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| <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> | |
| <p>Attorneys for Jefferson County Board of County Commissioners</p> <p>JEFFERSON COUNTY ATTORNEY ELLEN G. WAKEMAN, #12290 Writer Mott, #33148 Assistant County Attorneys Jefferson County Attorney's Office 100 Jefferson County Parkway, #5500 Golden, CO 80419-5500 Phone: 303-271-8916 Fax: (303) 271-8901 Email: wmott@co.jefferson.co.us</p> | <p>Case No. 11SA282</p> |
| <p style="text-align: center;">JEFFERSON COUNTY BOARD OF COUNTY COMMISSIONERS' STATEMENT IN OPPOSITION TO THE ADOPTED PLAN FOR DISTRICTS FOR THE COLORADO STATE HOUSE OF REPRESENTATIVES</p> | |

The Board of County Commissioners of the County of Jefferson (“Jefferson County”), by and through Jefferson County Attorney Ellen Wakeman and Assistant

County Attorney Writer Mott, hereby submits its Statement in Opposition to the Adopted Plan for Districts for the Colorado State House of Representatives¹ (the “Adopted Plan”) submitted by the Colorado Reapportionment Commission (the “Commission”). In opposition to the Adopted Plan, Jefferson County states as follows:

Legal Standard

This Court has established the following factors for evaluating the constitutionality of a proposed reapportionment plan:

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

In re Reapportionment of the Colo. Gen. Assembly, 45 P.3d 1237, 1247 (Colo. 2002) (hereinafter “Reapportionment 2002”) (*quoting* In re Reapportionment of the Colo. Gen. Assembly, 828 P.2d 185, 190 (Colo. 1992) (hereinafter “Reapportionment 1992”) (footnotes omitted)). The Supreme Court’s role in this review is not to redraw

¹ Jefferson County does not object to the Adopted Plan for Senate districts. This Statement in Opposition will only address the proposed House Districts as drawn in the Adopted Plan.

the reapportionment map for the Commission, but rather is to ensure that the Adopted Plan achieves constitutional compliance by satisfying the above criteria. Reapportionment 2002, 45 P.3d at 1247.

Here, the Adopted Plan falls short with respect to the proposed House Districts, which fail to preserve county boundaries when creating districts. More specifically, the Commission has chosen not to give Jefferson County the seven (7) full House districts its population supports and instead has divided Jefferson County into six (6) full House districts and two partial districts shared with other counties. The Adopted Plan, by failing to maintain county borders, cannot satisfy constitutional muster and, as a result, the proposed House districts should be rejected by this Court.

Argument

I. The proposed House districts in the Adopted Plan should be rejected

A. The Colorado Constitution recognizes the importance of preserving county boundaries when drawing state political districts

Counties are a basic structural unit for carrying out state purposes.... *
* * A direct line of accountability between citizens, their elected city councils and county commissioners, and their elected state representatives is at the heart of responsive government in Colorado and is built into the county-oriented design of the Constitution's reapportionment provisions. 'The constitution allows the Commission to divide a county *only if necessary* to meet the equal population requirement.' * * * These provisions contemplate that the integrity of county constituent representation in the General Assembly will be respected whenever possible.

Reapportionment 2002, 45 P.3d at 1248-49 [Emphasis in original].

Article V, Section 47(2) of the Colorado Constitution imposes a duty upon the Commission to match district and county boundaries and to avoid crossing county boundaries unless necessary to achieve the requirement of achieving equally sized districts. “The most important concern under section 47 is whether the Final Plan unnecessarily divides counties or cities within counties.” Reapportionment 92, 828 P.2d at 194. Thus, when analyzing the Adopted Plan for compliance with these constitutional requirements, the Court must begin with the recognition of the importance given to respecting County boundaries when drawing districts and the fact that the Commission is not free to ignore county boundaries to satisfy other criteria (with the exception of the need to create equal sized districts). *Accord*, Reapportionment 2002, 45 P.3d at 1252 (“While the Commission has discretion to make necessary compromises, it cannot advance the lesser community of interest criteria over the greater requirement not to make county divisions....”) (citations omitted).

B. The House Districts in the Adopted Plan impermissibly fail to respect the borders of Jefferson County

The Commission has set the ideal population for each House district at 77,372. *See* Memorandum in Support of Adopted Plan, pg. 15. According to the 2010 census, Jefferson County has a population of 534,543. Of Jefferson County’s total population

of 534,543, 277 individuals reside in Bow Mar, a largely non-contiguous section of Jefferson County, and another 3 individuals live in a small 3-person enclave wholly contained within Denver City limits. *See* Memorandum in Support of Adopted Plan, pg. 26 (acknowledging the existence of the Bow Mar enclave as part of the proposed District 1).² Thus, after excluding the population included in those two enclaves (280 individuals total), Jefferson County's contiguous population is 534,263.

Given a population of 534,263 and an ideal district size of 77,372, the contiguous portions of Jefferson County have the population to support 7 whole House districts.³ Accordingly, based on Jefferson County's population and the Colorado Constitutional requirement that counties not be divided unless doing so is necessary to create districts of equal size in those cases where a county cannot support an equal amount of whole districts, the Adopted Plan should be rejected for failing to preserve Jefferson County's boundaries and only providing Jefferson County with six

² While not specifically referenced in the Memorandum in Support of the Adopted Plan, all of the 280 Jefferson County non-contiguous residents, not just the 277 Bow Mar residents, are included in proposed House District 1 in the Adopted Plan. Jefferson County does not object to the inclusion of these non-contiguous residents in House District 1.

³ 77,372 divided into 534,263 is 6.91. Jefferson County's contiguous population, therefore, can support 7 whole House districts within the acceptable range of deviation from the ideal district's population or +/- .025. If the 7 Jefferson County House Districts were created with equal population, each district would be 1.3% under the ideal population within the acceptable range of deviation.

(6) whole districts (Districts 22, 23, 24, 27, 28, 29) and two partial districts (Districts 25 & 38) instead of the seven districts Jefferson County is entitled to receive. *See Reapportionment 2002*, 45 P.3d at 1249 (“We therefore construe *Section 47(2)* as requiring the Commission to assign whole districts to counties whose population qualifies for them based on the decennial census population and the Commission’s ideal district population.”) (emphasis added). *See also* Memorandum in Support of Adopted Plan, pg. 29 (“The Commission drew six whole districts within Jefferson County—House Districts 22, 23, 24, 26 (sic), 27, and 28. House District 25 then covers the remainder of Jefferson County and the whole counties of Gilpin, Clear Creek, and Pine.”).⁴ The Adopted Plan, therefore, denies Jefferson County the seven whole districts it is constitutionally entitled to receive, by instead dividing one of Jefferson County’s whole House districts into two partial districts, District 25, which includes 48,532 Jefferson County residents, and District 38, which includes 17,573 residents. This decision by the Commission was in direct contravention to the Section 47(2) of the State Constitution, which requires the Commission to maintain county defined districts if possible based on population and the ideal district size. Here,

⁴ This quoted language from the Commission’s Memorandum in Support of Adopted Plan is erroneous. It should actually read that Districts 27, 28, and 29 are the wholly contained Jefferson County House Districts, while District 26 is a district which includes Eagle County, Grand County, and Summit County, not any part of Jefferson County.

Jefferson County's population perfectly supports seven whole House Districts and, accordingly, any final plan should maintain the integrity of Jefferson County's political borders.

C. Jefferson County and its citizens were not given an opportunity to object to the Adopted Plan during the public comment period

During the course of the process the Commission considered several proposed maps that kept Jefferson County whole. In fact, the only map throughout the entire Commission process that denied Jefferson County its seven (7) whole House districts was the Adopted Plan. The Adopted Plan was never considered during the public comment period. In contrast, the residents of Jefferson County strongly objected to a preliminary Senate map that denied Jefferson County the 3 whole Senate districts to which it is entitled.

In short, Jefferson County is being denied its constitutional right to have its boundaries preserved in the creation of House districts. There is no legally sound basis underlying the Commission's decision to only recommend giving Jefferson County 6 whole House seats and then placing another 66,105 residents into two partial Jefferson County Districts. The sheer size of the Jefferson County population in the two partial districts alone supports Jefferson County's argument that it should have seven whole House Districts. The decision of the Commission to carve out two partial House districts from the contiguous sections of Jefferson County violates the

Colorado Constitution and provides this Court with ample grounds to reject the Adopted Plan for House districts.

Conclusion

The Colorado Constitution mandates and the citizens of Jefferson County deserve to have the integrity of county political borders honored in the reapportionment process. The Adopted Plan fails to satisfy that requirement with respect to the proposed districts covering Jefferson County. Jefferson County's total population supports seven whole House districts. There is no reason why over 66,000 Jefferson County residents should be divided into two separate partial House districts, especially in light of the constitutional mandate requiring the Commission not to divide a county unless it is necessary to create districts of equal population. No such split is necessitated here where Jefferson County has sufficient population under the 2010 Census to support seven whole districts. Accordingly, the Adopted Plan for House districts should be remanded back to the Commission to redraw the House districts in compliance with the requirements of the Colorado Constitution.

WHEREFORE, Jefferson County respectfully requests that this Court reject the Adopted Plan for House Districts, which unnecessarily and improperly fails to provide Jefferson County with the seven whole House Districts that it is entitled to receive under the Colorado Constitution.

Respectfully submitted this 24th day of October, 2011.

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CERTIFICATE OF MAILING

I hereby certify that on this the 24th day of October, 2011, I sent a true and correct copy of the foregoing **JEFFERSON COUNTY BOARD OF COUNTY COMMISSIONERS' RESPONSE IN OPPOSITION TO THE FINAL PLAN FOR DISTRICTS FOR THE SENATE AND HOUSE OF REPRESENTATIVES** via U.S. Mail, postage prepaid and addressed to the following:

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