

Bryan D. Smith, Esq. – ISBN 4411
Bryan N. Zollinger, Esq. – ISBN 8008
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Ave.
P.O. Box 50731
Idaho Falls, Idaho 83405
Telephone: (208) 524-0731
Facsimile: (208) 529-4166
Email: bds@eidaholaw.com

Attorneys for Petitioner

IN THE SUPREME COURT OF THE STATE OF IDAHO

BRANDEN DURST, a qualified elector of the
State of Idaho,

Petitioner,

v.

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

Respondents.

Supreme Court Docket No. 49261-2021

**RESPONSE TO MOTION TO
CONSOLIDATE AND ALIGN BRIEFING
SCHEDULE**

Petitioner Durst files this Response to Motion to Consolidate and Align Briefing Schedule in response to Respondents' Motion to Consolidate and Align Briefing Schedule. Petitioner has no objection to consolidating the two original actions filed with this court and identified as Docket Nos. 49261-2021 ("Durst Petition") and 49267-2021 ("Ada County Petition"). However, Petitioner Durst does object to the briefing schedule Respondents propose.

I. PETITIONER DURST DOES NOT OBJECT TO CONSOLIDATING THE TWO ACTIONS.

Petitioner Durst agrees that consolidating the Durst Petition and the Ada County Petition is proper because the two petitions involve nearly identical questions of law and fact. Accordingly, this Court should consolidate the two matters in the interests of justice.

II. PETITIONER DURST OBJECTS TO THE RESPONDENTS' PROPOSED BRIEFING SCHEDULE.

Petitioner Durst filed his Petition on November 10, 2021. On November 15, 2021, this Court issued a briefing schedule ordering Respondents to file their brief responding to the Durst Petition by November 29, 2021. This Court further ordered that Petitioner Durst file a reply brief by December 13, 2021. Respondents propose that this Court modify the briefing schedule to require that Petitioner Durst must file his brief by November 30, 2021. Respondents further propose that this Court require that Respondents file their brief by December 14, 2021, and that Petitioner Durst file a reply by December 21, 2021.

Petitioner Durst objects to Respondents' proposed modified briefing schedule. First, the Durst Petition is set on an expedited calendar for very good reason. Given the circumstances, this Court needs to decide the issues presented as soon as possible. Every day counts. The Court's original briefing schedule has the Durst Petition fully briefed by December 13, 2021. Respondents' proposed briefing schedule delays having the Durst Petition fully briefed for an additional eight days.

Second, Respondents' proposed modified briefing schedule adds an unnecessary layer of briefing. Specifically, the controlling law is found in Idaho Const. Art. III, *Bingham County v. Idaho Com'n for Reapportionment*, 137 Idaho 870 (2002), and *Twin Falls County v. Idaho Com'n on Redistricting*, 152 346 (2012). Respondents correctly state the central issue raised in the Durst Petition in their Motion to Consolidate and Align Briefing Schedule at page 3. Specifically, Respondents state, "Durst and Ada County both argue that the Plan L03 is unconstitutional under the Idaho Constitution because it divides more counties than is allegedly necessary." Recognizing the exigent circumstances and the single central issue the Durst Petition presents, this Court ordered that Respondents file a brief and Petitioner Durst file a reply brief to adequately brief the issue for the Court. Adding an unnecessary brief serves only to delay receiving a decision from the Court.

Third, Respondents had from November 15, 2021 through November 22, 2021 to be working on preparing a brief as ordered by this Court. Rather than abiding by this briefing schedule, Respondents are asking that their time to file a brief be enlarged and that Petitioner Durst be given at most only seven days to file a brief (down from 14 days). Moreover, Respondents propose Petitioner Durst do so during a Thanksgiving holiday week when counsel for Petitioner Durst is out of state and unavailable at least five of the seven days.¹ If counsel for Petitioner Durst had believed he would be required to file a brief on November 30, 2021, he could have and would have prepared

¹ Attorney Bryan D. Smith will be traveling to Chicago on Wednesday November 24, 2021 and will return on November 29, 2021 due to the Thanksgiving holiday.

the brief from Monday November 15, 2021 through November 23, 2021 (eight days) before his scheduled trip to Chicago. Accordingly, Respondents' proposed briefing schedule puts counsel for Petitioner Durst in an unfair and untenable position.

III. CONCLUSION.

Petitioner Durst does not object to consolidating the two Petitions for Review before this Court. However, Petitioner Durst does object to Respondents' proposed modified briefing schedule. Petitioner Durst proposes that Respondents file their brief by December 3, 2021. This will allow Respondents to file a singly brief in both the Durst Petition and the Ada County Petition matters pursuant to this Court's Scheduling Order in the ADA County Petition matter. Both Ada County and Durst can then file their reply briefs 14 days later on December 17, 2021. The matter will then be fully briefed consistent with this Court's scheduling orders entered November 15, 2021 in the Durst Petition matter and this Court's scheduling order entered November 19, 2021 in the Ada County Petition matter.

DATED this 22nd day of November, 2021.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By: 

Bryan D. Smith, Esq.
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of November, 2021, I caused a true and correct copy of the foregoing **RESPONSE TO MOTION TO CONSOLIDATE AND ALIGN BRIEFING SCHEDULE** to be served, via Electronic Filing and United States Mail, addressed to the following:

Megan A. Larrondo, Esq.
Robert A. Berry, Esq.
Cory M. Carone, Esq.
Idaho Attorney General's Office
954 W. Jefferson Street, 2nd Floor
P.O. Box 83720
Boise, ID 83702 -0010
megan.larrondo@ag.idaho.gov
robert.berry@ag.idaho.gov
cory.carone@ag.idaho.gov

☐ U. S. Mail
☐ Fax
☐ Overnight Delivery
☐ Hand Delivery
☐ Email
☒ E-file/iCourt

Jan M. Bennetts
Lorna K. Jorgensen
Leon Samuels
Deputy Prosecuting Attorneys
Civil Division
200 W. Front Street, Room 3191
Boise, ID 83702
civilpfiles@adaweb.net

☐ U. S. Mail
☐ Fax
☐ Overnight Delivery
☐ Hand Delivery
☐ Email
☒ E-file/iCourt


Bryan D. Smith