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Attorneys for Petitioner

IN THE SUPREME COURT OF THE STATE OF IDAHO

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

Petitioner,

v.

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

Respondents.

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

Petitioner,

v.

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

Respondents.

CANYON COUNTY, a duly formed and
existing county pursuant to the laws and

Supreme Court Docket No. 49261-2021
(Consolidated Cases 49261-2021 and 49267-
2021)

**VERIFIED PETITION TO INTERVENE
or in the alternative
CHALLENGING REAPPORTIONMENT
PLAN L03 AND REQUEST FOR WRIT OF
PROHIBITION AND REMAND**

VERIFIED PETITION TO INTERVENE or in the alternative CHALLENGING REAPPORTIONMENT PLAN
L03 AND REQUEST FOR WRIT OF PROHIBITION AND REMAND

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IDAHO SUPREME COURT
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2021 DEC 17 PM 1:58

Constitution 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.

COMES NOW, Canyon County, by and through Canyon County Prosecuting Attorney Bryan F. Taylor, and respectfully petitions this Court, pursuant to Idaho Appellate Rule 7.1, for leave to intervene as a party to the above-entitled proceeding. In the alternative Canyon County respectfully petitions this Court, pursuant to Article III, Section 2 of the Constitution of the State of Idaho and Idaho Appellate Rule 5, to issue a Writ of Prohibition restraining the Secretary of State from transmitting a copy of the Idaho Commission for Reapportionment's ("Commission") Final Report and Map L03. Canyon County further requests that this Court remand this matter to the Commission for revision.

JURISDICTION

1. The Court has original jurisdiction over challenges to a legislative apportionment final report and map. Idaho Const. art. III, § 2(5); Idaho App. R. 5(b). The Court has pending before it two petitions challenging the same legislative apportionment final report and map which have been consolidated under docket number 49261-2021.

2. Canyon County is an entity whose interest will be affected by the outcome of the pending proceeding. This Court may grant leave to Canyon County to intervene as a party petitioner in the pending proceeding pursuant to Idaho Appellate Rule 7.1.

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3. In the alternative, Canyon County, as a county in the State of Idaho, “may file an original action challenging a congressional or legislative redistricting plan adopted by the Commission on Reapportionment” within 35 days of the Commission’s filing of its final report with the Secretary of State. Idaho App. R. 5(b).

4. On information and belief, the Commission filed its final report with the Secretary of State on November 12, 2021.¹ Thus, the deadline for filing a challenge is December 17, 2021.

PARTIES

5. Petitioner, Canyon County, is a duly formed and existing county pursuant to the laws and Constitution of the State of Idaho. *See* Idaho Code § 31-116.

6. Petitioner in docket number 49267-2021 (consolidated into docket number 49261-2021), Ada County, is a duly formed and existing county pursuant to the laws and Constitution of the State of Idaho. *See* Petition Challenging the Constitutionality of Reapportionment Plan L03 and Request for Writ of Prohibition and Remand filed in docket number 49267-2021.

7. Petitioner in docket number 49267-2021, Branden Durst, is a qualified elector of the State of Idaho. *See* Petition for Review filed in docket number 49261-2021.

8. Respondent, Idaho Commission on Reapportionment (“Commission”), is a state commission charged with the reapportionment of state legislative and federal congressional districts pursuant to Article III, Section 2 of the Idaho Constitution and Chapter 15, Title 72 of the Idaho Code.

¹ The Secretary of State’s Office was unable to provide a file stamped copy of the Final Report. However, based on filed pleadings (*see, e.g.,* Respondents’ Motion to Consolidate and Align Briefing Schedule in docket no. 49261-2021 at 2) and media coverage (*see, e.g.,* Betsy Russell, *Final redistricting report filed with Secretary of State*, Idaho Press Tribune (Nov. 12, 2021)), Petitioner Canyon County believes the report was filed on November 12, 2021.

9. Respondent, Lawrence Denney, is the Secretary of State for the State of Idaho and bears the responsibility to receive a filing of the final report of the Commission and to transmit a copy of the final report to the president of the Idaho Senate and the speaker of the Idaho House of Representatives. Idaho Code § 72-1508.

BACKGROUND

10. The United States Census Bureau released its 2020 census results on August 12, 2021. According to the release, Idaho's total population is 1,839,106.

11. Pursuant to Idaho Code Section 72-1501, Secretary Denney issued an Order Establishing Commission for Reapportionment on August 12, 2021.

12. The Commission began its task of reapportionment on September 1, 2021 and concluded on November 10, 2021. The Commission's Final Report was filed with Secretary Denney's office on November 12, 2021.

13. The Commission divided the state into thirty-five (35) legislative districts, the number required by Article III, Section 2 of the Idaho Constitution.

14. Allocating the state population of 1,839,106 evenly across thirty-five (35) legislative districts would yield an "ideal" district size of 52,546 people. *See* Idaho Commission for Reapportionment, *Final Report* (November 10, 2021) at 10. In general, the population between the most and least populous districts may vary, or deviate, up to ten (10) percent. *See id.* at 6.

15. In an effort to minimize this deviation, the Commission in its Final Report adopted map L03.

16. Map L03 divides eight (8) counties externally, meaning portions of those counties are joined with other counties to form districts. Other maps presented to the Commission divided

seven (7) counties while maintaining a population deviation of ten (10) percent or less. *See, e.g.*, maps L075, L076, and L079 available at the Commission's website (<https://legislature.idaho.gov/redistricting/2021/>) and attached to this Petition.

17. Among the eight (8) counties split externally in Map L03, Canyon County and Ada County are each split externally three times. Bannock County is split externally twice. Nez Perce County has no wholly internal districts and is split twice. The remaining counties—Bonner, Bonneville, Kootenai, and Twin Falls—each have one external split.

18. Map L03 contains these three (3) external divisions despite Canyon County's population of 231,105 being large enough to support four (4) wholly internal districts. Under Map L03, thirty (30) percent of Canyon County's population is split externally and parsed out to districts with other counties. However, given Canyon County's population and the ideal district size, only 20,921—or nine (9) percent—of Canyon County residents need parsing out.

19. On November 10, 2021, Petitioner Branden Durst filed his petition challenging Map L03. On November 17, 2021, Petitioner Ada County filed its petition challenging Map L03. On November 23, 2021, the Court ordered both matters consolidated.

CAUSE OF ACTION VIOLATION OF ARTICLE III, SECTION 5 OF THE IDAHO CONSTITUTION

20. Each fact and allegation set forth in paragraphs 1 through 19 above are incorporated herein and realleged.

21. Article III, Section 5 of the Idaho Constitution states (emphasis added):

A senatorial or representative district, when more than one county shall constitute the same, shall be composed of contiguous counties, *and a county may be divided in creating districts only to the extent it is reasonably determined by statute that counties must be divided to create senatorial and representative districts which comply with the constitution of the United States.* A county may be divided into more than one legislative district when districts are wholly contained within a single county. No floterial district shall be created. Multi-member districts may be

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created in any district composed of more than one county only to the extent that two representatives may be elected from a district from which one senator is elected. The provisions of this section shall apply to any apportionment adopted following the 1990 decennial census.

This emphasized provision “prohibits the division of counties *except* to meet the constitutional standards of equal protection.” *Twin Falls County v. Idaho Comm’n on Redistricting*, 152 Idaho 346 (2012) (quoting *Bonneville County v. Ysura*, 142 Idaho 464, 471 (2005) (emphasis added)).

22. Map L03 violates the above constitutional provision because it divides more counties than is necessary and may also violate that constitutional provision because it divides some of those counties more times than is necessary to comply with the Constitution of the United States.

CLAIM FOR RELIEF

Petitioner respectfully requests that this Court grant the following relief:

- (a) Declare that Map L03 is unconstitutional because it unnecessarily divides too many counties too many times, including three external splits affecting thirty (30) percent of Canyon County residents.
- (b) Issue a Writ of Prohibition that restrains Secretary of State Denney from transmitting a copy of the Final Report and Map L03 to the president of the Idaho Senate and the speaker of the Idaho House of Representatives.
- (c) Remand this matter back to the Commission for review and revision so that it can adopt a Final Report and legislative map that comply with both the United States and Idaho Constitutions as well as Idaho’s statutory requirements.

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VERIFIED PETITION TO INTERVENE or in the alternative CHALLENGING REAPPORTIONMENT PLAN L03 AND REQUEST FOR WRIT OF PROHIBITION AND REMAND

STATEMENT IN SUPPORT OF PETITION TO INTERVENE

Petitioner Canyon County respectfully requests that Canyon County be granted permission to intervene as a party petitioner in the pending proceedings and to file a Reply brief once Respondents Idaho Commission for Reapportionment and Secretary of State Denney file their Response brief. Canyon County has an interest in maintaining traditional neighborhoods and communities of interest in Canyon County to the largest extent possible. While Canyon County is almost certain to remain externally split if the Court declares Map L03 unconstitutional as urged by Petitioners Ada County and Durst, the divisions of Canyon County—how many times it is split externally, which portions of Canyon County are parsed out, and how many Canyon County residents are included in those portions—are likely to change in the event Map L03 is revised or an alternative map is adopted. Therefore, the outcome of the pending proceeding will directly affect Canyon County's interest.

In the alternative, if Canyon County is not permitted to intervene, Petitioner asks that this Court accept this Petition as an original action challenging the legislative redistricting plan adopted by the Commission for Reapportionment pursuant to Idaho Appellate Rule 5(b).

DATED this 11th day of December, 2021.



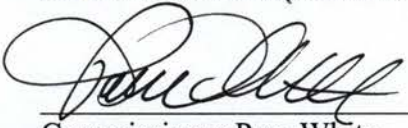
ALEXIS KLEMPER
Deputy Prosecuting Attorney

VERIFICATION

Keri K. Smith, Pam White, and Leslie Van Beek, Canyon County Commissioners declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct to the best of her knowledge and belief.

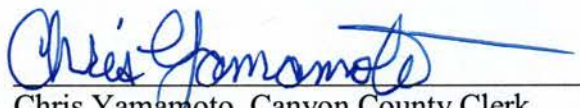
Board of Canyon County Commissioners

By: 
Commissioner Keri K. Smith

By: 
Commissioner Pam White

By: 
Commissioner Leslie Van Beek

ATTEST:


Chris Yamamoto, Canyon County Clerk

CERTIFICATE OF SERVICE

I hereby certify that on a true and correct copy of the foregoing **VERIFIED PETITION TO INTERVENE or in the alternative CHALLENGING REAPPORTIONMENT PLAN L03 AND REQUEST FOR WRIT OF PROHIBITION AND REMAND** was served on the following in the manner indicated on this 17th day of December, 2021.

Idaho Commission for Reapportionment
PO Box 83720
Boise, Idaho 83720
redistricting@redistricting.idaho.gov

☐ U.S. Mail
☒ Email
☐ Facsimile
☐ Hand Delivery

Lawrence Denney
Idaho Secretary of State
450 N. 4th Street
Boise, ID 83702
elections@sos.idaho.gov

☐ U.S. Mail
☒ Email
☐ Facsimile
☐ Hand Delivery

Idaho Attorney General
Counsel for Respondents
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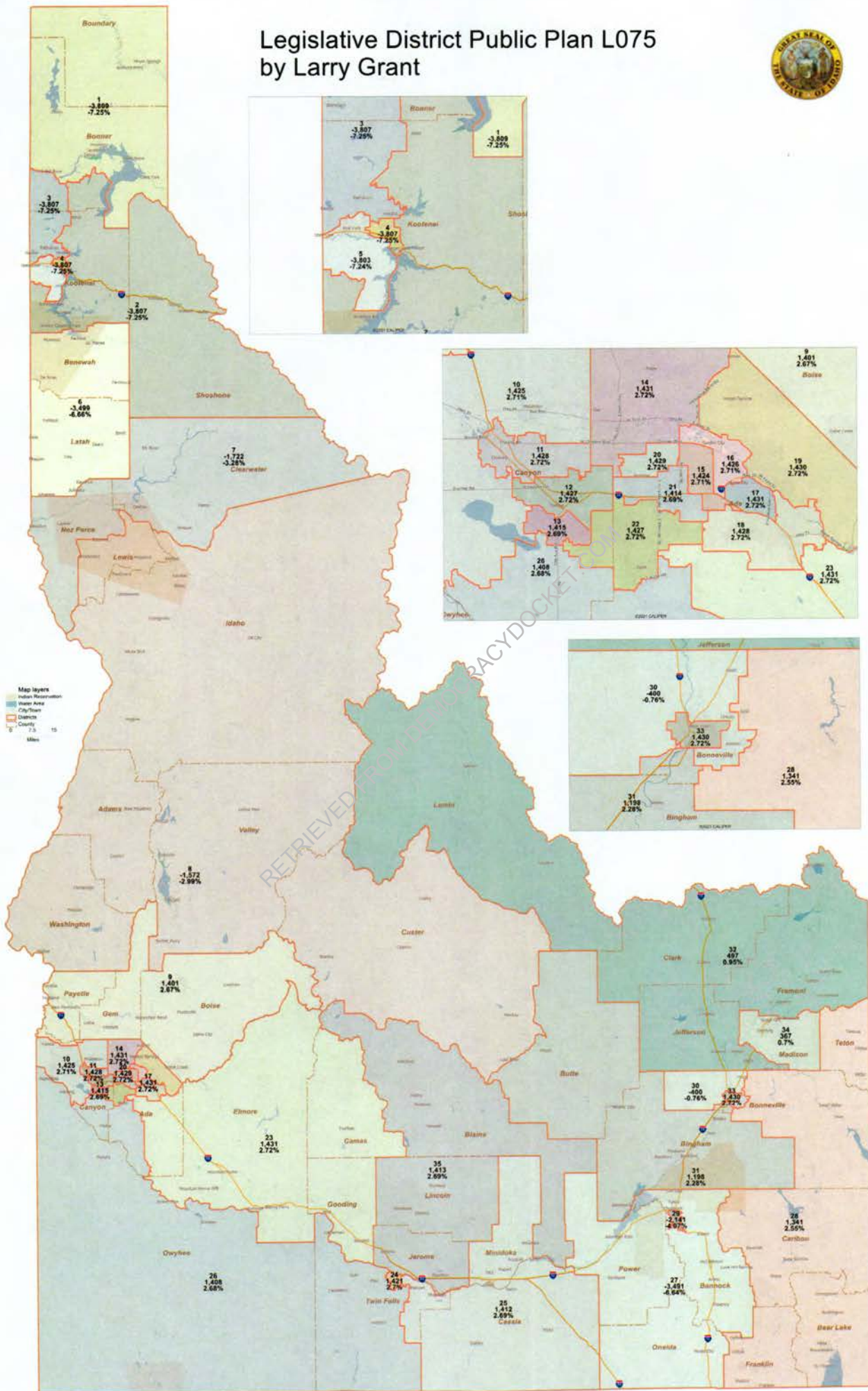
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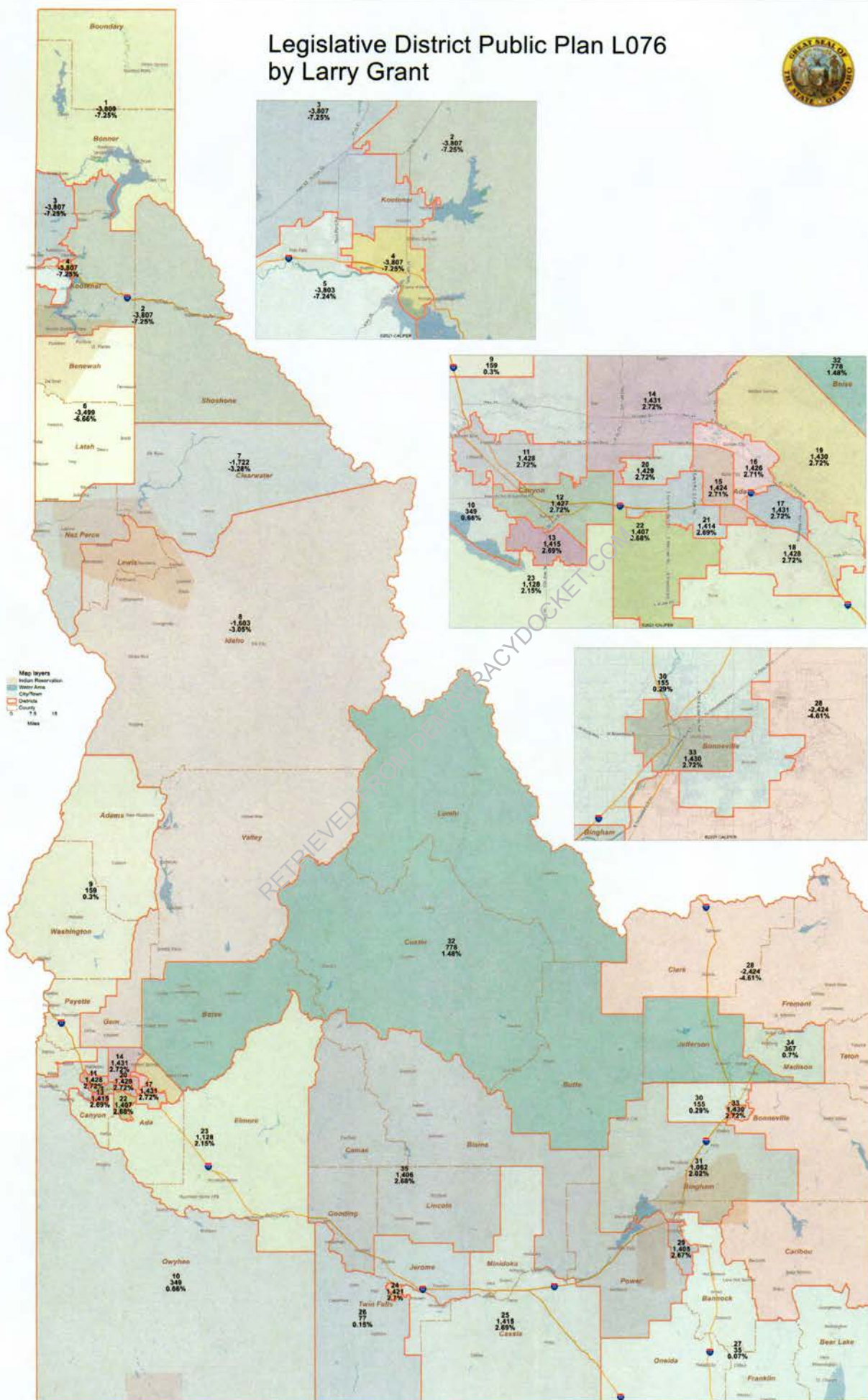
Alexis Klempel
Deputy Prosecuting Attorney

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Legislative District Public Plan L075 by Larry Grant



Legislative District Public Plan L076 by Larry Grant



Legislative District Public Plan L079 by Wayne Hurst

