

<p>SUPREME COURT, STATE OF  COLORADO  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. 2011SA282</p>
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<p style="text-align: center;"><b>STATEMENT OF OPPOSITION  ARAPAHOE COUNTY, COLORADO</b></p>	

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The Board of County Commissioners of the County of Arapahoe, State of Colorado, pursuant to the Colorado Rules for Reapportionment Commission Proceedings (Chapter 34), submits this Statement of Opposition to the Final Plan for Districts for the Senate and House of Representatives filed by the Colorado Reapportionment Commission on October 3, 2011.

### SUMMARY

The Final Plan for Districts for the Senate and House of Representatives filed by the Colorado Reapportionment Commission results in under-representation of the citizens in Arapahoe County in both the Colorado Senate and the Colorado House of Representatives in violation of Article V, Sections 46 and 47 of the Colorado Constitution. Since reapportionment occurs only once every ten years, this under-representation will be further exacerbated unless it is addressed at this time. The Final Plan should be disapproved and returned to the Commission to be revised or otherwise modified to comply with the requirements of the Colorado Constitution.

### BACKGROUND

Based on the 2010 federal census, the population of Arapahoe County increased to 572,003 residents, which figure represents an increase of 84,036 residents from the 2000 federal census. The percentage change in population in

Arapahoe County over this 10-year period is 17.2%, which is greater than the overall State's increase of 16.9%. (See Exhibit 1 attached hereto.) The Final Plan ("Final Plan") submitted by the Colorado Reapportionment Commission ("Reapportionment Commission") on October 3, 2011, indicates the ideal Senate District would have a population of 143,691 residents and the ideal House of Representatives District would have a population of 77,372 residents.

The Colorado Supreme Court has clearly set forth the standards that the Reapportionment Commission must follow in the development of a plan for districts for the Colorado Senate and for the Colorado House of Representatives. The hierarchy of criteria, from most to least important, that the Reapportionment Commission must follow for state house and state senate districts are:

(1) The U.S. Constitution - Fourteenth Amendment (equal protection clause) and Fifteenth Amendment

(2) Section 2 of the Voting Rights Act of 1965 (42 USC 1973)

(3) Colorado Constitution - Art V, Sec 46 [equality of population of districts in each house – no more than 5% deviation between most populous to least populous in each chamber.]

(4) Colorado Constitution – Art V, Sec 47(2) [districts not to cross county lines (except to meet Sec 46 requirements) and number of cities and towns contained in more than one district are minimized]

(5) Colorado Constitution – Art V, Sec 47(1) [districts to be as compact as possible and to consist of whole general election precincts]

(6) Colorado Constitution – Art V, Sec 47(3) [preservation of community of interest within a district, including ethnic, cultural, economic, trade area, geographic and demographic factors shall be preserved within a single district whenever possible.]

See *In re Reapportionment 2002*, 45 P.3d 1237 (Colo. 2002) and *In re Reapportionment 1992*, 828 P.2d 185 (Colo. 1992).

Once federal criteria have been addressed in a reapportionment plan, the Reapportionment Commission must match districts to county boundaries and not cross county boundaries unless necessary to meet equal population criteria of the Colorado Constitution. A reapportionment plan must be (a) attentive to county boundaries to meet the requirements of Section 47(2) of Article V of the Colorado Constitution and (b) accompanied by a sufficient factual showing that less drastic alternatives could not have satisfied the equal population requirements of the Colorado Constitution. *In re Reapportionment 2002*, 45 P.3d 1237 (Colo. 2002) at 1248-1249.

Based on the 2010 population data, Arapahoe County residents should be served by four whole Senate Districts and seven whole House of Representatives Districts. The Final Plan does not provide for this representation nor does the Final Plan set forth an adequate factual showing to demonstrate a need for the unnecessary county divisions as applied to Arapahoe County.

## PROPOSED SENATE DISTRICTS

In examining the Final Plan in relation to the Senate Districts, Arapahoe County residents are identified in five proposed Senate Districts. These are Senate Districts 26, 27, 28, 29 and 31, the percentages of which for Arapahoe County are as follows:

Senate District 26:	84.6% Arapahoe	15.4% Denver
Senate District 27:	100% Arapahoe	
Senate District 28:	100% Arapahoe	
Senate District 29:	100% Arapahoe	
Senate District 31:	4.6% Arapahoe	95.4% Denver

Even if one were to total all percentages in these Districts, Arapahoe County would only have representation equal to 3.892 Senate Districts, which is less than the four Senate Districts to which Arapahoe County is entitled. While this apparently small variance in percentage may not seem significant, it is significant for two reasons:

- The 4.6% of Arapahoe County citizens in proposed Senate District 31 is so trivial as to effectively provide no representation for Arapahoe County residents, and should not be counted as part of the County's representation numbers. [It should be noted that these Arapahoe County residents are in enclaves of territory completely surrounded by Denver.]
- Arapahoe County's growth to the east of the current urban area within the County is expected to be significant over the next ten years, especially in

comparison with Denver and other geographically-limited entities. Any under-representation existing now will be magnified extensively over the next ten years, without the County having the ability to “fix” the ever-increasing level of under-representation. Because of the expected growth in this portion of Arapahoe County, the population for proposed Senate District 27 could be reduced to a population with a negative deviation factor.

One option for correcting Arapahoe County’s under-representation in the Senate Districts would be to use positive population deviation factors in Districts 26, 27, 28 and 29 to give the County the representation to which it is entitled.

Proposed Senate Districts 27, 28 and 29 involve only Arapahoe County residents; however, the population deviation factors for each of these districts are all positive and thus include more residents than the “ideal” senate district. (See Plan – Senate Tab – pp. 16-17) These are:

<u>District</u>	<u>% Deviation</u>	<u>Deviation</u>
Senate District 27	2.24%	3224 residents
Senate District 28	2.37%	3404 residents
Senate District 29	2.26%	3246 residents

These positive deviations represent some of the largest positive deviations in the Plan and these are “concentrated” in Arapahoe County. Proposed Senate District 26 is a district that crosses county lines and involves Arapahoe County residents

(84.6%; 124,296 residents) and Denver County residents (15.4%; 22,660 residents), and this proposed Senate District also represents another large positive deviation of 2.27% involving 3265 residents. Proposed Senate District 26 should be modified by (a) decreasing the number of Denver County residents, which residents can be easily added to proposed Senate District 32, and increasing the number of Arapahoe County residents by reducing the number of residents in proposed Senate District 27 and/or proposed Senate District 28, which districts could be reduced to negative deviations, or (b) decreasing the number of Denver County residents, which can be easily added to proposed Senate District 32. This action would more accurately achieve Arapahoe County's authorization for its constitutional right to four whole Senate districts.

The Final Plan for the proposed Senate Districts does not establish the four whole Senate Districts in Arapahoe County as required, nor does the Final Plan set forth an adequate factual showing to demonstrate a need for unnecessary county divisions as applied to Arapahoe County.

#### HOUSE OF REPRESENTATIVE DISTRICTS

In examining the Final Plan in relation to the House of Representative Districts, Arapahoe County residents are identified in eleven proposed House

Districts. These are House Districts 3, 6, 9, 36, 37, 38, 40, 41, 42, 56 and 65, the percentages of which for Arapahoe County are as follows:

House District 3:	100% Arapahoe	
House District 6:	0.07% Arapahoe	99.93% Denver
House District 9:	8.85% Arapahoe	91.15% Denver
House District 36:	100% Arapahoe	
House District 37:	100% Arapahoe	
House District 38:	77.1% Arapahoe	22.9% Jefferson
House District 40:	100% Arapahoe	
House District 41:	100% Arapahoe	
House District 42:	100% Arapahoe	
House District 56:	46.8% Arapahoe	53.2% Adams
House District 65:	9.55% Arapahoe	90.45% seven other counties

The 0.07% of Arapahoe County citizens in proposed House District 6 and the 8.85% of Arapahoe County citizens in proposed House District 9 are so trivial as to effectively provide no representation for Arapahoe County residents, and should not be counted as part of the County's representation numbers. [It should be further noted that these Arapahoe County residents are in enclaves of territory completely surrounded by Denver.] Proposed House District 65 is a district comprised of rural eastern Arapahoe County which is combined with a portion of rural eastern Adams County, a portion of Elbert County and all of Logan, Phillips, Sedgwick, Washington and Yuma Counties.

In reviewing the remaining eight proposed House Districts in Arapahoe County in the Final Plan, House Districts 3, 36, 37, 40, 41 and 42 involve only

Arapahoe County residents, House District 38 involves residents of Arapahoe and Jefferson Counties, and House District 56 involves residents of Arapahoe and Adams Counties. In the Final Plan, there is no adequate factual showing to demonstrate why Arapahoe County does not have seven whole House of Representative districts. The boundaries for House District 38 or House District 56 should be revised to create another whole House District in Arapahoe County. This action would more accurately achieve Arapahoe County's authorization for its constitutional right to seven whole House of Representative Districts.

#### IMPROPER CRITERIA

In the Final Plan, the Reapportionment Commission includes reports of the breakdown of the number of registered Democrats, Republicans, minor political parties, and unaffiliated voters in each district as of 2008 and 2010. [The details are found at pages 32 -34 of the Final Plan in relation to the proposed Senate Districts and pages 51-56 of the Final Plan in relation to the proposed House of Representative Districts.] In its Memorandum in Support of Adopted Plan, the Reapportionment Commission correctly identifies the legal standards and the priority of the federal and the state criteria to be followed in developing a reapportionment plan. See *In re Reapportionment 2002*, 45 P.3d 1237 (Colo. 2002) and *In re Reapportionment 1992*, 828 P.2d 185 (Colo. 1992).

However, in the Memorandum in Support of Adopted Plan, at pages 13-14, the Reapportionment Commission discusses the importance of increasing the number of competitive districts. In reviewing the criteria established by federal and state law which the Reapportionment Commission must follow, there are no legal references to:

- (a) the numbers of registered voters in a district,
- (b) the political party affiliation of registered voters in a district, or
- (c) the competitiveness of candidate races in an election.

In support of the purported “competitive district” concept, the Memorandum of Support of Adopted Plan references the Affidavit of Mario M. Carrera, the Chair of Colorado Reapportionment Commission, which affidavit is attached to the said Memorandum of Support. The affidavit expresses Mr. Carrera’s personal opinion for a desire to “increase the number of competitive seats” but he fails to identify the legal reference that allows for this to be considered as a factor in the Reapportionment Commission’s determination. Further, the affidavit fails to identify or otherwise establish a legal standard for a “competitive seat;” the affidavit merely sets forth Mr. Carrera’s personal opinion. Additionally, the Colorado Supreme Court, while recognizing that reapportionment is not without political considerations, stated “...these considerations are not among our

constitutional criteria and the Commission may not allow them to outweigh the constitutional criteria.” See *In re Reapportionment 1982*, 647 P.2d 209 (Colo. 1982) at 213. Also, the inclusion of political party affiliation as a factor in the reapportionment process is another form of gerrymandering, especially when this factor is not identified in the Colorado Constitution. And to the extent that Denver residents were included in proposed Senate District 26 (see above) in order to make the district “more competitive,” the number of Denver residents should be reduced. The Reapportionment Commission was established pursuant to Section 48 of Article V of the Colorado Constitution for a limited purpose; the members of the Reapportionment Commission must perform their duties in accordance with federal and state law and not in accordance with the personal opinions or preferences of the members or other political considerations.

## CONCLUSION

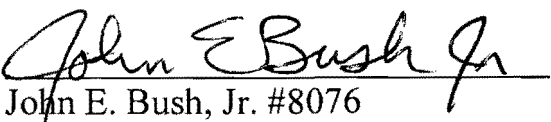
Based on the population as identified in the 2010 federal census and on the requirements of the Colorado Constitution associated with reapportionment, Arapahoe County is entitled to four whole Senate Districts and seven whole House of Representative Districts. The Final Plan for Districts for the Senate and House of Representatives filed by the Colorado Reapportionment Commission does not provide for this mandated representation and is therefore a plan which results in

under-representation of the citizens in Arapahoe County in both the Colorado Senate and the Colorado House of Representatives in violation of Sections 46 and 47 of Article V of the Colorado Constitution. Further, members of the Reapportionment Commission considered evidence and testimony for criteria which is not established in law, and made findings based on personal opinions and political considerations rather than established legal standards. The Final Plan should be disapproved and returned to the Commission to be revised or otherwise modified to comply with the requirements of the Colorado Constitution.

Dated this 24<sup>th</sup> day of October, 2011.

Respectfully submitted,

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**Table 1. The Most Populous Counties and Incorporated Places in 2010 in Colorado: 2000 and 2010**

(For information on confidentiality protection, nonsampling error, and definitions, see <http://www.census.gov/prod/cen2010/p194-171.pdf>)

Population rank		Geographic area	Population		Change, 2000 to 2010	
2010	2000		2000 <sup>1</sup>	2010	Number	Percent
		Colorado.....	4 301 261	5 029 196	727 935	16.9
		<b>COUNTY</b>				
		Colorado.....	4 301 261	5 029 196	727 935	16.9
1	3	El Paso County.....	516 929	622 263	105 334	20.4
2	1	Denver County <sup>2</sup> .....	554 636	600 158	45 522	8.2
3	4	Arapahoe County.....	487 967	572 003	84 036	17.2
4	2	Jefferson County.....	527 056	534 543	7 487	1.4
5	5	Adams County.....	363 857	441 603	77 746	21.4
6	7	Larimer County.....	251 494	299 630	48 136	19.1
7	6	Boulder County.....	291 288	294 567	3 279	1.1
8	9	Douglas County.....	175 766	285 465	109 699	62.4
9	8	Weld County.....	180 936	252 825	71 889	39.7
10	10	Pueblo County.....	141 472	159 063	17 591	12.4
11	11	Mesa County.....	116 255	146 723	30 468	26.2
12	14	Garfield County.....	43 791	56 389	12 598	28.8
13	X	Broomfield County <sup>3</sup> .....	X	55 889	X	X
14	15	Eagle County.....	41 659	52 197	10 538	25.3
15	13	La Plata County.....	43 941	51 334	7 393	16.8
16	12	Fremont County.....	46 145	46 824	679	1.5
17	16	Montrose County.....	33 432	41 276	7 844	23.5
18	17	Delta County.....	27 834	30 952	3 118	11.2
19	18	Morgan County.....	27 171	28 159	988	3.6
20	20	Summit County.....	23 548	27 994	4 446	18.9
		<b>INCORPORATED PLACE</b>				
1	1	Denver city <sup>2</sup> .....	554 636	600 158	45 522	8.2
2	2	Colorado Springs city.....	360 890	416 427	55 537	15.4
3	3	Aurora city.....	276 393	325 078	48 685	17.6
4	5	Fort Collins city.....	118 652	143 986	25 334	21.4
5	4	Lakewood city.....	144 126	142 980	- 1 146	-0.8
6	10	Thornton city.....	82 384	118 772	36 388	44.2
7	7	Pueblo city.....	102 121	106 595	4 474	4.4
8	6	Arvada city.....	102 153	106 433	4 280	4.2
9	8	Westminster city.....	100 940	106 114	5 174	5.1
10	X	Centennial city.....	X	100 377	X	X
11	9	Boulder city.....	94 673	97 385	2 712	2.9
12	11	Greeley city.....	76 930	92 889	15 959	20.7
13	12	Longmont city.....	71 093	86 270	15 177	21.3
14	13	Loveland city.....	50 608	66 859	16 251	32.1
15	14	Grand Junction city.....	41 986	58 566	16 580	39.5
16	16	Broomfield city <sup>3</sup> .....	38 272	55 889	17 617	46.0
17	24	Castle Rock town.....	20 224	48 231	28 007	138.5
18	22	Commerce City city.....	20 991	45 913	24 922	118.7
19	20	Parker town.....	23 558	45 297	21 739	92.3
20	15	Littleton city.....	40 340	41 737	1 397	3.5

X Not applicable.

<sup>1</sup> Census 2000 counts are as published in Census 2000 reports and thus do not include any changes published subsequently due to boundary changes or to the Count Question Resolution program.

<sup>2</sup> Denver County and Denver city are coextensive.

<sup>3</sup> Broomfield County was created in 2001 from territory formerly in Adams, Boulder, Jefferson, and Weld Counties; there is no Census 2000 population for Broomfield County. In 2010, Broomfield County and Broomfield city are coextensive.

Source: U.S. Census Bureau, Census 2000 Redistricting Data (Public Law 94-171) Summary File, Table PL1, and 2010 Census Redistricting Data (Public Law 94-171) Summary File, Table P1.