

# Idaho Supreme Court holds hearing on redistricting Friday

BY IAN MAX STEVENSON  
istevenson@idahostatesman.com

The drawing of Idaho's new legislative districts neglected Native American tribes' sovereign boundaries and divided up important "communities of interest," like tribes, an attorney told the Idaho Supreme Court on Friday.

The Supreme Court heard arguments on Friday for several legal challenges to the state's new boundaries for legislative districts, which were drawn following the 2020 census. Deborah Ferguson, an attorney representing the Coeur d'Alene and the Shoshone-Bannock Tribes, told justices that tribal boundaries should have been given more weight in the process, given that communities of interest are supposed to be preserved to the "maximum extent" possible, and that the tribes have long been discriminated against.

"The tribes have been here long before we were here, long before statehood," Ferguson said during closing remarks. "They deserve to be considered and to be kept as whole as possible."

The redistricting com-

mission's new maps will be used during the upcoming primary elections in May. But if the court agrees with any of the challengers, the commission could be required to reconvene and select a new map. That could jeopardize upcoming deadlines for this year's primaries, only four months away.

The legal challengers mostly argued that the commission cut up counties and other communities more than was necessary.

The state's redistricting commission adopted its final legislative and congressional maps in November, which will serve as Idaho's political boundaries for the next decade. With the state's rapid population growth, the redistricting process is designed to account for shifting demographics. The U.S. Constitution requires political districts to have roughly equal population size — a mandate commonly known as the "one person, one vote" provision.

The commission is also legally mandated to try to keep counties together. In its report, the commission wrote that it "sincerely wished to accommodate

the request" of the Shoshone-Bannock Tribes to put most of the reservation in a single district, but that it was "impracticable for both equal protection and county integrity reasons."

The commission's legislative map divides eight of Idaho's counties, and most of the petitioners at Friday's hearing argued that it could have instead divided seven, or that it divided various communities of interest unnecessarily.

The state's justices appeared skeptical of some of the petitioners' arguments, asking whether more deference should be granted to the commission, while also asking tough questions of the commission's attorney.

## A 'HERCULEAN' TASK TO CREATE POLITICAL BOUNDARIES, COMMISSION ATTORNEY SAYS

Attorneys for Ada and Canyon Counties, two other petitioners, argued that the commission's map unconstitutionally divided counties when creating legislative districts, thus splitting up coherent interest groups in the Treasure Valley, the most populous part of the state.

During Ada County Deputy Prosecutor Lorna K. Jorgensen's argument, Justice Gregory W. Moeller interrupted to say, "It's one thing to say you don't like what they did, but without pointing us in a direction of something that you think works, how do we know that there is a better solution available?"

Bryan Smith, an attorney for another petitioner, Branden Durst, objected to the commission's map because he said it splits too many counties "externally," meaning a part of one county is added to a district in another county.

To comply with the U.S. Constitution, districts are generally supposed to have population deviations of less than 10%, according to the final commission's report. But if that criteria is over-emphasized, Smith argued, Idaho-specific requirements get short shrift.

"If you actually apply the state constitution, and you do equal protection, and you do this balancing act," he said, "the map pretty much draws itself."

In its defense, Megan Larrondo, a deputy attorney general representing the commission, said it

had taken into account maps that divided fewer counties, but that they violated the U.S. Constitution by having too large population differences between some districts. She said the commission, which is a state constitutional body that had conducted a "Herculean" task, should be given a certain amount of deference in its decision.

The commission is made up of six members, half appointed by Republican leaders and half by Democrats, and she said it is not the court's job to decide whether it thinks a better map might be possible.

Were it to do so, the court would be overriding "the people's decision to entrust the difficult task of redistricting to the commission," Larrondo said.

But justices repeatedly pressed Larrondo about the commission's decisions, and about what the court's role should be.

"If we issue a decision that allows the commission full discretion on whether they're going to accept or reject any publicly submitted maps, then what's the point of allowing the public to submit maps if they're not really bound by them?" Justice Colleen D. Zahn said.

Zahn also questioned the commission's determination that maps submitted by third parties with seven county splits, rather than eight, were inoperable because they

arbitrarily allowed for too much deviation between populations.

"Why is it more permissible for the commission to draw the inference (the maps are) drawn just to hit 10% (population deviation) as opposed to drawing the inference 'these only split seven counties?'" she said. "I'm struggling with why the commission gets to focus on one inference and is able to disregard another just as likely inference."

## IDAHO SUPREME COURT CHIEF JUSTICE POSITIVE FOR COVID-19

At the start of Friday's hearing, Chief Justice G. Richard Bevan announced he had COVID-19. He said he had mild symptoms, but that he and the court have had "exposure" to the virus.

On Wednesday, the hearing was moved online, instead of in person. Bevan did not have symptoms when he attended the governor's State of the State speech on Monday at the Capitol, a spokesperson Nate Poppino said in an email.

Poppino added that another justice, John R. Stegner, has been at home this week due to another exposure through a family member. He did not attend the governor's speech.

Ian Max Stevenson:  
208-274-3538,  
@ianmaxstevenson