SUPREME COURT, STATE OF COLORADO 2 East 14th Ave Denver, CO 80203 Original Proceeding Pursuant to C.R.S. 1-4-107(2) (2017) Appeal from the Ballot Title Board	DATE FILED: January 4, 2018 4:11 PM
In the Matter of Title, Ballot Title, and Submission Clause for Proposed Initiative 2017-2018 #69 ("Congressional Redistricting") **Petitioners:** Robert DuRay and Katina Banks, **v.** **Respondents:** Bill Hobbs and Kathleen Curry, **and** **Title Board:** Suzanne Staiert, Sharon Eubanks, and Glenn Roper.	▲ **COURT USE ONLY** ▲
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BRIEF OF *AMICUS CURIAE* CAMPAIGN LEGAL CENTER IN SUPPORT OF RESPONDENTS

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with C.A.R. 28(a)(2)-(3), C.A.R. 29 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

This amicus curiae brief complies with the applicable word limit set forth in C.A.R. 29(d) because it contains 3,906 words (does not exceed 4,750).

This amicus curiae brief complies with the content and form requirements set forth in C.A.R. 28(a)(2)-(3) and 29(c).

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28(2)-(3), C.A.R. 29 and C.A.R. 32.

Dated this 4th day of January, 2018.

s/Stephen G. Masciocchi
Signature of attorney or party

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INTEREST OF AMICUS CURIAE

Amicus curiae, the Campaign Legal Center (CLC), is a nonpartisan, nonprofit organization that works to protect and strengthen the U.S. democratic process across all levels of government by generating public policy and participating in state and federal litigation throughout the nation regarding voting rights. CLC has served as counsel or *amicus curiae* in numerous voting rights and redistricting cases at the state and federal level. CLC works to ensure that all eligible voters, particularly those from traditionally underrepresented or underserved communities, have the opportunity and information they need to exercise their right to vote. CLC has a demonstrated interest in voting rights and redistricting law.

SUMMARY OF ARGUMENT

Respondents Kathleen Curry and Bill Hobbs proposed a series of ballot initiatives—2017-2018 #67, #68, and #69 (Proposed Ballot Initiatives)—designed to introduce an Independent Redistricting Commission (IRC) to prevent a single political party from unilaterally controlling the redistricting process. The IRC is designed to promote a more democratic process for the decennial drawing of boundaries for state legislative and congressional districts.

Petitioners Robert DuRay and Katina Banks have objected to the Proposed Ballot Initiatives on the principal ground that they violate the single-subject rule.

CLC supports protecting minority voting strength and reducing the influence of any single political party (Democratic, Republican, or other) over the redistricting process, and it has supported the drafting of ballot language similar to the Proposed Ballot Initiatives in other states.

CLC files this brief to inform this Court in two areas. *First*, this brief explains the importance of allowing IRCs to be advanced by ballot initiative. Partisan gerrymandering is undermining democracy like never before, and there is no incentive for incumbents to relinquish their control over redistricting. Several states have successfully reduced the role of partisanship in redistricting by using ballot initiatives to introduce IRCs. This has allowed voters to take back control from self-interested incumbents and set up a system whereby those drawing the district lines for the next decade are responsive to community interests. This brief lays out some of the support from social and political science for the improvements in democracy that resulted from the introduction of IRCs in other states.

Second, this brief explains that protections for racial, ethnic, and language minorities do not address multiple subjects, but instead, accurately reflect existing Colorado and federal law with respect to communities of color. Further, requiring an IRC to protect the rights of racial, ethnic, and language minorities does not require the IRC to engage in racial gerrymandering. Courts have recognized a clear distinction between measures taken to protect historically disenfranchised

communities (for example, drawing districts that will promote the election of a candidate of choice by a community of color), and measures that excessively focus on race in a way that violates the Fourteenth Amendment.

ARGUMENT

I. AN INDEPENDENT REDISTRICTING COMMISSION IS A PROVEN SOLUTION TO PARTISAN GERRYMANDERING.

A. Technological Advances Are Driving Partisan Gerrymandering, Making Gerrymandering Worse Than Ever.

Political parties have long exploited the redistricting process to gain political advantage. The term "gerrymander" has described this activity since 1812, when the term was coined in response to a redistricting plan signed by Massachusetts Governor (and future Vice President) Elbridge Gerry. Gary W. Cox & Jonathan N. Katz, ELBRIDGE GERRY'S SALAMANDER: THE ELECTORAL CONSEQUENCES OF THE REAPPORTIONMENT REVOLUTION 3 (2002). The Boston Gazette published a cartoon showing that one district in the plan, drawn for partisan gain, resembled a salamander. The salamander district was drawn to benefit Gerry's Democratic-Republican Party, and soon the term "Gerry's salamander," or "Gerry-mander," was born. *Id*.

Historically the task of drawing districts to advantage a particular party was done by hand with paper maps, pencils, and protractors, which could produce only relatively crude estimates of whether a redistricting plan would favor one political party or the other for the remainder of the decade. David Daley, RATF**KED: THE

TRUE STORY BEHIND THE SECRET PLAN TO STEAL AMERICA'S DEMOCRACY 51–60 (2016). Until recently, to draw a partisan district, one would need to review past election results and demographic data manually to determine which areas of a state leaned Democratic and Republican. But technological advances have significantly changed the map-drawing process, making partisan gerrymandering much more precise and streamlined.

Today, sophisticated Geographical Information Systems (GIS) software packages and computerized regression models can incorporate past election results, demographics, public records, and multiple commercial databases to make predictions—with pinpoint accuracy—of where supporters and opponents of particular parties and candidates live, and how those patterns will change as the decade unfolds. *Id.* at 51, 92. These data can be used to evaluate the consequences of multiple district configurations, allowing map-drawers to craft and choose a redistricting plan that optimizes partisan gain. *Id.* at 60.

The results of the increased technological sophistication available to today's map-drawers can be seen in the degree to which parties benefit themselves (and harmed their opponents) through redistricting plans. The extent of partisan advantage in the current cycle's state legislative redistricting plans is greater than at any time in the last 40 years. Nicholas O. Stephanopoulos & Eric M. McGhee, *Partisan Gerrymandering and the Efficiency Gap*, 82 U. CHI. L. REV. 831, 872

(2015) (the efficiency gap "spiked in the 2012 election to the highest peak[] recorded in the modern era— . . . 6.07 percent at the state house level, compared to an average of 4.94 percent in the four prior decades. The increase in the *magnitude* of gerrymandering thus is a very recent phenomenon . . .").

B. Partisan Gerrymandering Causes Democratic Harms.

Partisan gerrymandering raises a plethora of serious democratic concerns. Districting plans that "would operate to minimize or cancel out the voting strength of . . . political elements of the voting population" invite scrutiny under the Equal Protection Clause of the Fourteenth Amendment. *Id*. at 839 n.33 (quoting *Fortson v. Dorsey*, 379 U.S. 433, 439 (1965)). Partisan gerrymandering also impinges on First Amendment rights by classifying and penalizing citizens based on their political expression. *See Vieth v. Jubelirer*, 541 U.S. 267, 314 (2004) (Kennedy, J., concurring in the judgment) ("After all, these allegations involve the First Amendment interest of not burdening or penalizing citizens because of their participation in the electoral process, their voting history, their association with a political party, or their expression of political views."). The right to vote is "a fundamental political right" that is "preservative of all rights." *Reynolds v. Sims*, 377 U.S. 533, 562 (1964). Partisan gerrymandering undermines the fundamental right of citizens to determine *who* their representatives will be, and their ability to hold their representatives accountable. *See Vieth*, 541 U.S. at 314 (Kennedy, J.,

concurring in the judgment) ("Representative democracy . . . is unimaginable without the ability of citizens to band together in promoting among the electorate candidates who espouse their political views."). The "excessive injection of politics" into the map-drawing process is thus "unlawful." *Id.* at 293 (plurality opinion) (emphasis omitted).

Extreme partisan gerrymanders, made possible by the technological advances described above, undermine public confidence in elections. Partisan gerrymandering is increasingly in the public consciousness,[1] in part because such efforts are much more effective now than they have been in the past. Indeed, state legislative redistricting plans from the current decennial cycle exhibit the greatest extent of partisan advantage during the last 40 years. Stephanopoulos & McGhee, *supra*, at 876 (since 1972, "the scale and skew of today's gerrymandering are

[1] *See, e.g.*, Nicholas Stephanopoulos, *What Virginia Tells Us, and Doesn't Tell Us, about Gerrymandering*, L.A. TIMES (Nov. 10, 2017), http://beta.latimes.com/opinion/op-ed/la-oe-stephanopoulos-gerrymander-waves-virginia-20171110-story.html; Eric H. Holder Jr., *Eric Holder: Gerrymandering Has Broken Our Democracy. The Supreme Court Should Help Fix It*, WASH. POST (Oct. 3, 2017), https://www.washingtonpost.com/news/posteverything/wp/2017/10/03/eric-holder-redistricting-has-broken-our-democracy-the-supreme-court-should-help-fix-it/?utm_term=.73f8f8e7f24e; Thomas Fuller & Michael Wines, *Some States Beat Supreme Court to Punch on Eliminating Gerrymanders*, N.Y. TIMES (June 20, 2017), https://www.nytimes.com/2017/06/20/us/politics/some-states-beat-supreme-court-to-punch-on-eliminating-gerrymanders.html; Robert Barnes, *Supreme Court to Hear Potentially Landmark Case on Partisan Gerrymandering*, WASH. POST (June 19, 2017), https://www.washingtonpost.com/politics/courts_law/supreme-court-to-hear-potentially-landmark-case-on-partisan-gerrymandering/2017/06/19/d525237e-5435-11e7-b38e-35fd8e0c288f_story.html.

unprecedented in modern history"). At the same time, public trust in government is at a historical low. *See, e.g.*, *Public Trust in Government 1958-2017*, Pew Res. Ctr. (May 3, 2017), http://www.people-press.org/2017/05/03/public-trust-in-government-1958-2017/ (last visited Jan. 3, 2018). Blatant partisan districting only exacerbates this trend of diminishing public trust.

Partisan gerrymandering also substantially decreases the effectiveness of our democratic processes. Districts drawn to ensure a particular electoral outcome decrease competition in general elections, because opposition candidates have no incentive to run. Indeed, 41.8% of state legislative races in 2016 had only one major party candidate competing. *See State Legislative Elections, 2016*, Ballotpedia, https://ballotpedia.org/State_legislative_elections,_2016 (last visited Jan. 3, 2018). Lack of competition leads to decreased political accountability for incumbent politicians, because there is no serious risk of losing the general election. Where a challenge does arise, it is more likely to occur during a primary, with pressure stemming from political extremes rather than the opposition party.[2] Without serious competition, legislators have few incentives to work toward political compromise or engage with constituents with whom they disagree. And, Justice Ginsburg has recognized, when voters feel they have no impact on election results, they are less likely to engage in the electoral process:

[2] *See, e.g.*, Jamie L. Carson *et al.*, *Redistricting and Party Polarization in the U.S. House of Representatives*, 35 AM. POL. RES. 878, 878–79 (2007).

> [I]f you can stack a legislature in this way, what incentive is there for a voter to exercise his vote? Whether it's a Democratic district or a Republican district, the result . . . is preordained in most of the districts . . . . [W]hat becomes of the precious right to vote? Would we have that result when the individual citizen says: I have no choice, I'm in this district, and we know how this district is going to come out?

Transcript of Oral Argument at 24–25, *Gill v. Whitford*, 137 S. Ct. 2268 (2017); *see also* Nonprofit Vote & U.S. Elections Project, *America Goes to the Polls 2016*, at 6 (Mar. 2017) ("Among the most common reasons voters cite for not voting are a lack of competition and meaningful choices on the ballot . . . ."), http://www.nonprofitvote.org/documents/2017/03/america-goes-polls-2016.pdf.

C. Independent Redistricting Commissions Promote Democracy.

Given the undemocratic outcomes that result from legislators drawing redistricting plans, citizens around the country have understandably turned to IRCs to level the playing field. The fundamental problem with legislators drawing their own lines is that they are self-interested, and once elected from safe districts they have drawn for themselves, they are largely unaccountable to voters. The solution, then, is to remove self-interest from the process.

IRCs do just that. IRCs have been shown empirically to improve multiple indicators of democracy. Partisan fairness, the number of contested elections, competitiveness, and responsiveness are all better in states where districts are drawn by IRCs.

Partisan fairness. Political scientists use two measures of partisan fairness: partisan bias and the efficiency gap. *See generally* Andrew Gelman & Gary King, *Enhancing Democracy Through Legislative Redistricting*, 88 AM. POL. SCI. REV. 541 (1994); Stephanopoulos & McGhee, *supra*, 876. For each metric, a higher number indicates greater partisan advantage. That is, with a higher partisan-bias or efficiency-gap score, voters from each party are treated more unequally with respect to converting votes into seats. Both metrics decrease significantly—and partisan fairness thus increases—when IRCs are used. *See* Bruce E. Cain *et al*., *Redistricting and Electoral Competitiveness in State Legislative Elections*, at 12 (working paper, Apr. 13, 2007); *see also* Vladmir Kogan & Eric McGhee, *Redistricting California: An Evaluation of the Citizens Commission Final Plans*, 4 CAL. J. POL. & POL'Y 1, 16–17 (2012).

Competitiveness. Additionally, more districts are competitive in states with IRC-drawn maps than in those with legislatively enacted plans. Cain *et al*., *supra*, at 15–16. Competitiveness can be measured as well by the margin of victory, with margins of less than 10 points (*i.e*., 45–55% votes for either side) being considered competitive. IRCs produce more districts that are decided by 10 points or less. Cain *et al*., *supra*, at 16 ("Legislative Vote" column); *see generally* Jamie L. Carson & Michael H. Crespin, *The Effect of State Redistricting Methods on*

Electoral Competition in United States House of Representatives Races, 4 STATE POL. & POL'Y Q. 455, 461–62 (2004).

Responsiveness. Finally, responsiveness is measured with respect to a redistricting plan in its entirety, and denotes the rate at which seats change in response to shifts in voter sentiment. Higher responsiveness is generally considered better than lower responsiveness, because the latter prevents changes in public opinion from producing changes in the makeup of the legislature. Maps drawn by IRCs produce legislatures that are dramatically more responsive than those produced by legislatures themselves. Cain *et al*., *supra*, at 18.

As the Supreme Court has noted, "Studies report that nonpartisan and bipartisan commissions generally draw their maps in a timely fashion and create districts both more competitive and more likely to survive legal challenge." *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2658 (2015) (citing Miller & Groffman, *Redistricting Commissions in the Western United States*, 3 U.C. IRVINE L. REV. 637, 661, 663–664, 666 (2013)). The Proposed Ballot Initiatives further these important goals.

II. THE PROPOSED INITIATIVES MEMORIALIZE STATE AND FEDERAL LAW CONCERNING RACE AND LANGUAGE GROUPS, AND THEY DO NOT VIOLATE THE SINGLE-SUBJECT RULE.

A. Race And Language Groups Are Properly Included In The Definition Of Communities Of Interest.

Race and language groups have been protected collectively by voting rights legislation since 1975. The Voting Rights Act of 1965 (VRA) was written to protect African Americans who had historically suffered from discrimination in exercising their right to vote. In 1975, the protected class was broadened to include protections for language minorities, including "Native Americans, Asian Americans, Alaskan Natives, and Hispanic Americans. 42 U.S.C. § 1973aa-1a(e) (2006)." Lauren R. Weinberg, *Reading the Tea Leaves: The Supreme Court and the Future of Coalition Districts Under Section 2 of the Voting Rights Act*, 91 WASH. U.L. REV. 411, 416 (2013). Far from creating multiple subjects, the Proposed Ballot Initiatives properly include both race and language groups in their definition of communities of interest in order to fully protect all those minority communities that have been historically disenfranchised.

B. Protecting Racial And Language Groups Is Consistent With Existing State And Federal Law.

Contrary to Petitioners' arguments below, racial and language groups are *already* key factors considered when drawing state legislative district lines in

Colorado.[3] Indeed, the inclusion of racial and language groups in the Proposed Ballot Initiatives is consistent with existing federal and state law.

First, the current Colorado state legislative redistricting commission, just like map-drawers in every other state, must comply with federal laws protecting the rights of voters of color, including Section 2 of the Voting Rights Act. *See* 52 U.S.C. § 10301; *see also In re Apportionment of the Colo. Gen. Assembly*, 332 P.3d 108, 110 (Colo. 2011). Section 2 prohibits redistricting plans that deny minority communities (on the basis of race, color, or language minority status) the opportunity to elect candidates of their choice if certain threshold conditions are met. *Thornburg v. Gingles*, 478 U.S. 30, 44 (1986). Colorado's state legislative districts have been successfully challenged for diluting the voting strength of Latino voters. *See, e.g.*, *Sanchez v. State of Colo*., 97 F.3d 1303, 1326 (10th Cir. 1996).

Given Colorado's demographics, including the state's sizeable Latino and African American populations, the commission must already consider racial and

[3] Racial and language groups, and other communities of interest, are also important criteria considered in Colorado's congressional redistricting. Under Colorado law, "[compliance] with the federal 'Voting Rights Act of 1965,' in particular 42 U.S.C. 1973," shall be considered and "the preservation of communities of interest, including ethnic, cultural, economic, trade area, geographic, and demographic factors" may be considered by court's evaluating a congressional redistricting plan. *Hall v. Moreno*, 270 P.3d 961, 966 n.5, 969–70 (Colo. 2012) (citing C.R.S. § 2-1-102 (2011)). Indeed, this Court and lower courts have "emphasized the importance of considering communities of interest" and "ruled that [a] map's failure to consider communities of interest made it impossible to adopt." *Id.* at 966.

language group status, data, and demographics to ensure compliance with Section 2.[4] Between 2000 and 2010 alone, Colorado's Hispanic population grew by 41%.[5] Far from requiring a "substantive and even fundamental change in the law," the Proposed Ballot Initiatives' inclusion of racial and language groups protects voters of color in a manner consistent with the federal Voting Rights Act.

Second, the Proposed Ballot Initiatives' inclusion of racial and language groups as part of the community-of-interest criterion is not a fundamental change to state law either, because Colorado's Constitution *already requires* consideration and preservation of such groups. Colorado Constitution Article V, Section 47 currently states that the redistricting commission shall preserve "ethnic, cultural,

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[4] In the most recent redistricting cycle, the commission considered racial and language-group demographics in order to comply with the VRA. *See, e.g.*, *Memorandum in Support of Adopted Plan, In re Reapportionment of the Colo. General Assembly*, No. 11SA282, at 12 (Colo. 2011) ("According to the state demographer, 20.7% of the state population is now Hispanic, an increase of about 4% over the last decade. Mindful of the significant population changes and their potential Voting Rights Act implications, the Commission strove to create districts which would afford the Hispanic, as well as the African-American, communities an opportunity to participate in the political process and to elect representatives of their choice."), https://www.colorado.gov/pacific/sites/default/files/Oct_13_2011_Brief_2.pdf; *see also* 2011 COLORADO REAPPORTIONMENT COMMISSION, HOUSE RESUBMITTED PLAN, at 24–28, https://www.colorado.gov/pacific/sites/default/files/Resubmitted_House_Plan_Maps_and_Reports.pdf; *see generally* 2011 COLORADO REAPPORTIONMENT COMMISSION, INDIVIDUAL HOUSE DISTRICT INFORMATION SHEET, https://www.colorado.gov/pacific/sites/default/files/Legislative_District_Information-House_Final.pdf.

[5] COLORADO DEP'T OF LOCAL AFFAIRS, CENSUS DATA FOR COLORADO 2010: STATE AND COUNTIES HISPANIC CHANGE FROM 2000–2010, https://dola.colorado.gov/dlg/demog/2010data/hispanic%20change%20counties.xls.

economic, trade area, geographic, and demographic" groups "wherever possible," when consistent with the other requirements in Sections 46 and 47. COLO. CONST. art. V § 47(3); *see also In re Colo. Gen. Assembly*, 332 P.3d at 110–11.

This Court's decisions demonstrate that racial and language groups are contemplated in determining whether the community-of-interest criterion has been met.[6] For example, in *In re Colo. Gen. Assembly*, the Court reviewed the 2011 state legislative plans for compliance with Colorado's redistricting requirements. 332 P.3d at 110. In discussing the community-of-interest criterion, the Court explained:

> [T]he Commission contends that it was required to comply with section 2 of the Voting Rights Act when drawing districts in Aurora, and that such compliance justified county splits in Arapahoe and Jefferson counties, directly and indirectly affecting several House districts. The changed ethnic and cultural demographics in this area of the state are unquestionably valid 'community of interest' concerns under section 47(3), and the Commission appropriately considered these demographics, particularly the growth in the Latino

[6] Racial and language groups are also considered in evaluating the community-of-interest criterion in Colorado congressional redistricting. For example, a federal lawsuit challenged the redistricting of Colorado's congressional districts in the 1980s. In analyzing the community-of-interest criterion (which defines "community of interest" exactly the same as the Colorado Constitution), the court considered several factors to determine whether certain areas should be drawn together, including that a "[Pueblo] County's large Hispanic population has strong traditional ethnic and cultural bonds with the San Luis Valley to the southwest" and the importance of having "a minimal impact on the voting strength of both minority and neighborhood communities" in determining where to split a district in Denver. *Carstens v. Lamm*, 543 F. Supp. 68, 91–92, 96 (D. Colo. 1982).

> population across the state, as part of its overall approach to drawing districts.

Id. at 111. The Court's analysis makes clear that "ethnic, cultural . . . and demographic factors" include examination of racial and language groups. Thus, rather than adding a new substantive requirement, the Proposed Ballot Initiatives' inclusion of racial and language groups simply codifies what is already considered under the current community-of-interest criterion as interpreted by the courts.

C. Protecting Racial And Language Groups Is Not Racial Gerrymandering.

Petitioners contend that protecting both racial and language groups will lead to an excessive focus on race in districting that will threaten to "carry us further from the goal of a political system in which race no longer matters – a goal that the Fourteenth and Fifteenth Amendments embody, and to which the Nation continues to aspire." 2017-2018 #67, Motion for Rehearing at 5 (quoting *Shaw v. Reno*, 509 U.S. 630, 657 (1993)). This betrays a fundamental misunderstanding of the racial-gerrymandering doctrine, which was most recently discussed by the U.S. Supreme Court in *Cooper v. Harris*, 137 S. Ct. 1455 (2017).

First, in order for a racial-gerrymandering violation to occur, "race [must be] the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Miller v. Johnson*, 515 U.S. 900, 916 (1995). Proving predominance "entails demonstrating that the

legislature 'subordinated' other factors—compactness, respect for political subdivisions, partisan advantage, what have you—to 'racial considerations.'" *Cooper*, 137 S. Ct. at 1463–64. But here, the Proposed Ballot Initiatives would allow race to be *one of many* factors considered in future Colorado redistricting. In addition to race, the Proposed Ballot Initiatives lay out several other factors to consider, including compactness, contiguity, equal population, county and municipal splits, other community-of-interest groups, politically competitive districts, and partisan advantage. *See, e.g.*, 2017-2018 #67 §§ 46(2), 47(1)-(4). Furthermore, consideration of race in the community-of-interest criterion is subject to compliance with the federal VRA and must be "consistent with the provisions of [Section 47] and Section 46(2) of this article V[.]" *Id*. at § 47(3).[7]

Second, even if it were shown that race predominated when Colorado map-drawers drew a specific district in the future—a circumstance having nothing to do with the Proposed Ballot Initiatives' language but rather implicating the map-drawers themselves—the district still must undergo strict scrutiny analysis. The burden would shift to the State to prove that its focus on race serves a compelling interest and is narrowly tailored. *See, e.g.*, *Bethune-Hill v. Virginia State Bd. of Elections*, 137 S. Ct. 788, 800 (2017). The Supreme Court has held that one such

[7] Notably, the Proposed Ballot Initiatives themselves do not draw districts, and thus, do not make decisions about placing voters into specific districts with race predominating. The Initiatives simply set forth factors to consider when redistricting, of which race is one of many.

compelling interest is complying with operative provisions of the VRA, if the State had "'good reasons' to think that it would transgress the Act if it did *not* draw race-based district lines." *Cooper*, 137 S. Ct. at 1464 (quoting *Ala. Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257, 1274 (2015)); *see also Shaw v. Hunt*, 517 U.S. 899, 915 (1996); *Bethune-Hill*, 137 S. Ct. at 801. This would give the Colorado commission "'breathing room' to adopt reasonable compliance measures that may prove, in hindsight, not to have been needed." *Cooper*, 137 S. Ct. at 1464 (quoting *Bethune-Hill*, 137 S. Ct. at 802).

Under the proper understanding of the racial-gerrymandering doctrine, the Proposed Ballot Initiatives do not introduce "a new form of race-based districting" in Colorado. 2017-2018 #67, Motion for Rehearing at 6. Rather, the proposed language allows race to be considered as one of many factors in the redistricting process, in compliance with existing federal and state law.

CONCLUSION

For the above-stated reasons, *amicus* Campaign Legal Center urges the Court to allow the Proposed Ballot Initiatives to proceed to the ballot.

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CERTIFICATE OF SERVICE

I certify that on the 4th day of January, 2018, the foregoing document was filed with the court and served via Colorado Courts E-Filing on the following:

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