

Victor Villegas [ISB No. 5860]  
BORTON-LAKEY LAW & POLICY  
141 E. Carlton Ave.  
Meridian, Idaho 83642  
Telephone: (208) 908-4415  
Facsimile: (208) 493-4610  
Email: [victor@borton-lakey.com](mailto:victor@borton-lakey.com)

*Attorneys for City of Eagle*

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

**BRANDEN JOHN 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.**

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**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  
DENNY, Secretary of State of the State of  
Idaho, in his official capacity,**

**Respondents.**

**CITY OF EAGLE AMICUS CURIAE  
BRIEF**

**Supreme Court Docket Nos. 49261-  
2021, 49267-2021, 49295-2021 and  
49353-2021**

Fax (208) 493-4610  
Email: [victor@borton-lakey.com](mailto:victor@borton-lakey.com)  
**Attorneys for Respondent/Respondents**

Idaho Commission for Reapportionment  
P.O. Box 83720  
Boise, ID 83720  
[redistricting@redistricting.idaho.gov](mailto:redistricting@redistricting.idaho.gov)  
**Attorneys**

Spencer E. Stucki  
Co-chair Committee for Fair Elections  
5046 Independence Ave  
Chubbuck, ID 83202  
[commffelect@gmail.com](mailto:commffelect@gmail.com)  
**Pro Se**

Deborah A. Ferguson  
Craig H. Durham  
Ferguson Durham, PLLC  
223 N. 6<sup>th</sup> Street Suite 325  
Boise, ID 83702  
[daf@fergusondurham.com](mailto:daf@fergusondurham.com)  
[chd@fergusondurham.com](mailto:chd@fergusondurham.com)  
**Attorneys**

**Attorneys for Ada County Prosecutor**

Lawerence Denney  
Idaho Secretary of State  
450 N. 4<sup>th</sup> Street  
Boise, ID 83702  
[elections@sos.idaho.gov](mailto:elections@sos.idaho.gov)  
**Attorneys General**

Bryan D. Smith  
Bryan N. Zollinger  
Smith, Driscoll & Associates, PLLC  
P.O. Box 50731  
Idaho Falls, ID 83405-0731  
[bds@eidaholaw.com](mailto:bds@eidaholaw.com)  
**Attorneys**

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**TABLE OF CONTENTS**

STATEMENT OF CASE..... 1

    A. Nature of the Case..... 1

    B. Procedural History ..... 1

    C. Statement of Facts..... 1

LEGISLATIVE APPORTIONMENT REVIEW ..... 3

ARGUMENT ..... 3

    A. The Commission violated Article III § 5 of the Idaho Consitution when it  
        unnecessarily split Ada County and combined it with other counties to  
        form external legislative districts. .... 3

    B. Plan L03's combination of the City of Eagle and parts of Gem County to  
        form the proposed District 14 does not comply with Idaho Code § 72-1506. .... 5

        1. Communities of interest should be able to interat with one another and  
           have similar living standards. .... 8

        2. Communities of interest should be united by commerce and transportation. .... 9

        3. Communities of interest should have common social, geographic,  
           cultural, political, and economic interests. .... 10

        4. The Commission's failure to preserve Eagle and Star as communities  
           of interest is a violation of Idaho Code § 72-1506. .... 12

CONCLUSION ..... 12

**TABLE OF CASES AND AUTHORITIES**

**Cases**

*Bingham County v. Idaho Com'n for Reapportionment*,  
137 Idaho 870 (2002).....4

*City of Manchester v. Sec'y of State*, 48 A.3d 864 (N.H. 2012) .....7

*Hippert v. Ritchie*, 813 N.W.2d 374 (Minn. 2012).....7

*In re Reapportionment of Towns of Hartland*,  
*Windsor, & W. Windsor*, 624 A.2d 323 (Vt. 1993) .....7

*In re Senate Joint Resol. of Legislative Apportionment 1176*,  
83 So. 3d 597 (Fla. 2012).....6

*Twin Falls County v. Idaho Com'n on Redistricting*, 152 Idaho 346 (2012).....3, 4

*Vandermost v. Bowen*, 269 P.3d 446 (Cal. 2012).....7

**Constitutional Provisions**

Article III § 5, Idaho Constitution.....1, 3, 4.

**Statutes**

Idaho Code § 72-1501 ..... 1

Idaho Code § 72-1506 ..... 3, 4, 5, 6 Passim

**Other**

City of Eagle Comprehensive Plan,  
<https://www.cityofeagle.org/DocumentCenter/View/980/Comprehensive-Plan---Eagle-is-HOME--PDF>

City of Star Comprehensive Plan, [https://www.staridaho.org/vertical/sites/%7BBABF7977-2C81-44F3-A8BC-95C5171109E7%7D/uploads/COUNCIL\\_APPROVED\\_COMP\\_PLAN\\_TEXT\\_12-8-21.pdf](https://www.staridaho.org/vertical/sites/%7BBABF7977-2C81-44F3-A8BC-95C5171109E7%7D/uploads/COUNCIL_APPROVED_COMP_PLAN_TEXT_12-8-21.pdf)

Gem Community Joint Comprehensive Plan,  
[https://webgen1files.revize.com/gemcountyid/Development\\_Services/Comprehensive\\_Plan/Gem\\_Community\\_Joint\\_Comprehensive\\_Plan.pdf](https://webgen1files.revize.com/gemcountyid/Development_Services/Comprehensive_Plan/Gem_Community_Joint_Comprehensive_Plan.pdf)

## STATEMENT OF CASE

### A. Nature of the Case

Article III § 5 of the Idaho Constitution mandates that “a county may be divided in creating districts only to the extent it is reasonably determined by statute that counties must be divided to create senatorial and representative districts which comply with the constitution of the United States.” The Idaho Commission on Reapportionment (“Commission”) violated this provision by dividing more counties than necessary to comply with the Equal Protection Clause of the United States Constitution.

### B. Procedural History

Pursuant to Idaho Code § 72-1501, after the United States Census Bureau released its 2020 results on August 12, 2021, the Idaho Secretary of State issued an order for organization of the Commission. The Commission called itself to order on September 1, 2021, finished its business on November 10, 2021, and submitted its Final Report to the Idaho Secretary of State. Petitioner Branden Durst submitted a Petition for Review of the Commission’s Plan on November 10, 2021. Petitioner Ada County submitted its Petition Challenging Constitutionality of Reapportionment Plan L03 and Request for Writ of Prohibition and Remand on November 17, 2021. Mr. Durst’s and Ada County’s Petitions were consolidated on November 23, 2021 as Supreme Court Docket 49261-2021. City of Eagle filed a motion for leave to submit an amicus curiae brief in support of Ada County’s Petition, and the Court granted such motion on December 17, 2021.

### C. Statement of Facts

The United States Census Bureau released its Census 2020 results on August 12, 2021. According to the release, Idaho’s total state population is 1,839,106. Thirty-five (35)

legislative districts are allowed, and the state population of 1,839,106 must be allocated among the thirty-five (35) districts. An exact allocation of 1,839,106 people in thirty-five (35) districts would result in 52,546 people in each district.

The Final Report of the Commission states that its Plan L03 meets equal protection requirements and divides eight (8) counties. The eight counties are: Ada, Bannock, Bonner, Bonneville, Canyon, Kootenai, Nez Perce, and Twin Falls. There were other plans presented to the Commission that met the equal protection standard and only divided seven counties. See Plans L075, L076 and L079 filed with the Ada County's Petition; *Final Report*, at 13.

Ada County currently has nine legislative districts. The Commission decreased Ada County's current *nine* internal districts to only *eight* internal districts in Ada County and externally joined 75,859 citizens of Ada County (over 15% of its population) with three other counties: Gem, Canyon and Owyhee to form districts. Ada County was split three times externally. As part of Ada County's external splits in Plan L03, the City of Eagle ("Eagle") has been combined with parts of Gem County to form their own district.

Currently, Eagle is in a District that encompasses part of the City of Star ("Star"). The current split should be preserved because Star and Eagle are local communities of interest and have similar Comprehensive Plans that work together to see future development in their portion of Ada County, the values of the local governments and its citizens align with the vision of the two cities, and they share roadways and media sources. The proposed Plan L03 presents a unique problem for Eagle because the City of Emmett and portions of Gem County are very agricultural, and their Joint Comprehensive Plan ("Gem Communities" includes the City of Emmet and other portions of Gem County) focuses on farmland and agricultural preservation. The values of the local governments and

citizens do not align, and redistricting in the proposed manner would likely stifle Eagle's development interests.

### LEGISLATIVE APPORTIONMENT REVIEW

This Court has original jurisdiction. Idaho Constitution Art. III § 2(5). When evaluating a challenge to a reapportionment plan, the Court considers a hierarchy of applicable law. *Twin Falls County v. Idaho Com'n on Redistricting*, 152 Idaho 346, 347, 271 P.3d 1202, 1203 (2012). First, the Court evaluates whether the plan meets the requirements of the Equal Protection Clause of the U.S. Constitution. *Id.* at 348-49, 1204. Second, the Court evaluates whether the plan limits the number of counties that can be divided. *Id.* at 349, 1205. And third, the Court considers whether the plan complies with Idaho Code § 72-1506. *Id.* at 349-350, 1206-1206.

### ARGUMENT

- A. The Commission violated Article III § 5 of the Idaho Constitution when it unnecessarily split Ada County and combined it with other counties to form external legislative districts.**

The Commission's proposed splits in Plan L03 are unnecessary, and its proposed District 14 could have been drawn in a way that better complies with the Idaho Constitution.

Article III § 5 of the Idaho Constitution states:

*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 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.*

(emphasis added). During the last reapportionment process in 2012, this Court held that if counties are divided for some reason other than to comply with the U.S. Constitution, it violates Idaho's Constitution. *Twin Falls*, 152 Idaho at 347, 271 P.3d at 1203. In violation of this constitutional provision, the Commission unnecessarily divided eight counties in its Final Report and Map L03. The Court stated in its *Bingham County* redistricting decision:

Obviously to the extent that a county contains more people than allowed in a legislative district, the county must be split. However, this does not mean that a county may be divided and aligned with other counties to achieve ideal district size if that ideal district size may be achieved by internal division of the county. Whether desirable or not, that is the meaning of Article III, § 5. A county may not be divided and parsed out to areas outside the county to achieve ideal district size, if that goal is attainable without extending the district outside the county.

*Bingham County*, 137 Idaho at 874, 55 P.3d at 867.

The Commission's Final Report stated: "When a county must be divided to create legislative districts, internal divisions, which create districts wholly contained within a county, are favored over external divisions, which create districts that combine part of the county with another county." [citing Idaho Const. art III, § 5, and *Bingham County*, 137 Idaho at 874]. A county may not 'be divided and aligned with other counties to achieve ideal district size if that ideal district size may be achieved by internal division of the county.'" [citing *Bingham County*, 137 Idaho at 874]. *Final Report*, at 8. The Commission certainly cites the correct standards, but it then asserts that it split Ada County three times in the interest of equal protection, and further argued that it "found it necessary [. . .] to combine 'rural, sparsely populated' areas with more urban ones." *Final Report*, at 56. This finding does not comport with its own statements of the standard for splitting counties into multiple districts, and instead attempts to tie its decision to equal protection. The Commission using "equal protection" as its reason for making such splits seems to lead to the improper purpose of diluting the strength



of the rapidly growing urban areas. The Commission did not favor internal divisions in Canyon and Ada Counties, and instead decided to favor excessive divisions of two urban counties and the alignment of the urban counties with neighboring rural counties. This excessive division of these counties is not constitutionally permissible and goes against the Commission's statements in its Final Report.

**B. Plan L03's combination of the City of Eagle and parts of Gem County to form the proposed District 14 does not comply with Idaho Code § 72-1506.**

Even if the Court finds that the Commission complied with the constitutional requirements outlined above, Plan L03 must still be redrawn because the Commission failed to follow the criteria governing reapportionment outlined in Idaho Code. Idaho Code § 72-1506 provides in part:

Congressional and legislative redistricting plans considered by the commission, and plans adopted by the commission, shall be governed by the following criteria:

[ . . . ]

(2) To the maximum extent possible, districts shall preserve traditional neighborhoods and local communities of interest.

[ . . . ]

(5) Division of counties shall be avoided whenever possible. In the event that a county must be divided, the number of such divisions, per county, should be kept to a minimum.

[ . . . ]

(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. [...]

The Commission argues that Plan L03 complies with Idaho Code § 72-1506 because the districts it drew maintained traditional communities of interest to the maximum extent possible, and that it considered Ada County's objection to the combination of a portion of Ada County and Gem County to be without merit. *Commission Response Brief*, at 42. The Commission alleges that:

[...] contrary to Ada County's arguments about the combination of urban and rural, Gem County is not actually "sparsely populated." While Ada County casts Emmett, Gem's county seat, as an "agricultural community," it is more urban than Eagle as it has 2,731 population per square mile as opposed to Eagle at 1,049 population per square mile.

*Commission Response Brief*, at 42 (internal citations omitted). The Commission relies on its analysis that Emmett is considered part of the Treasure Valley and that a highway connection exists between Ada County and Emmett by way of State Highway 16, which makes the drive from Ada County to Emmett a half-hour. *Commission Response Brief*, at 43; see *Final Report*, at 54–57. Despite the Commission's arguments, Eagle and Emmett (along with other portions of Gem County) are not similar in many ways and splitting Ada County in such a way does not meet the criteria in Idaho Code § 72-1506(2), which states that districts "shall preserve traditional neighborhoods and local communities of interest." (emphasis added).

While Idaho Code discusses preserving "traditional neighborhoods and local communities of interest," Idaho courts have not yet discussed what is meant by the phrase. However, courts outside of Idaho have analyzed very similar language, and have further defined what factors a commission should consider when making such a determination. The Supreme Court of Florida points to an analysis of "compactness" when considering legislative apportionment, and states that the term should include concepts such as "communities of interest." *In re Senate Joint Resol. of Legislative Apportionment 1176*, 83 So. 3d 597, 632 (Fla. 2012). It notes that courts should examine "functional factors such as whether constituents in the district are able to relate to and interact with one another, whether constituents in the district are able to access and communicate with their elected representatives, or whether the district is united by commerce, transportation, and communication." *Id.* at 632–633. In California, courts have found that the state's

Constitution defines a “community of interest” as a “contiguous population which shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation.” *Vandermost v. Bowen*, 269 P.3d 446, 458 (Cal. 2012). Those shared interests should be interests common to an urban area, rural area, an industrial area, or an agricultural area. *Id.* Also those interests common to areas in which the people share “similar living standards, use the same transportation facilities, have similar work opportunities,” or have access to the same media that would cover the election process. *Id.* Similarly, the Minnesota Supreme Court stated that for purposes of redistricting, communities of interest include groups of citizens “with clearly recognizable similarities of social, geographical, political, cultural, ethnic, economic, or other interests.” *Hippert v. Ritchie*, 813 N.W.2d 374, n.5 (Minn. 2012). New Hampshire and Vermont have come to nearly identical conclusions. *See City of Manchester v. Sec’y of State*, 48 A.3d 864 (N.H. 2012); *In re Reapportionment of Towns of Hartland, Windsor & W. Windsor*, 624 A.2d 323 (Vt. 1993).

The Commission has failed to consider these factors in its determination that it has preserved communities of interest in Plan L03. When further analyzing the communities combined in District 14, it is clear that the communities do not have shared interests. As stated in Petitioner Ada County’s Brief,

Eagle profiles itself as an area with “miles of trails, acres of parks, and endless outdoor recreational opportunities” and “a workforce with high educational attainment, top-rated schools, abundant shopping and entertainment, well-designed residential and commercial neighborhoods, and restaurants that run from five-star elegance to drop in casual.” No one would argue that this profile describes Emmett.

*Ada County Brief*, at 14 (internal citations omitted). A further dive into each community’s comprehensive plan shows the disparity between Star and Eagle, two cities that have urban-like objectives, and Emmet, a city that is focused on maintaining its agricultural base.

**1. Communities of interest should be able to interact with one another and have similar living standards.**

Eagle’s citizens do not have similar living standards to those in Gem County. Eagle and Star are more similar and would qualify as communities of interest under factors that should be considered in the Commission’s analysis. The City of Eagle’s Comprehensive Plan indicates that “Eagle’s community amenities, higher home values, and larger residential square footages are attractive features to many higher-income earning households and executive business leaders.”<sup>1</sup> *City of Eagle Comprehensive Plan*, at 49. Similarly, the City of Star’s Comprehensive Plan states that the largest job category for the citizens of Star was identified as management and professional related occupations.<sup>2</sup> *City of Star Comprehensive Plan*, at 33. This similarity in types of workers, and the interests the citizens have in a higher living standard makes the two cities communities of interest. On the other hand, the Gem Community Joint Comprehensive Plan states that the largest job categories for the citizens of Gem County are government and farming, “demonstrating that agriculture remains a significant contributor to the area economy and should be encouraged.”<sup>3</sup> *Gem Community Joint Comprehensive Plan*, at 27. The plan also indicates that citizens of Gem County are interested in the rural lifestyle that the area offers. *Id.* This sets Gem County’s citizens apart

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<sup>1</sup> See City of Eagle Comprehensive Plan at

<https://www.cityofeagle.org/DocumentCenter/View/980/Comprehensive-Plan---Eagle-is-HOME--PDF>

<sup>2</sup> See City of Star Comprehensive Plan at [https://www.staridaho.org/vertical/sites/%7BBABF7977-2C81-44F3-A8BC-95C5171109E7%7D/uploads/COUNCIL\\_APPROVED\\_COMP\\_PLAN\\_TEXT\\_12-8-21.pdf](https://www.staridaho.org/vertical/sites/%7BBABF7977-2C81-44F3-A8BC-95C5171109E7%7D/uploads/COUNCIL_APPROVED_COMP_PLAN_TEXT_12-8-21.pdf)

<sup>3</sup> See Gem Community Joint Comprehensive Plan at

[https://webgen1files.revize.com/gemcountyid/Development\\_Services/Comprehensive\\_Plan/Gem\\_Community\\_Joint\\_Comprehensive\\_Plan.pdf](https://webgen1files.revize.com/gemcountyid/Development_Services/Comprehensive_Plan/Gem_Community_Joint_Comprehensive_Plan.pdf)

from Eagle's citizens. The living standards are different, which creates two communities that have different interests and conflicting objectives.

**2. Communities of interest should be united by commerce and transportation.**

One of the specific conflicting objectives between Eagle and Gem County is the focus of the communities' commerce. Eagle's future plans outlined in its Comprehensive Plan include "attracting and retaining a talented and highly skilled workforce in the Information, Professional, Scientific, Management, Technology, and Manufacturing fields." *Eagle Comp. Plan*, at 54. Further, Eagle plans to "intensify its urban center through the promotion of mixed-use commercial and higher density residential development," and to promote and expand Eagle's local technology cluster. *Eagle Comp. Plan*, at 55. Star has similar goals and objectives when it comes to commerce. Star "presents a lucrative opportunity for entrepreneurs to launch new businesses." *Star Comp. Plan*, at 38. One of Star's objectives is to "provide a climate where businesses, particularly locally-owned ones, can flourish by enhancing the city's natural resources, arts and culture, lively urban core, and vital neighborhoods." *Star Comp. Plan*, at 40. These objectives are similar to Eagle's, and both areas have commerce goals that would complement each other and allow for growth in similar ways. Local governments would be able to coordinate and support specific growth that would help meet both Eagle and Star's objectives.

While Eagle and Star focus on urban growth, technology, entrepreneurial establishments, new business, and professional fields, Gem County is focused on maintaining its rural commerce. Gem Communities' Comprehensive Plan states that over 7% of the State's agricultural employment comes from Gem County farms and ranching operations. *Gem Comm. Comp. Plan*, at 27. It also values its vast network of canals and river systems reaching

the reservoirs of Black Canyon Dam, Cascade Dam and Deadwood Dam. The Comprehensive Plan's main focus consistently references that "Agriculture brings to the valley a sense of community and vast, open spaces, which make it well worth protecting." *Id.* The commerce goals of Gem County remain heavily focused on agriculture and maintaining a rural commercial base, while Eagle and Star aim to expand their urban cores and heighten modern commerce opportunities. The differences between Eagle and Gem County's current commerce and future commerce goals show that they are not communities of interest. Eagle more closely aligns with Star.

**3. Communities of interest should have common social, geographic, cultural, political, and economic interests.**

Finally, and perhaps most important, the citizens of Eagle and the citizens of Gem County have very different social, cultural, and economic interests. Eagle's Comprehensive Plan states that "Eagle has the hallmarks of a traditional US bedroom community – located within commuting distance to a larger metropolis, primarily focusing on housing workers and families, and providing typical residential services such as schools and some retail." Eagle benefits from this reputation as a bedroom community by earning regional appeal for its high quality of life. Eagle's social, cultural, and economic objectives are to "promote community connections and have urban (or urban-like) amenities such as shopping, restaurants and entertainment." *Eagle Comp. Plan*, at 49. Conversely, "The industry in Gem County with the highest employment is Government with 855 employees followed closely by farm employment with 850 employees demonstrating that agriculture remains a significant contributor to the area economy and should be encouraged." *Gem Comm. Comp. Plan*, at 27. Gem County's social, cultural, and economic objectives are to maintain "rural lifestyle, quality of life, lower taxes and proximity to the Treasure Valley." *Gem Comm. Comp. Plan*,

at 29. While one of Gem County's goals is to maintain lower taxes for its citizens, Eagle's focus on being a bedroom community will likely cause it to rely heavily on its residential tax base. *Eagle Comp. Plan*, at 49. Additionally, to accommodate growth, Eagle will be providing "additional light manufacturing, commercial, multi-family housing, office structures, as well as increased building heights and densities." *Eagle Comp. Plan*, at 49. These conflicting political ideas will not be supported if the citizens of these areas are merged into one legislative district.

On the other hand, Star seems to have similar social, cultural, and economic interests to those of Eagle. Star's Comprehensive Plan states that "in 2000, farming-related agricultural activity accounted for only 15 employees, which is only 1.7 percent of the city's entire labor force." *Star Comp. Plan*, at 33. Instead, the largest job category was identified as management and professional related occupations. Star sees that it must pursue growth in a more urbanized way. Star's Comprehensive Plan specifically states, "While it is both culturally and economically important for Star to continue to support and grow the agriculture-based businesses in its area, a greater emphasis should be placed on the development of high-value professional and technical businesses and occupations that will supply the community's residents with higher paying long-term employment opportunities." *Star Comp. Plan*, at 33. These interests align with Eagle's interests. The statements made in Eagle's Comprehensive Plan and those made in Star's Comprehensive Plan show that the citizens in both cities have similar social, cultural, political, and economic interests, while the citizens in Gem County focus entirely on maintaining its rural base – a far deviation from Eagle's goal to urbanize.

**4. The Commission's failure to preserve Eagle and Star as communities of interest is a violation of Idaho Code § 72-1506.**

Idaho Code § 72-1506(2) states that "To the maximum extent possible, districts shall preserve traditional neighborhoods and local communities of interest." The Commission did not follow this directive when it combined Eagle with a portion of Gem County to create District 14 in Plan L03. Eagle and Star are communities of interest and should be preserved in one district. Gem County and Eagle have different living standards, different goals for commerce, and have different social, cultural, political, and economic interests. Combining these areas into one district will be a detriment to each of their goals for growth. Preserving Eagle and Star as communities of interest would support each of the community's goals identified in their respective Comprehensive Plans. Splitting Ada County in the way proposed by Plan L03 is detrimental to the communities involved, and goes against the directives in Idaho Code.

There is no statutory or constitutional basis for the Commission deciding that in rapidly growing urban counties should be deprived of their legislative districts and be split and aligned with rural, sparsely populated areas. L03 does not preserve traditional neighborhoods and local communities of interest and instead excessively divides counties.

### **CONCLUSION**

For the reasons set forth above, Eagle supports Ada County's Petition and respectfully requests that the Court issue a Writ of Prohibition that restrains the Secretary of State from transmitting a copy of the Commission's Final Report and Map L03 to the president of the Idaho Senate and the speaker of the Idaho House. Eagle requests that the Court remand the matter back to the Commission for review and revision so that the Final



Report and adopted map comply with the Equal Protection Clause of the United States Constitution, the Idaho Constitution, and Idaho Code.

DATED this 30th day of December 2021.

BORTON- LAKEY LAY & POLICY

By Victor Villegas  
Victor S. Villegas, Of the Firm  
Attorney for City of Eagle

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 30 day of, December, 2021, a true and correct copy of the within and foregoing instrument was served upon:

Jan M. Bennetts  
Ada County Prosecuting Attorney  
200 W. Front Street, Rm 3191  
Boise, ID 83702  
[civilpfiles@adaweb.net](mailto:civilpfiles@adaweb.net)

- U.S. Mail
- Facsimile
- Hand Delivery
- E-filing/Email

Idaho Commission for Reapportionment  
P.O. Box 83720  
Boise, ID 83720  
[redistricting@redistricting.idaho.gov](mailto:redistricting@redistricting.idaho.gov)

- U.S. Mail
- Facsimile
- Hand Delivery
- E-filing/Email

Lawrence Denney  
Idaho Secretary of State  
450 N. 4<sup>th</sup> Street  
Boise, ID 83702  
[elections@sos.idaho.gov](mailto:elections@sos.idaho.gov)

- U.S. Mail
- Facsimile
- Hand Delivery
- E-filing/Email

Spencer E. Stucki  
Co-chair Committee for Fair Elections  
5046 Independence Ave  
Chubbuck, ID 83202  
[commfelect@gmail.com](mailto:commfelect@gmail.com)

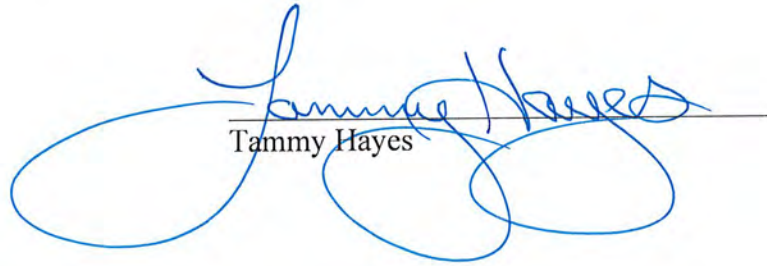
- U.S. Mail
- Facsimile
- Hand Delivery
- E-filing/Email

Deborah A. Ferguson  
Craig H. Durham  
Ferguson Durham, PLLC  
223 N. 6<sup>th</sup> Street Suite 325  
Boise, ID 83702  
[daf@fergusondurham.com](mailto:daf@fergusondurham.com)  
[chd@fergusondurham.com](mailto:chd@fergusondurham.com)

- U.S. Mail
- Facsimile
- Hand Delivery
- E-filing/Email

Bryan D. Smith  
Bryan N. Zollinger  
Smith, Driscoll & Associates, PLLC  
P.O. Box 50731  
Idaho Falls, ID 83405-0731  
[bds@eidaholaw.com](mailto:bds@eidaholaw.com)

- U.S. Mail
- Facsimile
- Hand Delivery
- E-filing/Email



Tammy Hayes

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