SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203	DATE FILED: December 5, 2017 4:33 PM
Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2017-2018 #50 ("Congressional Redistricting") **Petitioners: Robert DuRay and Katina Banks,** **v.** **Respondents: Kathleen Curry and Toni Larson,** **and** **Title Board: Suzanne Staiert; Glenn Roper; and Sharon Eubanks**	▲ COURT USE ONLY ▲
Attorney for Petitioners: Mark G. Grueskin, #14621 RECHT KORNFELD, P.C. 1600 Stout Street, Suite 1400 Denver, CO 80202 Phone: 303-573-1900 Facsimile: 303-446-9400 Email: mark@rklawpc.com	**Case No. 2017SA260**

PETITIONERS' RESPONSE BRIEF ON PROPOSED INITIATIVE 2017-2018 #50 ("CONGRESSIONAL REDISTRICTING")

CERTIFICATE OF COMPLIANCE

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).

Choose one:

X It contains 3,243 words.

☐ It does not exceed 30 pages.

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

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

s/ Mark G. Grueskin
Mark G. Grueskin
Attorney for Petitioners

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Constitutional Provisions

Other Authorities

INTRODUCTION

Typically in these appeal proceedings, objectors take a "kitchen sink" approach in proposing wholesale changes to a ballot title for a proposed initiative; the initiative's proponents inevitably counter with "enough's enough." Here, objectors seek the inclusion in the titles of one matter only – identifying that Initiative #50 gives unchecked appointment power for this politically sensitive commission to private entities – specifically, the two largest political parties in the state. Voters should know that foxes, identified by the Proponents, will decide who gets control of the redistricting henhouse.

Both the Title Board and Proponents argue that the key issue is whether voters know the partisan affiliation of the commissioners, not the fact that 8 of the 12 commissioners are appointed by political parties instead of public officials. The Board justifies its omission, contending that the identity of the appointing authority is "not a 'central feature' of the initiative." Title Board Opening Brief at 8. Proponents state this lack of disclosure is justified because the identity of these two appointing authorities "is not critical information for voters" and also assert that this information must be omitted, given the statutory requirement that titles be brief. Respondents' Opening Brief at 7, 8.

LEGAL ARGUMENT

A. The fact that political parties are appointing authorities of 2/3 of the Commission is a "central feature" of, and "critical information" about, Initiative #50.

Proponents insist it is "not critical" that voters be told about the appointing authorities of partisan commissioners and that voters will have "sufficient" knowledge if they are just told that commissioners are affiliated with the state's two largest political parties. Respondents' Opening Brief at 8, 9.

These contentions are belied by the fact that Initiative #50 sets a precedent that would surprise voters by expressly delegating the role of appointing authority of governmental commissioners to private entities – the state's two dominant political parties. The Court has long disapproved of delegations of governmental authority to "a private person or corporation or a purely voluntary private association," including a private association whose actions are based on "the judgment of its executive committee or governing body." *Munson v. Colorado Springs*, 84 P. 683, 685 (Colo. 1906). A public entity "cannot shift its governmental authority to people or entities who are unaccountable to the voters." *Bittle v. Brunetti*, 750 P.2d 49, 56 (Colo. 1988). In fact, the Colorado Constitution requires "[e]very person having authority to exercise or exercising any public or governmental duty, power or function" to be an elected officer or to be appointed

by one who has direct accountability to the electorate. Colo. Const., Art. XXI, § 4. Appointees of political parties under Initiative #50 will have not been appointed by persons who have "direct accountability to the electorate," reflecting this measure's dramatic departure from the constitutional norm. In no other instance can a material governmental power be delegated "to politically unaccountable persons." *Greeley Police Union v. City Council of Greeley*, 553 P.2d 790, 792 (Colo. 1976).

This deviation from the prohibition on delegating governmental powers to private parties is all the more remarkable given what is at issue here: legislative district line drawing which is fundamental to the optimal functioning of a democracy. It is critical that voters, signing this petition or voting on this measure, at least know this delegation to private political associations is part of the measure they are considering so they understand the initiative's true meaning and import. *See In re Proposed Initiative Bingo-Raffle Licensees*, 915 P.2d 1320, 1324 (Colo. 1996) ("purpose of the title setting process is to ensure that persons reviewing the initiative petition and voters are fairly advised of the import of the proposed amendment"). A ballot title only fulfills its purpose when it "alert[s] voters to the fact that some of the proposed changes would significantly alter" key provisions of

law. *In re Title, Ballot Title and Submission Clause for Initiative 2015-2016 #73*, 2016 CO 24 at ¶28, 369 P.3d 565.[1]

Both Proponents and the Board contend that it is important that voters know only the commissioners' partisan affiliations which, allegedly, is adequate to tell them all they need to know about the lack of independence of two-thirds of the commission. Yet, that is the norm of which Colorado voters are already aware. The existing Colorado Reapportionment Commission, for example, has always allowed for appointment of representatives of both major political parties. *See* Colo. Const., art. V, §48(1)(b), (c) (appointees to be speaker of the house, house minority leader, and majority and minority leaders in the senate, or their designees; no single political party can represent more than a majority of the commission). What is different here – which is critical for voters to understand – is that the commission's partisan actors under Initiative #50 are political party agents.

Political party appointment of government officials is a "central feature" of Initiative #50 because political parties, acting in their own right, do not act out of the broad public interest that should frame any redistricting. In fact, political parties often act as proxies for special interests. According to the U.S. Supreme

[1] In contrast, when an initiative simply proposes to give rule making power to a government commission, as Initiative #50 does to foster the administration of the redistricting commission, Proposed C.R.S. § 2-1-104(5), such provision is not a key feature that must be addressed in the ballot title. *In re Title, Ballot Title and Submission Clause, and Summary Pertaining to the Proposed Tobacco Tax*, 830 P.2d 984, 989-90 (Colo. 1992).

Court, "Parties thus perform functions more complex than simply electing candidates; whether they like it or not, **they act as agents for spending on behalf of those who seek to produce obligated officeholders**." *Fed. Elec. Comm'n v. Colorado Republican Fed. Campaign Comm*., 533 U.S. 431, 452 (2001) (analyzing coordinated spending between parties and their candidates) (emphasis added).

Maneuvering to produce "obligated officeholders" is at odds with "the foundational goal of congressional redistricting under the United States Constitution: 'fair and effective representation for all citizens.'" *Hall v. Moreno*, 2012 CO 14 , ¶43, 270 P.3d 961, citing *Reynolds v. Sims*, 377 U.S. 533, 565 (1964); *cf. United States Civ. Serv. Comm'n v. Nat'l Ass'n of Letter Carriers*, 413 U.S. 548, 565 (1973) (under the Hatch Act, federal government employees are prohibited from, among other things, holding political party positions in order to "reduce the hazards to fair and effective government"). Given this other agenda of political parties in addition to their status as private parties with new governmental powers, their involvement in naming 2/3 of all decision makers in the redistricting process is clearly a "central feature" of this initiative and "critical information" about which voters need to be informed.

The latest iteration of Initiative #50[2] is 2017-2018 #69, pending before the Title Board. That measure changed very little in Initiative #50's fourteen pages of text. One thing it did change is the way in which the two major political parties' commissioners are to be chosen. Initiative #69 uses elected legislative leaders – the designated leadership in the State Senate and the State House of Representatives – to appoint these partisan commissioners. *See* Final Text of Initiative 2017-2018 #69; Proposed C.R.S. §2-1-103(7).[3]

In addition, under Initiative #69, persons seeking appointment as partisan commissioners must apply, using a process that had been reserved for unaffiliated commissioners under Initiative #50. Each applicant must complete an application that is made available by the Secretary of State. *Id.* Such application requires each applicant to set forth: (1) his or her professional background; (2) his or her party affiliation; (3) his or her past political activity; (4) a list of political organizations

---

[2] All of the redistricting measures to date have been sponsored by a group calling itself "Fair Districts Colorado" whose website links to "our initiatives" and states:

READ OUR INITIATIVES HERE
#48 Legislative redistricting – constitutional
#50 Congressional redistricting – statutory
#67 Legislative redistricting – constitutional
#68 Legislative redistricting – constitutional
#69 Congressional redistricting – statutory

See http://fairdistrictscolorado.org/ (last viewed December 4, 2017).

[3] http://www.sos.state.co.us/pubs/elections/Initiatives/titleBoard/filings/2017-2018/69Final.pdf.

joined in the last five years; (5) a list of civic organizations joined in the last five years; and (6) an explanation of why he or she wants to serve on the commission. *See* Final Text of Initiative 2017-2018 #69; Proposed C.R.S. §2-1-103(6)(b). Applicants may supplement this information with a statement of how they would promote consensus among commissioners and four letters of reference. *Id.*

In contrast, under Initiative #50, four commission members need only be registered with the state's largest political party and another four commission members need only be registered with the state's second largest party. Each group of partisan commissioners is "appointed by the chairperson of that party, or by the leadership of that party as the party may provide by rule." Initiative #50, Proposed C.R.S. §2-1-103(3)(a), (b).[4]

The two initiatives thus could not differ more in this respect. Initiative #69's appointment process is not delegated to private entities but is made by constitutional officers and is based on information about applicants' backgrounds. Initiative #50's appointments are made by party insiders according to whatever rules they decide apply.

The Title Board contends that Initiative #50's assignment of appointment powers (i.e., to political parties) is "minutiae of the appointment process" and does not need to be addressed in the titles. Title Board's Opening Brief at 8. This

[4] https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/initiatives/2017-2018/17SA260/Petition%20for%20Review.pdf

suggestion is best evaluated in light of a prior version of Initiative #50 that was challenged on single subject grounds in 2016. This Court found that the initiative's use of the Supreme Court Nominating Commission to screen applicants and choose finalists for appointment was a separate subject. *In re Title, Ballot Title and Submission Clause for 2015-2016 #132*, 2016 CO 55, ¶25, 374 P.3d 460. More relevant to this matter, the Court also observed that the ballot title failed to inform voters about the Nominating Commission's changed role in identifying the four commissioners who were to be unaffiliated with a major political party:

> Initiatives #132 and #133 run the risk of surprising voters with a "surreptitious" change not anticipated by the seemingly neutral requirement that the Nominating Commission recommend candidates for appointment to the Redistricting Commission. We have disapproved of second subjects "coiled up in the folds of a complex proposal," and we conclude that the proposed changes to the Nominating Commission are just that. **Although the Petitioner does not challenge the language of the titles set by the Title Board, we note that voters would have no notice of this fundamental shift because the titles make no reference whatsoever to the (Supreme Court) Nominating Commission's changed role.**

Id. at ¶25 (emphasis added). Thus, this Court has already taken note of the fact that a substantial change in the appointment process is anything but "minutiae" and can represent a "fundamental shift" that is important for voters to consider. In the same manner, Initiative #50's significant change to allocate governmental appointment authority to the state's two largest political parties should be set forth in the titles to likewise warn voters of what this measure does.

Such a change to the titles would be consistent with Title Board practice when a redistricting commission is established. When the Reapportionment Commission for state legislative districts was considered (and approved) by voters in 1974, the ballot title for Amendment 9 specifically identified the number of commissioners by their appointing authorities.

> An act to amend Article V of the Constitution concerning the reapportioning of legislative districts by a body to be known as the Colorado Reapportionment Commission, which shall consist of eleven electors, **four of whom shall be appointed by the legislative department, three by the executive department, and four by the judicial department of the state**, and adding new requirements to be considered in the creation of legislative districts.

Legislative Council of the Colorado General Assembly, *An Analysis of 1974 Ballot Proposals*, Res. Pub. No. 206 at 26 (attached as Exhibit A). The title said nothing about the required partisan affiliations of commissioners – specifically, that commissioners be the leadership in each house and that no more than 6 of the 11 commissioners could be associated with the same political party. Colo. Const., art. V, §48(1)(b), (c).

The titles' reference to commissioners' appointing authorities was important in order to accurately describe the nonpartisan structure to be used in drawing district lines. Amendment 9 was crafted to "**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." *An Analysis of 1974 Ballot Proposals, supra*, at 29 (emphasis added). Initiative #50, which uses the most partisan of entities – political parties – to make appointments, is exceedingly different in this regard. This distinction underscores that the source of appointments of redistricting decision makers is "critical information" for voters.

The titles should therefore be corrected.

B. The title's brevity would be unaffected by informing voters that the two largest political parties will make the bulk of appointments to this politically charged commission.

The Proponents argue there's no room in the ballot title to inform voters of the new role of political parties as appointing authorities. They invoke the statutory requirement that titles be brief. C.R.S. §1-40-106(3)(b).

A ballot title is not intended to serve the needs of only knowledgeable voters. "The title should enable the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to intelligently determine whether to support or oppose such a proposal." *In re Title, Ballot Title & Submission Clause for Initiative 2013-2014 #129*, 2014 CO 53, ¶22, 333 P.3d 101, 105 (citations omitted). Further, the Court will reverse the Title Board where "brevity has been

taken to the extreme." *In re Proposed Initiative Under the Designation "Tax Reform"*, 797 P.2d 1283, 1290 (Colo. 1990).

The existing title contains 187 words. The inclusion of the unprecedented role of political parties would not materially lengthen that description, adding only a net nine (9) additional words.

> Shall there be a change to the Colorado Revised Statutes concerning federal congressional redistricting, and, in connection therewith, establishing a congressional redistricting commission to perform the responsibility of the state legislature to redraw congressional boundaries following each federal census; specifying the qualifications and methods of appointment of members of the commission; providing that, ~~for~~ of the ~~appointment of~~ 12 commissioners, 4 ~~of whom are~~ will be registered with the state's largest political party, 4 ~~of whom are~~ will be registered with the state's second largest political party, and 4 ~~of whom are~~ will not be registered with either of ~~the state's~~ these two ~~largest political~~ parties; authorizing each of the state's two largest political parties to appoint the commissioners representing that party; establishing factors for the commission to use in drawing districts; requiring the commission to consider political competitiveness after all other factors; prohibiting drawing plans to purposefully advantage or disadvantage any political party or person; developing procedures to be followed by the commission, including requiring that the commission's work be done in public meetings and requiring nonpartisan staff of the commission to prepare and present plans; requiring the agreement of at least 8 of 12 commissioners to approve any action of the commission; and specifying procedures for the finalization and approval of a plan?

Thus, while the Board is not required to write the perfect title, a decision to address this one additional major aspect of Initiative #50 would not have caused the Board to violate the brevity requirement for ballot titles.

Proponents also argue that addressing the appointments by political party leaders of these commissioners requires that the appointment of non-major political party commissioners must also be described in the titles. "Further, adding an explanation of how the non-independent commissioners are appointed would fairly necessitate an explanation of the detailed process by which the independent commissioners are appointed and would bloat the Titles to lengths that would be unhelpful to voters." Respondents' Opening Brief at 9 (emphasis in original).

Three points answer this assertion. First, Proponents never contend that the initiative's new process for appointing the "independent" commissioners is a central feature of their measure. Lacking that, there is no reason why it would need to be addressed in the ballot title.

Second, they assert that such a description "would bloat the Titles." Proposed C.R.S. §2-1-103(7) sets forth the process for choosing these commissioners. It occupies four (4) typewritten pages and includes the application process, the process for winnowing applicants, the legislative staff's procedure for choosing finalists, and then the multi-layered process for arriving at the four commissioners themselves. *See* pp. 5-8 of Initiative #50. This process, as set forth, represents almost one-quarter of the text of this initiative.

Third, Proponents state that even a thorough description of this new process "would be unhelpful to voters." If there is nothing that voters need to know and

describing that process would not enhance voter understanding of the initiative's key elements, there is no reason to describe it in the titles. Thus, Petitioners do not disagree with the Proponents that a summary of the complete process would be unhelpful. *See 2015-2016 #73, supra*, 2016 CO 24 at ¶22 (where person objecting to the title and the initiative's proponents agree title language is unnecessary, Court will consider that consensus to delete an "unnecessary phrase" in the title). Therefore, this reference is not required for a clear, fair title and should not divert the Court from the issue of political party appointments to the commission that does need to be briefly described in the titles.

However, if the Court finds this issue must be described in order to provide balance with the titles' description of political parties' new appointment power, it can be done in just 17 words – 9% of the verbiage of the existing ballot title – such that the titles' entire commissioner appointment description would read as follows:

> providing that, of 12 commissioners, 4 will be registered with the state's largest political party, 4 will be registered with the state's second largest political party, and 4 will not be registered with either of these two parties; authorizing each of the state's two largest political parties to appoint the commissioners representing that party; providing a process for selecting the 4 commissioners not registered with the state's two largest political parties.

The description of appointments of unaffiliated or minor party voters would parallel the title's summary of other provisions in Initiative #50 that are too lengthy to describe in detail, including the ballot title's references to "establishing factors

for the commission to use in drawing districts," *see* pp. 1-2 of Initiative #50, and "specifying procedures for the finalization and approval of a plan." *See* pp. 11-14 of Initiative #50.

Regardless of whether the titles describe the non-party appointment process, they can be amended to reflect that political parties will control the appointment of 2/3 of the commission without violating the requirement for brief titles.

CONCLUSION

The Board overlooked a pivotal feature of Initiative #50, one that vests an unprecedented type of power in private groups – namely, political parties. There is no other realm where such important governmental appointment authority is vested in politically motivated, private entities – and particularly not an area that is so central to our representative form of government. At a bare minimum, voters should be informed that their redistricting commission for congressional seats will be largely populated by persons who are appointed by the state's two largest political parties. Thus, the title should be returned to the Board for correction.

Respectfully submitted this 5th day of December, 2017.

/s Mark Grueskin
Mark G. Grueskin, #14621
RECHT KORNFELD, P.C.
1600 Stout Street, Suite 1400
Denver, CO 80202
Phone: 303-573-1900
Facsimile: 303-446-9400
Email: mark@rklawpc.com
ATTORNEY FOR PETITIONERS

CERTIFICATE OF SERVICE

I, Erin Holweger, hereby affirm that a true and accurate copy of the **PETITIONERS' RESPONSE BRIEF ON PROPOSED INITIATIVE 2017-2018 #50 ("CONGRESSIONAL REDISTRICTING")** was sent the 5th day of December, via Colorado Courts E-Filing to counsel for the Title Board and to Counsel for the Respondents at:

Matthew Grove
Office of the Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203

Benjamin Larson
Ireland Stapleton Pryor & Pascoe, PC
717 17th Street, Suite 2800
Denver, CO 80202

/s Erin Holweger

LEGISLATIVE COUNCIL
OF THE
COLORADO GENERAL ASSEMBLY

AN ANALYSIS OF

1974 BALLOT PROPOSALS

Research Publication No. 206
1974

Prohibit Transportation of Students for Racial Balance

5. The proposal should be rejected because it will have serious negative effects on the education of minority children in the core city school system. In the Denver desegregation controversy, the federal district court found that Denver's segregated schools offered minority students unequal educational opportunities. This finding was based on evidence of lower standards of expectations, higher teacher turnover rates, lower levels of teacher experience, lower student achievement, higher dropout rates, and other disadvantageous factors in the minority schools.

6. The busing of school children is not a real issue in the overall Denver desegregation controversy. The Denver school system was busing more than 11,000 students before the original suit was initiated in the controversy in 1969. Since that time, the system has had five years of limited experience with busing for integration. Increased transportation expenses are a small price to pay for the elimination of racial discrimination in the Denver schools and for the enhancement of educational opportunities for a large number of the district's pupils.

AMENDMENT NO. 9 -- INITIATED PROPOSAL

Ballot Title:	An act to amend Article V of the Constitution of the State of Colorado concerning the reapportioning of legislative districts by a body to be known as the Colorado Reapportionment Commission, which shall consist of eleven electors, four of whom shall be appointed by the legislative department, three by the executive department, and four by the judicial department of the state, and adding new requirements to be considered in the creation of legislative districts.

Provisions of the Proposed Constitutional Amendment

The proposed constitutional amendment would:

1. Remove from the General Assembly the power to reapportion itself or to revise legislative district boundaries. After each federal census (presently conducted every ten years), an eleven-member commission would assume responsibility for establishing district boundaries for the General Assembly. The commission would consist of: (a) the Speaker and Minority Leader of the state House of Representatives and the Majority and Minority Leaders of the state Senate (or the designees of these legislative leaders); (b) three appointees of the Governor; and (c) four appointees of the Chief Justice of the Colorado Supreme Court.

2. Allow no more than a five percent deviation between the

most populous and least populous districts in each house of the General Assembly.

3. Require that "...the aggregate linear distance of all district boundaries shall be as short as possible".

4. Encourage the preservation of communities of interest (including ethnic, cultural, economic, trade area, geographic, and demographic factors) within a single district whenever possible, and discourage the splitting of cities and towns between districts.

5. Require publication of a preliminary reapportionment plan and public hearings on this plan in several areas of the state.

6. Provide for automatic review and ultimate approval of the reapportionment plan by the Colorado Supreme Court.

Comments

Present Reapportionment Requirements. The Colorado General Assembly is required by the constitution to reapportion districts upon the availability of information from each federal census. The reapportionment must be conducted in accordance with the following criteria: (1) the state must be divided into single-member districts; (2) legislative districts in each house must have populations as nearly equal as may be required by the Constitution of the United States; (3) each district must be as compact in area as possible; and (4) districts must contain whole counties except when it is necessary to split counties to meet population requirements.

If the General Assembly fails to reapportion within 45 days of the convening of a regular session following the availability of census data, no legislator may succeed himself in office or receive any compensation or expenses until a reapportionment plan has been adopted.

Members of the Proposed Commission. The proposal would establish a reapportionment commission outside of the legislative branch of state government. No more than six of the eleven members of the commission could be affiliated with the same political party. The membership of the commission would be determined at least partially by geographic factors (each Congressional district of the state must be represented on the commission, and at least one member of the commission must reside west of the continental divide).

Appointments to the commission would be made in three phases; acceptance of service by legislative leaders or designation of alternates for these leaders would occur prior to gubernatorial appointments, and the appointments of the Governor would occur prior to those of the Chief Justice. Thus, the appointment process would be sufficiently flexible to ensure that the proposal's restrictions on party affiliation and requirements for geographic representation on the commission would be met.

Reapportionment Commission

Compactness of Districts. The proposal is intended to clarify the present constitutional requirement for compact districts by providing that the "...aggregate linear distance of all district boundaries shall be as short as possible". The intent of the sponsors is to avoid irregularities in district boundary lines which may be placed in a reapportionment plan for reasons not related to natural boundaries, population requirements, and census and local government boundaries.

Conflict with Amendment No. 6. This proposal would amend two sections of the constitution which are also subject to amendment by Amendment No. 6, which was submitted to the voters by the General Assembly. The sections of the constitution which would be amended in conflicting manners by the two proposals are Sections 46 and 48 of Article V.

In its amendment to Section 46 of Article V, this proposal sets a maximum population deviation of five percent between the most populous and the least populous legislative districts. Amendment No. 6 sets a maximum deviation of five percent from the mean legislative district population, or an actual maximum deviation of 10 percent between the most populous and the least populous districts.

Section 48 of Article V vests power in the Colorado General Assembly to revise and alter legislative district boundaries following each federal census. This proposal would reenact this section, vesting reapportionment powers with the Colorado Reapportionment Commission. Amendment No. 6, on the other hand, would amend Section 48 with the addition of certain technical language concerning federal census information needed for reapportionment. (Amendment No. 6 deals primarily with gubernatorial succession and is not an alternate reapportionment plan.)

According to present Colorado law, if both amendments are approved by the voters, the amendment which receives the greatest number of affirmative votes will be adopted for those sections of the constitution in which these conflicts occur (Sections 46 and 48 of Article V). Thus, the proposal for the creation of a Colorado Reapportionment Commission could be jeopardized if Amendment No. 6 receives a greater number of affirmative votes than this proposal. This matter, however, might eventually be brought to court, and a judicial determination might effectively merge the two proposals, since it may be determined that the content of this proposal is more substantive in certain respects than the technical reapportionment amendments contained in Amendment No. 6.

In the preparation of the proposal, the sponsors made every effort to ensure that the language of the amendment was technically correct and consistent with existing provisions of the constitution. The proposal was submitted to the legislative service agencies of the General Assembly for this purpose. An accurately drafted proposal was then filed with the Secretary of State and provided to the printer. Unfortunately, the subsequently printed copies which were

tually circulated and signed contained three typographical errors. ıe most important error involved the deletion of a period in section ' (2) of the proposal, which tends to cloud the meaning of the sec- .on.

opular Arguments For

1. Colorado is experiencing one of the highest population rowth rates in the nation. Most of the growth is occurring in ur- ın centers, while populations in many other areas are stable or eclining. With regard to reapportionment, this means that entitle- ent to legislative seats will increase for some communities, while eats in other areas must be combined. The combination of seats, of ourse, often results in two or more incumbent legislators being laced in the same legislative district. Thus, there is consider- ole personal involvement of legislators in the reapportionment pro- ess. Establishment of a reapportionment commission would free the eneral Assembly from the task of reapportioning itself and would educe the role that personal decisions play in the reapportionment rocess.

2. The maximum population deviation of five percent between istricts is a reasonable standard which will allow greater flexi- ility in the location of small cities and towns within single leg- slative districts and which will make it easier to avoid splitting ounties between legislative districts. The use of a five percent eviation would also permit more consideration of the ethnic, cul- ural, economic, and other aspects of reapportionment called for in ıe proposal. (The standard of a one percent deviation was employed y the General Assembly in 1972 because no court had, at that time, learly defined the allowable deviation between legislative district opulations. It should be noted that the one percent deviation is ot likely to be used by the General Assembly in the future, since ess stringent deviations have been declared acceptable in court ince 1972.)

3. Adoption of the proposal would mean that reapportionment f legislative districts would occur only once every 10 years (un- ess the federal census is taken more often than every 10 years). resent constitutional provisions do not place such a limit on the eneral Assembly. This limitation is necessary to prevent major edistricting efforts during the period between censuses (efforts hich are likely to occur with changes in party balance), since such fforts divert legislators' attention from other critical matters.

4. The proposal would reduce the impact that partisan poli- ics can have on the drawing of legislative district boundaries, hrough the placement of the commission outside the legislative ranch and through the requirements for appointment of commission embers by all three branches of state government. The proposal's ore stringent requirements for consideration of communities of nterest, for compact districts, and for minimization of the split-

ting of cities and towns, and the public visibility of the activities of the reapportionment commission would tend to reduce the gerrymandering of legislative districts.

5. The present reapportionment process contributes to endless battles over redistricting and to enmity among state lawmakers. This enmity carries over into other legislative business and is damaging to the effectiveness of the General Assembly in its role of enacting laws in the best interests of Colorado citizens.

Popular Arguments Against

1. In November of 1966, Colorado voters approved a constitutional amendment to take Colorado judges out of politics. The effect of the proposal is to put the Colorado Supreme Court back into politics. The Chief Justice would be required to appoint the final four members of the reapportionment commission. Appointments of the Chief Justice would determine the final geographic and political balance of the commission. Such a duty could place the Chief Justice in an untenable position with regard to the court's review of any plan promulgated by the proposed reapportionment commission. If the Chief Justice disqualifies himself from consideration of any plan, the remaining six justices of the Colorado Supreme Court may be deadlocked in a three-three tie vote on a decision.

2. One of the stated objectives of the sponsors of the proposal is to develop a General Assembly in which members "represent the state as a whole as well as their own districts". However, the requirement of the proposal for the preservation of communities of interest in the drawing of legislative district boundaries may magnify parochialism within the General Assembly rather than encourage responsiveness to overall state needs.

Furthermore, the proposal does not establish clear priorities among the various criteria to be used in the creation of legislative districts. Should the requirement for compact districts take precedence over the requirement for minimizing the splitting of cities and towns? Should cultural and ethnic factors take precedence over economic and trade area factors in the preservation of communities of interest?

3. The sponsors of the proposal are concerned that legislators devote too much time to reapportionment. However, according to the time schedule set forth in the proposal, legislative leaders on the commission could be involved in reapportionment at least from July of the first year until March of the second year following the federal census. Furthermore, the redrawing of United States Congressional districts will continue to be required of the state General Assembly, which will have to devote time and effort to this type of redistricting. Detailed census information and research staff manhours would thus be needed by both the commission and the General Assembly, adding to the expense of reapportionment.

4. Reapportionment commission plans in other states provide mechanisms for reappointment or court action when the members of a commission are unable to reach agreement on a plan. Although this proposal provides an odd number of commission members and a deadline to be met for the reapportionment plan, the proposal is silent as to the course of action to be taken when the commission is unable to develop a reapportionment plan within required time limits. On the other hand, existing constitutional provisions penalize Colorado legislators until they adopt a reapportionment plan.

5. There is no provision in the proposal restricting non-legislative members of the reapportionment commission from running for election to the General Assembly following implementation of the redistricting plan. Michigan included such a condition in its reapportionment commission law in order to discourage commission members from being influenced by their own political ambitions.

6. The language and conditions set forth in the proposal depart from the established body of Colorado reapportionment case law. If the proposal is adopted, the Colorado Supreme Court is likely to be called upon to establish new guidelines as to its intent and meaning. The possibility of such litigation of the reapportionment process would complicate the 1980 reapportionment.