

<p>SUPREME COURT, STATE OF COLORADO 101 West Colfax Avenue, Suite 800 Denver, Colorado 80202</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Original Proceeding Pursuant to the Colorado Rules for Reapportionment Proceedings</p>	
<p>IN RE REAPPORTIONMENT OF THE COLORADO GENERAL ASSEMBLY</p>	
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<p style="text-align: center;">STATEMENT OF OPPOSITION OF COLORADO CITIZENS FOR FAIR REPRESENTATION TO THE COMMISSION'S RESUBMITTED PLAN</p>	

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Objector Colorado Citizens for Fair Representation, through its undersigned counsel, hereby submits this Statement of Opposition to the Reapportionment Commission’s Resubmitted Plan for Districts for the Senate and House of Representatives (“Resubmitted Plan”), filed on December 5, 2011.

I. INTRODUCTION

After its initial Adopted Plan was rejected by this Court, the Commission had ample time to draft, debate, and adopt a set of maps that satisfy all of the constitutional requirements. But not only did the Commission fail to adopt such maps, it did something unprecedented in the thirty-year history of the Reapportionment Commission—it intentionally blinded itself to superior alternative maps in a misguided attempt to frustrate this Court’s ability to fully examine the constitutionality of the submitted maps.

More importantly, the Commission has once again failed to fulfill its constitutional responsibilities by creating a map that violates Article V, sections 46 and 47, of the Colorado Constitution in several respects. First, despite the clear teachings of this Court, the Commission has failed to minimize county and city splits. Second, the Commission has adopted a map that is significantly less compact than it need be, particularly with respect to Arapahoe, Jefferson and El Paso counties in the Senate Plan and in rural Colorado in the House Plan. And

third, the Commission's new plan disregards several important communities of interest that can be preserved without sacrificing compliance with any higher-order constitutional criteria. Not only do alternative maps demonstrate that several county splits contained in the Resubmitted Plan are unnecessary, but they simultaneously do so with much greater adherence to the lower constitutional criteria.¹

As a result, the Resubmitted Plan should be rejected. And because of the December 14 constitutional deadline for approval of a valid plan, and because the Court has before it an alternative plan that satisfies all of the constitutional criteria, the Court should direct the adoption of those specific alternative plans for forwarding to the Secretary of the State.

II. ISSUES PRESENTED

1. The Resubmitted Plan unnecessarily adds part of one county to all or part of another in at least five instances that cannot be justified on equal-population grounds. Does the Plan's failure to minimize county splits violate the Constitution?
2. The Constitution requires the Commission to minimize the number of city splits, but the Commission's Resubmitted Plan includes at least six unnecessary and avoidable city splits. Must the Resubmitted Plan be rejected on that basis?
3. The Constitution requires the Commission to draw as compact a map as possible, subject only to higher constitutional criteria, and to preserve

¹ These alternative maps are House Plan Gv1, attached hereto as Exhibit 1, and Senate Plan Cv2, attached hereto as Exhibit 2.

communities of interest wherever possible. The Resubmitted Plan is significantly less compact than an alternative plan that includes fewer county and city splits, and disregards several communities of interest that can be preserved without introducing any other constitutional problems. Does the Commission's failure on these grounds warrant rejection of the Resubmitted Plan?

III. STANDARD OF REVIEW

Pursuant to Article V, Section 48 (1)(e) of the Colorado Constitution, this Court shall review the Commission's plan and determine its compliance with sections 46 and 47 of Article V of the Constitution. This Court's role is simply to "determine whether the Commission followed the procedures and applied the criteria of federal and Colorado law in adopting its reapportionment plan for Colorado General Assembly House and Senate districts." *In re Reapportionment of the Colo. Gen. Assembly* ("In re Reapportionment 2002"), 45 P.3d 1237, 1247 (Colo. 2002) (emphasis added).

Where, as here, there is an alleged or apparent constitutional deficiency in the reapportionment plan, the Court owes no deference to the Commission and "must exercise careful scrutiny." *In re Reapportionment of Colo. Gen. Assembly* ("In re Reapportionment 1982"), 647 P.2d 191, 200 (Colo. 1982) (Lohr, J., concurring as to standard of review). The Court's "obligation under the constitution would not be satisfied by any less exacting review." *Id.* "[W]hen an objector demonstrates to the court, by alternative plan or otherwise, (1) that the

Commission could have complied with all the reapportionment requirements where it did not, or (2) that the Commission unnecessarily failed to respect the constitutional hierarchy of precedence, deference to Commission expertise is no longer appropriate.” *Id.*

IV. FACTS OF THE PROCEEDINGS AFTER REMAND

Following this Court’s remand order, the Commission decided to meet on Monday, November 28 to discuss proposed plans and on Tuesday, November 29 to vote for a final plan.² In addition, the Commission set a deadline as to when Commissioners needed to submit draft maps to be considered on November 28 and 29. On November 16, Staff Director Barry sent an email to the Commission stating that the “deadline to submit proposed plans” was Wednesday, November 23 at 5:00 p.m.³ That deadline would prove to be “flexible,” but only for Democrat members of the Commission.

Two days before the deadline, on November 21, Commissioner Witwer, a Republican, emailed Staff Director Barry to request clarification of the deadline.

² Audio recordings of these two meetings are contained on a CD attached hereto as Exhibit 3. An unofficial transcript of the November 28 meeting is attached as Exhibit 4, and an unofficial transcript of the November 29 meeting is attached as Exhibit 5.

³ See Tim Hoover, *Colorado Democrats enjoyed advantage Republicans lacked in presenting maps for new legislative districts, e-mails show*, THE DENVER POST (Nov. 30, 2011), http://www.denverpost.com/breakingnews/ci_19440415. A copy of this article is attached hereto as Exhibit 6.

Director Barry replied, “Sorry. Plans are due by Noon on the 23rd.”⁴ Republican Commission members therefore submitted several maps by that deadline.

On the morning of the deadline date, however, Commissioner Carroll, a Democrat appointee, emailed Director Barry to also ask about the deadline, to which Director Barry replied:

Noon is the deadline for plans to be sent out before Monday’s meeting. Amendments and new plans can be sent to us over the weekend, and we will try to have them ready for Monday’s (Nov. 28) meeting, but depending on how many we get, we may have trouble having them ready for Monday’s meeting.

As I understand it, no new plans or amendments are to be introduced or discussed on Tuesday (Nov. 29). If someone has a plan that they do not want sent out, but wants to have ready for the meeting on Monday, it would be helpful to have it to us as early as possible. If we are not to send it out before the Monday meeting, just let us know.⁵

No Republican Commissioner was copied on this e-mail.⁶

On Sunday, November 27, Democratic Commission members submitted to staff new proposals for both the Senate (plan Ev1) and House (plan Fv1). Staff

⁴ *Id.*

⁵ *Id.*

⁶ *See id.*

circulated these plans to Republican Commissioners around 8:30 p.m.,⁷ and at least one of the Commissioners apparently did not receive the email until the next morning, just before the meeting to consider new plans. *See* Ex. 4, Nov. 28 Tr. at 50 (Commissioner Loevy “didn’t learn about this plan [Fv1] until 9:30 this morning”).

During the first part of the November 28 meeting, Commissioners Salazar, Atencio, Webb, Carroll and Jones—all Democrats—made detailed presentations of House plan Fv1, which would eventually be adopted as the Resubmitted Plan for the House. As Commissioner Nicolais later observed, their prepared and obviously coordinated presentations seem to indicate that the Democratic Commissioners had prepared House plan Fv1 well before Sunday night, when it was ultimately circulated to the Republican Commissioners. *See* Ex 4, Nov. 28 Tr. at 16. Later during the same meeting, the Commission formally voted to allow consideration of the delinquent maps.

During that day’s debate over whether to allow the Sunday-night maps to be submitted, Democrat Commissioners seemed willing to allow additional amendments during that day, and even new maps. Chairman Carrera stated, “You could submit amendments right now for your maps.” *Id.* at 21. Commissioner

⁷ *See* Ex. 5, Nov. 29 Tr. at 18:14–15 (Commissioner Carroll stating she received the maps “all circ[ulat]ing around 8:30 p.m.”).

Webb went so far as to say: “My view is, I won’t care if someone submitted a map and amendment tomorrow morning [Tuesday, November 29] if it makes for a better map—that’s the goal we’re attempting to do.” *Id.* at 24. Commissioner Webb’s comment drew approval from Republican Commissioners Witwer and Nicolais. Commissioner Carroll also stated that “I think to be clear that we can incorporate everybody’s ideas through today.” *Id.* at 26. When asked by Commissioner Webb what would happen if someone offered an amendment later that same day, Commissioner Atencio replied: “Then you are free to move. You are free to make another motion.” *Id.* at 29.

But immediately upon reconvening after a brief recess requested by Commissioner Witwer to discuss a possible compromise, *id.* at 51–52, and while Commission staff was working to prepare two proposed amendments for consideration by the Commission that day, Commissioner Atencio moved to bar any new maps or amendments to existing maps beyond those submitted by Sunday night. The motion was quickly approved by a 6–5 vote along party lines. There can be little doubt that during the break the Democrat members of the Commission, along with the Chairman, decided to act affirmatively to bar any maps from being created or introduced that might be constitutionally superior to their Sunday-night

maps, in order to prevent this Court from using such maps as evidence of deficiencies in the Democrat maps that had been circulated the night before.

Nonetheless, such constitutionally superior maps were in fact presented to the Commission. At the start of the meeting the next morning, Commissioner Tool stated that the Commission staff was preparing House Plan Gv1, which was superior to the Democrats' map in terms of the number of county splits, the number of city splits, total compactness, and preservation of communities of interest. Commission staff circulated House Plan Gv1 to the Commission during that meeting.

Commissioner Tool then moved for the Commission to adopt plan Gv1 as its final plan for the House, and the motion was seconded. Before there could be any discussion of map Gv1, however, Commissioner Salazar offered a substitute motion to approve the constitutionally inferior plan Fv1, the Democrats' Sunday-night map. The Commission then vigorously debated whether map Gv1 was properly before the Commission and part of the official "record," as some of the Commissioners apparently believed that only documents in the "official record" could be presented to this Court. *See Ex 5, Nov. 29 Tr. at 6:3–10:9 & 11:22–17:12.* The Commission then approved the substitute motion by a 6–5 vote along party lines and adopted plan Fv1 as its Resubmitted Plan for the House.

After the Commission adopted plan Fv1, Commissioner Tool then moved to adopt House plan Gv1 as a minority report, just as a minority bloc of Commissioners had done in 2002. Commissioner Carroll, however, immediately offered a substitute motion to approve Senate plan Ev1, which, like House Plan Fv1, had only been submitted to the Commission on the previous Sunday night. The Commission then adopted plan Ev1 as the Resubmitted Plan for the Senate by another 6–5 vote, and effectively rejected the motion to allow a minority report.

After adopting the Resubmitted Plan for the Senate, Commissioner Atencio then immediately moved to expressly bar submission of any minority reports. The Commission approved that motion—yet again, on a 6–5 vote. There can be no other explanation for this procedural tactic than an intent by the majority to prevent the forwarding of map Gv1 to this Court for its comparison with the adopted plans.

After the Commission had adopted its Resubmitted Plan, Commission staff discovered that the Resubmitted Plan for the Senate contained an error in the sequencing of elections. The Resubmitted Plan scheduled the election for proposed Senate District 22 in 2014, but unbeknownst to the Commission staff, the author(s) of the map had drawn the incumbent Senator out of his district. The district, therefore, will have no incumbent senator residing in it if the Resubmitted Plan is permitted to take effect. Resubmitted Plan at 4.

Despite having ample time to fix this problem before the Commission's December 6 deadline for submitting a plan to this Court, the Commission did not do so and now asks this Court to fix that error itself. Once again, there can be little doubt that some Commissioners wanted to avoid a meeting for fear of an alternative map being put in the record for this Court to consider.

V. ARGUMENT

A. THE COMMISSION'S EFFORTS TO BLOCK JUDICIAL REVIEW SHOULD NOT BE SANCTIONED, AND THIS COURT MAY PROPERLY CONSIDER ANY EVIDENCE THAT DEMONSTRATES CONSTITUTIONAL INFIRMITIES IN THE RESUBMITTED PLAN.

1. The Resubmitted Plan should be subject to stricter scrutiny in light of the partisan nature of the Resubmitted Plan.

The Resubmitted Plan is not simply a revised version of the original Adopted Plan that fixes the deficiencies identified by this Court in its October 15 opinion. Rather, the Resubmitted Plan is an entirely new plan that sacrifices *every* constitutional criterion examined by this Court, apparently for partisan purposes. Notably, the Resubmitted Plan draws numerous Republican incumbents (many holding significant leadership positions) together into proposed districts: Representative Amy Stephens (House Majority Leader) and Representative Marsha Looper are both drawn into proposed District 19 in the House plan; Representative B.J. Nikkel (Majority Caucus Whip and Vice-Chair of

Congressional Redistricting) and Representative Brian DelGrosso (Chair of House Finance Committee) are both placed in proposed District 51; and in the Senate plan, Senator Bill Cadman (Senate Minority Leader) and Senator Keith King are both placed in proposed District 12. None of these pairings was present in the original Adopted Plan or any other plan submitted by either party, and none is required in order to satisfy the constitutional requirements for a reapportionment plan.

Regardless of the extent to which this grouping of Republican incumbents was intentional, the result will certainly be to deter future Commission members from objecting to adopted plans for fear of political backlash. Acceptance of the Resubmitted Plan may therefore result in future reapportionment plans that are less consistent with the constitutional criteria adopted by the citizens of Colorado. Parties should not be discouraged from challenging unconstitutional reapportionment plans simply because an opposing party can wield significant discretion in the map-drawing process to exact political revenge, and this Court should explicitly rebuke such efforts.

While it is not improper for the Commission to attempt to resolve political conflicts engendered by the Court's disapproval of its initial plan, "(p)roblems created by partisan politics cannot justify an apportionment which does not

otherwise pass constitutional muster.” *In re Reapportionment of Colo. Gen. Assembly* (“*In re Reapportionment Remand 1982*”), 647 P.2d 209, 213 (Colo. 1982) (quoting *Kirkpatrick v. Preisler*, 394 U.S. 526, 533 (1969)).

Moreover, the intentional targeting of Republican incumbents raises possible questions as to the Resubmitted Plan’s compliance with the Fourteenth Amendment to the United States Constitution. In *Cox v. Larios*, the U.S. Supreme Court affirmed a judgment that Georgia’s reapportionment plans violated the Equal Protection Clause. 542 U.S. 947, 947 (2004). That reapportionment plan involved population deviations of less than the 10% that typically invites scrutiny for Equal Protection violations. *See id.* at 951 (Scalia, J., dissenting). Justice Stevens noted that the District Court had “found that Democratic incumbents ‘attempted to draw districts that would enhance their own prospects at re-election and further their own political ends . . .’ and also ‘targeting particular Republicans to prevent their re-election.’” *Id.* at 947–48 (Stevens, J., concurring) (quoting District Court opinion, 300 F. Supp. 2d 1320, 1330 (N.D. Ga. 2004)). “As a result, ‘. . . Republican incumbents were regularly pitted against one another in an obviously purposeful attempt to unseat as many of them as possible.’” *Id.* at 948 (quoting District Court opinion, 300 F. Supp. 2d at 1329–30). “The District Court correctly held that the drafters’ desire to give an electoral advantage to certain regions of the

State and to certain incumbents (but not incumbents as such) did not justify the conceded deviations from the principle of one person, one vote.” *Id.* at 949. Justice Stevens concluded his condemnation of partisan gerrymandering by observing:

Drawing district lines that have no neutral justification in order to place two incumbents of the opposite party in the same district is probative of the same impermissible intent as the “uncouth twenty-eight-sided figure” that defined the boundary of Tuskegee, Alabama, in *Gomillion v. Lightfoot*, 364 U.S. 339, 340, 81 S.Ct. 125, 5 L.Ed.2d 110 (1960), or the “dragon descending on Philadelphia from the west” that defined Pennsylvania’s District 6 in *Vieth*, 541 U.S., at 340, 124 S.Ct., at 1812 (STEVENS, J., dissenting) (internal quotation marks omitted).

Id. at 950.

The Commission’s drawing together of the Republican leadership is not “consistent with the aim of our reapportionment process to prevent gerrymandering and to promote political fairness among the state’s legislative districts.” Plan Disapproved and Remanded with Directions en Banc (“Slip Op.”), *In re Reapportionment of the Colo. Gen. Assembly*, Case No. 11SA282, slip op. at 1 (Colo. Nov. 15, 2011) (Bender, C.J., dissenting). Nor is there any “presumption of validity” for the Resubmitted Plan where: (1) it was developed by partisan decision-makers, sacrifices constitutional requirements for political goals, and is adopted strictly along party lines; and (2) the Commission affirmatively blocked

“adequate opportunity for the presentation and consideration of differing points of view” *See id.* at 1–2 (Bender, C.J., dissenting).

Accordingly, this Court should not defer to the Commission’s conclusions regarding the Resubmitted Plan. Instead, the Court should carefully compare it against the Alternative Plans attached to this brief, scrutinize it for compliance with Article V, Sections 46 and 47 of the Colorado Constitution, and reject it if any deficiencies are apparent.

2. The Court may properly consider any alternative plan put forward by any objector, regardless of its technical inclusion in the Commission’s formal record.

Article V, Section 48(1)(e) directs this Court to review the Commission’s plan for a “determination as to compliance with sections 46 and 47” Section 48(1)(e) specifically contemplates that parties opposing the plan may present evidence to the Court, and directs the Court to adopt rules governing the presentation of such evidence. This Court did precisely that. On June 2, 2011, the Court adopted rule changes to Chapter 34 of the Colorado Court Rules. Rule Change 2011(6), Colorado Court Rules Chapter 34, Rules for Reapportionment Proceedings (adopted June 2, 2011). Paragraph 5 of the order states that “[a]ny opponent to the plan filed by the Commission may file a statement of opposition, a proposed alternate plan or plans, appropriate maps, and comprehensive

explanatory, descriptive, and legal memoranda.” Nothing in the order requires such “proposed alternate plan or plans” to have been formally presented to, considered by, or voted on by the Commission.

Indeed, the Court noted in paragraph 7 of the same order that it may request supplementary materials from any party. In fact, the Court has done so before, and noted at the time that it was “*compelled* to consider outside submissions” where the Commission did not provide the relevant information and in fact had not had the relevant information before it. *In re Reapportionment Remand 1982*, 647 P.2d at 212 (emphasis added) (noting that “it is clear from the summary of the Commission’s March 8th meeting that the Commission had no figures with which to compare the compactness of districts in the two plans.”).

Nothing in section 48(1)(e) or the Court’s rules governing these proceedings restricts evidence offered by a party to any formal record before the Commission. This Court’s review of the Commission’s plan is not a formal administrative review proceeding, and is not subject to the State Administrative Procedure Act, C.R.S. §§ 24-4-101 *et seq.* Accordingly, the Court is free to consider any alternative plans proposed by any objector, regardless of whether it was previously presented to the Commission. *A fortiori*, the Court is free to consider Alternative House Plan Gv1 (“Alternative Plan Gv1”), which, as a matter of public record, was

given to the Commission, was discussed at Commission meetings, was the subject of a motion, which was seconded, to adopt it as the Commission's plan on resubmission, and subsequently was even moved and seconded for consideration as a minority report to this court.⁸

B. THE COLORADO CONSTITUTION REQUIRES THE COMMISSION TO MINIMIZE COUNTY AND CITY SPLITS, TO DRAW AS COMPACT A PLAN AS POSSIBLE, AND TO PRESERVE COMMUNITIES OF INTEREST WHEREVER POSSIBLE.

This Court's "prior opinions addressing reapportionment have established a clear hierarchy of the relevant federal and state criteria." Slip Op. at 6.

the Final Plan **must** be consistent with six parameters (in the following hierarchy from the most to the least important): (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).

⁸ Senate Plan Cv2 ("Alternative Plan Cv2") was formally accepted for consideration by the Commission, and there is no question that it is properly before this Court.

In re Reapportionment of the Colo. Gen. Assembly, 828 P.2d 185, 190 (Colo. 1992) (emphasis added, footnotes omitted).⁹

While the focus of CCFR's objections to the initial Adopted Plan was on the Commission's failure to assign the maximum number of single-county districts to counties large enough to contain at least one full district, it is clear that the constitutional mandate to preserve county boundaries extends to small counties (i.e., those with a population insufficient to compose a whole district) as well as the more populous counties at issue in CCFR's original Statement of Opposition. Section 47(2) requires that the Commission minimize instances in which part of one county is added to all or part of another county, regardless of the populations of the counties involved.

C. THE HOUSE PLAN MUST BE REJECTED BECAUSE IT IS NOT SUFFICIENTLY ATTENTIVE TO COUNTY BOUNDARIES, CITY BOUNDARIES, COMPACTNESS CONCERNS, OR IMPORTANT COMMUNITIES OF INTEREST.

The Commission was given Alternative Plan Gv1, which is wholly superior to the Resubmitted Plan on *every* single criterion listed in section 47. Alternative Plan Gv1 splits fewer counties and fewer cities than the Resubmitted Plan; it is more compact; it contains more Hispanic-majority districts; it preserves important

⁹ The law regarding the Commission's obligations is set forth more fully in § IV.A of CCFR's original Statement of Opposition to the Commission's initial Adopted Plan (filed Oct. 24, 2011), which is incorporated by reference as if fully set forth herein.

geographic communities of interest that the Resubmitted Plan does not; and it avoids the politically vindictive same-party pairings of incumbents into single districts that are present in the Resubmitted Plan. In fact, it simultaneously solves *all* of the problems with the Resubmitted Plan identified below, without introducing *any* new county splits elsewhere. But rather than adopting Alternative Plan Gv1, the Commission refused even to discuss it, and, incredibly, moved to exclude it from consideration altogether—presumably in a misguided attempt to prevent this Court from seeing it.

Table 1 below summarizes the important differences between the Resubmitted Plan and Alternative Plan Gv1:

Table 1: Comparison of House Plans		
	Resubmitted Plan	Alternative Plan Gv1
# of times part of one county is added to part or all of another county*	21	17
Extra city splits within a county	Additional splits of Aurora, Commerce City, Foxfield, Littleton, Pueblo, and Thornton	Additional split of Centennial
Compactness: aggregate linear distance of all district boundaries (in miles)	40,455.42	38,555.74
Hispanic-majority districts	5	6
Communities of interest	Connects widely disparate communities in HDs 58, 59 and 61 and denies southwest Colorado a whole seat	Provides southwest Colorado one whole seat and draws much more compact districts in rural Colorado
*Resubmitted Plan splits the same counties as Alternative Plan Gv1, and in addition splits Gunnison county (counts as 2 instances) and includes additional splits in Boulder and Weld counties, for a total of four additional splits. See Table 2.		

1. Alternative Plan Gv1 shows conclusively that the Commission’s Resubmitted Plan unnecessarily splits Gunnison, Boulder and Weld counties.

Once again, and despite the Commission’s assertion that “the Resubmitted Plan minimized the number of small county splits,” Resubmitted Plan at 6, the Commission has adopted a plan that includes multiple unnecessary county splits. The Resubmitted Plan includes twenty-one separate instances in which part of one county is added to all or part of another county. Alternative Plan Gv1 contains only seventeen such instances, *every one of which is also contained in the Resubmitted Plan*. Table 2 lists, by the county that is split, each instance in which part of one county is added to all or part of another:

Resubmitted Plan			Alternative Plan Gv1		
County	# of parts added to other counties	Districts	County	# of parts added to other counties	Districts
Adams	1	56	Adams	1	36
Arapahoe	2	9, 56	Arapahoe	2	9, 36
Boulder	2	13, 33	Boulder	1	13
Delta	2	54, 61	Delta	2	55, 58
Denver	2	1, 9	Denver	2	1, 9
Douglas	1	39	Douglas	1	33
Fremont	2	47, 60	Fremont	2	47, 60
Gunnison	2	59, 61	Gunnison	Not split	
Jefferson	1	1	Jefferson	1	1
Larimer	1	49	Larimer	1	49
Mesa	1	54	Mesa	1	55
Pueblo	2	47, 62	Pueblo	2	47, 62
Weld	2	33, 49	Weld	1	35
Total	21		Total	17	

*Ignores zero-population split of Broomfield county in Alternative Plan Gv1

Alternative Plan Gv1 shows conclusively that the Commission could have avoided splitting Gunnison county altogether, and could have had one fewer split in both Boulder and Weld counties, while satisfying equal-population requirements and *without introducing any additional county splits elsewhere*.¹⁰ Because the Commission can avoid these county splits, it must. Yet rather than doing so, it rejected such a map and then tried to hide it from this Court.

Gunnison county: The Resubmitted Plan splits Gunnison county across two House districts, whereas Alternative Plan Gv1 keeps Gunnison county whole. Indeed, the original Adopted Plan rejected by this Court also kept Gunnison county whole. Because Alternative Plan Gv1 includes no county splits that are not also in the Resubmitted Plan, the Commission cannot contend that its split of Gunnison county is driven by population concerns. And there was no evidence presented to the Commission regarding a possible issue with the Voting Rights Act of 1965 (the “VRA”)¹¹ that would require the split, and no discussion of any VRA spillovers during the Commissions meetings following rejection of the Adopted Plan. The Commission’s gratuitous split of Gunnison county therefore violates section 47(2) and warrants rejection of the Resubmitted Plan.

¹⁰ Because both parts of Gunnison county are added to all or part of another county in the Resubmitted Plan, Commission staff counts this unnecessary split as two separate instances in which part of one county is added to all or part of another.

¹¹ 42 U.S.C. §§ 1973–1973aa-6.

Also, to the extent the Commission argues that it has discretion as to which counties it may split, it should be noted that the testimony before the Commission established a strong community of interest across Gunnison county that the Commission must preserve where possible. As Commissioner Salazar noted in presenting House plan Fv1 (which was adopted as the Resubmitted Plan) to the Commission, “You know we have heard testimony in Gunnison that . . . they did not want Gunnison County split” Commissioner Salazar, Ex. 4, Nov. 28 Tr. at 5–6. He then observed that Gunnison county was kept whole in the Commission’s original Adopted Plan for that reason. *Id.* at 6. Similarly, Commissioner Loevy observed: “If there was anything that we heard chapter and verse on when we were in Gunnison County it was, ‘Please don’t split Gunnison County.’” *Id.* at 50.

Boulder county: In the Resubmitted Plan, part of Boulder county is contained in proposed House Districts 10, 11, 12, 13 and 33. Districts 10, 11 & 12 are single-county districts; Boulder county’s “remainder” is split into two separate multi-county districts, each of which adds part of Boulder county to all or part of another county. In Alternative Plan Gv1, Boulder county is similarly given three full districts (10, 11 & 12), but its entire remainder is contained in a single district (13). Because Alternative Plan Gv1 reduces the number of instances in which part of Boulder county is added to all or part of another county, without introducing

other such instances elsewhere, the Commission cannot maintain that the extra split of Boulder county in the Resubmitted Plan is required for equal population. Nor can the Commission claim that the extra split is required for compliance with the VRA—there was absolutely no discussion of such issues by the Commission after remand, much less any relevant evidence presented to the Commission. Accordingly, the superfluous split of Boulder county violates section 47(2), and the Resubmitted Plan must be rejected.

Weld county: The Resubmitted Plan spreads Weld county across five districts, where it can be contained entirely within four. Alternative Plan Gv1 does precisely that, without any adverse spillover effects, and in doing so avoids a significant constitutional problem presented by the Resubmitted Plan. Proposed District 33 in the Resubmitted Plan includes only five residents of Weld county. By isolating these five individuals, the Commission has essentially guaranteed that their voting behavior will become a matter of public record so long as votes in county elections are reported by district or district-based-election results are reported by county. This Court has found a strict right of voter privacy embodied in the Colorado Constitution, Article VII, section 8, that would be vitiated if voting behavior is made public. *See Taylor v. Pile*, 391 P.2d 670, 673 (Colo. 1964) (“Under pertinent constitutional provisions (Article VII, Sec. 8) and legislative

enactment (C.R.S. '53, 49-10-22) the secrecy of the ballot is guaranteed the citizen.”); *see also, e.g.*, C.R.S. § 1-13-712 (declaring it a crime to “reveal to any other person the name of any candidate for whom a voter has voted”). Pursuant to *Taylor v. Pile*, any election in which the voting behavior of this small enclave of Weld county—perhaps just a single household—would be publicly revealed could be rendered void. And, of course, these five individuals will be virtually voiceless when it comes to raising county concerns in the legislature.

But it is not necessary for the Commission to place these five residents of Weld county alone in a district with several thousand residents of Broomfield and Boulder counties. As demonstrated by Alternative Plan Gv1, they can be placed with a larger portion of Weld county to preserve their privacy and allow them to participate in matters of county concern. Therefore, the Commission cannot claim that the extra split of Weld county in the Resubmitted Plan is justified on population grounds, and the extra split violates section 47(2).

2. The House Plan unnecessarily splits Aurora, Commerce City, Foxfield, Littleton, Pueblo and Thornton.

The Resubmitted House Plan introduced unnecessary splits to a net of four cities and towns in Adams and Arapahoe counties, as well as an extra split to the City of Pueblo, when compared to Alternative Plan Gv1. Importantly, the

Resubmitted Plan splits Commerce City, the population of which is small enough to be wholly contained within a single district, as it is in Alternative Plan Gv1. So even under the strictest reading of section 47(2), the Resubmitted plan fails to satisfy the constitutional criteria because it fails to minimize the number of cities that are split “[w]ithin counties whose territory is contained in more than one district of the same house.” COLO. CONST., ART. V, § 47(2).

Aurora: The Resubmitted Plan splits Aurora across eight separate districts (proposed Districts 30, 36, 39, 40, 41, 42, 44 & 56); Alternative Plan Gv1 places the same population into only six districts (30, 33, 36, 40, 41 & 42).¹²

Commerce City: The Resubmitted Plan splits the population of Commerce City across two districts (proposed Districts 30 & 32), whereas Alternative Plan Gv1 places the entire population of Commerce City into a single district (34).¹³

Foxfield: The Resubmitted Plan splits the Town of Foxfield into proposed Districts 37 & 40; Alternative Plan Gv1 keeps Foxfield whole.

Littleton: Portions of Littleton fall into three separate counties—Arapahoe, Jefferson, and Douglas. Therefore, to honor county boundaries, Littleton must be split across three districts. The Resubmitted Plan splits Littleton across four

¹² Alternative Plan Gv1 also includes a small geographic area with zero population in a seventh district (37).

¹³ Both plans also place zero-population areas of Commerce City into two other districts.

districts (proposed Districts 3, 22, 38 & 43), while Alternative Plan Gv1 contains it in the minimum three districts (25, 38 & 43).

Pueblo: Pueblo is spread across three separate districts in the Resubmitted Plan (proposed Districts 46, 47 & 62), but is contained in only two districts in Alternative Plan Gv1 (46 & 62).¹⁴

Thornton: The Resubmitted Plan splits Thornton's population across four districts (proposed Districts 30, 31, 34 & 56). Alternative Plan Gv1 keeps Thornton in three districts (28, 39 & 56).¹⁵

Centennial: Centennial is the *only* city that the Resubmitted Plan splits fewer times than Alternative Plan Gv1 does. The Resubmitted Plan places Centennial in two districts (proposed Districts 37 & 38), but Alternative Plan Gv1 places parts of Centennial into three districts (3, 37 & 38). This additional split of Centennial makes it possible to contain Littleton in only three districts, as opposed to the four districts that include parts of Littleton in the Resubmitted Plan. In light of the *six* cities and towns above that Alternative Plan Gv1 splits less than the Resubmitted Plan, Alternative Plan Gv1 demonstrates that the Commission could have included a net of at least five fewer city splits in its plan without introducing

¹⁴ Alternative Plan Gv1 also includes a zero-population segment of Pueblo in a third district (47).

¹⁵ Both plans include a zero-population area of Thornton in an additional district.

any additional county splits, equal-population problems, or issues with compliance with federal law. In addition, Alternative Plan Gv1 avoids splitting the population of Commerce City altogether—which demonstrates that the Resubmitted Plan violates section 47(2) even under the narrowest possible interpretation of that section.¹⁶ Accordingly, the Resubmitted Plan must be rejected for failing to be sufficiently attentive to city boundaries.

3. The Resubmitted House Plan is less compact than the Alternative House Plan.

There is no question that the Alternative Plan Gv1 is more compact than the Resubmitted Plan: the “aggregate linear distance of all district boundaries,” which must be “as short as possible” under section 47(1), is only 38,555.74 miles in Alternative Plan Gv1, but is a full 40,455.42 miles in the Resubmitted Plan, a difference of almost 5%. One particularly egregious example where the Commission sacrificed compactness is in El Paso county, where the Commission

¹⁶ In its reply brief in support of its initial Adopted Plan, the Commission argued that section 47(2) requires minimization only of the *number* of cities that are split. Reply to Statements of Opposition (filed Oct. 31, 2011), at 26. Appropriately, this interpretation was criticized significantly by another objector. See Statement of Opposition to Colorado Reapportionment Commission’s Final Plan for House and Senate Districts (filed by Elbert County Board of Commissioners, *et al.* Oct. 24, 2011), at 18–24 (describing narrow interpretation as “Piranha Rule”). Nevertheless, Alternative Plan Gv1 avoids splitting the population of Commerce City altogether, thereby reducing the number of cities that are split as compared to the Resubmitted Plan.

drew proposed District 18 to snake west from Colorado Springs to include the more liberal Manitou Springs, rather than including the large sections of Colorado Springs itself that the Commission split off into the otherwise rural proposed District 20. As a result, District 20 wraps all the way around Manitou Springs to the west and includes significant portions of Colorado Springs that lie both northeast and southeast of Manitou. Commissioner Loevy, a resident of Colorado Springs, criticized this odd construction:

But of course by putting [Manitou] in a Colorado Springs district—and I know why they do that, it makes it more Democratic—they make it impossible to give Colorado Springs the maximum number of Senate seats it deserves and thus violates the low priority of reducing city splits.

Commissioner Loevy, Ex. 4, Nov. 28 Tr. at 50.

Compactness concerns are particularly acute with regard to the Resubmitted Plan's Western Slope and Eastern Plains districts in the House. The total perimeter of these ten proposed districts (26, 54, 55, 57, 58, 59, 60, 61, 64 & 65) in the Resubmitted Plan is 4,876.1 miles. The total perimeter for the same ten districts in Alternative Plan Gv1 is 4,308.7 miles—a difference of 13%—even though the total area for these 10 districts is highly comparable.

Even if the Resubmitted Plan satisfied all of the higher constitutional criteria as well as Alternative Plan Gv1, its lack of compactness warrants rejection. *See In*

re Reapportionment Remand 1982, 647 P.2d at 211–12 (rejecting resubmitted plan in part because it was less compact according to two measures of compactness provided by opposers, where aggregate district perimeters were “roughly equal”).¹⁷

4. The Alternative House Plan is more attentive to important communities of interest.

The Resubmitted House Plan is not sufficiently attentive to communities of interest. Once a plan minimizes county splits, city splits, and the aggregate linear distance of district boundaries, the Commission must preserve important communities of interest within districts whenever possible. § 47(3). It has not done so. First, the Resubmitted House Plan includes only five Hispanic-majority districts: proposed Districts 1, 4, 5, 32 & 62. In contrast, Alternative Plan Gv1 includes six Hispanic-majority districts: 1, 4, 5, 28, 34 & 62. Indeed, the Resubmitted Plan is the *only* House plan that was presented to the Commission after remand that included fewer than six Hispanic-majority districts.

¹⁷ In 2002, this Court stated that “Issues concerning compactness, communities of interest, and which plan is preferred by a certain group of citizens, must remain within the scope of the Commission’s discretion.” *In re Reapportionment 2002*, 45 P.3d at 1253. But the Court did not discuss or overrule its second 1982 decision in which it rejected the resubmitted plan on grounds of both compactness and communities of interest. *See In re Reapportionment Remand 1982*, 647 P.2d at 213. Section 47(1) mandates that the Commission submit a plan in which districts are “as compact in area as possible,” and section 47(3) requires the Commission to preserve communities of interest “within a single district wherever possible.” These issues fall within the scope of this Court’s review, and constitutional infirmities with respect to these criteria cannot be overlooked.

Commissioner Carroll attempted to attribute the loss to the Court's requirement that county boundaries be preserved: "I think one of the casualties of the court's decision in my opinion but with the elimination of the county splits there is one fewer 50% majority-minority Hispanic district in Aurora." Commissioner Carroll, Ex. 4, Nov. 28 Tr. at 9. But as comparison to Alternative Plan Gv1 shows, the failure of the Resubmitted Plan to create a sixth Hispanic-majority seat is not necessitated by preservation of counties or cities, or by population concerns, or even by compactness considerations.

The Resubmitted Plan also divides the southwest corner of the state into two districts, separating La Plata county from Montezuma and Dolores counties, with which it shares strong communities of interest, and instead combining La Plata county with liberal-leaning voters in part of Gunnison county. Alternative Plan Gv1 keeps these three counties together in a single district (59). Indeed, the Resubmitted Plan severs the recognized communities of interest on the Western Slope, by combining Montrose and Montezuma counties in proposed District 58, but separating Montrose from Ouray county, which is in proposed District 59 with Archuleta county (accessible from Ouray only over Red Mountain Pass, which is impassible much of the year). Moreover, the Resubmitted Plan includes Summit county in the same district as Lake and Pitkin counties and portions of Gunnison

and Delta counties. Summit county is connected to the rest only by Highway 91 over Fremont Pass, which is also frequently impassable, placing a significant burden on any Representative tasked with visiting constituents. The only other way to get from Summit county to the rest of proposed District 61 is by helicopter, or by a several-hour drive through other districts. Summit county shares no community of interest with the rest of District 61. And Lake county is separated from Pitkin county by Independence Pass on the Continental Divide, which is typically closed each winter from November through May. In contrast, Alternative Plan Gv1 places Summit county together with Park county and most of Fremont county, with which it is connected by Highway 9. It also places Lake county with Chaffee and Saguache counties to the south, which both lie primarily east of the Continental Divide like Lake county.

And the Alternative Plan Gv1 avoids the “unfortunate” pairing of Jackson county in a district with part of Boulder county, as Commissioner Salazar lamented regarding the Resubmitted Plan. Ex. 4, Nov. 28 Tr. at 5 (“you’ll notice on this map that Jackson is connected with Grand and to Boulder and that was an unfortunate part of trying to keep as many parts and counties together as possible”). As Commissioner Loevy noted, “House District 13: if we got any message from Grand and Jackson Counties it was, ‘Don’t mix us with Boulder County.’ You are

essentially asking some of the most conservative rural Coloradans to be overwhelmed in a district from Colorado's most liberal city." *Id.* at 50. Alternative Plan Gv1 includes Jackson county in a district containing only the more rural and conservative Grand and Larimer counties.

Some divisions of communities of interest are always an unfortunate byproduct of equal population, county, and city considerations. But not only did the Commission ignore its constitutional mandate to consider communities of interest; it attempted to legitimize violations of community of interest concerns based on the higher criteria even when such violations were not necessary.

Because the Commission disregarded these important communities of interest in violation of section 47(3), and reduced the number of Hispanic-majority districts without justification, the Resubmitted Plan must be rejected.

D. THE SENATE PLAN MUST BE REJECTED BECAUSE IT IS NOT SUFFICIENTLY ATTENTIVE TO COUNTY BOUNDARIES, CITY BOUNDARIES, COMPACTNESS CONCERNS, OR IMPORTANT COMMUNITIES OF INTEREST.

The Commission was presented with, and considered, Senate Alternative Plan Cv2, which, like Alternative Plan Gv1 in the House, is strictly superior to the Resubmitted Plan on *every* single criterion listed in section 47. The Alternative Plan Cv2 includes fewer county splits and fewer city splits than the Resubmitted Plan and contains no county or city splits that are not also present in the

Resubmitted Plan; it is more compact, particularly in Arapahoe, Jefferson, and El Paso counties; it gives minorities a greater voice in north Aurora; it preserves important geographic communities of interest in Jefferson county and Aurora that the Resubmitted Plan does not; and it contains no politically vindictive pairings of incumbents into single districts.

Table 3 below summarizes the important differences between the Resubmitted Plan and Alternative Plan Cv2:

Table 3: Comparison of Senate Plans		
	Resubmitted Plan	Alternative Plan Cv2
# of times part of one county is added to part or all of another county*	10	9
Extra city splits within a county	Westminster, Foxfield	None
Compactness: aggregate linear distance of all district boundaries (in miles)	Whole map: 28,245.12	Whole map: 27,644.8
	Arapahoe districts: 352.2	Arapahoe districts: 289.6
	Combined districts 2, 9, 10, 11, 12, 16, 17, 18, 19, 20 and 22: 1,524.1	Combined districts 2, 9, 10, 11, 12, 16, 17, 18, 19, 20 and 22: 1,392.3
Minority influence	Dilutes minority population in north Aurora (57.01% minority in SD 29)	Greater concentration of minority population in north Aurora (63.77% minority in SD 29)
Communities of interest	Aurora combined with rural Arapahoe county District 16 combines all of western Jefferson county with part of Denver and part of Boulder counties	Two districts fully within Aurora Clean districts in Jefferson districts; south Jefferson county united in one district
*Resubmitted Plan splits the same counties as Alternative Plan Cv2, plus Boulder county. See Table 4.		

Table 4 sets forth the counties that are split to add part of that county to all or part of another:

Resubmitted Plan			Alternative Plan Cv2		
County	# of parts added to other counties	Districts	County	# of parts added to other counties	Districts
Arapahoe	1	31	Arapahoe	1	31
Boulder	1	16	Boulder	Not split	
Denver	2	16, 31	Denver	2	16, 31
El Paso	1	2	El Paso	1	2
Jefferson	1	16	Jefferson	1	16
Larimer	1	23	Larimer	1	23
Pueblo	1	35	Pueblo	1	35
Weld	2	1, 23	Weld	2	1, 23
Total	10		Total	9	

*Ignores zero-population splits of Broomfield county in Resubmitted Plan and of Arapahoe and Broomfield counties in Alternative Plan Cv2

1. The Commission once again unnecessarily split Boulder county in violation of section 47(2).

In its initial Adopted Plan for the Senate, the Commission unnecessarily divided Boulder county across three districts, even though it can be contained entirely within two. This extra split of Boulder county is an additional instance in which part of one county is added to all or part of another county, and is entirely avoidable (and hence, not justifiable on population grounds). CCFR objected to the Adopted Plan on this ground (among others), and this Court cited CCFR’s objection to proposed Senate District 16 in its opinion rejecting the Adopted Plan for failing to be sufficiently attentive to county boundaries. *See In re Reapportionment 2011*, Slip Op. at 5 n.2.

Nevertheless, the Commission refused to address the extra split of Boulder county, and has again split Boulder county across three districts in violation of

section 47(2). Boulder's population is one person more than 2.05 times the "ideal" district size; Boulder county can therefore be contained entirely within two districts if one of those districts contains a *single* person more than 2.5% above the ideal district size. Some of the Commissioners apparently believed that the Commission cannot draw districts with populations that differ from the "ideal" population by more than 2.5%. *See* Ex. 4, Nov. 28 Tr. at 43 (Commissioner Carroll stating "The 2.5% deviation isn't flexible and so if you're over population it's over population All of those in the case of Boulder in particular violate the constitution as far as being above the maximum allowable population deviation.") & 45 (Commissioner Atencio stating "the version that is offered by Commissioner Tool does violate the 2.5% deviation whereas Fv1 does not"). But that has never been the rule. Section 46 requires only that the largest district and the smallest district have populations that are within 5% of each other, and this Court has stated:

The five percent deviation test means that the sum of the percent by which the largest district's population exceeds that of the ideal district and the percent by which the smallest district population falls short of the population of the ideal district must be less than five percent.

In re Reapportionment of Colo. Gen. Assembly, 647 P.2d 191, 193 n.4 (Colo. 1982). In fact, in 1982 the Court approved a reapportionment plan in which the

largest House district exceeded the ideal district size by 2.7%, because the smallest House district was within 2.3% of the ideal district size. *Id.*

At least one other Commissioner stated that the Commission has “discretion” with respect to the five-percent allowance in section 46, and is only constitutionally required to ensure that counties receive the number of whole districts to which they are entitled. Ex. 5, Nov. 29 Tr. at 32:25–33:7 (statements of Commissioner Atencio). This also is incorrect. While it is *necessary* for the Commission to give each county the number of whole districts for which they are eligible, it is not *sufficient*. Section 47(2) requires the Commission to avoid adding part of one county to all or part of another unless necessary to satisfy the equal-population requirements. Alternative Plan Cv2 shows that it is not necessary to add part of Boulder county to all or part of any other county to satisfy section 46. Accordingly, the Commission is required to avoid such a split.

Even the Commission staff counted the extra split of Boulder county in its tally of instances in which part of one county is added to all or part of another county, and that information was given to the Commission before it voted to adopt the Resubmitted Plan. This unnecessary split of Boulder county cannot be justified on equal-population grounds: Alternative Plan Cv2, which was presented to and considered by the Commission, avoids this extra split, and includes no other

county splits that are not also present in the Resubmitted Plan. Alternative Plan Cv2 is therefore constitutionally superior to the Resubmitted Plan, and demonstrates unambiguously that the Commission unnecessarily split Boulder county. And because the Commission failed to honor the Court's instruction to correct this error, the Resubmitted Plan must be rejected.

2. The Resubmitted Plan unnecessarily splits the City of Westminster and the Town of Foxfield in violation of section 47(2).

The City of Westminster is split across three separate districts in the Resubmitted Plan (proposed Districts 19, 21 & 24), whereas it is contained in only two districts in Alternative Plan Cv2 (19 & 24). And like in the House, the Resubmitted Plan splits the Town of Foxfield across two districts (proposed Districts 26 & 27), while Alternative Plan Cv2 keeps Foxfield whole. This Court indicated in its remand opinion that excessive city splits warrant rejection of a plan. *See In re Reapportionment 2011*, Slip Op. at 10 (rejecting Adopted Plan and agreeing with objections that Adopted Plan “failed to minimize city splits in Colorado Springs”). Because the Commission could have avoided splitting Foxfield and the portion of Westminster in Adams county, but did not, the Resubmitted Plan must be rejected.

3. The Resubmitted Plan is less compact than Alternative Plan Cv2.

The aggregate linear distance of district boundaries in the Resubmitted Plan is 28,245.12 miles; it is only 27,644.80 miles in Alternative Plan Cv2. But the compactness problems in the Resubmitted Plan can be seen most readily in certain smaller geographic “footprints,” or areas that contain exactly the same number of whole districts in both the Resubmitted Plan and Alternative Plan Cv2. In these areas, the Commission could adopt a more compact configuration of districts within the footprint *without disturbing any districts outside the footprint*. For example, both the Resubmitted Plan and Alternative Plan Cv2 keep Arapahoe county precisely contained within four districts,¹⁸ so that the Arapahoe-county portion of one plan could be substituted into the other plan with no spill-over or ripple effects elsewhere. Similarly, both plans create an almost equivalent footprint for the eleven districts covering El Paso, Teller, Fremont, Park, Boulder, Jefferson, Gilpin, Clear Creek and southwest Denver counties (proposed Districts 2, 9, 10, 11, 12, 16, 17, 18, 19, 20 and 22 in the Resubmitted Plan), so the portion of the map covering these districts could be substituted almost exactly into the other plan without requiring any reconfiguration elsewhere.

¹⁸ This excepts the 6,670 residents of Arapahoe county enclaves surrounded by Denver county.

Alternative Plan Cv2 is more compact in Arapahoe county. The aggregate linear distance of district perimeters within Arapahoe county is 352.2 miles in the Resubmitted Plan—more than 20% above the 289.6 miles represented in Alternative Plan Cv2. Similarly, the aggregate linear distance of district perimeters within the eleven-district El Paso-Jefferson-Boulder-county footprint is 1,524.1 miles in the Resubmitted Plan, whereas it is only 1,392.3 miles in Alternative Plan Cv2. Because the footprints for these two regions are identical or almost identical across plans, and because both plans split cities within these counties the same number of times, the Commission cannot defend its decision to draw less compact districts on higher constitutional criteria. It was presented with a superior option but chose to disregard it for entirely non-constitutional reasons. The Commission’s Resubmitted Plan therefore violates section 47(1) and should be rejected.

4. Alternative Plan Cv2 better preserves important communities of interest.

Despite the Commission’s apparent concern over VRA issues in Aurora discussed in its original brief to this Court, the Commission elected to *dilute* minority influence in north Aurora in its Resubmitted Plan. District 29 is 63.77% minority in Alternative Plan Cv2, whereas in the Resubmitted Plan proposed District 29 is only 57.01% minority.

Alternative Plan Cv2 also draws more sensible districts in Aurora and in Jefferson county. Alternative Plan Cv2 includes two districts wholly contained within the outer boundaries of the Arapahoe-county portion of Aurora, whereas the Resubmitted Plan contains only one such district fully within the outer boundary of Aurora, and includes the entire rural eastern portion of Arapahoe county in a district with the more than 130,000 residents of Aurora in proposed District 29. In Jefferson county, the Resubmitted Plan's proposed District 16 extends the full north-south length of the county (and beyond, to include the Town of Superior from Boulder county), while wrapping almost three-quarters of the way around proposed Districts 20 and 22 to include a portion of Denver.¹⁹ By comparison, District 22 in Alternative Plan Cv2 is compact, and its boundary follows natural lines such as I-70. And Districts 16 and 19 in Alternative Plan Cv2 honor the boundary between Jefferson and Boulder counties. The Resubmitted Plan should be rejected because Alternative Plan Cv2 demonstrates that the Commission could have better preserved minority influence in Aurora and maintained geographic communities of interest in Arapahoe and Jefferson counties without sacrificing any higher constitutional factors.

¹⁹ Proposed District 16's perimeter is, accordingly, highly convoluted and non-compact.

5. Alternative Plan Cv2 avoids the election sequencing problem in the Resubmitted Plan.

The Commission has admitted that the Resubmitted Plan for the Senate contains constitutionally impermissible sequencing of elections, so that it cannot be adopted as submitted. Resubmitted Plan at 4.²⁰ The Resubmitted Plan draws newly appointed Senator Tim Neville (who would have faced a special election in 2012 even though his seat was not slotted for election until 2014) out of his district (so he will be unable to run for the remainder of his Senate term) and into proposed District 16 with Senator Nicholson in order to create a new, open Senate seat in Jefferson county to accommodate the Commission's political desires. As a result, under the election sequencing in the Resubmitted Plan, proposed District 22 will not have a Senator for two years after Senator Neville's term ends. Yet the Commission had ample opportunity to fix the problem. Several Commissioners requested additional Commission meetings after November 29 to allow further discussion and deliberation regarding the plans presented to the Commission and noted that the Commission had until December 6 to submit its plan. Ex. 5, Nov. 29 Tr. at 6:23–25 (Commissioner Witwer) & 12:16–18 (Commissioner Nicolais). But

²⁰ See also Tim Hoover, *Glitch in new Colorado legislative map could unseat senator*, THE DENVER POST (Dec. 6, 2011), http://www.denverpost.com/legislature/ci_19477451. A copy of this article is attached hereto as Exhibit 7.

the Commission declined to meet again, arguably over concerns that holding an additional meeting would open the door to formal consideration of House Alternative Plan Gv1. *See id.* at 19:1–9 (comments of Commissioner Carroll).

Alternative Plan Cv2 does not draw Senators Neville and Nicholson into the same district, so that it avoids the election-sequencing problem entirely.

VI. RELIEF REQUESTED

This Court has the authority to direct the Commission to submit an alternative plan to the Secretary of the State. *See In re Reapportionment Remand 1982*, 647 P.2d at 213 (ordering Commission to submit to the Secretary of State a plan other than the one resubmitted by the Commission and including additional changes described and mandated by the Court). In 1982, the Court noted that section 48(1)(e) provides no guidance in the event that it disapproves the Commission’s resubmitted plan. *Id.* It also noted, however, that section 48(1)(e) does contain a firm deadline for approving a constitutionally valid plan for submission to the Secretary of the State. *Id.* This year, the firm deadline for submission of a valid plan is December 14, 2011.²¹

²¹ *See* section 48(1)(e) (“The supreme court shall approve a plan . . . by a date that will allow sufficient time for such plan to be filed with the secretary of state no later than fifty-five days prior to the date established in statute for precinct caucuses in the second year following the year in which the census was taken . . .”). The Republican precinct caucuses are set for February 7, 2012.

The looming deadline provides no reason to afford the Commission's Resubmitted Plan additional deference. Doing so would simply invite future Commissions to try to run out the clock by making as few changes as possible, knowing that the Court will afford the Commission greater deference after an initial remand. Particularly in light of the Commission's efforts to frustrate effective judicial review of its Resubmitted Plan through its decisions along party lines to block consideration of alternative maps, to block amendments to the maps the Commission was considering, and to prevent adoption of a minority report, as well as the politically vindictive pairing of incumbents in the Resubmitted Plan, the Court should carefully scrutinize the Commission's Plan.

This Commission has proven itself incapable of adopting a constitutional plan, and at any rate may not have time to notice a public meeting at which it could consider new proposals and then send a revised plan back to this Court for review. The Commission will simply be unable to formulate a new plan that fixes all of the constitutional infirmities present in the Resubmitted Plan. But this Court has before it alternative plans that contain none of the problems that plague the Resubmitted Plan. Alternative Plan Gv1 for the House and Alternative Plan Cv2 for the Senate together satisfy the equal-population requirements, minimize instances in which part of one county is added to all or part of another, minimize city splits, reduce the

aggregate linear distance of all district boundaries relative to the Resubmitted Plan, increase the number of Hispanic-majority districts, and preserve important communities of interest. Given the imminent deadline for submitting a plan to the Secretary of State, this Court should direct the Commission to file House Alternative Plan Gv1 and Senate Alternative Plan Cv2 with the Secretary of State by December 14, 2011. The Commission should make any technical or district-numbering changes necessary prior to its submission to the Secretary of State.

VII. CONCLUSION

For all of the foregoing reasons, CCFR respectfully requests that this Court reject the Resubmitted Plan as constitutionally deficient and direct the Commission to submit Alternative Plan Gv1 for the House and Alternative Plan Cv2 for the Senate to the Secretary of State.

Respectfully submitted this 8th day of December 2011.

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CERTIFICATE OF SERVICE
(11SA282)

I hereby certify that on this 8th day of December 2011, a true and correct copy of the foregoing **STATEMENT OF OPPOSITION OF COLORADO CITIZENS FOR FAIR REPRESENTATION TO THE COMMISSION'S RESUBMITTED PLAN** was filed with the Colorado Supreme Court by hand delivery and served via e-mail to the following:

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