

SUPREME COURT, STATE OF COLORADO

101 W. Colfax Ave., Suite 800  
Denver, Colorado 80202

Original Proceeding Pursuant to the Rules for  
Reapportionment Commission Proceedings

IN RE REAPPORTIONMENT OF THE  
COLORADO GENERAL ASSEMBLY

**▲ COURT USE ONLY ▲**

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Case Number: 11 SA 282

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**STATEMENT OF OPPOSITION OF CLUB 20 AND SOUTHWEST  
COLORADO CITIZENS FOR A CONSTITUTIONAL MAP TO THE  
REAPPORTIONMENT COMMISSION'S RESUBMITTED PLAN FOR  
THE HOUSE OF REPRESENTATIVES**

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<p><b>CERTIFICATION OF COMPLIANCE</b></p>	

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g).

It contains 2,314 words.

The brief complies with C.A.R. 28(k).


For the party raising the issue:

It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record (R. \_\_, p. \_\_), not to an entire document, where the issue was raised and ruled on.

For the party responding to the issue:

It contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.

Abadie & Schill, PC



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William E. Zimsky  
Counsel for Opposers Club 20

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Opposers Club 20 and Southwest Colorado Citizens for a Constitutional Map (“Southwest Citizens”), by and through undersigned counsel, William E. Zimsky, Abadie & Schill, PC, hereby submit this Statement of Opposition to the Resubmitted Plan for Districts for the Senate and House of Representatives (“the Resubmitted Plan”). Club 20 and Southwest Citizens objection to the Resubmitted Plan as it applies to the redistricting of the districts for members of the House of Representatives of the Colorado General Assembly.

## **1. STATEMENT OF ISSUE**

A. Does the Reapportionment Commission’s Resubmitted Plan violate the county integrity requirement of Colorado Constitution Article V, Section 47(2) by unnecessarily splitting more counties than necessary, including Gunnison County, while at the same time not only ignoring the compactness criteria of Colorado Constitution Article V, Section 47(1) but also stampeding over the community of interest requirement of Colorado Constitution Article V, Section 47(3) in order to achieve a political advantage thereby eviscerating the bipartisan foundation upon which the voters established the Commission?

## **2. STATEMENT OF THE CASE**

After the Court rejected the Commission’s Adopted Plan by Order dated November 15, 2011, the Commission filed the Resubmitted Plan on December 9,

2011. The Resubmitted Plan is subject to this Court's review for compliance with, *inter alia*, Section 47 of Article V of the Colorado Constitution.

Objector Club 20 is a nonpartisan organization of counties, communities, tribes, businesses and individuals formed for the purpose of speaking with a unified voice on issues of concern to the Western Slope.<sup>1</sup> A more detailed description of the membership and goals of objectors Club 20 and Southwest Colorado Citizens for a Constitutional Map are set forth in detail in their Statement of Opposition filed with the Court on October 24, 2011 (at pp. 2-3 and Exhibit 1 thereto).

### **3. SUMMARY OF THE ARGUMENT**

The Resubmitted Plan violates all three criteria under article V, section 47 of the Colorado Constitution by: (1) unnecessarily splitting counties, including Gunnison County; (2) creating districts in the Western Slope that are bizarrely shaped, anything but compact and oblivious to the geographic realities of the mountainous nature of the area; and (3) by creating districts that ignore the communities of interest of the Western Slope.

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<sup>1</sup> The following counties and tribes are members of Club 20: Archuleta, Delta, Dolores, Eagle, Garfield, Grand, Gunnison, Hinsdale, Jackson, Lake, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Routt, San Juan, San Miguel, Summit, and the Ute Mountain and Southern Ute Indian tribes.

The Commission was aware of the less drastic alternative maps for house districts in the Western Slope, but chose instead to ignore those alternatives and pursue a partisan path lined with bad intentions that do violence to the will of the voters when they adopted the very Constitutional amendments that created the Commission in the first instance, *viz.*, to “reduce the impact that partisan politics can have on the drawing of legislative district boundaries.” Concerning Amendment No. 9, Legislative Council of the Colorado General Assembly, An Analysis of 1974 Ballot Proposals, Research Publication No. 206 (1974) at 29-30.

The Resubmitted Plan prompted the Durango Herald, a newspaper that rarely meets a Democratic candidate who it does not endorse, to issue an Editorial titled “Legislative District Shenanigans” (subtitled: “Democrats win with *wacky* new map” [emphasis supplied]). A copy of the Herald’s December 1, 2011 “Shenanigans Editorial” is attached hereto as Exhibit 1. The Herald decries the fact that the process for developing the Resubmitted Plan devolved into “blatant partisanship” and recognizes the “cynical reasons” the majority drew the Resubmitted Plan. The Shenanigans Editorial observes that “it is difficult to see how the new boundaries link together ‘communities of interest.’” The Herald cuts to heart of the problem with the Resubmitted Plan for House District 59, when it

laments the harsh realities that the Commission has uncaringly unleashed upon the residents of HD 59 with its short sighted partisanship:

. . . while all who live on the Western Slope understand the reality of having to travel mountain passes, requiring an epic journey to cross a state House district seems onerous for would-be representatives. The 59<sup>th</sup> District now might be competitive, but given its scope, candidates might be scarce.

Not only is the Resubmitted Plan “wacky and “cynical” its is unconstitutional.

#### **4. ARGUMENT**

##### **THE COMMISSION’S RESUBMITTED PLAN VIOLATES ALL THREE OF THE CRITERIA OF ARTICLE V, SECTION 47**

##### **A. STANDARD OF REVIEW**

The Court’s role in reviewing the Commission’s reapportionment action is to measure the reapportionment plan against the constitutional standards. *In re: Reapportionment 2002*, 45 P.3d 1237, 1247 (Colo.2002), *citing In re Reapportionment 92-1*, 828 P.2d 185, 189 (Colo.1992). While the choice between constitutional plans is for the Commission to make, the Court will not uphold a plan that departs from the constitutional criteria under which the Commission must operate. *Id.*

**B. THE RESUBMITTED PLAN VIOLATES ARTICLE V, SECTION 47(2) BY UNNECESSARILY SPLITTING COUNTIES, INCLUDING GUNNISON COUNTY**

**i. THE COMMISSION MUST AVOID UNNECESSARY COUNTY SPLITS**

Colorado Constitution Article V, Section 47(2) provides that, “Except *when necessary* to meet the equal population requirements of Section 46, no part of one county shall be added to all or part of another county in forming districts.”

(Emphasis added). In fact, “[t]he most important concern under section 47 is whether the Final Plan unnecessarily divides counties or cities within counties.” *In re Reapportionment 2002*, 45 P.3d at 1248. “The constitution allows the Commission to divide a county *only if necessary* to meet the equal population requirement.” *Id.*, quoting *In Re Reapportionment of the Colorado General Assembly 1982*, 647 P.2d. 191, 197 (1982) (emphasis added to the quotation by the Court).

To guard against the creation of “unnecessary county divisions,” the Court requires the Commission to submit the Resubmitted Plan “accompanied by an adequate factual showing that less drastic alternatives could not have satisfied the equal population requirement of the Colorado Constitution.” *In re Reapportionment 2002*, 45 P.3d at 1249 (internal quotation marks omitted).

Alternative plans may demonstrate “the availability of less drastic alternatives to the Resubmitted Plan in regard to county divisions.” *Id.* at 1250. If less drastic alternative plans were before the Commission that illustrate ways in which counties can be divided in a manner that is constitutionally preferred to the manner in which counties are divided by the Resubmitted Plan, then “the Commission must make an adequate factual demonstration [that the less drastic alternative could not have satisfied the equal population requirement of the Colorado Constitution] and articulate its rationale for the divisions.” *Id.* at 1252.

**ii. HOUSE PLAN GV1 REVEALS THE AVAILABILITY OF A LESS DRASTIC COUNTY DIVISION ALTERNATIVES**

The Commission Staff prepared House Plan Gv1 on November 29, 2011 and it was submitted to the Commission during its December meetings on remand from the Court.

House Plan Gv1 contain less county splits than the Resubmitted Plan. The Resubmitted Plan contains 17 “incidents” in which a fraction of one county is combined with another county. House Plan Gv1 contains 13 incidents. Specifically, there are two fewer splits associated with Gunnison County (zero splits versus 2 splits) and one fewer split in Boulder and one split fewer in Weld.

House Plan Gv1 demonstrates that it is not necessary to split Gunnison County. As State Senator Schwartz testified at the June 20, 2011 Commission public hearing.

I would just strongly oppose, suggest opposing any map that might divide Gunnison County. Gunnison County as you see is not a large county and it has a very important economy that works together, and to split the northern from the southern part of Gunnison County would be, I think, very unfortunate for that county.

A copy of the transcript of Senator Schwartz's testimony is attached hereto as Exhibit 2.

**iii. THE COMMISSION FAILED TO SHOW THAT THE COUNTY SPLITS IN THE RESUBMITTED PLAN ARE NECESSARY IN VIEW OF THE LESS DRASTIC ALTERNATIVE THAT IS AVAILABLE**

The Commission fails to even attempt to satisfy its constitutional obligation to “make an adequate factual demonstration [that the less drastic alternative could not have satisfied the equal population requirement of the Colorado Constitution] and articulate its rationale for the divisions.” *In re Reapportionment 2002*, 45 P.3d. at 1252.

**C. THE COMMISSION'S ADOPTED PLAN VIOLATES THE COMPACTNESS CRITERIA ARTICLE V, SECTION 47(1)**

The Commission's Resubmitted Plan fails to satisfy the compactness criteria of Section 47(1) that provides:

Each district shall be as compact in area as possible and the aggregate linear distance of all district boundaries shall be as short as possible. Each district shall consist of contiguous whole general election precincts. Districts of the same house shall not overlap.

The Resubmitted Map offends the Constitution's compactness requirement. While the population density of the Western Slope necessarily leads to larger House districts than along the Front Range, the proposed House Districts set forth in the Resubmitted Plan for the Western Slope are unnecessarily expansive. The total perimeter for the eight West Slope districts (26, 54, 55, 57, 58, 59, 60 and 61) is 3,242.1 compared to a total perimeter of 3,106.1 for House Plan Gv1.

The footprints for these eight districts differ slightly. House Plan Gv1 includes Saguache and Mineral counties but not Custer. The Resubmitted Plan includes Custer but not Mineral and Saguache. Thus, in spite of the fact that House Plan Gv1 excludes one geographically small county and includes two larger counties, it still has a smaller perimeter.

Applying a simple "eyeball" comparison, or what Malcolm Gladwell describes as "thin slicing" analysis in his 2005 book *Blink, The Power of Thinking Without Thinking*, to the two plans, results in the inescapable conclusion that House Plan Gv1 is the far superior plan under the compactness criteria for the Western Slope.

The Resubmitted Plan creates three terribly non-compact districts: 58, 59 and 61. District 61 connects widely disparate communities linking eastern Delta County with Summit County, perhaps the most nonsensical district ever contemplated by this Commission.

House Plan Gv1 proposes two highly compact and sensible alternatives for districts 58 and 59. Under House Plan Gv1, the perimeter for HD's 58 and 59 is 752.3 miles. By contrast, under the Resubmitted Plan, the total perimeter of these two districts is 952.4 miles.

Traveling between Durango, the county seat of La Plata County, to Gunnison, the county seat of Gunnison County, both of which are in the proposed HD 59, is, in the words of the Durango Herald, an “epic journey.” While the distance is long, 172, the difficulty is formidable - one only must the intrepid traveler navigate the infamous Red Mountain Pass but she must also traverse Cerro summit between Montrose and Gunnison to complete this four-hour drive (in good conditions).

The proposed HD 59 and 61 stretches the limits of the definition of “contiguity” beyond its breaking point. If compactness matters anywhere, it should count particularly in rural areas with immense topographical and geographical challenges.

If the constitutional requirement stipulating compactness means anything, it must inform the Court and direct the Commission here. Not only does the Resubmitted Plan provide for less compact districts on the Western Slope than the alternative, but it does so in a substantial fashion, combining communities that are separated by hours of dangerous drives from one another.

**D. THE COMMISSION’S ADOPTED PLAN VIOLATES ARTICLE V, SECTION 47(3) BY FAILING TO PRESERVE COMMUNITIES OF INTEREST WITHIN A SINGLE DISTRICT WHEREVER POSSIBLE**

Colorado Constitution Article V, Section 47(3) provides that, “Consistent with the provisions of this section and section 46 of this article, communities of interest, including ethnic, cultural, economic, trade area, geographic and demographic factors, *shall be preserved within a single district wherever possible.*” Colo. Const., art. V, § 47(3) (emphasis added).

House Plan Gv1 creates districts on the Western Slope that preserve communities of interest to the extent possible for HD’s 58 and 59 and 61. The Resubmitted Plan does not.

With respect to Delta County, House Plan Gv1 keeps most of Delta County in HD 58 with Montrose and San Miguel counties, all of which share similar agricultural and ranching interests. The Resubmitted Plan places the eastern portion of Delta County within HD 61. While the eastern portion of Delta County

shares some interests with the northern section of Gunnison County, it is also being placed in a district that includes Pitkin, Lake and Summit counties, none of which share a community of interest with the residents of eastern Delta County.

The community of interests for HD 59 is preserved under House Plan Gv1, but not under the Resubmitted Plan. Under House Plan Gv1, La Plata, Montezuma and Dolores counties form HD 59. This district comprises a relatively rectangular area nestled in the very southwest corner of the state. These counties share agricultural and ranching interests, transportation issues and are economically similar in many respects.

House District 59 under the Resubmitted Plan consists of La Plata, Archuleta, Hinsdale, San Juan, Ouray and the southern part of Gunnison County, including Gunnison. This district splits Gunnison County and lumps together communities south of Red Mountain Pass with communities on the north end. The main population centers, Durango and Gunnison, are many miles apart separated by several mountain passes.

#### **IV. CONCLUSION AND RELIEF REQUESTED**

The majority's Resubmitted Plan focused solely on the elimination of county splits, but ignored the constitutional criteria of compactness and communities of interest. Thus, it fails to pass constitutional muster. By contrast, House Plan Gv1 passes all three criteria.

Faced with a constitutional plan on the one hand, and a partisan unconstitutional plan on the other hand, the majority of the Commission choose partisanship over the Constitution, a result that cannot stand.

For the foregoing reasons, Opposers Club 20 and Southwest Colorado Citizens for a Constitutional Map request that this Court disapprove the Resubmitted Plan and return it to the Colorado Reapportionment Commission with instructions to formulate and resubmit a revised plan.

Respectfully submitted this 9<sup>th</sup> day of December, 2011.

By:

  
\_\_\_\_\_  
William E. Zimsky, 25318

## CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of December, 2011, I served a true and correct copy of the foregoing **STATEMENT OF OPPOSITION OF CLUB 20 AND SOUTHWEST COLORADO CITIZENS FOR A CONSTITUTIONAL MAP TO THE REAPPORTIONMENT COMMISSION'S RESUBMITTED PLAN FOR THE HOUSE OF REPRESENTATIVES**, with all attachments, by email to each of the following:

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## Legislative district shenanigans

Democrats win with wacky new map

The protracted and partisan discussion about how to redraw the Colorado legislative district boundaries has taken several turns since the process began last summer, arriving at an almost-conclusion Tuesday. While the map approved by the Colorado Reapportionment Commission meets the criteria for how the districts must be crafted, there is no shortage of head-scratching outcomes – particularly for Southwest Colorado’s House districts.

In a process that devolved from thinly veiled to blatant partisanship, the commission was taking a second stab at redistricting after the state Supreme Court rejected the initial map favored by Democrats. The new map, which is even more favorable to Colorado Democrats, puts Durango, Gunnison, Lake City, Ouray and Pagosa Springs together in the 59th District, and links Cortez, Telluride and Montrose in the 58th. These sprawling, mountainous districts would be hard-pressed to be defined as the “communities of interest” the commission was aiming to create – unless the definition of such communities is based solely on county lines. By that litmus, the map approved Tuesday succeeds: It creates districts in Western Colorado that include whole counties, with one exception – Gunnison.

Faced with the challenge of drawing districts of equal population as well as a series of constitutionally dictated requirements, the commission had a tall task. As the state’s website outlining the process says, each district, “... must be as compact as possible and the sum of the perimeters of all districts must be as short as possible.

“Districts must be composed of contiguous election precincts. Counties and cities cannot be split unless necessary to achieve equal population. Finally, communities of interest – ethnic, economic, cultural, demographic, trade area and geographic – are to be preserved within a single district whenever possible.”

Given the geographical and political landscape of the state, and the fact that this effort was conducted by way of a reapportionment commission comprising five Democrats, five Republicans and an unaffiliated chairman, it is not surprising the process wound up in court – this time at the request of Republicans who opposed the map approved by the commission’s Democrats and its chairman. The court kicked the map back to the commission to reconfigure, emphasizing keeping counties intact. The Democrats ran with those orders, to the Republicans’ dismay.

The new map, widely expected to meet court muster, puts at risk several Republican leadership positions and makes the 59th District more competitive by exchanging the moderate-to liberal-leaning Gunnison for conservative Cortez. It also creates competition among incumbent Republicans in other districts where the boundaries will force one to quit or face a primary.



Partisanship aside, though, it is difficult to see how the new boundaries link together “communities of interest.” Indeed, it raises the question of whether commission members have ever visited this part of the state. Durango and Gunnison are separated by 171 miles and a 3½-hour drive; Cortez and Montrose by about 135 miles and 3 hours – distances that suggest differences beyond geography. And while all who live on the Western Slope understand the reality of having to travel mountain passes, requiring an epic journey to cross a state House district seems onerous for would-be representatives. The 59th District now might be competitive, but given its scope, candidates might be scarce.

The state legislative map approved Tuesday follows the letter of the law, but its spirit is compromised – and for the most cynical reasons.

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EXHIBIT 1 – TESTIMONY OF SENATOR SCHWARTZ BEFORE THE  
REAPPORTIONMENT COMMISSION  
JUNE 20, 2011 (Clip II)

**Senator Schwartz (37:30):** “Would just like to serve 5 years now representing Senate District 5 and lived on the [inaudible] Valley for 40 years, and just wanted to speak to some of the issues associated with the geography of our part of the state and some of the challenges when it comes to, a, you know working, having communities work together **I would just strongly oppose, suggest opposing any map that might divide Gunnison County. Gunnison County as you see is not a large county and it has a very important economy that works together, and to split the northern from the southern part of Gunnison County would be, I think, very unfortunate for that county.** A very large land mass and again it has several challenges in terms of, in the northwest corner, being, having energy development and a sparsely populated area then a resort community and then, a, then town of Gunnison with Western State College and then also and certainly the culture of agriculture is really the foundation of that county and I think that when you break it apart, I think you break apart more or less the economic fiber of that community. When you look at the little ring of Delta County with respect to the North Fork Valley, which you know I represent 11 counties and Senator [inaudible] as you well know so the North Fork Valley is again, has a distinct, distinctly different geologic aspect to it and has a different economy than the town of Delta, I think it works to have a North Fork be separate and those communities of interest because of that northern part, northwest part of Gunnison County, the only way you get to the North Fork from the north is, in Delta County, is through that little wing of Gunnison County and that is, does affect the watershed, that does affect the oil and gas activity and the coalmining that does take place, in part in Gunnison County which is just adjacent to...if you see where I am talking about, how that road comes across there, comes across Gunnison and then goes into Paonia and you have only a temporary road that’s open from that part of Gunnison County that goes over across [inaudible-Tedler] Path, it’s only open in the summer, and so, as I am thinking through the fact that that is, that does work well together that little piece of Delta County worth keeping the entirety County of Gunnison together and happy to clarify that. I would also encourage the recommendation that New Castle, [inaudible], again such an important marker for Garfield County in terms of what happens to the east and to the west, one being, one being lush



agricultural area and then the other where you step into a very mineral rich area of the state and so I think moving that line and including, the part of New Castle because and then I'd like to speak to the North Fork Valley, which it is a community of interest, it's an economy, it's a workforce, it's a watershed, and how important that is that that little piece of Eagle going all the way up to Glenwood Springs all the way through New Castle starting with, starting from the Aspen Snowmass community and moving through the Fault in [inaudible], it all works in one. We have districts that work together, we have non-profits that work together, we work together, in really building and sustaining an economy, a workforce and a community. So I strongly recommend moving that line a little bit further to the west [inaudible-including] New Castle, for example [inaudible-the Warren Fort Pence Agency] is one of the only [inaudible-agencies] in the state and we are a [inaudible] district and we have supported each other around that issue. Lastly, I would just point out that there is a little tiny piece of Hinsdale County down, down there you can see how it splits twice with respect to the continental divide, and, now I'm a good senator and I've driven over 200,000 miles representing my district, I've not really visited those, that very small population on the southern part of Hinsdale County. You access that through Pagosa Springs. That is to, that is three and a half hours from, approximately three hours from the county seat. And so that, they relate to the Pagosa and Archuleta County much more so than they relate to the northern part so I would suggest if you're going to have a representative, you don't have a representative that comes from the north or Gunnison or wherever, most likely its going to come from the north since Hinsdale's so tiny and that you give that little tiny piece of Hinsdale access to representation that might come from the south as opposed to the north. And on that, so, the northern part of Hinsdale works well with Gunnison, you're right around that [inaudible Reservoir], you're again, you've got some recreation interests that work together with Gunnison County, again another reason not to split Gunnison County because that northern part of Hinsdale and Gunnison County work well together. With that, I am happy to answer any questions."

**(43:25)**

(Emphasis supplied)