

IN THE SUPREME COURT OF THE
STATE OF IDAHO

SPENCER E STUCKI, registered voter)
pursuant to the laws and Constitution)
of the State of Idaho)

SUPREME COURT NO.
49295-2021

Petitioner)

vs.)

IDAHO COMMISSION FOR)
REAPPORTIONMENT, and LAWRENCE)
DENNEY, Secretary of State of the State of)
Idaho, in his official capacity,)

Respondents.)

BRIEF CHALLENGING ADOPTED REDISTRICTING PLAN L03

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TABLE OF AUTHORITIES

United States Constitution Article I ,Section 2. Authorization for ten year census. Reapportionment to occur.

United Sates Constitution Amendment XIV. Section 1 ...nor deny to any person within it's jurisdiction the equal protection of the laws.

This amendment has been interpreted to apply to the number or deviation between the lowest and highest districts to be as low as possible.

Constitution of the State of Idaho Article III, Section 5. A senatorial or representative district, when more than one county shall constitute the same, shall be composed of contiguous counties, and a county may be divided in creating districts only to the extent it is reasonably determined by statute that counties must be divided to create senatorial and representative districts which comply with the constitution of the United States. A county may be divided into more than one legislative district when districts are wholly contained within a single county.

Instructions on the formation of legislative districts.

Idaho Code Section 72-1509(1). Within the time and in the manner prescribed by rule of Supreme Court, any registered voter, incorporated city or county in this state may appeal to the supreme court a congressional or legislative redistricting plan adopted by the commission.

Authorization for petitioner as registered voter to appeal or challenge the recommendation of the redistricting commission.

Idaho Code -72-1506. CRITERIA GOVERNING PLANS. Congressional and legislative redistricting plans considered by the commission, and plans adopted by the commission, shall be governed by the following criteria:

- (1) The total state population as reported by the U.S. Census Bureau, and the population of subunits determined therefrom, shall be exclusive permissible data.
- (2) To the maximum extent possible, districts shall preserve traditional neighborhoods and local communities of interest.
- (3) Districts shall be substantially equal in population and should seek to comply with all applicable federal standards and statutes.
- (4) To the maximum extent possible, the plan should avoid drawing districts that are oddly shaped.
- (5) Division of counties shall be avoided whenever possible. In the event that a county must be divided, the number of divisions, per county, should be kept to a minimum.
- (6) To the extent that counties must be divided to create districts, such districts shall be composed of contiguous counties.

(7) District boundaries shall retain the local voting precinct boundary lines to the extent those lines comply with the provisions of section 34-306, Idaho Code. When the commission determines, by an affirmative vote of at least five (5) members recorded in its minutes, that it cannot complete its duties for a legislative district by fully complying with the provisions of this subsection, this subsection shall not apply to the commission or legislative redistricting plan it shall adopt.

(8) Counties shall not be divided to protect a particular political party or a particular incumbent.

(9) When a legislative district contains more than one (1) county or a portion of a county, the county or portions in the district shall be directly connected by roads and highways which are designated as part of the interstate highway system, the United States highway system or the state highway system. When the commission determines, by an affirmative vote of at least five (5) members recorded in its minutes, that it cannot complete its duties for a legislative district by fully complying with the provisions of this subsection, this subsection shall not apply to the commission or legislative redistricting plan it shall adopt.

Idaho Code 34-306. **Precinct boundary requirements.** (1) Precinct boundaries shall follow visible, easily recognizable physical features on the ground including, but not limited to, streets, railroad tracks, roads, streams and lakes.

Bingham County v Idaho Commission on Redistricting (2002) held that provisions applying to one or more counties or legislative districts should be applied equally to other counties or legislative districts.

Twin Falls County v Idaho Commission on Redistricting (2022) County splits should be kept to a minimum.

STATEMENT OF FACTS

April 1, 2020 a census was officially conducted pursuant to the authorization found in Article I, Section 2. of the Constitution of the United States.

Petitioner in the spring of 2021 along with a colleague formed a committee to bring about positive changes in our electoral system. As a result of the timeliness of reapportionment it was the first item of discussion. (<https://committeeforfairelections.org>).

August 14, 2021 census data was belatedly transmitted to the states whereupon, pursuant to Idaho Code Section 72-1501, a Commission for Reapportionment was formed upon order of the Secretary of State, Lawrence Denney.

The Commission was organized September 1, 2021 and conducted it's business, including hearings held around the state, until November 10, 2021.

Petitioner desired to provide a submitted map very early in their deliberations with the goal of demonstrating that districts 7, 8, and 32 in the previous reapportionment could be drawn differently in order to solve the difficulties those districts had. As the commission's plan L01 was not yet available to use as a basis for map drawing, the old plan was used. As a result submitted plan was the second one received and numbered L012. That plan contained 10 county splits or more. Petitioner ended up submitting at least 12 maps, each subsequent submission using the guidance of Idaho Code 72-1506 to assist the commission with their final plan. Petitioner also provided written testimony as well as remote verbal testimony on Tuesday October 12, 2021.

The commission on November 10, 2021 held their final vote to approve plan L03 as the officially adopted plan for legislative districts and subsequently filed their approved findings of Fact and Final

Report with the Secretary of State.

On December 1, 2021 a challenge to the adoption of plan L03 was submitted by petitioner to the Clerk of the Supreme Court State of Idaho.

SUMMARY OF THE ARGUMENT

As stated in Idaho Code 72-1506(5). “Division of counties shall be avoided whenever possible. In the event that a county must be divided, the number of divisions, per county, should be kept to a minimum.” Petitioner found it necessary to split nine (9) counties in order to meet the other criteria from Idaho Code 72-1506. The commission, in their plan L03 failed to follow the court’s opinion from *Bingham County v Idaho Redistricting Commission (2002)* about treating the counties or districts in one part of the state the same as they were treated in other parts of the state. The districts in southeast Idaho were treated different than the districts in north Idaho as related to county splits. Plans submitted, L074, et al. found that following the guidelines in Idaho Code 72-1506 it became necessary to split Bingham County. It wasn’t possible to avoid this split in order to keep the deviation within acceptable range, thus keeping the number of county splits to a minimum of nine (9). The moves made in one part of the state effect other parts of the state.

ARGUMENT

Given the ruling in *Bingham County v Commission for redistricting* (2002) that counties and districts across the state should have the same criteria used in the formation of legislative districts. Two counties in northern Idaho, Bonner and Nez Perce, were split in plan L03 and none in the other parts of the state, other than the six automatic splits that have to occur in the more populous counties. Allowing one additional split in eastern Idaho does not exceed the direction given in Idaho Code 72-1506(5). “Division of counties shall be avoided whenever possible. In the event that a county must be divided, the number of divisions, per county, should be kept to a minimum.”

The first concern of redistricting is “equal protection” as called for in the fourteenth Amendment of the U. S. Constitution. This is provided with low deviation numbers or percentages between the high and low districts statewide. The guidelines in the Idaho State Constitution² state that the “counties be preserved intact where possible” and “to the extent possible”. It should be noted that there are six counties that have to be split because of their population numbers. When they split they are combined with neighboring counties. It is important that any other county splits be minimized and only occur when it is necessary to achieve acceptable deviation numbers. Using a 10% allowable deviation, with 52,546 being the ideal district size, the difference between the low and high districts could be just more than 5,000 population. In the north, Bonner County has to be split because Boundary County, the farthest north panhandle county, with 12,058 people is not a large enough population by itself, but with Bonner’s 47,110 they have more than enough for one district. Kootenai County has to be split because their population calls for 3.2 districts. It is pretty impossible to get out of north Idaho without another county split somewhere. Clearwater County presents a special problem in that it is contiguous with five counties but only has highway connections with three of those counties, Nez Perce, Lewis and Idaho. If Clearwater, Lewis, and Nez Perce counties were joined in one district it would have very close to the target numbers having a low deviation. That leaves Idaho County which goes from the east to the west border, to the south, with limited options. This example demonstrates the decisions that have to be

² Constitution State of Idaho Article III, Section 5.

made in drawing up maps. Petitioner in the initial submitted maps added Clearwater with Latah and Idaho, splitting Idaho County. The Commission in their plan chose to split Nez Perce County and added Clearwater County to a district north of it which was contiguous but no highways connected them. As a result of a previous court ruling, the Commission operated with the guideline that only eight counties could have external splits. In north Idaho the quota for external splits statewide, has been used up.

Ada and Canyon Counties come next. Ada has the population for 9.4 districts and Canyon 4.4 requiring some neighboring counties to join them. Twin Falls County population equals 1.7 districts as does Bannock County. Bonneville County has enough people for 2.4 districts. By not splitting any other counties in south or east Idaho, the Commission came up with the configuration in L03 for southeast Idaho. The commission had the goal to have no more than 8 county splits statewide. District 28 in Bannock County gives an example. Having one full district, number 29, in the City of Pocatello, what do they do with the additional Bannock County residents? To balance the number of voters in the district to the east 4,553 were moved from Bannock County and added to district 35, splitting the Marsh Valley area³. The balance of Bannock County's population and Franklin and Power Counties were included in district 28 to get the right amount of people for a district.

The provisions for counties and communities of interest or voting precincts both have "if possible" or "to the extent possible" attached to them whereas the oddly shaped and the highway provisions are stated without qualification.⁴ Preserving voting precinct boundaries and communities of interest should be preserved (if possible).⁵ Most of the testimony given by county clerks and some others were very much against splitting precinct boundaries. The Ada County Clerk had said that it didn't matter because

3 Appendix VIII – Political Subdivision Splits Report

4 Idaho Code - 72-1506

5 Idaho Code – 72-1506(2,7)

they could just draw up new boundaries as necessary. Drawing precinct boundaries is the responsibility of the county commission in each county and it occurs, generally upon recommendation of their county clerks. But when it involves rural precincts in smaller communities, it is different than in cities. In Bannock County four rural precincts were split, Arimo, McCammon, Pebble Creek, and Inkom, which, if allowed to stand, would require two separate ballots, in those split precincts, as they would be in two different legislative districts. It doesn't seem practical and is questionable for rural precincts. At their final meeting the commission passed a motion stating that they couldn't do their work without splitting precinct boundaries. In the second final meeting on November 10, one commissioner voted against passage, I think, hoping that the commissioner that voted nay with him on the Congressional map would join him, and the motion would have failed. With the escape clause written into Idaho Code 72-1506(7,9) the commission was able to overlook splitting precincts and requiring connecting highways. They were given maps that didn't split those precincts and the Bannock County clerk gave specific testimony against splitting those three precincts.⁶ The two more populous areas of the Fort Hall Reservation are split by this plan⁷. Also, the Marsh Valley area is a community of interest and school district that is split by L03.

Consider District 35.⁸ The very fact that this district is numbered last and #35 could be termed as, whatever is left over. It is a strangely concocted district including portions of two very populated counties that are not contiguous and two very distant counties along the eastern border of Idaho, Bear Lake and Teton counties. The only real connection between the two may be that they are both somewhat tourist destinations. Or that original settlers of each came from Switzerland.⁹ Considering that this plan splits a school district and a community of interest in Bannock County, this doesn't

6 Appendix III – Minutes – Pocatello October 6, 2021

7 Appendix III – Minutes – Fort Hall October 6, 2021

8 Final Report 52 District 35.

9 Final Report 52A also plan finding 44A and 45A.

appear to be a maximum effort. The districts western boundaries include I-15 in Bannock County which splits three rural precincts.¹⁰ Including the entire populations, 1,362 residents, of the split off portions of the three precincts in Bannock County would not significantly change the population of the district.¹¹ These precincts were split for the whole purpose of contiguity for district 28.

There is a provision about odd shaped districts.¹² The districts in southeast Idaho look as though they could have been drawn to protect current Senators. District # 28 is an odd shaped district. As you look at it on the map, you see Franklin County which adjoins southern Bannock County and includes Downey. Then it goes through low populated areas to the west, the split off portions of three precincts, and misses the cities of Arimo, McCammon, and Inkom. The district then skips most of Pocatello but includes Chubbuck and includes all of Power County to the west. The Marsh Valley area and school district is split in two. Districts 8 and 35 are odd shaped districts also. A newspaper columnist¹³ stated that Bear Lake, Franklin, and Oneida counties, long linked together in one district, will now be linked to Driggs, American Falls, and Burley in separate districts. The commission in their final report stated that public opinion at the hearings overwhelmingly favored keeping those three counties together, but that they were unable to find a way to do it.¹⁴ Several options were presented, however, one that wasn't discussed was including Power County in district 27 with Cassia and Minidoka which gives a deviation of +3.0% whereas with Oneida it was -3.26%. Publicly submitted plans were dismissed as they split nine counties. The people and counties were not treated equally statewide. Hearings began in the Treasure Valley, moved to north Idaho, then to south central Idaho, and finished up in eastern Idaho.

10 Final Report 52 B.

11 Final Report 52 D.

12 Idaho Code -72-1506(4).

13 Randy Stapilus, November 21, 2021 Idaho State Journal p. B6

14 Final report 44 District 27. A.

Then there is the provision about requiring a state or federal highway to connect the areas of a district. This provision also had a motion stating that the commission couldn't complete their work if they followed this requirement, using the escape clause written into I C 72-1506(9). Plans were submitted that had connecting roads¹⁵. How do you drive from Mackay to Mountain Home or Glens Ferry or even McCall. What about from Burley to Malad or Paris to Driggs? In the final report, state highway system roads were not acknowledged thus increasing the number of districts reported.¹⁶ Also counted were highway connections that required driving through a doughnut hole within a county. I C 72-1506(9) reads when one or more counties are contained in a district they shall be connected by highway. Driving from Burley to Malad there are two routes. One route you would travel south on I-84 to Tremontan, Utah and then north on I-15. The other route would be to travel east on I-86 through American Falls through Pocatello to I-15 and south.

The Commission, being constrained by the no more than eight external county splits ruling, had no choice but to draw the southeast Idaho districts as in L03. All submitted plans with a nine county split were dismissed in spite of overwhelming testimony in favor of them.¹⁷ Given an interpretation of “avoiding county splits if at all possible” which would allow a county split for east Idaho, more districts could be drawn with highway connections, fewer rural precincts or communities of interest would be split, and districts would be more compact and logical in their configuration, not be oddly shaped. Teton County could be connected to Fremont County rather than Bear Lake and the three counties on the south could remain in the same district. State highway 32 does connect Teton and Fremont counties, whereas in L03, Fremont is not connected to Clark County by highway.

15 Plan L074 et al.

16 Appendix X Highway Connection Report, Plan L03

17 Final Report 44 District 27, A.

Consider plan L074. This plan was prepared using L01 as the basis and mostly involved changes to eastern Idaho including splitting Bingham County to achieve adequate numbers. Had either plans L02 or L03 been known to have been available to use as the base in Maptitude, a more accurate statewide plan could have been submitted. This plan would dovetail nicely into L03 for the Treasure Valley southwest Idaho area. Adams County becomes the problem. It is one of the smallest counties by population and fits much better with those counties to the south and east of it than it does to northern Idaho. Much testimony from northern Idaho favored dividing at the Idaho County line.¹⁸ Northern Idaho as in either L074 or L03 could be adopted, though it would require some adjustments to adjust deviation numbers, there may be fewer county splits. Clearwater County is a problem of where to put it because of roads. This map provides the most compact arrangement for the large counties with small populations for the state as a whole. Compactness is not considered in the guidelines given the Idaho Commission, it is replaced by the highway provision. This plan makes sense considering highways and communities of influence. Plan L078 is another plan to consider. The Court may ask for the reviews of written testimony submitted to the commission and the explanations given for districts 28 and 35 in their final report findings pages 77 - 95.¹⁹ As the complete written testimony submitted by petitioner could not be found in the final report, it is included as an addendum to this filing.²⁰

It could be asked, what is the best case scenario for several counties around the state. Adams County is contiguous and connected by highway to Valley and Washington counties. For Bear Lake County it would be to be combined with the two counties they are contiguous to and adding Oneida County and as much of southern Bannock County as was necessary. For Clearwater, as outlined earlier, with contiguous and highway connected counties in whatever manner to achieve an appropriate number.

Custer fits best along with Lemhi, Butte, and Clark with Jefferson County. Elmore's best case scenario

18 Appendix III – Minutes Lewiston September 24, 2021

19 Final Report 44 District 27 to 52 District 35

20 Plan L056 was modified to become L074

is being connected to Owyhee County. The best connection for Oneida County is with Bannock County as they have common communities of interest and highways that connect them. For Teton the best situation is to be joined with Fremont County to the north and to a portion of Bonneville to the south, both contiguous and connected by state highways. Bonneville County is a center of influence for most all of the far flung district proposed as district 35 in L074, that is Butte, Clark, Custer, Jefferson, Lemhi, and the western part of Bonneville counties.

Plan L074 placement of counties in legislative districts is explained. Using map L03 as the base, the only changes needed for north Idaho would be to move Adams County to district 8 and make the population adjustments necessary in districts 6 and 7 to compensate for the 4,374 residents of Adams County moved to district 8. The next move would be to take Custer County with similar population numbers and add it with Lemhi County because they fit well together, are connected by roads, and have common interests, in a district 35. No other moves would need to be made until Oneida County which would be moved to join Bannock County in district 28, it is a very logical move with connecting highway and common interests. Power County would be moved from district 28 to 27. Interstate 86 connects these counties. Bear Lake and Caribou counties along with the precinct area from Bannock County that L03 had placed in district 35. 20,385 Bannock County residents would make up the balance of district 28. That would leave about 14,000 Bannock residents to add to Bingham County in district 30. Butte County would be added to district 35. Butte County is contiguous with Custer, Lemhi, Clark, and Jefferson counties and are connected by highways. Fremont County would be attached to Teton County in district 33 with which it is contiguous and has a connecting state highway. Bingham County would need to move about 7500 people to balance the deviations for the districts. Far eastern Bingham County and most of Shelley would be joined with district 33. Bonneville County, Idaho Falls,

is the center of influence for this area and would have two complete internal districts. The western area of Bonneville would be added to district 35 to balance the deviations in map L074.

CONCLUSION

It is obvious that, given the difficulty of the task, the commission did a remarkable job. By holding tightly to the requirement to make districts as nearly equal in size with low deviations they were meeting the provisions of the United States and Idaho constitutions. The second requirement was to hold county splits to a minimum and maximum of eight and they followed this rule tightly also. Two provisions, avoiding splitting precincts and highways connecting counties in a district, have an escape clause that, in essence, enabled the commission to ignore those two provisions in drawing their map.

The court is asked to consider and take these actions:

1. Declare adopted plan L03 inadequate in meeting the needs of counties in southeast and elsewhere in Idaho as counties were not considered equally from one part of the state to another. Ask the commission to make appropriate revisions. Northern Idaho district seven to end at the southern boundary of Idaho County, with appropriate adjustments to meet population deviation goals in districts 1 through 7. No adjustments would need to be made for the Treasure Valley area from L03, only as necessary to dovetail. A plan similar to submitted plan L074 be adopted for the rest of the state, south central and eastern Idaho.

2. Declare that given the populations and geographical boundaries of counties in the state of Idaho that 9 county external splits does not exceed the rigid requirements of the Constitution of the State of Idaho when used to give equal and reasonable representation to the people. That the, “counties be preserved intact where possible” and divisions kept to a minimum, provision of I C 72-1506(5), give some flexibility in the number of county splits. When by so doing it enables the road provision, avoids splitting precincts and communities of interest unnecessarily, and without oddly shaped districts for a better overall plan.

/s/ Spencer E Stucki

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VERIFICATION

I, Spencer E Stucki, petitioner and a qualified elector in Bannock County in the State of Idaho, declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct to the best of my knowledge and belief.

/s/ Spencer E Stucki
Spencer E Stucki, Petitioner

ADDENDUM

Written Testimony submitted by Spencer Stucki prior to the remote hearing of 10/12/2021.

Plan L056

Let me speak about plan L056. My goal as I started this mapping process was primarily focused on Districts 7, 8, and 32 from the last redistricting and eliminating the problems caused in those districts. As the base for this plan I used plan L01 from the commission and modified it to fit my goal for southeast Idaho. At first glance it appeared across southern Idaho to have districts with a very north south orientation and Bear Lake was still combined with Teton and a large chunk of Bonneville County along with a part of Bannock County. Commissioner Pence being from Teton, I'm surprised she would want to be attached to Bear Lake. There is no direct connection between the two. It can't even be said that the road through Bone ties Bonneville to Caribou County. That road goes to Bingham County. I did like the way that no counties were split except for Nez Perce and some difficult combinations were split up. I liked the way L01 had drawn the lines in the Magic Valley area. I first switched Oneida and Power Counties because it was a better fit for Oneida County. Oneida County is not tied to Cassia County by I-84. I-84 barely passes through a remote underpopulated corner of Oneida County. I joined Butte and Custer Counties with Jefferson County along with the western area of Bonneville County in District 32. I think Commissioner Davis indicated that part of Bonneville County was in his district when he was first elected. It was needed for numbers in that district. I joined Fremont County with Teton County and eastern Bonneville County for District 28. Bonneville County still has two complete districts within the county. Bear Lake and Caribou County were added to Franklin and the southeast area of Bannock County in district 27. The northern area of Bannock County including the reservation community of interest area was added to Bingham County. The boundary of district 29 was moved north across I-86. My final moves added some eastern areas of Bingham County, which is tied to Bonneville including by the road through Bone, to district 28. This split was necessary to balance out diversions in population in neighboring districts. As a result of moving Custer County out of district 8, that district was short of people so I added Adams County from District 7. This plan makes for a much better plan than the current in place plan, remembering districts 7, 8, and 32, and maybe 23 and 25. Plan L056. Consider the Sandpoint situation and that it would be around a four hour drive to get from Teton to Bear Lake County. In the hearing in Burley the sub-committee for eastern Idaho asked for help with ideas for how to handle Bannock and Eastern Idaho, L056 is my suggestion.

North Idaho L055 & L060

After listening to the Lewiston hearing I went back to my previous proposal and made a couple of changes that eliminated an external split of a county. It hardly seems right that a county that has enough population to have more than a district, and is forced to join with another county, should count as an external split against the allowed eight. All the larger population counties have at least one complete district entirely within the county and then the balance is added to other counties. Even Ada and Canyon Counties, in L01 had external splits joining with Owyhee County in District 23. My move of Adams County to District 8 kept the district that includes Idaho County from including any county below the Salmon River. To me this plan only splits three counties Bonner, because it is forced, Nez Perce (or Idaho)

because something had to give somewhere, and Bingham because it became necessary and was actually somewhat logical. My plan L026 was referred to at this hearing as a better way by dividing Idaho County rather than Nez Perce. If there was a way to modify and keep district 7, Idaho County, all north of the Salmon and district 8 south I could go for that. I have submitted two plans, one revising My L026 plan only as a regional plan concerning splitting Idaho County. The second plan revising L026 made changes for a statewide plan meeting deviation standards, they are L055 and L060. Almost unanimous agreement with L01 in Twin Falls.

L056

On a historical note, I would like to point out that when redistricting was first done, Bear Lake, Caribou, and Franklin Counties were one complete district. There was a sort of gentleman's agreement that each county would have one of the legislators. As redistricting occurred through the years, first Oneida County was added. Before that they had been linked with southern Bannock County in a district. Another time Downey and Lava were added to those southern counties. Then instead of going further into Bannock County, in order to keep Bannock County more intact, eastern Bonneville County was added. My father represented that district from Bear Lake County for nine years in the Idaho House and now his position, in recent years, was held by a representative from Ammon. There is no direct connection from Bonneville County to Caribou and Bear Lake Counties. Plan L044 and L047 and now L056 keep those southeast counties together and connect them in a compact and contiguous and logical manner with southern and eastern Bannock County. Taking I-15 south from Pocatello, with available exits, major roads lead to all the southeast counties in that district. It would seem that often Bear Lake County is an after thought, lets just put it with these other areas that haven't been assigned. It should be handled like, what is a good combination for the county to be added to.

Speaking of the Congressional District plans, I was curious as to why they kept referring to C024 as the plan they preferred in the Twin Falls hearing. I don't see that much difference from C01. My preference would be C018 but either C01 or C024 or similar plan would be acceptable.