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Idaho Supreme Court
Melanie Gagnepain, Clerk of the Court
By: Melanie Gagnepain, Deputy Clerk

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 LAWERENCE 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 Idaho,

Petitioner,

v.

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

Supreme Court Dkt. No. 49261-2021

Consolidated Case No(s):
49267-2021,49295-2021, 49353-2021

Respondents.

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 the Shoshone-Bannock Tribes,

Petitioners,

v.

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

Respondents.

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I. INTRODUCTION

Much like Ada County, Intervenor-Petitioner Canyon County is unhappy that the Idaho Commission for Reapportionment ("Commission") could not completely grant its requests when drawing districts in certain neighborhoods. So again like Ada County, Canyon County now argues that the Commission *must* adopt a legislative plan that divides seven counties even though Canyon County previously advocated for a legislative plan that divides eight counties. The law does not reward that hypocrisy.

The six-member, bi-partisan Commission reasonably determined that Plans L075, L076, and L079 violate the Equal Protection Clause of the U.S. Constitution because, among other things, they create districts that are drawn to hit or slide just under 10% deviation and have regional deviations that severely under-populate northern Idaho districts and over-populate southern Idaho districts. The Court should defer to that reasonable determination, as opposed to allowing anyone who submits a map to the Commission that skates in at 10% deviation or slightly less to invalidate the Commission's careful judgment just because the Commission is unable to compel testimony under oath during its months of public hearings or take discovery during the appeal of its redistricting plan to determine the actual motivations of the third-party map drafters.

Further, *stare decisis* requires following *Twin Falls County v. Idaho Comm'n on Redistricting*, 152 Idaho 346, 271 P.3d 1202 (2012) and looking at the number of counties split, not the total number of external divisions created. This Court should decline to create new rules that further prevent the Commission from considering and protecting communities of interest. While Ada and Canyon Counties, at this particular moment in time, apparently believe it favors

their interests to straitjacket the Commission's decision-making with a new Idaho Constitution county division requirement, in the long-term and for other communities of interest across the state, such as tribal communities, such precedent would only hinder the Commission's ability to give sufficient consideration to communities of interest. The Court should deny Canyon County's request for relief.

II. STATEMENT OF THE CASE

Intervenor-Petitioner Canyon County has intervened in the consolidated original proceedings brought 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 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"). *See id.* at 2–14. Respondents add the following statements unique to Intervenor-Petitioner Canyon County.

Canyon County "is the second most populous county in the state, with 231,105 people." Final Report at 21. Previously, residents of Canyon County could vote for 15 legislators in 5 districts.[1] Final Report, App. XIV at 3 (districts 9–13). Under Plan L03, residents of Canyon County can vote for 18 legislators in 6 districts. Final Report at 44–54, 71–73 (districts 9–13 and 23).

[1] Under the prior plan, Districts 10 through 13 were wholly internal districts. Final Report, App. XIV at 3. District 9 contained part of Canyon County along with Payette, Washington, and Adams Counties. *Id.*

Although Canyon County would apparently prefer to ignore it, on November 2, 2021, Canyon County submitted a letter to the Commission supporting Plan L072. Final Report, App. XIII at 9–11. Plan L072 divides eight counties and has a deviation of 9.58%. Final Report at 55; Final Report, App. XII at 114. Canyon County supported Plan L072 because, in its view, Plan L072 preserved the traditional neighborhoods that it cared about, avoided oddly shaped districts, and did not mix Ada and Canyon Counties with parts of less populated neighboring counties. Final Report, App. XIII at 9–10. Canyon County did not advocate for dividing only seven counties. *Id.*

After balancing Canyon County's interests and interests throughout the entire state, the Commission adopted Plan L03, which resulted in Canyon County having three wholly internal districts (districts 11, 12, and 13), Final Report at 49–54, and three partially external districts (districts 9, 10, and 23). *Id.* at 44–49, 71–73. As Canyon County admits, "the Commission worked diligently in crafting [Plan] L03." Intervenor-Petitioner Canyon County's Opening Brief ("Canyon County's Brief") at 3. The Commission "performed in an exemplary fashion," making "detailed findings of fact, clearly explaining how the plan was developed, the steps it took to comply with one-person, one-vote requirements, its rationale for dividing or splitting counties, and how it applied the legislative guidelines in I.C. § 73-1506." *Id.* at 3 (quoting *Twin Falls County*, 152 Idaho at 351–52, 271 P.3d at 1207–08 (Jones, J., dissenting)).

As with the 2011 redistricting plan, the Commission found that Canyon County cannot be divided only internally to form districts of an ideal district size. The ideal district size is 52,546. Final Report at 10. If Canyon County were internally divided four times, each district would have, on average, a population of 57,776 resulting in an overpopulation of 5,230 people and a 9.95%

deviation per district. *Id.* at 21. If Canyon County were internally divided five times, each district would have, on average, a population of 46,221 resulting in an underpopulation of 6,325 people and a -12% deviation per district. *Id.* The Commission determined that Canyon County must be split externally because it was "mathematically impossible to create a redistricting plan that presumptively satisfies equal protection standards without externally splitting Canyon County." *Id.*

The Commission took great care in creating the three partially external districts that contain portions of Canyon County. Plan L03's district 9 is composed of many of the same counties as in prior redistricting cycles. Final Report at 46 ("Finally, on a historical note, these counties have all been combined together in the last two redistricting cycles."). District 9 contains a part of Canyon County along with Payette and Washington Counties. *Id.* at 44. When describing the areas contained in district 9, the Commission found that "many of them [are] rural or small communities" of similar population size and that they "share[] similar legislative concerns." *Id.* at 45. It found that this district was "well-balanced," with Canyon County contributing 17,074 residents and Payette and Washington Counties contributing 25,386 and 10,500 residents, respectively. *Id.* Neither Washington nor Payette County are populous enough to constitute self-contained districts. *Id.* at 46. The Commission determined that each component county population was sizeable enough that their interests should be taken into consideration. *Id.* at 45–46. Thus, the Commission found "that this district preserves traditional neighborhoods and local communities of interest to the maximum extent possible" and that it complies with the requirements of the U.S. and Idaho Constitutions. *Id.* at 46.

District 10 combines a portion of Canyon County with a portion of Ada County. *Id.* at 47. It has a total population of 53,498 with a 1.81% deviation from ideal district size. *Id.* It includes 40,635 Canyon County residents, the cities of Middleton and Star,[2] part of the city of Nampa, and other parts of Canyon County. *Id.* at 47–48. The Commission found that Middleton and Star separately and together are communities of interest and that crossing the county line is necessary to keep Star together. *Id.* at 48–49 ("With regard to this specific district, the Commission finds that the external division is further justified based on the close ties and connection between Middleton and Star, as well as Star's status as a cross-county city."). The Commission noted that Plan L072, which was endorsed by Ada and Canyon County Commissioners, also combines both cities. *Id.* at 48. The Commission found "that this district preserves traditional neighborhoods and local communities of interest to the maximum extent possible." *Id.* The Commission further found that this district complies with the requirements of the U.S. and Idaho Constitutions. *Id.* at 49.

Like Plan L072, for which Canyon County advocated, district 23 combines a portion of Canyon County with Owyhee County and a portion of Ada County. Final Report at 71. It has a total population of 53,424 with a deviation of 1.67% from ideal district size. *Id.* Ada County contributes 28,542 residents while Canyon and Owyhee Counties contribute 12,969 and 11,913 residents, respectively. *Id*. Owyhee County requires joinder due to its small population and the limited availability of contiguous counties. *Id.* at 72. The Commission combined "less densely populated areas of Ada and Canyon Counties with Owyhee County, because the areas included in

[2] Star crosses the Ada-Canyon county line. *Id.* at 47.

the district, many of them rural or small communities, have similar legislative concerns." *Id.* District 23 contains most of Kuna and Melba, which "were described as a community of interest in public testimony." *Id.* The Commission found "that this district preserves traditional neighborhoods and local communities of interest to the maximum extent possible." *Id.* It also found that this district complies with the requirements of the Equal Protection Clause while minimizing county divisions. *Id.*

The remaining districts within Canyon County are all internal districts (districts 11, 12 and 13). *Id.* at 49–54. Those three districts range in population from 53,363 to 53,581 with deviations between 1.55% to 1.97%. *Id.* The Commission gave Canyon County's November 2, 2021 letter careful consideration, as evidenced by the fact that in Plan L03 the Commission removed a portion of Meridian that in Plan L02 was combined with a portion of Canyon County. *See* Final Report, App. XIII at 10 (Canyon County objecting to the joinder of a portion of Meridian with a portion of Canyon County's commercial buildings); *compare* Final Report, App. XI at 7 (Plan L03's District 21 does not join a portion of Meridian with a portion of Canyon County) *with* Final Report, App. XI at 6 (Plan L02's District 17 joins a portion of Meridian with a portion of Canyon County).

Preferring its own judgment to that of the Commission, Canyon County petitioned to intervene in the challenges that Petitioners Durst and Ada County had already brought, belatedly advocating for previously ignored plans. Like Petitioners Ada County and Chairmen Allan and Boyer, whose testimony before the Commission contradicted the position they now take on appeal, Canyon County asserts that the Commission must adopt a plan that divides seven counties, even though it previously advocated for a plan that divides eight counties.

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*, 152 Idaho at 348, 271 P.3d at 1204; *see also* Corrected Response Brief to Durst and Ada County at 16–19. Second, the Plan must comply with 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.*

IV. ARGUMENT

A. Like Chairmen Allan and Boyer, Canyon County misunderstands the requirements of the U.S. Constitution's Equal Protection Clause and the analysis the Commission employed.

Canyon County erroneously urges this Court to reject the analysis the Commission employed to determine compliance with the Equal Protection Clause, mischaracterizing the Commission as having pursued a "more stringent sub-six percent maximum deviation" than the Equal Protection Clause requires. Canyon County's Brief at 11. Canyon County repeats Chairmen Allan and Boyer's misinterpretation of the Commission's reapportionment analysis. Respondents hereby incorporate their briefs in response to Petitioners Durst and Ada County and in response to

Chairmen Allan and Boyer to respond to Canyon County's flawed arguments. *See* Respondents Idaho Commission for Reapportionment and Lawerence Denney's Response Brief to Petitioners Chief J. Allan and Devon Boyer ("Response Brief to Allan and Boyer") at 13–17; Corrected Response Brief to Durst and Ada County at 16–19.

In brief, as the Commission correctly recognized, the Equal Protection Clause requires an "honest and good faith effort to construct districts . . . as nearly of equal population as is practicable." *Reynolds v. Sims*, 377 U.S. 533, 577, 84 S. Ct. 1362, 1390, 12 L. Ed. 2d 506 (1964); Final Report at 5–7; Corrected Response Brief to Durst and Ada County at 17–19. The U.S. Constitution permits deviations from equal population only when justified by "legitimate considerations incident to the effectuation of a rational state policy." *Reynolds*, 377 U.S. at 579, 84 S. Ct. at 1390; Final Report at 5–7; Corrected Response Brief to Durst and Ada County at 16–19. Thus, the Commission tried to remain "as close as possible to the ideal district size while still effectuating state policy." Response Brief to Allan and Boyer at 13–14 (quoting Final Report at 10–11). As explained in the Response Brief to Allan and Boyer, the Commission rejected any strict numerical touchstone while it worked to draw legislative districts as close to equal population as practicable while preserving as many counties as possible. *Id* at 14. The Commission properly worked from the presumption that it would not craft a district greater than 5% (positive or negative) from ideal district size without a compelling justification because such a district would likely put pressure on the allowable deviations for other districts and result in unequal deviations and regional favoritism. *Id.* In other words, the Commission's concern was not hitting some arbitrary

total 5% deviation, but making sure the deviations were distributed as evenly throughout the state as practicable, thus putting Idaho's voters on as even footing as practicable.

While Canyon County correctly admits that there is no mathematical test for compliance with the Equal Protection Clause, Canyon County's Brief at 4, it promptly abandons its own admission. Canyon County argues, without support, that in most cases the Commission *must* reach a deviation of 10% in order to accommodate legitimate state interests. Canyon County cites no precedent for its assumption, which actually contradicts case law. *See, e.g.*, *Roman v. Sincock*, 377 U.S. 695, 710, 84 S. Ct. 1458, 12 L. Ed. 2d 620 (1964) (rejecting "the District Court's attempt to state in mathematical language the constitutionally permissible bounds of discretion in deviating from apportionment according to population"). If the Commission had solely sought to hit 10% deviation and split the smallest number of counties possible within that 10% deviation, it would have been guilty of the arbitrary number crunching that violates the Equal Protection Clause. *See* Response Brief to Allan and Boyer at 15.

B. Plan L03 satisfies the requirements of Idaho's Constitution.

While Canyon County previously advocated for a legislative plan that, like Plan L03, divides eight counties, it now asserts that the Idaho Constitution requires adopting a plan that divides only seven counties and limits the number of external divisions. This inconsistent position should not be condoned.

As Canyon County's arguments overlap with arguments made by Petitioners Durst and Ada County, Respondents incorporate Section IV.B previously set forth in Respondents' Corrected Response Brief to Petitioners Durst and Ada County. *Id* at 19–41.

i. Canyon County has not established that the Commission should have selected a plan that divides seven counties.

Plans L075, L076, and L079 do not establish that the Commission could select a plan that divides seven counties and complies with the Equal Protection Clause. As the Commission previously explained, those plans, *inter alia*, "appear to have been drawn to get to or just under the 10% deviation and stop, which itself suggests a violation of the Equal Protection Clause." *Id.* at 23. They also "impermissibly demonstrate regional favoritism" by "significantly underpopulat[ing] districts in northern Idaho at the expense of fast-growing southern Idaho." *Id.* at 24; *see also* Response Brief to Allan and Boyer, App. A.

Canyon County's primary response is that "[t]here is no evidence that population was not the starting point and control criterion . . . nor is there any evidence that any of those plans were created for some irrational or improper purpose." Canyon County's Brief at 7. That argument, however, demonstrates precisely why the Court must defer to the Commission's analysis of whether a proposed plan violates the Equal Protection Clause when applying the *Twin Falls County* rule, as discussed in the Corrected Response Brief to Durst and Ada County.[3] *Id.* at 27–32.

While deviations of less or greater than 10% may be permissible to achieve certain goals under the Equal Protection Clause, confirming the legitimacy of the motivations for those deviations requires evidence. *See* Corrected Response Brief to Durst and Ada County at 29–30.

[3] It is unclear how Canyon County could assert that Respondents' argument was unsupported given the significant legal authority that Respondents cited in support of their argument. *See* Corrected Response Brief to Durst and Ada County at 27–32.

There are no guardrails on the development of third-party plans, nor is there any requirement that third-party plan drafters admit their true motivations. *Id.* at 30–31. When a third party submits a plan to the Commission, the Commission does not have the power to thoroughly investigate or scrutinize the submitter's motivations. *Id.* at 30. And this Court reviews legal challenges to legislative plans as appeals, meaning the Commission does not have the opportunity to take discovery and submit evidence. *Id.*

So the rule in *Twin Falls County* coupled with opportunities for the public to submit legislative plans presents a Catch-22. According to Canyon County (and the other Petitioners), if a proposed plan has less than a 10% deviation and has the fewest number of county splits, then the Commission *must* adopt it to comply with *Twin Falls County*. The Commission is unable to consider the motivations underlying the plan because there is no mechanism to scrutinize the submitter's true motivations, such as by taking discovery or presenting evidence. Canyon County's approach would remove all discretion from the Commission, despite the presumption of good faith to which it is entitled and the significant transparency requirements for its work, and bestow discretion and deference upon the unknown third-party map drawer. Canyon County's approach violates the Equal Protection Clause, and it deprives Idahoans of a legislative plan designed to provide them equal voting power.

To avoid that untenable outcome, the Court should grant deference to the Commission's evaluation of the Equal Protection Clause issue. Although detailed evidence was not available, the Commission utilized its collective experience to discern constitutional infirmities apparent on the face of Plans L075, L076, and L079, and rather than turn a blind eye to those issues, it concluded

that the plans violated the Equal Protection Clause. On an appeal with no opportunities for discovery, the Court should defer to the Commission's reasonable determination. The alternative is to allow an individual to escape any scrutiny of his or her motivations and to compel the Commission to adopt his or her proposed plan simply by drawing a map that advances potentially nefarious aims and slips just under the 10% deviation line.

In an effort to discredit the Commission's review of the seven-county-split maps, Canyon County makes two additional flawed arguments. First, Canyon County ignores the overpopulation of southern Idaho in order to minimize the underpopulation of northern Idaho. Canyon County's Brief at 8. But the two conditions do not exist in vacuums. It is the combination of the regional underpopulation of northern Idaho *with* the regional overpopulation in fast growing southern Idaho that is significant and constitutionally flawed. *See* Response Brief to Allan and Boyer, App. A. And while a 10% deviation is not a safe harbor, in the context of Canyon County's attempt to justify the regional favoritism at play as falling within 10% deviation, Plan L079's deviation is notably only five people away from a deviation that would render it presumptively unconstitutional. *See* Second Transmittal of Record, Plan L079 Population Summary. Further, this Court should resist misapplying the U.S. Supreme Court's analysis in *Brown v. Thompson*, where the Court looked only at whether it was a violation of the Equal Protection Clause for Wyoming law to require that Niobrara County have a representative. 462 U.S. 835, 838–48, 103 S. Ct. 2690, 2694–99, 77 L. Ed. 2d 214 (1983). The U.S. Supreme Court expressly disavowed addressing the question of whether the population deviations statewide throughout Wyoming's representative districts violated the Equal Protection Clause. *Brown*, 462 U.S. at 846, 103 S. Ct. at 2698.

Second, Canyon County offers an apples to oranges comparison of the Commission's map against the Commission's evaluation of third-party maps in a mistaken effort to delegitimize the Commission's evaluation of the third-party maps. Canyon County's Brief at 10. *Twin Falls County* required the Commission to scrutinize the third-party maps for any signs of arbitrariness or discrimination in the purported application of a legitimate policy justifying deviation and for any evidence that there was something other than a legitimate state policy justifying deviation at play. *See* Corrected Response Brief to Durst and Ada at 23–27. The Commission's scrutiny had to be searching, given that the Commission did not have any evidence as to the true motivations of the third-party plan drafters. The Commission analyzed its own map differently because it did not need to scrutinize its own motivations—it knew it was carrying out the legitimate state policy of minimizing county splits. Canyon County's error extends to its citation of *Bonneville County v. Ysursa*, 142 Idaho 464, 129 P.3d 1213 (2005). Canyon County's Brief at 9. There, this Court's analysis turned on scrutinizing the Commission's true motivations in adopting a plan with alleged regional deviations (the Court disagreed that regional deviations even existed). *See Bonneville County*, 142 Idaho at 470–71, 129 P.3d at 1219–1220. That analysis is inapplicable to the Commission's review of third-party maps for compliance with the Equal Protection Clause.

ii. <u>The Commission is not required to consider the total number of external divisions.</u>

Canyon County candidly acknowledges that *Twin Falls County* does not require the Commission to consider the number of times a county is externally divided, as it instead asks the Court to "clarify or expand the interpretation of the Idaho Constitution." Canyon County's Brief at 11. This tacit admission that the Commission properly followed this Court's interpretation of

the Idaho Constitution is correct. As the Commission explained in greater detail in its response to Durst and Ada County, this Court held in *Bingham County* that the Commission must select internal divisions over external divisions only to achieve a specific purpose: ideal district size. *See* Corrected Response to Durst and Ada County at 37–38. Canyon County cannot be divided only internally to form districts with an ideal district size, as on average its districts would be either overpopulated by about 10% or underpopulated by about 12%. Final Report at 21.

Ironically, as Petitioner Stucki points out, Canyon County appears to advance a rule that would *reduce* the voting power of its citizens. *See* Stucki Reply Brief at 9–10. If Canyon County were divided internally four times, then its citizens would vote for fewer legislators (12 instead of 18) and would live in overpopulated districts. If Canyon County were divided internally five times, it would be given extreme preference over the rest of the state (an average underpopulation of 12%) and its citizens would still vote for *fewer* legislators (15 instead of 18). Final Report at 21. Canyon County's proposed rule would also straitjacket the Commission's decision-making, meaning that the Commission's careful work of touring the state, taking months of public testimony, and giving the public's testimony sincere consideration would be reduced to just a computer performing a mathematical test: 10% deviation plus the fewest number of county splits plus the fewest number of divisions per county would equal the only possible reapportionment plan under Canyon County's rule. But this rule would violate the Equal Protection Clause and also mean that there could never be any consideration of any communities of interest other than counties. While two county petitioners apparently find this attractive, at least temporarily, such a rule would come at the expense of all other communities of interest, such as tribal reservations.

Because Canyon County cannot be divided internally to reach ideal district size, *Bingham County* is inapposite. As a result, the Commission had to rely on this Court's holding in *Twin Falls County*: deciding whether the county divisions in districting plan complies with article III, section 5 of the Idaho Constitution "can be determined *only* by counting the *total number of counties* divided under the plan." 152 Idaho at 349, 271 P.3d at 1205 (emphasis added). The Commission followed that directive. Now Canyon County, like Petitioners Durst and Ada County, wants to change the rules. But *stare decisis* requires continued adherence to *Twin Falls County* "unless it is manifestly wrong, unless it has proven over time to be unjust or unwise, or unless overruling it is necessary to vindicate plain, obvious principles of law and remedy continued injustice." *Ware v. City of Kendrick*, 168 Idaho 795, --, 487 P.3d 730, 736 (2021) (quotation omitted). Canyon County has not satisfied that high bar, asserting only that the Idaho Constitution "could reasonably be interpreted" differently while acknowledging that the alternative reading "may not be possible to strictly follow." Canyon County's Brief at 10.

C. Petitioner is not entitled to attorney's fees.

Canyon County does not request attorney's fees in its petition, but does so cursorily in its brief "[t]o the extent that the Court interprets the provisions of Idaho Code section 12-117(4) to be mandatory[.]" Canyon County's Brief at 3. Idaho Code § 12-117(4) allows for fees and expenses in civil proceedings between governmental entities. A governmental entity "means any state

agency or political subdivision." *Id.* The Secretary of State is not a state agency or political subdivision. *Coeur D'Alene Tribe v. Denney*, 161 Idaho 508, 524, 387 P.3d 761, 777 (2015).

Further, as this matter is an appeal of the Commission's Final Order per Idaho Code § 72-1509(1), it is not a civil judicial proceeding under Idaho Code § 12-117(4). "A petition for judicial review of an agency action is neither an administrative proceeding nor a civil judicial proceeding[.]" *Laughy v. Idaho Dep't of Transp.*, 149 Idaho 867, 877, 243 P.3d 1055, 1065 (2010) (analyzing attorney's fee request under section 12-117(1) that contains the same language of civil judicial proceeding). Thus, even if Canyon County were to prevail, and it should not, it is not entitled to an award of attorney's fees.

V. CONCLUSION

For the foregoing reasons, Respondents request that the Court declare the final legislative redistricting plan adopted by the Commission constitutional. Respondents further request that the Court refuse to issue the requested writ of prohibition and that the Court deny all other relief requested by Intervenor-Petitioner Canyon County.

DATED this 3rd 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 3, 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.

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I HEREBY FURTHER CERTIFY that on January 3, 2022, I served the following party to be served by electronic means (personal email) and via U.S. Mail, First Class.

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