

<p>SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, Colorado 80203</p>	
<p>Original Proceeding Pursuant to the Rules Regarding Reapportionment</p>	
<p>IN RE REAPPORTIONMENT OF THE COLORADO GENERAL ASSEMBLY</p>	
<p>BOARD OF COUNTY COMMISSIONERS OF WELD COUNTY, COLORADO Bruce T. Barker, Esq. Weld County Attorney Attorney Registration # 13690 915 Tenth Street P.O. Box 758 Greeley, CO 80632</p> <p>Phone Number: (970) 336-7235 Fax Number: (970) 352-0242 E-Mail: bbarker@co.weld.co.us</p>	<p>▲ COURT USE ONLY ▲</p> <hr/> <p>Case No: 11 SA 282</p>
<p style="text-align: center;">STATEMENT OF OPPOSITION OF</p> <p style="text-align: center;">THE BOARD OF COUNTY COMMISSIONERS OF WELD COUNTY, COLORADO</p>	

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STATEMENT OF ISSUE

Does the House Plan as it is described in the Final Plan for Districts for the Senate and House of Representatives, devised by the Colorado Reapportionment Commission, which was submitted to this Court on October 3, 2011, comply with Article V, Section 47(1) and (2) of the Colorado Constitution, as it applies to Weld County?

STATEMENT OF THE CASE

Pursuant to Colorado Constitution, Article V, Section 48, the Colorado Reapportionment Commission (“Commission”) has submitted to the Colorado Supreme Court its Final Plan for Districts for the Senate and House of Representatives (“Final Plan”). The Final Plan is to be reviewed by the Supreme Court for compliance with Sections 46 and 47 of Article V.

The Board of County Commissioners of Weld County objects to the Final Plan, because as it applies to Weld County, it does not comply with Article V, Section 47 of the Colorado Constitution, in two respects. First, the Final Plan violates Article V, Section 47(2) by having House District 63 go beyond Weld County’s borders to include all of Morgan County. Weld County now has enough population for three full House districts. There is no valid reason to designate House District 63 in this manner. Second, the newly reconfigured House District 63 is not as compact *as possible*, as required by Article V, Section 47(1).

The Board of County Commissioners requests that the Supreme Court instead approve Final Plan House 002v2 (“House Plan 002v2”), which was prepared by the Commission staff on September 15, 2011. House Plan 002v2 complies with Article V, Subsections 47(1) and (2), in that it creates three full House districts for Weld County, with the largest (House District 49) being compact and not extending beyond Weld County’s borders.

ARGUMENT

I. THE HOUSE FINAL PLAN IS UNCONSTITUTIONAL AS TO WELD COUNTY BECAUSE IT VIOLATES COLORADO CONSTITUTION ARTICLE V, SECTION 47(2)

Following the 2010 Census, due to Colorado's increase in population, Colorado's House and Senate districts needed to be redrawn to accommodate the Constitutional principal that each district have nearly equal population. *Colo. Const., Art. V, Sec. 46.* With the 2010 Census for Colorado being 5,029,196 people, the ideal number for House districts became 77,372. Dividing Weld County's 2010 population of 252,825 by 77,372 provides a total of 3.2 House seats (three full House districts and two-tenths of a fourth). This means that the residents of Weld County are, by virtue of the County's increased population, entitled to three full House districts located within the boundaries of Weld County.

The Final Plan creates only two full House districts within Weld County's borders, those being House Districts 48 and 50. The Final Plan puts the vast majority of the lands within Weld County into a reconfigured House District 63, which then goes beyond Weld's borders and includes all of Morgan County. The total population of House District 63 is 75,589, which is a 2.30% deviation from the goal of 77,372, being slightly greater than the Final Plan's mean deviation of 1.83%, but less than the maximum deviation of 2.50%.

Article V, Section 47(2) of the Colorado Constitution provides as follows:

(2) Except when necessary to meet the equal population requirements of section 46, *no part of one county shall be added to all or part of another county in forming districts.* 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. When county, city, or town boundaries are changed, adjustments, if any, in legislative districts shall be as prescribed by law. (Emphasis added.)

Thus, the *only time* one county may be added to another county to create a House district is when it is necessary to meet equal population requirements. Additionally, and most importantly, Section 47(2) requires the assignment of “. . . whole districts to counties whose population qualifies for them based on the decennial census population and the [Reapportionment] Commission’s idea district population projection. The Commission’s Adopted Plan must be: (1) ‘sufficiently attentive to county boundaries to meet the requirement of Section 47(2),’ *In Re Reapportionment 82*, 647 P.2d at 195; and (2) accompanied by ‘an adequate factual showing that less drastic alternatives could not have satisfied the equal population requirement of the Colorado Constitution.’ *In re Reapportionment 92-1*, 828 P.2d at 195-96.” *In re Reapportionment of the Colorado General Assembly*, 45 P.3d 1237, 1249 (Colo. 2002).

The Final Plan violates Article V, Section 47(2) by adding Morgan County to a major portion of Weld County to create House District 63. Going beyond Weld’s borders to make House District 63 is unnecessary to meet equal population requirements, because, as stated above, Weld County is eligible for three full House districts based upon its population. This is required by the Colorado Constitution and cannot be ignored. It is possible to produce a House district map that creates three full House districts in Weld County, as evidenced by and shown in House Plan 002v2. It creates House Districts 48, 49, and 50, which are fully within the boundaries of Weld County and have populations of 75,590, 75,696 and 75,894, respectively. Thus, in contrast to the Final Plan, House Plan 002v2 complies with Article V, Section 47(2).

The explanation of the creation of House District 63 described on pages 22 and 23 of the Reapportionment Commission’s Memorandum in Support of Adopted Plan makes no attempt to provide any factual showing that a less drastic alternative (not adding Morgan County to Weld

County to form House District 63) is possible. In fact, it appears that the explanation of how House District 63 was redrawn in the Final Plan is that the Commission started in Fort Collins and then worked its way eastward, basing its House district decisions on population in Larimer County, without any regard to the fact that the Colorado Constitution requires Weld County to have three full House districts.

II. THE HOUSE FINAL PLAN IS UNCONSTITUTIONAL AS TO WELD COUNTY BECAUSE IT VIOLATES COLORADO CONSTITUTION ARTICLE V, SECTION 47(1).

Article V, Section 47(1) of the Colorado Constitution requires each House district to be “. . . as compact in area as possible and the aggregate linear distance of all district boundaries shall be as short as possible.” The term “compact” as used in this context means that the boundaries of the area being considered are as nearly equidistant as possible from the geographic center of the area. *In re Reapportionment of the Colorado General Assembly*, 647 P.2d 209, 211 (Colo. 1982); *Acker v. Love*, 178 Colo. 175, 177, 496 P.2d 76 (1972).

The compactness measures for House District 63 in the Final Plan are a Roeck value of 0.36, being greater than the average Roeck value of 0.26. It has a Schwartzberg value of 0.91, well over the average value of 0.74. House District 63 has an area of 4,834.2 square miles, and a perimeter of 326.7 linear miles.

In contrast, the compactness measures for House District 49 in House Plan 002v2 are a Roeck value of 0.36 and a Schwartzberg value of 0.84. It has an area of 3,517.4 square miles, and a perimeter of 344.6 linear miles. Thus, the compactness measures for House District 49 of House Plan 002v2 are equal to or less than those of House District 63 of the Final Plan.

However, and most importantly, as mentioned above, all of House District 49 of House Plan 002v2 is located within Weld County, showing that *it is possible* to create a compact House district entirely within the borders of Weld County.

CONCLUSION

Weld County is entitled under the Colorado Constitution to three full House districts based upon its population. However, the Final Plan creates House District 63, which extends beyond Weld County's borders and takes in all of Morgan County. The Final Plan thereby violates Article V, Section 47(2) of the Colorado Constitution. In contrast to House District 63 as created in the Final Plan, House District 49 of House Plan 002v2 is more compact and is located entirely located within Weld County. Thus, Final Plan also violates Article V, Section 47(1) of the Colorado Constitution, because *it is possible* to create a compact House district entirely within the borders of Weld County.

The Board of County Commissioners of Weld County, Colorado, respectfully requests the Colorado Supreme Court to reject the Final Plan, and to instruct the Commission to consider for adoption House Plan 002v2, because, as to Weld County, it complies with Article V, Section 47(1) and (2).

Dated this 24th day of October, 2011.

BOARD OF COUNTY COMMISSIONERS
OF WELD COUNTY, COLORADO

By: _____

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Statement of Opposition of the Board of County Commissioners of Weld County, Colorado, was on this 24th day of October, 2011, placed in the U.S. Mail, postage pre-paid, to the following:

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