

<p>SUPREME COURT, STATE OF COLORADO</p> <p>101 W. Colfax Ave., Suite 800 Denver, Colorado 80202</p>	
<p>Original Proceeding Pursuant to the Rules for Reapportionment Commission Proceedings</p>	
<p>IN RE REAPPORTIONMENT OF THE COLORADO GENERAL ASSEMBLY</p>	<p>▲ COURT USE ONLY ▲</p>
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<p>STATEMENT OF OPPOSITION OF SOUTHWEST COLORADO CITIZENS FOR A CONSTITUTIONAL MAP AND CLUB 20 TO THE REAPPORTIONMENT COMMISSION'S HOUSE ADOPTED PLAN</p>	

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<p>CERTIFICATION OF COMPLIANCE</p>	

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g).

It contains 5352 words.

The brief complies with C.A.R. 28(k).

For the party raising the issue:

It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record (R. __, p. __), not to an entire document, where the issue was raised and ruled on.

For the party responding to the issue:

It contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.

Abadie & Schill, PC

/s/ William E. Zimsky

William E. Zimsky

Counsel for Opposers Southwest Colorado
Citizens for a Constitutional Map and Club

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Opposers Southwest Colorado Citizens for a Constitutional Map and Club 20, by and through undersigned counsel, William E. Zimsky, Abadie & Schill, PC, hereby submit this Statement of Opposition to House and Senate Plans Filed by Reapportionment Commission with Explanatory and Legal Memorandum pursuant to Rule 4 of the Rules for Reapportionment Commission Proceedings as set forth in Chapter 34 of the Colorado Court Rules adopted by this Court on June 2, 2011, and pursuant to paragraph number 2 of the Order of Court in this matter dated October 3, 2011.

1. STATEMENT OF ISSUES

A. Does the Reapportionment Commission's House Adopted Plan violate the county integrity requirement of Colorado Constitution Article V, Section 47(2) by unnecessarily splitting off eastern San Miguel County from the rest of San Miguel County to complete the adopted House District 59?

B. Does the Reapportionment Commission's House Adopted Plan violate the compactness criteria of Colorado Constitution Article V, Section 47(1) by adding Ouray County and eastern San Miguel County to House District 59 instead of including a larger portion of Montezuma County?

C. Does the Reapportionment Commission's House Adopted Plan violate the community of interest requirement of Colorado Constitution Article V, Section 47(3) by including Ouray County and eastern San Miguel County in the adopted House District 59?

2. STATEMENT OF THE CASE

Pursuant to Colorado Constitution, Article V, Section 48, the Colorado Reapportionment Commission (the "Commission") has submitted its finalized plan for reapportionment of the State into legislative districts (the "Adopted Plan") to this Court for review and approval. The Adopted Plan is subject to this Court's review for compliance with, *inter alia*, Section 47 of Article V of the Colorado Constitution.

Southwest Colorado Citizens for a Constitutional Map is an unincorporated group of more than 150 citizens from all the counties impacted by the Commission's map for House District 59 – Archuleta, La Plata, eastern Montezuma, Ouray, San Juan and eastern San Miguel counties. Its members include ranchers, business owners, current and former county commissioners,

doctors, educators, attorneys and retired persons.¹ Southwest Colorado Citizens for a Constitutional Map has come together as an association in order to oppose the Commission's adoption of maps for House Districts 58 and 59 in southwestern Colorado that unconstitutionally split San Miguel County, fail to meet the compactness criteria and unconstitutionally fail to preserve important local communities of interest within a single district.

Club 20 is a nonpartisan organization of counties, communities, tribes, businesses and individuals formed for the purpose of speaking with a unified voice on issues of concern to the Western Slope.² Pursuant to its bylaws, Club 20's Board of Directors is comprised of representatives from each of the twenty-two counties and Ute Indian tribes located in Western Colorado. Club 20 is active in issues ranging from "traditional" West Slope issues such as water, public lands, agriculture, natural resources, and energy policy, to more modern issues such as economic development, tourism, air service, recreation, education policy,

¹ A list of the members of the Southwest Colorado Citizens for a Constitutional Map is attached hereto as Exhibit 1.

² The following counties and tribes are members of Club 20: Archuleta, Delta, Dolores, Eagle, Garfield, Grand, Gunnison, Hinsdale, Jackson, Lake, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Routt, San Juan, San Miguel, Summit, and the Ute Mountain and Southern Ute Indian tribes.

healthcare, and telecommunications. For over five decades, Club 20 has provided a forum for the discussion of these issues, and has been engaged in a broad range of activities to promote and protect the interests of the Western Slope at all levels of government. Club 20 has long advocated that communities of interest and rural counties should remain intact during the reapportionment process.

The Opposers present this Statement of Opposition is presented pursuant to the Colorado Appellate Rules, the Rules for Reapportionment Commission Proceedings as set forth in Chapter 34 of the Colorado Court Rules adopted by this Court on June 2, 2011, and paragraph number 2 of the Order of Court in this matter dated October 3, 2011.

3. SUMMARY OF THE ARGUMENT

As the Court noted in *In re Reapportionment 92-1*, 828 P.2d 185, 190 (Colo.1992):

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). (Footnotes omitted.)

With respect to House Districts 58 and 59, the subject of this Statement in Opposition, the first three parameters are inapplicable. In addition, no cities and towns are contained in more than one district and the subject house districts consist of contiguous whole general election precincts. Thus, the hierarchy relevant to this Statement in Opposition with which the Final Plan must comply is as follows: (1) article V, section 47(2) (districts not to cross county lines except to meet section 46 requirements); (2) article V, section 47(1) (each district to be as compact as possible); and (3) article V, section 47(3) (preservation of communities of interest within a district).

The Adopted Plan is unconstitutional because fails to meet any of the three constitutional criteria. The Adopted Plan splits San Miguel County not to meet the equal population requirement of Article V, Section 46, but for purely political reasons, *i.e.*, to make House District 59 more competitive by adding heavily Democratic precincts in and around Telluride to counterbalance the Republican areas of rural La Plata, Archuleta and Montezuma counties. House Districts 58 and 59 established by the Commission in its Adopted Plan can be redrawn in a way that substantially affects no other house districts on the map, while eliminating the

split of and better preserving communities of interest within a single district. The Commission was aware of the less drastic alternative map of these two house districts, but chose to split San Miguel County unnecessarily anyway.

Unsurprisingly, the Adopted Plan's gerrymandered House Districts 58 and 59 violate the compactness criteria of Section 47(2) and the community of interest requirement of Section 47(3).

4. ARGUMENT

D. STANDARD OF REVIEW

The Court's role in reviewing the Commission's reapportionment action is to measure the reapportionment plan against the constitutional standards. *In re: Reapportionment 2002*, 45 P.3d 1237, 1247 (Colo.2002), *citing In re Reapportionment 92-1*, 828 P.2d at 189. While the choice between constitutional plans is for the Commission to make, the Court will not uphold a plan that departs from the constitutional criteria under which the Commission must operate. *Id.*

Thus, finding that the Adopted Plan based on the 2000 consensus did not comply with Article V, Sections 46 and 47 of the Colorado Constitution, the Court set aside the Commission's action and remanded the Adopted Plan to the Commission for further consideration, modification, re-adoption and re-submittal. *Id.* at 1241.

B. THE ADOPTED PLAN VIOLATES ARTICLE V, SECTION 47(2) BY UNNECESSARILY SPLITTING EASTERN SAN MIGUEL COUNTY TO CREATE HOUSE DISTRICT 59

Colorado Constitution Article V, Section 47(2) provides that, “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.”

(Emphasis added).

In fact, “[t]he most important concern under section 47 is whether the Final Plan unnecessarily divides counties or cities within counties.” *In re Reapportionment 2002*, 45 P.3d at 1248. “The constitution allows the Commission to divide a county *only if necessary* to meet the equal population requirement.” *Id.*, quoting *In Re Reapportionment of the Colorado General Assembly 1982*, 647 P.2d. 191, 197 (1982) (emphasis added to the quotation by the Court).

In turn, Colorado Constitution Article V, Section 46 provides that, “*in no event* shall there be more than five percent deviation from the most populous to the least populous district in each house.” Colo. Const., art. V, § 46 (emphasis added).

To guard against the creation of “unnecessary county divisions,” the Court requires the Commission to submit the Adopted Plan “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 2002*, 45 P.3d at 1249 (internal quotation marks omitted).

Alternative plans may demonstrate “the availability of less drastic alternatives to the Adopted Plan in regard to county divisions.” *Id.* at 1250. If less drastic alternative plans were before the Commission that illustrate ways in which counties can be divided in a manner that is constitutionally preferred to the manner in which counties are divided by the Adopted Plan, then “the Commission must make an adequate factual demonstration [that the less drastic alternative could not have satisfied the equal population requirement of the Colorado Constitution] and articulate its rationale for the divisions.” *Id.* at 1252.

D. The Adopted Plan adds part of San Miguel County to all or part of another county in forming District 59

The Adopted Plan creates House District 58 with a population of 78,122 by combining two whole counties (Montrose, Dolores) with parts of three counties (Delta, Montezuma and San Miguel). (Binder House Final Plan at 1.) The Adopted Plan creates House District 59 with a population of 78,193 by combining four whole counties (Ouray, San Juan, La Plata and Archuleta) with parts of two counties (Montezuma and San Miguel). *Id.* The total population of these two districts under the Adopted Plan is 156,315.

As one of the two counties that are split between House Districts 58 and 59, San Miguel County is an example of “part of one county” being “added to all or part of another county in forming districts,” which is only constitutionally permissible “when *necessary* to meet the equal population requirements of section 46.” COLO. CONST. art. V, § 47(2) (emphasis added).

ii. Final Plan House 002v2 reveals the availability of a less drastic county division alternative

Final Plan House 002v2 (the “Alternative Plan”) was placed before the Commission on September 19, 2011. (Final Staff Summary of Meeting 09/19/2011 at 5.) The Alternative Plan creates House District 58 with a population of 78,401 by combining four whole counties (Montrose, Dolores, Ouray and San Miguel) with parts of two counties (Delta and Montezuma). The Alternative Plan creates House District 59 with a population of 79,288 by combining three whole counties (San Juan, La Plata and Archuleta) with part of one county (Montezuma). The total population of these two districts under the Alternative Plan is 157,689.³ Each of these districts is larger than the smallest district (House District 5 with population 75,460) in the Adopted Plan and smaller than the largest district (House

³ The Alternative Plan takes 1,374 more people from Delta County than the Adopted Plan does.

District 33 with population 79,296) in the Adopted Plan, and thus falls comfortably within the five percent range of total deviation from the ideal house district size (77,372) that qualifies as constitutionally equal in population.

Because it avoids splitting San Miguel County at all, unlike the Adopted Plan, the Alternative Plan represents a less drastic alternative to the Adopted Plan in regard to county divisions. Moreover, a comparison of the “county footprint” outlining House Districts 58 and 59 together under the Adopted Plan with the footprint of these same two districts under the Alternative Plan shows that both plans draw both districts within virtually the same exact county footprint.⁴

Because the two districts are so closely confined within effectively the same footprint, the Commission was completely free to select either plan’s map for House Districts 58 and 59 in isolation from all other districts without risk of creating any ripple effects in other parts of the Adopted Plan’s map outside of the footprint.

⁴ See *supra* note 1. Other than the Alternative Plan’s slightly larger reach into Delta County, the footprint outlines that are produced by combining House Districts 58 and 59 on the two maps are identical.

iii. THE COMMISSION HAS FAILED TO SHOW THAT THE ADOPTED PLAN’S SPLIT OF SAN MIGUEL COUNTY WAS NECESSARY IN VIEW OF THE LESS DRASTIC ALTERNATIVE THAT WAS AVAILABLE

The Commission’s Memorandum in Support of Adopted Plan is completely silent about the existence of Final Plan House 002v2 and articulates no express rationale for dividing San Miguel County other than the single statement that “[House District 59] joins the ski and tourist areas of southwestern Colorado into a single district.” (Mem. Supp. Adopted Plan at 22.) The Commission also states descriptively that, “House District 58 includes all of Montrose County together with portions of Montezuma and San Miguel Counties not in House District 59 and the portion of Delta County not in House District 54.” *Id.*⁵

These two bare statements cannot begin to satisfy the Commission’s obligation to “make an adequate factual demonstration [that the less drastic alternative could not have satisfied the equal population requirement of the Colorado Constitution] and articulate its rationale for the divisions.” *In re Reapportionment 2002*, 45 P.3d. at 1252.

⁵ The Commission also stated its intent to separate the Ute Mountain Ute Indian Tribe and the Southern Ute Indian Trive into different districts, as requested by the tribes in testimony before the Commission. Both the Adopted Plan and Final House Plan 002v2 accommodate that testimony.

Because the Commission has failed to show why its split of San Miguel County was *necessary* despite the availability of a less drastic alternative that does not split San Miguel County but that does satisfy the equal population requirement of Article V, Section 46, the Adopted Plan violates Article V, Section 47(2) of the Colorado Constitution.

iv. THE COMMISSION'S STATED GOAL FOR SPLITTING SAN MIGUEL COUNTY IS TO MAKE HOUSE DISTRICT 59 MORE POLITICALLY COMPETITIVE, A POLITICAL PURPOSE THAT THE COMMISSION'S CONSTITUTIONAL MANDATES WERE SPECIFICALLY DESIGNED TO AVOID

In 1974, the voters approved a citizen-initiated constitutional amendment creating the Reapportionment Commission. Objectives of the proposed constitutional amendment included reducing both partisan politics and gerrymandering:

The proposal would reduce the impact that partisan politics can have on the drawing of legislative district boundaries, through the placement of the commission outside the legislative branch and through the requirements for appointment of commission members by all three branches of state government. The proposal's more stringent requirements for consideration of communities of interest, for compact districts, and for minimization of the splitting of cities and towns, and the public visibility of the activities of the reapportionment commission would tend to reduce the gerrymandering of legislative districts.

Concerning Amendment No. 9, Legislative Council of the Colorado General Assembly, An Analysis of 1974 Ballot Proposals, Research Publication No. 206 (1974) at 29-30.

Unfortunately, the Commission has ignored its charge to follow the “more stringent requirements for consideration of communities of interest, for compact districts, and for minimization of the splitting of cities and towns” and has chosen instead to engage in gerrymandering in an attempt to make House District 59 more politically competitive, a goal that is wholly at odds with the purpose of Amendment 9.

As Commission Chair Carrera admitted at the Commission’s September 19, 2011 public hearing, the inclusion of Ouray County and part of San Miguel County into House District 59 was to make it politically competitive:

We took the best parts of the map from both, Democrats and Republicans and created competitive districts where possible and when the constitution commits. In summary, in the Carrera Plan on the Western Slope there are five safe Republican districts, one safe Democratic district, two highly competitive seats, one that leans Republican and one that leans Democratic. As a compromise the map was developed by taking ideas from the Republicans from most of the Western Slope, the six districts. Two districts were taken from the Democratic map in southwest Colorado as it matched up with the testimony from the tribes and *created a highly competitive district that leaned towards the Republicans, House District 59.*

Testimony of Commissioner Carrera on September 19, 2011 at 1:01:27. (The audiotapes are available from the Legislative Library.)

Chairman Carrera was not alone in attempting to use the reapportionment to create more competitive districts. At the September 12, 2011 public hearing, Commissioner Loevy made clear his position on using the Commission to make districts competitive:

Robert Loevy: Okay. Thank you Commissioner Nicolais. ***Now for my favorite topic, maximizing the number of competitive districts***, let me say again for the record and as a political scientist I'm not alone on holding this view, the great drawback of most state budget cycles and it's true of Colorado is the lack of competitive districts that swing back and forth between parties as the electorate swings back and forth between the parties . . . ***So although competitive districts are not one of the constitutionally mandated requirements, I think it is something that this commission needs to look at very, very seriously.*** (Emphasis supplied.)

September 12, 2011 hearing from about the ten minute mark through the 15 minute mark.

While adoption of a map whose outcome may result in making some districts more politically competitive (or less so) is not unconstitutional *per se*, a map that is drawn for the purpose of making a particular house district more competitive by splitting a county absent a need to meet the equal population requirements of Section 46 is clearly unconstitutional.

In pursuit of Commissioner Loevy “favorite topic”, which he acknowledged to be outside of the Commission’s mandated requirements, the Commissioner has purposefully ignored the facts that its proposed map not only violates the stricture against splitting counties, it fails the compact criteria and gives little heed to the community of interest requirement.

Making house and senate districts more politically competitive may be a worthwhile goal that political scientists like Commissioner Loevy may want to achieve. However, that goal is absent from the Commission’s constitutional mandates and holds no position in the hierarchy of parameters under which the Commission must act. If Commissioner Loevy and others want to change that hierarchy, they are free to do so but only after following the same arduous procedures that the proponents of Amendment 9 successfully pursued – through an amendment of Article V, Section 47. They cannot, *ipse dixit*, change the constitution to pursue policy goals that they deem to be worthwhile.

It would be truly ironic if the Commissioners, who were appointed to a Commission established by the Constitution, were allowed to ignore the very constitutional provisions under which they were appointed.

C. THE COMMISSION’S ADOPTED PLAN VIOLATES THE COMPACTNESS CRITERIA ARTICLE V, SECTION 47(1)

The Commission’s Adopted Plan for House District 59 fails to satisfy the compactness criteria of Section 47(1) that provides:

Each district shall be as compact in area as possible and the aggregate linear distance of all district boundaries shall be as short as possible. Each district shall consist of contiguous whole general election precincts. Districts of the same house shall not overlap.

A simple side-by-side “eye ball” comparison demonstrates that the Commission adopted the least compact map as it relates to districts 58 and 59. Under the four objective compactness criteria, the proposed 002v2 Plan prevails on two of the four tests, while the two others, the Roeck and Area, are basically even.

Criteria	Adopted HD-58	002v2 HD -58	Adopted HD-59	002v2 HD -59
Roeck	0.20	0.24	0.24	0.21
Schwartzberg	0.71	0.79	0.68	0.77
Area (sq. miles)	6,286.7	7,320.2	5,017.9	4,064.4
Perimeter (miles)	608.1	555.2	519.0	376.1

Compare: House Final Plan, Measure of Compactness⁶ with Final House Plan 002v2, Measure of Compactness.⁷

Because the footprint of Districts 58 and 59 is essentially equivalent between the Adopted Map and Final House Plan 002v2, the area tests are essentially equal. But there is a wide disparity between the tests with regard to the perimeter tests. The sum of the perimeter for Districts 58 and 59 in the Adopted Map is 1,127.1 miles. The sum of the perimeter for Districts 58 and 59 in Final House Plan 002v2 is 931.3 miles. Not surprisingly, Final House Plan 002v2 exceeds the Adopted Plan's measures of compactness on the Schwartzberg test, another perimeter-based measure. (Note: the Schwartzberg test measures compactness on a 0.01 to 1.00 basis, with 1.00 being the ideal score and 0.01 being the least compact.)

⁶ <http://www.colorado.gov/cs/Satellite?blobcol=urldata&blobheadername1=Content-Disposition&blobheadername2=Content-Type&blobheadervalue1=inline%3B+filename%3D%22House+Final+Plan+Maps+and+Reports.pdf%22&blobheadervalue2=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1251743682909&ssbinary=true>

⁷ http://www.colorado.gov/cs/Satellite?blobcol=urldata&blobheadername1=Content-Disposition&blobheadername2=Content-Type&blobheadervalue1=inline%3B+filename%3D%22Binder_Final_Plan_House_002v2.pdf.pdf%22&blobheadervalue2=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1251739852193&ssbinary=true

The Adopted Map offends the Constitution's compactness requirement: "The aggregate linear distance of all district boundaries shall be as short as possible." Here, we have two maps (the Adopted Map and Final House Plan 002v2) with two districts (58 and 59) covering virtually the same area (the same footprint). The Constitution's *prima facie* directive is to measure and compare the aggregate perimeters of the two districts in each plan. Under that directive, Final House Plan 002v2 is superior to the Adopted Plan.

If compactness matters anywhere, it should count particularly in rural areas with immense topographical and geographical challenges.

If the constitutional requirement stipulating compactness means anything, it must inform the Court and direct the Commission here. Not only does the adopted map make Districts 58 and 59 less compact than the alternative, but they do so in a substantial fashion, combining communities that are separated by hours of dangerous drives from one another.

D. THE COMMISSION’S ADOPTED PLAN VIOLATES ARTICLE V, SECTION 47(3) BY FAILING TO PRESERVE COMMUNITIES OF INTEREST WITHIN A SINGLE DISTRICT WHEREVER POSSIBLE WHEN IT ADDS OURAY COUNTY AND EASTERN SAN MIGUEL COUNTY INTO HOUSE DISTRICT 59

Colorado Constitution Article V, Section 47(3) provides that, “Consistent with the provisions of this section and section 46 of this article, communities of interest, including ethnic, cultural, economic, trade area, geographic and demographic factors, *shall be preserved within a single district wherever possible.*” Colo. Const., art. V, § 47(3) (emphasis added).

The Ouray and San Miguel County portions of the district are fundamentally different communities from Montezuma, San Juan, La Plata and Archuleta, which are a world of their own. Whether it is tourism, transportation or commerce, San Miguel and Ouray are connected with Montrose. Due to geography and weather, they are remote outposts from the rest of the district.

On the two dimensional map adopted by the Commission, the inclusion of Ouray County and the eastern part of San Miguel County in House District 59 standing alone appears to be unremarkable. “Unremarkable”, however, is not the word anyone would use to describe the third dimension that makes the proposed map unworkable, *viz.*, the San Juan Mountains and, more particularly, Red Mountain Pass. Red Mountain Pass is not only a formidable, not to mention

spectacular, physical obstacle that separates Ouray County and the eastern part of San Miguel County from the rest of proposed HD 59, it is a physiological barrier that separates the respective populations.

In the winter, Red Mountain Pass is often closed and, when open, often treacherous. *See* Statement Under Penalty of Perjury of Michael W. Ertle, a professional snow plow driver with first hand experience on Red Mountain Pass. A copy of Mr. Ertle's Statement is attached hereto as Exhibit 2.

As illustrated by the following episode of the television series Dangerous Drives that original aired on November 26, 2009 on Speed TV, travel over Red Mountain Pass is challenging even in ideal weather conditions:

<http://www.hulu.com/watch/118386/dangerous-drives-million-dollar-highway>

In addition to Red Mountain Pass, Lizard Head Pass separates eastern San Miguel County from the counties to the south. Although not as daunting as Red Mountain, Lizard Head is yet another substantial physical barrier that separates the eastern part of San Miguel County and Ouray County from the rest of the counties in HD 59. If one were to travel to the eastern part of San Miguel County across Lizard Head Pass, one has to drive through District 58 to get there.

While the proponents may argue that these passes are only problematic in the winter,⁸ it is noted that the winter includes the month before the general assembly's legislative session begins and continues through almost all of the session. Thus, it would be difficult for the House member representing House District 59 to visit parts of House District 59 to meet constituents during the crucial times that matters are pending before the House.

Commissioner Lovey is free to theorize on the interests of voters in having a competitive district, but if their representative cannot meet with them during the crucial months before and during the legislative session, having a competitive district will mean very little to them.

Based on this natural barrier, it is little wonder that the economic and trade patterns are significantly different between San Miguel and Ouray counties vis-à-vis the counties to the south.

⁸ See, for example, Commissioner Jones in defense of adding eastern San Miguel County and Ouray County to District 59: “. . . [O]pponents of House District 59 created in this way [combining Telluride and Ouray with La Plata and Archuleta] say that the mountain pass along Highway US 550 is challenging to drive and would make the district hard to represent. However this is very striking topography in setting the characterized tourist driven economy that people come to the area to see. The Million Dollar Highway is part of that and it's only winter part of the year, I might add. The way we've talked about it you'd think it was winter all the time on that pass.” – September 12, 2011, part 2, 42:30.

For example, the Region 9 Economic Development District includes La Plata, Archuleta, Montezuma, San Juan and Dolores counties, but does not include Ouray or San Miguel counties. The Region 10 Economic Development District includes six counties in western Colorado consisting of San Miguel, Ouray, Hinsdale, Montrose, Gunnison and Delta counties. At the August 6, 2011 hearing in Montrose, Paul Gray, Executive Director of Region 10 League for Economic Assistance & Planning, Inc.,⁹ testified strongly against the Adopted Plan. The audio for the August 6, 2011 Montrose hearing is found at :
<http://www.colorado.gov/legcouncil/Audio/2011ReapCommission/Montrose8-6-11.mp3>. Mr. Gray's testimony is found around 1:13 p.m.

Another major economic difference between the four counties in the current HD 59 vis-à-vis Ouray County and eastern San Miguel County is oil and gas development. The northern portion of the San Juan Basin gas field, the largest natural gas field in the United States, extends into La Plata and Archuleta counties. There is also shale gas development and producing CO₂ wells in Montezuma County. Oil and gas development is a major driver of the economies in these

⁹ Region 10 is a 501C3 non-profit organization offering public programs in support of eighteen local communities and six counties in western Colorado, including San Miguel and Ouray counties. *See*: Region 10's homepage: <http://www.region10.net/index.php>

counties. There is no oil and gas development, however, in eastern San Miguel County or in Ouray County.

Airport service is another major difference between eastern San Miguel and Ouray counties and the other counties. Residents of eastern San Miguel and Ouray counties use the Montrose airport and Telluride's participates with Montrose in an airline guarantee program. By contrast, residents of Montezuma, Archuleta, San Juan and La Plata Counties use the Durango or Cortez airports.

Montezuma, San Juan, La Plata and Archuleta are part of the Albuquerque media market; San Miguel and Ouray counties are in the Denver media market.

Ouray and San Miguel are in a different watershed (Gunnison) than the rest of the proposed district (the San Miguel, Dolores, Animas and San Juan River Basin).

The Commission attempts to justify its gerrymandering by creating a justification that upon closer examination is simply not true: “[House District 59] joins the ski and tourist areas of southwestern Colorado *into a single district.*” (Mem. Supp. Adopted Plan at 22; emphasis supplied.)

First, there are five downhill ski areas in southwest Colorado located in five different counties and four different House Districts: Durango Mountain Resort (La Plata County; HD 59), Silverton Ski Area (San Juan County; HD 59), Telluride

Ski Resort (San Miguel County; HD 58), Crested Butte (Gunnison County; HD 61) and Wolf Creek (Mineral County HD 62). If Telluride is added to House District 59, the five ski areas will be located in three different house districts, not one single district joining all of the ski areas in southwest Colorado as represented by the Commission.

Moreover, each of the three ski areas in the Adopted Plan's HD 59 is unique, Telluride probably most of all. Telluride Ski Resort is located between the town of Telluride and Mountain Village, one of the most exclusive subdivisions in Colorado. Telluride Ski Resort attracts skiers from all over the United States and is known world wide as a high-end resort frequented by the very rich and famous, such as Oprah Winfrey, Tom Cruise, Oliver Stone and Donald Trump. Telluride is famous for its steep double diamond bump runs and bowls.

Durango Mountain Resort, on the other hand, is located more than 30 miles from Durango and attracts visitors from Farmington and Albuquerque, New Mexico, as well as many families from Texas. DMR is known for its family friendly blue cruiser runs and bluebonnet skies.

Silverton Ski Area is a small single lift ski area renowned for its powdery steep slopes, narrow, dangerous couloirs and its requirements to carry an avalanche

beacon coupled with the ability to self-arrest with an ice axe. Silverton Ski Area's market niche is for the expert skiers who spell extreme without the first "e".

Cutting off eastern San Miguel County to include it in HD 59 based on the fact that Telluride has a ski resort as does La Plata and San Juan counties ignores the fundamental differences in the nature of these ski areas and how they market themselves to tourists.

Second, while the Commission's proposed HD 59 would add a number of tourist attractions into HD 59, it would not even come close to joining all of the tourists areas in southwest Colorado into a single district as stated by the Commission. In fact, under the Adopted Plan, one of the most popular tourists attractions in southwest Colorado, Mesa Verde, would shift from HD 59 to HD 58. (Under the Final Plan House 002v2, Mesa Verde would remain in HD 59.)

Under the Adopted Plan, the Canyons of the Ancients and McElmo Canyon, as well as Mesa Verde, would be located in HD 58. Gunnison County (HD 61) boasts the Gunnison River, the Black Canyon and Crested Butte, all of which provide endless summer and winter tourist activities. House District 61 also includes Lake City and most of the Alpine Loop, the historic mining town of Creede and the headwaters of the Rio Grande River. Tourists from all over the country visit all the house districts in southwest Colorado for hunting and gold

medal fly-fishing. Backpackers hike and camp in the mountains throughout all of the house districts in southwest Colorado.

Thus, there is no factual basis to support the Commission's rationale for adding the eastern part of San Miguel County and Ouray County into HD 59 in order to join the ski and tourist areas of southwestern Colorado into a single district.

IV. CONCLUSION AND RELIEF REQUESTED

For the foregoing reasons, Opposers Southwest Colorado Citizens for a Constitutional Map and Club 20 request this Court to disapprove the Adopted Plan and return it to the Colorado Reapportionment Commission with instructions to formulate and resubmit a revised Adopted Plan that creates House District 59 out of Archuleta, La Plata and San Juan Counties, plus part of Montezuma County only, without including any part of Ouray or San Miguel Counties, and instead draws the remaining population needed to satisfy the equal population requirement by including a larger portion of the population of Montezuma County, consistently with the less drastic alternative map for House Districts 58 and 59 that was before the Commission as Final Plan House 002v2.

Respectfully submitted this 24th day of October, 2010.

/s/ William E. Zimsky

By:

William E. Zimsky, 25318

Attorney for Opposers Southwest Colorado
Citizens for a Constitutional Map and Club
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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of October, 2011, I served a true and correct copy of the foregoing **STATEMENT OF OPPOSITION OF SOUTHWEST COLORADO CITIZENS FOR A CONSTITUTIONAL MAP AND CLUB 20 TO THE REAPPORTIONMENT COMMISSION'S HOUSE ADOPTED PLAN**, with all attachments, by first-class mail, postage paid, to each of the following:

David R. Fine
Richard C. Kaufman
Jennette C. Roberts
Joseph G. Martinez
McKenna Long & Aldridge LLP
1400 Wewatta St., Ste. 700
Denver, Colorado 80202-5556

Jeremiah B. Barry
Kate Meyer
Troy C. Bratton
Colorado Reapportionment Commission
1313 Sherman Street, Rm. 122
Denver, Colorado 80203

Olivia Mendoza
Colorado Latino Forum
309 W. 1st Ave.
Denver, Colorado 80223

/s/ William E. Zimsky

By:

William E. Zimsky

EXHIBIT 1

SOUTHWEST CITIZENS FOR A CONSTITUTIONAL MAP

Membership List

Terence Aggeler	Durango
Peg Aldridge	Bayfield
Franklin Anderson	Ignacio
James Arens	Bayfield
Ann Arens	Bayfield
Sheryl Ayers	Hesperus
Kevin Baldwin	Silverton
Carol Baumgardner	Mancos
Rosemarie Beall	Cortez
Eugene Beall	Cortez
Earle Beasley	Pagosa Springs
James Beatty	Durango
John Beebe	Bayfield
Michael Bell	Durango
Janice Benton	Cortez
William Blackmon	Pagosa Springs
Brenda Blackmon	Pagosa Springs
Dean Boehler	Norwood
Stacy Boehler N	orwood
Duane Branson	Pagosa Springs
Jean Brown	Ignacio
Debbie Brown	Ignacio
J.Paul Brown	Ignacio
Marilynn Bunch	Pagosa Springs
Allan Bunch	Pagosa Springs
Jim Burpee	Hesperus
Jim Buske	Ouray
Bill Byers	Cortez
Mitzi Byers	Cortez
Anita Carden	Durango

Thom Carden	Durango
Mason Carpenter	Chimney Rock
Medray Carpenter	Pagosa Springs
Judith Cazedessus	Pagosa Springs
Camille Cazedessus	Pagosa Springs
Darlene Chandler	Mancos
Art Charette	Ignacio
Maureen Charette	Ignacio
Bentley Colbert	Dolores
Tom Compton	Hesperus
Lacey Condon	Durango
Pat Conger	Pagosa Springs
Rod Cook	Durango
Casey Cook	Bayfield
Sandy Cooper	Ignacio
Jeff Cordova	Durango
Wendy Cox	Bayfield
Dennis Cox	Bayfield
Brianna Cox	Bayfield
Ann Cox	Bayfield
Lyle Cox	Bayfield
J.T. Coyne	Hesperus
LeRoy Cundiff	Durango
Patricia DeGagne-Rule	Cortez
Jiri Duskocil	Bayfield
Lyn Dryburgh	Pagosa Springs
Bruce Dryburgh	Pagosa Springs
John Dustin	Bayfield
James Earl	Durango
Kathryn Evans	Cortez
Dennis Evers	Bayfield
Sheri Figgs	Durango
James Finn	Bayfield
Jan Fiorucci	Pagosa Springs
Rich Fiorucci	Pagosa Springs
Carol Fisher	Hesperus
Carol Fisher	Pagosa Springs

Arvold Fisher	Pagosa Springs
Charles Flagg	Ignacio
Norman Frazier	Pagosa Springs
Theresa Frazier	Pagosa Springs
Don Freemyer	Durango
Johanna Fusco	Durango
Kenneth Fusco	Durango
Michael Gaddy	Mancos
Jan Gardner	Cortez
Gary Gardner	Cortez
Creston Garner	Cortez
Sue Gilbert	Cortez
Eileen Goebel	Durango
Rhoda Green	Telluride
Marilyn Harris	Pagosa Springs
Mark Harris	Hesperus
Lynn Harvey	Yellow Jacket
Mike Hately	Bayfield
Sandra Hately	Bayfield
Caryl Helmin	Ignacio
George Hewson	Telluride
Garry Hillyer	Bayfield
Catherine Hoffman	Norwood
Gary Hoselton	Bayfield
Cookie Hoselton	Bayfield
Kellie Hotter	Durango
James Huffman	Pagosa Springs
Dagmar Huffman	Pagosa Springs
Allen Iiving	Bayfield
Ned Jeffries	Durango
Barbara Jeffries	Durango
Velbeth Jones	Durango
Elliott Jones	Durango
Stephen Kallaher	Durango
Cherrie Kell	Placerville
Kevin Kell	Placerville
Lyn Kirkpatrick	Hesperus

Danielle Kirkpatrick	Hesperus
Charlotte Langford	Hesperus
Ray Lattin	Pagosa Springs
Doris Lattin	Pagosa Springs
Carol Lefebvre	Ignacio
Ruel Lefebvre	Ignacio
Carol Lewin	Durango
Karen Little	Durango
Danielle Lynn	Durango
Cheryl Lynn	Durango
Lonnie Malouff	Durango
Dena Malouff	Durango
Robert Marcus	Durango
Darlene Marcus	Durango
LaVina Mars	Bayfield
Linda McLaughlin	Durango
Katherine Michelsen	Durango
Davin Montoya	Hesperus
George Morley	Hesperus
Margaret Morley	Hesperus
Greg Munro	Durango
Lee Murphy	Pagosa Springs
Pauline Murphy	Pagosa Springs
Barbara Myers	Durango
Dick Norton	Durango
Hilde Norton	Cortez
Zane Odell	Cortez
Gary O'Neal	Durango
Charles Page	Durango
Stephens Parker	Durango
Glenn Pauls	Mountain Village
Larry Perino	Silverton
Dennis Pierce	Durango
Carolyn Plested	Bayfield
Virgil Pulliam	Durango
Barbara Pulliam	Durango
Larry Rardin	Durango

Billie Jean Ratoike	Bayfield
Gordon Ratoike	Bayfield
Robert Rawlings	Pagosa Springs
Barbara Rawlings	Pagosa Springs
Eric Rayburn	Cortez
Mark Reider	Dolores
Fran Reynolds	Durango
John Rice	Durango
David Rick	Durango
Naomi Riess	Durango
Paul Romere	Bayfield
Elizabeth Romere	Bayfield
Sallyann Rothweiler	Pagosa Springs
Larrie Rule	Cortez
Linda Sanchez	Hesperus
Cliff Schmid	Ignacio
Pamela Schoemig	Pagosa Springs
Betty Shahan	Chromo
Gail Short	Bayfield
Wallace Short	Bayfield
Reed Slingerland	Pagosa Springs
Judy Slingerland	Pagosa Springs
Rick Smith	Bayfield
Phyllis Snyder	Cortez
Judy Spady	Durango
Johnnie Stevens	Mountain Village
Dennis Svanes	Bayfield
Del Talley	Hesperus
Tom Talley	Durango
Rebecca Talley	Hesperus
Jim Tencza	Bayfield
Carol Tullis	Cortez
Roy Vega	Pagosa Springs
Jim Wanebo	Durango
Dottie Wanebo	Durango
Phil Weiser	Cortez
Michael Whitney	Durango

Terri Will
Joyce Wood
Joel Ragan Young

Bayfield
Bayfield
Mancos

EXHIBIT 2

<p>SUPREME COURT, STATE OF COLORADO</p> <p>101 W. Colfax Ave., Suite 800 Denver, Colorado 80202</p>	
<p>Original Proceeding Pursuant to the Rules for Reapportionment Commission Proceedings</p>	
<p>IN RE REAPPORTIONMENT OF THE COLORADO GENERAL ASSEMBLY</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorney for Opposers Club 20 and Southwest Colorado Citizens for a Constitutional Map</p> <p>William E. Zimsky, Atty. Reg. No.: 25318 Abadie & Schill, PC 1099 Main Avenue, Suite 315 Durango, Colorado 81301 Phone Number: 970.385.4401 FAX Number : 970. 385.4901 E-mail: wez@oilgaslaw.net</p>	<p>Case Number: 11 SA 282</p>
<p style="text-align: center;">STATEMENT UNDER PENALTY OF PERJURY OF MICHAEL W. ERTLE IN SUPPORT OF STATEMENT OF OPPOSITION OF CLUB 20 AND SOUTHWEST COLORADO CITIZENS FOR A CONSTITUTIONAL MAP TO THE REAPPORTIONMENT COMMISSION'S HOUSE ADOPTED PLAN</p>	

Michael W. Ertle, under penalty of perjury, states the following:

1. I am above the age of majority and having personal knowledge regarding the facts set forth herein.
2. I am a resident of Ouray, Colorado.
3. I am a professional snowplow driver for the Colorado Department of

Transportation and frequently plow Highway 550 (The Million Dollar Highway) over Red Mountain Pass. Together with my colleagues, we have spent 2,548 hours plowing the Red Mountain Pass over the most recent 12 months.

4. I have witnessed the pass being closed to traffic many days over the past 12 months.

5. Chain law requirements were imposed over the pass for 99 days in the past 12 months.

6. I have seen many vehicle accidents, vehicles stuck on the pass, and vehicles that have slid off the road.

7. As measured by traffic fatalities per vehicle mile traveled, Red Mountain Pass is one of the most treacherous passes in all of Colorado.

8. Having experienced the dangers of this pass in my professional roll, I urge those that I know to avoid driving over the Red Mountain Pass anytime threatening weather approaches.

10. In my opinion, Red Mountain Pass is not a dependable thoroughfare for purposes of transportation during the winter.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing statements are true and correct.

/s/ Michael W. Ertle

Michael W. Ertle

Dated: _____