Comments of League of United Latin American Citizens ("LULAC") and Colorado League of United Latin American Citizens ("Colorado LULAC") Regarding Third Staff Congressional Plan Released September 23, 2021

On behalf of the League of United Latin American Citizens and the Colorado League of United Latin American Citizens (collectively "LULAC"), Campaign Legal Center ("CLC") submits the following comments regarding the Third Staff Congressional Plan released on September 23, 2021. These comments supplement those LULAC submitted on August 17, 2021 and September 10, 2021, in response to the Staff's preliminary plans and the First Staff Congressional plan.

I.   Introduction and Summary

LULAC has previously explained how the Commission staff has misinterpreted—in fact, disregarded—the Colorado Constitution's requirement that maps not have the purpose or effect of "dilut[ing] the impact of [minority's] electoral influence." Colo. Const. art. V, § 44.3(b). The Third Staff Congressional Plan worsens that violation of the Colorado Constitution present in the prior versions.

I.   District 3 in the Third Staff Congress Plan Dilutes the Ability of Latino Voters to Influence Electoral Outcomes.

District 3 dilutes the ability of Latino voters to influence electoral outcomes. District 3 has a Latino total population of 25.7%, and a Latino CVAP of 20.6%.[1] As LULAC previously explained, with a thorough analysis of election results in racially homogenous precincts, voting in the affected area of the State is racially polarized: Latino voters strongly support Democratic candidates while white voters throughout rural Colorado strongly support Republican candidates. As a result, it dilutes the electoral influence of Latino voters to combine them with rural white voters who oppose Latino-

---

[1] The Commission's staff reports include only total population. The CVAP data provided in these comments—the metric relevant to assessing eligible voters—were obtained from Dave's Redistricting App ("DRA"), davesredistricting.org, by uploading the Block Equivalency File for the First Staff Congressional Plan. The Commission website encourages the public to use DRA.

preferred candidates if an alternative district can be drawn that includes a sufficient number of white crossover voters to permit Latino voters to reliably elect their candidates of choice.

The Third Staff Plan worsens the dilution that was present in the First Staff Plan. In particular, the Third Staff Plan removes the white crossover voters—who support Latino-preferred candidates—from Eagle County and replaces them with rural white voters from Garfield, Rio Blanco, and Moffat Counties who bloc vote against Latino-preferred candidates.[2]

As the staff's analysis shows, the Democratic candidate—the preferred candidate of Latino voters in District 3—would have lost *each* of the eight elections assessed by the staff, ranging from a loss by 6.1% in the 2018 gubernatorial election to a loss by 15.3% in the 2016 presidential election. In the 2020 presidential election, Trump would have carried the district by a margin of 52.9% to 44.7%. As shown below, PlanScore—a CLC project that predicts the partisan fairness and outcomes of redistricting plans—reveals that District 3 would lean Republican, with just a 14% chance that a Democratic candidate—the Latino-preference—could win.[3]
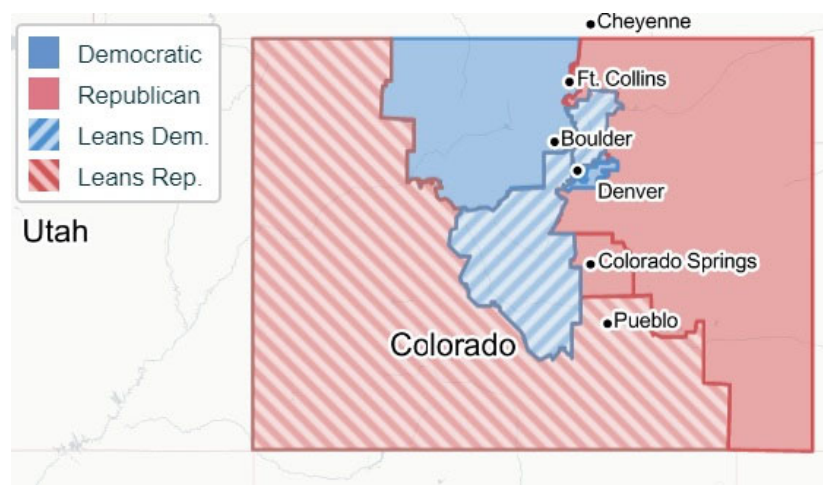
As LULAC previously explained, an effective crossover district can be drawn that would afford Latino voters in Pueblo, southern Colorado, southern Colorado Springs, and Eagle and Lake Counties an opportunity to elect their preferred candidate in both primary and general elections. *See* LULAC Comments (Aug. 17, 2021).

At a recent meeting, however, the Commission voted to require that the following military bases in El Paso County be included in a single district: the Air Force Academy,

---

[2] For example, here are the election results for Garfield, Rio Blanco, and Moffat Counties combined: 2020 President: Trump (R) prevailed 56.3% to 41.3%; 2020 Senate: Gardner (R) prevailed 57.3% to 40.4%; 2018 Governor: Stapleton (R) prevailed 55.8% to 40.7%; 2018 Attorney General: Brauchler (R) prevailed 56.7% to 40.1%; 2016 President: Trump (R) prevailed 58.2% to 34.5%; 2016 Senate: Glenn (R) prevailed 55.7% to 38.9%.

[3] *See* Ex. 1 (PlanScore Analysis of Third Staff Congressional Plan).

Cheyenne Mountain Space Force Station, Peterson Air Force Base, Schriever Space Force Base, and the populated portion of Fort Carson. In LULAC's original congressional proposal, all but Fort Carson were placed in LULAC proposed District 5, while Fort Carson was in District 8. The Commission also recently voted to keep the Roaring Fork Valley whole, including the towns of Aspen, Basalt, Carbondale, El Jebel, Glenwood Springs, and Snowmass Village. In LULAC's original congressional proposal, Glenwood Springs and Carbondale were in separate districts from the remainder of the Roaring Fork Valley. Given the Commission's vote to keep the El Paso County military bases and the Roaring Fork Valley whole, LULAC now submits a second proposed Congressional Plan that accomplishes these Commission priorities. LULAC does so by switching some El Paso County precincts from District 5 to District 8, and by moving the City of Durango and surrounding precincts, as well as a portion of Montezuma County, from proposed District 8 to proposed District 3 in exchange for keeping all of the Roaring Fork Valley whole in District 8. Unlike the Third Staff Plan, LULAC is able to accommodate these Commission priorities while simultaneously complying with the Colorado Constitution's requirement that Latino voters' electoral influence not be diluted. Below is a map of LULAC Congressional Plan Option 2.

LULAC CONGRESSIONAL PLAN OPTION 2 (without county lines)

'
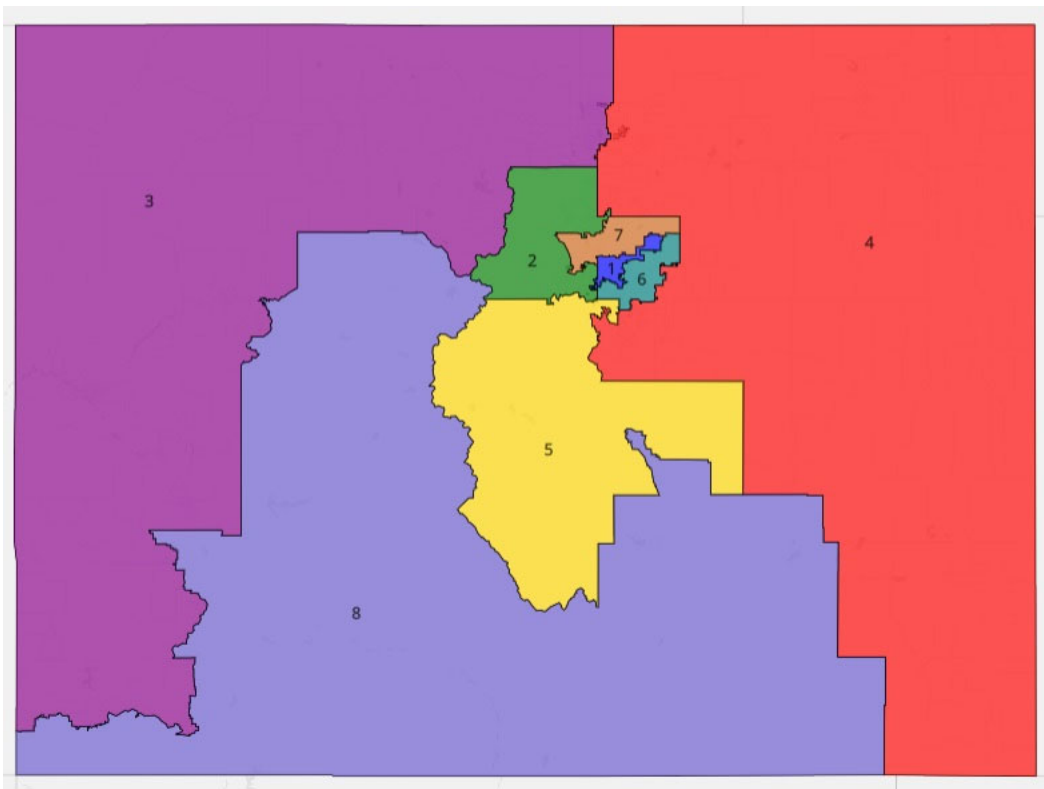
LULAC CONGRESSIONAL PLAN OPTION 2 (with county lines)
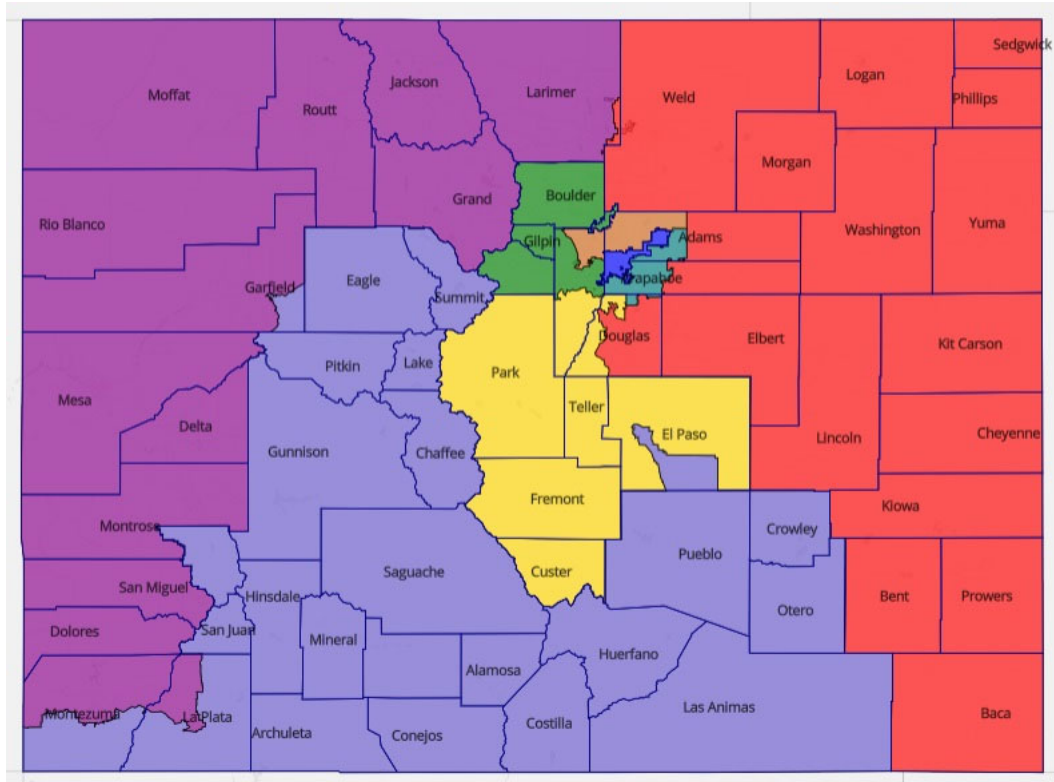
The districts are equally populated.[4] Below is the demographic information for LULAC Congressional Plan Option 2, which alters only Districts 3, 5, and 8.

LULAC Congressional Plan Option 2 Total Population

District	White	Hispanic	Black	Asian	Native	Pacific
1	54.5%	27.8%	10.8%	5.5%	3.5%	0.4%
2	73.8%	15.2%	2.1%	6.0%	2.9%	0.3%
3	77.4%	14.5%	1.6%	2.5%	3.8%	0.3%
4	70.1%	21.5%	2.4%	3.5%	3.0%	0.3%
5	74.0%	12.4%	5.3%	5.5%	3.3%	0.6%
6	54.3%	22.4%	13.2%	8.6%	3.2%	0.6%
7	57.8%	31.8%	3.0%	5.2%	4.0%	0.3%
8	59.3%	29.4%	5.7%	2.7%	5.0%	0.6%

---

[4] Districts 2 and 5 have 721,713 people, Districts 7 and 8 have 721,714 people, and Districts 1, 3, 4, and 6 have 721,715 people.

LULAC Congressional Plan Option 2 Voting Age Population (VAP)

District	White	Hispanic	Black	Asian	Native	Pacific
1	58.8%	24.4%	9.7%	5.2%	3.3%	0.4%
2	76.6%	13.2%	1.8%	5.6%	2.6%	0.2%
3	80.2%	12.3%	1.4%	2.3%	3.4%	0.3%
4	73.3%	18.9%	2.0%	3.0%	3.0%	0.3%
5	76.7%	10.6%	4.6%	4.8%	3.0%	0.5%
6	58.3%	19.7%	11.9%	8.1%	3.0%	0.5%
7	62.0%	28.1%	2.5%	4.9%	3.8%	0.3%
8	63.2%	26.1%	4.9%	2.5%	4.6%	0.5%

LULAC Congressional Plan Option 2 Citizen Voting Age Population (CVAP)

| District	White	Hispanic	Black	Asian	Native	Pacific
1	65.1%	20.4%	9.7%	3.3%	1.2%	0.1%
2	82.9%	11.0%	1.3%	3.5%	1.0%	0.1%
3	86.3%	9.5%	1.0%	1.4%	1.5%	0.1%
4	80.3%	15.3%	1.4%	1.6%	1.1%	0.1%
5	81.5%	9.7%	4.2%	3.1%	1.1%	0.1%
6	69.0%	13.3%	11.1%	5.2%	1.1%	0.2%
7	70.9%	22.4%	2.0%	3.3%	1.0%	0.1%
8	68.4%	23.3%	4.3%	1.6%	2.0%	0.3%

LULAC's Congressional Plan Option 2 also has high compactness scores, as shown below:

| District	Reock Score	Polsby-Popper Score
1	.16	.09
2	.50	.18
3	.33	.27
4	.44	.38
5	.50	.22
6	.29	.15
7	.21	.17
8	.31	.19

Reconstituted election results and predictive models show that the Latino-preferred candidate reliably would be able to prevail in District 8.

2020 President		2020 Senate		2018 Governor	
Biden (D)	53.6%	Hickenlooper (D)	52.5%	Polis (D)	53.3%
Trump (R)	43.4%	Gardner (R)	44.6%	Stapleton (R)	42.1%
2018 Atty. Gen.		**2016 President**		**2016 Senate**	
Weiser (D)	52.3%	Clinton (D)	47.0%	Bennet (D)	50.7%
Brauchler (R)	43.9%	Trump (R)	44.1%	Glenn (R)	42.7%

PlanScore's analysis likewise shows that District 8 would be likely to perform to permit Latino voters to influence electoral outcomes, as shown below. PlanScore characterizes District 8 as "Lean Democratic," and predicts a 71% chance that the Latino-preferred Democratic candidate would prevail in District 8, with a predicted voted margin of 53% to 47%.[5]
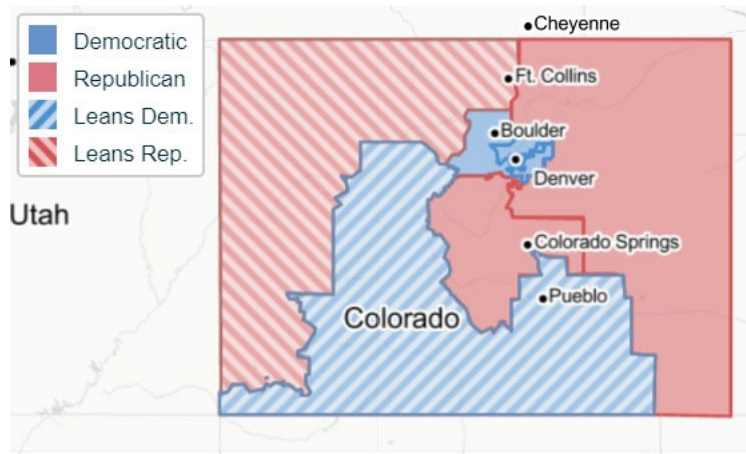
The map below compares LULAC's proposed District 8 (from LULAC Congressional Plan Option 2) with the Third Staff Congressional Plan's District 3. The areas in blue are those common to both districts, the area in green shows the additional territory included in LULAC's proposed District 8, and the area in purple shows the territory the Third Staff Congressional Plan includes instead.

---
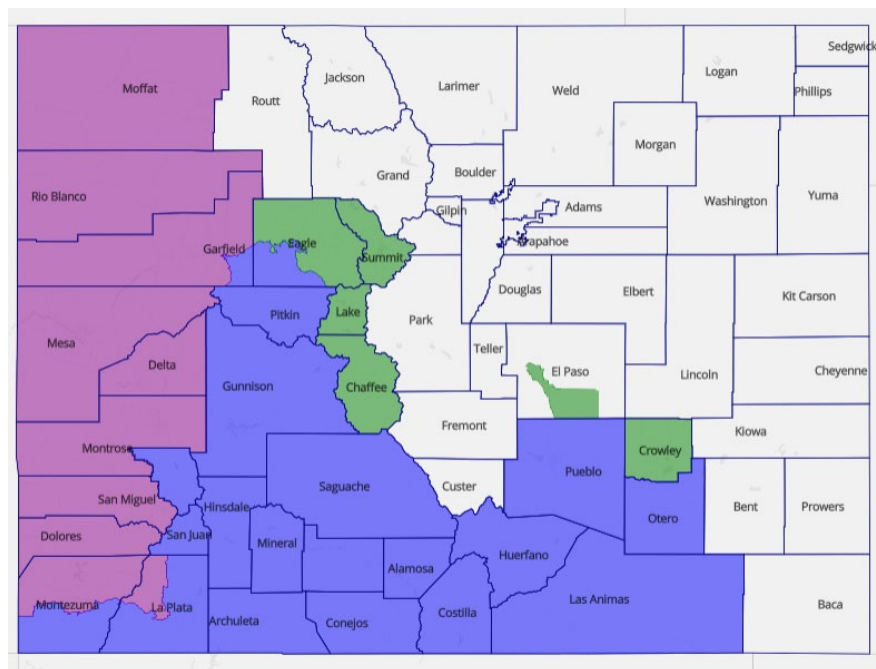
[5] *See* Ex. 2 (PlanScore Analysis of LULAC Congressional Plan Option 2).

The blue area has a Latino total population of 33.7% and CVAP of 29.2%. The blue area reliably performs to elect Latino voters' preferred candidates: Biden received 52.0% in this area, Hickenlooper received 51.2%, Polis received 52.4%, Weiser received 51.6%, Clinton received 46.9% (to Trump's 44.9%), and Bennet received 51.9%.

The green area (proposed by LULAC) has a Latino total population of 24.8% (and a Black total population of 9.4%), and a Latino CVAP of 16.4%. The green area reliably performs to elect Latino voters' preferred candidates: Biden received 55.6%, Hickenlooper received 54.1%, Polis received 54.6%, Weiser received 53.1%, Clinton received 47.1% (to Trump's 43.0%), and Bennet received 49.2% (to Glenn's 42.8%).

By contrast, the purple area (proposed by the Commission staff) has a Latino total population of 17.0% and a Latino CVAP of 10.9%. The purple area's white citizen voting age population is 85.0%, and election results show that its white voters overwhelmingly vote as a bloc to defeat Latino-preferred candidates. In the purple area, Trump (2020) received 60.9%, Gardner received 62.0%, Stapleton received 59.3%, Brauchler received 61.7%, Trump (2016) received 62.1%, and Glenn received 60.2%. The inclusion of the purple areas, instead of the green areas, dilutes the ability of Latino voters to influence electoral outcomes and violates the Colorado Constitution.[6]

The Commission must adopt a district based in southern Colorado—such as LULAC's proposed District 8—that does not dilute the electoral influence of Latino voters. As LULAC showed in its August 17 comments, this district would not only avoid a general election victory by candidates opposed by Latino voters as a result of white bloc voting but would also provide the reliable opportunity—based on the available election data—for a Latino candidate to prevail in both the primary *and* general election. This satisfies the Colorado Constitution's "electoral influence" mandate. It also better serves the Commission's other criteria.

II. District 8 in the Third Staff Congressional Plan Dilutes the Ability of Latino Voters to Influence Electoral Outcomes.

District 8 in the Third Staff Congressional Plan dilutes the ability of Latino voters to influence electoral outcomes. Both the preliminary plan and the Third Staff Plan place District 8 in the northern suburbs of Denver, where there is a large Latino population. LULAC proposed a district similar to the staff's preliminary plan (numbered District 7 in LULAC's plan), also with a large Latino population. In both the staff's preliminary plan and LULAC's plan, white bloc voters would not be able to elect the general election candidate opposed by Latino voters. *See, e.g.*, Preliminary Plan Political Memo (noting

---

[6] In the September 3, 2021 comments, LULAC showed how the Commission's focus on keeping the city of Colorado Springs whole dilutes the electoral influence of Latino voters in southern Colorado Springs. The minor changes proposed by LULAC in Option 2—to accommodate the Commission's desire to keep the five military bases in a single district—do not affect the analysis in LULAC's prior comments showing the need to split the city of Colorado Springs.

that Democratic Attorney General candidate carried District 8 51.8% to 44.4%); LULAC Comments (Aug. 17, 2021) Ex. 1 (PlanScore analysis of staff's preliminary plan showing 87% chance Democratic candidate would prevail in District 8, with predicted margin of 55% to 45%); *Id.* Ex. 2 (PlanScore analysis of LULAC Plan showing 94% chance Democratic candidate would prevail in District 7, with predicted margin of 57% to 43%).

The Third Staff Congressional Plan, however, creates a significant risk that white bloc voting would result in general election victories by candidates opposed by Latino voters. Although the newly proposed District 8 has an even higher Latino population—a total population of 38.5% and a CVAP of 27.5% (compared to LULAC District 7's Latino CVAP of 22.4%)—the plan attains those higher numbers by swapping white voters in suburban Denver (including in Jefferson County) who cross over to support Latino preferred candidates with white voters in Weld County who bloc vote against Latino preferred candidates. By doing so, the Third Staff Congressional Plan dilutes the ability of Latino voters to influence electoral outcomes. As the staff memo reflects, the Latino preferred candidates lost both the 2016 presidential race and the 2018 Attorney General race in District 8, with an overall average of just a 1.3% margin of victory across the eight elections analyzed by the staff. PlanScore reveals that the Democratic candidate—the Latino preferred candidate—would have just a 50% chance of winning the district, with a projected *tied* vote of 50% to 50%.[7] It violates the Colorado Constitution to create the façade of a Latino opportunity district that the data show may not actually perform to permit Latino voters to elect their preferred candidates. *Cf. Perez v. Abbott*, 253 F. Supp. 3d 864, 884-55 (W.D. Tex. 2017) (invalidating plan that created the "façade of a Latino district" by including non-performing precincts with Hispanic voters and excluding performing precincts).

The image below shows the Weld and Larimer County portions of District 8 in purple, and the Adams County portion in red.

---

[7] *See* Ex. 1 (PlanScore analysis of Third Staff Congressional Plan).
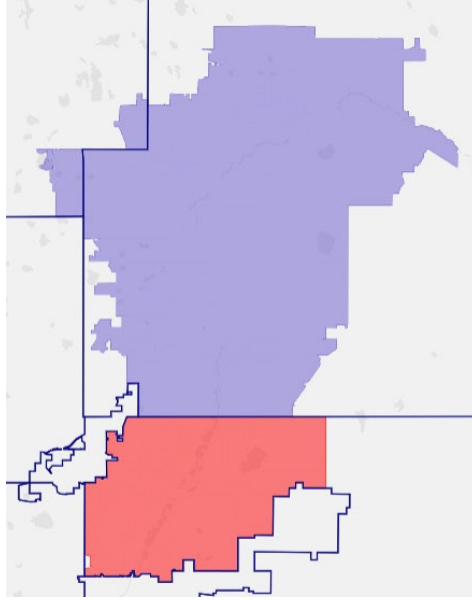
The red area (63.2% of the district's population) has a Latino total population of 41.3% and a Latino CVAP of 29.7%. Its white CVAP is 62.5%. The red area reliably votes to favor of Latino-preferred general election candidates. For example, Biden prevailed 56.6% to 40.5%, Hickenlooper prevailed 55.2% to 41.8%, Polis prevailed 54.5% to 40.6%, Weiser prevailed 53.1% to 42.9%, Clinton prevailed 49.8% to 41.3%, and Bennet prevailed 52.6% to 41.2%.

By contrast, the purple area (36.8% of the district's population) has a Latino total population of 33.8%, a Latino CVAP of 23.7%, and a white CVAP of 72.0%. White voters in the purple area bloc vote against Latino preferred candidates. For example, Trump (2020) prevailed 55.8% to 41.2%, Gardner prevailed 57.7% to 40.0%, Stapleton prevailed 56.3% to 38.9%, Brauchler prevailed 58.1% to 37.8%, Trump (2016) prevailed 54.6% to 36.1%, and Glenn prevailed 53.6% to 40.7%.

To the extent District 8 is intended to further the Colorado Constitution's criterion that the Commission should "to the extent possible, maximize the number of politically competitive districts," Colo. Const. art. V, § 44.3(3(a)—the lowest priority in the Constitution's set of criteria—it is unlawful to accomplish that goal by making the district with the largest Latino population into the façade of a Latino opportunity district. By doing so, the proposal dilutes the ability of Latino voters to influence electoral outcomes by creating a 50% chance[8] that white bloc voting will defeat their preferred candidate.

Moreover, if the Commission's goal was to create a district with a larger Latino population in the Denver region, that could have been achieved without diluting the ability of Latino voters to influence electoral outcomes, by including adjacent precincts in Denver County or Jefferson County with large Latino populations.

---

[8] *See* Ex. 1 (PlanScore analysis of Third Staff Congressional Plan).

* * *

The preliminary staff plan violated the Colorado Constitution by drawing three districts with large Latino populations, but only two in which Latino voters had the ability to influence electoral outcomes. This Third Staff Congressional Plan is worse yet—it includes three districts with large Latino populations, but only *one* in which Latino voters could avoid being overwhelmed in general elections by white bloc voting, and *zero* in which Latino voters could be expected reliably to win both the primary *and* the general election.

Notably, this is not necessary to achieve a map characterized by partisan fairness or competitiveness. As the PlanScore analysis of LULAC's proposed plan shows,[9] LULAC's Plan achieves a fair outcome by all accepted measures of partisan fairness and creates two districts that "lean" in one direction or another, as the PlanScore map below illustrates.[10]
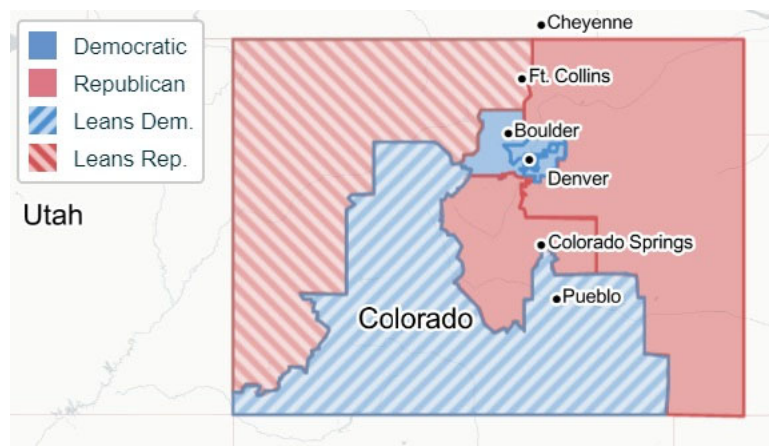
It is not necessary—nor lawful—to achieve a competitive map by diluting the electoral influence of Latino voters. The Third Staff Congressional Plan violates the Colorado Constitution, and must be changed consistent with the Colorado Constitution, as reflected in LULAC's proposed plan.

---

[9] *See* Ex. 2 (PlanScore analysis of LULAC Plan showing partisan fairness across all accepted metrics).

[10] *See id.* For more information about the partisan fairness metrics shown on the PlanScore report, see www.planscore.campaignlegal.org.

September 25, 2021

Submitted by,

/s/ Mark P. Gaber

Mark P. Gaber
Director of Redistricting
Campaign Legal Center
1101 14th St. NW, Ste. 400
Washington, DC 20005
(202) 736-2200
mgaber@campaignlegal.org

EXHIBIT 1

Third_Congressional_District_Staff_Plan_Final.zip

*Uploaded: 9/24/2021, 10:04:58 PM*

Colorado U.S. House plan

PlanScore bases its scores on predicted precinct-level votes for each office (State House, State Senate, and U.S. House) built from past election results and U.S. Census data. More information about the predictive model used to score this plan.

Efficiency Gap: 1.9%

+25% D   Balanced   +25% R
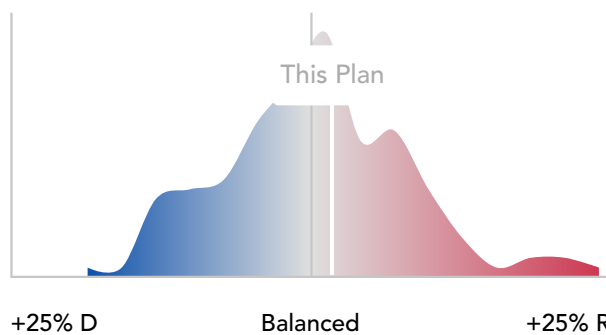
Votes for Republican candidates are expected to be inefficient at a rate 1.9% lower than votes for Democratic candidates, favoring Republicans in 59% of predicted scenarios.[*] Learn more ❯
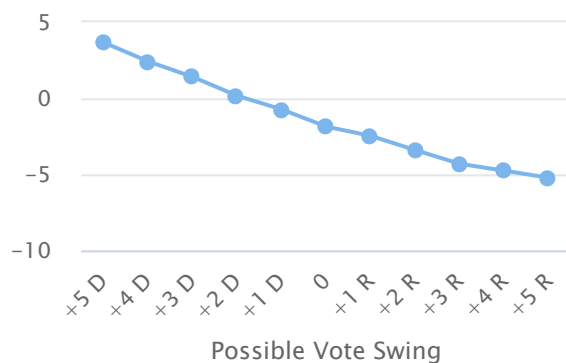
Sensitivity Testing


Possible Vote Swing

Sensitivity testing shows us a plan's expected efficiency gap given a range of possible vote swings. It lets us evaluate the durability of a plan's skew.

Declination: 0.07

+0.81 D Balanced +0.81 R
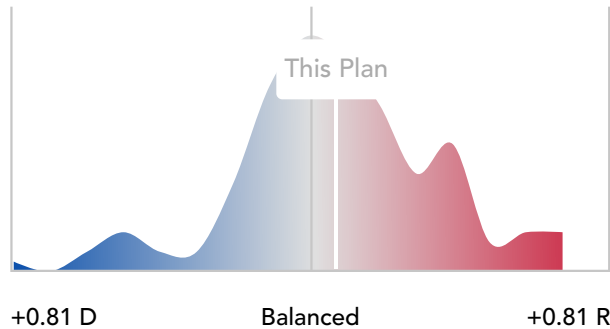
The mean Democratic vote share in Democratic districts is expected to be 4.1% higher than the mean Republican vote share in Republican districts. Along with the relative fraction of seats won by each party, this leads to a declination that favors Republicans in 69% of predicted scenarios.[*] Learn more ❯

Partisan Bias: 5.1%

+25% D Balanced +25% R
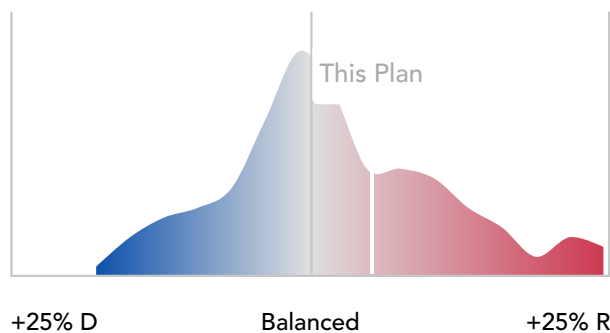
Republicans would be expected to win 5.1% extra seats in a hypothetical, perfectly tied election, favoring Republicans in 83% of predicted scenarios.[*] Learn more ❯

Mean-Median Difference: 1.9%

+12% D Balanced +12% R
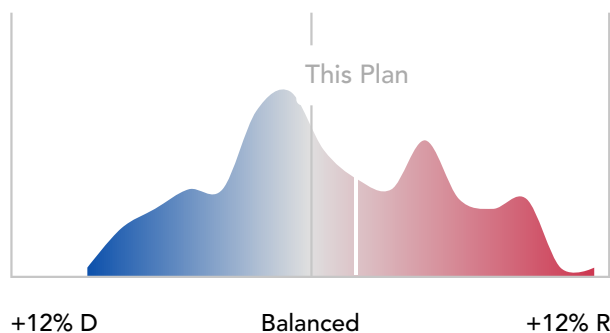
The median Republican vote share is expected to be 1.9% higher than the mean Republican vote share, favoring Republicans in 81% of predicted scenarios.[*] Learn more ❯
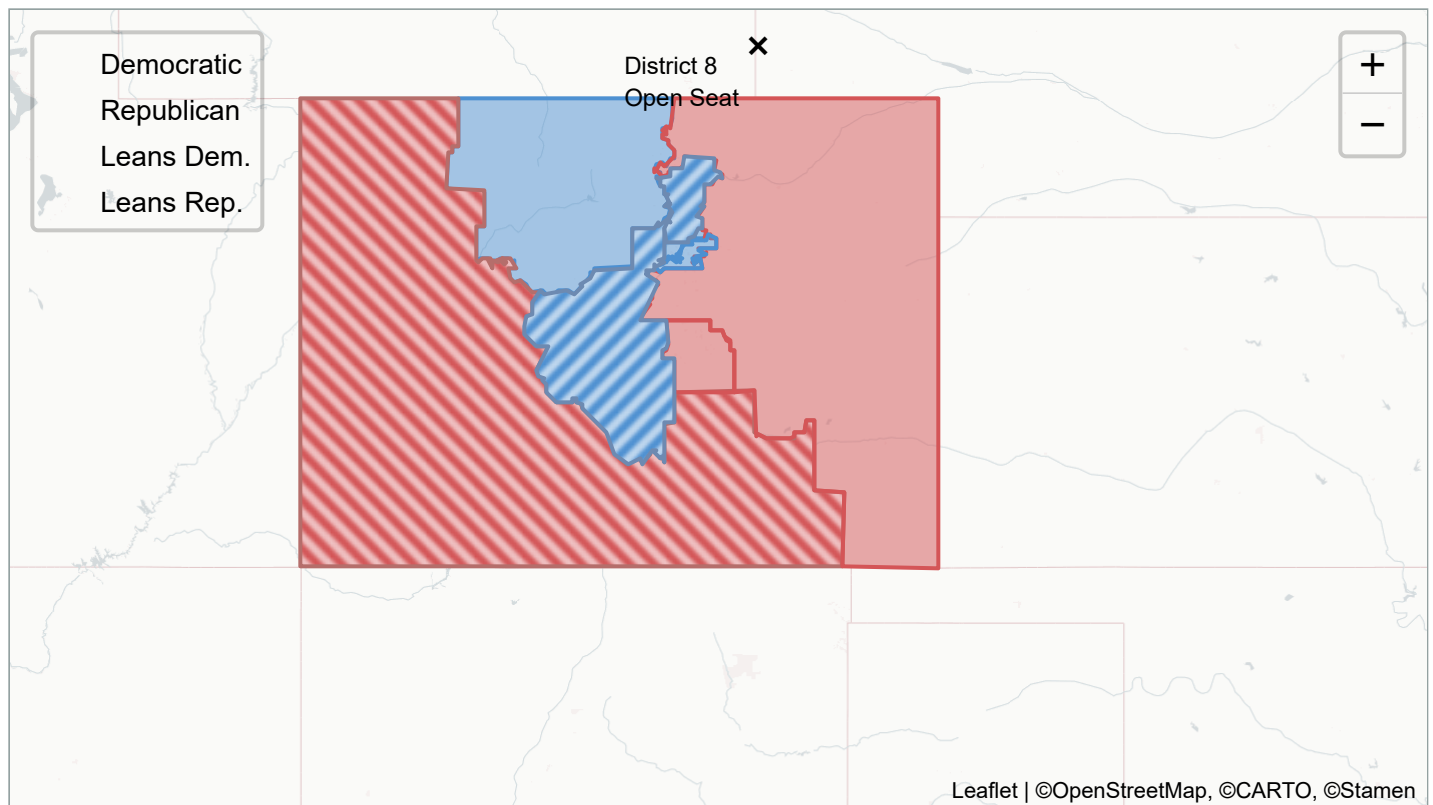
District	Candidate Scenario	Pop. 2020	Non-Hisp. Black CVAP 2019	Hispanic CVAP 2019	Non-Hisp. Asian CVAP 2019	Chance of 1+ Flips†	Chance of Democratic Win	Predicted Vote Shares	Bide (D 202
1	Open Seat	721,714	9.5%	20.4%	3.3%	No	>99%	77% D / 23% R	315,48
2	Open Seat	721,709	1.3%	8.8%	2.7%	No	>99%	67% D / 33% R	305,75
3	Open Seat	721,714	1.1%	20.6%	0.8%	Yes	14%	44% D / 56% R	186,12
4	Open Seat	721,743	1.7%	9.9%	2.5%	No	4%	39% D / 61% R	174,28
5	Open Seat	721,714	6.9%	13.4%	3.2%	No	11%	43% D / 57% R	161,06
6	Open Seat	721,714	10.3%	13.1%	4.7%	No	96%	60% D / 40% R	232,71
7	Open Seat	721,680	1.6%	12.1%	2.7%	Yes	83%	55% D / 45% R	255,49
8	Open Seat	721,714	2.0%	27.4%	3.0%	Yes	50%	50% D / 50% R	173,41

Download raw data as tab-delimited text.

Metric	Value	Favors Democrats in this % of Scenarios*	More Skewed than this % of Historical Plans‡	More Pro-Democratic than this % of Historical Plans‡
Efficiency Gap	1.9% Pro-Republican	41%	20%	34%
Declination	0.07 Pro-Republican	31%	29%	40%
Partisan Bias	5.1% Pro-Republican	17%	46%	29%
Mean-Median Difference	1.9% Pro-Republican	19%	24%	34%

* Scenarios are part of the predictive model used to score this plan.

† 50%+ chance of one or more party flips assuming the plan is used for one decade with five State House elections, five U.S. House elections, or three State Senate elections.

‡ Enacted U.S. House, State House, and State Senate plan metrics are featured in our historical dataset.

CLC

ADVANCING
DEMOCRACY
THROUGH LAW

PlanScore is a project of Campaign Legal Center.

EXHIBIT 2

PlanScore
A PROJECT OF CAMPAIGN LEGAL CENTER

block-assignments (5).csv

Uploaded: 9/25/2021, 1:20:35 AM

Colorado U.S. House plan

PlanScore bases its scores on predicted precinct-level votes for each office (State House, State Senate, and U.S. House) built from past election results and U.S. Census data. <u>More information about the predictive model used to score this plan</u>.

Efficiency Gap: 2.6%

+25% D   Balanced   +25% R
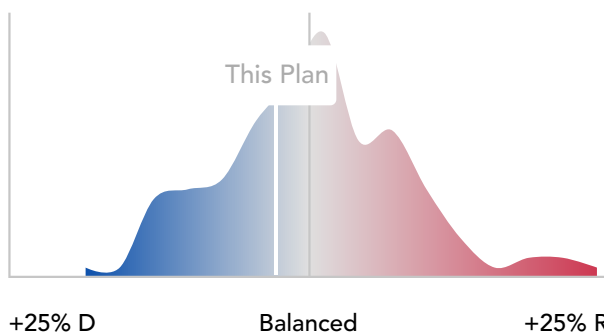
Votes for Democratic candidates are expected to be inefficient at a rate 2.6% lower than votes for Republican candidates, favoring Democrats in 64% of predicted scenarios.* <u>Learn more ❯</u>
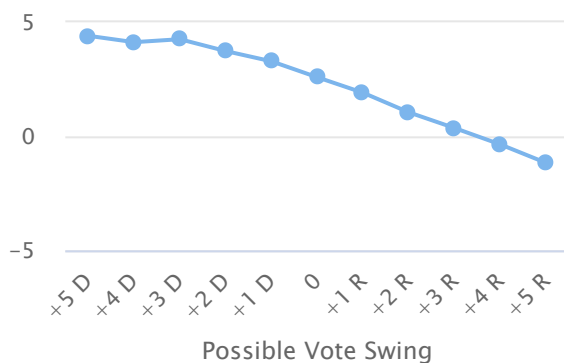
Sensitivity Testing

Possible Vote Swing

Sensitivity testing shows us a plan's expected efficiency gap given a range of possible vote swings. It lets us evaluate the durability of a plan's skew.

Declination: 0.04

+0.81 D   Balanced   +0.81 R
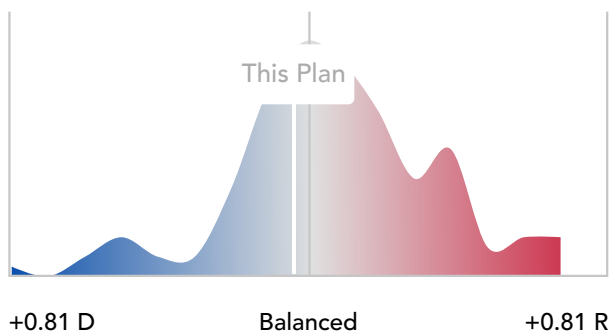
The mean Republican vote share in Republican districts is expected to be 4.1% higher than the mean Democratic vote share in Democratic districts. Along with the relative fraction of seats won by each party, this leads to a declination that favors Democrats in 56% of predicted scenarios.[*] Learn more ❯

Partisan Bias: 0.2%

+25% D   Balanced   +25% R
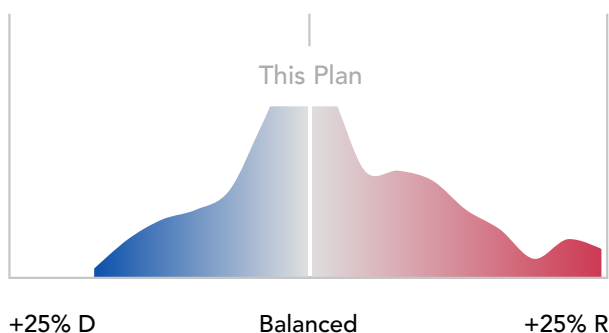
Republicans would be expected to win 0.2% extra seats in a hypothetical, perfectly tied election, favoring Republicans in 65% of predicted scenarios.[*] Learn more ❯

Mean-Median Difference: 0.1%

+12% D   Balanced   +12% R
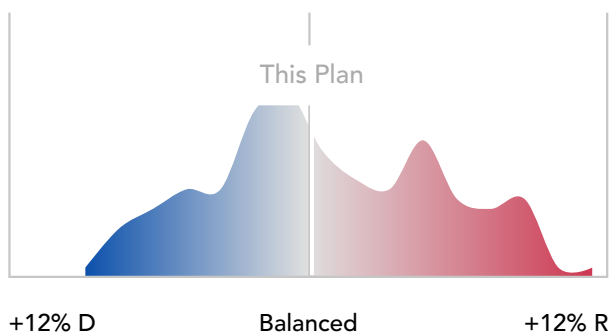
The median Republican vote share is expected to be 0.1% higher than the mean Republican vote share, favoring Republicans in 52% of predicted scenarios.[*] Learn more ❯
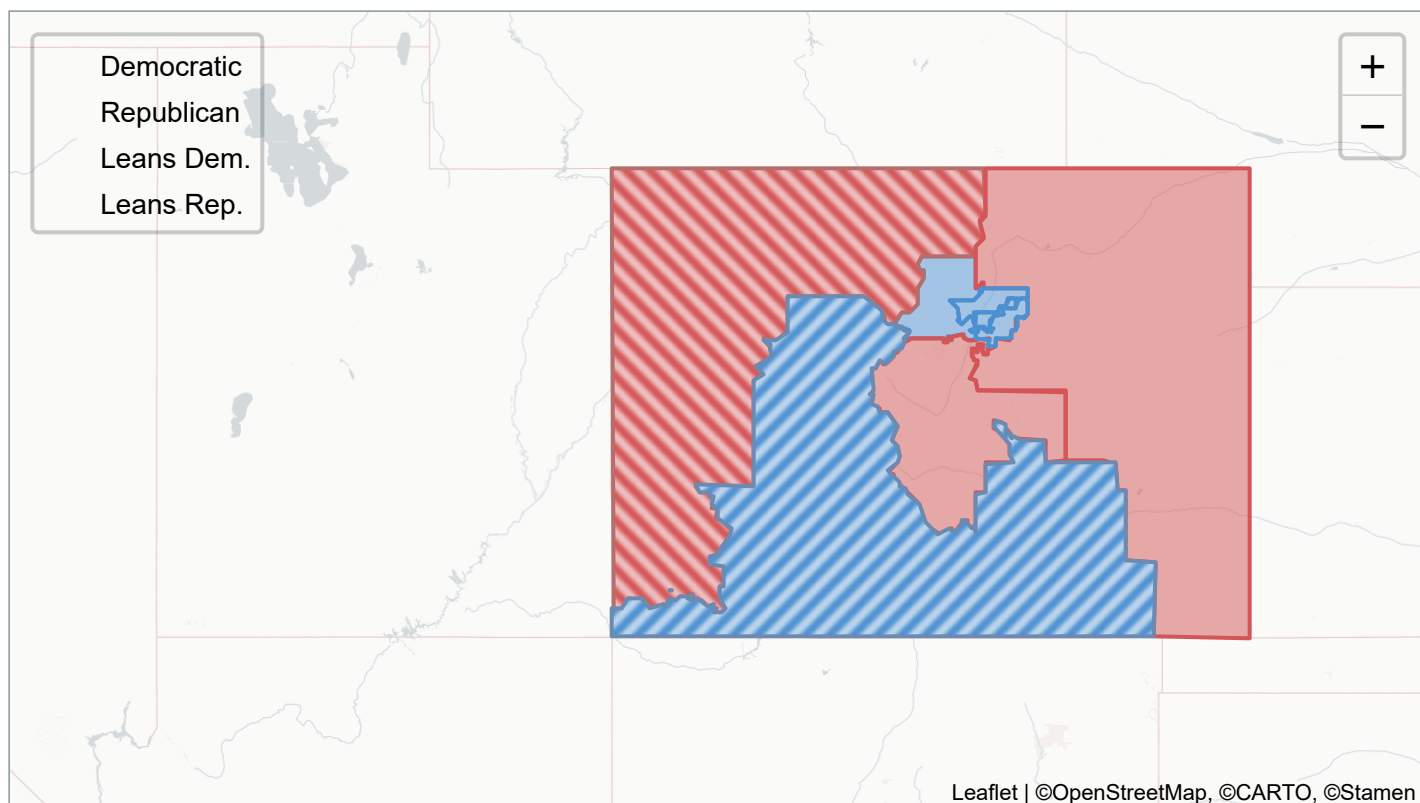
Leaflet | ©OpenStreetMap, ©CARTO, ©Stamen

District	Candidate Scenario	Pop. 2020	Non-Hisp. Black CVAP 2019	Hispanic CVAP 2019	Non-Hisp. Asian CVAP 2019	Chance of 1+ Flips†	Chance of Democratic Win	Predicted Vote Shares	Bide (D 202
1	Open Seat	721,715	9.5%	20.4%	3.3%	No	>99%	77% D / 23% R	316,10
2	Open Seat	721,713	1.3%	11.0%	3.5%	No	>99%	65% D / 35% R	304,84
3	Open Seat	721,709	1.0%	9.5%	1.4%	Yes	31%	47% D / 53% R	208,55
4	Open Seat	721,715	1.3%	15.4%	1.6%	No	2%	37% D / 63% R	149,01
5	Open Seat	721,707	4.2%	9.7%	3.1%	No	5%	41% D / 59% R	173,66
6	Open Seat	721,715	10.9%	13.3%	5.2%	No	97%	60% D / 40% R	229,90
7	Open Seat	721,714	1.9%	22.5%	3.3%	No	90%	57% D / 43% R	221,41
8	Open Seat	721,714	4.2%	23.3%	1.6%	Yes	71%	53% D / 47% R	200,84

Download raw data as tab-delimited text.

Metric	Value	Favors Democrats in this % of Scenarios[*]	More Skewed than this % of Historical Plans[‡]	More Pro-Democratic than this % of Historical Plans[‡]
Efficiency Gap	2.6% Pro-Democratic	64%	27%	58%
Declination	0.04 Pro-Democratic	56%	20%	61%
Partisan Bias	0.2% Pro-Republican	35%	3%	44%
Mean-Median Difference	0.1% Pro-Republican	48%	4%	45%

[*] Scenarios are part of the predictive model used to score this plan.

[†] 50%+ chance of one or more party flips assuming the plan is used for one decade with five State House elections, five U.S. House elections, or three State Senate elections.

[‡] Enacted U.S. House, State House, and State Senate plan metrics are featured in our historical dataset.

PlanScore is a project of Campaign Legal Center.