

**PETITIONER STUCKI'S REPLY BRIEF TO RESPONDENTS' RESPONSE BRIEF**

IN THE SUPREME COURT OF THE STATE OF IDAHO

BRANDEN JOHN DURST, a qualified	)	Supreme Court Dkt. No(s). 49261-2021,
elector of the State of Idaho,	)	49267-2021, 49295-2021, and 49353
	)	2021.
Petitioner	)	
	)	
And	)	
	)	
CANYON COUNTY, a duly formed and	)	
existing county pursuant to the laws and	)	
Constitution of the State of Idaho,	)	
	)	
Intervenor-Petitioner,	)	
	)	
v.	)	
	)	
IDAHO COMMISSION FOR	)	
REAPPORTIONMENT, and LAWERENCE	)	
DENNEY, Secretary of State of the State of	)	
Idaho, in his official capacity,	)	
	)	
Respondents.	)	

PETITIONER STUCKI'S REPLY BRIEF TO RESPONDENTS' RESPONSE BRIEF

\_\_\_\_\_ )  
 )  
 )  
ADA COUNTY, a duly formed and existing )  
county pursuant to the laws and Constitution )  
of the State of Idaho, )  
 )  
v. )  
 )  
IDAHO COMMISSION FOR )  
REAPPORTIONMENT, and LAWERENCE )  
DENNEY, Secretary of State of the State of )  
Idaho, in his official capacity, )  
 )  
Respondents. )  
 )  
\_\_\_\_\_ )  
 )  
SPENCER STUCKI, registered voter pursuant )  
to the laws and Constitution of the State of )  
Idaho, )  
 )  
Petitioner, )

PETITIONER STUCKI'S REPLY BRIEF TO RESPONDENTS' RESPONSE BRIEF

)  
v. )  
)  
IDAHO COMMISSION FOR )  
REAPPORTIONMENT, and LAWERENCE )  
DENNEY, Secretary of State of the State of )  
Idaho, in his official capacity, )  
)  
Respondents. )  
)  
\_\_\_\_\_)  
)  
CHIEF J ALLAN, a registered voter of the )  
of Idaho and Chairman of the Coeur d' )  
Alene Tribe and DEVON BOYER, a )  
registered voter of the State of Idaho and )  
Chairman of the Shoshone-Bannock Tribes, )  
)  
Petitioner, )  
)  
v. )  
)  
IDAHO COMMISSION FOR )

**PETITIONER STUCKI'S REPLY BRIEF TO RESPONDENTS' RESPONSE BRIEF**

REAPPORTIONMENT, and LAWERENCE )  
DENNEY, Secretary of State of the State of )  
Idaho, in his official capacity, )  
 )  
Respondents )

---

**PETITIONER STUCKI'S REPLY BRIEF TO RESPONDENTS' RESPONSE BRIEF**

**PETITIONER STUCKI'S REPLY BRIEF TO RESPONDENTS' RESPONSE BRIEF**

**TABLE OF CONTENTS**

**Table of Authorities ..... Page 5**

**INTRODUCTION ..... Page 7**

**ARGUMENT ..... Page 8**

**CONCLUSION ..... Page 12**

# PETITIONER STUCKI'S REPLY BRIEF TO RESPONDENTS' RESPONSE BRIEF

## 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.

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.

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.

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 it's minutes, that it cannot complete it's 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.

## PETITIONER STUCKI'S REPLY BRIEF TO RESPONDENTS' RESPONSE BRIEF

(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.

Brown v. Thompson (1983)

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.

Lareos (2004)

Twin Falls County v Idaho Commission on Redistricting (2012) County splits should be kept to a minimum.

Harris (2016)

## PETITIONER STUCKI'S REPLY BRIEF TO RESPONDENTS' RESPONSE BRIEF

### INTRODUCTION

Responder's attempts to minimize the efforts and involvement in the redistricting process are not born out in their emphasis on the number of plans submitted by petitioner to the commission. Petitioner was involved from the very beginning as indicated by the timing of the first plan submitted even before the commission came out with their plan L01. Plan L011 was submitted on 3 September 2021 using as it's basis the plan currently in place. Petitioner is a senior citizen, several years retired, who although previously very involved in the political processes had never gotten involved directly in the redistricting process. Thus, this was a learning opportunity, L011 was a statewide redistricting effort which was followed by later plans which also involved statewide effort.

Petitioner requests an interpretation of the Idaho Constitution, Article III, Section 5, which reads "to the extent that it is reasonably determined by statute that counties must be divided . . . districts which comply with Constitution of the United States." Petitioner was accused of elevating state statutes above both the state and national constitutions. As the above quote indicates, the state statutes are the means of how the two Constitution's provisions are carried out. They have to work together. When does a compelling state interest as spelled out in Idaho Code, 72-1506 have bearing?

Petitioner listened to many of the hearings held around the state, spending many hours doing so. Each time someone at the hearings mentioned things that could make improvements to

## PETITIONER STUCKI'S REPLY BRIEF TO RESPONDENTS' RESPONSE BRIEF

plans, a new plan was drawn up and submitted. As technology was not available to allow listening live, several days would pass before the recordings could be downloaded. Why can't we have best case scenarios in drawing district lines while meeting constitutional mandates when it could constitute a compelling state interest?

### ARGUMENT

Voters in one county are just as important as those of any other county, Fourteenth Amendment. A voter in Bear Lake is just as important as a voter in Ada County and should have equal opportunity for representation. Much of the state is considered rural as is large portions of the two most populous counties in the state. When petitioner Stucki started this redistricting exercise, it was because three districts in the state had very unwieldy boundaries. Sandpoint in northern Idaho, Bonner County was connected to Riggins in Idaho County. Salmon in Lemhi County was in the same district as Emmett in Gem County. Malad in Oneida County was connected to Driggs in Teton County in a legislative district. Each of these districts involved large areas of low population.

When the Commission came out with Plan L01 they had, to a degree, solved problems for all three of these districts. Sandpoint was now connected to Boundary and most of Bonner County. Idaho County was not connected to Clearwater County. Salmon was not connected to Gem County and Malad and Teton county were no longer connected. Petitioner was accused of being focused on only two counties which were still connected in a district.

## PETITIONER STUCKI'S REPLY BRIEF TO RESPONDENTS' RESPONSE BRIEF

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 area.<sup>1</sup> 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.<sup>2</sup> Preserving voting precinct boundaries and communities of interest should be preserved (if possible). Southern Bannock County, Marsh Valley, is a community of interest which was split along with School District 21, Marsh Valley's school district was also split.<sup>3</sup>

There is a provision about oddly shaped districts.<sup>4</sup> The districts in southeast Idaho look as though they could have been drawn to protect current Senators. District # 28 is an oddly

---

<sup>1</sup> Final Report Appendix VIII, Political Subdivision splits Report.

<sup>2</sup> Idaho Code – 72-1506.

<sup>3</sup> Idaho Code – 72-15069(2, 7)

<sup>4</sup> Idaho Code – 72-1506(4)

## PETITIONER STUCKI'S REPLY BRIEF TO RESPONDENTS' RESPONSE BRIEF

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 going from Glenn's Ferry in Elmore County to Mackey and Challis in Custer County and District 35, discussed later, are oddly shaped districts also. A newspaper columnist<sup>1</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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.

---

<sup>5</sup> Randy Stapilus, Idaho State Journal, Nov 21, 2021, pg. B-6

<sup>6</sup> Final Report 44 District 27. A.

## PETITIONER STUCKI'S REPLY BRIEF TO RESPONDENTS' RESPONSE BRIEF

Consider District 35.<sup>7</sup> 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. Considering that this plan splits a school district and a community of interest in Bannock County, this doesn't appear to be a maximum effort. The Commission stated in their final report that counties contiguous to Teton County had been given prior positions. Given the number of oddly shaped counties in Idaho, it was not even mentioned in the final report about oddly shaped districts even though I C 72-1506(4) calls for it. Even though the commission vowed that 72-1506(8) had been followed for district 28, there was no explanation given as to the reason for moving the district boundary east to I-15. There, also, was no explanation given for splitting the four Bannock County precincts in the final report.

Respondents state that Stucki never gave testimony about the last plan submitted, L074, but instead testified about Plan L056. The last opportunity for oral testimony was October 12, 2021 and L074 was submitted on the 13<sup>th</sup>. The only change of L074 from L056 was the boundaries of District 29 changing to have 29 all within the city limits of Pocatello.

As stated in petitioner's brief, "The first concern of redistricting is equal protection as called for in the Fourteenth Amendment of the U. S. Constitution." That is the reason we redistrict

---

<sup>7</sup> Final Report 52. District 35.

## PETITIONER STUCKI'S REPLY BRIEF TO RESPONDENTS' RESPONSE BRIEF

and the goal of each redistricting plan submitted. Respondents state that districts are required to be as equal in population as practicable while allowing for some deviation to achieve a legitimate state consideration. *Twin Falls (2012)*. Finally, the Plan must comply with Idaho's statutes to the extent that it is able given the constitutional requirements.

Respondents in their response indicate that Stucki overlooks the U.S. Constitution. That statement couldn't be farther than the actual facts are. How can any one overlook the Constitution, that is why redistricting is done? They stated that petitioner did not discuss deviations. As Plan L074 no longer displayed deviation numbers as the brief was prepared so he was unable to use those figures, but the proposed districts did have acceptable deviation numbers.

Respondent stated that Petitioner Durst in his Plan L084 disagreed with the placement of Custer County as in L074. L084 duplicated the current plan that Stucki found very unsatisfactory having Salmon in Lemhi County being represented by legislators from Emmitt in Gem County. It is Petitioner Stucki's opinion that petitioners Durst and Ada and Canyon Counties are being very short sited in their petitions in that they would potentially lose representation if they should win their petitions. Large areas of both Ada and Canyon counties are very rural and in L03 those areas have been combined with other neighboring counties that are also rural in nature. It is a very real possibility that Ada County could have representatives from Ada County be elected in 10 or 11 districts instead of just nine as they are

## PETITIONER STUCKI'S REPLY BRIEF TO RESPONDENTS' RESPONSE BRIEF

proposing. Canyon County could also benefit from having not just three districts but four or five districts with representatives from Canyon County in those districts.

Stucki proposed in L074 for a district that combined the Fort Hall areas of Bingham and Bannock Counties into one district as requested in the hearing in Fort Hall by Chairman Boyer, he is requesting fewer counties be split. In the hearing in Couer d' Alene, Chief Alan stated that he liked having representation in more districts.<sup>8</sup> Stucki was happy that the two tribes joined in as Petitioners giving the Court another perspective to consider. The goal should be to have districts that represent the representation needs of the voters in that district whether they be from Fort Hall or Ada County or wherever they live in the state. This petitioner doesn't feel that L03 fully accomplishes that goal. Respondent should take a trip around the state as the Commissioners did to gain an outside of Ada County perspective.

### CONCLUSION

Petitioner requests an interpretation of the Idaho Constitution, Article III, Section 5, which reads "to the extent that it is reasonably determined by statute that counties must be divided . . . districts which comply with the Constitution of the United States." Idaho Code 72-1506 is the statute indicated by which the rules governing redistricting are spelled out. Two of the

---

<sup>8</sup> Final Report Hearing recordings.

**PETITIONER STUCKI'S REPLY BRIEF TO RESPONDENTS' RESPONSE BRIEF**

provisions, 7 and 9, of the statute can be ignored if the commission votes that they cannot comply with them and do the task of redistricting. Two other provisions, 4 and 8, were either not addressed in their final report or a statement was given that no consideration to benefit incumbent legislators was employed in Plan L03. When do the other provisions of I C 72-1506, other than reducing the number of counties split, become of compelling state interest? The compelling state interest being giving voters in all parts of the state equal representation or protection under the law.

Dated this 30<sup>th</sup> day of December, 2021

Petitioner, a register voter

By /s/ Spencer E Stucki

Spencer E Stucki

PETITIONER STUCKI'S REPLY BRIEF TO RESPONDENTS' RESPONSE BRIEF

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 30, 2021, I filed the foregoing electronically through the iCourt E-File system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notification of Service.

Lorna K. Jorgensen  
Leon Samuels  
ADA COUNTY PROSECUTOR'S OFFICE  
DEPUTY PROSECUTING ATTORNEY  
CIVIL DIVISION  
[ljorgensen@adaweb.net](mailto:ljorgensen@adaweb.net)  
[lsamuels@adacounty.id.gov](mailto:lsamuels@adacounty.id.gov)  
[civilpfiles@idaweb.net](mailto:civilpfiles@idaweb.net)

*Counsel for Petitioner Ada County*

Bryan D. Smith  
Bryan N. Zollinger  
SMITH DRISCOLL & ASSOCIATES PLLC  
[bds@eidaholaw.com](mailto:bds@eidaholaw.com)  
[bnz@eidaholaw.com](mailto:bnz@eidaholaw.com)  
[filing@eidaholaw.com](mailto:filing@eidaholaw.com)

*Counsel for Petitioner Brandon Durst*

Deborah A. Ferguson  
Craig H. Durham  
FERGUSON DURHAM, PLLC  
[daf@fergusondurham.com](mailto:daf@fergusondurham.com)  
[chd@fergusondurham.com](mailto:chd@fergusondurham.com)

*Counsel for Petitioners Chief Alan  
and Devon Boyer*

Bryan F. Taylor  
CANYON COUNTY PROSECUTING ATTOR-  
Alexis Klempel  
DEPUTY PROSECUTING ATTORNEY  
[civilfile@canyoncounty.id.gov](mailto:civilfile@canyoncounty.id.gov)

*Attorneys for Intervenor-Petitioner*

IDAHO ATTORNEY GENERAL  
OFFICE OF THE ATTORNEY GENERAL  
Meghan A. Larrondo  
DEPUTY ATTORNEY GENERAL  
[megan.larrondo@ag.idaho.gov](mailto:megan.larrondo@ag.idaho.gov)  
[robert.berry@ag.idaho.gov](mailto:robert.berry@ag.idaho.gov)  
[cory.carone@ag.idaho.gov](mailto:cory.carone@ag.idaho.gov)

*Counsel for Respondents*

/s/ Spencer E. Stucki  
Spencer E. Stucki  
Petitioner