

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. R21-0781.03 Megan Waples x8639

HJR21-1008

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HOUSE JOINT RESOLUTION 21-1008

101 **CONCERNING A REQUEST TO THE SUPREME COURT OF THE STATE OF**
102 **COLORADO TO RENDER ITS OPINION UPON QUESTIONS**
103 **REGARDING SECTIONS 44 TO 48.4 OF ARTICLE V OF THE STATE**
104 **CONSTITUTION.**

1 WHEREAS, In 2018, the voters in Colorado overwhelmingly
2 approved Amendments Y and Z; and

3 WHEREAS, Amendment Y, which became sections 44 to 44.6 of
4 article V of the state constitution, changed the entity responsible for
5 redrawing congressional districts from the General Assembly to a new
6 Independent Congressional Redistricting Commission (congressional
7 commission), and Amendment Z, which became sections 46 to 48.4 of
8 article V of the state constitution, changed the entity responsible for
9 redrawing the districts for the state Senate and state House of

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

1 Representatives from the Reapportionment Commission to a new
2 Independent Legislative Redistricting Commission (legislative
3 commission); and

4 WHEREAS, In sections 44 and 46 of article V of the state
5 constitution, the people declared that they wanted and deserved a
6 "redistricting process that provides the public with the ability to be heard
7 as redistricting maps are drawn, to be able to watch the witnesses who
8 deliver testimony and the redistricting commission's deliberations, and to
9 have their written comments considered before any proposed map is
10 voted upon by the commission as the final map"; and

11 WHEREAS, Amendments Y and Z provide for a multi-stage
12 process with specific deadlines for the consideration and development of
13 redistricting plans, in which:

- 14 ● Nonpartisan staff prepares and presents a preliminary
15 redistricting plan to each commission, to be completed
16 between May 1 and May 15;
- 17 ● The commissions conduct numerous public hearings on the
18 preliminary plans in locations across the state, to be
19 completed by July 7 for the congressional commission and
20 by July 21 for the legislative commission, allowing at least
21 five weeks for the public hearings to be held;
- 22 ● The commissions provide direction to nonpartisan staff,
23 who then prepares and presents up to three staff plans to
24 each commission, which the commissions review, consider,
25 and possibly amend;
- 26 ● Each commission approves a plan to be submitted to the
27 Colorado Supreme Court, by September 1 for the
28 congressional commission and by September 15 for the
29 legislative commission. If a commission is unable to
30 approve a plan by the deadline specified in the state
31 constitution, nonpartisan staff submits the unamended third
32 staff plan to the Colorado Supreme Court.
- 33 ● The Colorado Supreme Court either approves each
34 commission's plan or sends the plan back to the
35 commission with the reason for its disapproval, by
36 November 1 for the congressional commission and by
37 November 15 for the legislative commission; and
- 38 ● The Colorado Supreme Court gives final approval to the
39 congressional redistricting plan by December 15 and the
40 legislative redistricting plan by December 29; and

1 WHEREAS, Amendments Y and Z provide for increased public
2 participation at various stages of the redistricting process by:
3 ● Requiring at least three public hearings on the preliminary
4 plan of each commission in each of the seven existing
5 congressional districts;
6 ● Allowing any Colorado resident to submit a redistricting
7 plan and provide comments to the redistricting
8 commissions, with the plan and comments posted on the
9 commissions' website; and
10 ● After the commissions begin considering staff plans,
11 prohibiting the commissions, unless waived by all
12 commissioners, from voting to approve a plan for
13 seventy-two hours after a staff plan is presented to the
14 commissions, or the staff plan is amended at a public
15 meeting, so that the public is aware of what is in each
16 commission's final plan submitted to the Colorado Supreme
17 Court; and

18 WHEREAS, Sections 44.4 (5)(c) and 48.2 (5)(c) of article V of the
19 state constitution allow the commissions to adjust the specified timelines
20 for their work if circumstances outside the commissions' control require
21 such an adjustment to ensure the adoption of a plan, thus allowing the
22 commissions the flexibility to ensure the public has functional
23 opportunities to participate in the process when strict adherence to the
24 specified deadlines would impair such participation; and

25 WHEREAS, The state constitution does not provide a mechanism
26 by which to adjust the deadlines specified for the Colorado Supreme
27 Court to review and approve the plans submitted by the commissions
28 pursuant to sections 44.5 and 48.3 of article V of the state constitution;
29 and

30 WHEREAS, The constitutionally mandated timelines and
31 deadlines for the work of the commissions are based on the understanding
32 that 13 U.S.C. sec. 141 requires the United States Census Bureau to
33 provide the state by March 31, 2021, with the population and
34 demographic data at the census block level necessary to redraw election
35 districts; and

36 WHEREAS, Due to the COVID-19 pandemic, the United States
37 Census Bureau did not provide the total population data for the state by
38 March 31, 2021, as required by 13 U.S.C. sec. 141; and

1 WHEREAS, The tabulation of the total population by state
2 required by 13 U.S.C. sec. 141 (b) was released on April 26, 2021, and
3 the United States Census Bureau anticipates releasing the remaining data
4 on the following schedule:

- 5 ● The redistricting data, which is the population and
6 demographic data at the census block level, will be released
7 in a legacy format summary redistricting data file by mid-
8 to late-August 2021; and
- 9 ● The final census data, which is the redistricting data
10 required by 13 U.S.C. sec. 141 (c), and fundamentally the
11 same data to be provided in the legacy format in August
12 2021, will be released on or after September 30, 2021,
13 which is at least six months after the original deadline; and

14 WHEREAS, If the commissions are required to wait to begin work
15 on their plans until the final census data is released on September 30,
16 2021, at the earliest, it will be impossible for the commissions to comply
17 with the requirements and meet the mandated deadlines specified in the
18 state constitution to submit their final plans for the Colorado Supreme
19 Court's consideration and approval of the plans; and

20 WHEREAS, If the commissions are delayed in submitting the final
21 plans to the Colorado Supreme Court, it is likely the court will not be able
22 to approve or disapprove the plans by November 1 for the congressional
23 commission and by November 15 for the legislative commission; and

24 WHEREAS, If the commissions cannot begin the public hearing
25 process prior to the release of the final census data, there is likely to be
26 substantially less public discussion of the proposed district boundaries in
27 the preliminary and staff plans and their adherence to the criteria
28 specified in sections 44.3 and 48.1 of article V of the state constitution,
29 contrary to voter expectations when they adopted Amendments Y and Z;
30 and

31 WHEREAS, It is to the public's benefit for redistricting to be
32 completed and the new district boundaries known well in advance of the
33 2022 primary election so that potential candidates can make decisions
34 about whether to run for office and meet the deadlines for nomination by
35 petition or assembly that precede the primary election; and

36 WHEREAS, If the start of the redistricting processes is delayed
37 until approximately September 30, 2021, when receipt of the final form

1 of data from the United States Census Bureau is anticipated, it is possible
2 that election events such as precinct caucuses and the primary election
3 will need to be delayed as well, allowing less time for voters to consider
4 and choose among candidates for United States Senate and statewide
5 elected offices, as well as candidates in the newly drawn districts for
6 Representatives in Congress and members of the Colorado State Senate
7 and House of Representatives, and potentially creating conflicts with
8 related deadlines in federal law for the 2022 general election; and

9 WHEREAS, To achieve the voters' intent stated in Amendments
10 Y and Z to allow sufficient opportunities for public input, to minimize
11 disruption to and uncertainty in the 2022 election calendar, and to comply
12 with the constitutional mandates and timelines for public input, Senate
13 Bill 21-247 was introduced in the Senate of the Seventy-third General
14 Assembly on April 16, 2021; and

15 WHEREAS, Senate Bill 21-247:

- 16 ● Amends the statutory definition of the "necessary census
17 data" to be used to create preliminary plans pursuant to
18 sections 44 to 48.4 of article V of the state constitution in
19 the 2021 redistricting year to include the tabulation of the
20 total population by state published by the United States
21 Census Bureau on April 26, 2021, along with additional
22 state or federal data sources approved by each commission,
23 while requiring the final census data to be used for all staff
24 plans; and
- 25 ● Finds that the Colorado Supreme Court has inherent
26 authority over its own procedures and is authorized by
27 sections 44.5 and 48.3 of article V of the state constitution
28 to develop the rules for judicial review of redistricting
29 plans; and
- 30 ● Provides that, in a legal proceeding that challenges
31 compliance with the technical requirements of the
32 redistricting process established in the state constitution or
33 in statute, a reviewing court shall evaluate the claims to
34 determine whether there was substantial compliance with
35 those requirements; and

36 WHEREAS, In the absence of guidance from the Colorado
37 Supreme Court, there will likely be litigation challenging the
38 constitutionality of the provisions of Senate Bill 21-247 authorizing
39 nonpartisan staff to use "necessary census data" as defined in Senate Bill

1 21-247 or the inability of the commissions and the Colorado Supreme
2 Court to comply with the requirements and mandated deadlines set forth
3 in the state constitution; and

4 WHEREAS, Delays resulting from such litigation will create
5 further uncertainty in the 2022 election and could necessitate redrawing
6 the redistricting plans, which would create additional uncertainty for the
7 2022 general election and could imperil the state's ability to conduct
8 elections in 2022 in a timely and orderly fashion and in compliance with
9 related deadlines in federal law; and

10 WHEREAS, Section 3 of article VI of the state constitution directs
11 the Colorado Supreme Court to "give its opinion upon important
12 questions upon solemn occasions when requested by the ... senate, or the
13 house of representatives; ..."; and

14 WHEREAS, Resolving the constitutional question of whether the
15 General Assembly may enact statutory changes to the definition of the
16 "necessary census data" to be used to draw preliminary plans in the 2021
17 redistricting year through an interrogatory proceeding will avoid
18 imminent judicial action to determine how to redraw congressional and
19 state legislative districts when it is impossible for the districts to be
20 redrawn in the manner set forth in the state constitution without amending
21 the definition; and

22 WHEREAS, A determination of the appropriate legal standard to
23 apply in evaluating any noncompliance with the technical requirements
24 of the state constitution and related statutory provisions concerning
25 redistricting will similarly avoid or minimize the delays and disruptions
26 from any litigation challenging that noncompliance; and

27 WHEREAS, The issues raised by Senate Bill 21-247 are strictly
28 legal issues involving the interpretation and construction of various
29 provisions of the state constitution or to purely public rights related to
30 such provisions, and no factual issues are likely to arise in the context of
31 a private suit that would enhance the Colorado Supreme Court's ability to
32 adjudicate these issues; and

33 WHEREAS, Senate Bill 21-247 was passed on third reading by the
34 Senate on April 26, 2021, was passed by the House of Representatives on
35 second reading on May 4, 2021, and now awaits final passage by the
36 House of Representatives; and

1 WHEREAS, If, prior to the adjournment sine die of the first
2 regular session of the Seventy-third General Assembly, the Colorado
3 Supreme Court determines that the provisions of Senate Bill 21-247 do
4 not violate the state constitution, Senate Bill 21-247 will in all likelihood
5 pass the House of Representatives on third reading and be presented to
6 the Governor in accordance with section 11 of article IV of the state
7 constitution; and

8 WHEREAS, The General Assembly has elected to submit these
9 interrogatories by Joint Resolution of the two houses in order to
10 demonstrate to the Colorado Supreme Court that both houses concur in
11 the importance of the issues set forth below and the urgency of the
12 situation described in this Joint Resolution constituting a solemn occasion
13 as contemplated in section 3 of article VI of the state constitution; and

14 WHEREAS, The submission of these interrogatories in this
15 manner in no way limits or modifies the authority of either house to
16 submit separate interrogatories by a House of Representatives or Senate
17 Resolution; now, therefore,

18 *Be It Resolved by the House of Representatives of the Seventy-third*
19 *General Assembly of the State of Colorado, the Senate concurring herein:*

20 That, in view of the premises, there are important questions as to
21 the constitutionality of Senate Bill 21-247, and it is the judgment of the
22 Senate and the House of Representatives that the questions of the
23 constitutionality of Senate Bill 21-247 are a matter of extreme importance
24 and public interest; that it is essential that an immediate determination be
25 secured so the commissions and the court know how they may proceed
26 and how their actions, if challenged, would be evaluated by a court; that
27 a solemn occasion within the meaning and intent of section 3 of article VI
28 of the state constitution has arisen; and that the Senate and the House of
29 Representatives accordingly request the Colorado Supreme Court to
30 render its opinion upon the following questions:

31 Since circumstances beyond the control of the commissions and
32 the General Assembly make it impossible to complete the 2021
33 redistricting process within the deadlines established by the state
34 constitution:

- 35 1. Are the provisions of Senate Bill 21-247, which amend the
36 statutory definition of "necessary census data", establish statutory

1 authority for nonpartisan staff to use that data for the preliminary plans,
2 and confirm in statute that the staff plans which provide the basis for
3 action by the commission must be based on final census data,
4 constitutional in allowing the commissions to perform their constitutional
5 responsibilities in accordance with sections 44 to 48.4 of article V of the
6 state constitution following the 2020 federal census?

7 2. Is the provision of Senate Bill 21-247 that directs a court to
8 apply the standard of substantial compliance when adjudicating a legal
9 proceeding that challenges the lack of compliance with the technical
10 requirements for the redistricting process established in the state
11 constitution and related statutes, such as the timing of this court's review
12 of a commission's first approved map or a staff map when the commission
13 is unable to adopt a plan by the deadline to do so, constitutional?

14 *Be It Further Resolved*, That, in view of the limited number of
15 days remaining in the legislative session, the Senate and the House of
16 Representatives respectfully request that, if the Supreme Court grants this
17 request for interrogatories and requires briefing and oral argument, the
18 Supreme Court consider adopting an expedited schedule to require
19 submission of briefs within no more than five days after the order
20 granting the request and submission of answer briefs and, if deemed
21 necessary by the court, scheduling for oral arguments within no more than
22 five days following submission of the briefs.

23 *Be It Further Resolved*, That the Speaker of the House of
24 Representatives, immediately upon passage of this House Joint
25 Resolution, shall transmit to the Clerk of the Colorado Supreme Court a
26 certified copy thereof and certified copies of Revised Senate Bill 21-247,
27 and that the Committee on Legal Services shall be directed to furnish said
28 Court with an adequate number of copies of this House Joint Resolution
29 and said bill and shall retain counsel or otherwise prepare and submit to
30 said Court such further documents and briefs as the Court may require to
31 expedite its procedure in the premises.