

IN THE SUPREME COURT OF THE STATE OF IDAHO

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

Petitioner,

and

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

Intervenor-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.

SPENCER STUCKI, registered voter 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

Supreme Court Dkt. No. 49261-2021

Consolidated Case No(s):

49267-2021, 49295-2021 and 49353-2021

CHIEF J. ALLAN, a registered voter of the State of Idaho and Chairman of the Coeur d'Alene, Tribe, and DEVON BOYER, a registered voter of the State of Idaho and Chairman of the Shoshone-Bannock Tribes,

Petitioners,

v.

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

Respondents.

RESPONDENTS IDAHO COMMISSION FOR REAPPORTIONMENT'S AND LAWRENCE DENNEY'S RESPONSE BRIEF TO PETITIONER SPENCER STUCKI

HON. 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

JAN M. BENNETTS

Ada County Prosecuting Attorney

LORNA K. JORGENSEN

LEON J. SAMUELS

Deputy Ada County Prosecuting Attorneys

civipafiles@adacounty.id.gov

Attorneys for Petitioner Ada County

BRYAN D. SMITH

BRYAN N. ZOLLINGER

SMITH, DRISCOLL & ASSOCIATES, PLLC

414 Shoup Avenue

P. O. Box 50731

Idaho Falls, Idaho 83405

bds@eidaholaw.com

bnz@eidaholaw.com

Attorneys for Petitioner Branden Durst

DEBORAH A. FERGUSON

CRAIG H. DURHAM

Ferguson Durham, PLLC

223 N. 6th Street, Suite 325

Boise, Idaho, 83702

(208) 484-2253

daf@fergusondurham.com

chd@fergusondurham.com

Attorneys for Petitioners Chief Allan and Devon Boyer

Bryan F. Taylor
CANYON COUNTY PROSECUTING ATTORNEY
Alexis Klempel
DEPUTY PROSECUTING ATTORNEY
1115 Albany Street
Caldwell, Idaho 83605
civilefile@canyoncounty.id.gov

Attorneys for Intervenor-Petitioner

SPENCER E. STUCKI
5046 Independence Ave.
Chubbuck, ID 83202
commffelect@gmail.com

Pro Se Petitioner

RETRIEVED FROM DEMOCRACYDOCKET.COM

TABLE OF CONTENTS

I. INTRODUCTION1

II. STATEMENT OF THE CASE2

III. LEGAL STANDARD AND REDISTRICTING5

IV. ARGUMENT6

 A. Stucki overlooks the U.S. Constitution6

 B. Stucki’s challenge also fails because he ignores the Idaho Constitution’s requirement to minimize county splits.....7

 C. Plan L03 complies with Idaho Code9

 1. The Commission properly adopted Plan L03 because it found a map could not be drawn that complies with Idaho Code § 72-1506(7) and (9)9

 2. Plan L03 does not contain odd-shaped districts or disregard local communities10

 3. Stucki’s preferences and “best case scenarios” cannot supplant Plan L0312

V. CONCLUSION14

TABLE OF AUTHORITIES

CASES

Bingham County v. Comm’n for Reapportionment,
137 Idaho 870, 55 P.3d 863 (2002).....7, 8

Bonneville County v. Ysursa,
142 Idaho 464, 129 P.3d 1213 (2005).....7, 10

Kueber v. City of San Antonio,
197 F. Supp. 3d 917, 926 (W.D. Tex. 2016).....7

Perez v. Abbott,
250 F. Supp. 3d 123, 202 (W.D. Tex. 2017).....7

Twin Falls County v. Idaho Com’n on Redistricting,
152 Idaho 346, 271 P.3d 1202 (2012).....7, 8, 9

CONSTITUTIONS

Idaho Constitution, article III, § 2(5)2

STATUTES

Idaho Code § 72-1506..... *passim*

Idaho Code § 72-1506(7)9

Idaho Code § 72-1506(9)9

Idaho Code § 72-1509 (1).....2

I. INTRODUCTION

It is easy to theorize about hypothetical districts for a couple of counties, as Petitioner Stucki does, but redistricting the entire state is quite difficult. The Idaho Commission for Reapportionment (the “Commission”) had to balance the U.S. Constitution’s requirement that districts have as close to equal population as practicable with the Idaho Constitution’s requirement that county boundaries be preserved except as necessary to comply with the Equal Protection Clause. And the Commission had to do this for all of Idaho — a state where political and geographic borders and population distributions do not lend themselves to easy solutions and where drawing lines in one region impacts the allowable districts in other regions. The Commission heard public testimony for months, ultimately crafting a legislative redistricting plan in Plan L03 that appropriately complies with the Equal Protection Clause and the Idaho Constitution and accounts for public input regarding communities of interest and other relevant criteria.

Petitioner Stucki now asks the Court to jettison its precedent and order the Commission to split *more* counties to accommodate his preferences. This is a fatal misconception of the law. Further, Stucki’s challenge is in direct contrast to those of Petitioners Durst, Ada County, Allen and Boyer, and Canyon County, which all argue that the Commission should have split *fewer* counties (though they each have their own particular preferences as to how the districts should look). In addition to being fatally flawed legally, Stucki’s challenge demonstrates the inherent flaw running through all these challenges. The question before this Court is not which district lines are “best,” but whether the Commission properly applied the hierarchy of laws governing reapportionment. Because Plan L03 complies with the legal requirements for reapportionment, it must be upheld.

II. STATEMENT OF THE CASE

This is an original proceeding filed by Petitioner Spencer Stucki under article III, section 2(5) of the Idaho Constitution and Idaho Code § 72-1509(1) challenging legislative redistricting Plan L03. For the sake of brevity, Respondents incorporate the Statement of the Case that it previously set forth in their Corrected Respondents Idaho Commission for Reapportionment's and Lawrence Denney's Response Brief ("Corrected Response Brief to Durst and Ada County"). See Corrected Response Brief to Durst and Ada County at 2-14. Respondents add the following statements unique to Petitioner Stucki.

Stucki is a registered voter from Chubbuck, Idaho. Brief Challenging Adopted Redistricting Plan L03 ("Stucki Brief") at 1. Stucki appeared and presented remote testimony to the Commission on October 12, 2021. Final Report, Appendix III (October 12, 2021 Remote Testimony Minutes) at 2. The minutes reflect that Stucki spoke in support of Plan L056, "which attempted to solve issues in eastern Idaho where districts were expansive and linear." *Id.* Stucki did not testify about Plan L074, nor did he submit written testimony in support of it.

Plan L056 is one of 15 plans Stucki submitted to the Commission. Final Report, App. XII at 40-42, 45-47, 49, 53 (Plan L011), 54 (Plan L012), 56 (Plan L014), 57 (Plan L015), 58 (Plan L016), 68 (Plan L026), 69 (Plan L027), 84 (Plan L042), 86 (Plan L044), 89 (Plan L047), 90 (Plan L048), 97 (Plan L055), 98 (Plan L056), 102 (Plan L060), 116 (Plan L074). His first plan, Plan L011, was submitted on September 3, 2021, and his final plan, Plan L074, was submitted on October 13, 2021. *Id.* at 40, 49. His plans constantly shifted. Plan L011 contained 11 county splits with population deviations from -8.67% to 8.46%. *Id.* at 53; L011 Population Summary Report; L011 County Splits Report. From there, his plans vacillated between nine county splits (Plans L012, L042, L044, L056, and L074) and ten county splits (Plans L014, L015, L016, L026, L047,

L055, and L060) — all more than Plan L03’s eight county splits. *Compare* L012 County Splits Report, L042 County Splits Report, L044 County Splits Report, L056 County Splits Report, L074 County Splits Report *with* L014 County Splits Report, L015 County Splits Report, L016 County Splits Report, L026 County Splits Report, L047 County Splits Report, L055 County Splits Report, and L060 County Splits Report. Plans L012 and L015 are also presumptively unconstitutional under the Equal Protection Clause as they exceed 10% total population deviation. L012 Population Summary Report; L015 Population Summary Report; Final Report, App. XII at 54, 57.

The Commission considered Stucki’s plans, which largely attempted to group four southeastern Idaho counties together: Oneida, Franklin, Bear Lake, and Caribou (“Four Counties”). Final Report at 77-80. In deciding how to apportion these counties, the Commission noted that “public testimony was generally not in favor of combining Oneida County with Minidoka and Cassia. Instead, public testimony overwhelmingly favored combining Oneida with Franklin, Bear Lake, and Caribou Counties.” *Id.* at 78. The Commission attempted to accommodate that preference, but could not devise a plan that combined the Four Counties and satisfied both the Equal Protection Clause and the Idaho Constitution. *Id.* at 78-80.

The combined population of the Four Counties is only 32,157, far short of the ideal district size of 52,546. *Id.* at 78. The only adjacent counties that could provide the necessary additional 20,389 people to the populations of the Four Counties are Power, Bannock, Bingham, and Bonneville. *Id.* At 44,992 people, Bingham County is too populous to add: joining it to the Four Counties would require a ninth county split. *Id.* at 78-79. Power County’s population is too low at 7,878. *Id.* at 79. Bannock County’s population is too large. If the Commission were to create one internal district of ideal district size in Bannock County and combine the remainder of Bannock County’s population with the Four Counties, the Four Counties district would have 66,629 people

and a deviation of 26.8%. *Id.* If Bannock County were divided into one internal district and only 20,389 people were taken from Bannock County to add to the population of the Four Counties, the Commission saw no place for the remaining 14,083 people in Bannock County to go; the receiving districts would either be too populous or not populous enough. *Id.*

Bonneville County could be split into two districts of ideal size, resulting in 18,872 remaining residents that, if combined with the Four Counties, would create a district with 51,029 people and a deviation of -2.89%. *Id.* But that division would be problematic for Teton County's population of 11,630 people. The only counties adjacent to Teton County are Madison and Fremont (excluding Bonneville, whose population has already been allotted in this scenario). *Id.* But Madison County's population is so close to ideal district size that the Commission determined that the Idaho Constitution required it be left intact, and Fremont County's population of 13,388 is not large enough to create an ideal district when combined with Teton. *Id.* at 79-80. Adding adjacent counties to Fremont does not solve the problem. Jefferson County is so populous that, when combined with Fremont and Teton, the resulting district would likely push the total plan deviation over 10%. *Id.* at 80. And Clark County's 790 people would not add sufficient population, meaning populations from counties farther west would need to be accessed, but those populations had already been allotted to other districts and were part of regions farther west. *Id.* at 80.

In light of those insurmountable issues, the Commission determined that the Four Counties could not be combined and that Stucki's preferences could not be accommodated. *Id.* at 80 (discussing the Four Counties issue and Stucki's Plans L011, L012, L014, L015, L016, L026, L042, L044, L047, L055, L056, L060 and L074). The Commission concluded that there was no "viable way to keep the Four Counties together and comply with both equal protection and the Idaho Constitution." *Id.* The Commission found that these legal requirements dictated that "the

most reasonable placement for Oneida County is in a district with Minidoka and Cassia Counties” and found that “this district preserves traditional neighborhoods and local communities of interest to the maximum extent possible.” *Id.*

After his initial filing was rejected by the Court, Stucki filed his Verified Petition Challenging Adopted Redistricting Plan L03 on December 8, 2021. Order Withdrawing Conditional Dismissal and Reinstating Action, issued December 9, 2021. On December 17, 2021, the Court consolidated Stucki’s challenge with *Allan v. Idaho Commission for Reapportionment*, Docket No. 49353-2021, *Durst v. Idaho Commission for Reapportionment*, Docket No. 49261-2021, and *Ada County v. Idaho Commission for Reapportionment*, Docket No. 49267-2021. Order to Consolidate and Set Briefing Schedule, issued December 17, 2021.

III. LEGAL STANDARD FOR REDISTRICTING

Respondents incorporate the Legal Standard for Redistricting as set forth in their Corrected Response Brief to Durst and Ada County. *Id.* at 14-16. In short, the legal hierarchy that governs redistricting is as follows. First, the Plan must comply with the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, which requires districts to be as equal in population as practicable while allowing for some deviation to achieve a legitimate state consideration. *Twin Falls County v. Idaho Com’n on Redistricting*, 152 Idaho 346, 348, 271 P.3d 1202, 1204 (2012); *see also* Corrected Response Brief to Durst and Ada County at 16-19. Second, the Plan must comply with the requirements of the Idaho Constitution, which prohibits the division of counties except to the extent necessary to meet the requirements of the U.S. Constitution. *Twin Falls County*, 152 Idaho at 349, 271 P.3d at 1205. Finally, the Plan must comply with Idaho’s statutes to the extent that it is able given the constitutional requirements. *Id.*

Stucki's challenge turns on his misinterpretation of the Idaho Constitution and on a futile effort to elevate statutory law over the U.S. and Idaho Constitutions.

IV. ARGUMENT

A. Stucki overlooks the U.S. Constitution.

Stucki inverts the legal hierarchy that governs redistricting and repeatedly invokes Idaho Code § 72-1506 to criticize Plan L03. Stucki Brief at 7, 8, 12, 15. His critiques ignore the careful decisions that the Commission was required to make in order to comply with the superior requirements of the U.S. and Idaho Constitutions. Idaho Code § 72-1506 is subordinate to those authorities, and Stucki's claims thus fail. *Twin Falls County*, 152 Idaho at 349, 271 P.3d at 1205.

There is no dispute that Plan L03 complies with the U.S. Constitution. As discussed in the Corrected Response Brief to Durst and Ada County, under the Equal Protection Clause, Plan L03 is presumptively constitutional at a maximum population deviation of less than 10% — specifically 5.84% deviation. Corrected Response Brief to Durst and Ada County at 17. Stucki does not argue that the Commission violated the Equal Protection Clause, and instead praises the Commission for doing “a remarkable job.” Stucki Brief at 15.

Stucki merely argues that the Commission should have drawn the district lines in Plan L03 to his preferences, making the same arguments in his legal challenge as one would make in public testimony before the Commission to advocate for preferred line-drawing. *Id.* at 13-15. Stucki does not discuss population deviations, except to note that “equal protection” is “provided with low deviation numbers or percentages between the high and low districts statewide,” to incorrectly state that 10% deviation is categorically “allowable,” and to shift population blocks in theorizing about his preferred district lines. *Id.* at 8, 14-15. Stucki's failure to appreciate the Equal Protection Clause is readily apparent. Three of his plans exceed a total population deviation of 10% and his

remaining plans appear solely aimed at achieving just less than 10% deviation, which is inconsistent with the Equal Protection Clause. *See* Corrected Response Brief to Durst and Ada County at 23-24 (citing *Perez v. Abbott*, 250 F. Supp. 3d 123, 202 (W.D. Tex. 2017); *Kueber v. City of San Antonio*, 197 F. Supp. 3d 917, 926 (W.D. Tex. 2016)). Stucki also makes no effort to identify the equal protection considerations that would result from his proposed shifts to Plan L03. Stucki Brief at 13-15. Stucki's arguments fail because he fails to give adequate consideration to the Equal Protection Clause.

B. Stucki's challenge also fails because he ignores the Idaho Constitution's requirement to minimize county splits.

The Idaho Constitution mandates that counties may be divided only to the extent necessary to create a plan that complies with the Equal Protection Clause. *Bonneville County v. Ysursa*, 142 Idaho 464, 471, 129 P.3d 1213, 1220 (2005) (quoting *Bingham County v. Com'n for Reapportionment*, 137 Idaho 870, 878, 55 P.3d 863, 871 (2002)). As with the U.S. Constitution's requirements, Stucki would ignore the Idaho Constitution in favor of Idaho Code § 72-1506. But the Idaho Constitution's requirements trump Idaho Code. *Twin Falls County*, 152 Idaho at 349, 271 P.3d at 1205.

While Stucki acknowledges that under the Idaho Constitution, county splits must be "minimized and only occur when it is necessary to achieve acceptable deviation numbers," he ignores the Court's precedent, which establishes how the acceptable number of county splits is determined for the purpose of complying with the Idaho Constitution. *See* Stucki Brief at 8. "If one plan that complies with the Federal Constitution divides eight counties and another that also complies divides nine counties, then the extent that counties must be divided in order to comply with the Federal Constitution is only eight counties." *Twin Falls*, 152 Idaho at 349, 271 P.3d at 1205. Plan L03 complies with the Equal Protection Clause and splits eight counties. Stucki would

have the Commission split nine counties.¹ Stucki Brief at 7 (“Petitioner found it necessary to split nine (9) counties in order to meet the other criteria from Idaho Code 72-1506”). Stucki’s preferred district distribution therefore cannot supplant Plan L03.

Moreover, the Idaho Constitution does not require the Commission to distribute the split counties evenly across the State, as Stucki apparently believes. The Court’s precedent establishes that the county division requirement is solely to minimize the number of counties split and to keep counties of ideal district size intact. *Twin Falls County*, 152 Idaho at 349-51, 271 P.3d at 1205-07; *Bingham County*, 137 Idaho at 874, 55 P.3d at 867. Indeed, if the Commission were required to distribute split counties exactly evenly across the state, it would not be able to split counties “solely” for the purpose of complying with the Equal Protection Clause, as the Idaho Constitution requires. *Twin Falls County*, 152 Idaho at 349, 271 P.3d at 1205. But even if such a distribution were required (and it is not), Plan L03 distributes county splits evenly across northern Idaho (Bonner, Kootenai and Nez Perce), southwestern Idaho (Ada and Canyon), and south central/eastern Idaho (Twin Falls, Bannock, Bonneville.) Final Report, App. VIII at 2-3.

Stucki also apparently believes that an additional split is justified when it is necessary to comply with Idaho Code. But as stated above, the Idaho Constitution’s mandate to minimize county splits trumps Idaho Code. The Idaho Constitution allows county splits for the sole purpose of complying with the Equal Protection Clause. *Twin Falls County*, 152 Idaho at 349, 271 P.3d at 1205. And in *Twin Falls County*, the Court addressed Idaho Code § 72-1506(5)’s strictures on

¹ Stucki throws a passing reference to Plan L078 as “another plan to consider.” Stucki Brief at 13. This reference should not be considered as it is unsupported by argument; but, even if it were, Plan L078 is an eight county split plan and therefore the Commission was within its discretion to adopt a different eight county split plan—Plan L03. Final Report, App. XII at 120; L078 County Splits Report; *Twin Falls County*, 152 Idaho at 351, 271 P.2d at 1207. Additionally, there are issues with Plan L078, which will be addressed in Respondents’ brief in response to Petitioners Allan and Boyer’s challenge.

county divisions in analyzing the Idaho Constitution's county-division requirement and arrived at the very interpretation that forecloses Stucki's challenge: if a plan exists that complies with the Equal Protection Clause and contains fewer county splits, the Commission may only split that number of counties. *Id.* at 350-51, 271 P.3d at 1206-07. Stucki's challenge fails.

C. Plan L03 complies with Idaho Code.

Given that Stucki's Idaho Code arguments contain the condition precedent of the Court concluding — contrary to its own precedent — that the Commission should have adopted a nine county split map instead of an eight county split map, Stucki's remaining arguments must be rejected out of hand. Stucki's Idaho Code arguments fail given that the Commission made the decisions it did in order to comply with the superior constitutional requirements of the U.S. and Idaho Constitutions. But even if Stucki's arguments under Idaho Code § 72-1506 were not preempted by the U.S. and Idaho Constitutions, they are deeply flawed and do not merit relief.

1. The Commission properly adopted Plan L03 because it found a map could not be drawn that complies with Idaho Code § 72-1506(7) and (9).

Stucki misreads the language in Idaho Code § 72-1506(7) and (9), which allows the Commission to disregard local voting precinct boundary lines and connecting roads when the Commission votes that it cannot comply with either factor. Neither provision applies because all six members of the Commission found that compliance was not possible in light of the other legal demands for drawing districts. Idaho Code § 72-1506(7), (9); Final Report at 26-27; Final Report, App. III (November 5 & 10 Meeting Minutes); *Twin Falls County*, 152 Idaho at 350, 271 P.3d at 1206.² Stucki is also incorrect that the testimony by county clerks was against splitting precinct boundaries. Stucki Brief at 9. The Commission was advised by multiple county clerks to ignore

² Stucki contends that one commission voted against this determination, but that was in regard to the congressional plan, not the legislative redistricting plan. *See* Final Report, App. III (November 10 Meeting Minutes).

precinct lines as they would be redrawn after redistricting. Final Report at 33, 35, 36, 38, 56-57, 58-59, 60, 62, 64, 65-66, 67, 69, 70. Stucki's arguments related to voting precincts and connecting roads therefore fail. Stucki Brief at 9-10.

2. Plan L03 does not contain odd-shaped districts or disregard local communities.

Stucki's disjointed arguments regarding the shapes of Districts 8³, 28, and 35 ignore that this Court wisely does not "micromanage all the difficult steps the Commission must take in performing the high-wire act that is legislative district drawing." *Bonneville County*, 142 Idaho at 472, 129 P.3d at 1221. The difficult steps the Commission takes are fact-intensive and fact-dependent, and the Commission is intimately acquainted with these facts based on its composition and its interaction with the public and public officials during redistricting.

While Stucki contends District 35 is a "whatever is left over" district, the Commission's rationale in fashioning this district shows the opposite. Stucki Brief at 10; Final Report at 93-95. District 35 has a total population of 50,982 and a deviation of -2.98%. *Id.* at 93. Contrary to Stucki's description, the district is actually comprised of "primarily small and rural communities." *Id.* at 94. The whole counties in the district were not themselves populous enough to be self-contained, requiring some joinder:

Bear Lake County is contiguous to Caribou County, Caribou County is contiguous to the portions of Bannock and Bonneville Counties contained within this district, and Bonneville County is adjacent to Teton County. The Commission finds that this district complies with the requirements of equal protection while minimizing county divisions to the maximum extent possible.

Id. at 94. The realities of geography and population distribution force the shape of District 35. Because these counties run along Idaho's border, they cannot be combined with counties to the

³ While Stucki references District 8, he cites no argument or evidence to support any contention that it is odd-shaped. Stucki Brief at 11.

east or south. Final Report, App. XI at 7. And the denser populations of Bannock and Bonneville Counties, which require splits to distribute their excess populations and therefore combination with contiguous counties, further limit options. Final Report at 20-21, 94; Idaho Const. art. III, § 5. In short, the districts must be arranged in a way that allows smaller counties to be combined with the excess population in Bannock and Bonneville Counties. Final Report at 94. While Stucki contends that Bear Lake and Teton counties have no real connection, Teton, Caribou, Bear Lake and portions of Bonneville were previously part of District 32 at the last redistricting plans in 2002 and 2011.⁴ Final Report, App. XIV at 2-3. Stucki's disagreement with District 35 is simply micromanaging, which does not warrant relief.

Stucki also contends, without specific facts or evidence, that the "districts in southeast Idaho look as though they could have been drawn to protect current Senators." Stucki Brief at 11. In stark contrast, the Commission explicitly disavowed any notion that districts were drawn to protect incumbents. *See* Factor E in the discussion for each legislative district in the Final Report. Stucki's unsupported speculation is insufficient to support a challenge.

Stucki next contends that District 28 is "odd" because of its inclusion of Power, Bannock and Franklin counties and omission of Arimo, McCammon, Inkom and most of Pocatello. Stucki Brief at 11. But the Commission's decision was quite reasonable. The Commission reasonably found that Bannock County had to be split because its population was significantly greater than ideal district size and to distribute some of its population to create districts in combination with less populous surrounding counties. Final Report at 20-21. Specifically, "[o]ne external split — for District 28 — requires that Bannock be combined with Power and Franklin Counties." *Id.* at 83. The Commission tried to keep Pocatello together, but the size of its population meant that the

⁴ Stucki contends a school district is split, but he does not identify this school district or a community of interest in Bannock County. Stucki Brief at 10.

city had to be divided into Districts 28 and 29. *Id.* at 81-85. Most of Pocatello is in District 29. *Id.* at 84-85. In forming District 28, the Commission noted that “the population distribution in this part of the state is such that the most populous counties — Bannock, Bingham, Bonneville, Madison, and Jefferson — are clustered together, while the less populous counties surround them.” *Id.* at 82. Stucki takes issue with the population distribution of southeastern Idaho, not with the Commission’s redistricting choices.

Stucki’s district shape and community of interest arguments are simply Stucki’s effort to micromanage and second-guess the Commission’s hard decisions. They are insufficient to unwind L03.

3. Stucki’s preferences and “best case scenarios” cannot supplant Plan L03.

Stucki asks for the Court to order that a plan similar to Plan L074 be adopted “for the rest of the state, south central and eastern Idaho.” Stucki Brief at 13-15. Petitioner Durst made a similar improper request that the Court order that his specific redistricting preferences be adopted. Stucki’s request fails for the same reasons that Petitioner Durst’s request fails. *See* Corrected Response Brief to Durst and Ada County at 45-46.

It is unclear what Stucki wants the Court to do or how he expects the Court to achieve it. At times, Stucki argues that Plan L074, or some variant thereof, is better than Plan L03.⁵ *See* Stucki Brief at 13-14 (offering a scattershot of diffuse and disjointed suggestions without explaining how the Idaho redistricting puzzle would fit together under his theories). While Stucki admits, “[t]he moves made in one part of the state effect other parts of the state,” he fails to offer a viable alternative as to how to redistrict the entire state. *Id.* at 7. And when one analyzes some of his “best

⁵ It appears that Stucki may be advocating for an unknown variant of Plan L074; some of his self-described “best case scenario[s]” for various counties are not reflected in Plan L074. *Compare* Plan L074 (separating Elmore from Owyhee Counties) *with* Stucki Brief at 13-14 (“Elmore’s best case scenario is being connected to Owyhee County.”).

case scenarios,” they are clear non-starters. For example, Custer County cannot be combined with Lemhi, Butte, Clark and Jefferson County as this combination yields a wildly underpopulated district (46,504 people for a -11.5% deviation). Stucki Brief at 13; Final Report, App. V at 5. Owyhee County combined with Elmore County similarly fails due to underpopulation (40,579). Stucki Brief at 13-14; Final Report, App. V at 5. Adams combined with Valley and Washington Counties results in a 26,615 person district. Stucki Brief at 13; Final Report, App. V at 5. And Stucki’s self-described “best case scenario” conflicts with the preferences of other petitioners. For example, Petitioner Durst apparently disagrees with Stucki’s preference for combining Custer, Lemhi, Butte, Clark and Jefferson Counties as Durst advocates for a different combination, combining Custer, Lemhi, Valley, Boise and Gem Counties in Plan L084. *Compare* Final Report, App. XII at 116 *with* Final Report, App. XII at 126. Rather than a “best case scenario,” Stucki has presented a mess of his own preferences with no clear or logical outcome as to how to redistrict the entire state of Idaho.

Stucki concludes his brief by attempting to explain how he thinks district lines should be drawn in southeastern Idaho based upon Plans L03 and L074, but unlike the counties in northern Idaho, which the Commission noted as presenting a Gordian knot, there is no way to cut through Stucki’s explanations and proposed shifts. Stucki’s theorizing falls apart and results in incomprehensibility. *See* Stucki Brief at 14-15. Once again Stucki describes a non-existent plan; his described changes reflect neither Plan L03 nor Plan L074 accurately. *Id.* Stucki reconfigures districts and shifts populations with easy keystrokes based on his own beliefs as to which areas “fit well together,” “are connected by roads,” “have common interests” and which moves are “logical.” *Id.* He moves population from district to district without a word toward how the Idaho Constitution’s county division requirement would be impacted, nor does he analyze whether his

proposed districts would comply with the Equal Protection Clause. If only redistricting were so easy.

Stucki's facile words are not evidence that the Court can consider in evaluating the Commission's decision-making with Plan L03; but, even if they were, Stucki's sweeping reconfigurations are simply his preferences for how he would replace the Commission's careful fact-gathering and considered judgment with his own. They are not grounds to invalidate Plan L03.

CONCLUSION

For the foregoing reasons, Respondents request that the Court declare that the final legislative redistricting plan adopted by the Commission complies with governing law. Respondents further request that the Court refuse to issue the requested declarations, and that the Court deny all other relief requested by Petitioner Stucki.

DATED this 23rd day of December, 2021.

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 December 23, 2021, 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.

Lorna K. Jorgensen
Leon Samuels
ADA COUNTY PROSECUTOR'S OFFICE
DEPUTY PROSECUTING ATTORNEYS
CIVIL DIVISION
ljorgensen@adaweb.net
lsamuels@adacounty.id.gov
civilpfiles@idaweb.net

Counsel for Petitioner Ada County

Bryan D. Smith, Esq.
Bryan N. Zollinger, Esq.
SMITH, DRISCOLL & ASSOCIATES, PLLC
bds@eidaholaw.com
bnz@eidaholaw.com
filing@eidaholaw.com

Counsel for Petitioner Branden Durst

Deborah A. Ferguson
Craig H. Durham
FERGUSON DURHAM, PLLC
daf@fergusondurham.com
chd@fergusondurham.com

*Counsel for Petitioners Chief Allan and
Devon Boyer*

Bryan F. Taylor
CANYON COUNTY PROSECUTING ATTORNEY
Alexis Klempel
DEPUTY PROSECUTING ATTORNEY
civilefile@canyoncounty.id.gov

Attorneys for Intervenor-Petitioner

I HEREBY FURTHER CERTIFY that on December 23, 2021, I served the following party to be served by electronic means (personal email) and via U.S. Mail, First Class.

Spencer E. Stucki
5046 Independence Ave.
Chubbuck, ID 83202
commffelect@gmail.com

Pro Se Petitioner

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