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| <p>SUPREME COURT, STATE OF COLORADO</p> <p>101 West Colfax Avenue, Suite 800 Denver, Colorado 80202</p> | |
| <p>Original Proceeding Pursuant to the Colorado Rules for Reapportionment Proceedings</p> | <p>▲ COURT USE ONLY ▲</p> |
| <p>IN RE REAPPORTIONMENT OF THE COLORADO GENERAL ASSEMBLY</p> | <p>Case No. 11SA282</p> |
| <p>Attorney for Jennie Sanchez:</p> <p>Joseph Salazar, #35196 The Salazar Consulting Group, LLC 2318 E. 116th Ave. Thornton, CO 80233</p> | |
| <p>BRIEF IN SUPPORT OF RESUBMITTED PLAN</p> | |

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I. INTRODUCTION

Jeannie Sanchez (“Ms. Sanchez”) is a registered Colorado voter, residing in the City of Center in Saguache County. Ms. Sanchez was the named plaintiff in Sanchez v. Colorado, 97 F.3d 1303 (10th Cir. 1996), the seminal Voting Rights Act case applied to the reapportionment of Colorado’s legislative districts. Ms. Sanchez, through her undersigned counsel, hereby submits this Brief in Support of the Colorado Reapportionment Commission (“Commission”) Plans House Fv1 and Senate Ev1 (“Resubmitted Plans”) and in Opposition to improperly proposed House Submitted Plan Gv1 (“Gv1”), attached as Exhibit 1 hereto.

II. THE RESUBMITTED PLAN MEETS FEDERAL AND STATE CONSTITUTIONAL REQUIREMENTS and Gv1 DOES NOT

The Fourteenth Amendment, Fifteenth Amendment, and section 2 of the Voting Rights Act superimpose federal requirements on the Colorado constitutional criteria. In accordance with the Supremacy Clause, U.S. Const. art. VI, cl. 2, the Commission must address amended section 2 of the Federal Voting Rights Act of 1965 (“VRA”), 42 U.S.C. sections 1973-19730 concerns before attending to Colorado constitutional concerns, such as county splitting. See In re Reapportionment of the Colo. Gen. Assembly 1992, 828 P.2d 185, 190 (Colo. 1992). “In order of priority, we have set forth the federal and state criteria 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).

Id. (footnotes omitted).

When there is conflict between the above-stated criteria “[t]he Commission resolves conflicts by applying the criteria in preferential order, articulating on submittal to us how the Adopted Plan reflects the criteria.” In re Reapportionment of the Colo. Gen. Assembly 1982, 647 P.2d 191, 194 (Colo. 1982).

In 1996, the 10th Circuit Court of Appeals reviewed a federal district court complaint alleging that racial bloc voting in Colorado’s San Luis Valley deprived the Hispanic community of a fair opportunity to elect representatives of their choice to the General Assembly. *See Sanchez v. Colorado*, 97 F.3d 1303. The Valley is comprised of Saguache, Alamosa, Costilla, Mineral Rio Grande and Conejos counties in central Colorado, with a western boundary of the San Juan Mountains (the “Valley”). *See Id.* at 1306. The three judge appellate panel found that the plaintiff “satisfied the two conditions necessary for the State to have a compelling interest to remedy their section 2 claim.” *Id.* at 1329. In response, the state legislative district that comprised the Valley was redrawn to incorporate

portions of the City of Pueblo so as to ensure the population of the Valley's state house district exceeded 50% of the total population; and the district was redrawn in the 2001-2002 Reapportionment process in a similar fashion. *See In re Reapportionment of the Colo. Gen Assembly*, 45 P.3d 1083 (2002).

The Commission sought and received expert analysis regarding potential racial bloc voting in the Valley occurs today. *See Voting Patterns by Race/Ethnicity in Recent Elections in the San Luis Valley*, Dr. Lisa Handley, Commission Memorandum in Support of Adopted Plan, Exhibit 10. This expert analysis informed the 2011 Commission's drawing of the Valley house district based upon the analysis of the 2008 and 2010 voting results in state house contests. In the written opinion produced by Dr. Lisa Handley, she concluded that, "[v]oting in the San Luis Valley continues to be racially polarized and Hispanic voters are still politically cohesive in support of their preferred candidates. ... I therefore conclude that maintaining districts in which Hispanics are a majority is essential to satisfy Section 2 of the Voting Rights Act." *Id.* at p. 7.

The hierarchy of reapportionment considerations provided by the Court mandates that the VRA must be considered before other state constitutional criteria. *See In re Reapportionment 1992*, at 190. The Commission decision to begin drawing the Valley's state house district, House District 62 ("HD 62") prior

to any other district was proper. *See* Affidavit of Commission Chair Mario M. Carrera, Commission Memorandum in Support of Adopted Plan, Exhibit 6, ¶ 2.

The Commission kept HD 62 kept the entire Valley whole within a district with a Hispanic population of over 50% of the total district population.

Saguache County, where the Sanchez plaintiffs reside, is an integral part of the Valley. The expert racial bloc analysis showed that the Valley, including Saguache County and the Hispanic population that resides in the City of Center, is a part of the racially polarized population subject to the VRA. Any statewide plan that does not include Saguache County or the City of Center within a house district that considers the VRA is constitutionally deficient.

One argument advanced by opponents to the Resubmitted Plan is that Gv1 is a less drastic alternative in terms of the number of county splits in the map. Considerations of county splits are state constitutional requirements. See Colo. Const. art V, section 47(2). Prior to considering state constitutional requirements, “the Commission must first comply with federal law.” In re Reapportionment 2002, 45 P.3d 1247 (“If the Commission faces actual or probable federal law violations, its starting point for the Approved Plan is compliance with federal law.”).

House Plan Gv1 is not a less drastic alternative to the Resubmitted Plan and Gv1 should not be considered or contrasted by this Court. First, Gv1 was a map improperly generated on the final day of hearings that was never subjected to public review, or comment. Second, even if Gv1 were properly presented, the map violates the protections of amended section 2 of the VRA. The requirements of the VRA to ensure fair representation, supersede any concerns of county splits.

In particular, Gv1 fractures the San Luis Valley into two different house districts. Saguache and Mineral counties are relegated to a district where the total Hispanic population is approximately 15% of the total population. The Appellate Court found in Sanchez that the Hispanic population in Saguache County, the subject of the Sanchez Voting Rights Act case, is not a part of a district in which the Hispanic community has an fair opportunity to elect the candidate of their choice. Gv1 asserts that by splitting-off Saguache and Mineral Counties from the other counties in the Valley, the numbers of total county splits are reduced. This is not a proper conclusion because this Court has previously made clear that elevating county integrity above that of the VRA is improper. Gv1, even if properly submitted, was not a less drastic alternative map that could have been considered by the Commission during the rushed timeframe.

Only the Resubmitted Plan meets the constitutional requirements as set forth by this Court. The Resubmitted Plan considers the VRA and the importance of

protecting fair representation of the Hispanic community, Gv1 fails to even consider, much less comply with the requirements of the VRA. Therefore, the only plan this Court should consider is the Resubmitted Plan and i should be certified by this Court as outlined in Article V of the State Constitution.

III. CONCLUSION

For the foregoing reasons and the reasons set forth, Ms. Sanchez respectfully requests that the Court approve the Resubmitted Plan.

Dated: December 8, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of December 2011, a true and correct copy of the foregoing **REPLY TO STATEMENTS OF OPPOSITION** was filed with the Colorado Supreme Court by hand delivery and served via U.S. Mail to the following:

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