



July 31, 2023

Dear Hon. Members of the El Paso County Redistricting Commission,

We write to express our concerns about minority vote dilution in El Paso's County Commissioner districts. We urge the Redistricting Commission to use the current redistricting process to adopt new districts that will address this serious problem and that will aspire to the goal that every vote counts in El Paso County.

El Paso County has seen a tremendous period of demographic diversification in recent years. People of color currently make up fully 34%¹ of the county's overall population—up from 28%² in 2010 and 23%³ in 2000. Such changes afford El Paso County a rich diversity among residents with respect to race, ethnicity, culture, perspective, and experience. Those trends, likely to continue in future years, provide the Redistricting Commission with the opportunity to design districts that will ensure that this rich diversity is reflected in El Paso County's elected representatives.

In addition, as the Commission has recognized, these demographic changes also bring corresponding responsibilities under the federal Voting Rights Act. Fulfilling these responsibilities would mean ensuring that the county's redistricting process and electoral system are fair, affording all voters equal opportunities to elect candidates that will represent their

¹ See US Census Bureau 2020 PL94 Redistricting Data, Table T028 (Race by Hispanic Status).

² See US Census Bureau 2010 Decennial Census Data, Table T055 (Hispanic or Latino Origin By Race).

³ See US Census Bureau 2000 Decennial Census Data, Table T015 (Hispanic or Latino By Race).

interests. To achieve basic fairness and comply with the Voting Rights Act, the redistricting plan proposed for the county must be one that reflects the current and growing diversity of El Paso County.

El Paso County’s Existing Electoral System

El Paso County’s five-member county commission is elected in staggered, four-year elections from five, single-member districts. Each of these districts, whose current boundaries are shown in Figure 1 below, has consistently encompassed majority-white populations even though more than a fifth of the county’s population—enough to account for a full district—has been non-white for over two decades. As can be seen in Figure 2, this is the result of so-called ‘cracking,’ wherein a district map splits a compact minority population (in this case, SE Colorado Springs) across multiple districts with the effect of diluting the minority vote.

The end result is unsurprising. In election after election, the candidate preferred by the county’s non-white voters loses and the county commission fails to reflect the vibrant diversity of its population. The exclusion of minority-preferred candidates from the county commission reflects racially-polarized voting in the county and a continuing legacy of racial exclusion. The Black and Brown population in the county has grown, but that growth is still not yet reflected in the county’s representation.

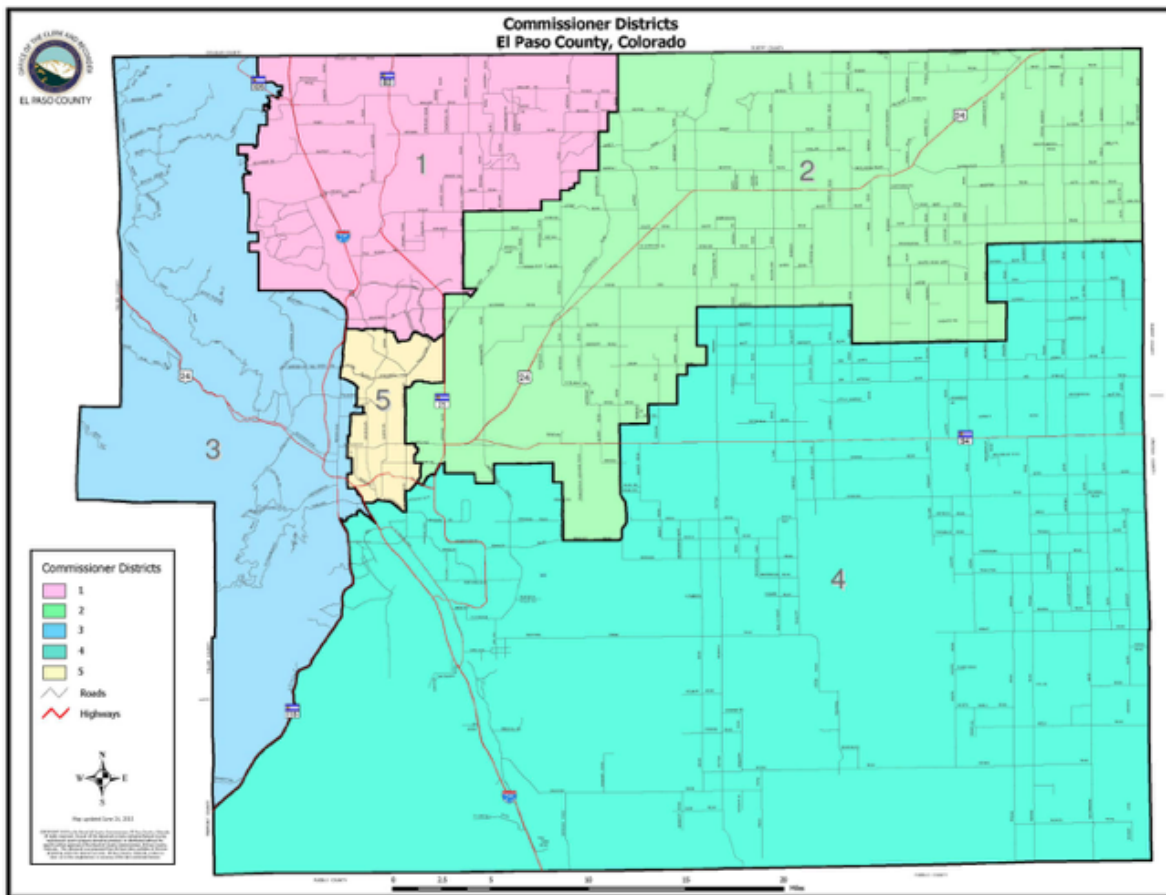


Figure 1: The five current county commissioner districts in El Paso County, CO.

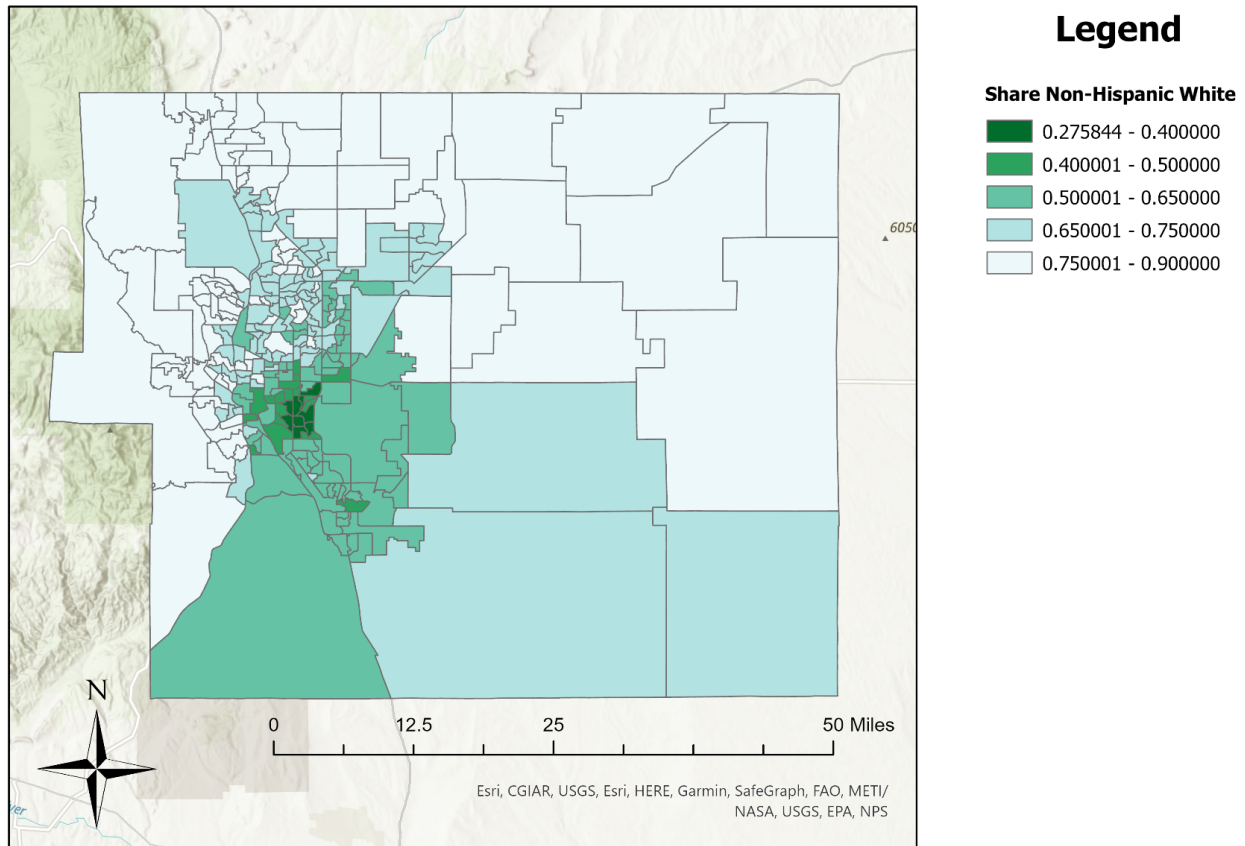


Figure 2. Non-Hispanic white share of the population in El Paso’s 2020 precincts. Precincts with larger shares of non-white voters are shown in darker shades of green. The district map shown in Figure 1 “cracks” the voters in SE Colorado Springs (the darkest green region) across districts two, three, four, and five.

Requirements of the Federal Voting Rights Act

The Voting Rights Act (“VRA”) requires that electoral systems be designed so that voters who are part of a cohesive racial minority are not denied by racial discrimination or “white bloc voting” the equal opportunity to elect their preferred representatives. Section 2 of the Act, as the Supreme Court confirmed this summer, prohibits not just electoral systems that are purposefully discriminatory, but also electoral systems that have discriminatory “effects.” *Allen v. Milligan*, 143 S. Ct. 1487, 1500 (2023); *Thornburg v. Gingles*, 478 U.S. 30, 35 (1986).

This includes district boundaries that have the effect of diluting the minority vote. The key question in analyzing a vote dilution claim under Section 2 is whether, based on the totality of circumstances, electoral districts give voters in a racial minority “less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” 52 U.S.C. § 10301(b) (as amended).

The Supreme Court has held that Section 2 of the VRA is violated when three pre-conditions (the so-called “*Gingles* factors”) are satisfied and the totality of the circumstances show that the challenged political process is not “equally open” to minority voters. These three factors are: (1) the minority group is sufficiently large and geographically compact to constitute a majority in one or more single-member districts; (2) the minority is politically cohesive (i.e., tends to vote as a bloc); and (3) the majority also votes as a bloc, usually to defeat the minority’s preferred candidate. *Milligan*, 143 S. Ct. at 1503. The other primary factors pertinent to the totality of circumstances—the so-called “Senate factors”—“are supportive of, but not essential to, a minority voter’s claim.” *Id.* at 48, n. 15. The 10th Circuit, in which Colorado lies, has consistently applied this analysis from *Gingles* and its successors. *Baca v. Berry*, 806 F.3d 1262, 1274 (10th Cir. 2015); *Sanchez v. Bond*, 875 F.2d 1488, 1497 (10th Cir. 1989).

Consistent Shortcomings in the County’s Commissioner Districts

We believe El Paso’s current commissioner districts may violate Section 2. First, in satisfaction of the first *Gingles* factor, there is a minority coalition sufficiently large and geographically compact to constitute a majority in a single member district. Second, in satisfaction of the second and third *Gingles* factors, both racial minority voters and majority white voters in El Paso tend to vote as distinct blocs for competing candidates, and those preferred by the latter regularly defeat those preferred by the former. Finally, the totality of the circumstances, including the extreme degree of racially polarized voting and the lack of electoral success for minority-preferred candidates, suggests that the political process is not equally open to racial minorities in El Paso County.

To understand the bloc behavior of voters, political scientists perform a “racially polarized voting” (RPV) analysis. This involves comparing the vote preferences of racial minority voters with those of racial majority voters. Because votes are anonymous, these analyses rely on statistical estimates to infer how racial minorities and white majorities vote. Courts have approved this analysis, the most sophisticated version of which is called “ecological inference” (EI), as capable of determining whether the second and third of the *Gingles* factors are met. *Gingles*, 478 U.S. at 52–53; *see, e.g., Clerveaux v. E. Ramapo Cent. Sch. Dist.*, 984 F.3d 213, 236 (2d Cir. 2021) (holding that “there is more than enough evidence indicating the acceptance of the . . . methodology in the scientific or academic community” and that expert testimony based on EI was admissible and supported the district court’s finding that the *Gingles* factors were met).

An RPV analysis of the 2020 elections in El Paso, using precinct,⁴ population,⁵ and election⁶ data that are most readily available, shows clear and distinct bloc voting. Figure 3 summarizes the results of this RPV analysis. It shows the so-called “95% credible interval” of

⁴ See Redistricting Data Hub 2020 precinct shapefile at <https://redistrictingdatahub.org/dataset/vest-2020-colorado-precinct-boundaries-and-election-results-shapefile/>

⁵ See Redistricting Data Hub population count data, from the Colorado Independent Redistricting Commission, at <https://redistrictingdatahub.org/dataset/colorado-block-pl-94-171-2020-official/> (which links to https://redistrictingdatahub.org/download/?datasetid=26542&document=%2Fweb_ready_stage%2FPL2020_OFFICIAL%2FCO%2Fxlsx%2Fco_pl2020_block_official.zip).

⁶ See the El Paso Clerk and Recorder’s Cast Vote Record (CVR) at https://secure25.securewebsession.com/elpasoelections.com/2020General/2020General_CVR_Public.xlsx.

the level of support of each racial/ethnic group for the winning candidates in the 2020 presidential and county commissioner elections. A credible interval is a statistical term of art. It gives the range of values between which one can assert with 95% confidence the true value falls. For example, the 95% credible interval for non-Hispanic white voters in the second district commissioner election for 2020 candidate Carrie Geitner (shown top-right in green) ranges from about 0.9 to 0.97. In other words, the model suggests with 95% confidence that somewhere between 90 and 97 percent of non-Hispanic white voters voted for Geitner. Analogously, it can be said with 95% confidence that only somewhere between 8 and 18 percent of racial minority voters voted for Geitner (shown top-right in orange).

The results are consistent across elections: a clear majority of racial minority voters in El Paso County prefer a different candidate from the clear majority of white voters. We estimate, with 95% confidence under the EI model, that 69 to 81 percent of non-white voters voted for Biden, compared to only 26 to 34 percent of white voters. Likewise, only 8 to 18 percent of non-white voters chose Carrie Geitner in the election for the second commissioner district, compared to 91 to 95 percent of white voters. The results are similar for the third and fourth commissioner elections. Between 0 and 24 percent of non-white voters chose Stan VanderWerf compared to 62 to 73 percent of white voters. And only 17 to 27 percent of non-white voters chose Longinos Gonzalez Jr., compared to 88 to 98 percent of white voters.

In each of these cases, the candidate preferred by a majority of white voters received the most votes in El Paso County. That is, the white voting bloc usually defeats the minority's preferred candidate among El Paso County's voters.

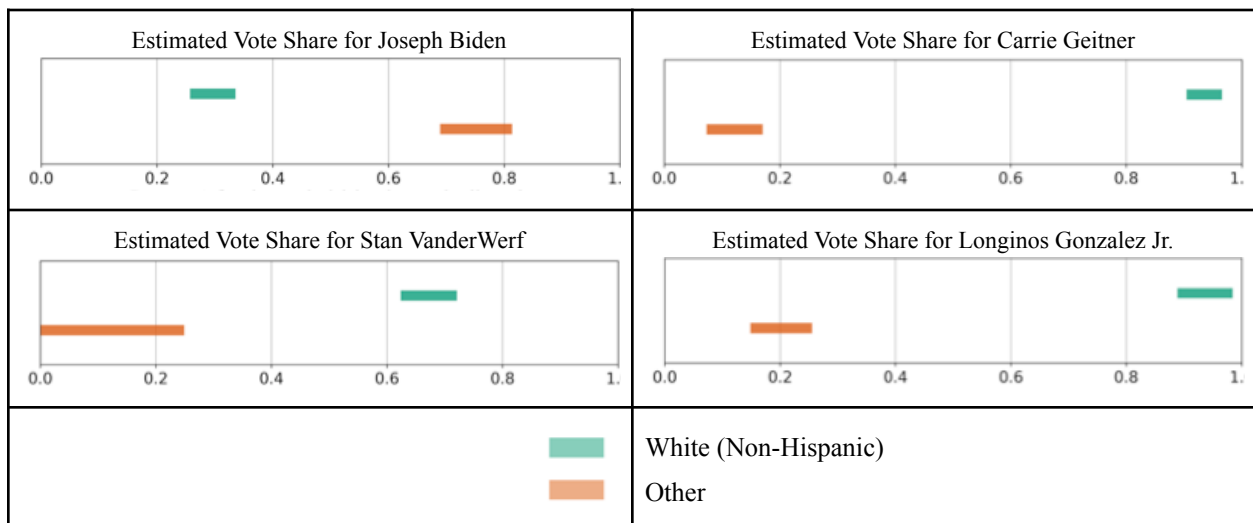


Figure 3. Estimated 95% credible interval for the share of non-Hispanic white voters and voters who aren't non-Hispanic white (i.e., 'Other') supporting the winning candidate in each of four 2020 elections: the presidential election (top-left), and the commissioner election for districts 2 (top-right), 3 (bottom-left), and 4 (bottom-right).

Other evidence similarly demonstrates that the second and third *Gingles* factors are satisfied. When given a fair opportunity to elect a candidate of their choice, racial minority voters in El Paso County do. For example, Figure 4 shows Colorado State House District 17. Unlike the current commissioner districts, District 17 preserves much of the minority vote in SE

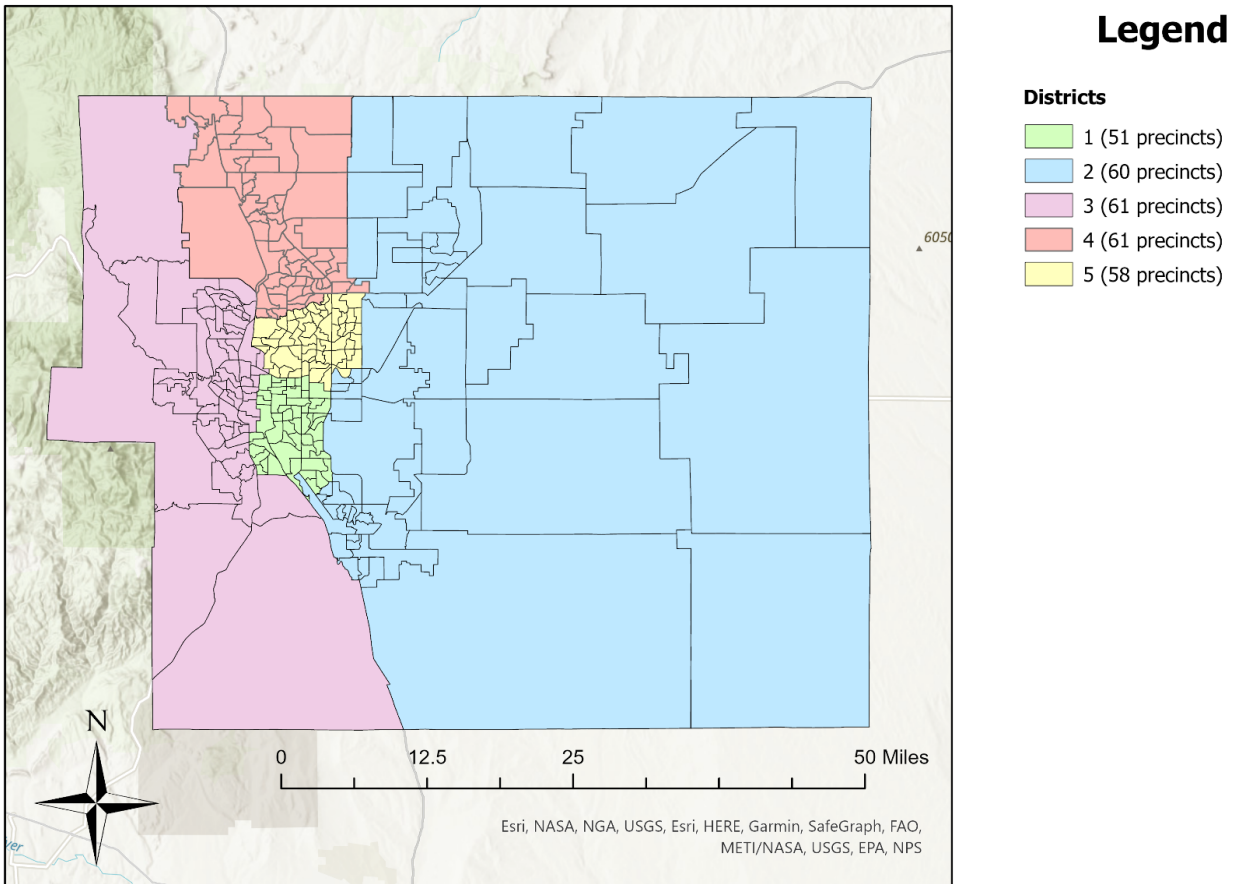


Figure 5. One possible redistricting using 2020 precincts in which a district (district 1, in green) has a minority-majority.

Whether the Redistricting Commission adopts a map like that above, or another map that meets the requirements of the VRA, what is clear is that without appropriate action by the Redistricting Commission to substantially alter the current district boundaries, white voters will likely retain a majority in all five of the county’s commissioner districts. This would deny Black and Brown voters a fair opportunity to see their interests represented by even one commissioner, despite now making up over a third of the county’s population.

As you finalize the new county commissioner districts, we strongly urge you to select a map that addresses minority vote dilution and gives Black and Brown voters in El Paso County a fair opportunity to make their voice heard and to allow El Paso County to fully benefit from the rich diversity and perspective of its residents.

If you would like to discuss further, please contact the ACLU of Colorado’s Director of Advocacy, Taylor Pendergrass at tpendergrass@aclu-co.org.

Thank you for your attention to this matter.

Sincerely,



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