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the State of Idaho

IN THE SUPREME COURT OF THE STATE OF IDAHO

In Re: Petition for Writ of Prohibition.

RECLAIM IDAHO, and the COMMITTEE
TO PROTECT AND PRESERVE THE
IDAHO CONSTITUTION, INC.,

Petitioners,

v.

LAWRENCE DENNEY, in his official
capacity as the Idaho Secretary of State, and
the STATE OF IDAHO,

Respondents,

Supreme Court Docket No. 48784-2021

**DECLARATION OF
JASON HANCOCK**

and

SCOTT BEDKE in his official capacity as Speaker of the House of Representatives of the State of Idaho; CHUCK WINDER, in his official capacity as President Pro Tempore of the Idaho State Senate; SIXTY-SIXTH IDAHO LEGISLATURE,

Intervenor-Respondents.

I, Jason Hancock, declare as follows:

1. I am over the age of 18 years and competent to testify on the matters herein. I make this declaration based upon my own personal knowledge.
2. I am currently employed with the Idaho Secretary of State as a Deputy Secretary of State.
3. As part of my work in the Idaho Secretary of State's office, I oversee and assist in the oversight of the elections divisions. I began this role on April 7, 2020.
4. Given my role in the Idaho Secretary of State's office, I have access to all of the documents that are filed with the Secretary of State, including initiative and referenda related documents.
5. A true and correct list of all initiative and referenda petitions that have qualified for the ballot since 1933, when the legislature approved a process by which such petitions could appear on the ballot, is available on the Idaho Secretary of State's website at

<https://sos.idaho.gov/elect/inits/inithist.htm> (last visited May 24, 2021). A true and correct print out of this webpage is attached as Exhibit A (printed on May 24, 2021).

6. Between 1933 and 1997, 24 initiative and 3 referenda petitions qualified for the ballot under the requirement that petition sponsors obtain signatures from legal voters equal in number to not less than ten percent of the electors in the state based on the aggregate vote cast for governor at the last general election. *See* Idaho Code § 34-1805 (1933). The Idaho Secretary of State's Office does not possess complete records of all of the initiative and referenda petitions that circulated but did not qualify for the ballot during this period.

7. In 1997, the legislature amended Idaho Code § 34-1805 to require petition sponsors to obtain signatures from legal voters equal in number to not less than six percent of the qualified electors of the state at the time of the last general election; the requisite signatures were required to include "a number of signatures of qualified electors from each of the twenty-two (22) counties equal to not less than six percent (6%) of the qualified electors at the time of the last general election in each of those twenty-two (22) counties." 1997 Idaho Sess. Laws 756, 759. The county-based geographic distribution was enjoined on November 30, 2001 in *Idaho Coalition United for Bears v. Cenarrusa*, 234 F.Supp.2d 1159 (D. Idaho 2001). Between 1998 and 2013, four initiative and four referenda petitions qualified for the ballot. During this period, 63 initiative and referenda petitions circulated, meaning that the ballot qualification rate was 12.7%.

8. In 2013, the legislature amended Idaho Code § 34-1805 to require that initiative and referenda petition sponsors obtain signatures from legal voters equal in number to not less than six percent of the qualified electors at the time of the last general election in each of at least 18

legislative districts, as well as to obtain a total number of signatures equal to or greater than six percent of the qualified electors in the state at the time of the last general election. 2013 Idaho Sess. Laws 503, 504. Between 2014 and 2020, 14 petitions were circulated and 2 initiative petitions qualified for the ballot, resulting in a qualification rate of 14.3%. Notably, the petition sponsors for the three 2020 ballot measures all indicated that their efforts to qualify for the ballot were negatively impacted by the onset of the COVID-19 pandemic. If these three petitions are removed from the calculation, the qualification rate for initiatives and referenda petitions for the period from 2014 to 2020 is 18.2%.

9. Two initiative petitions qualified for the ballot in 2018. One initiative petition was assigned the short ballot title “An initiative to provide that the state shall amend its state plan to expand Medicaid eligibility to certain persons” (referred to herein as “Medicaid Expansion”). This initiative petition was initially filed with the Secretary of State’s Office on October 18, 2017, and ballot titles were issued on December 5, 2017. The petition sponsors could begin circulating the petition for signatures upon issuance of the ballot titles. Idaho Code § 34-1802(1) (2011). All required signatures had to be collected by April 30, 2018 to qualify the petition for the November 2018 general election. *Id.* The petition sponsors obtained verified signatures of at least six percent of the qualified electors in 21 of 35 legislative districts. Attached as Exhibit B is a true and correct copy of a map on which the legislative districts in which Medicaid Expansion obtained verified signatures from at least six percent of the qualified electors are colored in orange. The petition sponsors were only short of qualifying in six additional legislative districts by an average of 217 signatures per district.

10. Another initiative petition qualified for the November 2018 ballot. That initiative petition was assigned the short ballot title “An initiative authorizing historical horse racing at certain locations where live or simulcast horse racing occurs and allocating revenue therefrom” (referred to herein as “Historical Horse Racing”). The proposed initiative petition was filed with the Secretary of State’s office on January 3, 2018 and ballot titles were issued on January 26, 2018. As with Medicaid Expansion, all required signatures had to be collected by April 30, 2018 to qualify the petition for the November 2018 general election. Idaho Code § 34-1802(1) (2011). Historical Horse Racing obtained signatures of at least six percent of the qualified electors in 22 of 35 legislative districts. Attached as Exhibit C is a true and correct copy of a map of the legislative districts in which Historical Horse Racing obtained signatures from at least six percent of the qualified electors (the relevant legislative districts are colored in orange). The petition sponsors were only short of qualifying in two legislative districts by an average of 280 signatures per district.

11. As demonstrated by the different legislative districts in which Medicaid Expansion and Historical Horse Racing obtained qualifying signatures, a petition sponsor could select the legislative districts in which it focused its efforts to collect signatures under the 18 legislative district requirement. *Compare* Exhibit B with Exhibit C.

12. Under the signature gathering requirements enacted in 2013, initiative and referenda proponents could obtain all of the required signatures to qualify a measure for the ballot in just Ada, Bonneville, Canyon, and Kootenai counties, Idaho’s major population centers. Collectively, those counties contain over 18 of Idaho’s 35 legislative districts (in fact, just three

counties contain 18 of Idaho's legislative districts). As of the November 3, 2020 general election, the four aforementioned counties also contain slightly more than 56% of the qualified electors statewide. Thus, a measure could qualify for the ballot and become law based on support in only Idaho's major population centers because, once on the ballot, a measure need only to garner a majority of votes at the statewide general election to become law. *See* Idaho Code § 34-1811.

13. Senate Bill No. 1110, also known as 2021 Idaho Session Law Chapter 255 and current Idaho Code § 34-1805(2) (referred to herein as the "35 District Requirement"), was passed by the Sixty-Sixth Idaho Legislature. It requires that initiative and referenda sponsors obtain signatures from at least six percent of the qualified electors in all 35 of Idaho's legislative districts. 2021 Idaho Sess. Law 255. Due to how the legislative districts overlay Idaho's counties, the 35 District Requirement means that initiative and referenda sponsors must gather signatures in about a third of Idaho's 44 counties (14 of 44); although, they may choose to gather signatures in more. From 2013 until the passage of the Act, initiative and referenda sponsors were required to obtain signatures in 18 legislative districts, which translates to only three of Idaho's 44 counties depending on the legislative districts selected.

14. The 35 District Requirement did not change the total number of signatures required for an initiative or referendum to be placed on a ballot — a total that has been required since 1997. Setting aside geographic distribution requirements, starting in 1997, initiative and referenda petition sponsors were required to obtain signatures from "[six percent] of the qualified electors of the state at the time of the last general election." 1997 Idaho Sess. Laws 756, 759; *see also* 2013 Idaho Sess. Laws 503, 504. Thus, by requiring signatures from six percent of the qualified electors

at the time of the last general election in each of the 35 legislative districts, the Act did not change the total number of signatures required to qualify an initiative or referendum petition for the ballot.

15. The 35 District Requirement accomplishes Idaho's interests in (1) ensuring that initiatives and referenda placed on the ballot have support distributed throughout the State, (2) protecting against localized legislation, (3) ensuring that all voter interests, including the interests of the minority, are protected during the initiative and referendum process, (4) protecting minority interests against the will of the majority, (5) efficiently producing clear and understandable ballots, which requires ensuring that statewide ballots are not unduly cluttered with initiatives and referenda that represent primarily local interests or that are not supported by an engaged statewide electorate, (6) promoting grassroots legislative efforts, and (7) promoting an informed and engaged electorate statewide as to initiative and referenda petitions. The 35 District Requirement achieves these interests by requiring initiative and referenda proponents to obtain signatures on initiative and referenda petitions from six percent of the qualified electors in all 35 of Idaho's legislative districts to qualify those petitions to be on the ballot at the general election.

16. Idaho's legislative districts are drawn to be substantially equal in population. For the initiative petitions that circulated in 2018, the threshold number of required signatures to qualify each legislative district ranged from 1,195 to 2,202.

17. Idaho's legislative districts were last redrawn on January 27, 2012 by Legislative Plan L 93. Legislative Plan L 93 was adopted by the Commission for Reapportionment of the State of Idaho on January 27, 2012, on a 6-0 vote. A true and correct copy of the Revised Findings and Conclusion for Legislative Plan L 93 may be found here:

https://legislature.idaho.gov/wp-content/uploads/redistricting/2011/93_findings.pdf. Legislative Plan L 93 created legislative districts of approximately equal population with the largest variances being 4.84% (LD 28) and -4.86% (LD 24).

18. The Secretary of State's Office interprets Idaho Code § 34-1803, which states "[r]eferendum petitions with the requisite number of signatures attached shall be filed with the secretary of state no more than sixty (60) days after the final adjournment of the session of the state legislature which passed on the bill on which the referendum is demanded" to mean that both the House of Representatives and the Senate must have adjourned *sine die* to trigger the running of the deadline contained in this provision. Because the House of Representatives has not yet adjourned *sine die*, the 60 day deadline to collect the requisite signatures for any referendum petition on any legislation passed by the Sixty-Sixth Legislature has not yet begun to run.

I declare under penalty of perjury pursuant to Idaho Code § 9-1406 that the foregoing is true and correct.

DATED this 2nd of June, 2021.

By: 
Jason Hancock

CERTIFICATE OF SERVICE

I certify that on this 2nd day of June, 2021, I filed the foregoing document electronically through the iCourt E-File system, which caused the following iCourt-registered counsel to be served by electronic means, as more fully reflected on the Notification of Service.

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/s/ Megan A. Larrondo

MEGAN A. LARRONDO
Deputy Attorney General

Declaration of Jason Hancock

Exhibit A

IDAHO SECRETARY OF STATE ELECTION DIVISION

IDAHO INITIATIVE HISTORY

The initiative and referendum were written into the Idaho Constitution by amendments in 1912. They were policies of the Populist wave of that era. It took the Idaho legislature 21 years to implement those constitutional provisions. The laws setting up the mechanics by which the people could initiate a law, or refer a law written by the legislature to the people for approval or rejection, were enacted by the 1933 legislature.

The right of initiative and referendum is found in Article III, Section 1 of the Idaho Constitution. Title 34, Chapter 18 contains the statutory procedures pertaining to the initiative and referendum.

DATE	ISSUE	DESCRIPTION	YES	%	NO	%	RESULT
11/6/18	INIT 1	An initiative authorizing historical horse racing at certain locations where live or simulcast horse racing occurs and allocating revenue therefrom.	278,212	46.2	323,924	53.8	Defeated
	INIT 2	An initiative to provide that the state shall amend its state plan to expand Medicaid eligibility to certain persons.	365,107	60.6	237,567	39.4	Adopted
11/6/12	REFER 1	Referendum to approve or reject legislation limiting negotiated agreements between teachers and local school boards and ending the practice of issuing renewable contracts.	277,102	42.7	371,224	57.1	Law Rejected
	REFER 2	Referendum to approve or reject legislation providing teacher performance pay based on state-mandated test scores, student performance, hard-to-fill positions and leadership.	272,939	42.0	376,689	58.0	Law Rejected
	REFER 3	Referendum to approve or reject legislation amending school district funding, requiring	215,800	33.3	432,667	66.7	Law Rejected

		provision of computing devices and online courses for high school graduation.					
11/7/06	INIT 1	An initiative increasing public funding for education.	204,381	45.4	245,563	54.6	Defeated
	INIT 2	An initiative restricting eminent domain and regulatory takings.	105,778	23.9	336,083	76.1	Defeated
11/5/02	INIT 1	An Initiative defining tribal video gaming machines and providing for amendment of State-Tribal Gaming Compact providing for their use.	232,986	57.8	170,097	42.2	Approved
	REFER 1	Referendum reinstating term limits for elected state, county, municipal and school district officials through ballot access restrictions.	203,005	50.2	201,116	49.8	Term Limits Remain Repealed
11/3/98	INIT 1	Initiative allowing congressional candidates to sign term limits pledge; informs voters on the ballot if candidate signs or breaks pledge	192,390	54.7	159,615	45.3	Approved
11/5/96	INIT 1	Initiative to limit property taxes to one percent (1%) of value subject to assessment and providing exceptions	180,678	37.1	306,818	62.9	Defeated
	INIT 2	Initiative to prohibit the use of dogs or bait while hunting black bear and to limit the bear hunting season	194,750	40.2	289,752	59.8	Defeated
	INIT 3	Initiative requiring legislative and voter approval of agreements for the receipt of additional radioactive waste and	182,710	37.5	304,886	62.5	Defeated

		nullifying prior agreement					
	INIT 4	Initiative instructing candidates for state legislature and u.s. congress to support congressional term limits; requires statement indicating non-support on ballot	267,973	56.1	210,108	43.9	Adopted
11/8/94	INIT 1	An act establishing state policies regarding homosexuality	202,681	49.6	205,754	50.4	Defeated
	INIT 2	Initiative establishing term limits for elected federal, state, county, municipal and school district officials	234,703	59.4	160,748	40.6	Adopted
11/3/92	INIT 1	Limiting ad valorem property tax rates to one percent (1%) of market value	163,690	34.5	311,159	65.5	Defeated
11/4/86	INIT 1	Establishing State Lottery Commission	226,816	60.0	151,132	40.0	Adopted
	REFER 1	Concerning retention of Right-To-Work Law	208,248	54.0	177,069	46.0	Law Approved
11/6/84	INIT 1	Initiative exempting food for human consumption from sales tax	186,505	47.0	210,054	53.0	Defeated
11/2/82	INIT 1	Initiative providing 50% or \$50,000 residential tax exemption	168,895	56.5	130,062	43.5	Adopted
	INIT 2	Initiative authorizing the practice of dentistry and establishing licensing board	197,756	65.2	105,436	34.8	Adopted
	INIT 3	Initiative supporting future generation of electricity through nuclear energy	175,407	60.5	114,408	39.5	Adopted
11/7/78	INIT 1	Restricting governmental ability to change property valuations or taxes	164,817	58.3	118,102	41.7	Adopted
11/5/74	INIT 1	Sunshine Law for political funds and	178,705	77.6	51,707	22.4	Adopted

		lobbyist activity disclosure						
11/3/70	INIT 1	Legislative pay	132,511	59.2	91,372	40.8	Adopted	
11/8/66	REFER 1	Should 3% sales tax imposed by 1965 Legislature be approved	156,109	61.2	99,048	38.8	Law Approved	
11/4/58	INIT 1	Right-To-Work Initiative. Right to employment regardless of labor organization membership or non-membership	118,718	49.4	121,790	50.6	Defeated	
11/2/54	INIT 1	Regulate dredge mining in Idaho	174,377	85.3	30,102	14.7	Adopted	
11/5/46	INIT 1	Anti Gambling Act	69,144	44.6	85,797	55.4	Defeated	
	INIT 2	Local Option Prohibition Act	54,402	35.0	100,951	65.0	Defeated	
	INIT 3	The Idaho Sobriety Act	59,199	38.3	95,450	61.7	Defeated	
11/3/42	INIT 1	Senior Citizens Grants Act	75,090	68.0	35,344	32.0	Adopted	
11/5/40	INIT 1	County Option Liquor Control Act	70,544	38.4	112,972	61.6	Defeated	
	INIT 2	Idaho Sobriety Act	75,563	42.5	102,186	57.5	Defeated	
11/8/38	INIT 1	Idaho Fish and Game Commission Act	118,448	76.0	37,442	24.0	Adopted	
11/3/36	REFER 1	Adoption of two percent sales tax (HB 76, 1935)	68,728	47.7	75,468	52.3	Law Rejected	

[Previous Page](#) [Idaho Secretary of State's Main Page](#) [State of Idaho Home Page](#)

Comments, questions or suggestions can be emailed to: sosinfo@sos.idaho.gov

Declaration of Jason Hancock

Exhibit B

IDAHO STATE LEGISLATIVE MEMBERS

66th IDAHO STATE LEGISLATURE

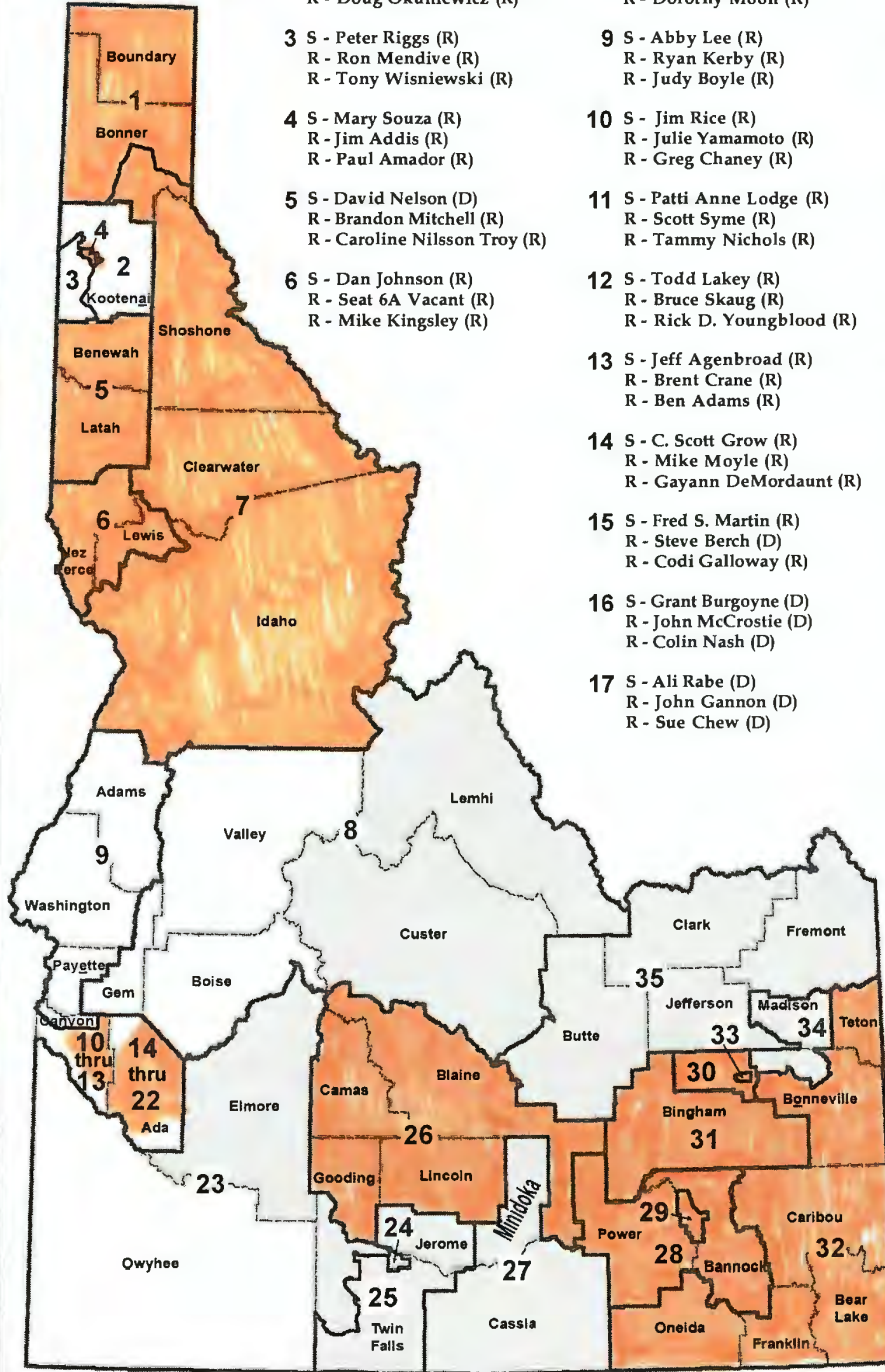
FIRST REGULAR SESSION

SESSION BEGINS
JANUARY 11, 2021

Legend

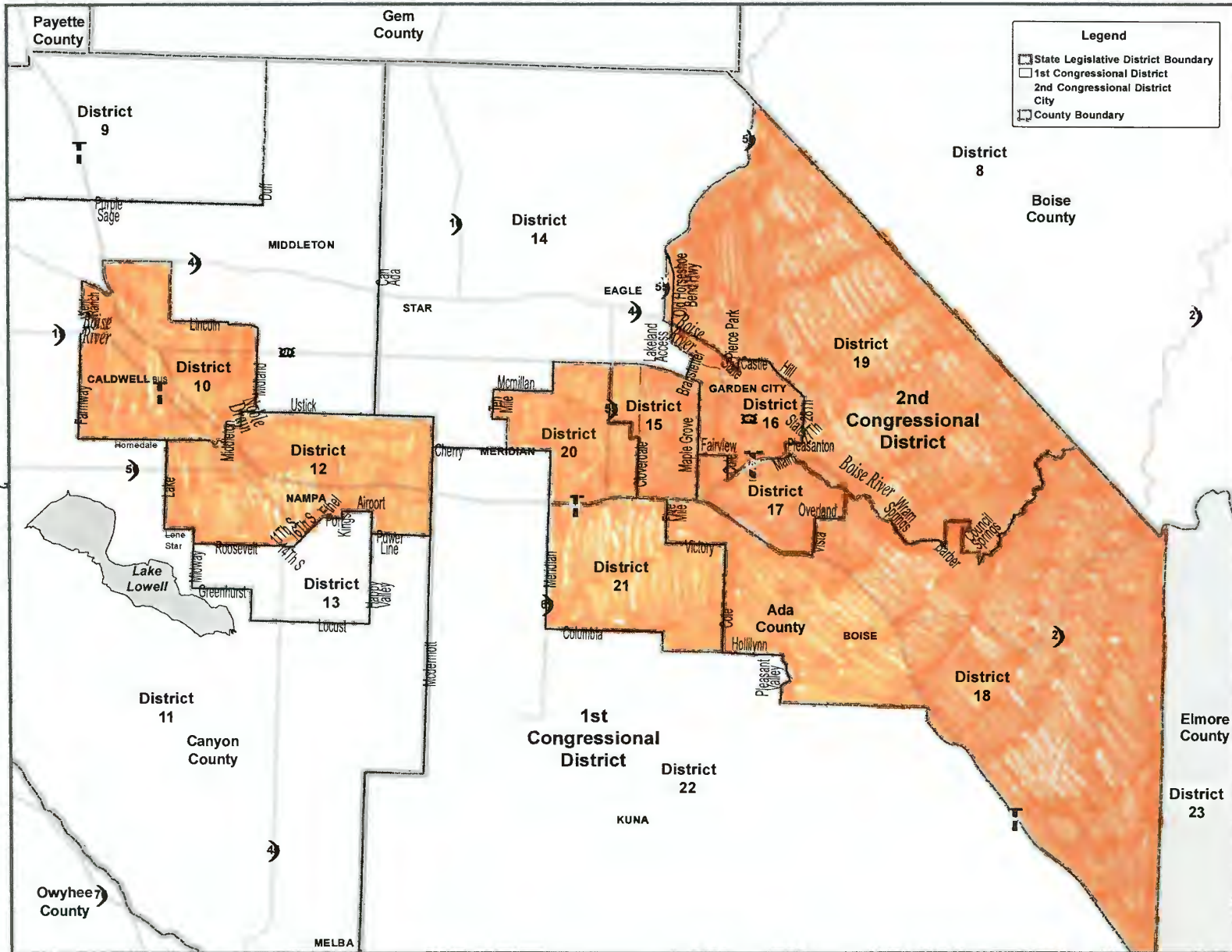
S - Senator
R - Representative
(D) Democrat
(R) Republican

State Legislative District Boundary
 State Legislative District Number
 1st Congressional District
 2nd Congressional District
 County Boundary



- | | | |
|--|---|---|
| <p>1 S - Jim Woodward (R)
R - Heather Scott (R)
R - Sage Dixon (R)</p> <p>2 S - Steve Vick (R)
R - Vito Barbieri (R)
R - Doug Okuniewicz (R)</p> <p>3 S - Peter Riggs (R)
R - Ron Mendive (R)
R - Tony Wisniewski (R)</p> <p>4 S - Mary Souza (R)
R - Jim Addis (R)
R - Paul Amador (R)</p> <p>5 S - David Nelson (D)
R - Brandon Mitchell (R)
R - Caroline Nilsson Troy (R)</p> <p>6 S - Dan Johnson (R)
R - Seat 6A Vacant (R)
R - Mike Kingsley (R)</p> | <p>7 S - Carl Crabtree (R)
R - Priscilla Giddings (R)
R - Charlie Shepherd (R)</p> <p>8 S - Steven Thayn (R)
R - Terry F. Gestrin (R)
R - Dorothy Moon (R)</p> <p>9 S - Abby Lee (R)
R - Ryan Kerby (R)
R - Judy Boyle (R)</p> <p>10 S - Jim Rice (R)
R - Julie Yamamoto (R)
R - Greg Chaney (R)</p> <p>11 S - Patti Anne Lodge (R)
R - Scott Syme (R)
R - Tammy Nichols (R)</p> <p>12 S - Todd Lakey (R)
R - Bruce Skaug (R)
R - Rick D. Youngblood (R)</p> <p>13 S - Jeff Agenbroad (R)
R - Brent Crane (R)
R - Ben Adams (R)</p> <p>14 S - C. Scott Grow (R)
R - Mike Moyle (R)
R - Gayann DeMordaunt (R)</p> <p>15 S - Fred S. Martin (R)
R - Steve Berch (D)
R - Codi Galloway (R)</p> <p>16 S - Grant Burgoyne (D)
R - John McCrostie (D)
R - Colin Nash (D)</p> <p>17 S - Ali Rabe (D)
R - John Gannon (D)
R - Sue Chew (D)</p> | <p>18 S - Janie Ward-Engelking (D)
R - Ilana Rubel (D)
R - Brooke Green (D)</p> <p>19 S - Mellissa Wintrow (D)
R - Lauren Necochea (D)
R - Chris Mathias (D)</p> <p>20 S - Chuck Winder (R)
R - Joe Palmer (R)
R - James Holtzclaw (R)</p> <p>21 S - Regina M. Bayer (R)
R - Steven C. Harris (R)
R - Greg Ferch (R)</p> <p>22 S - Lori Den Hartog (R)
R - John Vander Woude (R)
R - Jason Monks (R)</p> <p>23 S - Christy Zito (R)
R - Matthew Bundy (R)
R - Megan Blanksma (R)</p> <p>24 S - Lee Heider (R)
R - Lance W. Clow (R)
R - Linda Wright Hartgen (R)</p> <p>25 S - Jim Patrick (R)
R - Laurie Lickley (R)
R - Clark Kauffman (R)</p> <p>26 S - Michelle Stennett (D)
R - Muffy Davis (D)
R - Sally Toone (D)</p> <p>27 S - Kelly Anthon (R)
R - Scott Bedke (R)
R - Fred Wood (R)</p> <p>28 S - Jim Guthrie (R)
R - Randy Armstrong (R)
R - Kevin Andrus (R)</p> <p>29 S - Mark Nye (D)
R - Dustin Manwaring (R)
R - James Ruchti (D)</p> <p>30 S - Kevin Cook (R)
R - Gary L. Marshall (R)
R - Wendy Horman (R)</p> <p>31 S - Steven Bair (R)
R - David Cannon (R)
R - Julianne Young (R)</p> <p>32 S - Mark Harris (R)
R - Marc Gibbs (R)
R - Chad Christensen (R)</p> <p>33 S - Dave Lent (R)
R - Barbara Ehardt (R)
R - Marco Erickson (R)</p> <p>34 S - Doug Ricks (R)
R - Jon Weber (R)
R - Ronald Nate (R)</p> <p>35 S - Van T. Burtenshaw (R)
R - Karey Hanks (R)
R - Rod Furniss (R)</p> |
|--|---|---|

Click [here](#) to see on-line map.
Prepared by the Idaho Transportation Department
Revised by LSO: April 29, 2021



Declaration of Jason Hancock

Exhibit C



Decl. Jason Hancock - Exhibit C

