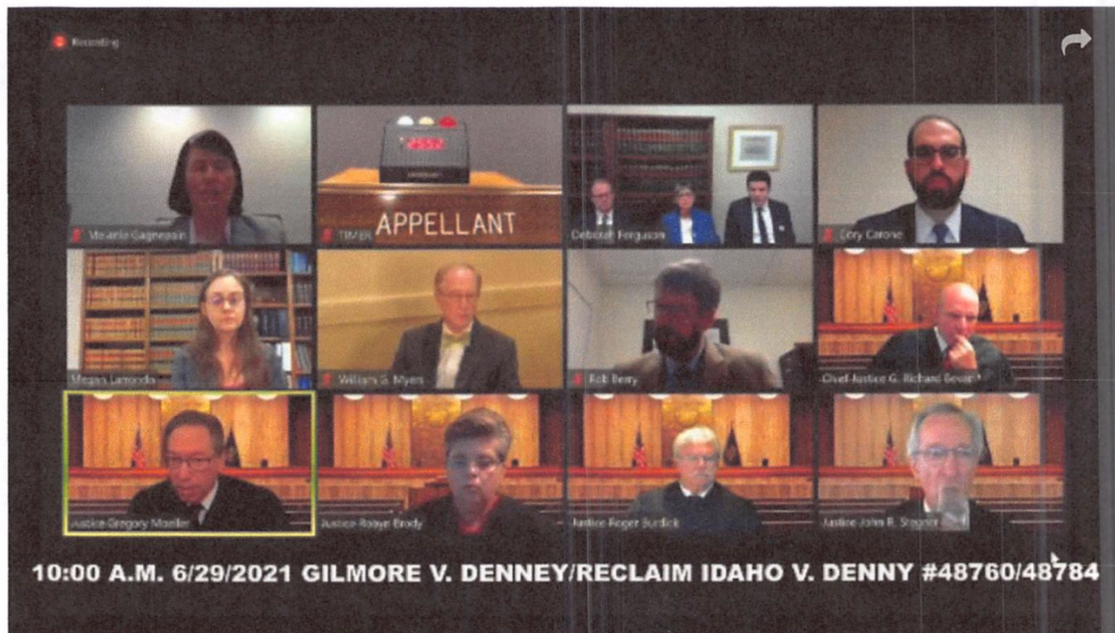


# Idaho Statesman

## Idaho Supreme Court will consider tossing out state's new legislative district map

BY RUAN SUPPE | JANUARY 02, 2022 4:00 AM



The Idaho Supreme Court listened to arguments on Senate Bill (SB) 1110 on June 27.  
BY [IDAHO SUPREME COURT](#) ✓

The Idaho Supreme Court soon will consider whether the state's redistricting committee, which faces several lawsuits after it approved new legislative and congressional maps, must redraw political boundaries ahead of the May primary election.

The Idaho Supreme Court in December consolidated five legal challenges on the legislative map into a single lawsuit, and the court scheduled oral arguments for Jan. 14. If justices side with one or multiple challengers, the commission could be forced to reconvene and choose new district boundaries.

Legal challengers argue the commission violated the Idaho Constitution and state law by dividing too many counties and "communities of interest," such as tribal reservations, between multiple legislative districts. As a result, the

divided counties and reservations will lose regional uniformity or electoral influence, they argue.

"It was pretty clear to me that the constitution was not adhered to," Branden Durst told the Idaho Statesman by phone. Durst is a former state lawmaker who was the first to file a lawsuit against the commission.

The commission and its attorneys have defended the county splits as necessary to maintain roughly equal populations in each legislative district, a mandate of the equal protection clause within the Fourteenth Amendment of the U.S. Constitution - better known as the "one person, one vote" provision. Experts have pointed to this mandate as the redistricting commission's first and primary legal responsibility.

Federal and state law requires the redistricting committee to balance the equal protection clause with the Idaho Constitution, which mandates that county boundaries be preserved as much as possible.

Keith Bybee, a budget and policy analyst for the Idaho Legislature who advised commissioners during the redistricting process, praised the commission for meeting federal and state requirements "without disenfranchising voters."

"I think it's a really strong plan," he told the Statesman by phone.

## **HOW REDISTRICTING WORKS IN IDAHO**

The six-person, bipartisan Idaho Commission for Reapportionment met for more than two months in 2021 to redraw voting districts following the 2020 U.S. Census.

The commission's task was to create new boundaries for Idaho's 35 legislative and two congressional districts while balancing a [hierarchy](#) of requirements established by the federal and state constitutions and Idaho Code. The Idaho Attorney General's Office, which is defending the commission against the lawsuits, described the job as a "high-wire balancing act" in a recent legal brief.

After the redistricting commission filed its new maps with the Secretary of State's Office, challengers had 35 days to dispute the boundaries. The new

districts spurred a flurry of lawsuits, primarily challenging the legislative map, which sets the margins for state House and Senate offices.

Though the petitioners ultimately want different outcomes for the legislative map, the justices will consider them all at once to determine whether to toss out the current boundaries. If the court rejects the current map, political leaders would also need to re-appoint new members to the redistricting commission.

Jim Jones, a former Idaho Supreme Court justice, noted the number of petitions and the short window before the May 17 primary election. The deadline for candidates to file for the election is March 11.

“It’s going to be a real difficult task to come up with a decision in all of those cases that will make it practical for people to file their declarations of candidacies in time for the May primary,” Jones told the Statesman by phone.

### **IDAHO SUPREME COURT TO WEIGH COUNTY SPLITS**

Durst is joined by Ada and Canyon county officials in objecting to the county divisions — in other words, the number of times portions of counties were split off and paired with other counties to form a legislative district.

The Idaho Constitution instructs redistricting commissions to split counties only when absolutely necessary. It says that counties may be divided “only to the extent it is reasonably determined by statute that counties must be divided” to create districts “which comply with the Constitution of the United States.”

In 2012, the Idaho Supreme Court heard a lawsuit filed by Twin Falls County against the redistricting commission. The justices back then ruled that if a challenger can prove the commission could have drawn a map with fewer county splits, while continuing to comply with the equal protection clause, then the commission must only split that number of counties.

The court at the time rejected the commission’s preferred map, which split 12 counties when an alternate proposal divided fewer counties and abided by the equal protection clause to maintain equivalent district populations.

Meanwhile, officials in Ada and Canyon counties argue the new map “excessively” divided Treasure Valley counties, and that more leeway on the “one person, one vote” standard should have been applied. They asked the court to remand the approved map back to the commission.

In the commission’s approved map, sections of Canyon County are paired in districts with Payette, Washington and Owyhee counties, while Ada County residents join districts with Gem and Owyhee counties’ residents. Alternative proposals made fewer external county splits.

“The commission is treating the largest urban areas of the Treasure Valley differently than all other urban areas in the state,” wrote Ada County Prosecutor Jan Bennetts in a legal brief. “There are 105,092 citizens in Canyon and Ada Counties facing unequal treatments because they are being deprived of a legislative district in each of their own counties.”

#### **COMMISSION DEFENDS MAP WITH ‘ONE PERSON, ONE VOTE’**

Spencer Stucki of Chubbuck is a petitioner aiming for a different outcome. Stucki of Chubbuck, who is representing himself, wrote in a petition that he prefers a legislative map that splits more counties than the commission approved, the opposite result his co-petitioners are looking for.

“I’m king of an outlier here,” Stucki said by phone.

Stucki said the purpose of the petition — like others included in the consolidated lawsuit — is to prod the court into clarifying the state constitution’s provision on splitting counties and commissioner’s responsibility to follow Idaho Code.

Attorney General Lawrence Wasden’s office declined to comment for this story. But according to the commission’s final redistricting report and recent legal briefs, the commission considered plans that split fewer than eight counties and “reasonably determined they did not comply with the equal protection clause for a variety of reasons,” wrote Deputy Attorney General Megan A. Larrondo.

Three maps proposed as alternatives to the commission’s preferred plan “appear to have been drawn to get to or just under” the maximum population deviation between districts, the brief argues. Deviation is the difference

between the least populous and most populous districts form the ideal district size, about 50,000 people based on the new census data.

While the commissions' favored map had a less than 6% deviation, the alternative plans deviated at or just under 10% the generally accepted maximum standard, according to the commissions' final report.

"Commitment to equal protection requires aiming for 0% deviation, not 10%," the report says. "Commitment to equal protection requires being able to justify deviations with a rational state policy, consistently and neutrally applied."

Larrondo also argued that the alternate plans "demonstrate regional favoritism" by "significantly" under populating North Idaho districts "at the expense of fast-growing southern Idaho."

"The Idaho Constitution is not a cudgel with which third parties can impose their own redistricting preferences on the entire state," she wrote.

Jones, who was on the Idaho Supreme Court during the Twin Falls County case and dissented with the majority opinion, said the commission should be afforded some discretion when dividing counties between districts.

"If the goal is to produce the least number of county-line splits, you don't need a commission to determine that, you just need a good computer," he said. "That ignores communities of interest that may be affected adversely by not letting the commission use its discretion to do one or two additional county-line splits."

Jones is not confident that the challengers can prove the commission violated the Idaho Constitution by splitting one district more than alternative maps. None of the five justices that ruled on the Twin Falls County case remain on the court.

"The real crux of it is you've got to give some discretionary calls to the redistricting commission," Jones said. "Unless you can show some violation of federal or state constitutional requirements, I'm not sure how you overcome that discretion."

#### **TRIBAL RESERVATIONS SAY MAP 'DILUTES' THEIR VOTE**

Another lawsuit, consolidated with the preceding petitions for the Jan. 14 hearing, argued that the commission unnecessarily divided reservations and decimated electoral influence of two Idaho tribes.

Chief J. Allan, Coeur d'Alene tribal chairman, and Devon Boyer, Shoshone-Bannock tribal chairman, are the latest to challenge the Idaho Commission for Reapportionment's approved maps. The tribes are represented by Boise attorneys Deborah Ferguson and Craig Durham.

The attorneys argued the commission violated Idaho law, which states "to the maximum extent possible, districts shall preserve traditional neighborhoods and local communities of interest."

The commission split the Coeur d'Alene Tribe's reservation into two legislative districts and the Shoshone-Bannock Tribes' reservation into three, while dividing the Shoshone-Bannock reservation's two largest population clusters. The approved plan "decimates and dilutes any electoral influence of the tribes and disenfranchises them from the political process," attorneys wrote.

Ferguson told the Statesman that "clearly a tribe is much more than simply a neighborhood" or community of interest.

"They lived here thousands of years before Idaho was ever a territory or a state," Ferguson said. "They share cultural, spiritual, legal bonds far beyond any simple community or neighborhood. I do think there should be an elevated appreciation for that and a really good faith effort to keep the tribal boundaries intact."

In its final report, the commission acknowledged that the reservations are communities of interest. But in a footnote and in a letter to lawmakers and party leaders, commissioners explained that state law limited their ability to protect communities of interest.

The section mandating communities of interest be maintained is "subordinate to the mandate in the Idaho Constitution to keep counties whole," the commission's letter said.

"Thus, it is common for communities that cross county boundaries, such as the Fort Hall Reservation, to be divided between legislative districts."

Commissioners suggested a constitutional amendment could provide greater protection for tribal reservations.

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