

<p>SUPREME COURT, STATE OF COLORADO</p> <p>101 W. Colfax Ave., Suite 800 Denver, Colorado 80202</p>	
<p>Original Proceeding Pursuant to the Rules for Reapportionment Commission Proceedings</p>	
<p>IN RE REAPPORTIONMENT OF THE COLORADO GENERAL ASSEMBLY</p>	<p><b>▲ COURT USE ONLY ▲</b></p>
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<p><b>STATEMENT OF OPPOSITION TO RESUBMITTED PLAN FOR DISTRICTS FOR THE SENATE AND HOUSE OF REPRESENTATIVES</b></p>	

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## CERTIFICATE OF COMPLIANCE

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 **4,588** words in sections that count toward word limits under C.A.R. 28(g).

The brief complies with C.A.R. 28(k). Because this is an original proceeding under the Rules for Reapportionment Commission Proceedings as set forth in Chapter 34 of the Colorado Court Rules adopted by this Court on June 2, 2011, rather than an appeal, the requirements of C.A.R. 28(k) do not apply to this brief .

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Opposers Elbert County Board of Commissioners, El Paso County Clerk & Recorder Wayne Williams, El Paso County Treasurer Bob Balink, El Paso County Commissioner Sallie Clark, Yuma County Commissioner Trent Bushner, Al Kolwicz, Marty Neilson, Dick R. Murphy, Valarie Murphy and Jim Paine, by and through their undersigned counsel, Robert A. McGuire, Attorney at Law, LLC, hereby submit this Statement of Opposition to Resubmitted Plan for Districts for the Senate and House of Representatives pursuant to Rule 4 of the Rules for Reapportionment Commission Proceedings as set forth in Chapter 34 of the Colorado Court Rules adopted by this Court on June 2, 2011, and pursuant to the Order of Court in this matter dated December 5, 2011.

**I. STATEMENT OF ISSUES**

A. Does the Colorado Reapportionment Commission's resubmitted House map violate Article V, Section 47(2) of the Colorado Constitution by unnecessarily dividing the cities of Thornton, Commerce City, Littleton, Foxfield, Aurora and Pueblo, thus failing to minimize city splits within Adams County, Arapahoe County, Douglas County and Pueblo County?

B. Does the Colorado Reapportionment Commission's resubmitted Senate map violate Article V, Section 47(2) of the Colorado Constitution by

unnecessarily dividing the City of Westminster and the Town of Foxfield, thus failing to minimize city splits within Adams County and Arapahoe County?

## **II. STATEMENT OF THE CASE**

Pursuant to Colorado Constitution, Article V, Section 48, and this Court's Order of Court in this matter dated November 15, 2011, the Colorado Reapportionment Commission (the "Commission") has resubmitted for this Court's review and approval a revised plan for reapportionment of the State into legislative districts. *See* 2011 COLO. REAPPORTIONMENT COMM'N, RESUBMITTED PLAN DIST. S. & H.R. (Dec. 5, 2011) (hereinafter "Resubmitted Plan"). The Resubmitted Plan is subject to this Court's review for compliance with federal law and with Sections 46 and 47 of Article V of the Colorado Constitution. *See* COLO. CONST. art. V, § 48(e).

Opposer the Elbert County Board of Commissioners is the three-person elected governing body of Elbert County. Opposer Wayne Williams is El Paso County's Clerk & Recorder, a resident of Colorado Springs and a Colorado taxpayer. Opposer Sallie Clark is a County Commissioner in District 3 of El Paso County, a resident of Colorado Springs and a Colorado taxpayer. Opposer Bob Balink is El Paso County's current Treasurer and former Clerk & Recorder (2003-2010), a resident of Colorado Springs and a Colorado taxpayer. Opposer Trent

Bushner is a Yuma County Commissioner and a Colorado taxpayer. Opposers Al Kolwicz, Marty Neilson, Dick R. Murphy and Valarie Murphy are residents of Boulder County and are Colorado taxpayers. Opposer Jim Paine is a resident of Boulder County and the Town of Superior and is a Colorado taxpayer.

This statement of opposition is presented by the foregoing Opposers pursuant to the Colorado Appellate Rules, the Rules for Reapportionment Commission Proceedings as set forth in Chapter 34 of the Colorado Court Rules adopted by this Court on June 2, 2011, and the Order of Court in this matter dated December 5, 2011.

### **III. ARGUMENT**

The Resubmitted Plan contains a map for districts of the Colorado House of Representatives that fails to minimize the division of cities and towns into more than one district within Adams County, Arapahoe County, Douglas County and Pueblo County. The Commission had before it – but ignored – two alternative maps for the House that made fewer divisions of cities and towns within these counties. Similarly, the Resubmitted Plan contains a map for districts of the Colorado Senate that unnecessarily divides the City of Westminster and the Town of Foxfield and thus fails to minimize the number of cities within Adams County and Arapahoe County that are split into more than one district, again despite the

Commission's awareness of a less drastic alternative map that avoided these unnecessary city and town splits. Because constitutionally preferable alternative maps for the House and Senate were before the Commission but were disregarded by the Commission, the Resubmitted Plan is unconstitutional.

**A. Standard of review and constitutional requirements**

This Court reviews plans submitted by the Colorado Reapportionment Commission to determine compliance with Article V, Sections 46 and 47. *See* COLO. CONST. art. V, § 48(e). The Court's role in conducting such a review, including following the Commission's resubmission of a new plan after this Court's remand of an initial plan, is to measure the submitted plan against constitutional standards to "determine whether the Commission followed the procedures and applied the criteria of federal and Colorado law." *In re Reapportionment of the Colo. Gen. Assembly*, 45 P.3d 1237, 1247 (Colo. 2002) (hereinafter *In re Reapportionment 2002-I*); *see also In re Reapportionment of the Colo. Gen. Assembly*, 46 P.3d 1083, 1087 (Colo. 2002) (hereinafter *In re Reapportionment 2002-II*). The choice among alternate plans is the Commission's, subject to the requirement that those alternate plans are "each consistent with constitutional requirements." *In re Reapportionment 2002-I*, 45 P.3d at 1247. Importantly, this Court has consistently held that the Commission's awareness of a

“less drastic” constitutional alternative renders the Commission’s selection of a constitutionally inferior plan over a constitutionally preferable one unsustainable. *In re Reapportionment 2002-I*, 45 P.3d at 1253 (instructing the Commission to avoid divisions of the City of Boulder and the City of Pueblo on remand where alternative plans showed that less drastic alternatives existed that would have kept the cities intact).

The ranked hierarchy of criteria against which this Court measures a reapportionment plan is as follows:

- (1) the Fourteenth Amendment Equal Protection Clause and the Fifteenth Amendment;
- (2) section 2 of the Voting Rights Act;
- (3) article V, section 46 (equality of population of districts in each house);
- (4) article V, section 47(2) (districts not to cross county lines except to meet section 46 requirements and the number of cities and towns contained in more than one district minimized);
- (5) article V, section 47(1) (each district to be as compact as possible and to consist of contiguous whole general election precincts); and
- (6) article V, section 47(3) (preservation of communities of interest within a district).

*In re Reapportionment 2002-I*, 45 P.3d at 1247 (citing *In re Reapportionment of the Colo. Gen. Assembly*, 828 P.2d 185, 190 (Colo. 1992) (hereinafter *In re Reapportionment 1992*)).

The equal-population requirement of Article V, Section 46, is the paramount constraint directly imposed by the Colorado Constitution on the process of legislative reapportionment. The next criterion in the hierarchy, Section 47(2), requires that the number of cities and towns whose territory is contained in more than one district within multidistrict counties must be kept “as small as possible.” COLO. CONST. art. V, § 47(2). The significance of this constitutional requirement to maintain the integrity of cities and towns was pointedly emphasized by this Court in 2002: “The most important concern under section 47 is whether the Final Plan unnecessarily divides counties or cities within counties.” *In re Reapportionment 2002-I*, 45 P.3d at 1248 (emphasis added); *see also* Plan Disapproved and Remanded with Directions en Banc (“Slip Op.”), *In re Reapportionment of the Colo. Gen. Assembly*, Case No. 11SA282, slip op. at 9 (Colo. Nov. 15, 2011) (per curiam) (calling the requirement to minimize splits of counties and cities the “most important criterion” under Section 47). Indeed, this Court’s November 15 opinion in this case expressly instructed the Commission,

upon remand, to minimize city splits generally, *see* Slip Op. at 12, and in Colorado Springs in particular, *see id.* at 10.

In discussing when divisions of counties, cities and towns are constitutional under Section 47(2), this Court has held that splits are permissible “only if necessary to meet the equal population requirement.” *In re Reapportionment 2002-I*, 45 P.3d at 1248 (addressing county splits) (emphasis in original). And a division is deemed “necessary” to achieve equal population only if there exists no alternative without the division that satisfies the requirements of Section 46. *See id.* at 1249 (allowing county divisions only where supported by “an adequate factual showing that less drastic alternatives could not have satisfied the equal population requirement of the Colorado Constitution.”) Finally, any alternative is properly considered “less drastic” if it illustrates that equal population across districts can be achieved “in a constitutionally preferred manner” – i.e., with fewer splits – by comparison with the number of splits made in the Commission’s plan. *Id.* at 1252.

- B. The Commission’s resubmitted House map violates Article V, Section 47(2) of the Colorado Constitution by unnecessarily dividing the cities of Thornton, Commerce City, Littleton, Foxfield, Aurora and Pueblo, thus failing to minimize city splits within Adams County, Arapahoe County, Douglas County and Pueblo County**

Section 47(2) requires, “Within counties whose territory is contained in more than one district of the same house, the number of cities and towns whose territory is contained in more than one district of the same house shall be as small as possible.” COLO. CONST. art. V, § 47(2).

Read literally, this requirement restricts only the number of total cities or towns that are split within a multidistrict county, rather than the number of total times that any particular city or town is split within a multidistrict county. In the initial round of briefing and oral argument related to the reapportionment plan first adopted by the Commission, the below Opposers argued that a better interpretation of Section 47(2) looks to minimizing the total number of city splits, since a literal reading of Section 47(2) produces the absurd result that a city, once split, may constitutionally be dismembered entirely, as all divisions after the first, no matter how unnecessary, cause no additional increase to the “number of cities and towns whose territory is contained in more than one district.”

By instructing the Commission to reduce the number of house districts in El Paso County containing territory of the City of Colorado Springs, Slip Op. at 10, this Court appears in fact to have adopted the less literal interpretation of Section 47(2). But, under either interpretation, Section 47(2) is now violated by the Resubmitted Plan’s map for the House.

**1. The Resubmitted Plan’s map for the House includes divisions of cities and towns within Adams, Arapahoe, Douglas and Pueblo Counties.**

The Resubmitted Plan contains a map for the Colorado House of Representatives that splits a number of cities and towns in Adams, Arapahoe, Douglas and Pueblo Counties into a larger number of districts than is required by the population of the respective cities and towns. *See* 2011 COLO.

REAPPORTIONMENT COMM’N, RESUBMITTED PLAN DIST. S. & H.R. bind. H. Final Resubmitted Plan (Dec. 5, 2011) (hereinafter “Resubmitted House Plan”).

Adams County

Adams County has multiple house districts. Section 47(2) therefore requires the number of cities and towns within Adams County that are split into more than one district to be “as small as possible.” COLO. CONST. art. V, § 47(2).

City of Thornton

The City of Thornton has a population of 118,722 people, all of whom reside in Adams County. Based on the size of an ideal house district (77,372 people), Thornton’s population in Adams County is equal to 1.54 ideal house districts, and the entire City of Thornton can thus mathematically be contained within two districts. But the Resubmitted House Plan splits Thornton out into four populated

house districts within Adams County: HD 30, 31, 34 and 56. *See* Resubmitted House Plan at 36.

*Commerce City*

The City of Commerce City has a population of 45,913 people, all of whom reside in Adams County. Based on the size of an ideal house district, Commerce City's population is equal to 0.59 ideal house districts, and the entire City of Commerce City can thus mathematically be contained within a single house district. But the Resubmitted House Plan splits Commerce City out into two populated house districts within Adams County: HD 31 and 32. *See* Resubmitted House Plan at 36.

\ *Arapahoe County*

Like Adams County, Arapahoe County has multiple house districts, and the number of cities and towns within Arapahoe County that are split into more than one district must therefore be "as small as possible." COLO. CONST. art. V, § 47(2).

*City of Littleton*

The City of Littleton has a total population of 41,737 residing in Arapahoe, Jefferson and Douglas Counties. The largest portion of Littleton's population – 39,328 people – resides in Arapahoe County, where this population constitutes the equivalent of 0.51 of an ideal house district. Littleton's population in Arapahoe

County thus fits mathematically within a single house district. But the Resubmitted House Plan splits Littleton out into two populated house districts within Arapahoe County: HD 3 and 38. *See* Resubmitted House Plan at 37.

*Town of Foxfield*

The Town of Foxfield has a total population of 685 people, all of whom reside in Arapahoe County. Based on the size of an ideal house district, Foxfield's population is substantially less than 1% of an ideal house district, and the entire Town of Foxfield obviously fits within a single house district. But the Resubmitted House Plan splits the small population of Foxfield out into two populated house districts within Arapahoe County: HD 37 and 40. *See* Resubmitted House Plan at 37.

\ *Douglas County*

Douglas County also has multiple house districts. As in Adams and Arapahoe Counties, the number of cities and towns within Douglas County that are split into more than one district must also be "as small as possible." COLO. CONST. art. V, § 47(2).

*City of Aurora*

A small portion of the City of Aurora's population, 117 people, resides in Douglas County. While this relatively small number of people of course

comprises a very small portion of an ideal house district, the Resubmitted House Plan nevertheless fails to keep these Aurora residents in a single district, and instead splits them out into two separate house districts within Douglas County: HD 39 and 44. *See* Resubmitted House Plan 37.

### Pueblo County

Pueblo County has multiple house districts, and the number of cities and towns within Pueblo County that are split into more than one district must therefore also be “as small as possible.” COLO. CONST. art. V, § 47(2).

### City of Pueblo

The City of Pueblo has a population of 106,595 people, all of whom reside in Pueblo County. Based on the size of an ideal house district (77,372 people), Pueblo’s population is equal to 1.38 ideal house districts, and the entire City of Pueblo can thus mathematically be contained within two districts. But the Resubmitted House Plan splits Pueblo out into three populated house districts within Pueblo County: HD 46, 47 and 62. *See* Resubmitted House Plan at 42.

## **2. Less drastic alternatives to the Resubmitted House Plan, with fewer city splits, were before the Commission**

Two alternative plans were before the Commission that show the availability of less drastic alternatives to the city splits that were contained in the Resubmitted

House Plan. *See* 2011 COLO. REAPPORTIONMENT COMM’N, H. RESUBMITTED PLAN Gv1 (Nov. 29, 2011)

<[http://www.colorado.gov/cs/Satellite?c=Document\\_C&childpagename=CGA-ReDistrict%2FDocument\\_C%2FCBONAddLinkView&cid=1251610687829&pagename=CBONWrapper](http://www.colorado.gov/cs/Satellite?c=Document_C&childpagename=CGA-ReDistrict%2FDocument_C%2FCBONAddLinkView&cid=1251610687829&pagename=CBONWrapper)> (hereinafter “House Resubmitted Plan Gv1”); *see also* 2011 COLO. REAPPORTIONMENT COMM’N, H. RESUBMITTED PLAN ADAMS/ARAPAHOE AMENDMENT V1 (Nov. 28, 2011) (hereinafter “Witwer House Amendment”).

Both of these alternative plans were prepared by Commission staff and are properly considered to be alternative plans “that the Commission had before it.” *In re Reapportionment 2002-I*, 45 P.3d at 1250. Indeed, House Resubmitted Plan Gv1 is sufficiently a part of the Commission’s official record that it is even posted on the Commission’s website and is presently available for the public to download from the very same web page where the Commission’s own Resubmitted House Plan is posted. *See* 2011 Colo. Reapportionment Comm’n, *Resubmission Plans for Consideration* (visited Dec. 8, 2011)

<<http://www.colorado.gov/cs/Satellite?c=Page&childpagename=CGA-ReDistrict%2FCBONLayout&cid=1251610425733&pagename=CBONWrapper>>.

As the following tables show, the House Resubmitted Plan Gv1 and the Witwer House Amendment both independently demonstrate that the Resubmitted

House Plan contains city splits within multidistrict counties that are unnecessary, and that the number of city splits within multidistrict counties in the Resubmitted House Plan is therefore not “as small as possible.” COLO. CONST. art. V, § 47(2).

<b>City (County)</b>	<b># Districts - Resubmitted H. Plan</b>	<b># Districts – H. Resubmitted Plan Gv1</b>	<b># Unnecessary city splits in Comm’n plan</b>
Thornton (Adams)	4	3	1
Commerce City (Adams)	2	1	1
Littleton (Arapahoe)	2	1	1
Foxfield (Arapahoe)	2	1	1
Aurora (Douglas)	2	1	1
Pueblo (Pueblo)	3	2	1

**Table 1. Comparison of # of City Splits in Resubmitted House Plan with # of City Splits in House Resubmitted Plan Gv1<sup>1</sup>**

<b>City (County)</b>	<b># Districts - Resubmitted H. Plan</b>	<b># Districts - Witwer H. Amendment</b>	<b># Unnecessary city splits in Comm’n plan</b>
Thornton (Adams)	4	3	1
Commerce City (Adams)	2	1	1
Littleton (Arapahoe)	2	1	1
Foxfield (Arapahoe)	2	1	1

**Table 2. Comparison of # of City Splits in Resubmitted House Plan with # of City Splits in Witwer House Amendment<sup>2</sup>**

While House Resubmitted Plan Gv1 does contain one more split of the City of Centennial in Arapahoe County than does the Resubmitted House Plan,

<sup>1</sup> Table 1 excludes city and town splits that involve territory with zero population.

<sup>2</sup> Table 2 excludes city and town splits that involve territory with zero population.

*compare* House Resubmitted Plan Gv1 at 42 of 68 *with* Resubmitted House Plan 37, it is nonetheless apparent that, on balance, the House Resubmitted Plan Gv1 contains significantly fewer splits of cities and towns within multidistrict counties than does the Resubmitted House Plan and thus is constitutionally preferable to the Commission’s resubmitted plan for the Colorado House.

Furthermore, not only does the Commission’s Resubmitted House Plan fail to minimize the number of city splits within the multidistrict counties of Adams, Arapahoe, Douglas and Pueblo, but the Resubmitted House Plan actually fails also to minimize even the number of total cities that are split in those counties. The Resubmitted House Plan splits a total of four more cities and towns within multidistrict counties than does House Resubmitted Plan Gv1: Commerce City within Adams County,<sup>3</sup> Littleton and Foxfield within Arapahoe County; and Aurora within Douglas County. None of these cities and towns is split within their respective multidistrict counties by Resubmitted Plan Gv1. Thus, even under the most literal interpretation of Section 47(2)’s requirement that the “number of cities and towns whose territory is contained in more than one district shall be as

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<sup>3</sup> Resubmitted House Plan, incidentally, appears to the Opposers to be the very first map considered by the 2011 Commission that has ever split Commerce City into more than one house district.

small as possible,” COLO. CONST. art. V, § 47(2), the Commission’s Resubmitted House Plan is still constitutional inferior to the alternative of House Resubmitted Plan Gv1.

The constitutional superiority of House Resubmitted Plan Gv1 over the Resubmitted House Plan is the result of the diligent attention given by House Resubmitted Plan Gv1 to maintaining the integrity of cities and towns in accordance with this Court’s express admonition that keeping cities and towns intact is “[t]he most important concern under section 47.” *In re Reapportionment 2002-I*, 45 P.3d at 1248. Indeed, a careful review of House Resubmitted Plan Gv1 shows that every city and town with population in a single county that is small enough to fit mathematically within a single ideal house district has, in fact, been entirely contained within a single house district within that county under House Resubmitted Plan Gv1. *See* House Resubmitted Plan Gv1 at 29-35, 41-48 of 68. The superiority of House Resubmitted Plan Gv1 over the Resubmitted House Plan with respect to minimizing the splits of cities and towns is unmistakable.

Because there were alternative plans before the Commission that clearly demonstrated “the availability of less drastic alternatives” to the Resubmitted House Plan in regard to divisions of cities and towns, it is readily apparent that the Resubmitted House Plan “can more certainly conform to the constitutional

criteria.” *In re Reapportionment 2002-I*, 45 P.3d at 1252. Where, as here, a less drastic alternative to the Commission’s Resubmitted House Plan in regard to minimizing splits of cities and towns was before the Commission and the Commission nonetheless fails to include in its submission an “adequate factual showing that less drastic alternatives could not have satisfied the equal population requirement of the Colorado Constitution,” the Resubmitted House Plan must be deemed to be unconstitutional. *Id.* at 1241, 1246.

**C. The Commission’s resubmitted Senate map violates Article V, Section 47(2) of the Colorado Constitution by unnecessarily dividing the City of Westminster and the Town of Foxfield, thus failing to minimize city splits within Adams County and Arapahoe County**

The Resubmitted Plan’s constitutional infirmity is not limited to the Commission’s resubmitted map for the House alone. The Resubmitted Plan’s map for the Senate, *see* 2011 COLO. REAPPORTIONMENT COMM’N, RESUBMITTED PLAN DIST. S. & H.R. bind. S. Final Resubmitted Plan (Dec. 5, 2011) (hereinafter “Resubmitted Senate Plan”), also violates Section 47(2)’s requirement that, within multi-district counties, “the number of cities and towns whose territory is contained in more than one district of the same house shall be as small as possible.” COLO. CONST. art. V, § 47(2).

**1. The Resubmitted Plan's map for the Senate splits the City of Westminster within Adams County and the Town of Foxfield in Arapahoe County**

The City of Westminster has a total population of 106,114 people, of whom 63,696 reside in Adams County, which (as previously noted) is a multidistrict county. Based on the size of an ideal senate district (143,691 people), Westminster's population in Adams County is equal to 0.44 of an ideal senate district, and the entire portion of the City of Westminster lying in Adams County can thus mathematically be contained within a single senate district. But the Resubmitted Senate Plan splits Westminster out into two populated senate districts within Adams County: SD 21 and 24. *See* Resubmitted Senate Plan at 29-30.

The Resubmitted Senate Plan also splits the Town of Foxfield. As previously noted, see *supra* § III.B.1, Foxfield has a total population of 685 people, all of whom reside in Arapahoe County. Based on the size of an ideal senate district, this tiny population is less than four-tenths of one percent of the population of an ideal senate district and could easily be mathematically contained within a single district. But the Resubmitted Senate Plan, like the Resubmitted House Plan, nonetheless splits tiny Foxfield out into two populated districts within Arapahoe County: SD 26 and 27. *See* Resubmitted Senate Plan at 27.

**2. A less drastic alternative to the Resubmitted Senate Plan, with no split of Westminster within Adams County and no split of Foxfield within Arapahoe County, was before the Commission**

An alternative plans was before the Commission that shows the availability of a less drastic alternative to the Resubmitted Senate Plan that splits neither the City of Westminster within Adams County nor the Town of Foxfield within Arapahoe County. *See* 2011 COLO. REAPPORTIONMENT COMM’N, S. RESUBMITTED PLAN CV2 (Nov. 28, 2011) <[http://www.colorado.gov/cs/Satellite?c=Document\\_C&childpagename=CGA-ReDistrict%2FDocument\\_C%2FCBONAddLinkView&cid=1251610456101&pagename=CBONWrapper](http://www.colorado.gov/cs/Satellite?c=Document_C&childpagename=CGA-ReDistrict%2FDocument_C%2FCBONAddLinkView&cid=1251610456101&pagename=CBONWrapper)> (hereinafter “Senate Resubmitted Plan Cv2”).

Senate Resubmitted Plan Cv2 was an alternative plan “that the Commission had before it.” *In re Reapportionment 2002-I*, 45 P.3d at 1250. Senate Resubmitted Plan Cv2 not only was prepared by Commission staff, but is presently posted on the Commission’s website for public download and review right alongside the Commission’s own Resubmitted Senate Plan. *See* 2011 Colo. Reapportionment Comm’n, *Resubmission Plans for Consideration* (visited Dec. 8, 2011)

<<http://www.colorado.gov/cs/Satellite?c=Page&childpagename=CGA-ReDistrict%2FCBONLayout&cid=1251610425733&pagename=CBONWrapper>>.

Unlike the Resubmitted Senate Plan, which splits the City of Westminster within Adams County, Senate Resubmitted Plan Cv2 instead keeps all of that portion of Westminster lying in Adams County within a single senate district (SD 24). *See* Senate Resubmitted Plan Cv2 at 11, 13, 29 of 41. Similarly, Senate Resubmitted Plan Cv2 keeps the entire Town of Foxfield intact within a single senate district (SD 27) in Arapahoe County. *See id.* at 6, 10, 12, 25-26 of 41.

The fact that Senate Resubmitted Plan Cv2 is able to maintain the integrity of Westminster and Foxfield within their respective multidistrict counties while also meeting the equal population requirements of Colorado Constitution Article V, Section 46, shows that the Resubmitted Senate Plan necessarily fails to meet the requirement that “the number of cities and towns whose territory is contained in more than one district of the same house shall be as small as possible.” COLO. CONST. art. V, § 47(2). Senate Resubmitted Plan Cv2 thus shows that the Resubmitted Senate Plan is unconstitutional.

- 3. This Court’s previous decisions to allow the City of Westminster to be split do not require this Court to permit the unnecessary division of Westminster now**

As the below Objectors previously argued in opposing the unnecessary splits of the City of Colorado Springs, where this Court has previously permitted cities to be dissected within multidistrict counties, the only stated basis for allowing such splits has ever been deference to a showing of necessity. *See In re Reapportionment 1992*, 828 P.2d at 196-97 (Colo. 1992) (upholding the division of Westminster based on necessity); *see also In re Reapportionment of the Colo. Gen. Assembly*, 647 P.2d 191, 197 (Colo. 1982) (upholding the divisions of Westminster and Denver without elaborating why).

In 1992, this Court upheld the division of the City of Westminster into seven house districts due to a necessity that was created as a result of the Commission's choice of where to start drawing district lines. *See In re Reapportionment 1992*, 828 P.2d at 202. But in 2002, this Court rejected the same necessity rationale as a justification for county divisions where the alleged "necessity" arose because of the Commission's discretionary choice of cartographic starting points. *See In re Reapportionment 2002-I*, 45 P.3d at 1251. This Court has thus discarded the entire necessity rationale that justified the City of Westminster's previous dismemberment in 1992 and need no longer defer to a false necessity created only by the Commission's exercise of discretion in choosing where to start drawing districts.

To justify a city split within a multidistrict county now, the Commission must instead produce an adequate factual showing of necessity rooted in something more than the Commission's preferred cartographic starting point. *See In re Reapportionment 2002-II*, 46 P.3d at 1089-90 (accepting the Commission's factual showing of necessity with respect to a 3-way split of the City of Boulder into house districts); *see also In re Reapportionment 2002-I*, 45 P.3d at 1252-1253 ("It is apparent from the alternative plans that less drastic alternatives exist that would keep the cities intact, as illustrated by the Rodriguez 5 and Rodriguez 6 senate alternatives and the Commission's Preliminary Plan it took to public hearing.") (emphasis added); *see also id.* at 1254 ("When necessary to meet equal population requirements, the Commission may make county and city divisions.") (emphasis added). No such showing of necessity has been made here with respect to either Westminster or Foxfield, and no such showing can be made, of course, since Senate Resubmitted Plan Cv2 demonstrates that no split of Westminster within Adams County is necessary. The Resubmitted Senate Plan is therefore unconstitutional.

#### **IV. CONCLUSION**

For the foregoing reasons, Opposers Elbert County Board of Commissioners, El Paso County Clerk & Recorder Wayne Williams, El Paso

County Treasurer Bob Balink, El Paso County Commissioner Sallie Clark, Yuma County Commissioner Trent Bushner, Al Kolwicz, Marty Neilson, Dick R. Murphy, Valarie Murphy and Jim Paine request this Court to set aside the Commission's action, disapprove the Resubmitted Plan and, in view of the imminent constitutional deadline for the Commission to file a reapportionment plan approved by this Court, instruct the Commission to file the less drastic and constitutionally preferable alternatives of House Resubmitted Plan Gv1 and Senate Resubmitted Plan Cv2 with the Secretary of State by December 14, 2011. Alternately, the foregoing Opposers request such additional relief as the Court deems just and proper.

Respectfully submitted this 8th day of December, 2011.

ROBERT A. MCGUIRE, ATTORNEY AT LAW, LLC

By:

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## **CERTIFICATE OF SERVICE**

I hereby certify that on this 8th day of December, 2011, I served a true and correct copy of the foregoing **STATEMENT OF OPPOSITION TO RESUBMITTED PLAN FOR DISTRICTS FOR THE SENATE AND HOUSE OF REPRESENTATIVES**, with all attachments, by first-class mail, postage paid, to each of the following:

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