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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

CHRISTOPHER PENTICO, a 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.	Supreme Court Dkt. No. 49351-2021

RESPONDENTS IDAHO COMMISSION FOR REAPPORTIONMENT AND LAWERENCE DENNEY'S RESPONSE TO PETITIONER CHRISTOPHER PENTICO

LAWRENCE G. WASDEN
Idaho Attorney General

BRIAN P. KANE
Chief Deputy

STEVEN L. OLSEN
Chief of Civil Litigation

MEGAN A. LARRONDO
ROBERT A. BERRY
CORY M. CARONE
Deputy Attorneys General
P.O. Box 83720
Boise, ID 83720-0010
megan.larrondo@ag.idaho.gov
robert.berry@ag.idaho.gov
cory.carone@ag.idaho.gov

Attorneys for Respondents

Edward W. Dindinger, Esq.
Runft Dindinger Kohler, PLLC
1020 W. Main St., Ste. 400
P.O. Box 1406
Boise, ID 83701-1406
ewd@rdkboise.com

Thomas J. Katsilometes, Esq.
Thomas J. Katsilometes, PLLC
P.O. Box 777
Boise, ID 83701
tjk@208lawyers.com

Attorneys for Petitioner Christopher Pentico

TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES

CASES

/ / /

CONSTITUTIONS

STATUTES

OTHER AUTHORITIES

I. INTRODUCTION

Petitioner Pentico manufactures novel constitutional and statutory issues with the Idaho Commission for Reapportionment's ("Commission") adoption of congressional redistricting plan C03 in a misguided effort to invalidate the Commission's hard work and substitute the Commission's discretion and judgment with his own. But neither of the arguments that Pentico advances can bear the weight he places on them. The Commission's filing of its Final Report with the Idaho Secretary of State was timely because it occurred within 90 days of the date the Commission was organized, i.e., the date the Commission selected co-chairs and adopted rules governing its procedure. In fact, the Commission filed its Final Report weeks before the 90-day deadline ran. And the Commission properly waived the statutory prohibition on splitting local voting precincts for its congressional redistricting plan pursuant to Idaho Code § 72-1506(7) with its vote that it could not complete legislative redistricting without splitting precincts. The plain language of Idaho Code § 72-1506(7) authorizes the Commission's action. Any other interpretation would tie the Commission to outdated precincts that would shortly have to be changed at the expense of other important state interests enshrined in statute, including avoiding drawing oddly shaped districts and preserving local communities of interest, and be contrary to legislative intent. The Court should deny Pentico's requests for relief.

II. STATEMENT OF THE CASE

This is an original proceeding filed by Petitioner Christopher Pentico under Article III, Section 2, Subsection (5) of the Idaho Constitution and Idaho Code § 72-1509(1) challenging congressional redistricting plan C03. Respondents incorporate the relevant portions of the

Statement of the Case previously set forth in the Corrected Respondents Idaho Commission for Reapportionment's and Lawerence Denney's Response Brief ("Corrected Response Brief to Durst and Ada County"), s*ee id.* at 3-5, and add additional facts pertinent to congressional redistricting plan C03 and Pentico.

A. The Commission worked carefully and expeditiously to adopt congressional redistricting plan C03.

The results of the 2020 federal census were received by the State of Idaho on August 12, 2021. Final Report at 1. That same day, Idaho Secretary of State Lawerence Denney issued his Order Establishing Commission for Reapportionment ("Order"), establishing the Commission and identifying the individuals to serve on the Commission. *Id.* at vii, 1. The Secretary's Order acknowledged the receipt of the census data, the submission by appointing authorities of their designations, "hereby establish[ed]" the Commission for Reapportionment, and identified its members: Bart Davis, Tom Dayley, Nels Mitchell, Amber Pence, Eric Redman, and Dan Schmidt. *Id.* at vii. The Commission is bi-partisan, and its members reflect geographic representation of individuals from across the state. Idaho Code § 71-1502; Final Report, Appendix ("App.") I.

The Commission convened on September 1, 2021. Final Report at 1. On that day, Secretary Denney administered the oath of office to the Commissioners, the Commissioners elected co-chairs, and they adopted rules governing the Commission's proceedings. Final Report at 1; Final Report, App. III (September 1 Meeting Minutes) at 1 and 3; Final Report, App. IV (Rules of the Idaho Commission for Reapportionment). At subsequent early business meetings, the Commission completed other necessary preliminary activities, including drafting proposed redistricting plans

to facilitate public discussion. Final Report at 1. The Commission then toured the state over the course of four weeks, holding in-person hearings at seventeen different locations throughout the state where public testimony was taken. *Id.* at 1-2; Final Report, App. III (September 15 Caldwell Minutes, September 15 Nampa Minutes, September 16 Meridian Minutes, September 16 Boise Minutes, September 17 Eagle Minutes, September 22 Sandpoint Minutes, September 22 Coeur d'Alene Minutes, September 23 Plummer Minutes, September 23 Moscow Minutes, September 24 Lewiston Minutes, September 29 Hailey Minutes, September 30 Twin Falls Minutes, October 1 Burley Minutes, October 6 Fort Hall Minutes, October 6 Pocatello Minutes, October 7 Rexburg Minutes, October 7 Idaho Falls Minutes). An eighteenth public meeting was held on October 12, 2021 to take remote testimony. Final Report at 2; Final Report, App. III (October 12 Remote Meeting Minutes). The Commission also accepted written comments and draft plans electronically. Final Report at 2.

Sixty-five days after convening, on November 5, 2021 (and again on November 10 out of concern for a potential open meeting violation), the Commission adopted Plan C03 as Idaho's congressional redistricting plan. Final Report at 2. The Commission adjourned on November 10, 2021, having considered 32 third-party-proposed and three Commission-proposed congressional redistricting plans. *Id.*; Final Report, App. XII at 2-39; Final Report, App. XI at 2-4. The Commission filed its Final Report with the Secretary of State's Office on November 12, 2021. Pentico's Verified Amended Petition for Review, Exhibit A.

In adopting Plan C03, the Commission created two congressional districts reflecting the two seats in the House of Representatives apportioned to Idaho. Final Report at 96; *see also* Idaho

Code § 34-1901 (creating two congressional districts with one member elected from each district). The Commission properly identified the legal criteria for congressional redistricting. Final Report at 95-96. The Commission recognized that, unlike with legislative redistricting, two provisions of the United States Constitution require proportional representation in Congress: Article I, Section 2 of the U.S. Constitution and the Equal Protection Clause contained in the Fourteenth Amendment to the U.S. Constitution. *Id.* at 95. As the Commission acknowledged, "[t]he population of congressional districts in the same state must therefore be as nearly equal as practicable." *Id.* (citing *Wesberry v. Sanders*, 376 U.S. 1, 84 S. Ct. 526, 11 L. Ed. 2d 481 (1964)). Courts will occasionally allow slight population deviations that are "consistent with constitutional norms." *Id.* at 96 (citing *Tennant v. Jefferson County Commission*, 567 U.S. 758, 760, 133 S. Ct. 3, 183 L. Ed. 2d 660 (2012)). Unlike with legislative redistricting, there is no Idaho constitutional provision governing the division of counties in congressional redistricting. *Id.* at 97. "Idaho's policies on congressional redistricting appear in statute." *Id.* at 96. As the Commission recognized, "[t]hese criteria include, to the extent possible, preserving traditional neighborhoods and local communities of interest, avoiding oddly shaped districts, avoiding division of counties, . . . and retaining local precinct boundary lines." *Id.* (citing Idaho Code § 72-1506(2), (4), (5), (7) and (8)).

The Commission heard varying testimony from county clerks about local precincts boundaries. Ada County Clerk Phil McGrane "advised the [C]omission to ignore precinct boundaries since the lines would be redrawn anyway at the conclusion of redistricting." Final Report, App. III (September 16 Meridian Meeting Minutes) at 1. Kootenai County Elections Manager Asa Gray similarly testified that Kootenai County intended to redraw precinct boundary

lines after redistricting concluded. *Id.* (September 22 Coeur d'Alene Meeting Minutes) at 1. In contrast, Nez Perce County Clerk Patty Weeks asked the Commission to follow existing precinct boundaries. *Id.* (September 24 Meeting Minutes) at 1-2.

After considering the law, testimony, and public comments pertinent to congressional redistricting plans submitted by the public, the Commission adopted Plan C03 by a four to two vote. Final Report at 96-98. The Commission found that, "[b]ecause Idaho has an even-numbered population, and because there are only two congressional districts, it is mathematically possible to achieve precise numeric equality between the districts." *Id.* at 97. Each district in Plan C03 is the ideal district size of 919,553. *Id.* at 99. The Commission found that it was not possible to completely avoid county divisions in response to Idaho Code § 72-1506(5)'s instruction that "[d]ivision of counties shall be avoided where possible" because "it [was] mathematically possible to achieve precise numeric equality between the districts" by dividing Ada County. [1] *Id.* at 97. The Commission noted that such a division is consistent with the history of Idaho's congressional districts since 1971, and found that maintaining this traditional division would be less disruptive and confusing to voters than the creation of entirely new districts. *Id.* As for the remaining criteria in Idaho Code, the Commission found that "even a small deviation between districts to effectuate state policy is not reasonable in a redistricting year when precise numeric equality can be achieved." *Id.*

[1] Ada County has not challenged this finding for purposes of congressional redistricting. Pentico, who resides in Elmore County, does not challenge Plan C03 on the grounds of county division. *See* Pentico's Verified Amended Petition for Review at ¶ 3; *id.* (§§ V−VII) at 6-9.

With regard to retaining local precinct boundary lines, the Commission found, by a five to one vote, that it could not complete its duties with regard to congressional redistricting by fully complying with the requirement in Idaho Code § 72-1506(7) to retain precinct boundary lines. *Id.* The Commission's vote was out of an abundance of caution. It had already unanimously voted to waive the precinct requirement for legislative districts for Plan L03 pursuant to Idaho Code § 72-1506(7). Final Report, App. III (November 5 Meeting Minutes) at 1; Final Report, App. III (November 10 Meeting Minutes) at 1. Plan C03 splits only six precincts, all of which are in Ada County. Final Report, App. IX at 2.

Co-chair Schmidt and Commissioner Mitchell authored a Minority Report in dissent to explain their votes against Plan C03. Final Report at 100-01. They disagreed with the rest of the Commission's determination as to whether it was possible to avoid dividing counties under Idaho Code § 72-1506(5). *Id.* at 101. They would have adopted Plan C036, or a similar plan, which kept counties whole, but resulted in a difference of 102 people between congressional districts. *Id.* Commissioner Mitchell did not explain his sole dissenting vote against splitting precincts. *Id.* at 100. No Commissioner voted for Plan C039.

B. Pentico submitted one congressional redistricting plan to the Commission that contained obvious flaws.

Pentico submitted Plan C039 to the Commission on September 27, 2021. Final Report, App. XII at 6, 36. Like Plan C03, it has a zero person population deviation. *Id.* at 6. Plan C039 does not split any local voting precincts. C039 County and Precinct Splits Report. However, Plan C039 cuts across Ada County twice with a jagged, irregular line to carve most of Ada County out

of its surroundings and place it in Plan C039's district 2. *Id.* at 36. Plan C039 also divides more communities of interest than Plan C03 as it divides four cities (Boise, Kuna, Meridian, and Star), while C03 divides only three cities (Boise, Eagle, and Meridian). *Compare id. with* Final Report, App. XI at 4.

Pentico filed his Verified Petition for Review challenging the Commission's adoption of Plan C03 on December 15, 2021, which he subsequently amended. *See* Pentico's Verified Petition for Review; Pentico's Verified Amended Petition for Review. Pentico's challenge turns on two questions of constitutional and statutory interpretation, specifically, (1) when does the 90 days for the Commission to file its final report with the Secretary of State begin to run and (2) can the Commission waive the statutory prohibition on splitting local precincts.[2] Pentico's Verified Amended Petition for Review (§§ V−VII) at 6-9. On both questions, Pentico's interpretations are flawed. His requests for relief should be denied.

III. LEGAL STANDARD FOR CONGRESSIONAL REDISTRICTING

When drawing congressional redistricting plans, the Commission must follow the United States Constitution and Idaho Code § 72-1506. The Equal Protection Clause contained in the Fourteenth Amendment to the U.S. Constitution applies to congressional redistricting, as does Article I, Section 2 of the U. S. Constitution, which requires that members of the House of

[2] Pentico asserts in his petition that his Plan C039 is the only submitted congressional redistricting plan that satisfies all applicable criteria. Pentico's Verified Amended Petition for Review at ¶ 30. While Respondents strenuously dispute this assertion, it is not necessary, nor would it be appropriate, to address the merits of every congressional redistricting plan submitted to the Commission in order for this Court to reject Pentico's challenge and uphold Plan C03. Pentico's assertion is not relevant to the causes of action he argues

Representatives "be apportioned among the several States . . . according to their respective Numbers" and "chosen every second Year by the People of the several States." That language has been interpreted as requiring the Commission to "draw congressional districts with populations as close to perfect equality as possible." *Evenwel v. Abbott*, 578 U.S. 54, 59, 136 S. Ct. 1120, 1124, 194 L. Ed. 2d 291 (2016) (citing *Kirkpatrick v. Preisler*, 394 U.S. 526, 530–31, 89 S. Ct. 1225, 22 L. Ed. 2d 519 (1969)). That requirement "does not require that congressional districts be drawn with precise mathematical equality," but it does require the Commission to "justify population differences between districts that could have been avoided by a good-faith effort to achieve absolute equality." *Tennant*, 567 U.S. at 759 (quotation omitted).

Courts, for example, will at times defer to state policies that are "consistent with constitutional norms, even if they require small differences in the population of congressional districts." *Id.* at 760. Idaho's congressional redistricting policies are reflected in Idaho Code § 72-1506, which identifies the following criteria: compliance with federal law, preservation of traditional neighborhoods and local communities of interest, avoidance of oddly shaped districts, avoidance of division of counties, retention of local precinct boundary lines, and combination of contiguous counties.

The challenger to a congressional redistricting plan "bears the burden of proving the existence of population differences that 'could practicably be avoided.'" *Tennant*, 567 U.S. at 760 (quoting *Karcher v. Daggett*, 462 U.S. 725, 734, 103 S. Ct. 2653, 2653, 77 L. Ed. 133 (1983)). If he meets this burden, the burden shifts to the state to show that the population differences were necessary to achieve a state objective. *Id.* Pentico similarly bears the burden to prove that the

Commission violated Idaho Code given the deference extended to the Commission's judgment. *Bonneville County v. Ysursa*, 142 Idaho 464, 472, n.8, 129 P.3d 1213, 1221 (2005); *see also* Corrected Response Brief to Durst and Ada County, at 16.

IV. ARGUMENT

A. The Commission's Final Report was timely filed with the Secretary of State's Office.

Contrary to Pentico's belief, the Commission's Final Report[3] was timely submitted to the Idaho Secretary of State in accordance with Idaho's Constitution and statutes. Under Article III, Section 2, Subsection (4) of the Idaho Constitution, the Commission was required to file its Final Report with the Secretary of State "within ninety days after the commission has been organized or the necessary census data are available, whichever is later." Idaho Const. art. III, § 2(4). September 1, 2021 is the date the Commission was organized, i.e. that it elected its leaders and agreed upon the rules that governed its conduct, and it is therefore the date from which the 90 days began to run. The Secretary of State's August 12, 2021 Order that Pentico relies upon did not organize the Commission—it merely formed it. Under the plain meaning of the pertinent provisions of Idaho's Constitution, statutes, and the Secretary of State's Order, the Commission timely filed its Final

[3] The Idaho Constitution states that "the commission shall file a proposed plan for apportioning the senate and house of representatives of the legislature with the office of the secretary of state. At the same time, and with the same effect, the commission shall prepare and file a plan for congressional districts." Idaho Const. art. III § 2(4). Pentico may argue that the Final Report referenced in Idaho Code § 72-1508 is different from the proposed plan referenced by the Constitution, but they are one and the same. It would be illogical for the Commission to be required to file its Final Report setting out the findings for its proposed plan weeks before filing its proposed plan. The Commission's Final Report and proposed plans are one and the same, so Respondents will simply refer to the filing of the Final Report with the understanding that Final Report means both the Commission's findings and its proposed legislative and congressional redistricting plans.

Report because it submitted its Final Report to the Secretary of State on November 12, 2021, significantly prior to its November 30, 2021 deadline. Pentico's Verified Amended Petition for Review, Ex. A.

The plain language of Subsections (2) and (4) of Article III, Section 2 of the Idaho Constitution control to understand the deadline set by Article III, Section 2, Subsection (4).[4] Pentico Brief at 9; *see also State v. Winkler*, 167 Idaho 527, 531, 473 P.3d 796, 800 (2020) ("When interpreting constitutional provisions, the fundamental object is to ascertain the intent of the drafters by reading the words as written, employing their natural and ordinary meaning, and construing them to fulfill the intent of the drafters.") (quotation omitted). While, as discussed below, Idaho Code is consistent with the constitutional deadline set by Subsection (4), even if it were inconsistent, it cannot override the deadline set by Idaho's Constitution. *State v. Village of Garden City*, 74 Idaho 513, 522, 265 P.2d 328, 331-32 (1953) ("The Legislature cannot amend or repeal the constitution, or any part of it, by legislative act, nor interpret it."). Pentico's argument fails because he fails to give the sufficient weight to the constitutional and statutory plain language.

The plain language of Subsection (2) states in pertinent part that "a commission for reapportionment shall be *formed* on order of the secretary of state. . . . ." Idaho Const. art. III, § 2(2) (emphasis added). This provision does not use the word "organize." The primary definition of the verb "to form" is "to give a particular shape to: shape or mold into a certain state or after a

[4] The Court has never interpreted the deadline set by Article III, Section 2, Subsection 4 of the Idaho Constitution. In *Twin Falls County v. Idaho Commission on Redistricting*, the Court just accepted the interpretation of the then-Secretary of State without scrutiny. *See* Appendix A to this brief, which contains the relevant briefing and order from *Twin Falls County*.

particular model." *Form*, MERRIAM-WEBSTER.COM DICTIONARY https://www.merriam-webster.com/dictionary/form (last visited January 2, 2021). Consistent with this definition, immediately after the sentence quoted above, Subsection (2) sets out the number of commissioners that may comprise the commission and the process by which those members are chosen. Idaho Const. art III, § 2(2). When an appointing authority does not select a member "within fifteen calendar days following the secretary of state's order to form the commission, such members shall be appointed by the Supreme Court." *Id.* There is no time frame for the Supreme Court to act to appoint a member. This alone proves the fallacy of Pentico's reading. The clock cannot start ticking on a commission's work before that commission has all of its members. Under Pentico's interpretation, a commission's deadline could expire before all its members were selected, let alone sworn in.

The Secretary of State's August 12, 2021 Order merely *formed* the Commission. This is consistent with the plain language of Subsection (2), which the Secretary of State relied upon as the authority for his Order. Final Report at vii. The Order began: "WHEREAS, Article III, Section Two of the Idaho State Constitution provides for the establishment of a Commission for Reapportionment under certain conditions." *Id.* The Order later states, "I . . . do hereby establish the Commission for Reapportionment." *Id.* To establish primarily means "to cause (someone or something) to be widely known and accepted" or "to put (someone or something) in a position, role, etc. that will last for a long time." *Establish*, MERRIAM-WEBSTER.COM DICTIONARY https://www.merriam-webster.com/dictionary/establish (last visited January 2, 2021), essential

meaning of *establish*, at ¶¶ 1, 2. That is what the Order did. It announced that the Commission had been formed, and it named the individuals who would serve as Commissioners.

The Commission's organization came later, as demonstrated by the plain language of the relevant constitutional provisions. The constitutional provision that sets the Commission's deadline uses different language than the provision that addresses the Secretary of the State's order. *Compare* Idaho Const. art III, § 2(2) ("a commission for reapportionment shall be *formed* on order of the secretary of state" *with* Idaho Const. art. III, § 2(4) ("within ninety days after the commission has been *organized* . . ."') (emphasis added). Different words are presumed to have different meanings in order to avoid rendering the use of different terms "mere surplusage." *Wright v. Willer*, 111 Idaho 474, 476, 725 P.2d 179, 181 (1986). If the Secretary of State's Order forming the Commission also triggered the running of the Commission's deadline under Article III, Section 2, Subsection 4, that provision would also have used the word "form." But it did not. It used "organize," which must be understood to have a different meaning and to refer to a different event.

To organize—the operative word used in the Idaho Constitution that Pentico invokes—primarily means "to form into a coherent unity or functioning whole" or "to set up an administrative structure for." *Organize*, MERRIAM-WEBSTER.COM DICTIONARY https://www.merriam-webster.com/dictionary/organize (last visited January 2, 2021), definition of *organize* as a transitive verb, at ¶¶ 1, 2a. The Secretary of State's Order did not organize the Commission. It did not, for example, identify the chairpersons or set the procedural rules for voting. Indeed, the Order never once used the word "organize."

Reading the Order as forming, but not organizing, the Commission is consistent with the relevant statutes. Subsection (1) of Idaho Code § 72-1501 provides: "A commission for reapportionment shall be organized, upon the order of the secretary of state, in the event that . . . [i]n a year ending in one (1), a new federal census is available, in which case an order shall be issued no earlier than June 1." Pentico omits the commas and misreads the plain language to argue that the statute says the Secretary's order also organizes the Commission. Pentico Brief at 9. But grammar matters. When the statute is read properly, it states *when* a Commission must be organized: in a year ending in one after a new federal census is available and after the Secretary of State issues an order establishing the Commission. In other words, properly read, the organization of the Commission is dependent upon the Idaho Secretary of State first issuing an order; it is not organized by the Secretary of State's issuance of an order.

Once the time is right for the Commission to be organized, Idaho Code § 72-1505 builds upon Section 1501 to explain how that organization actually occurs. *See Saint Alphonsus Regional Medical Center v. Elmore County*, 158 Idaho 648, 653, 350 P.3d 1025, 1030 (2015) ("Statutes that are *in pari materia* are construed together to effect legislative intent.") Section 1505 is appropriately titled "Organization and Procedure." *See Nelson v. Evans*, 166 Idaho 815, 821, 464 P.3d 301, 307 (2020) (noting that while the "heading of a section cannot limit the plain meaning of the text . . . [f]or interpretive purposes, [it is] of use only when [it] shed[s] light on some ambiguous word or phrase."). Consistent with its title, Section 1505 explains how the Commission "form[s] into a coherent unity or functioning whole" or "set[s] up an administrative structure." *Organize*, MERRIAM-WEBSTER.COM DICTIONARY https://www.merriam-

webster.com/dictionary/organize (last visited January 2, 2021), definition of *organize* as a transitive verb, at ¶¶ 1, 2a. It provides that the Commission first must elect a chairman or co-chairman and other officers as they may determine by majority vote. Idaho Code § 72-1505.

Here, the members of the Commission were sworn in on September 1, 2021, and promptly took that organizational step by electing co-chairs. Final Report, App. III, (September 1 Minutes) at 1. The Commission further organized itself that day by adopting rules regarding organization, procedure, and other matters. *Id.* at 3; Final Report at 1-2. It was only at that point that the 90-day deadline began to run. The Commission's deadline to file its Final Report was thus November 30, 2021. It met that deadline with time to spare when it filed its Final Report with the Secretary of State on November 12, 2021.

Pentico's purported "public policy considerations," which imagine a Commission that would delay to such an extent that it would destroy Idaho's democracy, both demonstrate the perils of hyperbolic flights of fancy and ignore the presumption of good faith to which public officials are afforded. *See State v. Abdullah*, 158 Idaho 386, 447, 348 P.3d 1, 62 (2015) ("[t]he Court presumes regularity in the performance of official duties by public officers.") (quotation omitted). Pentico fails to point to any support for his asserted public policy concerns beyond his own imagining. Pentico Brief at 10. Given that the Commission organized on September 1 and filed its Final Report early on November 12, 2021 after months of hard and expeditious work, Pentico's message that the Commission "Be about the people's business, and quickly" is an insult, especially where Pentico's challenge seeks the exact opposite result by further delaying matters.

B. The Commission's congressional plan satisfies the U.S. Constitution and Idaho Code § 72-1506.

The Commission's congressional redistricting plan C03 satisfies the U.S. Constitution by having a zero population deviation. Plan C03 also complies with Idaho Code. Contrary to Pentico's arguments, Idaho Code § 72-1506(7) gives the Commission the ability to disregard local voting precinct boundary lines for its congressional redistricting plan. Plan C03 should thus stand.

1. The Commission may vote to disregard precinct lines under the plain language of Idaho Code § 72-1506(7).

Pentico errs in thinking that the Commission's vote under Idaho Code § 72-1506(7) to waive consideration of precinct lines for the purpose of drawing legislative districts is irrelevant to its drawing of congressional districts. It was the Commission's vote to waive the prohibition on splitting precincts for legislative districts that freed it from the prohibition on splitting precincts for its congressional redistricting map.

Idaho Code § 72-1506(7) provides:

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

(emphasis added). Subsection (7)'s unmodified use of "district boundaries" in the first sentence applies to both "congressional and legislative redistricting plans." *See* Idaho Code § 72-1506 ("Congressional and legislative redistricting plans considered by the commission, and plans adopted by the commission, shall be governed by the following criteria"). Thus, with this first

sentence, the Commission is bound to retain precinct lines for both its legislative and congressional redistricting plans. The second sentence allows the Commission to waive this requirement for the "commission or legislative redistricting plan it shall adopt" if five members of the Commission vote "that it cannot complete its duties for a *legislative district* by fully complying with the provisions of this subsection." Idaho Code § 72-1506(7) (emphasis added). By the subsection's plain language, the prohibition on splitting precincts does not apply to the Commission's congressional redistricting plan once it votes to waive the precinct requirement for its legislative redistricting plan.

Pentico would infer from the use of "legislative district" in Subsection (7)'s waiver provision that the Commission's vote to waive the prohibition on splitting precincts for legislative districts does not apply to congressional districts, but that is not what the subsection says. Pentico's arguments fail to give meaning to all of the words that are used in Subsection (7). When interpreting Subsection (7), the Court "must give effect to all the words and provisions of the statute so that none will be void, superfluous, or redundant." *Nelson*, 166 Idaho at 820, 464 P.3d at 306. The Court must abide by all of the actual language in the subsection, and, under that actual language, the Commission merely needs to decide that it cannot complete its duties for legislative redistricting without splitting precincts in order for that vote to also free it from Subsection (7)'s prohibition on splitting precincts for its congressional district plan.

Subsection (7) states that, when five members agree that a plan cannot be adopted that adheres to precinct lines, that requirement does not apply "to the commission or [the] legislative redistricting plan." Idaho Code § 72-1506(7). If, as Pentico suggests, the waiver were to apply only

to legislative redistricting, Subsection (7) would say only that the precinct requirement does not apply to the "legislative redistricting plan" following a vote to waive the prohibition. *See State v. Rivera*, 131 Idaho 8, 10, 951 P.2d 528, 530 (1998). But the words "to the commission" must also be given meaning, and given that the phrase "legislative redistricting plan" already addresses the Commission's ability to waive the precinct prohibition for a legislative redistricting plan, the only reasonable meaning of "to the commission" is that the Commission's vote also frees it from the prohibition on splitting precincts for the congressional redistricting plan. Pentico's reading would render the words "to the commission" void, superfluous, and redundant.

> The legislature's inclusion of "or" in between both phrases is also instructive.
>
> > The word "or" is defined as "a function word to indicate (1) an alternative between different or unlike things, states, or actions ...; (2) [a] choice between alternative things, states, or courses...." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1993). Further, the Idaho Supreme Court has concluded that the word "or" should be given its normal disjunctive meaning, unless that meaning would result in absurdity or produce an unreasonable result.

Id. (citing *Filer Mutual Telephone Co. v. Idaho State Tax Commission*, 76 Idaho 256, 261, 281 P.2d 478, 481 (1955)). The use of "or" as a disjunctive in Subsection (7) confirms that "to the commission" and "legislative redistricting plan" are two different and unalike things. Because the Commission adopts the legislative redistricting plan, the only way to interpret the phrase "to the commission" as an unalike thing from the legislative redistricting plan is to understand it as referring to the congressional redistricting plan.

The plain language is further clarified by Subsection (7)'s express incorporation of Idaho Code § 34-306. Subsection (7) addresses "local voting precinct lines" as allowed by "the

provisions of section 34-306, Idaho Code." Idaho Code § 72-1507(7). Idaho Code § 34-306 sets the requirements for "precinct boundaries." This Court must look to Idaho Code § 34-306 and, indeed, the rest of Chapter 3, Title 34, Idaho Code, to understand Subsection (7) because statutes must be construed *in pari materia*. *Saint Alphonsus Regional Medical Center*, 158 Idaho at 653, 350 P.3d at 1030. Chapter 3, Title 34, Idaho Code provides that the board of county commissioners may only "create new or consolidate established precincts" "within the boundaries of *legislative districts*." Idaho Code § 34-301(1) (emphasis added). If precinct boundaries cannot comply with the visible feature or political boundary requirements as well as with "*legislative district* boundaries," the county "may designate subprecincts within precincts." Idaho Code § 34-306 (emphasis added). Given that precinct lines are expressly tied to legislative district boundaries, the Commission's vote to waive precincts lines for the purpose of drawing legislative districts is the only vote that could possibly matter. Once the Commission makes that determination, the precinct lines must be reset to comply with the new legislative district boundaries. Any consideration of those precinct lines as to the congressional districts is moot and meaningless.

While the Commission here, out of an abundance of caution, voted to waive the prohibition on splitting precincts with regard to its congressional redistricting plan, it was the Commission's vote to waive the prohibition on splitting precincts for its legislative redistricting plan that mattered. That vote relieved it from the prohibition on splitting precincts for the purpose of congressional redistricting. The Commission therefore properly split precincts within Plan C03.

Subsection (7) just makes sense. While the legislative and congressional district lines are different, the underlying precinct lines for both types of districts are the same. And precinct lines

must adhere to legislative district lines—not congressional district lines. Once the Commission votes to waive the precinct prohibition for legislative redistricting, the die is cast—the lines must be redrawn regardless of what happens with congressional redistricting. There is no need to handcuff the Commission to the old precinct lines for congressional redistricting because they no longer matter. But that is what would happen under Pentico's nonsensical interpretation, and it would be at the expense of the Commission's ability to consider other important statutory criteria.

The circumstances before the Commission confirm the logic of Subsection (7). In his testimony before the Commission, Ada County Clerk Phil McGrane advised "the [c]ommission to ignore precinct boundaries since the lines would be redrawn anyway at the conclusion of redistricting." Final Report, App. III (September 16 Meridian Minutes) at 1. Plan C03 only split local precincts in Ada County. It would make no sense for the Commission to bind itself to precinct lines that it knew would shortly be changed, particularly because holding itself to outdated precinct lines would come at the expense of other statutory redistricting criteria, such as communities of interest.

The legislative history further contradicts Pentico's anomalous interpretation.[5] Nothing in the 2009 legislative history of Senate Bill 1184, which is when the legislature added the ability for the Commission to waive the prohibition on splitting precincts, indicates that the legislature

[5] Respondents recognize that legislative history should only be considered if a statute is ambiguous. Respondents contend that Subsection (7) is not ambiguous. However, should the Court determine that Subsection (7) is ambiguous, it should consider the legislative history. *State v. Lantis*, 165 Idaho 427, 429, 447 P.3d 875, 877 (2019).

intended to prohibit the Commission from ever splitting precincts during congressional redistricting. *See* Appendix B (containing the legislative history for S.B. 1184, 60th Leg., 1st Reg. Sess. (Idaho 2009)). Instead, the legislature repeatedly indicated that it contemplated that the prohibition on splitting precincts could be waived. Appendix B at 3 ("local voting precincts shall remain intact as much as possible"); *id.* at 8 ("[t]his puts more emphasis in the division of counties and precincts and still allows the Commission to deviate from that, in order to comply with the other provisions in redistricting."); *id.* at 12 ("Protecting the counties and voting precincts as much as possible is important, so there are provisions for a process by which those can be overridden if necessary."); *id* at 14 ("the language contained in subpart 7 is just a waiver of the rigid standards that are contained there."). The legislative history supports the conclusion that the Commission's vote to waive the precinct requirement for the purposes of legislative redistricting also waived that requirement for the purposes of congressional redistricting.

2. The Commission's determination that it could not complete its duties without splitting precincts was factually correct.

Pentico's Plan C039 does not establish that the Commission's decision that it could not complete its duties without splitting precincts was factually incorrect. Given that it is the Commission's determination that it cannot complete its duties without splitting precincts with regard to *legislative* redistricting that matters, the merits of any *congressional* redistricting plan, including Plan C039, are wholly irrelevant. Pentico does not challenge the correctness of the Commission's determination that it could not complete legislative redistricting without splitting precincts, so his argument fails.

But even if Pentico's Plan C039 were relevant, contrary to Pentico's argument, Plan C039 does not satisfy all applicable constitutional and statutory criteria. For example, C039 is oddly shaped in contravention of Idaho Code § 75-1506(4) with its elephant trunk district line through Melba and Ada County that carves most of Ada County out of its surroundings. Final Report, App. XII at 36. C039 also divides more communities of interest than Plan C03. It divides one more city than C03. *Compare* Final Report, App. XII at 36 *with* Final Report, App. XI at 4.

The Commission properly applied the constitutional criteria and the statutory factors in reaching its determination that it could not complete its legislative redistricting duties without splitting precincts. The Commission's vote to waive the prohibition on splitting precincts for the purpose of legislative redistricting also waived the prohibition on splitting precincts for the purposes of congressional redistricting. And the Commission justified its conclusion with careful findings, which Pentico does not challenge. Pentico's desire to replace the Commission's discretion and decision-making with his own cannot stand.

C. Like the other Petitioners, Pentico is not entitled to attorney's fees.

Despite suing both the Commission and Idaho Secretary of State, Pentico only argues for attorney's fees against the Commission. Pentico Brief at 13-14. As such, no fees may be awarded against the Idaho Secretary of State.

As it relates to the Commission, Pentico would not be entitled to attorney's fees under either Idaho Code §§ 12-117 or -121 even if he could prevail (and he cannot) because the Commission acted with a reasonable basis in law and fact in adopting Plan C03 and it now acts with a reasonable basis in defending against Pentico's challenge. *See* Idaho Code §§ 12-117, -121.

This is both thoroughly demonstrated by the arguments presented herein, the absence of caselaw precisely supporting Pentico's positions, and by the remarks of University of Idaho Law Professor Benjamin Cover, who said that "both of the arguments are pretty technical arguments that are interpreting the rules in a very particular way, and it's not clear that the Idaho Supreme Court will embrace those interpretations." Betsy Z. Russell, *First Challenge filed to New Congressional District Plan*, Idaho Press Tribune (Dec. 16, 2021), available at https://www.idahopress.com/eyeonboise/first-challenge-filed-to-new-congressional-redistrictingplan/article_54541761-2fce-51ae-a956-f59a428cc729.html.

Indeed, if the alleged issues that Pentico raises are so obvious, one wonders why he did not say anything to the Commission about them prior to filing this challenge. *See* Final Report, App. III (recording no testimony before the Commission by Mr. Pentico); Final Report, App. XII at 6 (Pentico's comments on his submission of Plan C039 failed to mention his interpretation of the Commission's ability to waive the prohibition on splitting precincts). And there is no evidence for Pentico's unwarranted assumption that the Commission understood itself to be missing a November 10 deadline when it filed its report on November 12. Pentico's silence before the Commission and lack of evidence is telling and weighs heavily against the requested award of fees.

V. CONCLUSION

For the foregoing reasons, Respondents request that the Court declare that the final congressional redistricting plan adopted by the Commission complies with the applicable law

governing reapportionment. Respondents further request that the Court refuse to issue the requested writ of prohibition and that the Court deny all other relief requested by Petitioner Pentico.

DATED this 6th day of January, 2022.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By: */s/ Megan A. Larrondo*
MEGAN A. LARRONDO
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 6, 2022, 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.

Edward W. Dindinger, Esq.
Runft Dindinger Kohler, PLLC
ewd@rdkboise.com

Thomas J. Katsilometes, Esq.
Thomas J. Katsilometes, PLLC
tjk@208lawyers.com

Attorneys for Petitioner Christopher Pentico

/s/ Megan A. Larrondo
Megan A. Larrondo
DEPUTY ATTORNEY GENERAL

RESPONDENTS IDAHO COMMISSION FOR REAPPORTIONMENT AND LAWERENCE DENNEY'S RESPONSE TO PETITIONER CHRISTOPHER PENTICO

APPENDIX A

LAWRENCE WASDEN
ATTORNEY GENERAL

BRIAN KANE (ISB NO. 6264)
Assistant Chief Deputy Attorney General

STEVEN L. OLSEN (ISB NO. 3586)
Chief of Civil Litigation Division

MICHAEL S. GILMORE (ISB NO. 1625)
MEGAN MOONEY (ISB NO. 7750)
Deputy Attorneys General
P.O. Box 83720
Boise, Idaho 83720-0010
Telephone: (208) 334-4130
E-mail: yyyy@ag.idaho.gov

IN THE SUPREME COURT OF THE STATE OF IDAHO

In Re the Constitutionality of Idaho Legislative Reapportionment Plan of 2002 (2002 Plan L97) and of 2002 Congressional Reapportionment Plan	)	Case No. _____
	)	**SECRETARY OF STATE'S VERIFIED ORIGINAL JURISDICTION CHALLENGE AND PETITION FOR WRIT OF MANDAMUS**

Comes now Idaho Secretary of State, Ben Ysursa, in his capacity as Chief Elections Officer of the State of Idaho, see Idaho Code § 34-201, and as the officer whose office is the repository for Idaho Legislative and Congressional Reapportionment plans, see Idaho Const., Article III, § 2(4), and Idaho Code § 72-1508 , who hereby:

(a) files an Original Jurisdiction challenge under Idaho Const., Article III, § 2(4), to the currently effective Legislative Reapportionment Plan of 2002;

(b) petitions this Court for a Judgment declaring the Idaho Legislative and Congressional Reapportionment Plans of 2002 unconstitutional because they have population deviations of 95.73% and 14.84% under the 2010 Census, which violate the one-person, one-vote requirement of the Fourteenth Amendment's Equal Protection Clause, and

(c) petitions this Court for a Writ of Mandamus to the 2011 Commission for Reapportionment to reconvene and to submit plans meeting Federal and State Constitutional requirements as expeditiously as possible and no later than sixty days after the Court's order.

THE SUPREME COURT HAS ORIGINAL JURISDICTION OVER A LEGISLATIVE APPORTIONMENT CHALLENGE AND PETITION FOR A WRIT OF MANDAMUS

1. Idaho Const., Article III, § 2(5) directs: "The Supreme Court shall have original jurisdiction over actions involving challenges to legislative apportionment." This Original Jurisdiction Challenge is a "challenge[] to legislative apportionment" under Article III, § 2(5).

2. The last sentence of Article V, § 9, provides: "The Supreme Court shall also have original jurisdiction to issue writes of mandamus ... and all writs necessary or proper to the complete exercise of its appellate jurisdiction." This Petition for a Writ of Mandamus is associated with the Original Jurisdiction Challenge and is necessary to carry out the judgment of the Court under that Original Jurisdiction Challenge.

ABSENT ADOPTION OF A NEW PLAN, PLAN 2002 L97 REMAINS IN PLACE.

3. Currently, 2002 Plan L97 apportions Idaho Legislative Districts. 2002 Plan L97 remains in effect until a new plan is filed. Idaho Const., Article III, § 2. As provided in Article III, § 2(2), a new plan is now required based upon the results of the 2010 Census. Consistent with the 2010 Census, the Commission for Reapportionment was convened on June 7, 2011. See Exhibit 1, Order of Secretary of State, dated June 7, 2011. Pursuant to Idaho Const., Article III, § 2 (4) and Idaho Code § 72-1508 the Commission had 90 days in which to file a new plan. Absent the filing of a new plan, 2002 Plan L97 remains in effect.

4. As of the close of business, September 6, 2011, no plan for Legislative Reapportionment or for Congressional Reapportionment based upon the 2010 Census has been filed with the Secretary of State's Office. The initial time for the Commission for Reapportionment to file its plans based upon the 2010 Census has expired.

NO REASONABLE DEFENSE CAN BE OFFERED FOR USE OF 2002 PLAN L97 IN THE 2012 PRIMARY AND GENERAL ELECTIONS

5. This Court has held that the first requirement of any plan for reapportionment is compliance with "one person, one vote." *Bingham County v. Idaho Com'n for Reapportionment*, 137 Idaho 870, 872, 55 P.3d 863, 865 (2002). A redistricting plan that deviates more than 10% in population among the districts is *prima facie* unconstitutional under the Equal Protection

Clause. *Id.*, citing *Brown v. Thompson*, 462 U.S. 835, 842-43, 103 S.Ct. 2690, 2695-96 (1983). "The ultimate inquiry," after a *prima facie* case of discrimination is shown, is "whether the [Legislative reapportionment] plan 'may reasonably be said to advance a rational state policy' and, if so, 'whether the population disparities among the districts that have resulted from the pursuit of this plan exceed constitutional limits.' " *Id.* at 843, 103 S.Ct. at 2696 (quoting *Mahan v. Howell*, 410 U.S. 315, 328, 93 S.Ct. 979, 987 (1973)).

6. Currently effective 2002 Plan L97 has a total population deviation of 95.73%, far exceeding 10%. Exhibit 2, page one of which is taken from the Commission for Reapportionment's website, shows population deviations in the current Legislative and Congressional districts as shown by the 2010 Census. The 2011 Commission has offered no state policy or findings of fact to justify using either plan for the 2012 primary and general elections. Absent such findings of fact or articulated State policies, 2002 Plan L97 is constitutionally indefensible for use in the 2012 primary and general elections. The Court should enter a judgment on this Original Jurisdiction Challenge finding that 2002 Plan L97 is unconstitutional for use in the 2012 primary and general elections. As part of its pendant jurisdiction, the Court should also enter a judgment that the 2002 Congressional apportionment plan is likewise unconstitutional.

THE COMMISSION FOR REAPPORTIONMENT SHOULD BE MANDATED TO ADOPT PLANS

7. The Idaho Constitution tasks the Commission for Reapportionment with apportioning the Legislature and Idaho's Congressional delegation. Idaho Const., Article III, § 2(2). It limits the time within which the Commission must submit a plan to 90 days. *Id.*, Article III, § 2(4). The 90 days has expired, and no plans have been submitted. The Secretary of State asks the Court to defer to the Commission to provide it the fullest opportunity possible to comply with the Constitution's directive that the Commission apportion Legislative and Congressional districts. Alternative means of apportionment should only be considered as a last resort. The Idaho Secretary of State respectfully requests the Court to issue a Writ of Mandamus reconvening the Commission with the mandate to submit Legislative and Congressional plans as expeditiously as

possible, but in no event more than 60 days later.

CLARIFICATION IS NECESSARY TO ASSIST THE COMMISSION

8. To adopt a plan, the Idaho Constitution requires a ⅔ vote of the Commission for Reapportionment. Idaho Const., Article III, § 2(4). The Commission has six members, any four of whom are a ⅔-majority sufficient to approve a plan. However, the Legislature amended Idaho Code § 72-1506 to require 5 votes of the Commission with regard to two criteria: splitting precincts and establishing Legislative districts whose counties are not connected by State or Federal highways. The two 5-vote requirements permit a statutory veto of the constitutional majority of 4 votes to approve a plan because if a single precinct is split, or if a State or Federal highway does not "directly" connect counties in the Legislative district, the plan would require a five-vote supermajority instead of the Constitutional four-vote majority for approval.

9. The Commission could benefit from clarification of the *Bingham County* principles to the statutory amendments. Specifically, the 5-vote requirement adds to the ⅔ (4-vote) requirement in Article III, § 2(4). In *Bingham County*, the Court expressly stated: "[I]f the State Constitution and a statute conflict, the State Constitutional provision prevails." 137 Idaho at 874, 55 P.3d at 867. This Court elaborated: "[T]he other considerations set forth in § 72-1506 are subordinate to the limitations of Article III, § 5." *Id.*

10. This Court has observed: "[O]ur state, mountainous and expansive and sparsely populated, is divided into three regions: north, southwest, and southeast. *Hellar v. Cenarrusa*, 106 Idaho 571, 580, 682 P.2d 524, 533 (1984). Coupling the Fourteenth Amendment's requirement under the Equal Protection Clause with the Idaho Constitution's requirement that counties not be divided and combined with other counties in Legislative districts, except when necessary to comply with the Equal Protection Clause, makes a difficult task more formidable when confronted with Idaho's challenging topographic, geographic, and population features. *Bonneville County v. Ysursa*, 142 Idaho 464, 471, 129 P.3d 1213, 1220 (2005). Due to these well known features, apportionment of the Idaho Legislature in a manner consistent with the United States

Constitution (one person, one vote) and the Idaho Constitution (division of counties to form Legislative districts with other counties only as necessary) is formidable. Additional statutory factors further limiting the ability and discretion of the Commission may make apportionment of the Legislature unachievable under the added voting requirements. Clarification and direction will greatly assist the Commission by permitting it the opportunity to focus on those factors most important to a legally defensible Legislative apportionment plan.

11. The Secretary of State respectfully asks this Court to affirm the hierarchy of priorities in a constitutional apportionment: (1) Equal Protection, One-Person, One Vote (U.S. Constitution); (2) Legislative districts should not combine portions of one county with one or more other counties more than necessary to comply with Equal Protection (Idaho Constitution, Article III, § 5); and (3) Other statutory requirements as permissible after compliance with the preceding Constitutional requirements. The Commission may benefit from a clear statement whether four votes as provided by Article III, § 2(4) may approve a plan, or whether § 72-1506(7)'s and -(9)'s 5 vote requirements are necessary if precincts are split or counties within a Legislative district are not connected by federal or state highways.

PRAYER FOR RELIEF

The Secretary of State respectfully requests that the Court:

(a) accept and consider this Original Jurisdiction Challenge to the existing Legislative and Congressional apportionment,

(b) declare that and issue judgment that the 2002 Legislative and Congressional apportionments are unconstitutional for use in the 2012 primary and general elections,

(c) order that the Commission on Reapportionment reconvene to prepare and submit Legislative and Congressional reapportionment plans as expeditiously as possible and no later than within 60 days of this Court's Order, subject to such direction as this Court may order; and

(d) order all such further relief as provided in law and equity.

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

Your affiant, the Hon. Ben Ysursa, Secretary of State of the State of Idaho, being first duly sworn upon oath, and states upon personal knowledge as follows:

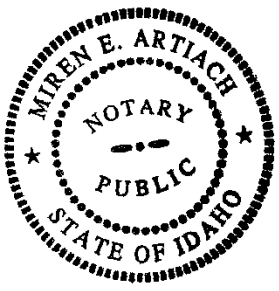
I am Ben Ysursa. I am the duly qualified Secretary of State of the State of Idaho. I have reviewed this Secretary of State's Verified Original Jurisdiction Challenge and Petition for Writ of Mandamus, and in particular the allegations of fact contained in Paragraphs 3, 4 and 6, and state that I have personal knowledge of those facts and that they are true to the best of my knowledge.

Dated this 7th day of September, 2011.

Ben Ysursa

BEN YSURSA
Secretary of State

SUBSCRIBED AND SWORN to before me this 7th day of September, 2011.



Miren E. Artiach
Notary Public
Residing at: Boise, Idaho
My Commission Expires: 7-15-2012

Exhibit 1

Order of the Secretary of State Establishing Commission for Reapportionment

State of Idaho

Office of the Secretary of State

Order

Establishing Commission for Reapportionment

WHEREAS, Article III Section Two of the Idaho State Constitution provides for the establishment of a Commission For Reapportionment under certain conditions; and

WHEREAS, the official results of the 2010 federal census have been received by the State of Idaho; and

WHEREAS, the census figures indicate that the current legislative and congressional districts are not within constitutional parameters; and

WHEREAS, the appointing authorities specified in Article III Section Two of the Idaho State Constitution have submitted their designations;

NOW, THEREFORE, I, Ben Ysursa, Secretary of State of the State of Idaho, by the authority vested in me under Article III, Section Two of the Idaho State Constitution, and Section 72-1501, Idaho Code, do hereby establish the Commission For Reapportionment. The initial members of the commission are as follows:

Allen Andersen	of Pocatello, Idaho
Lou Esposito	of Boise, Idaho
Lorna Finman	of Rathrum, Idaho
Evan Frasure	of Pocatello, Idaho
Julie Kane	of Lapwai, Idaho
George R. Moses	of Boise, Idaho

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Idaho. Done at Boise, the Capital of Idaho, this Seventh day of June, in the year of our Lord, Two Thousand and Eleven, and of the Independence of the United States of America, the Two Hundred and Thirty-fifth.

Ben Ysursa

Secretary of State

Exhibit 2

Populations of Current Legislative and Congressional Districts as Shown by the 2010 Census

ID	District	Population	18+ Population
1601	Congressional District 1	841930	614313
1602	Congressional District 2	725652	524197

District	Population	18+ Population
Legislative District 1	40210	30955
Legislative District 2	35917	28172
Legislative District 3	45166	33772
Legislative District 4	44634	34470
Legislative District 5	46466	34257
Legislative District 6	37244	30275
Legislative District 7	39265	30750
Legislative District 8	38711	30953
Legislative District 9	38220	28040
Legislative District 10	48958	33383
Legislative District 11	51062	36017
Legislative District 12	45474	31378
Legislative District 13	58725	40266
Legislative District 14	76940	51045
Legislative District 15	40177	30311
Legislative District 16	36855	29112
Legislative District 17	37314	30323
Legislative District 18	39282	29843
Legislative District 19	40219	32638
Legislative District 20	50201	35215
Legislative District 21	71377	50172
Legislative District 22	34066	24882
Legislative District 23	45710	32815
Legislative District 24	43046	31428
Legislative District 25	43165	31460
Legislative District 26	42443	29602
Legislative District 27	38757	26197
Legislative District 28	41905	28133
Legislative District 29	44248	31025
Legislative District 30	38591	29100
Legislative District 31	45173	31009
Legislative District 32	56073	36985
Legislative District 33	38893	28178
Legislative District 34	49686	35915
Legislative District 35	43409	30434

District	Population	Diff. from Ave	Pct Diff from Ave
Congressional District 1	841,930	58,139	7.42%
Congressional District 2	725,652	-58,139	-7.42%
Average	783,791		
Maximum	841,930	58,139	7.42%
Minimum	725,652	-58,139	-7.42%
=	116,278	116,278	14.84%

District	Population	Diff. from Average	Pct. Diff. from Ave.
Leg. Dist. 1	40,210	-4,578	-10.22%
Leg. Dist. 2	35,917	-8,871	-19.81%
Leg. Dist. 3	45,166	378	0.84%
Leg. Dist. 4	44,634	-154	-0.34%
Leg. Dist. 5	46,466	1,678	3.75%
Leg. Dist. 6	37,244	-7,544	-16.84%
Leg. Dist. 7	39,265	-5,523	-12.33%
Leg. Dist. 8	38,711	-6,077	-13.57%
Leg. Dist. 9	38,220	-6,568	-14.66%
Leg. Dist. 10	48,958	4,170	9.31%
Leg. Dist. 11	51,062	6,274	14.01%
Leg. Dist. 12	45,474	686	1.53%
Leg. Dist. 13	58,725	13,937	31.12%
Leg. Dist. 14	76,940	32,152	71.79%
Leg. Dist. 15	40,177	-4,611	-10.30%
Leg. Dist. 16	36,855	-7,933	-17.71%
Leg. Dist. 17	37,314	-7,474	-16.69%
Leg. Dist. 18	39,282	-5,506	-12.29%
Leg. Dist. 19	40,219	-4,569	-10.20%
Leg. Dist. 20	50,201	5,413	12.09%
Leg. Dist. 21	71,377	26,589	59.37%
Leg. Dist. 22	34,066	-10,722	-23.94%
Leg. Dist. 23	45,710	922	2.06%
Leg. Dist. 24	43,046	-1,742	-3.89%
Leg. Dist. 25	43,165	-1,623	-3.62%
Leg. Dist. 26	42,443	-2,345	-5.24%
Leg. Dist. 27	38,757	-6,031	-13.47%
Leg. Dist. 28	41,905	-2,883	-6.44%
Leg. Dist. 29	44,248	-540	-1.21%
Leg. Dist. 30	38,591	-6,197	-13.84%
Leg. Dist. 31	45,173	385	0.86%
Leg. Dist. 32	56,073	11,285	25.20%
Leg. Dist. 33	38,893	-5,895	-13.16%
Leg. Dist. 34	49,686	4,898	10.94%
Leg. Dist. 35	43,409	-1,379	-3.08%
Average	44,788		
Maximum	76,940	32,152	71.79%
Minimum	34,066	-10,722	-23.94%
Deviation	42,874	42,874	95.73%

In the Supreme Court of the State of Idaho

IN RE: CONSTITUTIONALITY OF IDAHO LEGISLATIVE REAPPORTIONMENT PLAN OF 2002 (2002 PLAN L97) AND OF 2002 CONGRESSIONAL REAPPORTIONMENT PLAN	)	ORDER
	)	Supreme Court Docket No. 39127-2011
EVAN FRASURE, LORNA FINMAN, and LOU ESPOSITO, Commissioners of the Idaho Redistricting Commission, Petitioners,	)	Supreme Court Docket No. 39128-2011
v.	)	
THE IDAHO REDISTRICTING COMMISSION, Respondent.	)	

WHEREAS, the Secretary of State organized a commission for reapportionment pursuant to Idaho Code section 72-1501(1)(b); and

WHEREAS, that commission failed to file a proposed reapportionment plan with the Secretary of State within the time period required by Article V, § 2(4) of the Idaho Constitution and Idaho Code section 72-1508; and

WHEREAS, this Court has no authority to order the commission to reconvene or to extend its duration because the commission has not adopted a plan that a court of competent jurisdiction has ordered to be revised, Idaho Code section 72-1501(2); and

WHEREAS, the Secretary of State can organize a new commission pursuant to Idaho Code section 72-1501(1)(b); and

WHEREAS, this Court has original jurisdiction over actions involving challenges to legislative apportionment, art. III, § 2(5), Idaho Const., and to review any plan proposed by the commission for reapportionment, art. V, § 9, Idaho Const., but it does not have original jurisdiction to hear a declaratory judgment action seeking clarification of the constitutional and statutory provisions relating to apportionment; and

WHEREAS, this Court has original jurisdiction over an action challenging the current apportionment plan adopted in 2002;

THEREFORE, IT IS HEREBY ORDERED:

1. That the Secretary of State's request for a writ of mandate in Supreme Court docket number 39127 is denied;

2. That the Secretary of State's request for a declaratory judgment in Supreme Court docket number 39127 is denied;

3. Supreme Court docket number 39128 is dismissed in its entirety; and

4. That the action to examine the 2002 plan apportioning legislative and congressional district boundaries shall be heard according to the following schedule:

   a. Within fourteen (14) days of the date of this order, any person or entity desiring to challenge or defend the 2002 apportionment plan shall file with this Court a brief and any affidavits; and

   b. Oral argument on 2002 apportionment plan shall be held on Wednesday, October 12, 2011.

DATED this 9th day of September, 2011.

By Order of the Supreme Court

Stephen W. Kenyon, Clerk

cc: Counsel of Record

RESPONDENTS IDAHO COMMISSION FOR REAPPORTIONMENT AND LAWERENCE DENNEY'S RESPONSE TO PETITIONER CHRISTOPHER PENTICO

APPENDIX B

LEGISLATURE OF THE STATE OF IDAHO

Sixtieth Legislature First Regular Session - 2009

IN THE SENATE

SENATE BILL NO. 1184

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO THE COMMISSION FOR REAPPORTIONMENT; AMENDING SECTION 72-1502, IDAHO CODE, TO PROVIDE THAT A PERSON WHO HAS SERVED ON A COMMISSION FOR REAPPORTIONMENT SHALL BE PRECLUDED FROM SERVING ON A FUTURE COMMISSION FOR REAPPORTIONMENT UNLESS THE COMMISSION IS RECONSTITUTED BECAUSE A COURT OF COMPETENT JURISDICTION HAS INVALIDATED A PLAN OF THE COMMISSION AND THE COMMISSION IS REQUIRED TO MEET TO COMPLETE A REAPPORTIONMENT OR REDISTRICTING PLAN AND TO CLARIFY THE DATE OF APPLICATION ON THE LIMITATION; AMENDING SECTION 72-1506, IDAHO CODE, TO REVISE CRITERIA FOR REAPPORTIONMENT OR REDISTRICTING PLANS; AND PROVIDING SEVERABILITY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 72-1502, Idaho Code, be, and the same is hereby amended to read as follows:

72-1502. MEMBERS. The president pro tempore of the senate, the speaker of the house of representatives, and the minority leaders of the senate and the house of representatives shall each designate one (1) member of the commission and the state chairmen of the two (2) largest political parties, determined by the vote cast for governor in the last gubernatorial election, shall each designate one (1) member of the commission. Appointing authorities should give consideration to achieving geographic representation in appointments to the commission. If an appointing authority does not select the members within fifteen (15) calendar days following the secretary of state's order to form the commission, such members shall be appointed by the supreme court.

Should a vacancy on the commission occur during the tenure of a commission, the secretary of state shall issue an order officially recognizing such vacancy. The vacancy shall be filled by the original appointing authority within fifteen (15) days of the order. Should the original appointing authority fail to make the appointment within fifteen (15) days, the vacancy shall be filled by the supreme court.

No person may serve on the commission who:

(1) Is not a registered voter of the state at the time of selection; or

(2) Is or has been within one (1) year a registered lobbyist; or

(3) Is or has been within two (2) years prior to selection an elected official or elected legislative district, county or state party officer. The provisions of this subsection do not apply to the office of precinct committeeperson.

A person who has served on a commission for reapportionment shall be precluded from serving in either house of the legislature for five (5) years following such service on the commission and shall be precluded from serving on a future commission for reapportionment

unless the commission is reconstituted because a court of competent jurisdiction has invalidated a plan of the commission and the commission is required to meet to complete a reapportionment or redistricting plan. This limitation on serving on a future commission for reapportionment shall apply on and after January 1, 2001.

SECTION 2. That Section 72-1506, Idaho Code, be, and the same is hereby amended to read as follows:

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 ~~should~~ shall be avoided whenever possible. ~~Counties should be divided into districts not wholly contained within that county only to the extent reasonably necessary to meet the requirements of the equal population principle.~~ In the event that a county must be divided, the number of such 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 ~~should~~ shall retain~~, as far as practicable,~~ the local voting precinct boundary lines to the extent those lines comply with the provisions of section 34-306, Idaho Code. When the commission determines, by an affirmative vote of at least five (5) members recorded in its minutes, that it cannot complete its duties for a legislative district by fully complying with the provisions of this subsection, this subsection shall not apply to the commission or legislative redistricting plan it shall adopt.

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

(9) When a legislative district contains more than one (1) county or a portion of a county, the counties or portion of a county 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.

SECTION 3. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

2009

STATEMENT OF PURPOSE

RS18744C2

The Idaho Constitution, Article III, Section 2, requires that the legislature shall enact laws providing for the implementation of the provisions of this section, including terms of commission members, the method of filling vacancies on the commission, additional qualifications for commissioners, and additional standards to govern the commission. This legislation focuses on the redistricting process to protect and preserve communities of interest in the following ways: 1. Counties shall not be divided whenever possible; 2. Counties or portions of a county in a district shall be directly connected by roads and highways to establish communities of interest; 3. District boundaries and local voting precincts shall remain intact as much as possible.

FISCAL NOTE

No additional general fund resources will be required as a result of these proposed changes to complete the redistricting efforts.

Contact:
Name: Senator Robert L. Geddes
Office: President Pro Tempore
Phone: (208) 332-1000

Title apvd - to Senate
04/28 To enrol
Rpt enrol - Pres signed
04/29 Sp signed
To Governor
05/06 Governor signed
Session Law Chapter 287
Effective: 07/01/09

S1184 .....by STATE AFFAIRS
COMMISSION FOR REAPPORTIONMENT - Amends existing law relating to the Commission for Reapportionment to provide that a person who has served on a Commission for Reapportionment shall be precluded from serving on a future Commission for Reapportionment unless the commission is reconstituted because a court of competent jurisdiction has invalidated a plan of the commission and the commission is required to meet to complete a future reapportionment or redistricting plan and to clarify the date of application on the limitation; and to revise criteria for reapportionment or redistricting plans.

04/02 Senate intro - 1st rdg - to printing
04/03 Rpt prt - to St Aff
04/13 Rpt out - rec d/p - to 2nd rdg
04/14 Rls susp - **PASSED - 30-5-0**
AYES -- Andreason, Bair, Bilyeu, Brackett, Broadsword, Cameron, Coiner, Corder, Darrington, Davis, Fulcher, Geddes, Goedde, Hammond, Heinrich, Hill, Jorgenson, Keough, Lodge, McGee, McKague, McKenzie, Mortimer, Pearce, Sagness(Malepeai), Schroeder, Siddoway, Smyser, Stegner, Winder
NAYS -- Bock, Kelly, LeFavour, Thorson(Stennett), Werk
Absent and excused -- None
Floor Sponsor - Geddes
Title apvd - to House
04/15 House intro - 1st rdg - to St Aff
04/17 Rpt out - rec d/p - to 2nd rdg
04/20 2nd rdg - to 3rd rdg
04/22 3rd rdg - **PASSED - 50-18-2**
AYES -- Anderson, Andrus, Barrett, Bayer, Bedke, Bell, Bilbao, Black, Block, Bolz, Boyle, Chadderdon, Clark, Collins, Eskridge, Gibbs, Hagedorn, Hart, Hartgen, Harwood, Henderson, Jarvis, Kren, Labrador, Lake, Loertscher, Luker, Marriott, Mathews, McGeachin, Moyle, Nielsen, Nonini, Palmer, Pasley-Stuart, Patrick, Raybould, Roberts, Schaefer, Shepherd(08), Shirley, Simpson, Stevenson, Takasugi, Thayn, Thompson, Wills, Wood(27), Wood(35), Mr. Speaker
NAYS -- Boe, Burgoyne, Chavez, Chew, Cronin, Durst, Higgins, Jaquet, Killen, King, Pence, Ringo, Ruchti, Rusche, Sayler, Shepherd(02), Smith(30), Trail
Absent and excused -- Crane, Smith(24)
Floor Sponsor - Loertscher
Title apvd - to Senate
To enrol
04/23 Rpt enrol - Pres signed
04/24 Sp signed
04/27 To Governor
04/30 Governor signed
Session Law Chapter 252
Effective: 07/01/09

S1185 .....by STATE AFFAIRS
GROUND WATER RECHARGE - Amends and repeals existing law relating to ground water recharge to authorize the Director of the Department of Water Resources to issue certain permits and licenses; to provide for the regulation and reduction of the amount of water authorized to be diverted for recharge purposes; to provide that the director may fix a term of years in certain permits or licenses during which the amount of water authorized to be diverted shall not be reduced; to authorize the director to approve, disapprove or require alterations in methods employed to achieve ground water recharge; and to provide that the director shall order the cessation of operations under certain circumstances.

04/01 Senate intro - 1st rdg - to printing
Rpt prt - to Res/Env
04/02 Rpt out - rec d/p - to 2nd rdg
04/03 2nd rdg - to 3rd rdg
04/09 3rd rdg - **PASSED - 35-0-0**
AYES -- Andreason, Bair, Bilyeu, Bock, Brackett, Broadsword, Cameron, Coiner, Corder, Darrington, Davis, Fulcher, Geddes, Goedde, Hammond, Heinrich, Hill, Jorgenson, Kelly, Keough, LeFavour, Lodge, McGee, McKague, McKenzie, Mortimer, Pearce, Sagness(Malepeai), Schroeder, Siddoway, Smyser, Stegner, Thorson(Stennett), Werk, Winder
NAYS -- None
Absent and excused -- None
Floor Sponsor - Cameron
Title apvd - to House
04/10 House intro - 1st rdg - to Res/Con
04/14 Rpt out - rec d/p - to 2nd rdg
04/15 2nd rdg - to 3rd rdg
04/16 3rd rdg - **PASSED - 67-0-3**
AYES -- Anderson, Andrus, Barrett, Bayer, Bedke, Bell, Bilbao, Block, Boe, Bolz, Boyle, Burgoyne, Chadderdon, Chavez, Chew, Clark, Collins, Crane, Cronin, Durst, Eskridge, Gibbs, Hagedorn, Hart, Hartgen, Harwood, Henderson, Higgins, Jaquet, Jarvis, Killen, King, Labrador, Lake, Loertscher, Luker, Marriott, Mathews, McGeachin, Moyle, Nielsen, Nonini, Palmer, Pasley-Stuart, Patrick, Pence, Raybould, Ringo, Roberts, Ruchti, Rusche, Sayler, Schaefer, Shepherd(02), Shepherd(08), Shirley, Simpson, Smith(30), Smith(24), Stevenson, Takasugi, Thayn, Thompson, Trail, Wood(27), Wood(35), Mr. Speaker
NAYS -- None
Absent and excused -- Black, Kren, Wills
Floor Sponsor - Wood(27)
Title apvd - to Senate
To enrol
04/17 Rpt enrol - Pres signed
04/20 Sp signed
To Governor
04/24 Governor signed
Session Law Chapter 242
Effective: 07/01/09

S1186 .....by FINANCE
HIGHWAY PROJECTS - GARVEE BONDING AUTHORITY - Provides bonding authority in a principal amount to finance $82,000,000 of highway transportation projects and provide intent language regarding the use of bond proceeds.

04/03 Senate intro - 1st rdg - to printing
Rpt prt - to Fin
Rpt out - rec d/p - to 2nd rdg
04/07 2nd rdg - to 3rd rdg
Rls susp - **PASSED - 28-6-1**
AYES -- Andreason, Bilyeu, Bock, Brackett, Broadsword, Cameron, Coiner, Corder, Darrington, Davis, Fulcher, Geddes, Goedde, Hammond, Heinrich, Jorgenson, Kelly, Keough, Lodge, McGee, McKenzie, Sagness(Malepeai), Siddoway, Smyser, Stegner, Thorson(Stennett), Werk, Winder
NAYS -- Bair, Hill, LeFavour, Mortimer, Pearce, Schroeder
Absent and excused -- McKague
Floor Sponsor - Hammond
Title apvd - to House
04/08 House intro - 1st rdg - to 2nd rdg
04/09 2nd rdg - to 3rd rdg
04/10 3rd rdg - **PASSED - 39-29-2**
AYES -- Anderson, Bayer, Bell, Bilbao, Black, Block, Boe, Bolz, Burgoyne, Chadderdon, Chavez, Chew, Collins, Crane, Cronin, Durst, Eskridge, Gibbs, Henderson, Higgins, Jaquet, Killen, King, Kren, Labrador, Moyle, Pasley-Stuart, Patrick, Pence, Ringo, Ruchti, Rusche, Sayler, Shepherd(02), Smith(30), Stevenson, Takasugi, Trail, Wills
NAYS -- Andrus, Barrett, Bedke, Boyle, Clark, Hagedorn, Hart, Hartgen, Harwood, Lake, Loertscher, Luker, Marriott, Mathews, McGeachin, Nielsen, Nonini, Palmer, Raybould, Roberts, Shepherd(08), Shirley, Simpson, Smith(24), Thayn, Thompson, Wood(27), Wood(35), Mr. Speaker
Absent and excused -- Jarvis, Schaefer
Floor Sponsor - Eskridge
Title apvd - to Senate
04/13 To enrol
04/14 Rpt enrol - Pres signed
04/15 Sp signed
04/16 To Governor
04/22 Governor signed
Session Law Chapter 203
Effective: 07/01/09

AGENDA

SENATE STATE AFFAIRS COMMITTEE

8:00 a.m.
Room 204
Wednesday, April 1, 2009

BILL NO.	*DESCRIPTION*	*PRESENTED BY*
	GUBERNATORIAL APPOINTMENT Bingo-Raffle Advisory Board Blanche M. Weber serving a term commencing January 7, 2008 and expiring January 7, 2011 (Via Telephone Conference)	
HJM4	A Memorial claiming sovereignty under the Tenth Amendment of the Constitution	Rep. Harwood
HJM7	A Memorial asking the Federal government to provide funding for the Doctor of Medicine degree	Rep. Thompson
H229	Relating to Martial Law	Rep. Nielsen
→ RS18744C2	Relating to the Commission for Reapportionment	Senator Geddes

Please present to the committee secretary a written copy of your testimony to ensure accuracy of records.

OFFICE

Deborah Riddle, Committee Secretary
Rm 205, Telephone: (208) 332-1326
Legislative Switchboard: (208) 332-1000
e-mail: driddle@senate.idaho.gov
WATS: 1-800-626-0471
Fax: (208) 334-2680

COMMITTEE MEMBERS

Sen Curt McKenzie, Chairman
Sen Monty Pearce, Vice Chairman
Sen Denton Darrington
Sen Robert Geddes
Sen Bart Davis
Sen Joe Stegner
Sen Russ Fulcher
Sen Clint Stennett
Sen Kate Kelly

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE:	April 1, 2009
TIME:	8:00 a.m.
PLACE:	Room 204
MEMBERS PRESENT:	Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett (Thorson), and Kelly
MEMBERS ABSENT/ EXCUSED:	None
NOTE:	The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENE: **Chairman McKenzie** called the meeting to order at 8:00 a.m. **Chairman McKenzie** said before beginning with our formal business he would like to acknowledge the guests that are here today.

Senator Davis said we are honored to have some fourth grade students with us today from Holy Rosary Elementary in Idaho Falls. Each student has been assigned or chosen a bill to watch through the legislative process. He had a conversation with them and they are very anxious to be here today and observe the Committee.

GUBERNATORIAL APPOINTMENT: **Blanche Weber** who was appointed to the Bingo-Raffle Advisory Board appeared via teleconference. **Ms. Weber** stated that she has been on the Board for several years. She enjoys her position and especially to see what the older people get from the bingo games.

Chairman McKenzie asked **Ms. Weber** to talk about her background with the bingo operation. **Ms. Weber** replied that she ran the bingo games for the Eagle Lodge and she assisted her husband with the games at the Eagle and Moose Lodges. **Chairman McKenzie** asked how long has she been on the Board? **Ms. Weber** answered almost since the beginning.

Chairman McKenzie thanked **Ms. Weber** for her service on the Board and advised her that the Committee will vote on her appointment at the next meeting.

HJM4 **Representative Harwood** presented **HJM4** to the Committee and stated that when the Tenth Amendment to the U.S. Constitution was drawn up, it was really when we became the United States. A lot of states had not ratified the Constitution because they did not have that portion and they

Senator Davis said as he looks at *Idaho Code 46-1002*, there is a formal definition of the word emergency. Subparagraph 2 of the handout talks in terms of a disaster emergency. The word emergency is specifically defined in chapter 10. It is an occurrence or eminent threat of a disaster or condition threatening life or property, which requires state emergency assistance to supplant local efforts to save lives and protect property, or to divert the threat of a disaster. **Senator Davis** said he remembers dealing with this before and that subparagraph 7 was going to solve this problem. He can see how **Representative Nielsen** feels that it does not specifically include the language as it relates to "martial law."

TESTIMONY:

Rick Neathamer, a concerned citizen from Meridian, testified regarding **H229**. **Mr. Neathamer** said when the government steps in and takes control of our constitutional rights, the people are fearful of the government. He has not spoken with **Representative Nielsen**, but he believes the bill should say that all able bodied persons will report to the county sheriff with weapons and ammunition to help protect, establish, and maintain order. When we start banning things in regard to certain constitutional amendments, you can only go so far until that amendment is gone completely. We need to ensure that our rights are not taken away from us.

MOTION:

Vice Chairman Pearce moved to send **H229** to the floor with a **do pass** recommendation. **Senator Fulcher** seconded the motion. The motion carried by **voice vote.**

→ **RS18744C2**

Senator Geddes presented **RS18744C2** to the Committee and stated that a few years ago, he and **Senator Stennett** worked to fine tune the redistricting efforts. The impetus of this legislation is to help give direction to our Redistricting Commission to ensure that when reapportionment is conducted again, that communities of interest are protected and preserved. As that Commission goes forward to do this very difficult task, it should be paramount to ensure that legislative districts are assigned such that various parts of districts do not feel disenfranchised by being included in the wrong district. **Senator Geddes** said he represents a district that has that impression. Teton County is a great distance away from the core of his district. They have very little in common with the rest of his district. Prior to the last redistricting, Oneida County was part of his district, but it isn't now. Their community is aligned from a judicial, school, and transportation standpoint, with a core of a different part of our State than what they are in legislative terms. This legislation will add more direction in how redistricting should occur and focus primarily on precincts where the citizens should have access to a place to vote. It will also allow that counties should be held together when possible and that only the absolutely necessary divisions of a county should be made.

The most important thing is for the Commission to take into account those counties that are not connected by a State highway or interstate. If a county is not connected to an adjacent county by a road or highway, then it would be natural to assume that there isn't a significant tie to connect the two communities. There is a provision if they have to include counties that are not connected that the vote of the Commission can override the

direction, to make sure they develop a district with the necessary population. **Senator Geddes** said this legislation will add clarity for the Commission to help expedite a process where they can divide our State into thirty five legislative districts, without contention and concern over disrupting some communities.

Senator Kelly asked if this is the only change needed to the current statutes before the redistricting process starts? **Senator Geddes** replied he has been involved in this effort for several years. In addition to what is already in statute which provides for the Legislature to give direction to the Commission, this amendment will add to the direction that they currently have, and hopefully expedite the redistricting process. At this time, he doesn't believe there are any more improvements needed for the redistricting process. **Senator Kelly** asked if there are any problems with making this retroactive back to 2001? **Senator Geddes** responded that statute already states that if you serve or have served on a Redistricting Commission, you cannot serve in the Legislature for a period of five years. The change that is incorporated is that if you serve or have served on a Redistricting Commission, you would not be allowed to serve on a future Redistricting Commission. The intent is to make the Redistricting Commission a citizens Commission.

Senator Geddes read from Article 3, Section 2 of the Constitution, stating that the Legislature should enact laws providing for the implementation of the provisions of this section, including the terms of commission members, the method of filling vacancies on the commission, additional qualifications for commissioners, and additional standards to govern the commission. The Legislature shall appropriate funds to enable the commission to carry out its duties. **Senator Geddes** said in the opinion of the Attorney General's Office and as he reads this, the Legislature has a very significant responsibility of defining who shall serve, how they shall serve, and what their length of service shall be.

Senator Kelly asked if the language change from should to shall is grammatical? **Senator Geddes** answered it seems to him that it is a contradiction of terms because we say that they shall to the extent possible. Shall does not have the weight that it normally means in most legislation. This puts more emphasis in the division of counties and precincts and still allows the Commission to deviate from that, in order to comply with the other provisions in redistricting. **Senator Kelly** asked if there is a reason to believe that part of these changes will be declared invalid or unconstitutional because of the severability clause? **Senator Geddes** replied "no", the severability clause is part of the original legislation.

Senator Darrington said that he chaired the committee that wrote the criteria for the Redistricting Commission. Second on the list was the factors for communities of interest to not be divided. The Commission ignored that, thus necessitating some of the changes that **Senator Geddes** is proposing. This Legislation is necessary to give guidance to the Commission.

MOTION: **Senator Davis** made the motion to print **RS18744C2** and **Senator Stegner** seconded the motion. The motion carried by **voice vote.**

ADJOURN: There was no other business before the Committee. **Chairman McKenzie** adjourned the Committee at 8:55 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

Sign-In Sheet

STATE AFFAIRS COMMITTEE

Date April 1, 2009

Name, Address, & Phone PLEASE PRINT	Occupation	Representing Company/Organization	Legislation Interested In	Wish to Testify	Pro	Con
Hadley Bush	lobbyist	BMCC	–	no		
⊗ Jonathan Parker	Executive Director	Idaho Rep. Party	HJM4	yes	X	
Holy Rosary School - 4th Grade	students					
Rep Jeff Thompson			HJM 7			
Becky Schroeder	Dep Dir	Idaho Lottery		no		
⊗ Wally Butler	Lobbyist	IFBF	HJM4	yes	x	
Hannah Saona	Legislative Director	ACLU	RS18744C2	no		

SECOND AMENDED AGENDA

SENATE STATE AFFAIRS COMMITTEE

9:00 a.m.
Room 204
Friday, April 10, 2009

BILL NO.	*DESCRIPTION*	*PRESENTED BY*
RS18957	Relating to food service in public buildings	Senator Geddes
→ S1184	Relating to the Commission for Reapportionment	Senator Geddes
RS18944C1	Relating to the Department of Agriculture and the Department of Environmental Quality	Senator Corder
RS18977	Relating to the Department of Labor	Bob Flick
	MINUTES APPROVAL March 18, 2009 April 1, 2009 April 3, 2009	

Please note the time change. Committee will convene upon adjournment of the Senate

Please present to the committee secretary a written copy of your testimony to ensure accuracy of records.

OFFICE

Deborah Riddle, Committee Secretary
Rm 205, Telephone: (208) 332-1326
Legislative Switchboard: (208) 332-1000
e-mail: driddle@senate.idaho.gov
WATS: 1-800-626-0471
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COMMITTEE MEMBERS

Sen Curt McKenzie, Chairman
Sen Monty Pearce, Vice Chairman
Sen Denton Darrington
Sen Robert Geddes
Sen Bart Davis
Sen Joe Stegner
Sen Russ Fulcher
Sen Clint Stennett
Sen Kate Kelly

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE:	April 10, 2009
TIME:	9:00 a.m.
PLACE:	Room 204
MEMBERS PRESENT:	Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett (Thorson), and Kelly
MEMBERS ABSENT/ EXCUSED:	None
NOTE:	The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
CONVENE:	**Chairman McKenzie** called the meeting to order at 9:15 a.m.
RS18957	**Jeff Youtz,** from Legislative Services Office (LSO), presented **RS18957** to the Committee. **Mr. Youtz** said in looking at the statutes for the operation of food services in the Capitol building, it became apparent that they were not in compliance. This bill will delete the state capitol from the definition of "public buildings" with respect to food service.
MOTION:	**Senator Davis** moved to print **RS18957** and **Senator Fulcher** seconded the motion. The motion carried by **voice vote.**
S1184	**Senator Geddes** presented **S1184** to the Committee and said that this deals with some minor adjustments that are being proposed to the redistricting, which will occur in a few years. In the print hearing they had lengthy discussions regarding what this bill does and it is an effort to protect and preserve communities of interest throughout the State. There are a number of districts because of Idaho's dynamic geography that were somewhat isolated from the community of interest, with respect to the district they were placed in. The most significant is the connection of highways, roads, and interstates which is the link that justifies communities of interest and keeps them together. Protecting the counties and the voting precincts as much as possible is important, so there are provisions for a process by which those can be overridden if necessary. In the last redistricting effort, the Commissioners were left with negotiating that and this will provide a better process for the decisions that need to be made and addressed.
	Senator Kelly asked **Senator Geddes** how does he reconcile the affirmative vote of at least four out of the six members of the Commission with the Constitutional requirement, that actions only require four affirmative votes? **Senator Geddes** asked for clarification if that

requirement is to accept a plan or to make decisions through the process for a plan that is being developed. **Senator Kelly** said in response to that, the language is vague. **Senator Geddes** said his recollection of the Constitution, is that a majority of the Commission have to agree that the plan being submitted is acceptable and meets the criteria by which the Legislature has developed direction for them, and not by how they address each issue along the way. **Senator Kelly** said in her view there is a potential for this provision to conflict with the Constitution.

Senator Kelly said with regard to the language in statute regarding communities of interest, that gives a lot of discretion to the Commission in making the determination. It could be argued that it already encompasses the language that is added in section 9. This takes away a lot of discretion of the Commission and puts in place a very descriptive direction with regard to highway systems. She asked **Senator Geddes** if he has a response to that? **Senator Geddes** replied in the last redistricting, the commissioners were hard pressed to protect communities of interest. In the north boundary to the southeast, the commissioners boxed themselves in and that created some difficult districts, not just for the citizens but for the legislators to adequately represent them. As he looked at the counties that are not connected by roads, highways, or interstates, they generally have a geographic barrier that prevents that to occur. In doing so, it has forced those areas of the State to develop a commonality with other communities. In **Senator Broadsword's** district for example, she has to drive through several districts in order to get to Shoshone County, which is a county in her district. The intent is to tie the districts more together than what they were last time, and for communities of interest to fall within the same judicial district. In the last redistricting, county barriers were not taken into account and it disrupted the traditional community associations or commonalities.

Senator Geddes said he looked at several other options, such as having half the districts represented in a first congressional district and the other half within the second congressional district, and then having only one district overlap. The problem is that it doesn't establish communities of interest, and in some cases it detracts from it. The other problem with that option is that two issues develop simultaneously. The first and second congressional districts are developed at almost the same time as the legislative districts. That could initiate starting at the north and south, and moving towards the Boise valley where it shouldn't matter if a district varies in Boise or Eagle by a block or two, or a mile. Those communities of interest would not be disrupted significantly like the rural communities. **Senator Kelly** requested a copy of the map that shows the redistricting. **Senator Geddes** stated he intends to provide the map to everyone. He has had discussions with many legislators not knowing how their district will be impacted, so he has offered a guarantee, they will reside with one district of the state.

Senator Darrington said in support of **Senator Geddes,** the committee for developing the criteria for this plan was chaired by him prior to the last redistricting. He moved "community of interest" up to second on the list,

which the commissioners did not take into account. **Senator Darrington** stated that he supports **Senator Geddes'** contention in paragraph 9, which gives guidance and direction for communities of interest. There isn't a conflict with paragraph 7 and the Constitution. There has to be a majority of four members who agree to the redistricting plan. This will preserve communities of interest within the State.

Senator Geddes commented traditionally Oneida County has more closely aligned with Franklin, Bear Lake, and Caribou County. He still gets calls from residents of Oneida County to address their concerns. It is also interesting to note that Teton County has little if any commonality with the other southeast counties. **Senator Geddes** said this effort is not nefarious, it simply tries to recognize and allow a process by which redistricting can happen. This will give the commissioners direction to come to agreement and accomplish what is needed.

Senator Kelly said she understands the frustrations with regard to the way **Senator Geddes'** district was laid out. Her district is different with two very distinct characteristics. Urban areas are not the same. **Senator Kelly** stated that she cannot support this legislation. This appears to be micro managing a Commission that already has direction and guidance in place. It is very specific to roads and requires a certain vote to make things happen, which she believes has the potential for a conflict with the Constitutional provision.

Senator Stegner stated that on a six member commission, two thirds is also the simple majority. Statute requires any final action be approved by two thirds. The reason a five member requirement was added is to provide for flexibility, it is not a restriction. He understands why there are concerns, but it really is a compromise for the Commission to have some ability to work within the parameters, and to not have rigid requirements that make it impossible to satisfy those requirements.

Senator Davis commented that the language contained in subpart 7 is just a waiver of the rigid standards that are contained there. It is not a modification of the Constitutional standard for adopting the plan.

MOTION: **Vice Chairman Pearce** moved to send **S1184** to the floor with a **do pass** recommendation. **Senator Darrington** seconded the motion. **Senator Kelly** requested a roll call vote on the motion.

Senator Darrington - Aye
Senator Geddes - Aye
Senator Davis - Aye
Senator Stegner - Aye
Senator Fulcher - Aye
Senator Thorson - Nay
Senator Kelly - Nay
Vice Chairman Pearce - Aye
Chairman McKenzie - Aye

The motion **carried.**

RS18944C1

Chairman McKenzie stated that he has a letter from the Chairman of the Agriculture Committee by unanimous request for the Committee to print the RS. **RS18944C1** relates to the Department of Agriculture and the Department of Environmental Quality to develop comprehensive plans with regard to dairy farm nutrient management, water, and air quality.

MOTION:

Senator Davis moved to print **RS18944C1** and **Senator Darrington** seconded the motion. The motion carried by **voice vote.**

RS18977

Chairman McKenzie said he has a request from the Commerce Committee by unanimous request to print the RS.

Bob Fick, from the Department of Labor presented **RS18977** to the Committee. **Mr. Fick** stated that **RS18977** provides for the provision in the Federal stimulus package to allow Federal-State unemployment insurance extended benefits to continue for the entire year, which the Federal government has agreed to pay for. The impact will be between fourteen and twenty million dollars more into the economy through 2010. Once the Federal government stops paying the benefits, it will revert back to the insured unemployment rate to determine whether extended benefits are needed.

MOTION:

Senator Davis made the motion to print **RS18977**. **Senator Geddes** seconded the motion. The motion carried by **voice vote.**

ADJOURN:

Chairman McKenzie deferred the approval of the committee minutes until the next meeting and adjourned the meeting at 9:38 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

STATE AFFAIRS COMMITTEE
ROLL CALL VOTE

DATE: 4-10-09 SUBJECT: Reapportionment BILL #: S1184

ORIGINAL MOTION IS:	AYE	NAY	A/E
Sen Curt McKenzie, Chair	X		
Sen Monty Pearce, Vice Chair	X		
Sen Denton Darrington	X		
Sen Robert Geddes	X		
Sen Bart Davis	X		
Sen Joe Stegner	X		
Sen Russ Fulcher	X		
Sen Stennett(Thorson)		X	
Sen Kate Kelly		X	
TOTALS	7	2	

MOVED Senator Pearce

SECONDED Senator Darrington

SUBSTITUTE MOTION IS:	AYE	NAY	A/E
Sen Curt McKenzie, Chair			
Sen Monty Pearce, Vice Chair			
Sen Denton Darrington			
Sen Robert Geddes			
Sen Bart Davis			
Sen Joe Stegner			
Sen Russ Fulcher			
Sen Stennett(Thorson)			
Sen Kate Kelly			
TOTALS			

MOVED _____

SECONDED

AMENDED SUBSTITUTE MOTION IS:	AYE	NAY	A/E
Sen Curt McKenzie, Chair			
Sen Monty Pearce, Vice Chair			
Sen Denton Darrington			
Sen Robert Geddes			
Sen Bart Davis			
Sen Joe Stegner			
Sen Russ Fulcher			
Sen Stennett(Thorson)			
Sen Kate Kelly			
TOTALS			

MOVED _____

SECONDED

Sign-In Sheet

STATE AFFAIRS COMMITTEE

Date April 10, 2009

Name, Address, & Phone PLEASE PRINT	Occupation	Representing Company/Organization	Legislation Interested In	Wish to Testify	Pro	Con
Emily Anderson		Governors ofc		no		
Brian Oakley		ISDA		No		
Wally Butler	lobbyist	IFBF		No		
DENNIS TANIKUNI	Lobbyist	Farm Bureau	S1184	No		
Kathie Garrett	lobbyist	Partners in Crisis	1184	NO		
Brent Olmstead	"	MK Products	HB944C-1	no	X	
Ken McClure	lawyer	MPI	"		/	
Colby Cameron	Legis. Adv.	Sullivan & Reberger		No		
BENJAMIN ~~DAVENPORT~~	Lobbyist	RischPisco		No		
Lee Flinn	lobbyist	Conservation Voters	S1184	NO		

MINUTES

HOUSE STATE AFFAIRS COMMITTEE

DATE: April 16, 2009

TIME: 8:00 a.m.

PLACE: Room 145

MEMBERS: Chairman Loertscher, Vice Chairman Anderson, Representatives Stevenson, Black, Andrus, Bilbao, Labrador, Luker, Crane, Mathews, Kren, Palmer, Simpson, Shepherd(2), Smith(30), Pasley-Stuart, King, Higgins

ABSENT/ EXCUSED: Rep. Black, Rep. Kren

GUESTS: Kathie Garrett, Partners in Crisis

Chairman Loertscher called the meeting to order at 8:04 a.m. A silent roll was taken.

MOTION: **Rep. Pasley Stuart** moved to approve the minutes April 14. The motion was carried by voice vote.

→ **S 1184:** **Chairman Loertscher** presented **S 1184** to the committee, in Sen. Geddes absence. This legislation seeks to make a couple of changes that were evidenced in the last redistricting plan that has caused some problems. It focuses on the redistricting process to protect and preserve communities of interest in the following ways: 1. Counties will not be divided whenever possible; 2. Counties or portions of a county in a district will be directly connected by roads and highways to establish communities of interest; 3. District boundaries and local voting precincts will remain intact as much as possible. For instance, his district is extremely diverse. Not everyone lives in the same water basin. There are the Snake River and the Bear River districts. There are two judicial districts and two school districts.

This legislation also establishes that people who serve on the redistricting commission can only precede themselves if they complete their work, and that work must be reviewed again because a court of competent jurisdiction has invalidated a plan of the commission. In that case the commission is required to meet again to complete a new reapportionment or redistricting plan. It seems reasonable that this position would have term limits. **Chairman Loertscher** agreed with a statement made by former representative Dean Haagenson, and quoted from his letter: "you should do away with the Re-Apportionment Commission and go back to having the legislature redistrict itself. The legislature knows the state and its communities of interest better than any commission possibly could."

In answer to committee questions, **Chairman Loertscher** explained that redistricting must start in the northern part of Idaho because of the panhandle. It is easier to change boundaries in Boise than in Northern or Eastern Idaho. Much of the redistricting has to do with numbers. There are great computer programs that have been instituted to help with that process. The legislature is very aware of their districts and this will give a fresh look to the commission. In order to comply with sec 306, the commission must follow logical lines or some other feature like a ditch, fence line, or a road. That's what determines how you split precincts. **Rep Bilbao** inquired if growth patterns were considered when redistricting. **Rep. Loertscher** said that the hard information that is used comes from the census.

Sen. Geddes explained further that the U.S. Supreme court allows for some deviation of population in redistricting. In anticipation, our Idaho Commission drew a line at a rate of 10% fixed.

Rep. Loertscher further explained that all district boundaries are in jeopardy every ten years. Changes are going to occur. It seems reasonable that the road requirement will make it easier to take better care of constituents in a reasonable manner. **Rep. Higgins** called attention to page 2 line 26 that says that there must be an affirmative vote of five members of the six that the commission cannot complete its duties for a legislative district. She queried why we needed so many committee members on this requirement when a simple majority of a six-member commission is four members. **Rep. Loertscher** explained it was felt that this requirement needed to be a little tougher so we know all the other alternatives have been discussed.

Sen. Geddes was recognized by the chair. He said Rep. Loertscher gave a good presentation and the questions and answers have been accurate. Regarding Rep. Bilbao's question about growth patterns, the Supreme Court has drawn a very bright line and the most important criteria are that all of the legislative districts are balanced, and that is the most difficult requirement to comply with. Some Senators have also expressed concerns about the provision that districts are connected by highways and in light of that, the population will change significantly in redistricting. His focus has been and will be to protect communities of interest. That is primary as we look at this legislation. Many communities feel disenfranchised because they are disconnected from their districts. Sen. Geddes said he probably receives more phone calls from Oneida County than other representatives that represent that area because they reside in the same judicial district. It's a natural link that was lost in the last redistricting effort. That is the most significant criterion to address in this legislation. As soon as the next census is completed there will be a new redistricting effort. He agrees that the legislature should take this responsibility back. The legislature understands the communities of interest significantly better than the commissioners that have been appointed in the past.

Rep Stevenson asked if in the future would we always have to start in the North or East? Is there anything to prohibit doing that or is that a natural flow? **Rep. Geddes** explained that it is actually best to start in the North and East and move toward the Boise Valley area. In Boise Valley you can move a mile or a block or two and not divide a community of interest. That would be a better solution.

In answer to committee questions, **Sen. Geddes** said that even though there is some consensus that the current system doesn't work, it would be very difficult to change the constitution due to the public sentiment and perceptions at this time. He also pointed out that there could be a 10% variance in the size of a legislative district. Regarding the map handout that he distributed to the committee, to the extent it is possible it has been vetted. It may be difficult to not separate some counties, but emphasis will be placed on avoiding that whenever possible.

MOTION: **Rep. Bilbao** moved to send **S 1184** to the floor with do pass recommendation.

Rep. Luker had one concern. Regarding the waiver provision in subsections seven and nine that gives the commission the power to waive the subsection completely, he would prefer making a change in language that would be more specific to a particular district, rather than throwing the whole rule out by the decision of the commission.

SUBSTITUTE MOTION: **Rep. Luker** moved to send **S 1184** to general orders for a change in language in subsections seven and nine.

Rep. Crane spoke in favor of the substitute motion. He has the same concerns as Rep. Luker and feels we can tighten up the language by sending it to general orders.

VOTE ON SUBSTITUTE MOTION: A roll call vote was called on the substitute motion to **send S 1184 to general orders. The motion failed 2 to 14. Reps. Luker and Crane voted AYE. Reps. Leortscher, Anderson, Stevenson, Andrus, Bilbao, Labrador, Mathews, Palmer, Simpson, Shepherd, Smith, Pasley-Stuart, King and Higgins voted NAY.**

VOTE ON ORIGINAL MOTION: A roll call vote was called on the original motion to **send S 1184 to the floor with a do pass recommendation. The motion was carried. Reps. Loertscher, Anderson, Stevenson, Andrus, Bilbao, Labrador, Luker, Crane, Mathews, Palmer, Simpson, Shepherd voted AYE, Reps Smith, Pasley-Stuart, King and Higgins voted NAY.** Chairman Loertscher will sponsor the bill on the floor.

ADJOURN: As there was no further business the meeting adjourned at 9:10 a.m.

Representative Thomas Loertscher
Chairman

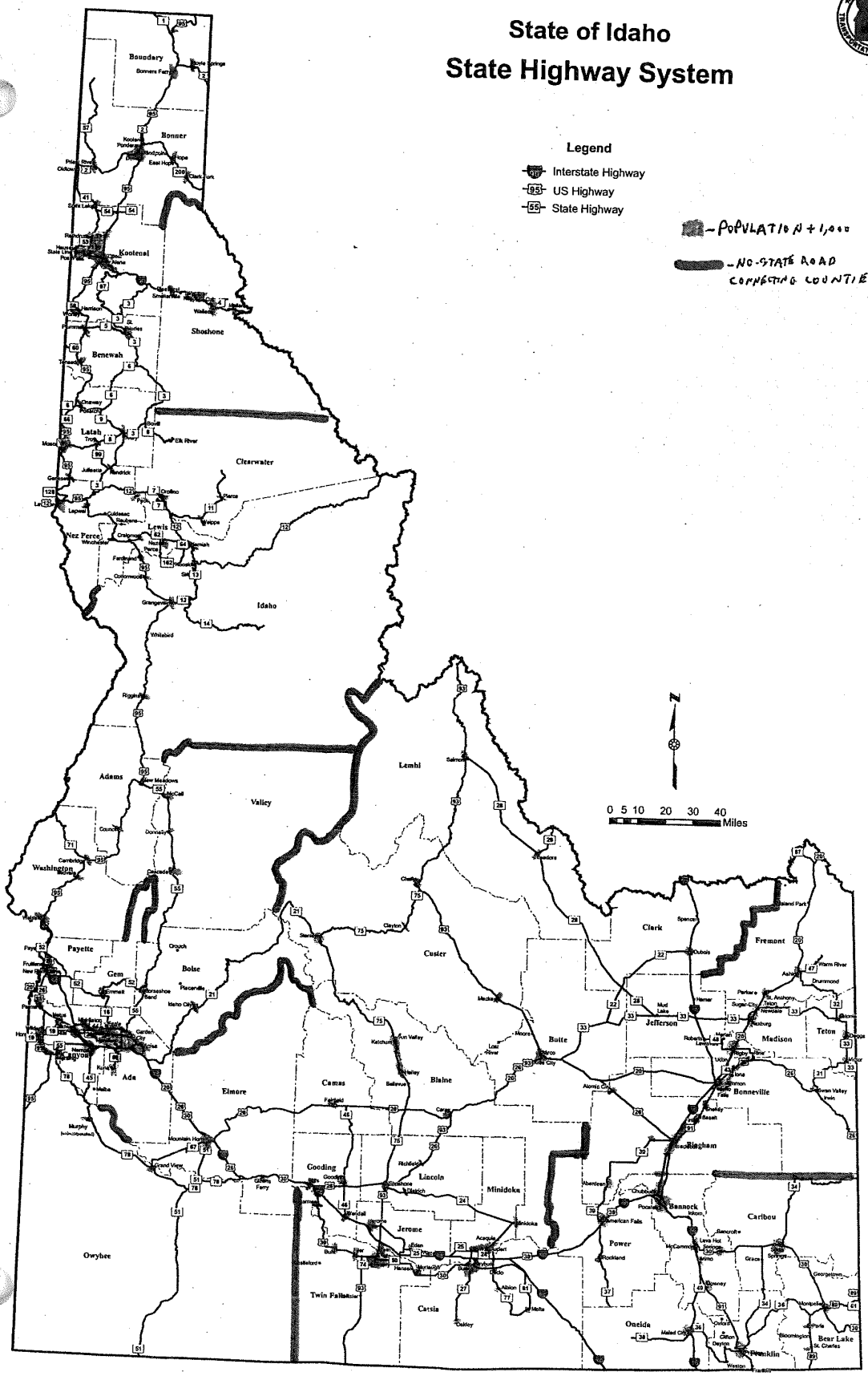
Marsha Walker
Secretary

Date: 4/16/09
Bill #: S1184

STATE AFFAIRS COMMITTEE
ROLL CALL VOTE

ORIGINAL MOTION				SUBSTITUTE MOTION				AMENDED SUBSTITUTE MOTION			
MOTION: do pass				MOTION: Do not				MOTION:			
MOVED: Bilbao				MOVED: Luker				MOVED:			
	AYE	NAY	A/E		AYE	NAY	A/E		AYE	NAY	A/E
Chair Thomas Loertscher	✓			Chair Thomas Loertscher		✓		Chair Thomas Loertscher			
Vice Chair Eric Anderson	✓			Vice Chair Eric Anderson		✓		Vice Chair Eric Anderson			
Rep Bert Stevenson	✓			Rep Bert Stevenson		✓		Rep Bert Stevenson			
Rep Max Black				Rep Max Black				Rep Max Black			
Rep Ken Andrus	✓			Rep Ken Andrus		✓		Rep Ken Andrus			
Rep Carlos Bilbao	✓			Rep Carlos Bilbao		✓		Rep Carlos Bilbao			
Rep Raul Labrador	✓			Rep Raul Labrador		✓		Rep Raul Labrador			
Rep Lynn Luker	✓			Rep Lynn Luker	✓			Rep Lynn Luker			
Rep Brent Crane (ps)	✓			Rep Brent Crane	✓			Rep Brent Crane			
Rep Russ Mathews	✓			Rep Russ Mathews		✓		Rep Russ Mathews			
Rep Steve Kren				Rep Steve Kren				Rep Steve Kren			
Rep Joe Palmer	✓			Rep Joe Palmer		✓		Rep Joe Palmer			
Rep Erik Simpson	✓			Rep Erik Simpson		✓		Rep Erik Simpson			
Rep Mary Lou Shepherd	✓			Rep Mary Lou Shepherd		✓		Rep Mary Lou Shepherd			
Rep Elaine Smith		✓		Rep Elaine Smith		✓		Rep Elaine Smith			
Rep Anne Pasley-Stuart		✓		Rep Anne Pasley-Stuart		✓		Rep Anne Pasley-Stuart			
Rep Phylis King		✓		Rep Phylis King		✓		Rep Phylis King			
Rep Elfeda Higgins		✓		Rep Elfeda Higgins		✓		Rep Elfeda Higgins			
TOTALS	12	4		TOTALS	2	14		TOTALS			
MOTION PASSED				MOTION PASSED				MOTION PASSED			
MOTION FAILED				MOTION FAILED				MOTION FAILED			

State of Idaho
State Highway System



Codes
S 11854