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Attorneys for Petitioner

IN THE SUPREME COURT OF THE STATE OF IDAHO

CHRISTOPHER PENTICO, a qualified elector
of the State of Idaho,

Petitioner,

vs.

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

Respondents.

Supreme Court No. 49351-2021

VERIFIED PETITION FOR REVIEW

I. INTRODUCTION

The electoral franchise is perhaps one of the most crucial elements of a free society which ensures a representative form of government in our Republic. That franchise embodies several principles guaranteed by both the Idaho Constitution and the U.S. Constitution, such as equal protection, due process, freedom of speech, and freedom of association. The process of reapportionment is vital and requires the utmost diligence of all participants to maintain the

integrity of creating voting districts that are free from any violation of citizens' rights. The State of Idaho has a long history of robust citizen participation in the reapportionment process and relies on the judicial system to enforce the rights of citizens whenever the process runs afoul of established principles, protections, and recognized legal constraints.

This Verified Petition challenges both the legality of the process used to adopt a congressional redistricting plan as well as the legality of the plan itself.

II. JURISDICTION AND FORUM

1. Art III, Sec 2(5) of the Idaho Constitution states that, “[t]he Supreme Court shall have original jurisdiction over actions involving challenges to legislative apportionment.” Idaho Code § 72-1509(1) provides that, “Within the time and in the manner prescribed by rule of the supreme court, any registered voter, incorporated city or county in this state may appeal to the supreme court a congressional or legislative redistricting plan adopted by the commission.” Idaho Appellate Rule 5(b) further provides that, “In accord with Article III, Section 2(5) of the Idaho Constitution, any registered voter, incorporated city or county in this state may file an original action challenging a congressional or legislative redistricting plan adopted by the Commission on Reapportionment. Such challenges shall be filed within 35 days of the filing of the final report with the office of the Secretary of State by the Commission.”

2. The Idaho Commission for Reapportionment filed its final report with the Secretary of State's office on November 12, 2021, making this Petition both timely and in the proper forum.

III. PARTIES

3. Petitioner Christopher Pentico is a registered voter in Elmore County, Idaho and, as such, has standing pursuant to I.C. § 72-1509(1) to challenge the congressional reapportionment plan filed by the Commission.

4. Respondent Idaho Commission for Reapportionment (hereinafter also referred to as the “Commission”) is a body organized upon the order of the Idaho Secretary of State to reapportion legislative and congressional districts pursuant to Art. III, Sec. 2 of the Idaho Constitution and Chapter 15, Title 72 of Idaho Code.

5. Respondent Lawrence Denney is the Secretary of State for the State of Idaho and is charged with receiving the filing of the final report of the Commission and transmitting the same to the president of the Idaho Senate and the speaker of the Idaho House of Representatives, as well as implementing the plan as adopted.

IV. BACKGROUND

6. The United States Census Bureau released the results of the 2020 Census on August 12, 2021, showing a total Idaho population of 1,839,106.

7. Pursuant to I.C. § 72-1501 and based on the census results, the Idaho Secretary of State issued an *Order Establishing Commission for Reapportionment* on August 12, 2021.

8. The Commission called itself to order on September 1, 2021.

9. Pursuant to I.C. § 72-1505(7), Petitioner submitted his plan for congressional reapportionment, designated as C039, on September 25, 2021.

10. Idaho Code § 72-1508 requires that, “[t]he final report of the commission shall be filed with the office of the secretary of state **not more than ninety (90) days after the commission has been organized**” [emphasis added].

11. Idaho Code § 73-109 provides that, “[t]he time in which any act provided by law is to be done is computed by excluding the first day, and including the last unless the last is a holiday and then it is also excluded.”

12. On November 10, 2021, the Commission voted to approve its Final Report, adopting the congressional redistricting plan designated as C03.¹

13. The Minutes of the Commission for Reapportionment for Wednesday, November 10, 2021 reflect that subsequent to the Commission's approval of its Final Report, the Commission decided that Commissioner Eric Redman and the Commission's staff would deliver the Final Report to the Secretary of State.

14. A copy of the cover page of the Final Report of the Idaho Commission for Reapportionment which was filed with the office of the Idaho Secretary of State is attached to this Petition as Exhibit A.²

15. The date stamp affixed by the office of the Idaho Secretary of State reflects that the Final Report was filed at 3:12 p.m. on Friday, November 12, 2021.

16. Idaho Code § 34-1901 requires that the state of Idaho be divided into two (2) congressional districts.

17. Idaho Code § 72-1506 sets forth the criteria governing plans for congressional and legislative redistricting.

18. I.C. § 72-1506(2) requires the Commission, to the maximum extent possible, to preserve traditional neighborhoods and local communities of interest when drawing district boundaries.

¹ https://legislature.idaho.gov/wp-content/uploads/redistricting/2021/Final_Report/Final%20Report.pdf.

² At 8:23 a.m. on the morning of December 14, 2021, undersigned counsel Thomas J. Katsilometes sent an email to deputy secretary of state Jason Hancock requesting a certified copy of the Final Report of the Commission. No response was received. On or about 11:00 a.m. on December 14, Mr. Katsilometes personally visited the office of the Secretary of State and requested the same document. Mr. Katsilometes was told that certified copies were available, but that "everyone who makes the certifications is in a meeting." Mr. Katsilometes provided the office of the Secretary of State a copy of Idaho Code § 67-903(6), which provides that the Secretary of State has a duty to "furnish **on demand** to any person paying the fees therefor a certified copy of all, or any part, of any law, record, or instrument filed, deposited, or recorded in his office" [emphasis added]. At 11:51 p.m. on December 15, 2021, Mr. Katsilometes sent an email to Jason Hancock again requesting a certified copy. As of the filing of this Petition, no response has been received.

19. I.C. § 72-1506(3) requires that districts be substantially equal in population and seek to comply with all applicable federal standards and statutes.

20. I.C. § 72-1506(4) requires the Commission, to the maximum extent possible, to avoid drawing districts which are oddly shaped.

21. I.C. § 72-1506(5) requires the Commission to avoid dividing counties whenever possible and, if a county must be divided, the number of such division per county should be kept to a minimum.

22. I.C. § 72-1506(6) requires that, to the extent counties must be divided to create districts, such districts shall be composed of contiguous counties.

23. I.C. § 72-1506(7) requires that district boundaries shall retain the local voting precinct boundary lines to the extent those lines comply with the provisions of I.C. § 34-306.

24. In Section 5 of the Final Report's "General Congressional Plan Findings" (p. 97), the Commission acknowledged I.C. § 72-1506(7)'s requirement to retain local voting precinct boundary lines, but asserted, "[t]he Commission finds, by a 5-1 vote, that it cannot complete its duties by fully complying with this requirement."

25. However, the plain text of I.C. § 72-1506(7) does not allow the Commission discretion to not comply with the statutory requirement to retain local voting precinct boundary lines in formulating congressional redistricting plans.

26. The relevant portion of I.C. § 72-1506(7) reads, "When the commission determines, by an affirmative vote of at least five (5) members recorded in its minutes, that it cannot complete its duties for a **legislative district** by fully complying with the provisions of this subsection, this subsection shall not apply to the commission or **legislative redistricting plan** it shall adopt" [emphasis added].

27. In other words, the requirement to retain local voting precinct boundary lines is mandatory, with no exception, as to congressional redistricting.

28. The plan adopted by the Commission in its Final Report, C03, splits six (6) Ada County precincts.

29. On information and belief, the plan submitted by the Petitioner, C039, is the only submitted plan which satisfies all statutory and constitutional criteria for congressional reapportionment.

30. A spreadsheet comparing all submitted congressional redistricting plans against Idaho's statutory criteria is attached to this Verified Petition as Exhibit B.

V. FIRST CAUSE OF ACTION

VIOLATION OF IDAHO CODE § 72-1508

Each and every fact and allegation set forth in paragraphs 1 through 30 above are hereby realleged and incorporated by reference.

Idaho Code § 72-1508 contains a mandatory command to the commission that it "shall" file its final report to the office of the Idaho Secretary of State not more than ninety (90) days after the commission has been organized. Lawrence Denney, the Secretary of State of Idaho, issued his *Order Establishing Commission for Reapportionment* on August 12, 2021. To comply with I.C. § 72-1508, the Commission would have had to file its final report with the office of the secretary of state no later than Wednesday, November 10, 2021. However, the evidence reflects that the Commission's report was not filed until Friday, November 12, 2021, in clear violation of statute.

This cannot be a mere inadvertent oversight, as Commission Co-Chair Bart Davis and Commission member Nels Mitchell are both licensed Idaho attorneys. In addition, Mr. Davis

served in the Idaho State Senate from 1998 to 2017 and was Senate Majority Leader from 2002 to 2017. As such, Mr. Davis is uniquely situated to be aware of the statutory requirements pertaining to reapportionment.

VI. SECOND CAUSE OF ACTION
VIOLATION OF IDAHO CODE § 72-1506(7)

Each and every fact and allegation set forth in paragraphs 1 through 30 above are hereby realleged and incorporated by reference.

Idaho Code § 72-1506(7) provides that,

District boundaries shall retain the local voting precinct boundary lines to the extent those lines comply with the provisions of section 34-306, Idaho Code. When the commission determines, by an affirmative vote of at least five (5) members recorded in its minutes, that it cannot complete its duties for a legislative district by fully complying with the provisions of this subsection, this subsection shall not apply to the commission or legislative redistricting plan it shall adopt.

The statute requires that all district boundaries “shall” retain local voting precinct boundary lines. The statute permits the Commission to make a finding that it cannot complete its duties **for a legislative district** by fully complying with its provisions, but by the plain language, this does not apply to congressional redistricting. Thus, the Commission’s assertion in its “General Congressional Plan Findings” that it “cannot complete its duties by fully complying with this requirement” is clearly erroneous and in contravention of law.

The plan adopted by Commission, C03, splits a precinct in violation of Idaho Code § 72-1506(7). Moreover, even if the Commission were statutorily permitted to exempt itself from the statute's requirements, its assertion that it "cannot complete its duties by fully complying with this requirement" is not factually correct. The Commission had before it the plan submitted by Petitioner, C039, which splits no precincts while maintaining a zero-person deviation, splitting only Ada County (the same as C03), and being contiguous.

VII. ATTORNEY FEES AND COSTS

Should the Respondents contest this Petition, Petitioner Christopher Pentico is entitled to an award of his reasonable attorney fees and costs pursuant to Idaho Code §§ 12-117 and 12-121 and Idaho Appellate Rules 39 and 40.

VIII. PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that the Court grant the following relief:

1. That the Court declare congressional redistricting plan C03 unlawful and issue a Writ of Prohibition restraining the Idaho Secretary of State from transmitting a copy of the report to the President of the Idaho Senate and the Speaker of the Idaho House of Representatives;
2. Alternatively, that the Court remand with instruction to the Commission to adopt a plan which meets all statutory and constitutional criteria for congressional reapportionment;
3. For an award of the Petitioner's reasonable attorney fees and costs pursuant to Idaho Code §§ 12-117 and 12-121 and Idaho Appellate Rules 39 and 40; and
4. For such other and further relief as the Court deems just and equitable under the circumstances.

DATED this 15th day of December, 2021.

RUNFT DINDINGER KOHLER, PLLC

By: /s/ Edward W. Dindinger
Edward William Dindinger, Esq.
Attorney for Petitioner

THOMAS J. KATSILOMETES, PLLC

By: /s/ Thomas J. Katsilometes
Thomas J. Katsilometes, Esq.
Attorney for Petitioner

VERIFICATION

STATE OF IDAHO)
) ss.
County of Ada)

Christopher A. Pentico, being first duly sworn under oath, deposes and states as follows:


1. I am the Petitioner herein.
2. I am a qualified elector in the State of Idaho. I am currently registered in Elmore County to vote.
3. I voted in the most recent November 2, 2021 election.
4. I have reviewed the foregoing Verified Petition for Review and am familiar with the facts asserted therein. The Petition and the facts asserted therein are true and correct to the best of my knowledge and belief.



Christopher A. Pentico, Petitioner

SUBSCRIBED AND SWORN to before me this 15th day of December, 2021.





Larsen T.J. Kohler
Notary Public for Idaho
Residing at Boise, Idaho
My Commission expires: July 27, 2024



EXHIBIT A



FINAL REPORT

November 10, 2021

IDAHO COMMISSION FOR REAPPORTIONMENT

Bart Davis, Cochair
Dan Schmidt, Cochair
Tom Dayley
Nels Mitchell
Amber Pence
Eric Redman

Nonpartisan Staff

Paul Boucher, Secretary
Elizabeth Bowen, Drafting Attorney
Keith Bybee, Budget and Policy Analyst
Todd Cutler, GIS Coordinator

Partisan Staff

Tyler Kelly, Republican Aide
Mariel Wilson, Democratic Aide
Matt Wolfe, Democratic Aide

EXHIBIT B

Comparison of Congressional Redistricting Plans					
	72-1506(3)	72-1506(5)	72-1506(6)	72-1506(7)	
	Deviation	Counties split	Contiguous	Precinct Split	Precincts (Ada Co.)
C01	52	Ada	Yes	No	
C02	237	None	Yes	No	
C03	0	Ada	Yes	Yes	1410, 1411, 1416, 1803, 1804, 2013
C010	322	Ada	Yes	No	
C011	5938	None	Yes	No	
C012	237	None	Yes	No	
C013	2	Ada	Yes	Yes	2214
C014	237	None	Yes	No	
C015	2337	None	Yes	No	
C016	59	Ada	Yes	No	
C017	1556	None	Yes	No	
C018	133	None	Yes	No	
C019	19	Ada	Yes	No	
C020	3712	None	Yes	No	
C021	2711	None	Yes	No	
C022	3719	None	Yes	No	
C023	1566	None	Yes	No	
C024	0	Ada	Yes	Yes	1416
C025	237	None	Yes	No	
C026	209	None	Yes	No	
C027	181	None	Yes	No	
C028	237	None	Yes	No	
C029	237	None	Yes	No	
C030	24275	Ada	No	No	
C031	1556	None	Yes	No	
C032	8449	None	Yes	No	
C033	392	None	Yes	No	
C034	392	None	Yes	No	
C035	135	Ada	Yes	No	
C036	102	None	Yes	No	
C037	2337	None	Yes	No	
C038	5853	None	Yes	No	
C039	0	Ada	Yes	No	
C040	488	Ada	Yes	No	
C041	0	Ada	Yes	Yes	1411
C042	378	None	Yes	No	

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2021, a true and correct copy of the foregoing VERIFIED PETITION FOR REVIEW was served upon the following persons by the method(s) indicated below:

Idaho Commission for Reapportionment
PO Box 83720
Boise, ID 83720

by U.S. Mail, postage prepaid
by email to redistricting@redistricting.idaho.gov

Lawrence Denney
Idaho Secretary of State
PO Box 83720
Boise, ID 83720-0080

by U.S. Mail, postage prepaid
by email to elections@sos.idaho.gov

RUNFT DINDINGER KOHLER, PLLC

By: /s/ Edward W. Dindinger
Edward William Dindinger, Esq.
Attorney for Petitioner

THOMAS J. KATSILOMETES, PLLC

By: /s/ Thomas J. Katsilometes
Thomas J. Katsilometes, Esq.
Attorney for Petitioner