

IN THE SUPREME COURT OF THE STATE OF IDAHO

BRANDEN JOHN DURST, qualified elector of)
the State of Idaho,)

Petitioner,)

v.)

IDAHO COMMISSION FOR)
REAPPORTIONMENT, and LAWERENCE)

DENNEY, Secretary of State of the State of)
Idaho, in his official capacity,)

Respondents.)

_____)

ADA COUNTY, a duly formed and existing)
county pursuant to the laws and Constitution of the)
State of Idaho,)

Petitioner,)

v.)

IDAHO COMMISSION FOR)
REAPPORTIONMENT, and LAWERENCE)

DENNEY, Secretary of State of the State of)
Idaho, in his official capacity,)

Respondents.)

_____)

**Supreme Court Docket
No. 49261-2021**

**(Consolidated Cases 49261-2021
and 49267-2021)**

PETITIONER ADA COUNTY'S BRIEF

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I. STATEMENT OF THE CASE

A. Nature of the Case

Article III § 5 of the Idaho Constitution mandates that “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.” The Idaho Commission on Reapportionment (“Commission”) violated this Idaho constitutional provision by dividing eight counties, more counties than necessary, to comply with the Equal Protection Clause of the United States Constitution.

B. Procedural History

Pursuant to Idaho Code § 72-1501, after the United States Census Bureau released its 2020 results on August 12, 2021, the Idaho Secretary of State issued an order for organization of the Commission. The Commission called itself to order on September 1, 2021, finished its business on November 10, 2021, and submitted its Final Report to the Idaho Secretary of State.

Petitioner Branden Durst submitted a Petition for Review of the Commission’s Plan on November 10, 2021. Petitioner Ada County submitted its Petition Challenging Constitutionality of Reapportionment Plan L03 and Request for Writ of Prohibition and Remand on November 17, 2021. Mr. Durst’s and Ada County’s Petitions were consolidated on November 23, 2021 as Supreme Court Docket 49261-2021.

C. Statement of Facts

The United States Census Bureau released its Census 2020 results on August 12, 2021. According to the release, Idaho’s total state population is 1,839,106. Thirty-five (35) legislative districts are allowed, and the state population of 1,839,106 must be allocated among the thirty-five

(35) districts. An exact allocation of 1,839,106 people in thirty-five (35) districts would result in 52,546 people in each district.

The Final Report of the Commission states that its Plan L03 meets equal protection requirements and divides eight (8) counties. The eight counties are: Ada, Bannock, Bonner, Bonneville, Canyon, Kootenai, Nez Perce, and Twin Falls. There were other plans presented to the Commission that met the equal protection standard and only divided seven counties. *See* Plans L075, L076 and L079 filed with the Ada County’s Petition; Final Report, at 13.

In addition, although L03 states that it divides eight (8) counties, this number only reflects any one division of a county. This counting method does not consider the actual number of times a county is divided and parsed out to other counties to form a legislative district. Using the Commission’s statement regarding external divisions, “creat[ing] districts that combine part of the county with another county,”¹ L03 actually has 15 divisions while L075 has 15 divisions, and both L076 and L079 have 14 divisions. *See* charts attached as Ex. A.

Ada County’s population is 494,967, an increase of 26.1% since the last census. Final Report, App. V. This should equate to nine internal legislative districts of 52,546 and a remainder of 22,053 people. Ada County currently has nine legislative districts. Idaho Secretary of State, District Maps, <https://sos.idaho.gov/elect/elected/maps.html>, Ex. B. The Commission, in its Final Report, claims that “Ada County *should* be externally split.”² Report at 20 (emphasis added). The Commission decreased

¹ Final Report, at 8 (citing Idaho Const. art III, § 5, and *Bingham County*, 137 Idaho at 874).

² The first sentence in the Final Report on page 20 appears to be in error. It states that “Seven counties—Ada, Bannock, Bonneville, Canyon, Kootenai, Madison and Twin Falls—have a population exceeding the ideal district size. Six of these counties must be divided to satisfy equal protection standards.” The report actually states that only four counties must be divided to satisfy equal protection standards. The Final Report states that Ada and Kootenai “should” be externally split (p. 22), Madison is not split (367 above ____ deviation +0.7%) (p. 22) while Bannock, Bonneville, Canyon and Twin Falls “must” be split (pp. 20-22).

Ada County's current *nine* internal districts to only *eight* internal districts in Ada County and externally joined 75,859 citizens of Ada County (over 15% of its population) with three other counties: Gem, Canyon and Owyhee to form districts. Ada County was actually split three times externally.

The Commission claims that "Bannock County *must* be externally split." Final Report, at 21 (emphasis added). Bannock County was split twice and was parsed out to other counties. According to Commission Map L03, a portion of Bannock County is aligned with Power and Franklin Counties and another portion is aligned with Bonneville, Teton, Caribou and Bear Lake Counties.

Bonner County was split twice, with a portion connected to Boundary County and another portion connected to Kootenai, Benewah, Shoshone and Clearwater Counties.

Bonneville County was split once, and a portion was parsed out to a portion of Teton, Caribou, Bannock and Bear Lake Counties. The Report claims that "Bonneville County *must* be externally split." Report at 21 (emphasis added).

Canyon County's population is 231,105, an increase of 22.3% from the last census. Final Report, App. V. This should equate to four ideal internal legislative districts of 52,546 and a remainder of 20,921 people. The Final Report claims that "Canyon County *must* be externally split." Report at 21 (emphasis added). The Commission created only three internal legislative districts and externally parsed out 70,678 citizens from Canyon County (30% of its population) to northern Ada County, to Washington and Payette Counties, and to southern Ada County and Owyhee County. In addition to the creation of three internal districts, the Commission divided Canyon County externally three times.

The Commission's Final Report claims that "Kootenai County *should* be externally split." Report at 22 (emphasis added). Kootenai County was split externally once, and a portion was parsed out to Bonner, Benewah, Shoshone and Clearwater to form a district.

Nez Perce County was divided with a portion connected to Idaho and Adams Counties and the other portion joined with Lewis and Latah Counties. Final Report, at 23-25.

The Report claims that “Twin Falls County *must* be externally split.” Final Report, at 22 (emphasis added). After creation of one internal legislative district, the remainder of Twin Falls County was parsed out to Gooding and Camas Counties.

II. LEGISLATIVE APPORTIONMENT REVIEW

This Court has original jurisdiction. Idaho Constitution Art. III § 2(5). When evaluating a challenge to a reapportionment plan, the Court considers a hierarchy of applicable law. *Twin Falls County v. Idaho Com’n on Redistricting*, 152 Idaho 346, 347, 271 P.3d 1202, 1203 (2012). First, the Court evaluates whether the plan meet the requirements of the Equal Protection Clause of the U.S. Constitution. *Id.* at 348-49, 1204. Second, the Court evaluates whether the plan limits the number of counties that can be divided. *Id.* at 349, 1205 And third, the Court considers whether the plan complies with Idaho Code § 72-1506. *Id.* at 349-350, 1206-1206.

III. ARGUMENT

A. Plans L03, L075, L076 and L079 all meet the equal protection standard.

In 1964 when *Reynolds v Sims*, 377 U.S. 533 (1964) was decided, the United States Supreme Court was focused on the lack of reapportionment of Alabama since 1901. At issue was the “strangle hold” that rural Alabama had over urban areas.³ The U.S. Supreme Court found “Population is, of necessity, the starting point for consideration and the controlling criterion for

³ “Bullock County, with a population of only 13,462, and Henry County with a population of only 15,286, each were allocated two seats in the Alabama House, whereas Mobile County, with a population of 314,301, was given only three seats, and Jefferson County with 634,846 people had only seven representatives.” *Reynolds v. Sims*, 377 U.S. 533, 545-46 (1964).

judgment in legislative apportionment controversies”. *Id.* at 567. However, the requirement is to “make an honest and good faith effort to construct districts . . . as nearly of equal population as is practicable. We realize that it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents, or citizens, or voters. Mathematical exactness or precision is hardly a workable constitutional requirement.” *Id.* at 577.

It was almost twenty years later in 1983, that the U.S. Supreme Court held in a state legislative apportionment case that “a maximum population deviation under 10%” is a “minor deviation” that is “insufficient to make out a prima facie case of invidious discrimination.” *Brown v. Thomson*, 462, U.S. 835, 842 (1983). Interestingly, in the same decision, the U.S. Supreme Court allowed more than 10% deviations in Wyoming finding it was “justified on the basis of Wyoming’s longstanding and legitimate policy of preserving county boundaries.” *Id.* at 847. On the same day, June 22, 1983, the U.S. Supreme Court also issued a congressional reapportionment decision, *Karcher v. Daggett*, 462 U.S. 725 (1983) (White, J., Powell, J. and Rehnquist, J. dissenting). Although the Court struck down New Jersey’s congressional reapportionment plan, the dissenting Justices argued against striking the congressional plan, utilizing the Court’s established case law for state legislative apportionment. *Id.* at 780. The dissenting Justices noted that the Court had “taken a more sensible approach” to state legislative apportionment. *Id.* (citing *Gaffney v. Cummings*, 412 U.S. 735 (1973); *White v. Register*, 412 U.S. 755 (1973)). The dissent summarized prior case law that recognized that small deviations were not a *prima facie* constitutional violation and that the Court had “upheld plans with reasonable variances that were necessary to account for political subdivisions.” *Id.* at 780-81 (citing *Mahan v. Howell*, 410 U.S. 315 (1973)). Here there are plans other than L03 that meet the 10% deviation requirement AND preserve county boundaries which is a sensible approach, accounting for the political boundaries of counties.

This Court has also recognized that precision is not attainable and that deviations are allowed. *Bonneville County v. Ysursa*, 142 Idaho 464, 467, 129 P.3d 1213, 1216 (2005) (citing to *Reynolds*, 377 U.S. at 577; *Brown*, 462, U.S. at 842-43 (1983); (*Twin Falls*, 152 Idaho at 349, 271 P.3d at 1205 “The commission is not required to draw legislative districts that all have precisely the same population numbers”).

The Commission set its goal as “no district should deviate more than five percent, either over or under, from the ideal district size” and ultimately settled on a “5.84% maximum deviation.” Final Report, at 2, 11. Curiously, the Commission did not focus on meeting the Equal Protection Clause **and** dividing as few counties as possible. Because other proposed plans split fewer counties and still met equal protection standards, the Commission had to address the other plans that divided fewer counties.⁴ The Commission stated that “seven-county split plans are discriminatory under the Equal Protection Clause, as they consistently and significantly underpopulate [sic] districts in North Idaho at the expense of voters in other parts of the state, such that the weight of a person’s vote depends on the location in the state where that person lives.” Final Report, at 29. The *Bonneville County* Court, in its decision, cited to a regional deviation case which found “that in the absence of evidence of an unconstitutional or irrational state purpose for deviating from mathematical equality, a plan that arguably favored one region of the state but remained within the ten percent margin was not unconstitutional. 142 Idaho at 469, 129 P.3d at 1218.

⁴ If a redistricting plan with a deviation of less than 10% is challenged, the burden is on the challenger to “demonstrate that the deviation results from some unconstitutional or irrational state purpose.” *Bonneville County v. Ysursa*, 142 Idaho 464, 468, 129 P.3d 1213, 1217 (2005); *see also Rodriguez v. Pataki*, 308 F.Supp.2d 346, 365 (S.D.N.Y. 2004). Since the Commission is challenging Plans L075, L076 and L079 in its Final Report, the Commission has the burden to demonstrate an unconstitutional or irrational purpose of those plans. On page 15 of the Final Report, it states: “the Commission does not mean to imply that anyone who submitted a seven-county-split plan did so for improper purposes.”

The Commission’s criticisms of the other plans with seven-county splits stated its concern with effects of the seven-county split plans on North Idaho. The Commission’s Plan, L03, fails to address the concerns of how Ada and Canyon Counties were split in the Commission’s plan. “Obviously, to the extent that a county contains more people than allowed in a legislative district, the county must be split. However, this does not mean that a county may be divided and aligned with other counties to achieve ideal district size if that ideal district size may be achieved by internal division of the county” *Bingham County*, 137 Idaho at 874, 55 P.3d at 867 (emphasis added). An ideal district number for Ada County is nine districts, which Ada County currently has, but Ada County was divided into eight districts and the rest of Ada County (15%) was aligned with other county districts. The same occurred with Canyon County. An ideal district number for Canyon County is four districts, but Canyon County was divided into three districts and the rest of the County (30%) was aligned with other county districts. The Commission is treating the largest urban areas of the Treasure Valley differently than all other urban areas in the state. There are 105,092 citizens in Canyon and Ada Counties facing unequal treatment because they are being deprived of a legislative district in each of their own counties.⁵

⁵ “The fact than an individual lives here or there is not a legitimate reason for overweighting or diluting the efficacy of his vote.” *Reynolds*, 377 U.S. at 567.

Number of Ideal Internal Legislative Districts Based on Population & Commission Internal Divisions				
County Population	No. of Ideal Internal Legislative Districts Based on Population	Population Remaining After Ideal Population Distribution of 52,913 into Legislative Internal Districts	Commission No. of Legislative Districts	Commission Population Remaining After Forming Internal Legislative Districts
Ada 494,967÷52,546	9 (note – currently Ada has 9 districts)	22,053	8	75,859
Bannock 87,018÷52,546	1	34,472	1	33,754
Bonneville 123,064÷52,546	2	17,972	2	20,497
Canyon 231,105÷52,546	4	20,921	3	70,678
Kootenai 171,362÷52,546	3	13,724	3	15,082
Twin Falls 90,046÷52,546	1	37,500	1	36,446
Madison 52,913÷52,546	1	367	1	0

The mathematical deviations in Plans L03, L075, L076 and L079 are insufficient to make a prima facie case that they are unconstitutional, and the Commission admits on page 15 of the Final Report, that “the Commission does not mean to imply that anyone who submitted a seven-county-split plan did so for improper purposes.”

The Commission argues that counties can only be split to comply with equal protection. Final Report, at 16. The Commission then argues that there is no equal protection justification for splitting Bonner County more than once (*Id.*), but the Commission somehow finds equal protection is served by externally dividing Ada County three times and removing an entire legislative district

that Ada County currently has. The Commission also finds that equal protection is served by externally dividing Canyon County three times and depriving Canyon County of a legislative district. Although L03 meets the 10% deviation criteria, L03 does not serve equal protection because of its treatment of Ada and Canyon Counties. There are 105,092 citizens that should have had their own legislative districts (Ada and Canyon)⁶ but instead have been parsed out of their own counties and have been joined with other counties.

B1. The Commission violated Article III § 5 of the Idaho Constitution by stating that they are dividing counties eight times to meet the equal protection clause when there were other plans that divided counties seven times and met the equal protection clause.

The Legislative History of the Constitutional Amendment to Article III § 5 indicates that not splitting counties was of great importance to the Idaho Legislature and Idaho Voters. In 1986, the Idaho Legislature adopted HJR4 which proposed to amend the Idaho Constitution. H.R.J. Res. 4, 48th Legislature (1986), Ex. C. A voter pamphlet was prepared, with the Legislative Council providing statements of meaning and purpose and the effect of adoption. *See* Secretary of State Voter's Pamphlet, 1986, Ex. D. The Legislative Council's meaning and purpose states in relevant part: "to permit the division of a county into more than one legislative district if all such districts are wholly contained within the county." *Id.* The Legislative Council's statement regarding effect of the adoption of the constitutional amendment stated in relevant part: "allow for the division of a county into more than one legislative district when districts are wholly contained within a single county." *Id.* The statements appeared to imply that counties could only be split internally into legislative districts. It was not until the Statements for the Proposed Amendment that the voter

⁶ Ada County and Canyon County should each have an additional district. This is the number of people who should be in those districts.

learned that adoption “would provide a constitutional method to divide counties, but only when absolutely necessary to form legislative districts of equal population.” *Id.*

The question that was to be presented on the ballot was shall the Idaho Constitution be amended “to provide that counties shall be divided only to the extent determined necessary by statute to comply with the Constitution of the United States. *See* H.R.J. Res. 4, Sec. 4, 48th Legislature (1986), Ex. C. The citizens voted in favor of the amendment to the Idaho Constitution, apparently favoring the limitation on the division of counties.

After the amendment was approved, Article III § 5 of the Idaho Constitution states:

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. No floterial district shall be created. Multi-member districts may be created in any district composed of more than one county only to the extent that two representatives may be elected from a district from which one senator is elected. The provisions of this section shall apply to any apportionment adopted following the 1990 decennial census.

Emphasis added. During the last reapportionment process in 2012, this Court held that if counties are divided for some reason other than to comply with the U.S. Constitution, it violates Idaho’s Constitution. *Twin Falls*, 152 Idaho at 347, 271 P.3d at 1203. In violation of this constitutional provision, the Commission unnecessarily divided eight counties in its Final Report and Map L03. There are other plans that meet the criteria of equal voter protection and divide only seven counties. *See* Plans 75, 76, and 79 filed with the Commission; *Twin Falls*, 152 Idaho at 350, 271 P.3d at 1206 (“If, for example, only seven counties needed to be divided in order to comply, then a plan that divides eight counties would violate these constitutional and statutory provisions”).

B2. The Commission violated Article III § 5 of the Idaho Constitution by failing to count the actual number of times the Commission divided counties, and because the actual number of divisions exceeds the number of divisions in Plans L076 and L079.

The Court did not address the external division issue in its 2012 *Twin Falls* Redistricting Decision. The Court did previously address the issue in its *Bingham County* redistricting decision.

Obviously to the extent that a county contains more people than allowed in a legislative district, the county must be split. *However, this does not mean that a county may be divided and aligned with other counties to achieve ideal district size if that ideal district size may be achieved by internal division of the county. Whether desirable or not, that is the meaning of Article III, § 5. A county may not be divided and parsed out to areas outside the county to achieve ideal district size, if that goal is attainable without extending the district outside the county.*

Bingham County, 137 Idaho at 874, 55 P.3d at 867 (emphasis added). As the following chart illustrates, the Commission not only divided more counties than necessary (8 vs 7) but the actual external divisions have more divisions than necessary.

County/Population	No. of Stated Commission County External Division	Commission External Divisions (“create districts that combine part of the county with another county” Final Report at 8) See Exhibit A for detailed charts of each L03, L075, L076, and L079
Ada 494,967	1	3 (75,859 parsed out)
Bannock 87,018	1	2 (33,754 parsed out)
Bonneville 123,064	1	1 (20,497 parsed out)
Canyon 231,105	1	3 (70,678 parsed out)
Kootenai 171,362	1	1 (15,082 parsed out)
Twin Falls 90,046	1	1 (36,446 parsed out)
Madison 52,913	0	0
All other counties have populations below the ideal mathematical size of 52,546 (1,839,106 divided by 35 legislative districts). Only the following two counties, with populations below 52,546 have been split under L03.		
Bonner	1	2 (47,110 parsed out)

47,110		
Nez Perce 42,090	1	2 (42,090 parsed out)
TOTAL	8	15

The Commission took 75,859 Ada County residents (15%), a number well above the mathematical ideal of 52,546, and enough to form another legislative district, and instead of creating another district, parsed those 75,859 citizens out in three other districts. This parsing out of Ada County to achieve an ideal district size is constitutionally prohibited. The Commission did the same thing with Canyon County, parsing out 70,678 citizens (30%), a number well above the mathematical ideal of 52,546, and enough to form another legislative district, and instead parsed the citizens out in three districts. The Commission’s action is constitutionally prohibited.

The Commission asserts in its Final Report that it split Ada County three times in the interest of equal protection, and further argued that they “found it necessary . . . to combine ‘rural, sparsely populated’ areas with more urban ones.” Final Report, at 56. This finding does not comport with equal protection as making urban and rural voters coequals by joining them in the same legislative district is not an equal protection issue, nor is it a county division issue. Such a finding actually appears to be for the improper purpose of diluting the strength of the rapidly growing urban areas. The Commission finally determines that they are maintaining communities of interest by the county divisions. The Commission does not appear familiar with southwest Idaho as they argue that Emmett and Eagle are part of the Treasure Valley, and that Emmett and Eagle share economic interests. *See* Final Report, at 54. Emmett is not considered part of the Treasure Valley. *See* Treasure Valley Partnership, <https://treasurevalleypartners.org/about>, Ex. E. Eagle profiles itself as an area with “miles of trails, acres of parks, and endless outdoor recreational opportunities” and “a workforce with high educational attainment, top-rated schools, abundant shopping and entertainment, well-designed

residential and commercial neighborhoods, and restaurants that run from five-star elegance to drop in casual.” The City of Eagle, Community Profile, www.cityofeagle.org/1778/Community-Profile, Ex. F. No one would argue that this profile describes Emmett. See City of Emmett, <https://www.cityofemmett.org/our-community>, Ex. G.

The Commission’s Final Report stated: “When a county must be divided to create legislative districts, internal divisions, which create districts wholly contained within a county, are favored over external divisions, which create districts that combine part of the county with another county.” [citing Idaho Const. art III, § 5, and *Bingham County*, 137 Idaho at 874]. A county may not ‘be divided and aligned with other counties to achieve ideal district size if that ideal district size may be achieved by internal division of the county.’” [citing *Bingham County*, 137 Idaho at 874]. Final Report, at 8. The Commission did not favor internal divisions in Canyon and Ada Counties, and instead decided to favor excessive divisions of two urban counties and the alignment of the urban counties with neighboring rural counties. This excessive division of these counties is not constitutionally permissible, and goes against the Commission’s statements in its Final Report.

C. L03 does not comply with Idaho Code § 72-1506.

Assuming arguendo that the Court finds L03 meets the Idaho Constitution’s requirement not to unnecessarily divide counties, the Plan fails to meet the statutory requirements found in Idaho Code § 72-1506.

Idaho Code § 72-1506 provides in part:

Congressional and legislative redistricting plans considered by the commission, and plans adopted by the commission, shall be governed by the following criteria:

...

(2) To the maximum extent possible, districts shall preserve traditional neighborhoods and local communities of interest.

...

(5) Division of counties shall be avoided whenever possible. In the event that a county must be divided, the number of such divisions, per county, should be kept to a minimum.

(9) When a legislative district contains more than one (1) county or a portion of a county, the counties or portion of a county in the district shall be directly connected by roads and highways. . .

As to § 72-1506(5), as previously stated in Parts A, B1 and B2 of this Brief, the Commission excessively and unnecessarily divided Ada and Canyon Counties.

Section 72-1506 discusses preserving traditional neighborhoods and local communities of interest. The Commission determined that they are maintaining local communities and argue that Emmett and Eagle are part of the Treasure Valley, and that Eagle and Emmett share economic interests. *See* Final Report, at 54. Emmett is not considered part of the Treasure Valley. *See* Treasure Valley Partnership, <https://treasurevalleypartners.org/about>, Ex. E. Eagle does not share economic interests with the agricultural community of Emmett. *See* www.cityofeagle.org/1778/Community-Profile, Ex. F; City of Emmett, <https://www.cityofemmett.org/our-community>, Ex. G. Also, it is questionable whether State Highway 16 directly connects Eagle with Emmett.

There is no statutory or constitutional basis for the Commission deciding that in southwestern Idaho, rapidly growing urban counties should be deprived of their legislative districts and be chopped up and aligned with rural, sparsely populated areas. Final Report, at 56. There is also no statutory or constitutional basis to chop up urban counties to make “urban and rural voters coequals” in a legislative district.

The Commission also criticized Ada County’s proposed plan because that plan divided Garden City into two legislative districts. *See* Final Report, at 55. Ada County, more familiar with its own communities, had a specific reason for its proposed division along the Boise River, as is highlighted in a recent *Idaho Press* article; Ryan Suppe, *Affordability, partisanship divides Garden*

City in recent local election, Idaho Press, November 20, 2021, <https://www.idahopres.com/news/local/affordability-partisanship-divides-garden-city-in-recent-local-election/article>, Ex. H. “North of the river are upscale subdivisions, winding suburban streets and a private golf course. In southeast Garden City, lower-income and more ethnically diverse residents live alongside industrial and commercial businesses, art studios and breweries.” The Commission further points out that Ada County’s proposed plan combined portions of Ada County and portions of Canyon County with Owyhee County. This was done specifically to keep the Melba School District intact because in the extremely rural area, the school district is the community of interest.

On the other side of the state, the Commission failed to maintain a traditional neighborhood and community of interest in Bannock County. According to the L03 map, it appears that the neighbors in the same cul-de-sac above the Highland Golf Course are separated into Legislative Districts 28 and 29 depending on which side of the street the person lives on.

Although the Commission Plan L03 should fail for failing to divide as few counties as possible, if the Court considers Idaho Code § 72-1506, L03 also fails under the statutory requirements. L03 does not preserve traditional neighborhoods and local communities of interest, it excessively divides counties and it is questionable whether certain areas are directly connected by highways.

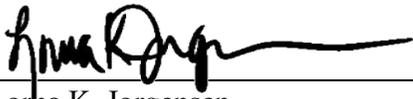
IV. CONCLUSION

There are several plans that meet the equal protection requirements of the U.S. Constitution and the Idaho Constitution. Unfortunately, Plan L03 fails to meet the requirements of the Idaho Constitution because it divides counties too many times. Because of this constitutional violation, Petitioner Ada County requests that the Court issue a Writ of Prohibition that restrains the Secretary of State from transmitting a copy of the Commission’s Final Report and Map L03 to the president of

the Idaho Senate and the speaker of the Idaho House. Further, Petitioner asks the Court to remand the matter back to the Commission for review and revision so that the Final Report and adopted map comply with both the Equal Protection Clause of the United States Constitution and the Idaho Constitution.

DATED this 2nd day of December, 2021.

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Ada County Prosecuting Attorney

By: 

Lorna K. Jorgensen
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of December, 2021, I served a true and correct copy of the foregoing BRIEF IN SUPPORT OF ADA COUNTY’S PETITION CHALLENGING THE CONSTITUTIONALITY OF REAPPORTIONMENT PLAN L03 AND REQUEST FOR WRIT OF PROHIBITION AND REMAND to the following persons by the following method:

Megan Lorrondo	<input type="checkbox"/>	Hand Delivery
Robert Berry	<input type="checkbox"/>	U.S. Mail
Cory Carone	<input type="checkbox"/>	Certified Mail
Office of the Attorney General	<input type="checkbox"/>	Facsimile
PO Box 83720	<input checked="" type="checkbox"/>	E-serve
Boise, Idaho 83720		Megan.larrondo@ag.idaho.gov
		Robert.berry@ag.idaho.gov
		Cory.Carone@ag.idaho.gov
Bryan D. Smith	<input type="checkbox"/>	Hand Delivery
Bryan N. Zollinger	<input type="checkbox"/>	U.S. Mail
SMITH, DRISCOLL & ASSOCIATES	<input type="checkbox"/>	Certified Mail
	<input type="checkbox"/>	Facsimile
	<input checked="" type="checkbox"/>	Email: bds@eidaholaw.com

/s/ Chyvette Tiedemann
Legal Assistant

L03 External County Splits

Statement: "Create districts that combine part of the county with another county," Final Report, at 8.

County/Population	No. of External Splits	Split 1	Split 2	Split 3
Ada 494,967	3	Northern Ada with Gem County	Eastern Ada with Canyon County	Southern Ada with Canyon and Owyhee Counties
Bannock 87,018	2	Portion with Power and Franklin Counties	Portion with Bonneville, Teton, Caribou and Bear Lake Counties	
Bonneville 123,064	1	Portion aligned with Bannock, Teton, Caribou and Bear Lake Counties		
Canyon 231,105	3	Portion with Northern Ada County	Portion with Washington and Payette Counties	Southern portion with Ada and Owyhee Counties
Kootenai 171,362	1	Portion with Bonner Benewah, Shoshone and Clearwater Counties		
Twin Falls 90,046	1	Portion connected to Gooding and Camas Counties		
Madison 52,913	0			
<p>All other counties have populations below the ideal mathematical size of 52,546 (1,839,106 divided by 35 legislative districts) and only the following two counties have been split under L03.</p>				
Bonner 47,110	2	Portion connected to Boundary County	Portion connected to Kootenai, Benewah, Shoshone and	

			Clearwater Counties	
Nez Perce 42,090	2	Portion connected to Idaho and Adams Counties	Portion connected to Lewis and Latah Counties	
TOTAL EXTERNAL SPLITS	15			

L075 External County Splits				
Statement: "Create districts that combine part of the county with another county," Final Report, at 8.				
County/Population	No. of External Splits	Split 1	Split 2	Split 3
Ada 494,967	3	Western portion with Canyon, Owyhee, and a portion of Twin Falls Counties	Western portion with Elmore, Camas and Gooding Counties	Western portion with eastern portion of Canyon (Kuna, Meridian and Nampa)
Bannock 87,018	0			
Bonneville 123,064	2	Portion aligned with Bingham and Butte Counties	Portion aligned with Teton, Caribou, Franklin and Bear Lake Counties	
Canyon 231,105	3	Northern Portion connected to Payette, Gem and Boise Counties	Southern portion with a portion of Ada, Owyhee, and Twin Falls Counties	Western portion with eastern portion of Canyon (Kuna, Meridian and Nampa)
Kootenai 171,362	2	Portion with Bonner and Benewah, Counties	Portion with Shoshone County	
Twin Falls 90,046	2	Portion connected to Owyhee,	Portion connected to	

