

SUPREME COURT, STATE OF COLORADO 101 West Colfax Avenue, Suite 800 Denver, Colorado 80202	<p style="text-align: center;">COURT USE ONLY</p> <p style="text-align: center;">FILED IN THE SUPREME COURT</p> <p style="text-align: center;">OCT 11 2011</p>
Original Proceeding Pursuant to the Colorado Rules for Reapportionment Proceedings	<p style="text-align: center;">OFFICE OF THE CLERK OF THE SUPREME COURT OF COLORADO 1001 Court St., Bldg. 1, Room 1000, Denver, CO 80202</p>
IN RE REAPPORTIONMENT OF THE COLORADO GENERAL ASSEMBLY	SUPREME COURT CASE No. 2011SA282
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COLORADO LATINO FORUM'S RESPONSE TO THE OPPOSITION STATEMENTS	

The Colorado Latino Forum¹ ("CLF"), a proponent of the Commission Final House and Senate Plans, hereby responds to a few statements made by the opponents of the Commission's proposed Final Plan.

INTRODUCTION

In the very short time available to respond to the opposition statements in this matter, CLF will focus on (1) the opposition filed by Weld County and (2) the repeated assertions that

¹ The Colorado Latino Forum is a non-profit, non-partisan, statewide organization and has participated throughout the entire Reapportionment process in partnership with several other Latino Organizations, including the Colorado Hispanic Bar Association.

the Commission violated Article V, Section 47(2) regarding county lines. Stated succinctly, we focus on two general points: (1) Weld County's opposition statement left out the very important, documented federal voting rights concern raised at Commission hearings related to voting history in Weld County; and (2) the opponents' concern about county lines attempts to create an extreme per se standard that virtually obliterates the significant role of the Commission, the Commission process and public input gathered over the course of 36 Commission meetings.

GENERAL RESPONSE TO THE OPPOSITION

Weld County

It is our understanding that Weld County believes it should not be connected to Morgan County in the House Plan. It argues that it is entitled to three whole House seats. This ignores at least two important points: (1) there is a substantial Latino community straddling the area between Greeley (Weld County) and Ft. Morgan (Morgan County) and (2) Weld County has an undisputed "remainder"² that must be combined with another county and, therefore, Weld County must be divided and joined with another county to some degree.

First, there is no question that the federal Voting Rights Act (VRA), 42 U.S.C. § 1973(b), must be considered the second highest priority in reapportionment, only after the equal population requirement. Among many other factors considered by the Commission, the VRA justifiably impacted the manner in which the Commission drew the House and Senate seats in Weld and Morgan County. It is undisputed that 20 years ago Colorado retained a voting expert who documented concerns about racial bloc voting in the San Luis Valley ("SLV") and Weld

² For example, even in the map supported by Weld County, House Plan 002v2, has a 14,537 Weld county remnant in House district 54, recognizing that Weld County must be divided. This plan is attached Exhibit C to the Statement of Opposition of Colorado Citizens for Fair Representation (see "Plan Components," p. 130 or 234).

County.³ The Colorado Hispanic Bar Association filed an opposition statement before this Court 20 years ago which raised concerns about voting rights violations in the SLV and argued that the Commission should have split the SLV due to the VRA concerns. That was not done in the Reapportionment process and a federal lawsuit followed which established racial bloc voting in the SLV, resulting in the redrawing of the Reapportionment map in 1997. *See Sanchez v. Colorado*, 97 F.3d 1303 (10th Cir. 1996). With respect to Weld County, there is no public evidence that the State of Colorado circled back to investigate the concern about Weld County. The 2011 Commission was certainly sensitive to the concern about Weld County and appropriately took preventive measures to avoid a “*Sanchez II*.” It heard the public testimony asking the Commission to avoid fracturing the Latino community straddling the area between Greeley (Weld County) and Morgan. Given that sparsely populated counties in northeastern Colorado had to be combined with other counties to form House and Senate seats, the Commission exercised its discretion to combine the counties so that it satisfied the equal population mandate, addressed some of the expressed concerns about federal voting rights issues in Weld and Morgan counties and simultaneously attempted to respect county lines as much as possible.

County Lines

It is our understanding that some proponents have criticized the Commission as automatically invalid because it could have created a plan which (1) created more districts

³ In 1991, the Reapportionment Commission retained EDS to study the voting patterns in Colorado and concluded that there was racial bloc voting in the San Luis Valley, and probably in Weld County. In 2001, the Reapportionment Commission retained Lisa Handley to perform a similar study and she concluded that racial bloc voting continued in the San Luis Valley. For reasons not in the records we have, the 2001 Reapportionment Commission did not appear to study the voting patterns in Weld County as a follow up to the concerns noted in 1991. The 2011 Commission expressly noted this concern and publicly called for an executive session to discuss the issue of racial bloc voting.

wholly contained within a district⁴ and (2) it split more county lines than allegedly necessary.⁵ This argument substantially undermines the significance of the Commission's role, the process and the public input. When it is clear that counties in certain regions must be combined and/or divided for population reasons, the Commission should be entitled to some deference to decide which map-drawing path to reasonably create constitutionally populated State House and Senate districts.

It is our understanding years ago, before the creation of the Reapportionment Commission existed, reapportionment was extremely politicized and unfair. In 1974, Colorado voters created the Reapportionment Commission, which included appointments from every branch of Colorado government, each major political party, each federal congressional district and from across the state. We understand that the intent was to create a balanced commission that would create a plan with substantial public input during the process. But now, the opposition seems to advocate for a position that suggests that if one person finds a way to create a map that has the highest number of single county districts and least amount of county splits (a "Maximization Map"), that such Maximization Map must be adopted. Pursuant to this theory, it seems that Colorado simply needs to hire an expert software technician to create such a Maximization Map without regard to how Coloradans interact with each other across the state. Taking this argument to the next logical step, no further Commission work or public input would be needed until someone could draw another equally maximized map; otherwise, presumably, there would be nothing to debate.

The opponents support for House Plan 002v2 as such a Maximization Map highlights the extreme position taken in at least 2 ways. First, the opponents noted that Plan 002v2 was not put

⁴ See, e.g., Statement of Opposition of Colorado Citizens for Fair Representation.

⁵ See, e.g., Statement of Opposition/Las Animas Board of County Commissioners.

to vote.⁶ So, the opponents are advocating for a map that could not even garner a vote by the Commission. Second, it is very obvious that this Map did not divide counties “solely” for population. Just like the Commission Plan, it also creates a district labeled the “Roaring Fork Valley” district. What this label demonstrates is that Eagle and Garfield county were not divided “solely” for equal population reasons but also logically in the area of the Roaring Fork Valley. Therefore, it is contradictory to say that Plan 002v2 divided counties solely on the issue of equal population.

In sum, we believe the Commission is entitled to some latitude as it decides what path to take when trying to equalize population. To create a per se mandate that a Maximization Map must be adopted would be completely contrary to a Commission composed of people (not machines) to create very important reapportionment plans, presented to the People of Colorado, and adopted by People who live and work together. In the end, we ask that the Court approve the Commission’s Final House and Senate Plans.



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CERTIFICATE OF SERVICE

I, ~~OLIVIA MENDOZA~~ hereby certify that an accurate copy of the Colorado Latino Forum’s Response to the Opposition Statements was served by mail on 10/31/11 on the following:

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⁶ See Statement of Opposition of Colorado Citizens for Fair Representation, p. 24.

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