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ATTORNEYS FOR PETITIONERS

IN THE SUPREME COURT OF THE STATE OF IDAHO

CHIEF J. ALLAN, a registered voter of the
State 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,

Petitioners,

v.

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

Respondents.

Case No. **49353-2021**

**VERIFIED PETITION
FOR REVIEW OF THE IDAHO
COMMISSION FOR
REAPPORTIONMENT'S
PLAN L03 AND
FOR A WRIT OF PROHIBITION**

ORIGINAL JURISDICTION

1. The Idaho Supreme Court has original jurisdiction over this matter under Article III, § 2(5) of the Idaho Constitution. Idaho Appellate Rule 5(b) further allows any registered voter in this state to challenge the final plan adopted by the Commission for Reapportionment within 35 days of the Commission's filing with the Idaho Secretary of State.
2. Petitioners have filed their Petition within 35 days of the Commission's filing of its adopted plan with the Secretary of State on November 12, 2021. The Petition is therefore timely. I.A.R. 5(b).

PARTIES

3. Petitioner Chief J. Allen is a registered voter in the State of Idaho. He is the Chairman of the Tribal Council of the Coeur d'Alene Tribe. The Coeur d'Alene Tribe is a federally recognized tribe and exercises sovereignty over its 350,000 acre reservation in Idaho.
4. Petitioner Devon Boyer is a registered voter in the State of Idaho. He is the Chairman of the Fort Hall Business Council, the governing body for the Shoshone-Bannock Tribes. The Shoshone-Bannock Tribes are federally recognized and exercise sovereignty over their 544,000 acre reservation in Idaho.

5. Respondent, the Idaho Commission for Reapportionment, is a state commission charged with the reapportionment of state and federal legislative districts under Article III, § 2 of the Idaho Constitution and Chapter 15, Title 72 of the Idaho Code.

6. Respondent Lawrence Denney is the Secretary of State for the State of Idaho. In that capacity, he has a non-discretionary duty under Idaho law to receive the Commission's Final Report and to transmit a copy to the President of the Senate and the Speaker of the House.

FACTS COMMON TO ALL CLAIMS

7. The Coeur d'Alene and Shoshone-Bannock Tribes are federally recognized American Indian Tribes.

8. Both Tribes have lived in the area that is now Idaho and the wider Northwest for thousands of years.

9. Over time, as settlers discovered value in their lands, the Tribes were pushed onto ever-increasing smaller reservations.

10. The Coeur d'Alene Tribe's homeland once included what later became known as the Silver Valley in north Idaho. They ceded that land for about \$150,000, which is eight cents an acre. The Silver Valley has since produced billions of dollars in silver, zinc and lead.

11. The Coeur d'Alene Tribe's original homeland also included the land where the city of Coeur d'Alene sits today.

12. It now has a reservation of about 350,000 acres covering parts of Kootenai and Benewah counties.
13. The Shoshone-Bannock Tribes' traditional homeland ranged throughout the Pacific Northwest, including Washington, Oregon, Idaho, Montana, Wyoming, Utah and Nevada.
14. The 1868 Treaty of Fort Bridger, which did not compensate the Shoshone-Bannock Tribes, pushed them to a reservation in the area of, and including, Fort Hall. They had to give up more than 55 million acres, including prime agricultural land in the Snake River Valley. They also ceded the land on which the prosperous and growing cities of Pocatello, Twin Falls, and Boise are now.
15. The Shoshone-Bannock Tribes' current reservation is about 544,000 acres in southeast Idaho.
16. Despite these historical injustices, the Coeur d'Alene and Shoshone-Bannock Tribes have persisted and flourished.
17. They each have tribally-ratified constitutions that have been approved by the United States Secretary of the Interior.
18. They are self-governing sovereigns over their respective reservations.
19. They have strong tribal governments that seek to promote economic development, education, and the health of their members.

20. They have protected, retained, and continue to promote their traditions, histories, and cultures.
21. They each add millions of dollars in economic activity to the State every year.
22. These and other tribes within Idaho's geographical boundaries are distinct political and cultural entities.
23. Every ten years, after the decennial United States Census is released, the Idaho Commission for Reapportionment is tasked by law to reapportion Idaho's state and congressional legislative districts.
24. The United States Census Bureau released its Census 2020 results in August of 2021.
25. It has counted Idaho's total state population as of 2020 to be 1,839,106.
26. Article III, § 4 of the Idaho Constitution requires that the Idaho state legislature be divided into 35 districts.
27. Article III, § 5 of the Idaho Constitution further requires 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."
28. Idaho Code § 72-1506(2) contains a mandatory directive to the Commission that "[t]o the maximum extent possible, districts shall preserve traditional neighborhoods and local communities of interest."

29. These Tribes are at the very least strong “traditional neighborhoods and local communities of interest” for purposes of the statute.
30. Idaho Code § 72-1506(4) also contains a mandatory directive to the Commission that “[t]o the maximum extent possible, the plan should avoid drawing districts that are oddly shaped.”
31. After conducting several hearings, and considering numerous redistricting proposals, the Commission adopted Plan L03.
32. In adopting Plan L03, the Commission strived for a goal of attaining the smallest maximum deviation possible among the state legislative districts.
33. It wrote in its Final Report that “in no instance” would it exceed a 5% deviation, “unless the district was an outlier and there was an extraordinarily compelling reason for the larger deviation.” (Final Report, p. 11.)
34. The final maximum deviation was 5.84%
35. The Commission believed that it was required by the proportional representation requirements of the Fourteenth Amendment’s Equal Protection Clause to reach for as close to mathematical equality as it could.
36. Because the Commission misunderstood the requirement of the Fourteenth Amendment on state legislative districts, it overemphasized that goal and neglected those demanded by the Idaho Constitution and Idaho statute.
37. Plan L03 divides eight counties in the State.

38. Several plans were submitted to the Commission that would have complied with the Equal Protection Clause and divided fewer counties.

39. Though the Commission wrote in its Report that it considered communities of interest, it did not.

40. For instance, Plan L03 divides the Shoshone-Bannock reservation into three legislative districts and splits its primary hub and population down the middle into two legislative districts.

41. Plan L03 splits the Coeur d'Alene reservation into two districts.

42. Several plans were in front of the Commission, most prominently L078 and L079, that divided only seven counties in the State, that would have been constitutional under the Equal Protection Clause, and that would have retained the Tribes' strong communities of interests.

FIRST CLAIM FOR RELIEF

The Commission erred in striving for exact proportionality among legislative districts while ignoring other compelling state, county, and tribal interests.

43. Petitioners incorporate all previous paragraphs.

44. The Equal Protection Clause of the Fourteenth Amendment requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis.

45. A State must make an honest and good faith effort to construct districts as nearly of equal population as is practicable.

46. But mathematical nicety is not a constitutional requisite. Some deviations from population equality may be necessary to permit the States to pursue other legitimate objectives such as maintaining the integrity of various political subdivision and providing for compact districts of contiguous territory.

47. Maximum deviations among legislative districts that are below or at 10% are not substantial for federal constitutional purposes and are presumptively constitutional.

48. The Commission erred in setting a primary goal of the smallest maximum deviation as possible to the exclusion of state and tribal interests.

49. The Fourteenth Amendment did not demand that goal.

50. The Tribes were prejudiced by the Commission's error because it disregarded their communities of interest during redistricting.

SECOND CLAIM FOR RELIEF

The Commission violated Article III, § 5 of the Idaho Constitution by failing to adopt a plan that both complies with the Equal Protection Clause of the Fourteenth Amendment and results in fewer county divisions.

51. Petitioners incorporate all previous paragraphs.

52. Article III, § 5 of the Idaho Constitution requires the Commission to divide as few counties in the State as possible during redistricting while still complying with the United States Constitution.

53. Several plans were before the Commission that divided only seven counties, instead of Plan L03's eight, and were at or below 10% maximum deviation and therefore were presumptively constitutional.

54. The Commission violated Article III, § 5 by not adopting one of those plans instead of Plan L03.

55. The Tribes were prejudiced by the Commission's error because it disregarded their communities of interest during redistricting.

THIRD CLAIM FOR RELIEF

The Commission violated Idaho Code § 72-1506(2) by not taking the Tribes' longstanding communities of interest into account before adopting its final plan.

56. Petitioners incorporate all previous paragraphs.

57. Idaho Code § 72-1506 requires the Commission to consider and weigh several mandatory and discretionary factors.

58. Idaho Code § 72-1506(2) contains a mandatory factor that "[t]o the maximum extent possible, districts shall preserve traditional neighborhoods and local communities of interest."

59. These Tribes are more than “traditional neighborhoods and local communities of interest,” but they are at least that for purposes of this statute.
60. The Commission wholly failed to consider retaining the Tribes’ sovereign interests in the redistricting process.
61. The Commission drew lines that fractured their reservations.
62. Several plans were presented to the Commission, most notably L078 and L079, that would have complied with the federal and state constitutions and would have still preserved the Tribes’ communities of interest.
63. The Commission erred in not adopting such a plan, to the Tribes’ prejudice.
64. Moreover, Idaho Code § 72-1506(2) requires the Commission to avoid, to the maximum extent possible, drawing districts that are oddly shaped. District 2 is such a district, as it is oddly shaped.

PRAYER FOR RELIEF

These Petitioners pray that the Court grant the following relief:

- A. Declare that the Final Report and Map L03 is unconstitutional because it unnecessarily divides too many counties.
- B. Issue a Writ of Prohibition that restrains the Secretary of State from transmitting a copy of the Final Report and Map L03 to the President of the Idaho Senate and the Speaker of the Idaho House.

C. Remand this matter back to the Commission for review and revision so that the Final Report and adopted map comply with the United States Constitution, the Idaho State Constitution, and the statutory requirements, including that it preserve the Tribes, to the maximum extent possible, as important communities of interest.

D. Award Petitioners their reasonable attorneys fees under the Private Attorney General Doctrine, Idaho Code § 12-117, § 12-121, or as otherwise provided by law.

E. Any other relief that the Court deems just and equitable under the circumstances.

Submitted on this 16th day of December, 2021.

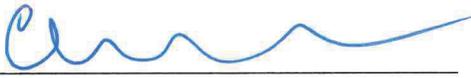
/s/Deborah A. Ferguson
Deborah A. Ferguson

/s/Craig H. Durham
Craig H. Durham

Attorneys for Petitioners

VERIFICATION

I, Chief J. Allan, 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 his knowledge and belief.

 Dated: 12-15-21
Chief J. Allan

State of Idaho

County of BENAVENUE



Signed and sworn to before me on 12/15/2021

Notary Public for Idaho

My commission expires: 10/01/2024



CERTIFICATE OF SERVICE

This Petition and all attached Exhibits have been served on the following on this 16th day of December, 2021, by filing through the Court's e-filing and serve system, and as follows to:

Robert Berry
Megan Larrondo
Corey Carone
Deputy Attorneys General
ecf@ag.idaho.gov
Attorney for Respondents

Also hand delivered on this date to:

Lawrence Denney
Secretary of State
Idaho Secretary of State's Office

/s/Deborah A. Ferguson
Deborah A. Ferguson

Shoshone-Bannock Tribes

of the Fort Hall Reservation

WHITE PAPER ON IDAHO 2021 LEGISLATIVE REDISTRICTING

October 13, 2021

Summary: *State legislative redistricting is a difficult concept and is highly controversial for Tribes. The Business Council requests that the Fort Hall Reservation be identified as a community of interest, and to the highest extent, remain whole in the legislative districting process. However, the Fort Hall Business Council recognizing the current legal constraints the Reapportionment Commission must follow, has considered the various options, and offers the following comments on legislative redistricting mapping: 1. The Business Council is leaning towards aligning with Bingham County, based on strong relations with the county; 2. The Business Council supports the concept to extend District 29 to the Reservation via the eastern side of Bannock County, or the western side of Bannock County; and 3. To extend District 29 west to include the western and southern portion of the Fort Hall Reservation.*

Redistricting in 2021 –As the Redistricting Commission reaches out to the Tribal community, they must ensure their end products are maps that are fair and equitable for all Idaho voters. For the first time, the Commission is holding hearings on the Fort Hall Reservation. At the October 6, 2021 meeting of the Redistricting Commission meeting in Fort Hall, the Commission was seeking input from the Fort Hall residents on the following: Questions for the Redistricting Commission and the Shoshone-Bannock Tribes to consider:

- ☒ How can legislative boundaries be drawn to improve representation of native voters?
- ☒ Can we ensure both the principals of equal representation and one-person-one-vote while not diluting the tribal vote by dividing the Fort Hall Reservation among several legislative districts?
- ☒ How can we, to the maximum extent possible, ensure and preserve traditional neighborhoods and local communities of interest?
- ☒ Is there a way to keep Indian country together? Do you like the fact that you are divided into two districts? Or do we want to be one legislative district? How can we ensure our voting strength of our tribal community is not diluted or weakened?
- ☒ Does the tribal community have equal voice and an equal opportunity to elect representatives who consider our tribal and individual needs and interests?

Communities of Interest: geographic areas where residents have common political, economic or other interests and would benefit from having a shared representative. Groups of people who share common social, cultural, racial, economic, geographic, or other concerns. These are groups of individuals who are likely to have similar legislative concerns, and who might therefore benefit from cohesive representation in the legislature. *In 2011, the Tribes*

requested to be identified and preserved as a community of interest, and again, for the 2021 Redistricting effort, the Tribes request to be considered a community of interest.

What is the history of Fort Hall Reservation Redistricting?

Back in 2000, the Fort Hall reservation, which is the State of Idaho's largest Native American community, was split in half, as a result of the 2000 Redistricting effort. A previous Redistricting Commissioner, Trent Clark, has suggested the resulting map was a deliberate effort to split the vote, which was likely illegal.

In the 2011 redistricting effort, our reservation was again deliberately fractured into several legislative districts. The Tribes specifically requested the Reservation be considered a "community of interest." Numerous individuals testified that it would be in the best interest of the State and the Shoshone-Bannock Tribes to retain the Reservation as a community of interest, thereby avoiding: a diluted tribal vote, splitting up a community of interest, and failing to consider how this split legislative districts (un)fairly represented tribal needs and interests. *Even though the Pocatello and Idaho Falls public meetings specifically discussed how to address the Fort Hall Reservation, those concerns were ignored in the final mapping.*

Fort Hall Reservation:

The Fort Hall Reservation was established on June 14, 1867 by Executive Order signed by President Johnson. That Executive Order set aside 1.8 million acres of land for the Tribes sold and undisturbed use. The following year, in 1868, the United States signed the Fort Bridger Treaty, where the Tribes agreed to make the Fort Hall Reservation their permanent home. After Congress created Idaho Territory in 1863, counties in Idaho began setting county lines, with Bingham County created in 1885, Bannock County in 1893, Power County in 1913, and Caribou County in 1919. In 1890 the State of Idaho was formally entered into the United States. The Fort Hall Reservation now has four counties within the reservation boundaries, Bannock, Bingham, Power and Caribou. The Shoshone-Bannock Tribes owns 98% of the land within the Fort Hall Reservation.

Population on the Fort Hall Reservation:

2020 Census data at the Reservation level has not yet been released. But state-wide data indicated that the 2020 American Indian population has increased 1.7% in Idaho.

Bannock County: American Indian Population is 3.8%.

Bingham County: American Indian Population is 7.3%.

Power County: American Indian population is 3.8%.

Unfortunately, the US Census has not released the Fort Hall Reservation population yet for 2020, so we turn to the Tribal data. The Tribes recently adopted a new addressing system for all residences within the Reservation. We believe it is the most accurate information than the 2020 US Census data this point.

Bingham County – 1,226 residences	}	Total: 2,509 homes
Power County – 376 residences		
Bannock County – 906 residences		

The Tribes also has the largest native American population in Idaho. The Shoshone-Bannock Tribal member enrollment is currently 6,094. It must be noted that not all tribal members live on the reservation, as we see them living off reservation, in other states, and even internationally. But for on reservation, we estimate a total resident population of approximately 5,800 population, which includes tribal members, non-tribal members and non-Indians. See attached map.

Electorate on Fort Hall Reservation:

- ¾ About ½ of reservation voters live in District 31 (Bingham County)
- ¼ About ½ of reservation voters live in District 30 (Bannock/Power County)

Two main voting districts have two popular polling locations on reservation, at the Fort Hall Elementary School, and the Sho-Ban Jr./Sr. High School. The third polling location on Reservation is at the Pocatello Airport.

Tribal Voice, Voting and Representation

Since Paulette Jordan resigned, there are no native American representatives in the Idaho Legislature. Generally, legislative candidates seek more votes off reservation, which has more appeal for white voters, mainly because off-reservation constituency have different interests than on-reservation constituents. As a result, there are no elected tribal member legislators from Districts 31, 28 or 29 representing the Reservation areas. *This raises the question of Reservation voter suppression, thereby constraining the voice of native voters by diluting tribal voters into three separate legislative districts. The Tribes request the Redistricting Commission to prevent the weakening of tribal voters, and keep the Fort Hall Reservation whole, to the fullest extent.*

The voting behavior of Reservation residents is interesting because there is usually a low voter participation for state and local elections. There are several reasons for this low voting turnout on reservations:

1. Voter dilution due to split legislative districts
2. No native American candidates who run for state or local elections
3. Low confidence in State legislative representation on native issues
4. Political partisanship – “*Idaho is Republican*” and “*Indians are Democrats*”

But there are positive factors in Idaho’s Native constituency:

1. Idaho recognizes Tribal Identification cards as valid identification card
2. The Shoshone-Bannock Tribes enacted a new physical addressing system that provided actual physical locations for addresses for residents and businesses on the Reservation. This provides more effective and efficient response for emergency services, and other issues, including voting.
3. Local voter districts polling locations on Reservation employs tribal members during elections
4. Two main voting districts have popular polling locations on reservation.

Until the Tribes reach the population numbers to justify a single legislative district, we will always be comingled into the surrounding populations and districts. This makes it difficult

for tribal communities to elect candidates of our choice. However, we would like to proposed a new concept of a Minority Legislative District.

Minority Legislative District:

A proposed minority legislative district could be established to provide one representative for tribal reservations in the House. This non-voting seat would advise the Legislature, would be on committees, attend hearings, and participate in legislative debates. It would provide tribes and residents of the reservations a fighting and viable chance to have our Native point of view be expressed and represented in Boise. This Minority Legislative District would not require a population threshold. It would improve the effectiveness of the Idaho Council on Indian Affairs with more representatives from reservations, who can then advocate to State legislature for positive change in Idaho laws, agencies and regulations. *The Tribes seek for the support of the Redistricting Commission for the new concept, and will work with Idaho legislatures and other Idaho tribes to develop this proposal.*

Mapping options:

As indicated above, the Business Council requests to be identified as a community of interest, and requests the reservation remain whole. While there are multiple residences, the Tribes are by-far the majority landowner. Any division of the Reservation into multiple legislative districts is in effect dividing a landowner's property. There are a number of mapping options available, but the population restraints of redistricting create limitations.

We are aware of at least one map (L14) that proposes to include most of the Reservation with the legislative district representing Bingham County. This would align with where most of members live on the Reservation.

There are other options that continue the legacy of splitting the Reservation into more legislative districts. The Business Council recognizes, but does not agree with current state law that does not recognize Indian reservation boundaries in the reapportionment process. That being said, the Business Council offers the following:

1. *The Business Council is leaning towards aligning with Bingham County, based on strong relations with the county;*
2. *The Business Council supports the concept to extend District 29 to the Reservation via the eastern side of Bannock County, or the western side of Bannock County; and*
3. *To extend District 29 west to include the western and southern portion of the Fort Hall Reservation.*

This white paper has outlined our concerns with those options. Attached are the following maps:

- x Fort Hall Reservation Residences Over Voting Districts
- x Maps – 3

Exhibit B to Declaration Devon Boyer

