

<p>SUPREME COURT, STATE OF COLORADO</p> <p>101 West Colfax Avenue, Suite 800 Denver, Colorado 80202</p>	
<p>Original Proceeding Pursuant to the Colorado Rules for Reapportionment Proceedings</p>	<p>▲ COURT USE ONLY ▲</p>
<p>IN RE REAPPORTIONMENT OF THE COLORADO GENERAL ASSEMBLY</p>	<p>Case No. <u>11 JA 282</u></p>
<p>Attorneys for Colorado Reapportionment Commission:</p> <p>MCKENNA LONG & ALDRIDGE LLP David R. Fine, #16852 Richard C. Kaufman, #8343 Jennette C. Roberts, #35502 Joseph G. Martinez, #38956 1400 Wewatta St, Suite 700 Denver, CO 80202-5556 Telephone: (303) 634-4000 Facsimile: (303) 634-4400</p> <p>COLORADO REAPPORTIONMENT COMMISSION Jeremiah B. Barry, #10400 Kate Meyer, #38059 Troy C. Bratton, #39807 Colorado Reapportionment Commission 1313 Sherman Street, Room 122 Denver, Colorado 80203 Telephone: (303) 866-3950 Facsimile: (303) 866-3945</p>	
<p>MEMORANDUM IN SUPPORT OF ADOPTED PLAN</p>	

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	ii
I. INTRODUCTION.....	1
II. COMMISSION PROCEEDINGS	2
A. Commission Composition	2
B. Formulation of the Preliminary Plan.....	3
C. Formulation of the Adopted Plan.....	5
III. LEGAL FRAMEWORK governing reapportionment process.....	6
A. Federal Criteria	6
B. Colorado Constitutional Criteria.....	7
1. Equal Population Requirements of Section 46.....	7
2. District Composition Requirements of Section 47.....	8
C. Application of Federal and State Criteria	8
D. The Court's Role.....	9
IV. CREATION OF THE PLAN	11
A. The Commission's Goals.....	11
B. Building the Plan.....	15
1. Senate Plan.....	15
2. House Plan	19
V. CONCLUSION	29

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>In re Interrogatories H.R. 1020</i> , 178 Colo. 311 (Colo. 1972).....	10, 11
<i>In re Reapportionment 1982</i> , 647 P.2d 191 (Colo. 1982).....	7, 10, 11
<i>In re Reapportionment 2002</i> , 45 P.3d.....	9, 10
<i>In re Reapportionment 2002</i> , 46 P.3d 1083 (Colo. 2002).....	11
<i>In re Reapportionment 92-I</i> , 828 P.2d.....	9, 10, 11
<i>Lucas v. Forty-Fourth General Assembly of Colorado</i> , 377 U.S. 713 (1964).....	6
<i>Reynolds v. Sims</i> , 377 U.S. 533 (1964).....	6
<i>Sanchez v. Colorado</i> , 97 F.3d 1303 (10 th Cir. 1996).....	19
STATUTES	
42 U.S.C. §1973(b).....	7
C.R.S. § 2-2-08 (2001).....	19
OTHER AUTHORITIES	
Colo. Const. Art. V, Sec. 28(1)(e).....	5
Colo. Const., Art. V, Sec. 46.....	8
Colo. Const. Art. V, section 46 and 47.....	1, 11
Colo. Const. Art. V, Section 48(1)(a).....	1, 2

	<u>Page(s)</u>
Colo. Const. Sec 48(1)(c).....	2
Colorado Constitution	5, 6
Article V, Section 48(1)(e) of the Colorado Constitution.....	3, 5
Fifteenth Amendment.....	6, 7
Fourteenth Amendment.....	6, 8
Rule 3.....	1
U.S. Const. Amend. XIV, §1.....	6
U.S. Const., Amend. XV, § 1	7
www.colorado.gov/reapportionment	3

I. INTRODUCTION

Colo. Const. Art. V, Section 48(1)(a) charges the Colorado Reapportionment Commission (“Commission”) to redraw the Colorado House and Senate districts following each decennial census. The Commission finalized its Reapportionment Plan (“Adopted Plan”) on September 19, 2011. In bi-partisan fashion, the Commission approved the Senate portion of the Adopted Plan on a 9-2 vote, and approved the House portion of the Adopted Plan on an 8-3 vote. The Commission submitted the Adopted Plan to the Court for its review and determination for compliance with Colo. Const. Art. V, section 46 and 47 on October 3, 2011. Pursuant to Rule 3 of the Court’s Rules for Apportionment Commission proceedings, the Commission submits this Memorandum in support of the Adopted Plan.¹

The Adopted Plan is a bi-partisan triumph. While soundly comporting with relevant federal and state constitutional strictures, the Adopted Plan comprises many districts about which both Democrat and Republican commissioners agreed, includes majority-minority or minority influence districts to reflect the state’s changing demographics, and produces a significant number of competitive districts. For the reasons described below, the Commission respectfully requests that the Court approve the Adopted Plan.

¹ For the Court and interested parties reference, a Glossy of Terms commonly used in redistricting is attached as Exhibit --.

II. COMMISSION PROCEEDINGS

A. Commission Composition

The Commission consists of eleven members, four of whom were appointed by the legislative department, three by the executive department, and four by the judicial department. Colo. Const., Art. V, Sec. 48(1)(a). Two are current members of the General Assembly. Five are registered with the Republican party, five are registered with the Democratic party, and one, the Commission Chair, is unaffiliated with any political party. Each congressional district is represented by at least one but no more than four members of the Commission, and one member resides west of the continental divide. Colo. Const. Sec 48(1)(c). The members of the Commission and their appointing authority are as follows:²

<u>Member</u>	<u>Appointing Authority</u>
Mario M. Carrera Commission Chair	Chief Justice of the Colorado Supreme Court
Wellington E. Webb Commission Vice Chairman	Governor
Dolores S. Atencio	Chief Justice of the Colorado Supreme Court
Gayle Berry	Governor
Sen. Morgan Carroll	Designated by Senate Majority Leader

² See Exhibit 1 hereto for information concerning the congressional district and party affiliation for the Commission members.

Robert Loevy	Chief Justice of the Colorado Supreme Court
Rep. Matt Jones	Designated by House Minority Leader
Mario Nicolais	Designated by Senate Minority Leader
Arnold Salazar	Governor
Stephen C. Tool	Chief Justice of the Colorado Supreme Court
Rob Witwer	Designated by Speaker of the House

B. Formulation of the Preliminary Plan

The Commission convened on May 12, 2011. It held 11 meetings from May 11 until July 25, 2011³, when it adopted a preliminary plan as required by Article V, Section 48(1)(e) of the Colorado Constitution. The Commission began its work by receiving an overview of changes in Colorado's population from the State Demographer, the legal criteria and timeline for the Commission's work, and the graphic information system ("GIS") software that would be used to draw districts.⁴

The Commission created and maintains a comprehensive website:

www.colorado.gov/reapportionment. The website contains information about the reapportionment process, notices of all of the Commission's hearings, agendas posted prior to the hearings, and hearing summaries posted following the hearings.

³ See Exhibit 2 for the Commission's meeting schedule. See Exhibit 11 containing the summaries of each of the public meetings prepared by Commission staff following the meeting and made available on the Commission's website.

⁴ See Exhibit 3 for a description of the GIS computer system used by the Commission.

Through the website, the public could view copies of proposed plans to be considered by the Commission prior to its hearings, including maps and statistical information.

To supplement the website, the Commission created an email mailing list of over 330 persons interested in receiving updated information. Commission staff sent emails containing the Commission agenda prior to each of the Commission's meetings and provided notices of important occurrences during the process. Commission staff sent an email notice on October 4, 2011, notifying interested persons that the final plan of the Commission had been filed with the Colorado Supreme Court. That notice included a link to the Commission's website where a pdf version of the Adopted Plan as filed with this Court and a copy of the Colorado Rules on the Reapportionment Commission Proceedings are posted.

To facilitate its work, the Commission divided the state into seven geographic regions. The Commission devoted one of its weekly meetings to public testimony for each region. After receiving the public testimony on a particular region, Commissioners and staff developed both House and Senate plans for that region. The plans were posted on the Commission's website by the Friday, prior to the Commission's next weekly meeting. At that next meeting, the Commission

voted on a House and Senate plan for that region⁵ and then held public testimony regarding the next region.

After receiving public comments regarding all seven regions, the Commission created preliminary plans for the House and Senate. The preliminary plan for the Senate was posted on the Commission's website on July 28, 2011, and the preliminary plan for the House was posted on the website on July 29, 2011.⁶ These dates were well within the 113 days permitted by the Colorado Constitution to publish a preliminary plan. Colo. Const. Art. V, Sec. 28(1)(e).

C. Formulation of the Adopted Plan

The Commission conducted 25 public hearings throughout the state to receive public comments on the preliminary plans [Between August 4 and September 1, 2011⁷,]as required by Colo. Const. Art. V, Sec. 48(1)(e).

After the last public hearing, Commissioners submitted proposed final plans for both the House and the Senate. The proposed plans were posted on the Commission's website. The Commission reviewed the proposed final plans at a meeting on September 12, 2011. After that meeting, additional proposed final

⁵ The Commission was not compelled to adopt a plan for each region if it believed that it would be best for one or more districts from that region to be part of another region.

⁶ See Exhibit 12 that is a copy of the Preliminary Plans as posted on the Commission's website.

⁷ See Reapportionment Commission Public Hearing Schedule, attached hereto as Exhibit 5. Additionally, Exhibit 11 contains summaries of each of the public hearings prepared by Commission staff and made available on the Commission's website.

plans were submitted and posted on the Commission's website. In a public meeting on September 19, 2011, the Commission again reviewed the proposed final plans. The Commission voted to approve one senate final plan by a vote of 9-2 and one house final plan by a vote of 8-3. Together, these approved plans became the Adopted Plan presently before the Court.

III. LEGAL FRAMEWORK GOVERNING REAPPORTIONMENT PROCESS

Federal law and the Colorado Constitution together create a set of guidelines that the Commission must follow in drawing Senate and House districts.

A. Federal Criteria

The Fourteenth Amendment, Fifteenth Amendment, and section 2 of the Voting Rights Act superimpose federal requirements on the Commission's state reapportionment decisions. These federal mandates essentially guarantee the right to vote, equality of vote, and opportunity for participation in the political process by minority groups. The Fourteenth Amendment guarantees the opportunity for equal participation by all voters in state elections. It requires state apportionment activities to be based on equal populations between districts so that the state gives equal weight to each person's vote. U.S. Const. Amend. XIV, §1; *Reynolds v. Sims*, 377 U.S. 533, 566-69 (1964); *Lucas v. Forty-Fourth General Assembly of Colorado*, 377 U.S. 713, 734-5 (1964).

The Fifteenth Amendment provides that the “right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race . . .” U.S. Const., Amend. XV, § 1. Section 2 of the Voting Rights Act expands upon this provision by requiring that racial minority groups be afforded an opportunity to participate in the political process “and to elect representatives of their choice.” 42 U.S.C. §1973(b).

B. Colorado Constitutional Criteria

The Colorado constitutional requirements applicable to the Commission's work, the Adopted Plan, and the Court’s review of it, are set forth in Sections 46 and 47 of Article V as follows:

1. Equal Population Requirements of Section 46

“The paramount criterion for testing the constitutional sufficiency of a reapportionment plan is substantial equality of population among the senate districts and among the house districts.” *In re Reapportionment 1982*, 647 P.2d 191, 193 (Colo. 1982). Section 46 provides:

The state shall be divided into as many senatorial and representative districts as there are members of the senate and house of representatives respectively, each district in each house having a population as nearly equal as may be, as required by the constitution of the United States, but in no event shall there be more than five percent deviation between the most populous and the least populous district in each house.

Colo. Const., Art. V, Sec. 46. In effect, Section 46 implements the Equal Protection mandates of the Fourteenth Amendment described above.

2. **District Composition Requirements of Section 47**

Section 47 provides:

(1) 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.

(2) Except when necessary to meet the equal population requirements of section 46, no part of one county shall be added to all or part of another county in forming districts. Within counties whose territory is contained in more than one district of the same house, the number of cities and towns whose territory is contained in more than one district of the same house shall be as small as possible. When county, city, or town boundaries are changed, adjustments, if any, in legislative districts shall be as prescribed by law.

(3) 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.

While the Commission must apply these factors where “possible,” they are inferior both to the federal requirements and Section 46 mandate of equal population.

C. **Application of Federal and State Criteria**

In order of priority, the Court has set forth the federal and state criteria as follows:

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

In re Reapportionment 2002, 45 P.3d at 1247; See also *In re Reapportionment 92-I*, 828 P.2d at 190 (footnotes omitted). The Commission is to apply all six of the criteria in order of their stated preference in adopting the final reapportionment plan for the state of Colorado. *In re Reapportionment 2002*, 45 P.3d at 1247.

D. The Court's Role

The Court's role in this proceeding is narrow: to determine whether the Commission properly applied federal and Colorado law in adopting its reapportionment plan. *In re Reapportionment 2002*, 45 P.3d 1237, 1247 (S.Ct. 2002); *In re Reapportionment 1992*, 828 P.2d 185, 189 (Colo. 1992). "This Court does not redraw the reapportionment map for the Commission." *In re Reapportionment 2002*, 45 P.3d at 1247, citing *In re Reapportionment 1982*, 647 P.2d 191, 194 (Colo. 1982). Rather, "[t]he choice among alternative plans, each consistent with constitutional requirements, is for the Commission and not the

Court.” *Id.* The Court should not substitute its judgment for the Commission’s unless it is convinced the Commission departed from constitutional criteria. *Id.*

The Court has considered reapportionment plans three times since the 1974 constitutional amendment creating the commission structure. *In re Reapportionment 1982*, 647 P.2d 191 (Colo. 1982); *In re Reapportionment 1992*, 828 P.2d 185 (Colo. 1992); *In re Reapportionment 2002*, 45 P.3d 1237 (Colo. 2002). As this Court has consistently recognized, “perfection is not attainable.” *In re Reapportionment 2002*, 45 P.3d at 1249; *In re Interrogatories H.R. 1020*, 178 Colo. 311, 313 (Colo. 1972). Given the number of often conflicting requirements, the Commission is to apply the six criteria “as a whole, as a set of firm but general guidelines which allow the Commission some discretion in application.” *In re Reapportionment 1982*, 647 P.2d at 194; *see also In re Reapportionment 2002*, 45 P.3d at 1247 (adopted plan complies with the constitutional requirements and becomes the final plan when it reflects the above-listed six criteria).

The six criteria cannot always be met simultaneously. And when they cannot, the lesser criteria must yield to the senior. *In re Reapportionment 1982*, 647 P.2d at 197. Moreover, there is a “ripple effect” when drawing district lines: changes in one area of the State necessarily alter other areas of the State. *In re Reapportionment 2002*, 45 P.3d at 1249; *In re Interrogatories H.R. 1020*, 178 Colo. at 313; *In re Reapportionment 1982*, 647 P.2d at 196.

For these reasons, each time the Court has considered reapportionment plans since the Commission structure was created, the Final Plan was approved over challenges based on non-compact districts, county splits, and divergent communities of interest. *In re Reapportionment 1982*, 647 P.2d at 195-7; *In re Reapportionment 1992*, 828 P.2d at 194, 197-99; *In re Reapportionment 2002*, 46 P.3d 1083, 1088-91 (Colo. 2002).

Perfect compliance is neither achievable nor the standard by which this Court should judge the Adopted Plan. *In re Reapportionment 1982*, 647 P.2d at 197; *In re Interrogatories H.R. 1020*, 178 Colo. at 313. Where, as here, neutral decision-makers developed the plan to reapportion based on neutral criteria, there was an adequate opportunity for the consideration of differing view-points, and the guidelines used in drawing the Adopted Plan were explained, this Court should assume that the Adopted Plan is valid. *In re Reapportionment 1992*, 828 P.2d at 189 n.4.

As explained below, the Commission has complied with the requisite federal and Colorado law and urges this Court to approve the Adopted Plan.

IV. CREATION OF THE PLAN

A. The Commission's Goals

The Adopted Plan rests first on adherence to federal law, specifically the Voting Rights Act, and to state constitutional requirements as set forth in Colo.

Const. Art. V, sections 46 and 47. *See* Affidavit of Commission Chair Mario M. Carrera, attached as Exhibit 6, ¶2.

The Commission was aware that previous commissions had faced potential Voting Rights Act issues. Following the 1992 reapportionment, successful Voting Rights Act litigation resulted in the redrawing a legislative districts in the San Luis Valley. In the last decade, the Hispanic population of Colorado grew by 42%. 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 African-American, communities an opportunity to participate in the political process and to elect representatives of their choice. Commissioners expressed strong support for the creation of such districts; none opposed the concept. Under the Adopted Plan, nine districts have an Hispanic population of 50% or greater, four districts more than the districts created under the 2002 plan, 13 districts have an Hispanic population of 40% or greater, eight districts more than the districts created under the 2002 plan and 24 districts have a population of 30% or greater, eight districts more than the districts created under the 2002 plan. *See* Carrera Affidavit at ¶3 and ¶4.

The Commission was equally mindful of Section 47's requirement that it assign whole districts to counties whose population qualifies for them and not unnecessarily dividing counties or cities within counties. The results of the Commission's efforts in this regard are detailed below. *See* Carrera Affidavit at ¶5.

As described below, the Adopted Plan recognizes communities of interest where possible, but not in the case of conflicts with constitutional criteria entitled to higher priority. The Adopted Plan also incorporates comments received during constitutionally required public input based on 32 public hearings held by the Commission.

Additionally, it was important to the Chair and most members of the Commission to increase the number of competitive districts. The notion of competitive districts received significant support during the 32 public hearings. To determine which districts would be competitive under any particular plan, the Commission used the 2010 State Treasurer's race as a benchmark. As a general principle, the Commission deemed districts in which the candidates were separated by 10% or less to be competitive and districts in which the candidates were separated by 5% or less to be highly competitive. Under this principle, a total of 33 seats, or more than one-third of total seats, are competitive and 17 of those seats, more than one-half, are highly competitive. *See* Carrera Affidavit at ¶6.

The Chair believed that as the appointed unaffiliated voter, he had a responsibility to engage commissioners of both parties, keep them at the bargaining table, and work with them to produce a map with as much bi-partisan support as possible, and with as much buy-in as possible by every commissioner. Indeed, the present reapportionment system was created in part “to reduce the impact that partisan politics can have on the drawing of legislative district boundaries... .” *See* Legislative Council of the Colorado General Assembly, Analysis of 1974 Ballot Proposals (“Blue Book”), attached hereto as Exhibit 7.

Accordingly, the Chair strove to draw as many consensus⁸ districts as possible and to include as many districts as possible drawn by commissioners representing both political party interests. The Adopted Plan derives in significant part from plans drawn by Democrat and Republican commissioners. For example, the house plan contains 25 districts drawn by consensus, 11 districts drawn by Democrat commissioners, 17 districts drawn by Republican commissioners, and 12 districts drawn by the Chair. The Senate plan contains 30 consensus seats, two districts drawn by Democrat commissioners, one district drawn by Republican commissioners and two districts drawn by the Chair. *See* Carrera Affidavit at ¶7. Thus, a total of 55 districts, over half, are consensus districts.

⁸ “Consensus” means districts that were the same or essentially the same (differences of 5000 persons or less) on the final Democratic and Republican plans. *See* Carrera Affidavit at ¶7.

B. Building the Plan

To obtain the ideal Senate district population, the Commission divided the population of Colorado, (5,029,183 according to the 2010 census), by 35. To obtain the ideal House district population, the Commission divided the population of Colorado by 65. Thus, the ideal Senate district was 143,691 people and the ideal House district was 77,372 people.⁹

1. Senate Plan

a. Eastern Plains/San Luis Valley

Senate District 3 is wholly within Pueblo County and includes all of the City of Pueblo. Senate District 3 is an Hispanic influence district with Hispanics comprising 44.03 % of the population. Senate District 35 includes the portion of Pueblo County not in Senate District 3 and the whole counties of the San Luis Valley -- Alamosa, Conejos, Costilla, Mineral, Rio Grande and Saguache -- and whole counties of Custer, Huerfano, Las Animas, Crowley, Otero, Kiowa, Bent, Prowers and Baca. Senate District 35 is also an Hispanic influence district with Hispanics making up 36.24% of the population.

The Commission drew Senate District 1 with the remaining whole counties of Lincoln, Cheyenne, Kit Carson, Elbert, Washington, Yuma, Morgan, Logan, Sedgwick, and Phillips. The Commission completed the population of Senate

⁹ A map of Colorado's counties is attached hereto as Exhibit 8. A district-by-district analysis of Senate and House districts is attached hereto as Exhibit 9.

District 1 with the more rural areas of Weld County. Senate District 1 in the Adopted Plan is identical to the Final Plans prepared by both the Republicans and Democrats. *See Exhibit 11, Summary of September 19, 2011 Meeting and attached Final Plan Senate 001v2 and Final Plan Senate 002v2.*

b. Western Slope

The Commission drew four senate districts on the Western Slope without splitting any counties. Senate District 5 covers the central mountains and includes Eagle, Pitkin, Lake, Delta, Gunnison, Chaffee, and Hinsdale Counties. Senate District 6 covers the southwestern corner of the state and includes Montrose, Ouray, San Miguel, Dolores, San Juan, Montezuma, La Plata, and Archuleta Counties. As the population of Mesa County is 1.02% of the ideal district size, Senate District 7 is wholly contained within Mesa County. Senate District 8 comprises the remainder of the Western Slope with the whole counties of Moffat, Rio Blanco, Garfield, Routt, Jackson, Grand, and Summit.

The Western Slope districts did not change from the preliminary plan, adopted on an 11-0 vote. *See Exhibit 11, Summary of June 20, 2011, Meeting Tab G, Page 2.*

c. El Paso County and the Central Front Range

The population of El Paso County is sufficient for 4.33 Senate Districts. The Commission drew four whole senate districts within El Paso County: Senate

Districts, 9, 10, 11 and 12. Senate District 11 is competitive.¹⁰ Senate District 2 included the portion of El Paso County not within one of the four senate districts together with the whole counties of Park, Teller, and Fremont.

d. Douglas County

Douglas County was one of the fastest growing counties in Colorado and has a population equal to 1.99% of the ideal strict size. The Commission drew Districts 4 and 30 wholly within Douglas County. The Cities of Castle Rock and Parker are wholly within Senate District 4 and the community of Highlands Ranch is wholly within Senate District 30.

e. Larimer and Weld Counties and the City & County of Broomfield

The population of Larimer County was 2.09% of the ideal district size. Similar to 10 years ago, the Commission drew one district in Larimer County that included the entire city of Fort Collins. Another district was drawn wholly within Larimer County and includes the entire city of Loveland. The excess population of Larimer County was joined with portions of Weld County along the Interstate 25 corridor and the City and County of Broomfield. Because the population of Weld County constituted 1.76% of an ideal senate district size, Senate District 13 was drawn wholly within Weld County and includes the entire City of Greeley.

¹⁰ This district was supported by Republican Commissioner Loevy, a political science professor at Colorado College. The boundaries of Senate District 11 remain unchanged from the preliminary plan. Commissioner Loevy cited the competitiveness of the district as the reason for his vote in favor of this district in the preliminary plan. See Exhibit 11, Tab H, pages 2 and 3, Summary of June 27, 2011 Meeting.

f. Metropolitan Area

The population of Adams County was 3.07% of the ideal senate district. The Commission drew Senate Districts 22, 24, and 25 wholly within Adams County. The preliminary plan split Senate District 19 between both Adams and Jefferson County; the Adopted Plan keeps that district wholly within Jefferson County. *See Exhibit 4.*

Including the enclaves of Arapahoe County surrounded by Denver, Denver's population was 4.23% of an ideal senate district. The Commission drew four senate districts wholly within Denver: Districts 31, 32, 33 and 34. Senate District 34 is a majority Hispanic District with Hispanics comprising 52.18% of its population. Districts 32 and 33 are Hispanic influence districts with Hispanics comprising 30.45% and 33.05% of the district populations respectively, African Americans comprise at least 27.84% of the population in District 33.¹¹ The Commission added the excess population from Denver to Senate District 26 in Arapahoe County.

The Commission drew three senate districts wholly within Arapahoe County. Senate District 29 is a majority minority district with Hispanics comprising 34.42% of the population and African Americans 20.92% of the

¹¹ Because of the way that the Department of Justice counts Hispanics, the number of African Americans may be understated. Under the Department of Justice regulations, adopted by the Commission, a person who checks both the Hispanic box and the Black or African American box is only counted as an Hispanic. A district over 20% African American may be considered an African American influence district.

population. Additionally, Senate District 28 is a minority influence district with minorities comprising 40.30% of the total population. Senate District 27 takes the remainder of the population of Arapahoe County.

The population of Jefferson County is 3.72% of the ideal senate district. The Commission drew three districts wholly within Jefferson County: Senate Districts 19, 20 and 22. When the excess population of Jefferson County was added to the populations of Clear Creek and Gilpin Counties, there was still not enough population to form a senate district. Therefore, the Commission added population from Boulder County, including the town of Superior and the portion of Coal Creek Canyon in Boulder County to complete Senate District 16.

Boulder County is 2.05% of the ideal senate district. Senate Districts 17 and 18 were drawn wholly within Boulder County. The City of Boulder is wholly within Senate District 18 and the Boulder County portions of the Cities of Longmont, Lafayette, and Louisville are wholly within Senate District 17.

2. House Plan

a. South Central Colorado, Pueblo County and Part of the Eastern Plains

The Commission drew the Hispanic majority district required in the San Luis Valley. *See Sanchez v. Colorado*, 97 F.3d 1303 (10th Cir. 1996); C.R.S. § 2-2-08 (2001). (General Assembly approved redrawing of house districts to comply

with Sanchez).¹² Improving on the plan approved in 2002, the Commission was able to draw House District 62 with an Hispanic majority without splitting any counties other than Pueblo.¹³ It consists of the whole counties of Alamosa, Conejos, Costilla, Mineral, Saguache, and Huerfano and a portion of Pueblo County and the City of Pueblo. The Commission was unable to draw a second Hispanic majority district within Pueblo County, and chose to draw two Hispanic influence districts -- House District 46, which is wholly within Pueblo County and House District 47, which includes the remainder of Pueblo County not in House District 46 or 62 and a portion of Las Animas County. The Hispanic population in district 62 is 50.52%, in district 46 is 44.31% and in district 47 is 32.35%.

House District 60 includes the whole counties of Custer, Fremont, Chaffee, and Lake. This contrasts with the 2002 plan in which Fremont County was split among three house districts. House District 64 includes the whole counties of Lincoln, Kit Carson, Cheyenne, Kiowa, Crowley, Bent, Prowers, and Baca and the portion of Las Animas County not in House District 47; its population is completed with a portion of Elbert County.

¹² The Commission retained Dr. Lisa Handley, an expert in the Voting Rights Act, to determine whether racially polarized voting persisted in the San Luis Valley, justifying the continuation of a majority-minority district. Dr. Handley analyzed several races from 2008 and 2010, and concluded that voting in the San Luis Valley was racially polarized. See *Handley Report*, attached as Exhibit 10.

¹³ The 2002 plan split both Saguache and Huerfano Counties to create the Hispanic majority district.

b. Western Slope

During its public hearings throughout the state, the Commission heard extensive testimony requesting changes to Western Slope house districts in the preliminary house plan. The Southern Ute and Ute Mountain Ute tribes requested that their reservations be placed in different house districts. Under the Preliminary Plan approved by the Commission, Grand and Jackson Counties were not included in house districts on the Western Slope, but were in districts on the Front Range. The Commission received numerous requests from citizens of both Jackson and Grand Counties that those counties be put back into house districts on the Western Slope. Additionally, the Commission heard numerous requests from citizens in Gunnison County to keep the County whole within a house district. The citizens of Delta County asked to be put in districts to the west and south rather than the east. The Adopted Plan makes all of these requested changes.

Mesa County is the only county on the Western Slope with a population in excess of a single house district, and House District 55 is drawn completely within Mesa County. The Commission believed that, to the extent possible the Roaring Fork Valley should be kept together in a single house district. This objective received considerable support at public hearings. Consequently, House District 61 joins, the whole counties of Hinsdale, Gunnison, and Pitkin with the portions of the Roaring Fork Valley in Garfield and Eagle Counties.

District 26 contains the whole of Grand and Summit counties and the portion of Eagle County not in House District 61. House District 57 encompasses the whole counties of Jackson, Routt, Moffat, and Rio Blanco and that portion of Garfield County not in House District 61. In order to meet the population requirements, a portion of Mesa County was added to House District 57. House District 56 includes the remainder of Mesa County together with a portion of Delta County.

In southwestern Colorado, House District 59 includes the whole counties of Archuleta, La Plata, San Juan, and Ouray, and the eastern portion of San Miguel County including Telluride. That district joins the ski and tourist areas of southwestern Colorado into a single district. In order to meet the population requirements, a portion of Montezuma County, not including the Ute Mountain Ute Indian Reservation, is added to House District 59. House District 58 includes all of Montrose County together with the portions of Montezuma and San Miguel Counties not in House District 59 and the portion of Delta County not in House District 54.

c. Larimer and Weld Counties and Northwestern Colorado

The population of Larimer County was in excess of three house districts. The Commission began by drawing three whole districts within Larimer County. The population of the City of Fort Collins is in excess of a single house district.

As a result the Commission drew two House Districts, 52 and 53, to cover all of Fort Collins and some unincorporated area within or surrounding Fort Collins. House District 51 was then drawn to include all of the City of Loveland and the Larimer County portion of Johnstown. House District 49 then covers the remainder of Larimer County and is completed with population from Weld County. The entire City of Windsor, both the Larimer County and Weld County portions, is kept whole in House District 49, as requested in public hearings.

The City of Greeley's population exceeds the ideal population of a single house district, so it is split between two districts -- 48 and 50 -- wholly within Weld County. The Commission drew House District 50 as an Hispanic influence district with an Hispanic population of 47.12%. House District 48 then includes the remainder of Greeley together with the Weld County portions of Berthoud and Johnstown. House District 63 includes the rural portions of Weld County and Morgan County. It is also an Hispanic influence district with an Hispanic population of 31.31%. The fast growing portion of Southwestern Weld County along the Interstate 25 corridor is joined with similar portions of Boulder County including the entire City of Louisville to form House District 12.

The Commission heard testimony concerning the Hispanic community in rural Weld and Morgan Counties. The Adopted Plan creates an Hispanic influence district in House District 63 by including all of Morgan County with the rural

portion of Weld County. 31.31% of the population of House District 63 is Hispanic. Ft. Morgan remains whole within this district.

Under both the Republican and Democratic plans, Morgan County was split. The Democratic plan also split Kit Carson County and the town of Evans. The Adopted Plan eliminates these splits.

House District 65 remains an agricultural district, as requested in public hearings. It comprises the whole counties of Sedgwick, Logan, Phillips, Washington, and Yuma, the rural portions of Adams and Arapahoe Counties and the portion of Elbert County not in House District 64. House District 65 includes 11,429 people from Adams County and 7,220 people from Arapahoe County. In Adams County, House District 65 remains south of Interstate 76 and includes the town of Watkins; in Arapahoe County, it does not cross into the City of Aurora and thus retains its rural character.

d. Boulder County

The population of Boulder County qualifies it for three whole house districts: 10, 11, and 13. The populations of both the Cities of Boulder and Longmont are in excess of the ideal population of a single house district and must be split. The City of Longmont is split between House Districts 10 and 11. The City of Boulder is split between House Districts 10 and 13. The remaining

portions of the County of Boulder are joined with all of the City and County of Broomfield to form House District 33.

The preliminary plan put most of the population of the city of Longmont in House District 11. The Commission heard testimony from residents of Longmont asking that the population of Longmont be more evenly split between two districts to give the residents of Longmont more of a voice in two districts similar to the current districts. Similarly, the preliminary plan joined population from Broomfield with portions of Weld County. The Commission heard testimony that Broomfield was more in common with Boulder than Weld County. The final plan makes both of these changes. See Exhibit 4.

e. Douglas, El Paso, and Teller Counties

The population of Douglas County allowed the Commission to draw three house districts wholly within Douglas County: Districts 43, 44, and 45. The City of Castle Rock is completely within House District 45. The City of Parker is completely within House District 44. Highlands Ranch, although not an incorporated municipality, was considered a community of interest. Its population was in excess of the ideal population of a single house district, but it was kept within House Districts 43 and 39. House District 39 includes the remaining portions of Douglas County and all of Teller County.

The Commission was able to draw eight districts wholly within El Paso County -- 14, 15, 16, 17, 18, 19, and 20 -- and no portion of El Paso County is joined with any other county. House District 17 was drawn as a minority influence district with an Hispanic population of 33.13% and a total minority population of 55.48%. House District 18 was drawn as a competitive district.¹⁴

f. Denver Metropolitan Area

The population of Denver, including the enclaves¹⁵ from other counties, is sufficient to draw eight districts wholly within Denver: House Districts 1, 2, 4, 5, 6, 7, 8 and 9. Districts 1, 4, and 5 were drawn as Hispanic majority districts with Hispanic populations of 50.05%, 53.01%, and 52.00% respectively. District 7 is an Hispanic influence district with an Hispanic population of 40.89%. House Districts 7 and 8 were drawn as African-American influence districts with African-American populations of 28.95% and 21.58% respectively, and total minority populations of 75.09% and 44.61%.

District 1 has an enclave of Jefferson County. Additionally, the City of Bow Mar creates an enclave that must be joined with either Denver or Arapahoe

¹⁴ This district, while drawn by the Democrats, was supported by Commissioner Loevy as a result of its competitive nature.

¹⁵ An "enclave" is an area of one county that is surrounded by another county. There are several enclaves of Arapahoe County that are surrounded by Denver. The largest of these is the city of Glendale and an area southeast of Glendale known as Holly Hills. There are two additional small enclaves of Arapahoe County in the southeastern corner of Denver. To the southwest, there is an enclave of Jefferson County surrounded by Denver that contains three people. Also, a portion of the Town of Bow Mar in Jefferson County is surrounded by Arapahoe County on the east and Denver on the other sides.

County. Because there is already an enclave of Jefferson County within Denver, the Commission placed Bow Mar in House District 1. The Arapahoe County enclaves of Glendale and Holly Hills are in House District 3. There is a small enclave of Arapahoe County in House District 6.

The population of Adams County allowed the Commission to draw five districts wholly within Adams County: 30, 31, 32, 33, and 34. House Districts 32 and 34 contain a majority of Hispanics at 50.08% and 53.67% of the population, and House District 31 is an Hispanic influence district with an Hispanic population of 30.90%.

The Commission learned that a majority of the population of the City of Aurora is comprised of minorities, yet few minority representatives were elected to the state house from Arapahoe County. Moreover, according to the State Demographer, the Hispanic population in Aurora grew by 38,499 or 70.3% between 2000 and 2010. This accounted for over 79% of the growth in the population in Aurora. Despite this significant minority population, of 12 districts that include part of the City of Aurora, only one of those districts is currently represented by a minority.

The Commission attempted to increase the number of districts that include a portion of Aurora from which a minority candidate might be elected. The Commission discussed creating an Hispanic majority district by joining a portion

of Arapahoe County with a portion of Adams County at its hearing on July 18, 2011. Commissioner Nicolais offered H6001v2/H7001v2, which was eventually adopted by the Commission as part of its preliminary plan. House District 56 in the Adopted Plan is very similar to the district in the Preliminary Plan. Both Plans have a majority of population of the district in Adams County just to the south and east of Denver International Airport. Both Plans finish off the district by going into Arapahoe County in the city of Aurora where it borders Denver along Colfax Avenue. House District 56 contains a majority of Hispanics at 50.60% of its population. Its population is also 17.57% African American bringing its total minority population to 73.31%. The Arapahoe County portion of House District 29 is wholly within the City of Aurora, and it brings all of the City of Aurora that lies in Adams County into one district.

The Commission drew six house districts wholly within Arapahoe County -- Districts 3, 36, 37, 40, 41, and 42. House District 39 is wholly within the City of Aurora. It is an Hispanic influence district with an Hispanic population of 31.26%, and an African American population of 21.09%, for a total minority population of 59.59%. House District 41 is also a minority influence district with minorities together comprising 44.63% of the population. After drawing four additional districts wholly within Arapahoe County, the remainder of southeastern Arapahoe

County is in House District 38, with a portion of Jefferson County added to reach sufficient population.

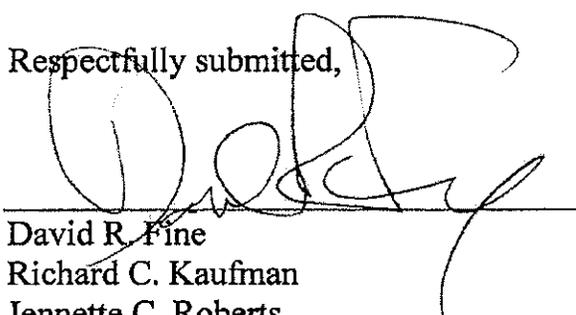
The Commission drew six whole districts within Jefferson County -- House Districts 22, 23, 24, 26, 27, and 28. House District 25 then covers the remainder of Jefferson County and the whole counties of Gilpin, Clear Creek, and Park.

V. CONCLUSION

The Adopted Plan is the result of countless hours of work by the Commissioners and its staff, and the participation of citizens across the state. It is a compromise plan forged by the unaffiliated commissioner which, first and foremost, comports with federal and state law. It features significant consensus between the parties. In addition, and to the benefit of Colorado's citizens for the next decade, it creates competitive districts and provides greater opportunity for all citizens to elect candidates of their choice. The Commission respectfully requests that the Court approve the Adopted Plan.

Dated: October 13, 2011

Respectfully submitted,



David R. Fine
Richard C. Kaufman
Jennette C. Roberts
Joseph G. Martinez

McKenna Long & Aldridge LLP

Jeremiah B. Barry

Kate Meyer

Troy C. Bratton

Colorado Reapportionment Commission

Attorneys for the Colorado
Reapportionment Commission

DN:32216823.1