

DISTRICT COURT, CITY AND COUNTY OF
DENVER, STATE OF COLORADO
1437 Bannock Street, Room 256
Denver, Colorado 80202
Court Tel.: (720) 865-8301

Plaintiffs: **DOMINICK MORENO; CHRISTINE LE
LAIT; WILLIAM N. PATTERSON; RITA
MAHONEY; MICHAEL BOWMAN; JON GOLDIN-
DUBOIS; and MIKEL WHITNEY,**

Plaintiffs: **KATHRYN H. HALL; DANNY E.
STROUD; DICK R. MURPHY, Ph.D.; MARK D.
HILLMAN; WAYNE W. WILLIAMS, MARK
BAISLEY; and SHIRLEY J. SEITZ;**

Plaintiffs-in-Intervention: **COLORADO LATINO
FORUM, a Colorado nonprofit corporation;
COLORADO HISPANIC BAR ASSOCIATION, a
Colorado nonprofit corporation; BILL THIEBAUT;
BOARD OF COUNTY COMMISSIONERS OF THE
COUNTY OF DOUGLAS, STATE OF COLORADO,
a body politic and corporate; THE CITY OF
AURORA; and MAYOR EDWARD J. TAUER, in his
official capacity as Mayor of the City of Aurora**

v.

Defendant: **SCOTT GESSLER, in his official capacity
as Secretary of State of the State of Colorado**

▲ COURT USE ONLY ▲

Case Number: 11CV3461
(consolidated with: 11CV3463)

Division/Courtroom: 209

ORDER

I. INTRODUCTION AND BACKGROUND

This matter comes before the Court on the claims filed by two groups of Plaintiffs. Plaintiffs Dominick Moreno, Christine Le Lait, William N. Patterson, Rita Mahoney, Roger Clark, Kristi Matsunaka and Mikel Whitney (“the Moreno Plaintiffs”) filed a Complaint for Declaratory, Injunctive and other Relief. Plaintiffs Kathryn E. Hall, Danny E. Stroud, Dick R. Murphy, Ph.D., Mark D. Hillman, Wayne W. Williams, Mark Baisley and Shirley Seitz (“the Hall Plaintiffs”) also filed a Complaint for Declaratory Relief.

All Plaintiffs challenge the current congressional districts as violative of the one person, one vote principle based on changes to the Colorado population as reflected by the April 2010 census. In addition to the Moreno and Hall Plaintiffs, Douglas County, the City of Aurora, the Colorado Latino Forum and Hispanic Bar Association and Bill Thiebault have intervened. Several other entities have filed *amicus* briefs. All parties have requested that this Court draw new congressional district lines in order to insure that the congressional districts are legally drawn.

Once the country’s decennial census has been completed, state legislatures are charged with correcting malapportionment among their assigned Congressional districts, a task that is designed to account for both the growth and relative shift in national and statewide population. The results of the 2010 census did not produce a change in the number of Colorado’s seats in the U.S. House of Representatives, but the growth rates in the state’s population was uneven among the seven Congressional districts, requiring that their boundaries be redrawn. In 2011, the Colorado General Assembly failed to fulfill its Constitutional obligation to enact legislation to correct this malapportionment of districts, 2 U.S.C. § 2c; Colo. Const., art. V, § 44, and after

lawsuits were filed by the Moreno and Hall Plaintiffs, this Court was obligated to establish new district lines.

Any redrawing of district lines must meet the constitutional criteria of numerical equality of population among Colorado's seven districts in compliance with the one person/one vote precept and must further comply with Section 2 of the federal Voting Rights Act to prevent invidious racial discrimination. C.R.S. § 2-1-201(1)(a).

There are also a number of non-constitutional criteria to consider and utilize, including but not limited to; the preservation of political subdivisions such as counties, cities, and towns as well as communities of interest (including ethnic, cultural, economic, trade area, geographic and demographic factors), the compactness of each congressional district and the minimization of disruption of prior district lines. C.R.S. §2-1-102(1)(b).

In Colorado, there is a history of courts drawing Congressional district maps when the General Assembly does not enact legislation establishing new districts after a decennial census. *See Carstens v. Lamm*, 543 F. Supp. 68 (D. Colo. 1982); *Avalos v. Davidson*, No. 01 CV 2897, 2002 WL 1895406 (Colo. Dist. Ct. Jan. 25, 2002), affirmed sub nom. *Beauprez v. Avalos*, 42 P.3d 642 (Colo. 2002). This case adds to that history.

This Court has labored for nearly three decades to avoid any suggestion of personal observation in rulings, opinions and orders. The instant matter is so unlike other judicial determinations, that it merits at least an initial note of reflection. While it is easy to blame the legislature for leaving this matter to the courts to decide, that initial impression is flawed. This process is so difficult and fraught with such a variety of divergent interests, it is small wonder that consensus was elusive. Laying political considerations aside, the depth and variety of local

and regional interests competing in this matter were extraordinary and, in many instances, impossible to reconcile. This Court labored diligently to follow constitutional and statutory guidelines and more than that, to hear the voices of the citizenry, as eloquently articulated by counsel and many witnesses. Colorado is a state of varied topography, economic endeavor and natural resources. In many ways it is a microcosm of much of the nation. Redrawing any district lines necessarily means disappointing citizens and interest groups no matter how those lines are drawn. That is a regrettable fact of any redistricting process. It is just plain hard, in terms of labor and consequences.

The Court was also ever mindful that time was at a premium. The accelerated trial began in October and concluded on October 31st. Final written submissions occurred on November 1st. Counsel for the Secretary of State informed the Court that county clerks have to begin printing ballots no later than mid-December. The Court understood the need to expedite the ruling in order to allow time for appellate review. Consequently, the Court was left without the luxury of unlimited time to deliberate and craft a ruling. Nonetheless, this Court, even on this very expedited schedule, has had a full opportunity to review all of the evidence and testimony in this case as well as all written submissions and existing appellate law. This decision is based on concentrated but full deliberation and consideration of all issues. The Court is confident that all parties were heard and all evidence fully considered.

The Court wants to emphasize these important considerations: All lines were drawn for a Colorado as it exists in 2011. Not a single partisan or political position or consideration played a role in this Court's task or ultimate decision. Whatever their underlying motivation, all of the parties and witnesses and especially counsel, appreciated that fact as this process began and

remained true to the important job of providing this Court with the non-partisan information necessary to craft this decision. The Court is grateful.

As the Court will discuss below, the Court has received a large number of maps, including three supplemental maps which reflect the voluminous body of evidence heard at trial and which reflect the questions and concerns of the Court. All parties have had an opportunity to address the issues raised by every single map, including supplemental maps. All parties are mindful that in *Carstens* the Court prepared its own map with the assistance of an independent technical expert who provided his services after trial was complete and no party was given an opportunity to comment on that final map.

In this case, after thorough review, the Court has determined that the lines should be drawn in a fashion consistent with the map characterized as the Moreno supplemental map or Moreno/South Map (hereinafter “Moreno/South”) for which an abundant evidentiary basis exists. The Court reached this conclusion only after careful review of all maps and an assessment of pertinent factors. The Court has concluded that the Moreno/South Map best reflects communities of interest as they now exist, while retaining compactness of districts, preserving as many political subdivisions as practical and disrupting prior district lines only as was absolutely necessary in order to best utilize all statutory factors.

II. FINDINGS OF FACT

A. FIRST CONGRESSIONAL DISTRICT

Both of the Moreno Maps contain a 1st Congressional District which preserves communities of interest, protects political subdivisions, is contiguous and compact, and

minimizes disruption of prior district lines. The current communities of interest in the Moreno Maps' 1st Congressional District include the City and County of Denver, and certain areas south of Denver that are contiguous, share transportation corridors, and have similar housing and the same economic base as Denver.

The 1st Congressional District in the Moreno Maps starts with the City and County of Denver, and adds the communities of Sheridan, Englewood, and Cherry Hills Village to the south and west. Sheridan, Englewood and Cherry Hills Village are connected to Denver via the Santa Fe and Broadway transportation routes. The proposed 1st Congressional District adds additional population south of the Grant Ranch area of Denver between Kipling and Sheridan, an area that has similar housing and the same economic base as does Denver. Adding these areas to the 1st Congressional District equalized population in the 1st Congressional District without splitting cities in the north. MP Ex. 5; Tr. at 1124:3-19; 1125:1-12; 1126:1-25; 1127:1-23, Martinez.

There is no genuine dispute that the City and County of Denver is a community of interest. Tr. 1427:25-1428:13, Stroud. This was the case in *Avalos* and it remains so today.

B. SECOND CONGRESSIONAL DISTRICT

Both maps submitted by the Moreno Plaintiffs contain a 2nd Congressional District that preserves communities of interest, protects political subdivisions, and is contiguous and compact. The current communities of interest in the Moreno Maps' 2nd Congressional District include the higher education community created by the funding crisis in higher education at Colorado's flagship schools of the University of Colorado at Boulder and Colorado State University at Fort Collins, the tech transfer phenomenon and similar small businesses that rise up

in association with those universities towns, the major industries and employers that create similar growth potential, the high-tech corridor from Broomfield to Fort Collins, forest health issues arising from the bark beetle infestation, the I-70 Corridor from C-470 to Avon with its tourism and recreation focus, Rocky Mountain National Park, and the I-36 and Highway 287 transportation corridors.

The 2nd Congressional District in the original or Main Moreno Map starts by linking up the I-70 corridor in the eastern portion of Eagle County with Summit, Grand, Gilpin, Clear Creek, Boulder, Larimer and west Jefferson Counties, picking up the Bailey portion of Park County, and a large portion of Broomfield County. MP ex. 5; Tr. at 1128:1-12, 23-25; 1129:1-19, Martinez. The Main Moreno Map's proposed 2nd Congressional District links up the 287 transportation route starting at Broomfield, through Louisville, Lafayette, up through Longmont, Berthoud, Loveland and up into Fort Collins. The Broomfield County split in the 2nd Congressional District runs along Sheridan, which is the dividing line for the Boulder County School District on the 2nd District side and the Adams County School District on the 6th District side. MP ex. 5; Tr. at 1128:23-25; 1129:1-19, Martinez.

Jefferson County is divided in the original Moreno Main Map's proposed 2nd Congressional District by selecting unincorporated interests of Jefferson County for the 2nd Congressional District and leaving the incorporated cities of Arvada, Golden, Evergreen and Aspen Park in the 7th Congressional District. MP ex. 5; Tr. at 1129:20-25; 1130:1-17, Martinez.

The other major transportation route through this newly formed 2nd Congressional District is Highway 36, which starts in this district in Broomfield County, and continues up

through southern Boulder County, through Boulder and into Estes Park and through Rocky Mountain National Park. MP ex. 5, MP ex. 24; Tr. at 1132:21-25; 1133:1-3, Martinez.

The Moreno/South Map, the Court's preferred map, would add to the 2nd District, half of Broomfield so that the entire City and County would be in one district and unincorporated Jefferson County as well as the Town of Evergreen, located in the foothills region of the County.

In the *Avalos* decision there were two communities of interest recognized by the Court in the 2nd Congressional District. The first was the cleanup of Rocky Flats in the northwest corner of Jefferson County. Most of the cleanup of Rocky Flats was completed around 2005 and the compact between impacted communities split up in 2005. The other was the I-70 corridor as it related to the recreation and tourism industry in Eagle, Summit, Clear Creek, Gilpin and Grand Counties. Tr. at 1134:12-25; 1135:1-25; 1136:1-13, Martinez.

In the 2000 legislative redistricting process, the instructions in the legislature for those drawing the maps were, critically, that no two incumbents were to be put together in the same district and several legislative maps were submitted to the Court in accord with that direction. MP Ex. 4; Tr. at 1061:18-1063:15, Martinez. In 2001, the incumbent members of Congress for the 2nd and 4th Districts lived in Larimer County (Congressman Shaffer) and Boulder County (Congressman Udall), respectively. Thus, linking those two counties would have been problematic. Currently, Congressman Gardner represents the 4th District and lives in Yuma County. Tr. at 1128:13-22, Martinez.

Again, the Moreno/South Map does add half of Broomfield, so that all of the City and County of Broomfield would be in one district as well as unincorporated Jefferson County and

the entirety of the town of Evergreen, located in the foothills region of the County. The Court finds this to be an important alteration for the reasons articulated later in this order.

1. Higher Education

The University of Colorado in Boulder (“CU Boulder”) is in the heart of Boulder, with 27,000 students and 7,200 employees. Tr. at 332:4-10, Carrigan. Colorado State University (“CSU Ft. Collins”) is located in downtown Ft. Collins, with approximately 25,000 students and 6,000 employees. CSU Ft. Collins is competitive with mature universities, attracting faculty from preeminent research universities nationwide. Tr. at 487:11-12, 487:22-488:7, 488:18-489:19, Kirkpatrick

Admittedly, there are other four-year higher education institutions in counties throughout the State, including University of Northern Colorado (Weld), Adams State (Alamosa), Colorado State University (Pueblo), Colorado Mesa University (Mesa), Fort Lewis College (La Plata), University of Colorado in Colorado Springs (El Paso), and University of Colorado-Denver (Denver). Tr. at 283:10-284:8, 287:8-25, 288:19-289:1, Munn. Yet it is indisputable that CSU Ft. Collins and CU Boulder are the leading higher education institutions in the State and: (a) the only public universities in the State with a RUVH (very high research university) Carnegie classification; (b) share a “unique responsibility” as the only comprehensive public research universities at both the doctoral and undergraduate levels; (c) “first tier” institutions with

“selective” admissions, and (d) generate the majority of baccalaureate and doctoral degrees. Tr. at 247:5-17, 249:11-24, 250:24-251:3, 251:14-252:9, Munn¹; Tr. at 331:7-18, Carrigan.

Events of the past decade have greatly impacted funding for higher education, and it is also beyond dispute that Colorado is in “crises mode in our funding for higher education.” While state funding levels for higher education institutions have continued to drop to \$514 million, student enrollment has continued to increase. Tr. at 242:10-12, 254:1-8, 255:8-10, 260:6-14, 261:1-263:10, Munn; Tr. at 335:17-23, Carrigan; Tr. at 1489:4-17, T. Lucero. State funding for higher education is projected to be reduced to zero in the near future, resulting in no state support and institutions having to close or be privatized. Tr. at 266:11-267:22, Munn; Tr. at 336:15-21, Carrigan; Tr. at 1498:21-24, T. Lucero; MP Ex. 15, at MP00062 (chart).

The level of funding available for universities is appropriate for a member of Congress to consider as part of his or her job in Washington. Tr. at 1491:6-10, Lucero.

Colorado historically has a high level of reliance on federal funding for higher education institutions, including Pell Grants, the GI Bill program, and competitive research grants. That reliance will not change. Tr. at 242:24-26, 255:23-256:7, Munn. The largest federal financial aid funding is the Pell Grant program, which enables low and middle income students to attend college. CU Boulder and CSU Ft. Collins will be similarly impacted and the “first ones hurt” if the federal government decreases the Pell Grant maximum dollar threshold because those institutions will no longer be affordable or accessible, unlike other universities in Colorado. Similarly, the federal government has taken a more direct role in providing student loans. Tr. at

¹ Mr. Rico Munn was qualified as an expert in the field of higher education in Colorado, including state and federal funding. Tr. at 241:8-20. Mr. Munn was appointed as the Executive Director of the Colorado Department of Higher Education from 2009 to 2011. Tr. at 227:16-24, Munn.

255:1-3, 268:19-23, 270:16-271:12, Munn; Tr. at 339:3-17, Carrigan. The GI Bill is an additional source of federal funding for higher education. CSU Ft. Collins and CU Boulder each actively recruit veterans to attend the universities under the federal GI Bill. Tr. at 255:2-3, 271:13-21, Munn.

Moreover, CSU Ft. Collins and CU Boulder have an important shared interest in procuring federal research dollars to sustain their overall and historic missions, to attract undergraduate and doctoral students, and to provide economic development to their surrounding communities. Tr. at 242:17-21, 272:9-19, 274:20-275:16, Munn; MP Exs. 18, 19, 20.

CSU Ft. Collins received more than \$200 million and CU Boulder received more than \$300 million in federal research funding last year. Tr. at 242:17-21, 272:9-19, 274:20-275:16, Munn; Tr. at 33:12-332:2, Carrigan.

The decade past has also marked a substantial change in the identity of CSU Ft Collins as the state's agricultural school based on the multitude of programs, degrees and research offered. The Court noted that of the 18 graduates of CSU Ft. Collins who testified (or are related family members) during the redistricting trial, 14 have undergraduate or doctoral degrees from schools and programs that are not related to agriculture or animal sciences. Tr. at 476:7-13, Kirkpatrick (political science degree); Tr. at 83:16-23, Repella (environmental design/industrial construction management degree); Tr. at 545:16-546:19, Stulp (5 family members with mechanical engineer or art education degrees); Tr. at 1414:5-1415:5, Murphy (5 family members with engineering, communications, business, or computer science degrees); Tr. at 1895:10-12, Lynch (political science/history degree); 2485:14-15, Tauer (mechanical engineering degree).

CSU does sponsor extension offices in every county of the State, and its research assists agricultural producers in every region, including the West Slope and the San Luis Valley. Tr. at 1688:14-1689:17, Hillman. CSU also receives research funding from agencies such as the U.S. Department of Energy, U.S. Department of Health Education and Welfare, the National Science Foundation, as well as the Department of Agriculture. Tr. at 600:8-15, Stulp. Additionally, there is no evidence in the record that the two universities compete with one another for any notable federal grants. Both CSU Ft. Collins and CU Boulder are members of the Association of Public and Land Grant Universities (APLU), an organization with a strong voice dedicated to getting federal research dollars to higher education institutions. Tr. at 275:17-276:8, Munn. Examples of collaborative CSU Ft. Collins-CU Boulder federal research projects are: (a) the EUV, extra ultraviolet laboratory, (b) the Colorado Space Grant Coalition, and (c) the Collaboratory, where the two universities are leaders in the joint effort to attract federal research dollars for renewable energy. Tr. at 273:6-274:12, Munn; Tr. at 342:8-22, Carrigan.

CSU Ft. Collins and CU Boulder also both have a considerable economic impact in their counties through tourism, cultural events and federal research centers associated with the two universities. Tr. at 332:15-333:8, Carrigan; Tr. at 727:18-728:8, Segal; Tr. at 1477:22-1478:4, 1504:11-1505:2, T. Lucero (both universities support ACE program for NASA and will seek funds for NASA project patent development); Tr. at 277:18-22, Munn; Tr. at 485:10-24, Kirkpatrick. Start-up companies, which create jobs and revenue, are prevalent as a direct result of working with CSU Ft. Collins and CU Boulder: 51 start-up businesses in Ft. Collins have spun-off from CSU Ft. Collins and about 60 businesses have spun-off from CU Boulder. Tr. at

247: 18-248:1, 277:22-278:4, Munn; Tr. at 484:8-18, Kirkpatrick; Tr. at 341:1-15, Carrigan; Tr. at 727:18-728:8, Segal; Tr. at 1503:14-17, 1503:24-1504:6, T. Lucero.

The evidence supports the proposition that it is more important to have an effective congressperson with a concentration of interests and an automatic voice at the table for all decisions related to education funding, as opposed to having separate representation of these important universities by several congresspersons. Tr. at 307:11-309:20, Munn.

2. Health, High-Tech Industry and Demographics

According to the credible testimony of its former Mayor, Ft. Collins currently enjoys an “increased vitality,” is seen as “a community with a global reach,” and has desirable downtown living with small and eclectic businesses that attract customers worldwide. Tr. at 479:5-487:5, Kirkpatrick.

Qualified and credible expert testimony further fortified the finding that Larimer County and Boulder County have striking economic similarities and employment growth potential because both counties share the same three major employment industries: education, health care and high-tech. Tr. at 723:20-724:5, 725:2-25, 726:22-727:17, 755:19-756:11, 758:5-8, Segal.² There is a significant amount of technology transfer and intellectual property development for start-ups and other businesses that occurs in Boulder and Fort Collins arising from the research funding flowing into the higher education institutions in those communities. Tr. at 1945:6-10,

² Mr. Bradley Segal is a qualified expert in the field of community development, including as to the Front Range. Tr. at 723:12-19. The field of community development is a multidisciplinary approach that considers market conditions, economics, transportation, land use, regulatory environment and outreach in a community. Tr. at 715:20-716:7, Segal.

Polis. Ft. Collins has also spent a significant amount of time and resources developing a biotechnology corridor. Tr. at 1503:1-6, T. Lucero.

Over the last ten years, Larimer and Boulder Counties have similarly experienced a decline in manufacturing and agricultural employment. Tr. at 725:25-726:4, 725:11-21, 728:18-25, Segal. This is further reflective of a change in this region since the last redistricting.

The North Front Range Metropolitan Planning Organization (NFRMPO) has become “less than effective” because Larimer County and Weld County have divergent air quality and transportation values and priorities. Tr. at 499:16-500:13, 532:9-533:4, Kirkpatrick. The citizens in Larimer County are willing to comply with stricter federal air quality regulations for the benefit of public health. Larimer County’s air quality priorities have more recently become more aligned with those of Boulder County residents. In contrast to Larimer and Boulder Counties, Weld County citizens perceive that jobs might be lost as a consequence of stricter air quality regulations. Tr. at 499:16-500:20, Kirkpatrick. Larimer County residents also appear to have an interest in multi-modal transportation (i.e. alternative and mass transit), which do not align with the single occupancy vehicle interests promoted by Weld County. Tr. at 506:16-507:10, 532:9-533:4, Kirkpatrick.

Boulder and Larimer Counties have comparable demographics. Residents in those counties enjoy above-median income. They also have a similar demographic profile of Anglo and Latino and a lower unemployment rate than the rest of the state. Tr. at 729:14-730:3, Segal. Unlike Larimer and Boulder Counties, Weld County continues to be driven by the more traditional economic sectors of agriculture, (with some diversification into the processing side of the industry such as the Leprino cheese plant that is being completed), manufacturing, and oil

and gas development. The demographics of Weld County include lower median incomes, higher concentration of Latino households, and a higher unemployment rate comparable to the rest of the state. Tr. at 730:4-731:5, at 732:12-19, 731:24-732:11, Segal.

3. Forest Health/Bark Beetles

Of great significance to this Court is the clear fact that the Moreno Maps' proposed 2nd Congressional District comprises the epicenter for forest devastation as a result of bark beetle activity. Mp ex. 23; Tr. at 389:1-25; 401:1-17, Gibbs.³ Colorado has 4 million acres of dead trees, with 500,000 acres of new dead trees accruing each year. Larimer County alone has 400,000 acres of dead trees. In the future, Colorado can expect to see 100,000 dead trees falling each day. Tr. at 385:3-386:3, Gibbs. One of the safety issues arising from the bark beetle infestation is the hazard of trees falling on people while they are hiking, camping, fishing or skiing in the forest, which also will have an adverse impact on tourism and tourism-related businesses in Colorado. Tr. at 386:4-25, Gibbs. Other safety issues arising from the bark beetle infestation include the hazard of dead trees coming down on power grids and creating power outages, dead trees coming down on houses, and the fire hazard from the volume of dead trees. Tr. at 386:11-17, Gibbs. An additional and significant impact of the bark beetle infestation on the State of Colorado is to transportation when downed trees block roads and there is only one ingress/egress into an area. Tr. at 386:1-25, Gibbs.

³ Mr. Dan Gibbs is a current Summit County Commissioner, former state Senator, former state Representative, wildland firefighter, and member of numerous boards and commissions dealing with forest health, I-70 transportation and tourism issues. Tr. at 380:20-384:18, Gibbs.

Much of the area impacted by the bark beetle infestation in Colorado is on federal lands. The U.S. Forest Service has called in a Type 1 National Emergency Management Organization team to manage the bark beetle infestation. Tr. at 390:10-16; 396:1-22, Gibbs. Colorado County Commissioners are looking to the federal government for help with the bark beetle infestation. A member of Congress plays a very important role and must work with U.S. Forest Service, prioritize what areas in Colorado are most in need for these projects, giving them the tools and resources that they need to work with counties, municipalities, and homeowners. Tr. at 390:17-20; 391:17-393:22, Gibbs.

While the bark beetle infestation is certainly a matter of statewide and even regional concern in the western United States, it is advantageous to have one Congressional point person to whom the other members of Congress can go for information and assistance, and who can foster relationships with the U.S. Forest Service and develop expertise on the issue. Tr. at 390:21-391:2; 393:23-394:18; 443:4-10, Gibbs. It is of more than passing significance that the congressperson that now represents the 2nd District actually knew the scientific name of the beetle in question and appeared to be well versed on the subject. Tr. at 1947:20-25, Polis.

The infestation of bark beetles is of dramatic and extraordinary significance. The cost of the bark beetle infestation just in the counties of Larimer, Boulder, Gilpin, Clear Creek and Jefferson over the next 40 years is estimated to be \$600 million. Tr. at 394:19-395:6; 424:17-426:2, Gibbs. Summit County citizens view the bark beetle issue important enough that a few years ago they adopted a ballot initiative imposing a new property tax that generates about \$500,000 to bring in money to help pay for proactive thinning in Summit County. Boulder

County views the bark beetle issue as so important that it is putting a question to voters in November 2011 to create a special district to put some additional resources toward forest health. Tr. at 397:19-398:16, Gibbs.

There is a clear and distinct line that runs through eastern Larimer County, Boulder County, and Jefferson County where the Eco region is coniferous forest to the west and Great Plains to the east. MP Ex. 36; Tr. at 401:18-402:11, Gibbs.

4. I-70 Corridor and Recreation

The I-70 Corridor runs from the intersection of I-70 and C-470 in the Golden area to Glenwood Springs, a 144 mile section. MP ex. 25; Tr. at 402:16-22, Gibbs. The portion of the I-70 Corridor that runs from Jefferson County to just past Avon in Eagle County is the section of the I-70 Corridor that has the most activity and that is most problematic with capacity issues, multiple mountain passes, safety issues and law enforcement issues. MP ex. 25, Tr. at 402:23-405:3, Gibbs. West of Avon, Colorado, I-70 is flat and has fewer challenges in terms of safety, capacity and funding in the future. Tr. at 407: 23-408:17; 431:15-432:9, Gibbs.

The federal government plays a critical role with the I-70 Corridor in terms of federal highway funds. A member of Congress for the Moreno Maps' proposed 2nd Congressional District could coordinate with an I-70 point person from the Colorado Department of Transportation on issues of safety, mobility, and pinch points on the I-70 Corridor. Tr. at 405:19-406:8; 409: 8-22, Gibbs.

The area of the I-70 Corridor from Jefferson County to just west of Avon has many related tourism and recreation-related economies, including skiing, whitewater rafting, fly

fishing and hunting big game, water fowl and pheasant. Tr. at 410: 5-413:19, Gibbs. There are additional shared interests among the ski area communities in the Moreno Maps' proposed 2nd Congressional District such as summer recreation activities, transportation, housing, and water challenges, in addition to regulatory approvals required by federal entities such as the U.S. Forest Service for improvements to resorts located on federal lands. Tr. at 412:3-413:19, Gibbs.

5. Rocky Mountain National Park

Existing district lines place Rocky Mountain National Park into two congressional districts with the parts in Grand and Boulder County in the Second Congressional District, and the parts in Larimer County in the Fourth Congressional District. Tr. at 414: 5-16, Gibbs. Rocky Mountain National Park is kept wholly inside the proposed Moreno 2nd Congressional District, helping preserve a community of interest as a national park and providing a unified voice fighting for the growing, dire and well documented needs of the park. MP Ex.5, MP ex. 26; Tr. at 416:18-22, Gibbs; Tr. at 1133:25-1134:11, Martinez. The federal issues related to Rocky Mountain National Park include forest health, overpopulation of elk, transportation and water issues. Tr. at 414:17- 416:17, Gibbs. Clearly, Boulder, Larimer and Grand County have shared interests in Rocky Mountain National Park related to tourism dollars to their economy, and access to the park. Tr. at 415:16- 416:17, Gibbs.

C. THIRD CONGRESSIONAL DISTRICT

The Moreno Maps' 3rd Congressional District preserves communities of interest, protects political subdivisions, is contiguous and compact, and minimizes disruption of prior district lines. The current communities of interest in the Moreno Maps' 3rd Congressional District

include the western slope, water, tourism, public lands, the Roaring Fork Valley, farming and ranching, mining and energy production, and the San Luis Valley's connection to both Pueblo and the western slope. The Moreno Maps' 3rd Congressional District keeps the western slope whole, retains the San Luis Valley, Pueblo and Custer County, and adds Lake County and a portion of Eagle County from the town of Edwards west. MP Ex. 5; Tr. at 1113:11-1115:20, Martinez.

The Court is untroubled by the fact that Eagle County is divided between the 2nd and 3rd Congressional Districts at Edwards, a natural dividing line keeping the tourism-based resort areas of the I-70 Corridor together east of Edwards in the proposed 2nd Congressional District, and keeping the flatter, lower capacity and higher speed section of the I-70 Corridor to the west in the 3rd Congressional District. Tr. at 1116:17-1119:8, Martinez. Dividing Eagle County at Edwards also keeps the Roaring Fork Valley communities of Glenwood Springs, Aspen, and Basalt together in the 3rd Congressional District. MP ex. 5; Tr. at 1113:11-1118:1, Martinez. The communities west of Avon on I-70 in Eagle County have similar concerns regarding transportation routes, longer worker commutes, lifestyle and recreation. Tr. at 1117:18-1119:8, Martinez.

Communities of interest in the Moreno Maps' 3rd Congressional District include its rural nature, ranching, mining, tourism, public lands, energy production, and water. Tr. at 1249:15-1250:12, Martinez; Tr. at 1319:18-1321:25, 1344:10-1345:6, Tipton. The Western Slope is a community of interest because 75% of the area is public lands, including Forest Service, BLM, Bureau of Land Reclamation, or national parks. Tr. at 1550:7-11, 1551:4-10, Hall. The public

lands support residents' ability to maintain water, hunting, fishing and recreation. Tr. at 1550:12-14, Hall.

Due to the sparse population in the area, residents have to travel between counties for work and there is inter-county trade among the counties in the Western Slope. Tr. at 1550:14-25, Hall.

It is, again, beyond dispute that there is a real and long standing community of interest between the San Luis Valley and Pueblo. Tr. at 1254:22-25, Martinez.

There are also three national parks wholly contained within the Third Congressional District: Sand Dunes National Park, Mesa Verde National Park, and Black Canyon of the Gunnison National Park. Tr. at 1351:15-1352:1, Tipton. A congressperson with a national park wholly contained within the district takes the lead on issues related to the national park, and thus plays a significant role in maintaining those unique treasures for the district and for Colorado. Tr. at 1351:2-1353:10; 1354:7-1355:25; Tipton. This was significant to the Court in the 2nd District and is equally important in the 3rd District.

Additionally, the Court finds that linking Lake County with the western part of Eagle County and Garfield County is important for protecting and organizing the mountain Latino community. Tr. at 1291:19-1292:12, Martinez. There is a community of interest between the higher Hispanic populations in Lake County, western Eagle County and Garfield County with the higher Hispanic populations in the San Luis Valley and Pueblo. MP Ex. 5, Tr. at 1120:3-9, 1288:24-1289:9, Martinez.

D. FOURTH CONGRESSIONAL DISTRICT

The Moreno Maps' proposed 4th Congressional District preserves communities of interest, protects political subdivisions, and is contiguous and compact. The current communities of interest in the Moreno Maps' 4th Congressional District include the eastern plains, oil and gas development along the Niobrara oil play, water supply and demand conditions, drought, agriculture, alternative energy, and the equine industry. That proposed Fourth Congressional District would keep the eastern plains whole. The original Moreno Main Map includes all of Douglas County and has much to commend it. However, the Moreno/South Map excludes the most dense, urban and well-populated portion of the county, which is preferable to the Court. MP ex. 5; Tr. at 1140:2-7, Martinez. The Moreno/South map also adds the City of Longmont, which was part of the 4th Congressional District over the past decade and other portions of Erie, Dacono and Frederick, all of which are changes that would make Weld County whole within the District.

Douglas County has a significant community of interest with Weld County because both are near but do not abut Denver, and both are fast growing, with urban, suburban and rural features. Tr. at 1138:25-1139:12, Martinez. Oil and gas development creates a community of interest between Weld County and eastern portions of Adams, Arapahoe, Douglas and Elbert Counties where oil and gas development is now expanding. Tr. at 1138:25-1140:11, Martinez.

1. Oil-Gas Development along the Niobrara Oil Play

The Niobrara oil play, located in Weld, Adams, Arapahoe, Elbert and Douglas Counties, has untapped oil resources that can be extracted through fracking technology. Tr. at 733:13-734:2, Segal. Residents along the Niobrara oil play have the prospect of similar economic benefits associated with oil and gas development, job creation and tax revenues. They also face

similar challenges, impacts and community concerns related to oil and gas development and fracking technology. Tr. at 740:18-742:5, 780:12-13, 781:15-20, 783:6-18, 784:4-5, 808:4-11, 809:3-810:2, Segal. Those common community concerns include water safety associated with the fracking process; wastewater storage; transportation and road infrastructure from the large machinery needed for oil and gas drilling, and noise, odor, and light pollution. Tr. at 740:24-741:25, Segal.

The Colorado Department of Local Affairs' energy and mineral impact program includes direct distribution, as well as a competitive grant program, to counties, cities and towns from severance and federal mineral lease royalties. Tr. at 492:6-16, Kirkpatrick.⁴ Providing payments at the oil and gas permit stage is a recent change to DOLA's direct distribution formula, and was necessary to enable counties to have plans in place earlier to deal with the community impacts that result from energy development. Tr. at 494:13-495:1, Kirkpatrick. Receiving a direct distribution from DOLA signals that a county should anticipate that they will face zoning, roads, water treatment facilities, and population growth impacts from oil and gas development. Tr. at 495:2-20, Kirkpatrick.

Weld County is currently experiencing economic development, infrastructure, environmental and labor impacts from the Niobrara oil and gas drilling occurring there. Tr. at 734:8-735:21, Segal. Recently, oil and gas leasing and permitting activity have started to occur in Adams, Arapahoe, Elbert and Douglas Counties. Tr. at 736:1-4, Segal. Conoco-Phillips Oil Company spent approximately \$138 million to purchase 46,000 acres of land, located in

⁴ In addition to her role as former Mayor of Ft. Collins, Ms. Kirkpatrick served as the executive director for Colorado's Department of Local Affairs ("DOLA"), the state agency whose responsibility is to provide oil and gas revenues to local governments through the energy and mineral impact program. Tr. at 477:21-22, 478:18-24, 491:1-19, 492:6-16, Kirkpatrick

Arapahoe, Douglas and Elbert Counties, for oil exploration. Tr. at 736:5-23, Segal. There have been 24 spacing permits—setting spacing parameters within which an oil company can drill—recently granted in Elbert County. Tr. at 736:21-727:11, Segal; MP Ex. 81. Likewise, a spacing permit was recently granted in Douglas County. Tr. at 736:21-727:11, 766:3-10, Segal; Tr. at 982:8-12, 994:15-18, Nelson; MP Ex. 81. More importantly, there have been 228 recorded oil and gas leases in Douglas County since 2010 and significantly, 153 recorded leases this year alone. Tr. at 985:15-986:1, Nelson. An engineering representative of Douglas County, Erik Nelson, who has worked on and dealt with oil and gas regulations there, informed the Douglas County commission in June 2011 that, “[b]ased on what we’ve seen so far, there’s definitive areas where it’s more likely we’ll be seeing production based on where the leases are going.” The definitive areas in Douglas County where the oil and gas leases have been recorded are: northeast of Parker, southwest of Franktown, and west of Castle Rock. Tr. at 958:1-7, 981:7-982:1, Nelson.

Douglas County is rushing to respond to community concerns related to the recent oil and gas developments and is working to prepare for such development in Douglas County. Tr. at 964:24-965:12, Nelson. The types and size of equipment evident on oil and gas production sites include: (a) 30 foot production tanks to hold 500-barrel water and oil-water byproduct, (b) tanker trucks that ranged from 1 to 50 trucks per site, and (c) command centers to operate the fracking drill rigs which are estimated to be 40 feet at the base and up to 100 feet tall and all of this can operate within clear sight of a housing subdivision. Tr. at 967:1-970:19, 982:8-20, Nelson.

Douglas County expedited a \$170,000 mitigation impact study in June 2011 to examine transportation issues in the county related to oil and gas development. Tr. at 973:10-974975:11, Nelson; Tr. at 737:14-18, Segal; MP Ex. 62. Douglas County also held five public meetings in six months (including one at the Douglas County Fairground where each of the 300 seats was filled) to address oil and gas development, which Mr. Nelson acknowledges is an indication that the public has concerns about the fracking technology coming to Douglas County. At one such forum, a Weld County official attended to advise Douglas County officials about likely impacts on the County. Tr. at 982:21-19, 986:16-24, 989:4-8, Nelson. At the public meetings, Douglas County residents expressed concerns about such issues as fracking, temporary housing for drilling employees, force pooling, and oil and gas companies' access to private property. Tr. at 977:11-24, 978:9-979:15, 983:10-19, Nelson; MP Exs. 63, 64, 65, 66, 67, 68. Douglas County's manager and staff have discussed emergency planning in the event of an oil and gas spill, based on containment, clean up and water safety concerns. Tr. at 984:3-985:8, Nelson; MP Ex. 67 at MP00332. Douglas County is also amending its zoning standards and regulations concerning grading erosion and sediment control related to oil and gas development equipment and fracking technology. Tr. at 958:8-963:6, Nelson.

Given the community concerns, it is expected that Douglas, Elbert and Arapahoe Counties will work together to plan for local zoning, land use impacts, and operating standards compatible with populated areas; to monitor regulatory issues occurring on a federal level, and; to plan for revenue impacts to the community before oil and gas drilling occurs. Tr. at 742:6-743:23, 775:17-21, Segal.

2. Drought

Southeastern Colorado has a history of drought on a fairly regular basis. Drought results in less growth of grasslands for livestock and less production for crops Tr. at 558:22-559:20, Stulp⁵.

The Farm Service Agency of the United States Department of Agriculture (USDA) provides an outline of the different government programs that are available for rural landowners who experience drought. Tr. at 562:24-563:12, Stulp; MP Ex. 35. These USDA programs include emergency loan programs, emergency grazing of the conservation reserve program, livestock indemnification, tax relief, and supplemental feed programs. Tr. at 563:25-565:21, Stulp. Congress makes the decision to make federal funding available for USDA programs. Tr. at 566:6-21, Stulp.

Very credible testimony established that the counties that are most affected by drought in terms of livestock inventory vulnerability are Douglas, Baca, Las Animas, Huerfano, Crowley, Kiowa, Cheyenne, El Paso, Jefferson, and Teller. MP Ex. 49; Tr. at 575:8-19, Stulp. The Colorado counties most affected by drought in terms of crop land are Elbert, Arapahoe, Adams, Cheyenne, Lincoln, and Washington counties. MP ex. 48; Tr. 576:18-577:3, Stulp. Costilla, Alamosa, Rio Grande, and Mineral counties are in the lowest level of drought vulnerability in Colorado in 2011. MP ex. 47; Tr. at 583:7-13, Stulp.

Again, credible testimony documented that the following counties are in the highest level of drought vulnerability in Colorado in 2011: Elbert, Douglas, Arapahoe, Adams, Washington, Las Animas, Baca, Crowley, Kiowa, Cheyenne, Lincoln and Phillips. MP ex. 47; Tr. at 583:19-

⁵ John Stulp is a former Colorado Commissioner of Agriculture, Prowers County Commissioner, and current farmer, rancher, and Special Advisor to Governor Hickenlooper on water and Interbasin Compact Committee Director for the State of Colorado. Tr. at 540:15-541:16, Stulp

584:1, Stulp. Because of the most recent drought, Governor Hickenlooper wrote the USDA seeking drought disaster designation for Elbert and Douglas Counties on August 26, 2011. MP ex. 33; Tr. at 584:15-22, Stulp.

3. Water Supply and Demand

The counties in the Moreno proposed 4th Congressional District share similar water supply shortages and challenges. Tr. at 824:3-13, Klahn.⁶ Credible expert testimony effectively documented the ways in which Larimer County is completely unlike the counties in the Moreno proposed 4th Congressional District. The supply of water that exists in Larimer County, in the form of senior water rights and trans-basin water from the Colorado Big Thompson project, meets the demand for water in Larimer County. Tr. at 872:7-873:7, Klahn.

The bulk of Douglas County is similar to and united with other counties in the Moreno Map's 4th Congressional District because it has and will experience shortages of water supply. Tr. at 874:3-11, Klahn. Douglas County relies primarily on non-renewable Denver Basin groundwater which is going to run out. It is an unsustainable supply that must be replaced. Tr. at 852:4-24, 879:13-17, Klahn. The Douglas County Rural Water Authority stated: "During and after the drought of 2002, concerns over water became the number one issue for residents of Douglas County. Rural water users began to cooperate and organize their efforts, the result being the formation of the Rural Water Authority in October 2008." MP Ex. 57; Tr. at 97:2-25, Repella.

⁶ Sarah Klahn was qualified as an expert in Colorado water law and Colorado water supply and demand conditions and challenges. MP Ex. 31; Tr. at 813:1- 823:20, Klahn.

The fact that Douglas County may meet some of its future water needs with agricultural transfers from counties on the eastern plains does not mean that they should be in a separate Congressional District from the locations where they may go to seek water. They share a water supply shortage condition with the other counties in the eastern part of the state that creates similarities with those counties, rather than distinctions based on where a project might be located. Tr. at 954:11-20, Klahn.

The Water Infrastructure and Supply Efficiency (WISE) project is a collaborative water project that certain rural water providers in Douglas County are exploring with Denver Water and Aurora which would allow these Douglas County water providers to capture wastewater from Denver and Aurora in during wet periods and filter it and reuse it in Douglas County. The Douglas water providers have not yet signed on to the project. In order to bring the project to fruition, the Douglas County water providers would need to sign on to the project themselves, get approval from their consumers and build the infrastructure. Even if the WISE project becomes a reality for Douglas County, it does not solve all of their water shortage challenges. Tr. at 862:4-867:15, Klahn. Douglas County is looking to a variety of sources to solve its water problems, including a project to bring water from the Flaming Gorge in Wyoming, and projects in the South Platte and Arkansas Rivers. Tr. at 868:24-869:19, Klahn. The evidence supports the finding that the counties in the Moreno proposed 4th Congressional District would benefit from having one voice in Congress when federal solutions are necessary or involved in a particular project. Tr. at 874:17-875:1, Klahn.

4. Douglas County Equine and Agriculture

Douglas County has numerous common interests in climate and agriculture with the rest of the counties in the Moreno Plaintiffs' proposed 4th Congressional District. Tr. at 665:1-24, Stulp. It does have a more obvious equine industry than other areas surrounding the metropolitan area. Tr. at 589:25; 590:1-25, Stulp. Douglas County also has agricultural production that is not insignificant and also has no demonstrably adversarial relationships with any eastern Colorado counties. Tr. at 591:4-14; 680:25; 681:1-9, Stulp.

5. Alternative Energy and Internet Cooperative

The Court also finds that alternative energy development (wind and solar) along the Eastern plains is a growth industry. Tr. at 2226:9-13, 2271:14-23, Gardner. Las Animas County is part of a rural, multi-county internet cooperative that includes Baca, Prowers, Bent, Otero, Crowley, and Kiowa counties to provide a unified connection among educational institution, government offices, and health care providers in southeast Colorado. Tr. at 601:3-603:11, Stulp.

E. FIFTH CONGRESSIONAL DISTRICT

The Moreno proposed 5th Congressional District preserves long recognized communities of interest, protects political subdivisions, is contiguous and compact, and minimizes disruption of prior district lines. The current communities of interest in the Moreno proposed 5th Congressional District include, as they have for years, the five military installations, and the transportation corridors that run through the region.

The starting point for the 5th Congressional District in the original Moreno Map was to keep El Paso County whole with its five military bases, and combining it with Fremont, Chaffee,

Teller and most of Park County to recognize the transportation routes running through those counties. MP ex. 5, Tr. 1120:10-25; 1121:1-25; 1122:1-18, Martinez. The five military installations contained within the Moreno Main Maps' 5th Congressional District constitute a strong and recognizable community of interest. Tr. at 1395:14-21, Williams. Although the five military installations inside Colorado are a matter of statewide concern, having one Congressperson as the point person on the military installations inside Colorado has benefited the state, because a Congressperson with five military installations in the state located in his or her district has a seat at the table when matters involving the military installations are at issue. Tr. at 1395:18-1397:5, Williams.

F. SIXTH CONGRESSIONAL DISTRICT

The Moreno proposed 6th Congressional District preserves communities of interest, protects political subdivisions, and is contiguous and compact. The prevailing Communities of Interest in the Moreno proposed 6th Congressional District include the exurban characteristics of the communities, the E-470 beltway and the business development it creates as well as the growth and development associated with Aurora as the third largest municipality in the state.

1. "Exurb" Communities and E-470 Corridor

Denver has an "exurb" which has a defining feature of E-470, a beltway developed on the eastern side of Denver and includes Centennial, Aurora and Brighton. Tr. at 747:18-748:21, Segal; Tr. at 748:7-21, 751:10-752:11, Segal. It is characterized by low density development; relatively new schools, civic facilities and infrastructure that have less maintenance and capital replacement needs, and new shopping centers with lifestyle centers that emulate Main Street and

big box retail development. Tr. at 749:5-750:7, Segal. Moreno Proposed Congressional District 6 does in fact appropriately represent Denver's "exurb." Tr. at 748:22-749:4, Segal; see also MP Ex. 5, at 2. E-470 has shaped the development of Denver's "exurb" in the last 10-15 years. Tr. at 750:17-19, Segal.

The Moreno/South Map also includes within the proposed 6th District, the Highlands Ranch development in unincorporated Douglas County, a small annexed portion of Aurora previously uncontained, as well as land necessary to provide contiguity with the Arapahoe County portion of the proposed 6th District. There was agreement at trial that Highlands Ranch contains a "substantial population" and is "a contiguous part of the south metro area." Tr. at 1230:10-18, Martinez.

The common demographics in Denver's "exurb" communities are higher than state median incomes, with a high concentration of Caucasian households. Tr. at 752:12-17, Segal. The common community development issues that Denver's "exurb" communities face are growth management issues. Tr. at 752:18-753:4, Segal.

2. City of Aurora

This Court finds that Aurora is much like Denver and Colorado Springs, a community of interest in and of itself. The best way to serve that community of interest is with a single congressperson. Tr. at 2512:6-18, Tauer. It is the third largest city in the state, with 325,078 residents living there. Tr. at 2451:2-17, Fernandez. The City of Aurora generates substantial job creation and supports the Denver metro area's economic development activity. Tr. at 2487:2-2488:4, 2493:14-2494:7, Tauer. Aurora has common local leadership and common services. Aurora has the same police department across the entire area of the city. Aurora does not rely on

any county's law enforcement. Aurora has its own fire department which is rare in suburban communities. It is one of only two ISO 2-rated fire departments in the state. The city delivers many other special services that are not dependent on any special district or county and provides its own road service and park service. Tr. at 2488:18-25, 2489:1-20, Tauer.

The City of Aurora also contains the Buckley Air Force military base and Fitzsimons medical center, as well as a VA Hospital currently under construction. Tr. at 2462:12-24, 2460:17-2461:17, Fernandez; Tr. at 2493:15-2494:3, Tauer. It is a leader in bridging metropolitan water solutions and, with the addition of the Prairie Waters Project, has a reliable and sustainable water supply system to preserve its present and future needs. Tr. at 2490:13-2493:11, Tauer; Tr. at 948:19-23, Klahn.

G. SEVENTH CONGRESSIONAL DISTRICT

The Moreno proposed 7th Congressional District preserves communities of interest, protects political subdivisions, and is contiguous and compact. The current Communities of Interest in the Moreno proposed 7th Congressional District include the “first ring suburb” qualities and infrastructural needs of the communities, the National Renewable Energy Laboratory and the spin-off businesses and federal agencies associated with the laboratory related to clean energy and the development of the Fastracks alternative transportation lines. The Moreno/South Map adds portions of Thornton and makes whole the City of Westminster.

1. “First Ring Suburb” Communities

No party disputed the fact that Denver has a “first ring of suburbs.” Tr. at 746:5-7, Segal. The most pronounced and contiguous “first ring suburb” occurs on the west and north side of

Denver, including the areas of Lakewood, Arvada, and Commerce City. Tr. at 746:9-19, Segal; MP Ex. 5, at 2. This “first ring suburb” shares common built-environment concerns and demographics. Tr. at 746:19-22, Segal.

There are similar challenges in Denver’s “first ring suburb” built-environment where buildings, infrastructure, schools, and civic facilities are approximately 50-60 years old and need common replacement, updating and maintenance. Tr. at 746:23-747:5, Segal; Tr. at 1989:13-1990:11, Perlmutter. The commercial corridors in Denver’s “first ring suburb” are struggling and are typified by older generation shopping malls that need to be redeveloped. Tr. at 749:12-15, Segal.

The common demographics in Denver’s “first ring suburb” are evidence of gateway communities, such as in Lakewood, Arvada, Federal Heights, and Northglenn where there are increasing Latino populations over the past 10 years. Historic differences exist between Denver and Commerce City. Tr. at 747:6-12, 811:1-20, Segal; Tr. at 1997:1-1998:11, Perlmutter. The common household income in Denver’s “first ring suburb” is generally at or below median income compared to the rest of the state. Tr. at 747:13-17, Segal.

2. National Renewable Energy Laboratory and Clean Energy Businesses

The National Renewable Energy Laboratory (“NREL”) has been instrumental and a primary driver in helping the 7th Congressional District develop and attract a clean energy industry. Tr. at 1982:20-1983:9, Perlmutter. NREL is a national laboratory, is a key driver of spin-off companies, and has attracted other clean energy businesses, such as Avengoa located in Lakewood and Primestar Solar in Arvada. Tr. at 1983:10-1984:23, Perlmutter. There is a

relationship between NREL and the Federal Center, located in the Moreno proposed 7th Congressional District, based on NREL's ongoing effort to build a new power grid for that Center. Tr. at 1985:19-1986:8, Perlmutter.

Regarding federal facilities in this region, NREL receives funds from the federal Department of Energy budget. The Federal Center is managed by the GSA and has regional offices for most agencies. The wildlife refuge located on the former Rocky Flats site receives funds from the Department of Interior's budget. Tr. at 1989:7-12, Perlmutter.

3. Fastracks

There is a Fastracks project under construction along 13th Avenue and Colfax out to Jefferson County courthouse. Tr. at 1991:5-13, Perlmutter; MP Ex. 80. The Fastracks Gold Line broke ground last month and runs through Arvada, Wheat Ridge to Ward Road. Tr. at 1991:14-17, Perlmutter; MP Ex. 80. Fastracks is relevant to the Moreno Maps' 7th Congressional District to relieve traffic congestion along east-west highways, and in particular 6th Avenue and I-70. Tr. at 1991:18-1992:1, Perlmutter.

4. Compactness

The Moreno Maps' 7th Congressional District is more compact than the existing district boundaries, which plays an important role for a Congressperson. Tr. at 1992:19-1993:13, Perlmutter. This compactness also addresses a statutory concern that existed a decade ago and which was articulated clearly in *Avalos*.

H. COMPETITIVENESS

The initial 2010 election abstract information that was presented to the Colorado legislature in March, 2011 was generally accurate. The 2010 election abstract was updated in June, 2011 with accurate information. Tr. at 2724:19-25, Knaizer. The original proposed Hall Minimum Disruption Map contains one competitive district in the 3rd Congressional District. Ex. MP7a; Tr. at 1184:2-25, Martinez.

The proposed original Moreno Map contains three competitive districts in the 3rd, 6th and 7th Congressional Districts. Ex. MP 6, MP 7a; Tr. at 1176:6-18; 1187:15-18, Martinez. The 3rd Congressional District in the Moreno Map is a competitive district, with Republicans, Democrats and Unaffiliated voters each accounting for more than 30% of the registered voters in that district. The party registration breakdown for registered voters in the proposed 3rd Congressional District is 30.95% Democrat, 32.90% Unaffiliated, 35.24% Republican, and .90% Other party.

The 6th Congressional District in the original Moreno Map is a competitive district, with Republicans, Democrats and Unaffiliated voters each accounting for more than 30% of the registered voters in that district. The party registration breakdown for registered voters in the proposed 6th Congressional District is 33.62% Democrat, 33.28% Unaffiliated, 32.41% Republican, and .69% Other party.

The 7th Congressional District in the original Moreno Map is a competitive district, with Republicans, Democrats and Unaffiliated voters each accounting for more than 30% of the registered voters in that district. The party registration breakdown for registered voters in the proposed 3rd Congressional District is 34.04% Democrat, 34.95% Unaffiliated, 30.27%

Republican, and .75% Other party. The Seventh Congressional district has historically been very competitive in terms of its voter registrations and affiliations. Tr. at 1999:11-12, Perlmutter.

Competitive districts can empower the Hispanic community by ensuring that the community has a voice in the outcome of the election. In a district that is competitive, meaning it is unknown who is going to win before the election is held, the Hispanic population will carry weight. The original Moreno Map 3rd District has 23.88 percent Hispanic population, the 6th District has 20.95% Hispanic population and the 7th District has 25.68% Hispanic population. These percentages are sufficiently large to ensure that the Latino population will have a voice in the outcome of the election in the competitive 3rd, 6th and 7th Congressional Districts. Tr. at 1294:11-1195:6, 20-25; 1296:1-18, Martinez. Competitiveness is particularly important for the Latino community because it gives them a voice in districts where the outcome of the election is close. Tr. at 2083:8-12, Mendoza. A competitive district requires candidates running for office to work very hard, to listen to all views, and to reach out and engage as many people as possible. Tr. at 1999:5-6, 2000:15-18, 2001:6-19, Perlmutter.

The Moreno/South Map makes only modest changes and does not substantially alter the more competitive nature of these districts.

I. THE FOUR HALL MAPS ARE FLAWED AND FAIL TO CONSIDER COMMUNITIES OF INTEREST

The Hall Maps' 3rd Congressional District runs the entire length and width of Colorado from the northwest corner to the southeast corner. Tr. at 1359:15-1360:6, Congressman Tipton. Additionally, the Hall Plaintiffs' map drawing consultant (Cameron Lynch) drew the Club 20

and Jefferson County maps. Mr. Lynch never spoke to anyone at Club 20 or Jefferson County. Mr. Lynch was directed to draw the Club 20 and Jefferson County maps by the Hall Plaintiffs' legal counsel. Tr. at 1873:23-1871:1872:24, Lynch.

The Hall Plaintiffs' maps were drawn without any regard to communities of interest. The factors used by the Hall Map maker were minimum disruption, contiguity, avoiding county splits where possible and avoiding municipal splits where possible. Tr. at 1880:14-1883:8, Lynch. In addition, the Hall Maps rely on outdated planning and management regional maps (such as for NFRMPO or DOLA) which are unreliable for current redistricting purposes because they are outdated and do not reflect changes in the state that have been made since they were created. Tr. at 2664:6-2665:2, Thiebaut, Tr. at 519:22-522:10, Kirkpatrick.

For example, the presence of agriculture has changed in Larimer County: no longer are there the agri-business phenomenon and the smell of feedlots observed by former Mayor Kirkpatrick thirty years ago. The remaining agricultural interests in Larimer County today are smaller than they were in 1972 and a less significant part of the overall economy of the county. Larimer County has seen an increase in the county toward high value crops, organic farm-to-table, and the "local food movement." Tr. 554:2-13, Stulp; Tr. at 485:25-487:5, 504:5-505:3, Kirkpatrick.

Most significantly, Rocky Flats is located in the current 2nd Congressional District. During the late 1990's and early 2000's, Rocky Flats was faced with significant closure and cleanup processes due to plutonium radioactivity, and thus was a very important and controversial subject. Tr. at 1978:20-1979:7, Perlmutter. The prior community issues related to Rocky Flats have changed over the last 10 years. Cleanup has occurred and the facility is a

wildlife refuge and wind testing facility for the National Renewable Energy Lab. Tr. at 1979:20-1980:14, Perlmutter.

The eastern stretches of Adams and Arapahoe Counties, in the current existing 7th Congressional District, are extremely rural and highly agricultural, with a high percentage of agriculture dependent industries, primarily grazing and farming. Despite the expectations of the *Avalos* Court a decade ago, neither Eastern Adams County nor Eastern Arapahoe County has become suburbanized. Tr. at 578:9-25, Stulp; Tr. at 1994:3-1996:14, Perlmutter.

The supplemental Hall/Aurora Map, received after trial, unfortunately places incumbent Congressmen Ed Perlmutter from the existing 7th Congressional District and Mike Coffman from the existing 6th Congressional District both into the Hall/Aurora Map's Seventh Congressional District, something previous legislatures and courts have sought wisely and strenuously to avoid. Moreover, the Hall/Aurora Map contains portions of Adams, Arapahoe, Jefferson and Douglas Counties and is connected in the middle by a frontage road.

J. THE CLF/CHBA MAPS ARE FLAWED IN A VARIETY OF RESPECTS

The CLF/CHBA Maps sought to follow a nesting approach whereby five state senate districts developed by the Reapportionment Commission are nested within a Congressional District. Nesting reapportionment of Senate districts is problematic because there are two separate processes, where the state Senate or House districts may account for certain criteria or policies which are not interchangeable with federal Congressional district considerations. Tr. at 2667:6-2668:16, Thiebaut. The Colorado Supreme Court had not approved the Colorado Reapportionment Commission's proposed map as of trial. Tr. at 2106:3-7, Mendoza.

Hispanics in Colorado have experienced discrimination. Tr. at 2145:2-2174:13, Romero. Dr. Romero's testimony was both credible and compelling in its detailed examination of that history. Yet the CLF/CHBA Maps take the Hispanic population in the 3rd Congressional District down from 24% Hispanic population to 13% Hispanic population. Tr. at 2099:14-2101:12, Mendoza. Moreover, CLF/CHBA Maps are not geographically compact. Tr, at 2649:21-2650:25, Thiebaut. The Court also finds that there is a dilution of Hispanic influence if the San Luis Valley is separated from the growing Hispanic population on the Western Slope in Lake and Garfield Counties. Tr. at 2649:21-2650:25, Thiebaut.

The Latino community must be recognized in the redistricting process and the impetus behind the CLF/CHBA Maps was that the two major political parties would not properly consider Latino population growth, the impact of the Latino community on Colorado, the needs of the Latino community, or otherwise factor in Latinos when drawing redistricting maps. Tr. at 2052:18-21, Mendoza; 2050:3-8, Mendoza. The top priorities of CLF/CHBA were empowering the Latino community, not diminishing districts of Latino influence, and uniting Weld and Morgan Counties with the San Luis Valley and Pueblo County. It was important that the Latino communities in Weld and Morgan Counties be given a voice. Tr. at 2059:4-10; 2064:10-13, Mendoza. The most important thing for CLF/CHBA was a 4th Congressional District that put Hispanics together, uniting Weld, Morgan, and Pueblo Counties with the San Luis Valley to try to create, or at least not diminish, influence districts. Tr. at 2113:2-18, Mendoza. An "influence district" is around 30 percent or higher, and that applies to Hispanic influence districts in the CLF/CHBA Maps. Tr. at 2078:23-2079:9, Mendoza.

In the original CLF/CHBA Map, the Latino population in the 3rd Congressional District would be 13.278%, a reduction of almost 11%. At that percentage of the district's population, Latinos would virtually be unable to impact an election. Tr. 2100:13-22; 2102:12-14, Mendoza.

Latino communities fill the northern part of Denver and stretch into the northern suburbs, and a district was drawn to capture those neighborhoods, following the Reapportionment Commission's State Senate district lines. Tr. at 2067:20-25, Mendoza. The original CLF/CHBA Map divides the "fertile crescent" of Hispanic population in the Denver metro area into four separate Congressional Districts. Tr. at 2097:9-15, Mendoza.

The Court finds that the Latino community benefits from being included in a competitive district because the candidates take into account the needs of the communities in their districts and because that community is able to elect their candidates of choice. 2083:8-2084:1, Mendoza.

The Court heard credible testimony regarding water shortages in the Rio Grande River impacting the San Luis Valley. The Court finds, based on the evidence at trial, that these shortages are largely the result of the state of Colorado taking a hands-off approach to the operation of irrigation wells in the Rio Grande. There is a process under way currently by which water division 3 is being brought essentially under the same legislative and statutory requirements as other water users in the state already meet. Once that has occurred, the shortage issues in the Rio Grande that impact the San Luis Valley may well resolve themselves, eliminating any shortage issues. The San Luis Valley probably has the potential for more sustainability or recharge by natural process than the Denver Basin area aquifer does. Tr. at 955:1-956:3, Klahn, Tr. at 671:19-23, Stulp.

There is no contiguity in the CLF/CHBA Maps' proposed 4th Congressional District between the Latino communities in the San Luis Valley and Weld and Morgan Counties. Tr. 1289:10-1290:5, Martinez. Further, there is not a community of interest between the Hispanic populations in the San Luis Valley and Pueblo with the eastern plains counties of Lincoln, Elbert, Kit Carson, Cheyenne, and Kiowa. Tr. at 1289:10-1290:5, Martinez. There are also divergent interests in law enforcement between Weld and Pueblo Counties. Tr. at 2649:21-2650:25, Thiebaut. And, there has been a transition away from the agrarian economy in the Hispanic community in Colorado, as well as in the overall community. Tr. at 2345:13-16, Salazar.

K. THIEBAUT MAPS

Intervenor Bill Thiebaut was generally aware of political information and used it to check the effect of the district lines proposed in Thiebaut Maps 1 and 2. Tr. at 2711:22-2712:17. Thiebaut Map #1 splits notable municipalities (Denver and Colorado Springs) and counties (Denver, Adams, Arapahoe, Boulder, Eagle, Elbert and Jefferson) to maximize competitiveness in these elections. Tr. at 2631:5-17, 2662:14-17; HP Ex. 11. Thiebaut Map #2 splits historic communities of interest, such as the Eastern Plains and the West Slope, to maximize competitiveness. It also advocates for the political benefits of compactness, yet draws a 6th and 7th Congressional District that is less compact than those districts proposed in the Moreno Maps, even though urban compactness is as valuable as rural compactness for purposes of redistricting. Tr. at 2645:24-2646:12, 2658:10-23, 2659:13-2662:6; HP Ex. 11.

Critically, the Thiebaut Maps were the only maps submitted to the Court that deviated from the ideal population of 718,457 persons per district by more than one person. Tr. at 2624:19-2625:19, Thiebaut; MP Ex. 6.

L. AMICUS BRIEFS

1. Larimer County

The Larimer County resolution and amicus brief, supporting the Hall Plaintiffs' map, does not reflect the current communities of interest in Larimer County. Larimer County has three commissioners and only two out of the three county commissioners in Larimer County are needed to pass a resolution, such as the resolution passed for the Larimer County Amicus Brief. Tr. at 533:5-534:2, Kirkpatrick.

Several issues of note arose at trial based on the Larimer County brief. Larimer County and Weld County have contrasting interests in open space preservation: Larimer County chose to impose a sales tax to support the public purchase of open space and wildlife corridors, whereas Weld does not have a dedicated revenue stream for open space and wildlife protection. Tr. 537:8-538:13, Kirkpatrick. RETAC does not represent a substantial provision of emergency care in Larimer and Weld County. Tr. at 535:20-23. There are more important health care delivery and emergency response systems in those counties. Tr. at 534:11-536:20, Kirkpatrick. The primary mental health care provider in Larimer County is Poudre Valley Health System, not North Front Range Behavioral Health. Tr. at 535:24-536:12, Kirkpatrick. Additionally, there is no crime lab in Larimer County. There is no current revenue for such lab, and the issue is not even on the November ballot. Tr. at 536:13-537:7, Kirkpatrick.

2. Club 20/Action 22/Progressive 15

Club 20 is an association, akin to a Chamber of Commerce, active in the western counties of Colorado, where interested persons pay money to join and vote on a number of topics. Tr. at 417: 5-19, Gibbs. Moreover, the board of Club 20 voted only on its 2010 policy to keep the western slope whole, not on the exact Club 20 Minimum Disruption Map submitted to the Court. Tr. at 1569:15-1570:5, Hall.

Summit County, Lake County, Eagle County, San Miguel County, and Gunnison County are not members of Club 20. Tr. at 481:5-6; 419:17-420:11, Gibbs. The voting member of Club 20 from Summit County is a small business owner who represents herself when she votes on an issue. She does not represent Summit County when she votes. She does not have the authority to bind Summit County government on a vote. Tr. at 418: 5-18; 420:17-421:14, Gibbs. Summit County has not taken a formal position in support of or in opposition to any map in this litigation, and no one from Club 20 contacted the Summit County Commissioners and asked them to support a particular map in this litigation. Tr. at 384:19-23; 423:1-3, Gibbs.

Action 22 is a consortium of a number of local governments, including counties and cities, private and public businesses, as well as individuals. Action 22 does not require that its positions be approved by the County Commissioners within its geographic area. Tr. at 548:8-15, 549:12-550:1, Stulp.

Douglas County is a dues-paying member of Progressive 15 and was not aware that Progressive 15 had endorsed a map in this litigation. Tr. at 129:17-130:4, Repella.

III. CONCLUSIONS OF LAW

A. Constitutional Criteria for Congressional Redistricting

The congressional districting plan must meet two constitutional criteria: numerical equality of population among Colorado's seven districts in compliance with the one person/one vote precept, and compliance with Section 2 of the federal Voting Rights Act to prevent invidious racial discrimination. C.R.S. § 2-1-201(1)(a); *see Wesberry v. Sanders*, 376 U.S. 1, 14 (1964); 42 U.S.C. § 1973(a). No party to this litigation disputes the need to address the numerical equality requirement or, given the available technology, the ability of this Court to do so.

No party (including intervenors or amici) suggests that Section 2 is directly implicated here; Colorado's existing population distribution simply does not permit the development of a cohesive congressional district in which members of a racial minority group will comprise a majority of the resulting district's voting age population. *Bartlett v. Strickland*, 129 S.Ct. 1231, 1245 (2009); *Thornburg v. Gingles*, 478 U.S. 30, 50 n.17 (1986).

B. Non-Constitutional Criteria for Congressional Redistricting

Colorado law also sets forth a number of discretionary criteria that this Court may consider. In Congressional redistricting litigation, a court:

May, without weight to any factor, utilize factors that include but (are) not limited to:

- (I) The preservation of political subdivisions such as counties, cities, and towns. When county, city or town boundaries are changed, adjustments, if any, in districts shall be prescribed by law.
- (II) The preservation of communities of interest, including ethnic, cultural, economic, trade area, geographic, and demographic factors;
- (III) The compactness of each congressional district; and
- (IV) The minimization of disruption of prior district lines.

C.R.S. § 2-1-102(1)(b).

The General Assembly amended this statute in 2010 to repeal the statutory prohibition, adopted in 2004, against the use of political data such as party registration and so-called “political performance” data. 2010 Sess. Law 1735.⁷ The Moreno and Hall plaintiffs, as well Intervenor, Bill Thiebaut, were aware of such political information and used it to develop or to check the effect of the district lines they proposed to this Court. Use of such information in the redistricting process has long been approved by the courts. *Gaffney v. Cummings*, 412 U.S. 735, 753 (1973); *In re Colorado General Assembly*, 828 P.2d 185, 199 (Colo. 1992). As a result, this Court has already determined that it may consider, consistent with the above cited statute and as a completely discretionary element of redistricting, the extent to which any proposed district may result in a district that is competitive in nature, meaning that no person is, by means of his or her party affiliation alone, prohibited from waging a meaningful campaign to be elected to Congress with a concomitant opportunity to actually be elected to office. The Court should add that it gave no weight to information from prior elections for a variety of reasons, not the least of which is that such information may be candidate driven or dependent on a variety of speculative factors. The Court did, as in *Avalos*, examine party registration numbers, only after the district lines had been determined based on the enumerated statutory factors. In other words, competitiveness, as in *Avalos*, was a more collateral beneficial factor resulting from a constitutional and statute driven assessment.

Of the discretionary factors specifically listed in the statute, the Court finds that no factor is more important than a district’s communities of interest. Above all else, the job of

⁷ “Political performance data” includes reasonably reliable information from prior statewide elections that would indicate the partisan propensity of a particular region. Such data was used by the Colorado Reapportionment Commission in setting the boundaries of certain legislative districts.

representing a district's voters involves understanding their needs and concerns and effectively representing those needs and concerns in Washington, D.C. both in committee rooms and on the floor of the House of Representatives. A community of interest requires that a candidate identify that significant policy matter confronting his or her constituents. It is literally what representative government is all about, now and on the day this Nation began. This Court would fail in its task of redrawing Congressional district lines if it could not point to current issues of concern for each district. Congresspersons are supposed to represent constituents in connection with their regional concerns.

Moreover, according to undisputed testimony at trial, this level of focus allows a congressperson to become the delegation's recognized leader on a substantive issue. That is also a matter of history and function. With clarity about issues of local concern, that congressperson should devote his or her time, energy and that of legislative staff as well as official resources to develop expertise and obtain key committee assignments to advance a region's emerging or historic interests. In essence, a member of congress should become a point person on those issues – a role that is essential if interests are to be effectively represented at the national level.

It is also critically important to preserve political subdivisions and seek compactness of districts and all of this must be accomplished with an effort to minimize disruption of district lines.

C. Redistricting proposals considered by the Court

Of the plans that were submitted to the Court, each had its own emphasis. The Hall “minimum disruption” plan was, admittedly, developed without regard for communities of interest, crafted solely to limit the change in congressional district number for as few people as

possible. The other factors considered in the development of this map were contiguity of congressional districts that needed to add population with congressional districts that needed to lose population, and vice versa, minimizing county splits, and minimizing city splits. According to Hall's mapping consultant, the communities of interests attributed to each district were not evaluated until trial.

The Hall Plaintiffs adopted two other maps just before trial, maps that were technically submitted by amici Jefferson County and Club 20 but were actually developed by the consultant who developed Hall's main "minimum disruption" plan. These alternative maps were drawn at the direction of Hall's legal counsel. Jefferson County's map is based upon Hall's "minimum disruption" goal but departs from it to keep Jefferson County largely whole. The "Club 20" plan also embodies some of Hall's "minimum disruption" objectives but reconfigures the 2nd Congressional District to place Grand County in the 3rd Congressional District and add portions of Weld and Adams Counties to the 2nd Congressional District. Necessary changes in the affected districts were also made in order to achieve the goal of numeric equality among the State's seven districts.

The CLF/CHBA plan redrew the 1st, 4th, and 7th Congressional Districts to promote Hispanic influence, comprising districts of at least 30% in overall Hispanic population. These districts were formatted using State Senate district lines, as approved by the Colorado Reapportionment Commission but not the Colorado Supreme Court as of the time of trial. The 2nd, 5th, and 6th Congressional Districts were largely unchanged except to equalize for population differences. The 3rd Congressional District is comprised of much of the West Slope of Colorado and most of Larimer County, which was added to this district to make up for the loss in

population attributable to placement of the San Luis Valley and Pueblo in the 4th Congressional District.

The Thiebaut plan #1 splits notable municipalities (Denver and Colorado Springs) and counties (Denver, Adams, Arapahoe, Boulder, Eagle, Elbert and Jefferson) to maximize competitiveness in these elections. The Thiebaut plan #2 splits communities of interest, such as the Eastern Plains and the West Slope, to help achieve the same goal. Numeric equality is not achieved.

The Moreno plan largely retains the 1st, 3rd, and 5th Congressional Districts, making some adjustments for numerical equality of population and compactness, and preserving certain communities of interest that remain constant today. It also makes changes to 2nd, 4th, 6th, and 7th Districts to reflect and preserve communities of interest that exist today.

For the reasons set forth below the Court prefers the Moreno plan and adopts the Moreno/South Map. Before explaining that preference, the Court will evaluate the other plans submitted.

1. The Hall Map Advocating Minimum Disruption of Existing District Lines

Hall's consultant admitted that the map was prepared without considering communities of interest. While minimum disruption is one of the factors enumerated in C.R.S. § 2-1-102(1)(b), using this factor alone is fundamentally at odds with the multi-dimensional task confronting this Court. It has never been the task of the Court to create district lines with complete indifference and without reference to the interests to be represented by the district's congressperson. In fact, in formatting districts based on after-the-fact communities of interest,

the Hall Plaintiffs have misconstrued the essential objective before this Court. Drawing lines based solely on the map drawn ten years ago ignores the fact that, as borne out by the evidence, American changes and Colorado changes over the span of a decade. Sometimes these changes are set in motion by economic crisis or natural crisis. They can reflect changing patterns in the workforce, the economy, federal funding problems and the state's shrinking ability to fund important projects. Often these changes over a decade involve fundamentally different commitments to sustaining natural resources or funding education. To draw a map concerned with no more than maintaining the status quo in the interest of minimal disruption is either a disservice to the people of this state or disingenuous. In either event, it is hardly sustainable. This Court weighed all factors, including minimal disruption. However, if the focus was limited entirely to that factor, and a map drawn with only that factor in mind, with all else as afterthought and rationalization, this entire enterprise would require no more than a five minute computer generated exercise. Moreover, it would not allow the process to consider concerns articulated by the Court ten years ago. These can be remedied in light of today's communities of interest and evolving circumstances.

An analysis of the 2nd Congressional District provides some additional insight into the difficulties posed by the minimal disruption approach. In 2001, the boundaries for that district were drawn by the Denver District Court in order to address a then-significant policy issue: the clean-up of the closed Rocky Flats facility.

District Two as shown in the map labeled Plaintiffs' Amendment to Republican Leadership is a compact and contiguous district. Unfortunately, some municipal and county boundaries are necessarily violated. However, it is clear to see that there is a strong community of interest among voters of Congressional District Two.

A very significant issue in District Two is the federal facility at Rocky Flats. This facility is involved in (the) United States’ effort in building nuclear weapons and, unfortunately, a great deal of radioactive waste will remain at Rocky Flats. To deal with this situation the towns of Superior, Boulder, Broomfield, Westminster, Arvada, and Boulder County have joined in what is called the Rocky Flats Coalition of Local Governments. All the members of the Coalition, to some degree, are contained in District Two as set forth by the order. In addition, those communities involved in the Northwest Parkway Project and the Improvements to US 36 (are) contained in [C]ongressional District Two – all these things show there is an extremely strong community of interest that the people of Congressional District Two share.

Avalos v. Davidson, District Court Decision at 6, Case No. 01 CV 2897 (Jan. 25, 2002)

(emphasis added); *see id.* at 10 (the “strong community of interest” around Rocky Flats was the reason it “was necessary for a portion of Jefferson County to be included in Congressional District Two”).

As established by testimony in this trial as uncontroverted evidence, the contamination threat that affected areas surrounding Rocky Flats ten years ago has been effectively addressed. The clean-up has been completed, and the Rocky Flats area is now a combined wildlife preserve and alternative energy testing area. The Coalition’s task, undertaken to protect the interests of this region’s citizens, has been achieved.

This result evidences the need for congressional districts to be set according to current conditions and communities of interest. With the answers to these safety and economic issues largely residing in federal agencies and the halls of Congress, that district was – for the decade past – well drawn. This is an instance where a regional issue of great importance was acted upon and resolved through Congressional action. But ten years later, times have changed.

As an aside, the Denver District Court noted in *Avalos* that the communities concerned with Rocky Flats were also affected by “the Northwest Parkway Project and the Improvements to

US 36.” There was actually very little discussion of either transportation project in the trial before this Court. The non-metro area portion of Highway 36 was discussed as the entryway to Rocky Mountain National Park and Congressman Polis did discuss Highway 36 and testified to a federal grant that was issued for certain improvements to Highway 36. But it is clear that some local concerns which existed ten years ago have either largely been addressed by Congress or replaced by current issues of greater interest in the area.

As a result, there is insufficient record evidence of any community-of-interest rationale for this Court’s retention of existing boundary lines for the 2nd Congressional District, as the Hall Plaintiffs urge it to do. In contrast, there is ample evidence to sustain the Court’s finding that this District now shares more with Larimer County and Ft. Collins than it does with, for example, Westminster (Adams County) and Arvada (Jefferson County) which have been in the 2nd District for the last decade. Thus, the inherent flaws in the Hall approach are demonstrable, as there is an inadequate basis to find that a community of interest exists to sustain the State’s districting in its current configuration, starting with the 2nd Congressional District. This is a somewhat graphic example of a flawed rationale illustrating why the Court cannot find for the Hall Plaintiffs or use the four maps they advocate in this litigation.

In addition, the Hall Maps fail to reflect a modernized 4th Congressional District. For example, issues relating to the proper regulation of oil and gas development through the technology known as hydraulic fracturing (“fracking”) deserve congressional representation and attention. This issue did not confront the Front Range or agricultural Colorado ten years ago. Today, this type of development in counties surrounding Denver is clearly proliferating, will have impacts on residents’ lifestyle and, potentially, their safety, and is a matter of concern to

those who reside in the counties into which it is spreading (Weld, rural Adams and Arapahoe Counties, Elbert County, and Douglas County). District residents deserve focused representation surrounding a development that even Douglas County deems “likely,” representing tens of millions of dollars of investment in mineral leases in these counties. Residents should not have to wait for this dramatic change in the landscape to occur in their backyards before they have a voice in Congress. Not every district needs to realize a Rocky Flats level of danger before it can be deemed a “community of interest.” It is also clear to the Court that some degree of federal regulation of fracking is likely.

Similarly, the original Hall Map treated the 7th Congressional District lines as sacrosanct. The boundaries of that district were no more than a useful, albeit imperfect, compromise ten years ago. That is not sufficient reason to retain them for the next decade. There is no record testimony that those boundaries continue to make sense. In fact, it is clear to the Court that the district itself is a winding, non-compact one, something the Denver District Court emphatically noted ten years ago when it described the district’s boundaries as being “extremely cut-up” and “very irregular” in shape. *Avalos, supra*, Decision at 9. Further, this district contains diverse, unrelated areas that include some of the metro area’s oldest suburbs (in need of help with aging infrastructure), a part of Colorado’s third-largest city, Aurora (with its own identity featuring robust economic development programs), and some of the State’s most productive agricultural lands in the eastern half of Adams County (which are indistinguishable visually from land and communities across the county’s borders in Weld and Washington Counties). This, too, is an instance in which the Hall Map simply does not reflect a region’s current reality. Ten years ago, it appeared that the eastern portions of Adams and Arapahoe Counties were “in the process of

changing to urban areas.” *Id.* at 10. Yet the record before this Court is undisputed; the anticipated prospect of the counties’ urbanization has not come to pass. This district is more of a cross-section of the entire State of Colorado than a unification of jurisdictions that confront similar issues. As such, it cannot be characterized as a “community of shared interest.” *Gaffney, supra*. The statutory goal of minimizing disruption of existing district boundaries is simply not a central and singular objective in the redistricting process.

Finally, by including Baca County in the 3rd Congressional District, the Hall Plaintiffs created a district that spans the entire north-south length and the entire east-west width of the State. It is, as it was referred to at trial, a maximum distance map as well as a minimum disruption map. This district fails any reasonable application of the concept of district compactness, another relevant statutory inquiry. This provides yet another reason why the Court finds it impossible to simply adopt the Hall Minimum Disruption Map.

In sum, the goal of “minimum disruption” is certainly one consideration in setting Congressional district lines, but it diminishes in value when regional concerns have changed over the preceding decade. Thus, its singular primacy in the redistricting process is not compelling.

2. The Hall/Aurora Map

The Hall Plaintiffs proposed a new map at closing, one that makes two changes, in large measure a response to questions raised by the Court. First, it adds Hispanic voters to the 1st Congressional District by including portions of Adams County in that district. It also unites Aurora in the 7th District.

Unfortunately this map does exacerbate the problems of the 7th Congressional District. While it achieves representation in one district for the City of Aurora, it does so only by the

narrowest of land bridges. In fact, it snakes from Jefferson County west into Adams County via a frontage road. It keeps the agricultural parts of Adams County in the 7th District but adds the agricultural parts of Arapahoe County as well. These significant crop-producing areas are more appropriately linked with the agricultural lands of the 4th District. Arapahoe County has about 100,000 acres of land dedicated to crop production, while Adams County has more than 250,000 acres of land used for this purpose. Ultimately, the Hall Plaintiffs seek to link the State's third-largest city with lands that are visually and functionally indistinguishable from adjacent lands in entirely agricultural counties.

Further, the shape of this district, using an Adams County frontage road to connect Jefferson County and Douglas County (those portions of Aurora that are over the Arapahoe County line), is not consistent with the goals of the redistricting process. Compactness of districts does matter, and this district with its truly odd shape cannot qualify as a compact one. It appears to have been drawn more to provide an alternative map that places Aurora in a single district than to provide for cogent Congressional representation. And other than Aurora, there is no discernible community of interest that is reflected in this map.

By adding Commerce City to the 1st Congressional District, the Hall Plaintiffs have augmented the 1st District's Hispanic population by less than three percent. This is not a change that will make "a meaningful impact on minority voting strength." *Carstens, supra*, 543 F.Supp. at 86.

Significantly, the Hall/Aurora Map is the also only map in this litigation that places incumbent congressmen in the same district. Incumbents from the 6th and 7th Districts would have to run against each other. This is an issue previous Courts have been instructed to and have

tried to avoid. The Court does not find this to be a necessarily insurmountable issue, but it is a product of an otherwise problematic district configuration and it is an additional reason to reject this map. In light of the more fundamental community of interest problems found in the main Hall Minimum Disruption Map and echoed in the Hall/Aurora Map, this option is too flawed to be serviceable.

3. The Jefferson County Map

This map, ostensibly advocated by the Jefferson County Commissioners but then adopted by the Hall Plaintiffs, suffers all the failings of the main Hall Map. No evidentiary case was made for this particular change, and the Court rejects this as a reasonable alternative redistricting map.

4. The Club 20 Map

This map was submitted by Club 20, an advocacy group on and for the West Slope. This map, too, advocates minimal change, but then advocates change to include Grand County – but not Lake, Eagle, or Summit Counties – in the West Slope district. This proposal lacks a compelling justification and the Court heard no attempt at such justification at trial.

The fact that this map was “endorsed” by two other regional lobbying organizations, Action 22 (southeast Colorado) and Progressive 15 (northeast Colorado) is of no moment to the Court. It became apparent at trial that these organizations are not official organizations of the county governments. They are lobbying groups to which any person or entity can belong. The decision making processes by which these maps were endorsed was not substantiated, and the Court cannot conclude, as the Hall Plaintiffs advocate, that the Hall Club 20 Map represents any official consensus of any of these county groupings. Their opportunity to persuade the legislature

has passed and their advocacy is not particularly significant to the Court because it fails to demonstrate a genuine basis for a finding of community of interest.

5. The CLF/CHBA Maps

The CLF/CHBA Maps seeks to create “influence districts” by aggregating various cities and counties so that populations of persons of Hispanic origin comprise 30% or more in each of three Congressional Districts the 1st, the 4th, and 7th.

Bartlett describes three types of districts that reflect racial considerations but are outside the mandates of the Voting Rights Act. “Influence districts” exist where a minority group “can influence the outcome of an election even if its preferred candidate cannot be elected.” “Cross-over districts” exist where a racial minority makes up less than a majority of voting age population but still, potentially, is a group “large enough to elect the candidate of its choice with help from voters who cross over to support the minority’s preferred candidate.” And “coalitional districts” exist where “two minority groups form a coalition to elect the candidate of the coalition’s choice.” 129 S.Ct. at 1242-43. There was really no evidence of record suggesting the potential for a coalition group in any of the districts that would be large enough to sustain a majority of the electorate.

There is no legal requirement – under Section 2 of the Voting Rights Act or otherwise – that the Court approve an influence district or any other district addressed by *Bartlett*. 129 S.Ct. at 1247. However, the possibility of consolidating Hispanic Coloradans in three congressional districts is potentially a matter for the Court’s exercise of discretion under C.R.S. § 2-1-102(1)(b).

This redistricting effort is suspect if it revolves around race-based decision-making. The Court understands that the CLF/CHBA seeks district lines drawn primarily for the purpose of creating Hispanic influence districts, but any district explicitly drawn to achieve racial objectives is constitutionally suspect and subject to strict scrutiny. *Hunt v. Cromartie*, 526 U.S. 541, 546 (U.S. 1999). Race need not be the only factor at issue; it can simply be “the predominant factor” in order for strict scrutiny to apply. *Id.* at 547.

The Court finds that race was the predominant consideration in drawing the CLF/CHBA Map. CLF/CHBA’s witnesses addressed, peripherally, health care, foreclosure rates, community services, agriculture, and family migration in the proposed 4th District. However, these comments were clearly not central to or the cause for CLF/CHBA’s district line-drawing. In this regard, the CLF/CHBA has suggested justifications for its maps in a manner similar to *Shaw v. Hunt*, 517 U.S. 899 (1996), where the majority noted:

We do not quarrel with the dissent's claims that, in shaping District 12, the State effectuated its interest in creating one rural and one urban district, and that partisan politicking was actively at work in the districting process. **That the legislature addressed these interests does not in any way refute the fact that race was the legislature's predominant consideration. Race was the criterion that, in the State's view, could not be compromised; respecting communities of interest and protecting Democratic incumbents came into play only after the race-based decision had been made.**

517 U.S. at 907. (Emphasis added.)

The record reflects that the “impetus” behind the maps was, first and foremost, racial in nature. CLF/CHBA wanted the map to account for Latino population growth, Latino needs, and the impact of Latinos on the State generally. The groups' top priority was to empower the Latino community and build, or at least not diminish Latino influence districts. It specifically structured the entirety of the maps around its 4th District for the purpose of uniting Latinos in Weld,

Morgan, and Pueblo Counties, as well as the San Luis Valley. And it is no coincidence (and the CLF/CHBA does not argue that it is) that its three primary districts exceed 30% in Latino population. As a result, if the Court were to draw these lines for these reasons based on this record, it would have “subordinated traditional race-neutral districting principles, including but not limited to compactness, contiguity, and respect for political subdivisions or communities defined by actual shared interests, to racial considerations.” *Cromartie, supra*, 526 U.S. at 547.

As such, the CLF/CHBA plan would have to be narrowly tailored to meet a compelling state interest, i.e., survive a strict scrutiny analysis. However, an effort to alleviate the effects of historical societal discrimination through a redistricting plan, while laudable, does not meet the “compelling state interest” test. *Shaw, supra*, 517 at 909-10. “Racial gerrymandering, even for remedial purposes, may balkanize us into competing racial factions; it threatens 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.” *Shaw v. Reno*, 509 U.S. 630,657 (1993).

Despite this constitutional infirmity, the Court considered the CLF/CHBA plan for consistency with other redistricting goals. First, the Court finds that in creating a 4th Congressional District that disconnects the San Luis Valley and Pueblo from the increasing Hispanic populations in Garfield, Eagle, and Lake Counties, the CLF/CHBA Maps actually abandon an effective political connection among the counties now in the 3rd Congressional District. In this respect, the attempt to create a potential “influence district” in the 4th Congressional District undermines the reality of an existing and effective “cross-over district” in the 3rd District.

The Court heard frequent references to the fact that former Congressman John Salazar is of Hispanic descent and was elected in 2004 and then twice reelected by significant margins in the 3rd Congressional District as currently configured. Obviously, he was not elected by Hispanic voters alone (who do not comprise a majority of the district) but through an amalgamation of Hispanic and non-Hispanic voters.

As to the growing Hispanic population in Garfield, Eagle, and Lake Counties, the CLF/CHBA Maps ironically dilute their votes by isolating them in a district that has seen Hispanic success at the Congressional level but would be hard-pressed to repeat it when Hispanic population drops from 24% to 13%. Vote dilution is not permitted on the off-chance that it might lead to a theoretical greater good. “[I]f there were a showing that a State intentionally drew district lines in order to destroy otherwise effective crossover districts, that would raise serious questions under both the Fourteenth and Fifteenth Amendments.” *Bartlett, supra.*, at 44-45. By so dramatically changing the current 3rd District which has been effectively a cross-over district, the CLF/CHBA Maps raise the potential of serious constitutional violations that this Court should avoid.

Additionally and most importantly, the CLF/CHBA Maps suffer from a series of gaps in the communities of interest to be represented. As described above in connection with the Hall Map, the CLF/CHBA Maps essentially configure the 2nd Congressional District as if this were 2001, around a Rocky Flats community of interest that no longer exists. There is no other cogent set of policy concerns for the entire district as it exists now, and notably, CLF/CHBA advanced none at trial. CLF/CHBA is correct that the State’s congressional districts should reflect changes in the state since 2001 – but it must reflect such changes in all parts of the state, not just the three

districts of greatest concern to CLF/CHBA. There is simply no argument for CLF/CHBA's 2nd Congressional District and the CLF/CHBA offers no independent basis for the 5th or 6th Districts. Similarly, its original 7th Congressional District is patterned on (but does not precisely reflect) the existing district lines and again, splits Aurora. As discussed above, the CLF/CHBA Maps' district lines do fracture cities and counties and reflect an array, not a concentration, of policy interests to be represented in Congress. While the Court understands the desire to amass Hispanic population in these two regions, it cannot do so where, as here, maximizing the sheer number of persons who share a racial classification is given priority over preserving a community's organized and potent political voice. *See* C.R.S. 2-1-102(1)(b)(II) (courts can consider "preservation" of communities of interest).

The CLF/CHBA Maps are also predicated upon a 4th Congressional District that is linked by agricultural interests. However, it is clear that the Hispanic presence in the agricultural industry in Southern Colorado (the San Luis Valley and Pueblo County) is waning, in contrast to the burgeoning Hispanic presence in agriculture found in Weld and Morgan Counties. Generally speaking, linking Pueblo to the rest of the Eastern Plains is problematic where agriculture is a major connecting factor. This industry, so present in certain counties in the 4th District, is a marginal influence in Pueblo County, and yet that county is the critical link between the San Luis Valley and the rest of the Eastern Plains.

The CLF/CHBA 4th Congressional District likewise faces the hurdle of a non-compact Hispanic population, stretching between two relatively concentrated areas – one in Southern Colorado and another in North-central Colorado. Between them, though, are half a dozen or more Eastern Plains counties where Hispanic population and growth percentages are marginal.

There is no evidence in the record that these two physically divided communities actually share an overriding interest, other than the implication that their race makes them inherently interested in certain legislation. Thus, any shared interests of the ends, as opposed to the middle, of this proposed district are not readily apparent to the Court.

Absent such a connection, it is clear that this north-south joinder of Weld County and the San Luis Valley/Pueblo, is a linkage rooted primarily in race. The district as drawn reflects a combination of racial identities which simply cannot serve as a proxy for shared policy priorities. Given that, the Court cannot, as a matter of law, draw the 4th Congressional District in the manner indicated by the CLF/CHBA intervenors.

Finally, the CLF/CHBA Maps split an inordinate number of political jurisdictions. For example, in order to achieve general numeric equality, Larimer County is split among three districts – one on the West Slope (the 3rd) that reaches along the Continental Divide to the southwest corner of the state, one on the Eastern Plains (the 4th) that reaches across the state's open prairies to the southeast corner of the state, and one in the Denver metro area (the 2nd) that includes Boulder and the ski tourism corridor along I-70. No county would have as many diverse, unrelated personalities as Larimer if the Court were to adopt the CLF/CHBA Maps.

6. The Thiebaut Maps

The Thiebaut Maps are designed to maximize competitiveness in six (Map 1) or five (Map 2) districts. While this may be an admirable goal and competitiveness is a discretionary factor, it cannot serve as the sole basis for drawing district lines. In addition, Map 1 splits too many key jurisdictions (Denver, Colorado Springs, and Aurora, for example, as well as Boulder, Adams, Arapahoe, Jefferson, Elbert and Eagle Counties). Map 2 advocates compactness as a

virtue but tolerates a winding 7th Congressional District even though urban compactness is at least as important as rural compactness in the districting process. *Carstens, supra*, 543 F.Supp. at 88. These maps are well-intentioned but flawed attempts at addressing the redistricting issue. They do not achieve numeric equality and cannot be utilized by this Court.

7. The Moreno Maps

The Moreno Maps meet key criteria in the statute in a variety of ways. The Moreno/South Map is a modest but, in the Court's view, very useful and productive modification of the original Moreno Map.

The 1st, 3rd, and 5th Congressional Districts are largely unchanged. The 1st District is expanded to pick up population to bring it to the same figure as the other districts. This approach links the southwest suburbs to unite the Marston Lake area with similar communities in the area. It does this without violating any jurisdictional lines that have not already been breached and unites the Columbine area that reaches across Arapahoe County's line into Jefferson County.

The 3rd Congressional District is made much more compact by placing Las Animas and Otero Counties in the 4th Congressional District and placing Lake County and part of Eagle County in the 3rd District to pick up needed population. In a sprawling district like the 3rd, these changes do not substantially change the nature of interests to be represented. They do, however, make it a somewhat more manageable district that still wholly contains three national parks – Mesa Verde, Black Canyon, and Sand Dunes National Parks. These parks are significant drivers of the tourism industry, as are a number of ski areas and other attractions. Based on testimony at trial, it is clear to the Court that there are notable benefits to a congressional representative being able to be the advocate of these national assets. For example, such a representative is able to

obtain a committee assignment that relates to public lands, seek additional funding for transportation routes that affect the parks, and to focus on the very significant tourism element of the West Slope economy, including businesses that support the many facets of this key component of the State's economy. Just as the congressperson from the 5th Congressional District is able to advocate for five military bases in his or her district, the congressperson from the 3rd Congressional District is able to advocate for these three national treasures, since these parks and other federal holdings comprise a substantial percentage of the land mass in the 3rd District.

The 5th Congressional District is largely unchanged from 2001. It needed to shed 7,445 people in order to reach numeric equality, and given the fact that Lake County is just about this size, Lake County is placed in the 3rd Congressional District. Because we now live in an internet era, the Court is less concerned that one transportation route into Lake County may be problematic during part of the year. A congressional representative's policy positions, press releases, and even e-newsletters are readily available on his or her website in virtually instantaneous fashion.

In any event, the largest mass of population in the 5th Congressional District resides in El Paso County which continues to have a significant military-related presence. The Court remains convinced that unified representation by a single congressperson is an advantage to the five military facilities that exist there, the employees who work in those facilities and the other businesses that are spun off, directly or indirectly and are dependent on those facilities. The 5th District lines are thus drawn to reflect that continuing community of interest.

The changes to the 1st, 3rd, and 5th Congressional Districts thus reflect the Court's attempt to give effect to the statutory criterion of minimizing disruption to current district lines.

Certainly, where communities of interest are largely unchanged, as here, the district boundaries can also stay largely the same.

As noted above, the lines of the current 2nd Congressional District were drawn, in large measure to address the clean-up of the Rocky Flats facility. But that issue is now resolved, and the existing district lines have no basis in a current, alternative community of interest. The Court must necessarily evaluate which issues are of greatest concern in that region.

The testimony at trial established that there now exists a genuine crisis in higher education funding in Colorado. The State's two leading universities – University of Colorado at Boulder and Colorado State University at Ft. Collins – are dramatically affected by this crisis. While it is true that other universities are also affected to a lesser extent, these are Colorado's premier flagship institutions. They compete on a national level with public universities of great stature. Such competition occurs both for federal grant funding and in recruiting professors and administrators of a national caliber. These universities have a demonstrated common set of interests to be advanced through joining the Association of Public and Land-grant Universities, a national organization that lobbies for the interests of its members.

On a practical level, these universities are working together on a regular basis and benefit from a purposeful collaboration when seeking federal research dollars. For example, they participate in an effort known as "The Collaboratory" where, together, they lead the State's effort to attract federal research dollars in the areas of clean energy, the Colorado Space Grant

Coalition, and the Extreme Ultraviolet Laser Laboratory. It is a partnership valued and fostered by both institutions.

It is clear to the Court that various forms of federal financial assistance are critical to the future of student access and institutional viability. Pell Grants provide monetary aid to students who have demonstrated financial need. Like many federal programs in this new and traumatic age of federal budget cutting, the continued full funding for this program that is so important to thousands of CU and CSU students is at risk. Likewise, the federal government has taken a more direct role in providing student loans, and this program too is essential so that middle class students can afford to attend the State's flagship universities. The so-called GI Bill pays for the education of our military's veterans. And each federal department carries on certain research programs, the dollar value of which, significantly, exceeds \$300 million annually for CU and \$200 million annually for CSU.

The need for a congressperson to advocate for strong and continuing student financial assistance was evident at trial. Given declining state revenues, it is projected that our state higher education budget will be eliminated and the system could be effectively privatized (i.e., operated without state taxpayer provided support) before the end of the decade. Relying on indirect advocacy of these programs is not sufficient. The State's two flagship institutions of higher learning should have an advocate for this topic, just as any industry would seek to be well represented on federal issues that play a key role in its financial survival.

The University of Colorado at Boulder and Colorado State University at Ft. Collins also support similar local economies. They employ 7,200 and 6,000 persons respectively. There are more than one hundred (100) businesses that are spun off by research that is conducted in

Boulder and Ft. Collins. There are many more businesses that support the operation of the university and the presence of tens of thousands of students for the vast majority of each year. In essence, these valued universities comprise an “industry;” were they to have these employee bases and exist in adjacent counties in any other field (mining, manufacturing, tourism, high tech), they would certainly be combined as a community of interest. These two major universities represent just such a convergence of interest. There is no evidence in the record that they compete with one another for any notable federal grants, and thus, their combination in a single congressional district will allow that representative to advocate for the interests of the institutions and their student bodies in a way that would not occur for a segmented industry.

The Hall Plaintiffs curiously argued that the two institutions would be better served if the two universities are represented by separate congresspersons. That argument is fundamentally at odds with the concept of a community of interest. The courts do not divide communities of interest to maximize their political clout; they unify them so that these interests rise to concerns of the first order for the elected representatives. If the Hall analysis were extended to its logical conclusion, every community of interest would be divided to increase the Members of Congress affected by an industry or citizen concern and as some sort of dizzying hedge against a partisan disadvantage, when one party is in power and the other is out. For instance, the military bases in the 5th Congressional District would be divided between two districts. The City & County of Denver could be divided among three, five, or even seven districts, giving many congresspeople an interest in its well-being but making the City’s concerns a central priority of none of them. That simply is not the way in which redistricting decisions are made. Nor should it be. Application of that theory would lead to dissipation, not concentration, of similarly situated

interests. It is no more helpful or meaningful than the notion that once in place, congressional lines should never be disrupted, no matter what changes have occurred in various communities of interest.

The linkage of Boulder, Larimer, and Grand Counties also results in a district in which Rocky Mountain National Park is wholly contained. As is the case with the three national parks in the 3rd District, this unification will give a congressperson substantial ability to advocate for the interests of the park and its surrounding businesses, as well as transportation access (Highway 36) upon which the town of Estes Park and Rocky Mountain National Park depend. Highway 36 runs largely throughout this district, from its southernmost point in the City & County of Broomfield to the Park.

This public lands aspect of the 2nd District extends to two very important and related issues: the encroaching threat to the region's forests from the bark beetle infestation and the I-70 corridor that leads to Keystone, Vail, and Breckenridge as well as government-owned lands in Gilpin, Clear Creek, Grand, Summit, Eagle, and Jefferson Counties. While the bark beetle infestation has affected other counties as well, there is absolutely no dispute that the current threat is greatest in the redrawn 2nd District. The cost to address this issue and its aftermath in the Larimer, Boulder, Jefferson, Gilpin and Clear Creek area alone will be \$600 million. A congressperson who has Rocky Mountain National Park, several major ski areas, and the primary access way to Colorado's mountain tourism industry in his or her district would be uniquely positioned to address this ongoing and devastating environmental threat as well.

The major concerns raised about placing Larimer County in the 2nd Congressional District related to its long-standing linkage to Weld County through several east-west running

roads, the Northern Front Range Metropolitan Planning Organization (“NFRMPO”), and the agricultural orientation of Colorado State University.

A single roadway or even a handful of roadways do not create a community of interest as that phrase is used in the redistricting context. Everyone travelling on them may have an interest in seeing them maintained or improved, but a road is not a community.

The NFRMPO is a planning organization whose actual effect on area citizens is unclear to this Court. Its purpose is to provide for coordinated transportation and air quality programs by local governments. Whether it performs these functions well and whether these issues are perceived as central policy concerns of the citizens living in Weld and Larimer Counties is not evident from this record. In any event, there was also an abundance of compelling evidence at trial that Larimer County has much more in common, in terms of air quality and transportation concerns, including mass transit programs, with Boulder County than it has with Weld. Larimer and Weld have grown in different directions in the past ten years, with Larimer emphasizing its white collar economy in the education, health care, and technology sectors (all the while still producing high value agricultural products on its eastern edge) and Weld emphasizing its role as the State’s largest producing agricultural county, focused on the agriculture sector with some diversification into the processing side of the industry, and oil and gas development in a reserve known as the Niobrara Oil Play which is accessed using the hydraulic fracturing technology. Larimer County’s unemployment rate parallels that found in Boulder and is lower than almost anywhere else in the State. Weld’s unemployment, on the other hand, is more reflective of the State economy. Larimer is no longer the rural county whose identity is marked by its position at the far northwest corner of the 4th Congressional District. It has developed a diversified

economy with significant economic growth potential and become more like the metro area than Lincoln and Crowley Counties.

The Court was also advised of critical key differences between Larimer and Weld Counties by amicus curiae, Clean Water Action, which effectively chronicled the distinctions between the two areas without endorsing a specific map. That amicus brief addressed the differences in the two counties' economies, geographies, water supply, water quality and public lands management, all of which were also established by evidence at trial. Brf. Amicus Clean Water Action, pp.3-5. That brief adds to a compelling argument that Boulder and Larimer Counties have a growing and already strong community of interest in terms of cultures and economies centered around water (natural resource protection and recreation as opposed to agricultural use and oil and gas extraction) and thus should be placed in a single congressional district with a focus on shared public lands and growing recreational economies.

Even the identity of CSU as the State's agricultural school has changed substantially. CSU receives research funding from agencies such as the U.S. Department of Energy, the U.S. Department of Health, Education & Welfare, the National Science Foundation, as well as the Department of Agriculture. Its focus has broadened substantially in the last decade or so. Not only does it have an expanded mission, but its agricultural activities are statewide in nature. It sponsors extension offices in every county of the State, and its research assists agricultural producers in every region, including the West Slope and the San Luis Valley. Its historic focus is not its current identity, and if this Court were to draw a congressional district based upon what was and not what is, it would have to ignore this current reality.

It should be noted that, by virtue of modest changes made by the Moreno/South Map in order to offset a portion of Douglas County movement, the 2nd District would add half of Broomfield. The result would be that all of the City and County of Broomfield would be placed in one district. It would also add unincorporated Jefferson County and the Town of Evergreen, located in the foothills of the County. These modifications are consistent with the Court's assessment of an appropriately drawn 2nd District.

In terms of the 4th District, all parties agree that Weld County and the balance of the Eastern Plains have a significant agricultural community of interest. Given that the 2nd Congressional District had to be reconfigured based on the changed circumstances described above, the Court considered the remaining population center that most appropriately matched this grouping of counties.

The parties did agree that energy is a significant issue for the 4th Congressional District. The eastern part of the State is known for its traditional energy development, with Weld County being the locus of the greatest activity. Alternative energy development along the plains is likewise a growth industry as the necessary raw materials (wind, biomass, sun) are plentiful on the Eastern Plains. Alternative energy development does occur across the State, with some of the most important research occurring in the 7th Congressional District at the National Renewable Energy Laboratory ("NREL"), and in private industry located there. More importantly, no issue of federal import was raised at trial in connection with alternative energy development as it is being implemented in the 4th District.

In contrast, the growing use of "fracking" to expand oil and gas development presents significant issues at the federal level. Questions about the appropriate role for the federal

government (as opposed to state agencies) to play as overseer of regulation and disclosure of the composition and disposal of the fluids involved in this process are in our headlines and in the lives of people living in the Niobrara Basin. It is undisputed that these are issues in the current public consciousness where fracking is to be used. The suggestion that it is a well-known, trusted technology has been at odds with many public concerns, particularly along Colorado's Front Range where residents and communities are facing an industry and its potentially significant side effects that they have not heretofore experienced.

A high level of Front Range interest and concern was established at trial. A Douglas County engineering representative involved in oil and gas regulation testified to the profound nature of fracking sites he has visited on behalf of the county, utilizing a demonstrative exhibit that portrayed a massive operation just a short distance from a housing subdivision. His description was compelling. The Douglas County Commissioners were told that such exploration was "likely." Based on leasing activity, they could even isolate which parts of the County would be most affected. The affected parts of the County lie outside Parker, Castle Rock and Franktown. In this regard, well over one hundred million dollars have been invested in tens of thousands of acres of mineral leases in rural Adams and Arapahoe Counties, Elbert County, and Douglas County. Douglas has had more than two hundred recorded mineral leases in less than two years, and its county government is obviously scrambling to deal with the potential onslaught of drilling activity. Its commissioners recently approved a \$170,000 sole source contract to study the transportation impacts on county residents. The commissioners and county staff are investigating zoning changes, emergency management planning, temporary housing for drilling employees, transportation and water quality issues. The fracking facilities themselves

are substantial and include tanks that hold hundreds of gallons of oil and drilling by-products, command centers, and hundred foot tall drilling equipment. The Court could not ignore the vivid description of these operations or the impact of the demonstrative exhibit utilized to describe the operations. The first so-called “spacing” permit has been granted in Douglas County; more than two dozen have just been granted in Elbert County. These permits are the precursor to state and local permitting and drilling. In short, the issue of whether these are safe facilities in close proximity to population centers is an ongoing question that has the attention of Front Range residents, so much so that there was not an empty chair at the Douglas County Fairground (more than 300 people) when this issue was discussed at a county-sponsored public forum in April of this year. It is difficult to fathom why Douglas County would undertake all of this effort to address citizen concerns and prepare itself for this industry if, as it argues solely in the context of redistricting, this development is unlikely. This was neither a credible or persuasive argument. All of these conditions combine to bring the role of the federal government into high relief for Coloradans who now face the very real prospect of this industry literally coming into their back yards. It would be folly to ignore the growth of federal involvement in terms of these concerns.

In addition, drought relief programs are used by farmers and ranchers throughout the Moreno proposed 4th District, which traces the most vulnerable agricultural regions in the State, and include Adams and Douglas Counties among the most at-risk areas. Prior to this litigation, Douglas County joined a regional lobbying organization (Progressive 15) which advocates regional interests for the inhabitants of counties, including Adams, Douglas, and Arapahoe, that comprise the State’s northeastern quadrant. Further, the State’s equine industry has a continuing

economic presence in the state's traditional agricultural counties, and its economic center is found in Douglas County, which ranks first in the State's 2007 Agricultural Census for value of sales of horses. *See* HP Ex. 24a. The Moreno proposed 4th Congressional District reflects this reality.

The inclusion of Las Animas and Otero Counties in the 4th Congressional District is a reasonable change. Testimony at trial indicated cooperative economic efforts between Trinidad, the largest city in Las Animas County, and Castle Rock, the county seat of Douglas County. And Las Animas County is part of a rural, multi-county internet cooperative that includes up to nine counties on the eastern plains to provide a unified connection among educational institution, government offices, and health care providers in this part of the State. Finally, the inclusion of these two counties in the 4th District allows the 3rd District to become more compact and provides a fairly uniform western border for this district (along the westernmost boundaries of Weld, Douglas, and Las Animas Counties).

The Court is aware that the placement of Douglas County is one that the County Commissioners oppose. However, the districting history of Colorado reflects that Douglas has been in an Eastern Plains district (1970s), and it has been split, with part of the County in the district with the West Slope and part of the County in the district with El Paso County (1990s). The fact that it is now Colorado's fastest growing county is actually a compelling reason to place it largely in the 4th District, where Weld County – the State's second fastest growing county – faces very similar types of issues and challenges that stem from such rapid growth rates. The Court does not find that Douglas County's road connections are a basis for a contrary decision, particularly because, as Douglas County itself brought to the Court's attention, there are

numerous other routes between the County and its northern neighbors. Its residents do not solely rely on interstate highways to make these journeys. In any event, the Court again holds that redistricting decisions should be based upon concerns that are more fundamental than a street grid. It is no small task to assign large numbers of people to Congressional districts, but ultimately, under our Constitutional system, “representatives represent people, not places or things or interests.” *Bush v. Vera*, 517 U.S. 952, 1049 (1996). The discussion at trial about obtaining more water ignores the policy emphasis of the Douglas County Commission that “water conservation is the best way to assure sustainable water supplies for all of Douglas County residents.” This approach was not even part of the policy debate thirty years ago when Colorado’s water was at issue before the *Carstens* court, and it, too, must be considered a changed condition for this redistricting process.

The 6th district, in the view of the Court and based on the evidence at trial, should accommodate the inclusion of the highest density portion of Douglas County, located in Highlands Ranch. Therefore, in order to balance population, certain changes had to be made.

Additionally, to the extent that the first, second, fourth, and fifth largest cities in the State – Denver, Colorado Springs, Ft. Collins, and Lakewood – are kept whole in their respective Congressional Districts, there is no conceivable reason for treating the third largest city in the State any differently. The City of Aurora is home to more than 325,000 Coloradans; it generates a good deal of the metro area’s economic development activity; it has major regional facilities, including a military base and a medical research facility; it has its own law enforcement and fire departments; it is a leader in bridging metropolitan water solutions. Given that, and because

there is no advantage to Aurora to have its Congressional representation divided, it must be made whole within a single 6th District. This was a matter of essential importance to the Court.

Aurora's growth is paralleled by that of newer or developing suburbs in the metro area that have largely come into being or flourished because of the E-470 corridor. Reaching from Centennial (which did not even exist in the 2001 redistricting process) through Aurora to the rapidly growing suburbs just to the north of Denver, this district reflects comparable demographics and economic trends. It is a district of new and growing suburbs, all of which have similar issues in terms of seeking infrastructure funding and accommodating their growth patterns. Based on the evidence at trial, it is appropriate to place both the Highlands Ranch development with its nearly 100,000 residents (far more densely populated than any other part of Douglas County and characterized by counsel for Douglas County as more than a third of the County) and the small annexed portion of Aurora in the 6th District as well as land necessary to provide contiguity with the Arapahoe County portion of the 6th District. Highlands Ranch contains a substantial population and is contiguous part of the south metro area. In doing this, the Court provides a methodology that allows the portion of Douglas County that is most directly connected to the employment base in Jefferson, Arapahoe and Douglas Counties, to remain linked with the 6th District. This mapping technique also places the Douglas County areas most likely to see and feel the impact of oil and gas development through fracking, (Parker, Castle Rock and Franktown, according to Erik Nelson the Douglas County staff person working intensely on this issue), in a district with Weld, Elbert and rural portions of Adams and Arapahoe Counties in the 4th District that are also addressing this concern. This makes abundant sense and even counsel for Douglas County conceded as much in closing statement when he noted that the

fracking issue is “a concern” in Douglas County where “[p]eople are scared and “don’t want it in their backyard.” He agreed that the issue was also a great concern in Weld, Adams and Arapahoe Counties.

The Court states clearly that, like so many other issues in this case, this is an instance of necessity and concession, given the evidence at trial. Keeping Douglas County whole would be preferred, but based on the evidence in the record before the Court, it does not appear that the representational interests of Douglas County will suffer adversely by virtue of this approach. Certainly, if major metropolitan counties like Adams, Arapahoe and Jefferson can flourish, as they clearly have, despite the effects of intelligently splitting them for purposes of Congressional redistricting, Douglas will also flourish. The Court notes again that as a counterbalance to splitting Douglas in this fashion, this mapping approach unifies the City of Longmont, which had been split because of its presence within both Boulder and Weld Counties. Most importantly, it also unifies the City of Aurora, which was of the greatest concern to the Court, as well as the cities of Westminster and the City and County of Broomfield in single Congressional districts. The advantages to municipal unification are at least equal to if not of greater weight than keeping Douglas County whole. “Municipal Boundaries...take precedence in densely populated areas.” *Carstens, supra*, 543 F. Supp. At 88(emphasis added).

As noted above, the current configuration of the 7th District is problematic. It is a circuitous route around Denver and DIA that splits Aurora and covers divergent economic interests, including high tech development in Jefferson County, industrial development in central Adams County, and one of the most productive wheat producing regions of the State in eastern Adams County. These lines were the “lesser evil” of ten years ago, as they were the product of

one political party's amendment to another political party's proposed map. But there is no reason that they should not be corrected, now that a decade has passed. This is particularly true, where, as here, there is no evidence in the record that this is the optimal boundary format given existing communities of interest.

The new 7th District links older, "first ring" suburbs to the west and north of the City & County of Denver. The new district unifies the new wildlife preserves on federal facilities that were severely polluted as a result of Cold War arms production, the Rocky Mountain Arsenal in Adams County and Rocky Flats in Jefferson County. It also includes the Federal Center where all the regional offices for federal agencies are located with a major federal research influence that affects the entire state in the form of NREL. The district also follows the path of western spurs of the Fastracks high speed rail system in the western suburbs, and keeps Commerce City to the north of Denver whole. It unifies, rather than segments, the politically connected Hispanic communities in Federal Heights and Northglenn. The 7th District would absorb additional portions of Thornton and make whole the City of Westminster.

In the Court's calculation and based on the record, all of the above changes produce a numerically equalized map with a deviation of only one vote in the 1st, 2nd and 6th Districts. In each of those districts the population would stand at 718,456 while in Districts 3, 4, 5 and 7 the population would stand at 718,457. Moreover, there is substantial evidence in the record to support and in fact to compel these changes.

The Colorado Supreme Court has pointed to competitiveness as a valued by-product of the Congressional redistricting process. Proof that the District Court's redistricting process was nonpartisan was found in the fact that the 7th Congressional District was so competitive. *People*

ex rel. Salazar v. Davidson, 79 P.3d 1221, 1227 (2003). Like other factors noted previously, competitiveness is a discretionary factor that the Court may evaluate, but not the primary driver of a redistricting process.

Much of the debate over competitiveness arises over the reliability of data. However, at trial, it became clear that both the Moreno and Hall plaintiffs were aware of political party registration figures attributable to the proposed Congressional districts presented to the Court. In fact, the Colorado General Assembly was presented with such data while it considered possible redistricting plans and the data was deemed reasonably reliable as long ago as March of this year. It appears clear to this Court that the Moreno approach to redistricting Colorado will also produce the maximum amount of competition of any of the realistically proffered maps in at least three districts – the 3rd, the 6th and the 7th. Each of those districts contains significant Latino populations, giving that group a major role in the decision about who will represent them in Congress. Thus, not only does the Moreno mapping approach reflect Colorado's current communities of interest, it holds the real possibility that voters will be as engaged in the electoral process as possible. This is beneficial.

IV. CONCLUSION

In sum, the Court finds the Moreno Plaintiffs have most accurately reflected and preserved current communities of interest in 2011. Their districts, as contained in the Moreno/South Map, are also as compact as possible, minimize jurisdictional splits wherever possible, encourage unification of major cities like Aurora and preserve existing district lines as appropriate. They have avoided a constitutionally suspect race-based mapping strategy. The Moreno Plaintiffs have satisfied all mandatory and discretionary redistricting criteria that are

discussed at length in this Order. Therefore, the Court adjudges the current congressional plan as unconstitutional and enjoins the Secretary of State from conducting further elections pursuant to that plan and orders the Secretary of State to utilize the redistricting map described above as Moreno/South and attached hereto as the Court's Map, in the congressional election process for the state of Colorado in 2012 and thereafter and that such elections be conducted in conformity with this opinion.

DONE this 10th day of November, 2011.

BY THE COURT

A handwritten signature in black ink, appearing to read "R. S. Hyatt", written in a cursive style.

Robert S. Hyatt
District Court Judge