

SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, Colorado 80203	<b>▲ COURT USE ONLY ▲</b>
Original Proceeding Pursuant to Art. V, § 48.3 of the Colorado Constitution	
<b>In re Colorado Independent Legislative Redistricting Commission</b>	
<b>Attorneys for Amicus:</b> Names: Suzanne Taheri, #23411 Address: Maven Law Group 1600 Broadway, Suite 1600 Denver, CO 80202 Email: staheri@mavenlawgroup.com	Case No. 2021SA305
<b>AMICI CURIAE BRIEF OF DORIS MORGAN</b>	

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## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of the Court's Order of July 26, 2021 and C.A.R. 32, including all formatting requirements set forth in these rules.

Specifically, the brief complies with the Court's Order of July 26, 2021 because it contains no more than 9,500 words.

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

s/Suzanne Taheri  
SUZANNE TAHERI, #23411  
*Attorney for Amici Curiae*

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**STATEMENT OF THE IDENTITY OF THE AMICI CURIAE AND  
INTEREST IN THE CASE**

*Amicus Curiae*, Doris Morgan, is a concerned citizen of Pueblo West advocating for her community to be kept whole. Ms. Morgan has been a resident of Pueblo West since 1997. Ms. Morgan previously served 3 years on the San Isabel Eclectic Board of Directors, an electric cooperative that serves Pueblo West. Ms. Morgan is also 5-year member of the Pueblo West Women's League and volunteers at the community Pueblo West Xeriscape Garden.

Amicus has an interest in ensuring that Colorado adopts a fair and constitutional 2020 redistricting plan for the General Assembly.

**ISSUES PRESENTED**

Whether the submitted legislative redistricting plan complies with constitutional criteria provided in Colo. Const. Art. V, §48.1.

**SUMMARY OF ARGUMENT**

In 2018, Colorado voters overwhelmingly approved a new process for drawing legislative district lines, rejected gerrymandered districts, and supported a process that promotes fair and effective representation.

Through Amendment Z, the voters entrusted an Independent Redistricting Commission with authority to conduct the legislative redistricting process, receive public input, balance competing interests, and ultimately establish

legislative district boundaries. In doing so, the People declared that the practice of political gerrymandering must end. To achieve this goal the Commission must, to the extent possible, preserve whole communities of interest. The record before the Commission demonstrated that Pueblo West, a census-designated place (“CDP”), must be kept whole within a single House District. In failing to keep Pueblo West whole, the Commission abused its discretion.

## **LEGAL ARGUMENT**

### **I. STANDARD OF REVIEW**

Section 48.3 of article V of the Colorado Constitution establishes the Criteria for the Commission when adopting a legislative redistricting map. Upon submission of the map, the Court shall approve the map unless it finds that the commission abused its discretion in applying the criteria in the constitution. Colo. Const, art. V, § 48.3. The Court may consider any maps submitted to the commission in assessing whether the Commission abused its discretion. *Id.*

Historically, the Court’s abuse of discretion standard in the context of redistricting was applied to the district court, which often had the “unwelcome obligation” of determining the congressional district lines because the state legislature rarely agreed on a map through its process. *Hall v. Moreno*, 270 P.3d 961, 971 (Colo. 2012), citing *Connor v. Finch*, 431 U.S. 407, 415 (1977). An abuse of discretion occurs if the Commission makes “erroneous legal

conclusions” in applying the criteria, *People v. Wadle*, 97 P.3d 932, 936 (Colo. 2004). An abuse of discretion also occurs if the Commission commits an “error of law in the circumstances,” *Cook v. Dist. Court of Cty. of Weld*, 670 P.2d 758, 761 (Colo. 1983).

Districts are improperly drawn where the Commission “has not made an adequate showing that a less drastic alternative could not have satisfied the hierarchy of constitutional criteria.” *In re Reapportionment of the Colo. Gen. Assembly* (2011), 332 P.3d 108, 110 (Colo. 2011).

## **II. REDISTRICTING CRITERIA**

The Commission must follow the criteria in Article V, Section 48.3 of the Colorado Constitution when drawing legislative boundaries:

(1)(a) Make a good-faith effort to achieve mathematical population equality between districts, 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. Districts must be composed of contiguous geographic areas.

(b) Comply with the federal “Voting Rights Act of 1965”, 52 U.S.C. sec. 50301, as amended.

(2)(a) As much as is reasonably possible, the commission’s plan must preserve whole communities of interest and whole political subdivisions, such as counties, cities, and towns. To facilitate the efficient and effective provision of governmental services, with regard to any county, city, city and county, or town whose population is less than a district’s permitted population, the commission shall presume that such county, city, city and county, or town should be wholly contained within a district; except that a division of such county, city, city and county, or town is permitted where,

based on a preponderance of the evidence in the record, a community of interest's legislative issues are more essential to the fair and effective representation of residents of the district. When the commission divides a county, city, city and county, or town, it shall minimize the number of divisions of that county, city, city and county, or town.

(b) Districts must be as compact as is reasonably possible.

(3)(a) Thereafter, the commission shall, to the extent possible, maximize the number of politically competitive districts.

(b) In its hearings in various locations in the state, the commission shall solicit evidence relevant to competitiveness of elections in Colorado and shall assess such evidence in evaluating proposed maps.

(c) When the commission approves a plan, or when nonpartisan staff submits a plan in the absence of the commission's approval of a plan as provided in section 48.2 of this article V, the nonpartisan staff shall, within seventy-two hours of such action, make publicly available, and include in the commission's record, a report to demonstrate how the plan reflects the evidence presented to, and the findings concerning, the extent to which competitiveness in district elections is fostered consistent with the other criteria set forth in this section.

### **III. THE COMMISSION ABUSED ITS DISCRETION BY FAILING TO PRESERVE PUEBLO WEST AS A COMMUNITY OF INTEREST**

#### **A. Community of Interest Criteria**

The Colorado Constitution requires that "as much as is reasonably possible," the commission's plan must preserve whole communities of interest, preserve whole political subdivisions, and keep districts compact. Colo. Const., art. V, §46.

Colo. Const., art. V, §46(3), subsection (b) states:



(I) “Community of interest” means any group in Colorado that shares one or more substantial interests that may be the subject of federal legislative action, is composed of a reasonably proximate population, and thus should be considered for inclusion within a single district for purposes of ensuring its fair and effective representation.

(II) Such interests include but are not limited to matters reflecting: (A) Shared public policy concerns of urban, rural, agricultural, industrial, or trade areas; and (B) Shared public policy concerns such as education, employment, environment, public health, transportation, water needs and supplies, and issues of demonstrable regional significance.

(III) Groups that may comprise a community of interest include racial, ethnic, and language minority groups, subject to compliance with subsections (1)(b) and (4)(b) of section 48.1 of this article V, which subsections protect against the denial or abridgement of the right to vote due to a person's race or language minority group.

(IV) "Community of interest" does not include relationships with political parties, incumbents, or political candidates.

The preservation of communities of interest “stems directly from the underlying purpose of maximizing fair and effective representation.” *Hall* at 961. It promotes “common concerns with respect to one or more identifiable features such as geography, demography, ethnicity, culture, socioeconomic status or trade.” *Carstens v. Lamm*, 543 F.Supp. 68, 91 (D.Colo. 1982),

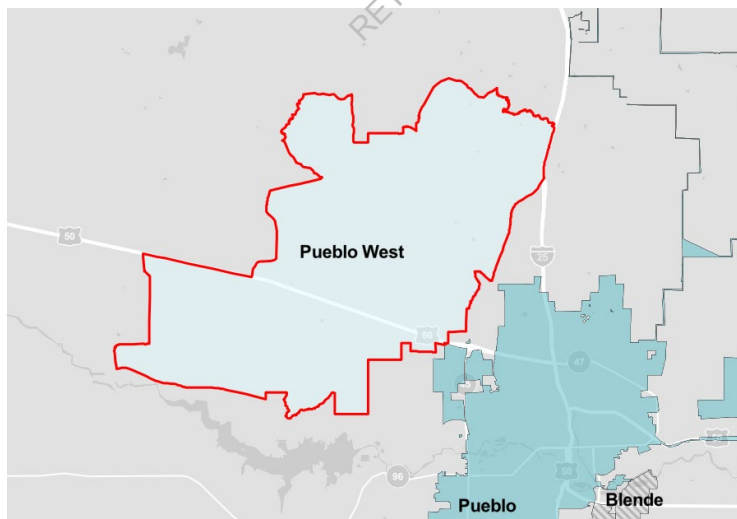
The Commission’s Final Map may be presumed to be valid only if “the Commission purports to follow the proper constitutional criteria.” *In re Reapportionment of Colo. Gen. Assembly*, 828 P.2d 185, 197 (Colo. 1992) (“*In re 1992 Reapportionment*”).

Even prior to the passage of Amendment Z, courts prioritized the preservation of communities of interest, “[o]f the discretionary factors specifically listed in the statute, the Court finds that no factor is more important than a district’s communities of interest.” *Moreno v. Gessler*, No. 11-CV-3461, 2011 WL 8614878, at \*21 (Colo. Dist. Ct. Nov. 10, 2011).

**B. The Commission’s Decision to not keep Pueblo West whole was an Abuse of Discretion**

Pueblo West is a Census Designated Place defined as a geographic entity representing closely settled, unincorporated communities that are locally recognized and identified by name. Statistically, it is the equivalent of an incorporated city or town and functions with a governmental structure.<sup>1</sup>

Pueblo West is the second largest Census Designated Place in Colorado, behind Highlands Ranch. Pueblo West’s defined District is as follows:



<sup>1</sup> <https://www.federalregister.gov/documents/2018/11/13/2018-24571/census-designated-places-cdps-for-the-2020-census-final-criteria>.

The Pueblo West Metropolitan District was founded on September 16, 1969. By 1975 Pueblo Reservoir was constructed within Pueblo West for the purpose of supplying water for irrigation, municipal, domestic, and industrial use. The Reservoir also serves as a source of recreation for residents of Pueblo West and beyond.

The Pueblo West property includes a connecting trail system, South Equestrian Center, National Horseman's Arena, and the Pueblo West Golf and Tennis Club. Pueblo West has its own elementary schools, a middle school and high school.

Pueblo West is a party to the Southern Delivery System, a bilateral agreement to supply water from the Pueblo Reservoir to Colorado Springs. Today, Pueblo West maintains 33,086 residents.<sup>2</sup>

Pueblo West's governance is through an elected board with services including fire and emergency services, streets and roads, parks and recreation, water and wastewater services, committee of architecture, economic development, and administrative services.<sup>3</sup>

Several residents of the Pueblo West submitted comments to the Commission regarding the shared interests of the community. "As my public

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<sup>2</sup> <https://www.census.gov/quickfacts/fact/table/pueblowestcdpcolorado/POP060210>

<sup>3</sup> <https://www.pueblowestmetro.com/459/Living-in-PW>

comment I would like to ask that Pueblo West remain in one legislative seat rather than be split between two districts. Pueblo West is not large enough to necessitate a split: we can be kept whole within one seat. There is no reason to draw an arbitrary line down the middle of our community and decrease our influence in the state legislature. All parts of Pueblo West have the same interests and basic concerns.”<sup>4</sup>

“Pueblo West is a unique community with a sense of identity. Pueblo West deserves to be united in the Colorado House map. Staff Map 3 splits up Pueblo West, which does not honor what the constitution calls for, which is not splitting communities of interest. Pueblo West is classified as a Metro District, which makes it a community of interest. Please keep Pueblo West whole in the state house map as there doesn't seem to be any reason to split it up into two separate districts.”<sup>5</sup>

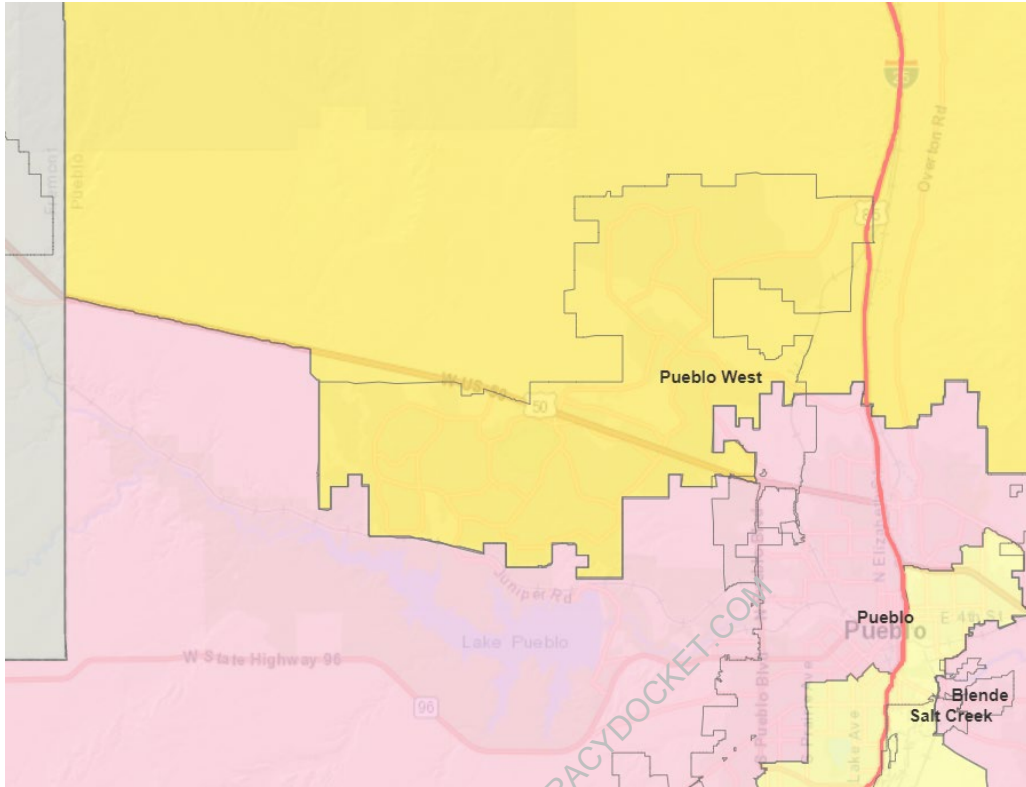
During the course of the Commission's redistricting process, several maps were proposed by the public, Commissioners, and staff. These maps were discussed with consideration given to the various boundary configurations that would achieve the required criteria. One such map was the HP 008 Coalition Map. This map kept Pueblo West whole while achieving other required criteria.<sup>6</sup>

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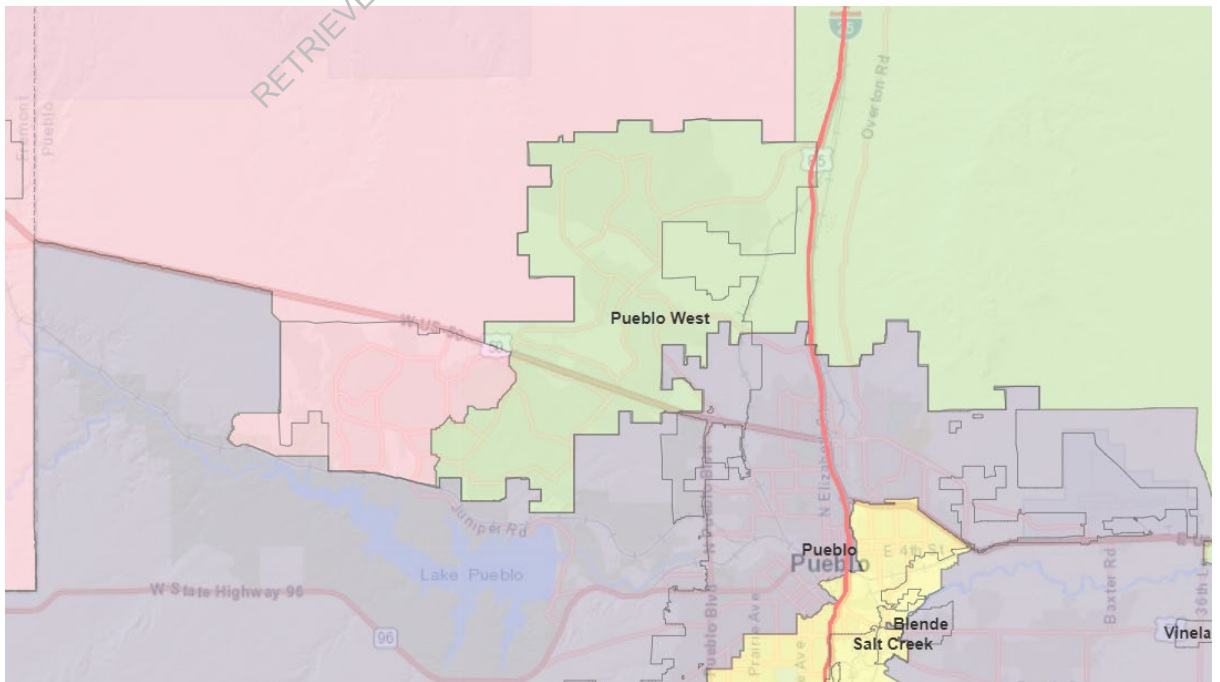
<sup>4</sup> [https://redistricting.colorado.gov/public\\_comments/](https://redistricting.colorado.gov/public_comments/)

<sup>5</sup> *Id.*

<sup>6</sup> <https://coleg.app.box.com/s/ti61ujnb8yq1gm0w2ngx9e0y67ed54vn/file/869971616485>



Ultimately the Commission adopted HA 015, a map that did not keep Pueblo West whole:



In adopting this map, the Commission failed to recognized Pueblo West’s community of interest. Instead, Pueblo West was split with 21,892 in HD 47 and 11,242 in HD 60.<sup>7</sup> This dilutes the influence of Pueblo West’s community and increases the chance that a Representative will not advocate for their interests.

When voters approved Amendment Z, Colorado voters defined communities of interest and further solidified its place as a mandatory criterion.

The Final Plan, if approved by this Court, would diminish the ability of Pueblo West citizens to obtain fair and effective representation on significant matters of concern – including shared interests in public policy concerns such as education, recreation, governance, environment, transportation, water needs and supplies, and issues of regional significance.

The Commission offers little to support its decision on this point. Rather, the Commission’s filing offers, “The Commission and Non-Partisan Staff preserved whole political subdivisions as much as reasonably possible.”<sup>8</sup>

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<sup>7</sup> [https://redistricting.colorado.gov/rails/active\\_storage/disk/eyJfcMfPbHMiOmsibWVzc2FnZSI6IkJBaDdDRG9JYTJWNVNTSWhlWEpwYzJkd2VuSnplREp4YWpnd2VuZGlnR3h5YkhkcE1UUmlPQVk2QmtWVU9oQmthWE53YjNOcGRHbHZia2tpUzJsdWJHbHVhVHNnWm1sc1pXNWwhiV1U5SWtOcGRia2dVM0JzYVhSekxuQmtaaUk3SudacGJHVnVZVzFsS2oxVlZFWXRPQ2NuUTJsMGVTVXINRk53YkdsMGN5NXdaR1IHT3daVU9oRmpiMjUwWlc1MFgzUjVjR1ZKSWhSaGNIQnNhV05oZEEdsdmJpOXdaR1IHT3daVSIslmV4cCI6IjIwMjEtMTAtMjFUMjE6MTM6MzluMjUxWjlsInB1cil6ImJsb2Jfa2V5In19--7c9c10dbbe0cbfb348b90ceb0af52735227f71f2/City%20Splits.pdf?content\\_type=application%2Fpdf&disposition=inline%3B+filename%3D%22City+Splits.pdf%22%3B+filename%2A%3DUTF-8%27%27City%2520Splits.pdf](https://redistricting.colorado.gov/rails/active_storage/disk/eyJfcMfPbHMiOmsibWVzc2FnZSI6IkJBaDdDRG9JYTJWNVNTSWhlWEpwYzJkd2VuSnplREp4YWpnd2VuZGlnR3h5YkhkcE1UUmlPQVk2QmtWVU9oQmthWE53YjNOcGRHbHZia2tpUzJsdWJHbHVhVHNnWm1sc1pXNWwhiV1U5SWtOcGRia2dVM0JzYVhSekxuQmtaaUk3SudacGJHVnVZVzFsS2oxVlZFWXRPQ2NuUTJsMGVTVXINRk53YkdsMGN5NXdaR1IHT3daVU9oRmpiMjUwWlc1MFgzUjVjR1ZKSWhSaGNIQnNhV05oZEEdsdmJpOXdaR1IHT3daVSIslmV4cCI6IjIwMjEtMTAtMjFUMjE6MTM6MzluMjUxWjlsInB1cil6ImJsb2Jfa2V5In19--7c9c10dbbe0cbfb348b90ceb0af52735227f71f2/City%20Splits.pdf?content_type=application%2Fpdf&disposition=inline%3B+filename%3D%22City+Splits.pdf%22%3B+filename%2A%3DUTF-8%27%27City%2520Splits.pdf)

<sup>8</sup> Commission Final Legislative Redistricting Plans, p.11.

Here, the Commission arbitrarily split Pueblo West without due consideration to the coalition map which offered a less drastic alternative.

### **CONCLUSION**

For all the reasons stated above, *Amici* respectfully request that the Court find the Commission abused its discretion in failing to keep Pueblo West whole and remand the map to the Commission with instructions to adopt a map wherein Pueblo West is in a single House District.

Respectfully submitted this 22<sup>nd</sup> day of October, 2021.

Maven Law Group  
/s/ Suzanne Taheri  
Suzanne Taheri  
Counsel for Amici Curiae

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**CERTIFICATE OF SERVICE**

This is to certify that on October 22, 2021, I electronically filed the foregoing AMICI CURIAE BRIEF with the Clerk via the Colorado Courts E-Filing E-Service, which will send notification of such filing and service upon all counsel of record.

/s/ Suzanne Taheri  
Suzanne Taheri

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