.</p>
California	5 Republicans 5 Democrats 4 unaffiliated	<p>Applicants must be California residents and registered with the same political party for at least five years prior to appointment. They also must have voted in two of the most recent three general elections prior to appointment.</p> <p>Applications are submitted to the state auditor, who appoints a panel of three independent auditors to review and select the 120 most qualified applicants.</p> <p>The applicants are interviewed and then divided into three subpools of 40 based on party affiliation. The total pool is then narrowed to 60 applicants—20 of each affiliation.</p> <p>The panel submits the list of 60 to legislative leadership, which can remove up to 24 names from the list, or 8 of each affiliation.</p> <p>From the remainder, the state auditor draws at random three Democrats, three Republicans, and two unaffiliated voters. Those initial eight review the remaining applications and select the final six members</p>	<p>Nine members constitutes a quorum, and any action must be taken by affirmative vote of at least nine members. Approval of district maps must include three Republicans, three Democrats, and three unaffiliated voters.</p> <p>The process is to be fully transparent and allow “full public consideration of and comment on the drawing of district lines.”</p> <p>Criteria to be considered when drawing district lines are equal populations; compliance with the federal Voting Rights Act; geographic contiguousness; protection of the geographic integrity of cities, towns, counties, neighborhoods, and communities of interest; and compactness of districts.</p> <p>To the extent practicable, state senate districts must be composed of two whole assembly districts, and Board of Equalization districts must be composed of</p>

		of the commission.	10 whole state senate districts. Political incumbency cannot be considered.
Colorado: 2016 (Proposal 132, not the final proposal)	4 Republicans 4 Democrats 4 unaffiliated	<p>Applicants cannot be lobbyists, members of Congress or of the General Assembly or candidates for either of those bodies. Unaffiliated applicants must have been registered as such for at least two years prior to appointment.</p> <p>The majority and minority members of each chamber of the state legislature directly appoint two party-affiliated members each.</p> <p>The Colorado Supreme Court Nominating Commission accepts applications for the remaining independent seats. After reviewing applications, the commission presents a list of 10 applicants reflective of geographic and demographic diversity to the initial 8 members selected by the legislative leadership. By unanimous vote, the 8 members must select 4 unaffiliated members. Failing that, the legislature’s nonpartisan research staff will make the final appointments.</p> <p>Each congressional district must be represented by at least one member. At least one member must reside west of the Continental Divide, and at least one must reside south of El Paso County’s southern border.</p>	<p>Any motion requires the affirmative vote of at least eight members. Meetings must take place in public, with at least three hearings held in each congressional district. Map drawing is assisted by nonpartisan legislative staff.</p> <p>Criteria to be considered when drawing district lines are equal populations; compliance with the federal Voting Rights Act, preservation of political subdivisions such as town and county lines, preservation of communities of interest, compactness, minimal disruption of prior district lines, and competitiveness to the extent that it does not affect other goals.</p> <p>Political incumbency cannot be considered.</p>

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