



Idaho's Citizen Commission for Reapportionment

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Public Meeting
Monday, August 15, 2011
Capitol Auditorium, Capitol Building
10:00a.m.

Present were **Commissioner Moses, Commissioner Kane, Commissioner Andersen, Commissioner Frasure, Commissioner Finman, and Commissioner Esposito.** Present from the staff were **Ms. Kristin Ford, Mr. Keith Bybee, Mr. Todd Cutler, and Cyd Gaudet.** Also present, after the lunch break, **Ms. Mooney,** from the Attorney General's office.

Chairman Frasure called the meeting to order, and stated that he hoped everyone had enjoyed their break for a few days. He said that they had three days this week to hopefully get a few things done, and that hopefully they could come to some conclusions. He then indicated that he had just briefly had a chance to look at the minutes. He suggested that if the rest of the commissioners could look at the minutes before they came back that afternoon, then they could go ahead and move to approve the minutes. He indicated that would be great, as then they would be totally up to speed on the minutes. As far as the calendar, he said that the next week when they came back in, on the 29th, that was his first day of school. He said that he did visit with his principal, and he did need to be at school on Monday the 29th. He stated that he could get to the meeting late, or he could come over on Sunday evening. He indicated that as he had to be back over to Pocatello by noon, if the commission wanted, they could meet for an hour on Monday morning. Or, he suggested that the commission be in a caucus that day, as the 29th is his first official day back at school. He said that Tuesday is his preparation day, as that was the day they were giving them to get their lesson plans ready for the first semester, and he could certainly be over for that day. On that Wednesday he had a mandatory district meeting, an in-service, and he was trying to see if he could squeeze out of that, but for now that did not look good. Then Thursday was his first official day with students in the classroom. Friday, being the second day, he was certainly able to get a substitute. He said that the principal had requested that he be there for the opening day of school, which was the 29th, and then on that Thursday, the opening day for classes. So he was giving the commission a heads up, and warning, that he would not be able to attend on those particular days.

Commissioner Andersen then asked if he would not be able to attend, at all, on the 29th. **Chairman Frasure** indicated that was correct, unless they wanted to start at 6:00 in the morning, they could meet for a few hours early, so he could be back over, in Pocatello, in time for those meetings. He said that he could get on the road by 3p.m. on Monday, and be with the commission all day on Tuesday. On Wednesday he was facing a mandatory district meeting, that he was seeing if he could possibly get out of, but right now it sounded like his employer wanted him there. Then Thursday was the first official day that they received students in their classrooms, and they did not like them to be missing on the first day that the students are there. Friday, the second day, he could get a substitute, so right then he was looking at being available on Tuesday, Friday, Saturday and Sunday, however he was having difficulties with the other days of the last week. So, they would have consideration of that schedule, they could perhaps chat more on that in the afternoon when they came back in, and then they would be able to approve the minutes.

Chairman Frasure then stated, that in all candor, that once they decided to, he thought that this body could move rapidly on these plans; however they still had two approaches to it. He said that as he read the papers, the Sunday paper and the journal, that for the second time their Democratic commissioners had put out a press release. He indicated that he appreciated reading their press releases, in his local paper, because it helped him understand their perspective on their challenge in getting to the point where they could agree to move forward. He said that he certainly hoped that they could, and he didn't think it was the intention of anybody on this commission, on either side of the aisle, to break down, and he knew that he certainly didn't want to come over to waste his summer, to come to a road block. He said it was

their constitutional responsibility and he was encouraged that they could get this done, and they needed to do everything that they could to find a compromise that they could all live with, and settle this issue. They also still had left hanging out there the congressional lines, and they hadn't come to a conclusion on that one. That was probably the simpler one of the two tasks, where it was one line, rather than 35 lines. He said that they may want to consider perhaps trying to get that one settled sometime in the next few days. With that, he said that they certainly had several new plans laid upon them on Friday and Saturday, the last time that they met, and he asked if there was any discussion on either the legislative or congressional plans that had been presented.

Commissioner Esposito asked the staff if they had received any new plans, either legislative or congressional, from the public, in the time that they had been gone. **Mr. Cutler** indicated that they had received three new legislative plans submitted by the public. **Chairman Frasure** indicated that they should get those submitted then, and asked if they were congressional or legislative. **Mr. Cutler** responded that they were legislative plans. **Commissioner Esposito** then suggested that it would be helpful if they could go through those plans then, and then he had another plan that the staff was working on. So hopefully by the time they were done going through the public plans, they would be able to present another plan also. **Chairman Frasure** asked if these plans had been assigned numbers, and **Mr. Cutler** indicated that these would be L42, L43 and L44.

Chairman Frasure then asked that L42 be put up on the screen for consideration. This plan was submitted by Branden Durst, and **Mr. Cutler** explained that he would overlay L28 to make it clearer what he had done. The commission then read the description provided by Mr. Durst. **Commissioner Esposito** asked for an explanation of the overlay and the boundaries, so that the commission would know fairly clearly what they were looking at. **Mr. Cutler** indicated that the solid green line was the original L28 plan, and the dashed lines were the new lines that Mr. Durst had drawn. **Commissioner Esposito** then asked that the L28 layer be taken off so they could see what Mr. Durst had proposed. He said that they could then do the overlay, as he thought that would be helpful. He also asked that **Mr. Cutler** take them through the entire plan, area by area, so they could see quite clearly what he had done.

Chairman Frasure asked if the first seven districts were identical, and **Mr. Cutler** said that was correct. **Chairman Frasure** then said they would just need to start with District 8, and asked that they walk down through, as it appeared that he made a number of changes. The commission then reviewed the plan starting with District 8. It was determined that District 8 was the same, however the northern boundary in District 9 was a change. **Chairman Frasure** indicated that he appreciated the overlay, however asked that it be removed, so he could see Mr. Durst's plan. **Commissioner Finman** asked that the deviation be shown. **Chairman Frasure** then indicated that it appeared that he was coming down through Gem County into Ada County, and then swinging below Ada County back into Canyon and part of Ada County. **Commissioner Moses** noted that the pipe stem, in District 21, had showed up in one of their plans also, and that was courtesy of the Ada County clerk, as that precinct was just shaped that way. **Chairman Frasure** indicated that you could get some strange shapes depending on what precincts you put together. He also said it was interesting to see District 20, how it snaked across the top picking up what looked like part of Meridian, part of Eagle, and then back into Boise.

The commission then moved their review to the eastern part of the state where **Chairman Frasure** asked that they focus on Madison County, as it appeared that was a new twist. He also indicated that in Idaho Falls he had changed that from the double circle, which they had in L28, as L28 had one small one and then one that pretty well wrapped around the second one. It was determined that District 29, in this plan, was identical to L28. **Chairman Frasure** commented that he knew that they didn't do these things for political purposes, however he would like it duly noted that they had one precinct out of Chubbuck, and that one precinct just happened to contain the Republican candidate that ran against the incumbent Senator. He said that just by accident, by pure numbers, that was his precinct, so he was not in her district any longer. He also said that it was interesting to see the Highland area cut in half, that it was kind of a strange reach up there, and it looked like a hand just reached up there and grabbed half of the Highland area. He commented that this plan divided Cassia County and sent half of it to the lower counties.

The commission then moved on to L43 submitted by Daniel Loughrey. The comments read that it was *an improvement on the L34 map*. In answer to a question from **Commissioner Moses**, **Mr. Cutler** indicated that this was a partial plan, for Ada County, and that the dark lines were Mr. Loughrey's, and the green line was L34. **Chairman Frasure** indicated that this was basically about a five precinct shift. It was also noted that in the District 19 area it appeared there was a two precinct swap.

L44, also submitted by Brandon Durst, was reviewed next. **Mr. Cutler** indicated that the comments stated there were six divided counties; however the report which he ran showed there were eight splits. **Commissioner Moses** noted that sometimes if a county was split more than once, that counted as two splits, but it was not a different number of counties. **Mr. Cutler** then showed the county split report by district. He indicated that this map was also based off of L28, so the green was L28, and he did not believe that the top eight districts were changed. **Chairman Frasure** said that he would have to compliment him as he got to the road connection on this one. He also commented that in the Idaho Falls area it appeared he was moving one precinct, and a partial, from L28.

Chairman Frasure noted that it was nice to get those plans on the public record. He indicated that Mr. Durst had now captured the lead as he had submitted the most plans. As a former legislator, and someone who wanted to get back in, he had the most hands on approach that he had seen of any individual. He then said, as their staff had not quite finished the one other plan, that they had to submit this morning, without objection, they would stand at recess until 11:10a.m.

Chairman Frasure called the commission back to order. He noted that prior to recess they had under consideration some public submitted plans, and also one that was coming down from **Commissioner Esposito**. He then asked if that one was down yet, and **Mr. Cutler** indicated that it was, and that plan is L45.

Commissioner Moses indicated that before they moved past the public submissions, he noted with interest **Chairman Frasure's** observation about the map in Pocatello that moved one of the Senators. He said that something tickled him about L43, so he went up and looked, and the changes that were made there put six Democratic incumbents in the same district. He said that he supposed that none of them should be surprised if the public submissions had a bit of a partisan tinge to them. **Chairman Frasure** indicated that he was unaware of what he meant by, in L43, and asked in which district it was putting six Democrats together. **Commissioner Moses** answered that he believed it was District 17, but it was the one that he made the small changes in Boise and Garden City. **Chairman Frasure** then asked if the swap of two or three precincts then affected incumbents there, and **Commissioner Moses** indicated that it put six in the same district.

Chairman Frasure said that it seemed like incumbency had become the focal point of their discussion, and it was not the consideration of this commission who got slain one way or the other. He indicated that the last time they even got so bold as to put little stars out there, they didn't know who they were, just little stars, so you could see a whole lot of incumbents out there that were affected. He said that they usually do that application once they had drawn a map, and if it was helpful they could certainly request to have that on there, so they could see any incumbent change. He stated that if **Commissioner Moses** would like, he would endeavor to instruct the staff to do that on all of the maps. **Commissioner Moses** stated that he didn't quite know where **Chairman Frasure** got that it might be his preference, in fact he would just as soon that it wasn't included (*sic*), as he was a little startled to see a list passed around of which incumbents were affected. He didn't think it had any place inside the room; however that was up to the Chairman, of course.

Commissioner Esposito indicated that unfortunately it had been reduced to that, in terms of media requests for impacts on incumbents. Since they had those requests, and they were dealing with those realities, then he thought that it was appropriate for them to just go ahead and put it on the maps, and put it on the table, because he thought there was even public interest about what the impacts on incumbency were. Quite frankly he had made it clear, over and over again, that where incumbents lived had no bearing on the work that he had been doing, and that he would continue to do that. He thought that the incumbents could look at where they were, if they so choose, and as he was on the record as saying, they would need to deal with it, and need to live with it, and that was not their job. When they are done, then they can deal with it as they see fit. That was his opinion, and he would speak for his two fellow Republican commissioners, that this was their position. They have had numerous media requests for that information, so once again, in terms of full disclosure, they would supply that information. He said that actually he believed that staff, Legislative Services, gave them the initial overlay, and they were actually doing an analysis of each one of the plans coming out, to make that available now to the media upon request. With that he said that he thought they just needed to move on.

Chairman Frasure said, in final response, that he understood that and appreciated **Commissioner Moses** pointing out, in L38, that there were six Democrats now in a district. He stated that obviously he had to find that information somewhere, and he assumed that he got it from Legislative Services, as that was the only place that he knew of where that existed. He said that had become public information, so the observation on L43 was duly noted, and since they noted it on that, they would attempt to note it on all of them. He said that he believed that the information they sent out initially did not have that, however they had emailed the staff, and apparently they could put that on the map they had just sent down, even though it did not have that before. So apparently the staff had provided one with, and without, the incumbents. **Commissioner Moses** said that unless there was a specific request by a commissioner to see that information, he would just as soon not have it put up. **Chairman Frasure** indicated that was duly noted and asked if it was any commissioner's desire to have that information put up on the screen. As there were no requests for that, **Chairman Frasure** asked that they review L45.

Commissioner Esposito explained that this was another variation of L34. He said that they simply joined Washington, Adams, Valley, Boise, and a portion of Ada County into a new district. That allowed them to combine Gem and Payette Counties all in one district. Once again, they followed all of the constitutional and statutory regulations in terms of road connectivity, and keeping county splits to a minimum. He said they had a deviation on this plan of 8.5%, which was not as good as some of the other ones, but again much better one person one vote line up, compared to most other plans. As a result of doing those combinations, they did also have some impact on Canyon County. Because both Gem and Payette did not have enough total population, they had to pick up a small portion of Canyon County to make District 11 work, and that had a cascading affect within Canyon County. He said that once again into Ada, he would like to make a note there about what they had been trying to accomplish with this. He said that they had someone actually submit a plan and use the terminology that he and **Commissioner Frasure** were insisting on making unnecessary divides in Ada County. He stated that the simple fact was, that in order to get the best one person, one vote deviation, and to follow and comply with all of the constitutional mandates, the statutes, and the court cases, for the most part, a divide of Ada County became necessary as you work through the populations going from north to south, and going from east to west. He said that he would challenge anybody; members of the media, his fellow commissioners, or anybody in the public, to come up with a map that followed all of the regulations, and came in with a deviation below 8%, that gave them a much better one person one vote. It would also need to keep the communities of interest together, and follow the preponderance of the public testimony, which they believed they had accomplished. He then said if there were any questions on the plan he would be more than happy to stand for questions.

Commissioner Andersen asked if that was the sum total of the changes which they were proposing on this plan. **Commissioner Esposito** indicated that was correct, that once you do the Washington, Adams, Valley, Boise, and pick up part of Ada County, and then put Gem and Payette together, you do have the additional impacts in both Canyon and Ada County. He stated that the impact was totally within southwest Idaho. **Commissioner Andersen** asked if the rest of the maps were similar to those that had been previously presented, and **Commissioner Esposito** indicated that was correct. **Commissioner Andersen** then asked for a recess so that they could review the maps, and be able to respond intelligently to them.

Commissioner Esposito indicated that there was one unfinished item of business that he would like to address. He then requested that L38 be pulled up, and stated that he believed that was the map that had not only the accommodation of Nez Perce and Lewis County together, but also in Idaho Falls they had a cleanup there, and they had a precinct split. He explained that he had called for a vote, and that was tabled in order to give his fellow commissioners time to review that and be able to make an informed vote on that. He would like to call for that vote now, because once again he was on the record as not proposing or putting out a plan that violated any of the statutes unless they did have a vote to deal with it, one way or the other, up or down. He said he wanted to stress again that this was not a vote to approve the entire plan, and not even actually a vote to approve that legislative district; it was just a vote to approve the concept of a precinct split. With that he said he would like to call for a vote on that precinct split in L38, in Idaho Falls.

Chairman Frasure said that he appreciated the call for the vote; however they certainly would like to have the opportunity to have discussion on that prior to taking the vote. He stated that they did discuss that, and **Commissioner Esposito** was correct that he did hold off that request, so they could look that over in the Idaho Falls area, where the staff had drawn almost a perfect square, and there was a precinct split involved in drawing that line. He said that if it goes down in flames, it goes down in flames.

Commissioner Moses indicated that his memory of what happened on the vote on that, was that there actually was a vote on that plan, and it was voted down. He said there was no motion to table that he recalled. **Chairman Frasure** explained that, in referring back to the minutes, that it was a vote on whether or not to allow the road deviation between Districts 6 and 7, which violated the road issue. Then **Commissioner Esposito**, when that was defeated 3 to 2, asked for a vote, and there was a lot of disagreement on taking that vote, so he withdrew his request. **Commissioner Esposito** said that accurately reflected what took place, and he said that he believed that the vote was pending and he would still ask for that vote. **Commissioner Moses** said that he was unclear now what they were being asked to vote on. **Commissioner Esposito** indicated that the vote was on the precinct split over in Idaho Falls, which **Mr. Cutler** had up on the screen. He said that it was one of the statutes they were required to follow, if there is a precinct split, and that it does take a vote of this body to approve that split. So he was asking for an up or down vote, just on that split. He indicated that as he previously stated, that it was not an approval of this plan by any means, and it was not even an approval of the configuration of this legislative district, it was whether they could submit this plan, and have it out there, and to meet the legal requirements that they are charged with. He said that he was calling for the vote, one way or another, so that it was on the record of whether this plan had approval or not, in terms of those deviations. He said that right now they were on the record saying the road deviation, for the districts up in north Idaho, had not been approved, and he was just simply asking for the vote on precincts.

Commissioner Moses indicated that they had two things going here; on the one hand **Commissioner Esposito** told them that this was not binding as to the plan, and on the other hand he told them that they couldn't pass the plan unless they passed this vote, and it can't be both ways. The constitution very specifically states that all that's required was a vote of 4 commissioners to pass a plan, any plan, so given that, he frankly was a little vague as to the purpose of having this vote. **Commissioner Esposito** said he was well aware of the position he had taken in terms of what it takes to approve an overall plan, but they did have an Idaho Statute that very clearly stated that if there was not a connecting road, they as commissioners were allowed to have a variance to that. He said that it takes a five person vote, in the affirmative, to pass that, and the same is true with precincts. So unless and until a court of competent jurisdiction told them that this process and procedure, and this statute was unconstitutional, that the three Republican commissioners were going to follow it, and so that was why he was insisting on this. He said that he was well aware of the fact that it takes a four person vote for the overall plans, but in the detail of the plans, in order to get to that, if there was a variance on the road statute or a precinct split, they believed, and were going to hold to the fact, that it takes a five person vote to approve that. **Commissioner Moses** said that they did raise this question with the attorney general's representative on the day that he first gave his briefing, and he had researched the case law. The case law that he found was that any law that required a higher standard than the constitutional standard, for the undertaking, was on its face unconstitutional. So it was just not possible to say that they couldn't adopt a plan with a four vote margin, because they didn't pass something else with a five vote margin, as that stands the law, and it stands the constitution, on their heads.

Commissioner Esposito expressed that he heard what he was saying, but the fact remained that they were bound to live with the laws that had been placed before them, and again, until they were given additional direction by the Idaho Supreme Court, they were going to follow all the laws. He said that quite honestly it would be great, on either the road variance, or on the precinct, to get four votes. However the fact remained, that in order for it to be legal they needed the five votes at this point. The statute was very clear about that, and that's unfortunately, whether they like it or not, was what we are going to do, they we are going to follow the law.

Commissioner Andersen asked, as a point of discussion, if it was possible to have a blanket vote to say that for any issue dealing with the roads, or with precinct splits, that they would set that aside until they had completed a map. **Chairman Frasure** said that could be a potential approach to it. He pointed out that the statute says district, it doesn't say districts. It says that anytime they choose to ask for a waiver when they do not follow that particular statute, which the statute says they could in fact waive, that they would be totally within the

guidelines of the legislation, as well as the constitution, by voting on that. He said that he thought his point was well taken, but it said district, it didn't say districts, it didn't say mass box shot, that you do the entire thing, and then take one vote on all of them at once, it actually referred to it singularly. An interim step votes is all that it was, and if it was defeated then they would scrub that particular idea and go on to another one. He said that he could certainly call for a vote, and obviously he was correct that the final passage did, in fact, only require four votes for the commission to pass it. The an assumption was being made, and he appreciated that, because he read it in Sunday's paper, and he knew their position because they published it, so he understood that from their perspective they can ignore those new statutes that the legislature required. However he said that the members on his side were not quite as bold to reject that statute outright.

At that time **Commissioner Moses** called for a point of personal privilege, and said that his position was being misrepresented. **Chairman Frasure** answered that his position misrepresented what the attorney general said, and that was what he was trying to point out. **Commissioner Moses** stated that he certainly did not say that they were free to ignore any statute. **Chairman Frasure** then said that he would rephrase that, he recognized that they were parsing words here and he understood that. However just a few moments ago the representation that he indicated was that the attorney general said that they could ignore this, and that it only requires a five vote margin. Therefore he was apparently making a ruling, and as they obviously didn't have that in writing from him, he hated to characterize what the position of the attorney general was, when he, or his representative, were not there to speak, and perhaps they should be. He said he was not sure why they were not there, as they had been requested, so he was surprised that they were not. Regardless of that point, when they got down to the issue of whether or not this was a valid law, and he was arguing that he feels it's unnecessary, or he wanted to do it as a group shot at the end, he thought that was a valid point. **Chairman Frasure** said he thought that if you did it at the end you could certainly make that argument, however the statute calls for individual votes, it says district. That anytime you violate it on a district basis you need to take a vote on it, and it's procedural. He said that this commission controls the ultimate outcome on all votes, and obviously if it was defeated, it was defeated. However it did take five votes in order to conform to that particular statute, and he appreciated the fact that **Commissioner Moses** wanted to conform to the statute and the laws as well.

Commissioner Esposito said that he would like to make one other point, because there had been lots of talk about adhering to the constitution. He said he thought that the Idaho Constitution, and the section that actually empowered this commission, clearly gave the legislature the ability to enact statutes to help further regulate, guide, whatever term you want to use, but with the full force and effect of law to have impact on this process. He said they had seen very clearly, as they travelled around the state, and listened to the overwhelming public testimony, and also from some legislators on this fact, that the reason why those additional statutes were enacted was because of the problems that came about from the last commission's drawing the "C" up in north Idaho. He said that disenfranchised, their word, voters up in Bonner County, Shoshone, Benewah, and some of the other counties up north. Also the people in south east Idaho, with District 31, it became overwhelming testimony in all four public hearings, that they had over in eastern Idaho, that for them not to repeat the mistake of the last commission, to follow the law and not put District 31 again. He said that what they had seen, from their Democratic colleagues, and from members of the public, is a repeat and rehash of District 31, and it really does fly in the face of what he believed the legislature was trying to accomplish. He said that quite simply, we are a nation of laws. They, as a commission, are not empowered to make law as they go. They needed to follow the laws until they were told otherwise, and that was what they had been attempting to do. He said that whether they like the law or not, whether it's convenient or not, whether in some people's mind it violates the constitutional intent or not, which they don't believe is anywhere near the truth. Having said all that, they were following all of the laws and quite simply all he was asking for, because he didn't want to be in the position of proposing a map that had a violation of Idaho statutes, he was simply asking for a vote. He said that each commissioner was free to vote any way they choose on this, it was just simply asking for the vote.

Commissioner Andersen said that he would need more discussion and clarification. He asked if they were saying that any final map that they may propose for adoption, that they would have to vote on each section that may violate the road rule, or the precinct section, prior to taking a vote on the entire map. **Commissioner Esposito** said that he believed that was the proper process and procedure that they needed to follow. He indicated that they needed to do this in a very clear procedural manner, so they should go through each map, have the requisite votes on each one of the roads, or the precinct splits, of any that were proposed, and then have the final vote on the map. He said that was their position. **Commissioner Andersen** then said that if he understands what they were saying, if they come to an agreement on a map, and they were able to get four votes on it, that would not be a valid vote without the other votes preceding that. **Commissioner Esposito** answered that there was only one attorney on this commission, and that was **Commissioner Kane**, so he had cautioned about any of them lawyering. He said that he was not quite sure what the answer to this question ultimately would be in terms of going before the courts; however he thought that the solid ground for them, he believed, would be if they followed all of the process and procedures that were outlined for them. That would be taking the road votes, and the precinct votes, and then having a vote on the map, and that would give them the greatest standing if they ended up having to go before a court. He said that he could continue to remain hopeful that they would be able to come to an agreement on an overall legislative map. And if they could get there, he thought the required votes, in order to allow them to vote on that, they would have the required number of votes for that, and also more than the four votes needed to actually pass the plan. So that was the intent, and that was the hope, as they proceeded. But he did have to say that there was a lot of value in terms of their work withstanding any challenge, if they adhered to the process and procedures that they had been given, constitutionally and also legislatively, and also followed the court rulings that they were aware of. He said that the maps that they had been presenting, L34 and the variations to that, that was their best attempt to make that happen.

Chairman Frasure pointed out that they had two requests going, one to go at recess, and one to take the vote. He said that obviously the precedence of taking the vote overcomes the desire for recess. He said that they did have requests for both, and they could continue

discussing it, and if the commission disposed of it, it was disposed of. If it failed, as the staff had pointed out on Saturday, it was kind of a moot point if it was defeated.

Commissioner Esposito said that if he could have agreement from his fellow commissioners that when they came back after lunch they would have a vote, he was willing to allow them time to discuss this. And he was willing, once again, to withdraw his request and put it on hold, and give them time to have further discussion. However when they came back, to be absolutely crystal clear about this, he would be, once again, requesting a vote on this matter. **Commissioner Andersen** said that in order for them to really understand what they needed to do, his question was, if it was voted down, if the proposal was not passed, what did that do to the overall map that they presented.

Commissioner Esposito replied that basically what it did, was that he is on the record of proposing a map that required the two votes. Their sponsorship of that map was predicated on receiving the affirmative votes to make that, in their view, a legal map to be considered. If the vote went the opposite direction, as the road variance one had, then it just clearly put that map in abeyance and they moved on. For future notice, any future maps that came out, that had either a road variance, or a precinct split, on the part of the three Republican commissioners, they would be requesting a vote on either one, or both of them, as they came up. **Commissioner Andersen** said that this opened another question, and asked if a map was submitted, probably by the Democratic commissioners, and that request had not been made, what would be the response as far as adopting that map. **Commissioner Esposito** said the response would be, let's take a look at the detail of this map, they could deal with precincts first, or they could deal with roads first, but let's go through it point by point. He said that they could start at any point that he would like on the map, whatever their preference was. He said he would be requesting a singular vote on each variance, so no blanket votes, but a singular vote on each one. Because quite frankly there might be some where they could say yes that one makes sense, we can agree to that, and there would be others that they wouldn't. So once again, he was going to be very clear about this, that they would ask for a vote on each one of the variances, as prescribed by Idaho Statute, if it was a road or a precinct split. **Commissioner Andersen** then asked if he was telling them that if a vote fails the entire map fails. **Commissioner Esposito** said that he believed, from their perspective, that was correct.

In light of this discussion, **Chairman Frasure** said that he had a conversation with **Commissioner Andersen** the prior week, because this had become the salient point, the point of contention between two different philosophies, in drawing maps. He said that he had asked the original sponsors of this legislation, the current Speaker of the House as well as the former Pro Tem, who was now Chairman of the Tax Commission, if they could enlighten them, as this was a problem. He said that they would like to understand the legislative intent and what they had in mind. He indicated that he heard back that **Mr. Geddes** was perhaps available that afternoon, or Wednesday afternoon, as they were in the middle of tax appeals. He said he believed that the Speaker was in town today, to hopefully help clarify this, as this seemed to be the point that they are breaking down on. He indicated that they could have those individuals explain to them what their intent was in that legislation, so they could at least get some clarification on that. He said that hopefully this afternoon one or both of them would be available. He indicated that he had also offered **Commissioner Andersen**, that if there was anyone else that he wanted to address that point, he was more than welcome to. But that was the point where they seemed to be breaking down, so any more clarification they could get on that would be helpful to their process. He said that **Commissioner Esposito** had withdrawn temporarily, the request for the vote on that. They also had a request to go at recess, and that, without objection, they would stand at recess until 2:30. As there were no objections, the commission stood at recess until 2:30p.m.

Chairman Frasure called the meeting back to order. He said they had not been able to track down the tax commissioner, as apparently he was still in hearings. He didn't know if he would be able to come chat with them, but as he understood it, the speaker was in a legislative meeting upstairs, and he would come down and give them his thoughts on why they made those law changes, at roughly 3:00. So they had a few minutes that they could cover some other material. He asked if there was any further discussion on the legislative plans, as they had a fairly lively discussion, before they broke for lunch, in regards to their opinions of the law. He then made a comment from the chair that he fully appreciated the position that the Democratic commissioners had taken, and again that it was stated quite clearly. He said that he appreciated their editorial, and he supposed they needed to do that as Republican commissioners, as they hadn't put anything out that way before, and perhaps they should. He stated that it was just an observation, that they recognized that this is a point of contention, and hopefully they could work their way through it.

He said that when he took the oath of office, each one of them took it with a different perspective perhaps, however none of them were truly objective in their lives, as they were all subject to the lives they had led. His understanding of statutory law was that they are required to follow it in their guidelines, and so their attempt had been to attempt to follow all of the statutory laws. He said that it was very difficult in this process, but it was interesting to note that the only two, of the nine guidelines, which the statutes talked about, that have very specific directions, were regarding precincts and counties, and the connection with the roads, and keeping precincts whole. They were very specific, it could certainly be shown what they were, and they gave them a remedy. He said that he understood the question of the remedy being tougher than the constitutional requirement. The constitutional requirement was that it only takes four votes to pass a bill, and yet they had an interim step in there, where they were saying here's a remedy, if you want to divide those things, and you have a super majority, you are welcome to do that. The others are somewhat vague as you look at those other seven guidelines. He said as he looks at the guideline not to draw oddly shaped districts, he thinks they all smile at that one, as how do you draw a legislative district that isn't oddly shaped following the contours of Idaho. He said when you look at the requirement to keep communities of interest whole, well, communities of interest by whose definition. As they had heard, you have literally hundreds of communities of interest, and how do you define that. He said that hopefully they could come to some agreement as to what they consider to be communities of interest. He indicated that when you look at the requirements not to protect incumbents or political parties, and yet they are a body that was created in that they

have partisan secure rooms that they can speak in, and it's a very partisan process. Yet those were in their guidelines, not to consider incumbency or parties.

He stated that as you go down through each one of those requirements, the only two that can be clearly demonstrated were the issue of dividing precincts, they know when they divide a precinct, and you also could determine on a map whether or not it was connected by the highway system. He said that this was the crux of the disagreement that they had. He said that hopefully, in the next few days as they discuss that, the clock was running out on them, and he would feel bad if they were unable to come to a compromise that they could all live with. He indicated that he thought it would require some give and take on this issue, and that this was a real tough issue. He said that he clearly understands the colleagues to his left, their attitude, and in their minds they felt that there was strong justification to say we think these are unconstitutional and that we can move on without them, and he understood that. However, on his side, they were trying to follow those statutes (*sic.*), and he thought that they were both legitimate positions, and it was certainly worthy of discussion.

Chairman Frasure said that having gone through all of that, legislatively, obviously they were focused on that. However, hopefully they didn't overlook the fact that they were obliged to pass a congressional line, and that clock was also ticking. Hopefully, at some point in time, they could handle that issue and get it solved. They were two separate issues, that are clearly separate guidelines, and the requirements for the two are separate. Again they had a divided commission, as some of them didn't want to handle that issue at this time, and perhaps it was something they may want to reconsider. He said that it was somewhat difficult when they bounce back and forth between the congressional and the legislative lines, but they are running out of days. With his own schedule, in reality they were down to about seven business days now to solve this. He said that they may want to check, and he did not know if staff had yet, that once they headed into the weekend, which was now the possibility of going into September 3rd and 4th, had they had any conversations at all with the Secretary of State's availability on those days, where they could file a plan with them on the weekend. He asked if that discussion had come up at all.

Ms. Ford indicated that had not come up in a very serious manner. She said there was some time back when he said "you're not going to make me come in on Sunday are you?", and she said "I hope not". So lightly that subject was broached, however she would certainly bring that up with him, in a more serious manner, if it came down to that. **Chairman Frasure** said if they could, that hopefully they would have it solved before. He said that they do have the constitutional ability to function through the 4th, and hopefully they were not there on the 4th, but he thought that they needed to have that contingency clearly defined. **Ms. Ford** indicated that she would definitely talk to the Secretary of State.

Chairman Frasure then asked if they had any discussion on the congressional districts. He said that they had requests for more time to contemplate those, and asked if there was any more contemplation or clarification. He said that they went through a series of votes, and that obviously any plan could be brought back up. He indicated that they actually had one plan still before them, which they had tried to remove from the upfront category. He then inquired as to what the number of that plan was, which they still had under active consideration. As there was some confusion as to the number of that plan, **Chairman Frasure** indicated that it was the last one submitted by a public entity. He indicated that day, they had three more legislative plans submitted, and none of those were submitted by the commission. He said that they observed what they did a little bit, and **Commissioner Moses** had pointed out that the one in the middle of the two by Mr. Durst, by Daniel Loughrey, apparently put a bunch of Democrats in one district, so he must have some republican leanings. Then the other two, of course Mr. Durst had been pretty proficient, and as a former legislator knew the process, and he guessed that he wanted to be a future legislator, so they understood his interests. On the congressional, the last one they had up, still had Lemhi and Custer Counties heading north with the bulk of Ada County, and that was the one that was still under consideration. He said it had been so long ago he didn't remember the C number on that. He indicated that it would have been submitted by the commission, and that should make it fairly easy to sort it out.

The commission reviewed several of the congressional plans, and it was determined that C37 was the last plan that was under active consideration by the commission. **Chairman Frasure** asked if there was any discussion on that plan. **Commissioner Moses** said that he supposed that they could come at these one of two ways; that it's a bad plan unless they consider it good, or it's a good plan unless they consider it bad. He indicated that he was curious if anyone had any objections to this plan, and if so, what they were. **Chairman Frasure** said that he would give a few objections. He said that Lemhi and Custer Counties are over the Frank Church wilderness area, from the 1st Congressional District, and it had been in the 2nd District since the creation of the districts back in 1971. So they were moving those 12,000 people into the 1st District, and also taking 188,000 people out of Canyon County, who had been in the 1st District ever since those districts were created, for the last forty years. And they were taking all of Owyhee County and Canyon County, and moving them to the 2nd District. So as far as the public, what they were doing was, the public just went through elections, and elected a new Congressman for that district, and they were taking roughly a third of the people that just voted that congressman in, and putting them over in the 2nd District. So there were over 200,000 people that they were moving from the 1st District to the 2nd. Then they were moving, in Ada County, approximately 150,000 people from the 2nd District and moving them into the 1st District. He said that overall, for the citizens of Idaho, they were looking at close to half of the citizens of Idaho who were going to have a new Congressman from this plan. He said that gave him a little bit of heartburn that they had two congressional districts that were fully staffed, they had people that man those offices, and through their whims they were going to change that, and disturb a whole lot of folks that are now working for those Federal positions, and change them rather radically. He said you had Lemhi and Custer County from the eastern side of the state, and all of a sudden you were going to shift those folks that were in the 2nd District forever, out. So they were swapping over, roughly in the neighborhood of 350,000 people, from one congressional district to the other, and that's the main objection that he had. He said that the other plans that they seemed to be getting close on were that the requirement was that the 1st District had 60,000 people too many, and the 2nd District needed 60,000 people. So most

of the plans, which were presented from his side, were simply moving those 60,000 people, within Ada County, and disturbing the least number of people going from one congressional district to a new congressional district. So moving 60,000 people, rather than 300,000 plus, seemed to be a bit of a stretch, so that would be the objections he had to this plan.

Commissioner Esposito said that in addition to that, the people in Lemhi County, in order to get to an existing congressional office, would have a six and a half hour drive through Montana, over to Lewiston, to get to an existing congressional office there. Or they would have a five and a half hour drive, on a good day, to get to Ada County directly. In the winter time Highway 21, the only connecting highway, was more often closed due to avalanche, as it averaged about 47 days per year that the road was closed during the winter time. So again, they had people in two counties that are basically cut off from the districts. The only way to get to their Congressman's office, unless they had a Congressman that established an office for those people in those two counties, they would have long drives, either having to go outside of the state, or try to get through roads that are closed by avalanche, or close to a six hour drive through a totally different congressional district. He said that he would also like to point out that Canyon County, getting back to the heart of the 2nd CD, they would have to drive through the 1st CD in order to get to the balance of the 2nd CD. He said that there was a state highway that does basically connect through Owyhee County, but to claim that would be the main travel route would be lacking. He said that he thinks this plan falls so terribly short of trying to get to a basic one person one vote, and more probably critically important was access to their representation, and he thought that this plan fails those tests miserably, and it was just not workable.

Commissioner Moses said that he had listened with interest to the comments on this map, and he didn't know if he had made up his mind whether he thought it was a good map or not, however he said that he needed to hear some arguments other than the ones that he had heard. The fact that some areas of this map, as it's laid out now, were traditionally in the other district, frankly didn't carry much weight with him. He said they were here about change, the state had changed, and it had changed a great deal in the last ten years. He said he was not too concerned about the resiliency of the average Idahoan to figure out who his representative was, particularly when there were only two to choose from. So the fact that they might be confused doesn't ring much with him. He said that the idea that it would be someone different in the 1st Congressional District, that the last four elections have produced a different congressional representative. So those folks were coping with change pretty well, and who knew what was going to happen in the future, but if what they were really talking about was the comfort of the incumbents running in their old districts, that got him no sympathy at all. The fact that a member was used to running in a district and so he ought to have it back, not only struck him as cold, but they got repeated suggestions from the public and the polls, that they would like to see incumbents shaken up a little bit. Sometimes this was the only way it could happen and he didn't think that should necessarily be their objective, but neither should it stop them from doing anything. As far as where existing offices go, those things will change too, once a representative was elected it was up to him to figure out the best way to represent the people that elected him, and if that meant moving offices, there certainly were resources to do that. As far as having to drive through another congressional district, he hardly knew where to begin, he didn't believe that would require a passport, as it's still Idaho. And even if it weren't, they could still get there. Once again, people live in those areas, they are remote areas, they know that, they live there not in spite of it, but because of it, they like it that way, so he didn't know that they ought to be about bringing Ada County amenities to Lemhi County, as that was not a standard that he was sure they could meet.

Commissioner Esposito said that he really appreciated his comments because he found it enlightening that now he was not concerned about the possible confusion for voters, as long as it's Canyon County and other places, but over and over again he had expressed the concern that people living in Ada County could not figure out who their congressional representatives was. So either the citizens of Ada County are somewhat mentally deficient, or else the argument was flawed. He was not quite sure from his vantage point what it was. They had been through this over, and over, and over again, and he thinks the bottom line on all of this, and he believes that he probably has the record on this commission, at that point, about not really caring about incumbency. He said that he does take his point on where the incumbents are was irrelevant, but the fact remained that they did have, in terms of the congressional lines, they did have the tradition, they did have workable maps that got the job done with the least amount of disruption. They did have maps that tie the traditional communities of interest, so when you're really holding a map like this one up to some of the other ones that have been proposed, this truly was a situation that begs for him, at least further explanation about why it was a good plan, because they've heard lots of reasons why it wasn't but at this point, he was not sure what was being accomplished here. **Commissioner Esposito** thinks they need to move on, they need to have the votes that they have talked about. He said that he knows that **Commissioner Moses**, and his fellow Democratic commissioners, were not willing, at this point, to vote on a congressional plan. They've heard them loud and clear on that, and they can't force them to vote, and they would just see how this plays out at the end. Now to segue to an area where he thought they could get to a vote, if there was no objection from the committee, at this point to move to move off of the congressional plan, unless there was a call for a vote.

Chairman Frasure indicated that they had discussed L37 fairly thoroughly, and he certainly had some enlightenment today, and he was certainly prepared to vote and that **Commissioner Moses** perhaps had now convinced him, and if he would like to make a motion, he would certainly entertain that motion. **Commissioner Moses** said that all he wanted to say, in response, was that he regrets the personal nature of the observations. **Commissioner Esposito** replied that the personal observations were the statements that he had made continually in these hearings, and he was just stating things that are on the record, a matter of the public record, and he was just trying to point out that if they were going to move this process forward they needed to recognize those statements. He said that they needed to try to move through this and get on with the business at hand. He said that he apologized if there was any offense taken, but they were his words, and words to him, along with laws, had meaning and had impact.

Chairman Frasure then asked for any motions or further discussion. As there were none, he stated that the request was to move off of the congressional lines at that time, and asked if there was an objection to that. As there was no objection he said they would put that aside. He said that one of the co- sponsors of the legislation, on the issue that they appeared to be at a disagreement on, had entered the room to help them better understand this issue, and he asked former Senate Pro Tem **Robert Geddes** to come to the podium. He said that they appreciated him taking the time, as he knew he was busy with the tax commission, but he was one of the co-sponsors on that legislation, and they have some sincere disagreement on what his legislative intent was, and what he had in mind when he passed that. He said that if he would enlighten them, they would appreciate it.

Mr. Geddes said that it was an honor for him to be there. He introduced himself, and said that he had forsaken his former legislative career, his district, and his friends. He said that he was now a resident of Meridian, and he really didn't have the vested interest, to the degree that he had before, as Senate Bill 1184 was brought forward in 2009. He said he wanted to first tell them why Senate Bill 1184 came in 2009. He said the reason was that they simply didn't get it done in 2008. He indicated that in 2008 he and **Senator Clint Stennett** spent considerable time trying to anticipate some of the concerns, that they had been dealing with, for now a couple of months. They had each gone through the reapportionment and redistricting, and felt they had somewhat of an understanding as to what could be done to improve the process, and they felt that in 2008 they would probably have a significant advantage, because the feelings and emotions would not be as significant as they would have been, if they had delayed that to a point closer to the redistricting effort. Unfortunately, what happened between 2008 and 2009 was that **Senator Stennett** was diagnosed with cancer, and was unable to participate in the 2009 session. So he asked them to take it on his appeal, that they did work closely together on this legislation, that they shared some common concerns, and they did share what they thought was a potential advantage of doing something then, to enhance and make their jobs a little bit easier, whether that's the case or not, he said that time will tell. In the 2009 session **Speaker Denney** and he, serving as the President Pro Tem of the Senate at the time, brought this legislation forward.

He then read, for the commission, the Statement of Purpose for this legislation.

The Idaho Constitution, Article III, Section 2, requires that the legislature shall enact laws providing for the implementation of the provisions of this section, including terms of commission members, the method of filling vacancies on the commission, additional qualifications for commissioners, and additional standards to govern the commission. This legislation focuses on the redistricting process to protect and preserve communities of interest in the following ways: 1. Counties shall not be divided whenever possible; 2. Counties or portions of a county in a district shall be directly connected by roads and highways to establish communities of interest; 3. District boundaries and local voting precincts shall remain intact as much as possible.

Mr. Geddes stated that was the goal and the purpose of this legislation. He said that it was his experience, having survived and maintained his seat through the last redistricting effort, that the communities of interest, in his opinion, should be perhaps the paramount goal of the commission. That was what made Idaho unique, and that was what protected the intent of the U.S. Supreme Court when it talked about one man one vote. He then gave them some examples; he said that when he first entered the legislature in 1995 he represented Franklin County, Bear Lake County, Caribou County, and Oneida County, which were then the contents of District 28, at the time. In that process they determined, and he determined, over his experience there, that because of the geographic nature of those counties, they did in fact serve a community of interest. His constituents resided in the same judicial district, they resided in the same transportation district, their school districts played each other in athletics, they had a number of commonalities because of the dynamics of that population, that brought those communities together, and they shared one community of interest. In the last redistricting, his district was changed such that he then represented Franklin County, Bear Lake County, Caribou County, the eastern portion of Bonneville County and Teton County. That was a significant deviation from what he interpreted as a community of interest. Teton County shared very little in common with the other counties in that district, and it was because there was no road connecting those counties. And as a result, commerce, business, industry, athletics, judiciary, transportation all went someplace else. So it was difficult, not only from a geographical standpoint for him to adequately represent Teton County, it was difficult for them to recognize him as someone who could identify them, and share their concerns and interests, from a legislative perspective. Another thing that occurred in that point in time, he continued to receive calls from Oneida County residents, they identified with him, and he identified with them. And through the entirety of his legislative career he continued to get calls from Oneida County; people, elected officials, to have their interests represented in the Idaho State Legislature. He said that he took that as significant. When he realized that he was not going to be involved in the next redistricting effort, he gave **Chairman Frasure** some advice. He said go back twenty years, and look at how those districts were formed, and what communities involved in each of those districts, and if you can accomplish that task, you will be pretty close to having a good district modification in place. Knowing that populations would change, but the communities of interest still would remain intact, for the most part. He said that he thought it was interesting, that as they brought this legislation forward, that many of the same discussions that he has been reading that they have been having in the newspaper, are the same discussions that they had during that effort.

They realized that some of the nine criteria, that established their process are difficult to follow, in fact in some cases it didn't even make sense. Districts and district boundaries should be not unusually shaped, well how do you do that in a state that's shaped like Idaho, it just simply cannot happen. And so there had to be some flexibility in their efforts to be able to accommodate the criteria that they had been asked to address, and put in their vision of what the districts should be. At the last redistricting, because of the uniqueness of his district, there had to be some tough decisions made with respect to sitting legislators. A lot of legislators simply were not located in the right area of their new district, or geographically such that they could anticipate being elected again. That happened in his district, he was faced with a challenge by **Senator Stan Hawkins**, someone who had served much longer than he had, and when it came down to it guess what the

decision was, he decided simply not to run. And the reason was that he was not geographically located, or tied into the district that he now represented, and he anticipated, and they discussed this, that the majority share of the legislative district that they were called to serve in, District 31, would be skewed, and lean toward **Mr. Geddes'** electability rather than his.

He said that he faced that with the last redistricting, and he made this promise to all of the sitting legislators, that when it was all said and done, each and every one of them would be in a legislative district, and would still have an opportunity to run for election. However that being said, the districting did make a difference and it did create some challenges for many incumbents. He appreciated the fact that they had tried to avoid that, and from what little he had read and looked at the plans, he thought that they had done a pretty good job of not making legislative incumbency their priority, and he congratulated them for that. In the effort of getting the legislation passed there was a lot of discussion, knowing that it might ultimately come to the circumstance where not every county placed within the same legislative district would have a highway or a road that connected those two counties. And so they created a provision where they could override that shall, and make that somewhat flexible, so that ultimately they could be successful, and he thought that was significantly important. Now many said, and it was said during the debate of that legislation, that they didn't need that provision because number two on the criteria governing plans was that to the maximum extent possible districts shall preserve traditional neighborhoods and local communities of interest. He said that **Senator Darrington** served on the original committee to identify the provisions, and the criteria by which the redistricting commissions would function. **Mr. Geddes** then read his quote from the minutes of the Senate State Affairs Committee minutes from April 10, 2009: *Senator Darrington said in support of Senator Geddes, the committee for developing the criteria for this plan was chaired by him prior to the last redistricting. He moved "community of interest" up to second on the list, which the commissioners did not take into account.* **Mr. Geddes** said that this was talking about the last redistricting effort, so he surmised from that, **Senator Darrington** was really saying that as you go down that list of nine criteria, they fall somewhat in order of priority and importance. He wanted to move community of interest to the top, and make that the number one priority; apparently his efforts were not successful. He indicated that pretty much covered the reason that they had, and the only thing he would add, is that both in the Senate and the House, when Senate Bill 1184 was brought forward, it was not decided based on partisanship, there were members of both parties who supported this bill. He found that quite gratifying because, at that moment in time, the legislature truly did want to make their jobs easier, and they wanted to make it such that they understood the priority.

Mr. Geddes said that many have talked to him in his 16 years of service in the senate and talked about the fact that this was an absolute mistake to take the redistricting authority away from the legislature, and put it in the hands of a citizen's committee. He had mixed emotions on that, but one thing that he does think he can accurately state, and that is that when this was in the hands of the legislators, they fully understood the importance of protecting and preserving communities of interest, perhaps more so than what has been demonstrated ten years ago and now, in his opinion. He said it does bode well for protecting the interests of not only someone who has a legislator that they identify with, but think about this, if you are districted into a district that does not have commonality with the rest of your geography what would the likelihood be of you even being able to be elected. And that, in and of itself, he thought somewhat skews the one man, one vote concept. He said that he thought, as they contemplate how best to implement the criteria of our state law, 72-1506, he would hope that they place major emphasis on that provision. He said that a lot of the things that we do, we do based on the majority, and the things that he thinks of as being most significant, raising taxes, changing the constitution, those require a super majority to offset those provisions and to change those provisions, and he thinks that this should be ranked right there with initiatives and concepts of that magnitude. To say that if you chose to connect counties that don't have commonality, then it should be a conscious decision, not just fitting the parts of the puzzle that you are trying to fit together. With that he said that he would be happy to stand or answer any questions that they may have.

Commissioner Kane said that she sees these changes that were made back then, and it looked like the strike outs on criteria #5, that they struck out the sentence *counties should be divided into districts not wholly contained within a county only to the extent reasonably necessary to meet the requirements of the equal population principle*, and she asked why they would strike that. **Mr. Geddes** said that he thought the only reason was that they tried to simplify that, and make it as clear as possible, because at the front of that provision it says *division of counties shall be avoided whenever possible*, and they didn't think they had to go into great detail to explain what that meant or the principle that they were actually trying to accomplish.

Commissioner Moses thanked **Mr. Geddes** for his time, and said that he wanted to move away from the roads for a moment, and talk about the provision of the law that has to do with not dividing precincts. He said that the reason he wanted to bring that up was that the law states they should follow precinct lines, however in their hearings they were importuned by county clerk, after county clerk begging them to ignore the lines, as they are obsolete, they will be redrawn as soon as they are done, and that to the degree that they follow the old lines they lock them into things that they may not want to do. In fact one clerk actually came to them in writing and asked them to redraw his lines. He asked what the reasoning behind locking in outdated precinct lines was. **Mr. Geddes** said that he thought the reason there was consistent with the rest of this, and that was to protect communities of interest. He said that precinct boundaries also should be considered based on communities of interest, and they felt that if those precinct boundaries had been put in place in the past, and that there was some value in protecting those for the future. He noted that they also provided a provision so that if it does become important and necessary that you change that, there is a provision for you to go through to allow that to happen. So, once again, they were trying to emphasize the aspects of protecting and preserving communities of interest, but also giving them the flexibility to change that, if in fact, it couldn't happen or couldn't be done expeditiously. **Commissioner Moses** then noted that the override provision had been the source of some debate there in the last couple of hours, and he wouldn't bore him with that now, except to say that if it was meant to give them an

out, it has turned out to be exactly the opposite. **Mr. Geddes** indicated that was unfortunate because that certainly was not the intent of this legislation, it was meant to bring people together, and not drive the commissioners apart.

Chairman Frasure then said that he would like to redirect that questions a little bit. He said as these county clerks came in, their concern was that ten years ago, especially here in Ada County, Canyon County, Twin Falls County, and a number of them, where the commission decided ten years ago to follow city boundaries, and they came in and followed those city boundaries, and before the ink was dry on the paper, many cities had changed their boundaries already and those were archaic, old numbers. They ended up in the situation where literally there, with new subdivisions going in, they had to make determinations whether or not the line would actually go through the home's structure, and they would have to determine which district it was in. He said that a lot of their pleading was to follow natural boundaries, which the testimony they heard over and over again from county clerks, was to follow roads, to follow the guidance of a distinct road, rather than follow city boundaries. So a lot of them were stuck for ten years with incredibly poor precincts because they followed city boundaries. He then asked if that testimony ever came up in his committee hearings. **Mr. Geddes** said not that he could recall, although he had heard a lot of discussions regarding that, and his perspective has changed somewhat, because he now lives in a different part of the state, from the standpoint of some of the discussion that they were engaged in when he first arrived. He asked, did it concern him that it might be difficult for him to determine if he resided in the 1st Congressional District or the 2nd Congressional District, not at all. Will he ultimately find out which congressional district he lives in, absolutely. He said from his experience, he always lived in the 2nd Congressional District, and **Congressman Simpson** was always his Congressman. However if he ever had an issue where he need to talk to the 1st Congressional Congressman, not once, not ever, did that individual ever say *where do you reside, before I represent you tell me where you live*. He said he doesn't think that happens in Idaho, he thinks that is one of the hallmarks of our state, that when we elect officials to represent us, they do their very best to do exactly that, and they try very hard to do that. He thinks that by living in Ada County, he can play that game more effectively now, than he perhaps could, although it was never a problem in the past. He indicated that he likes that, he likes the fact that our largest city, the location where our most prominent population resides, has access to both congressional representatives. He said that he thinks that's significantly important because that makes the number of districts within the constraints of Boise and the Treasure Valley, somewhat a common community of interest, and that's a positive, that's an upside for us to have a voice and access to those elected officials. He asked if it was easier if they have standardized geographic boundaries that divide our districts and our congressional districts, absolutely it is. He said that he knows that in some cases, in the last redistricting effort, there were irrigation ditches that were identified as the line of demarcation between legislative districts, and in most of those cases, or in a lot of those cases, the irrigation ditches no longer existed. However they found themselves to be on an old map that was used to make some geographical boundary distinctions between one side or the other, and that makes it difficult for people to understand. So he likes the idea of using established highways, landmarks that not only will last for ten years, but maybe even last longer than ten years.

Commissioner Andersen indicated that, one area that has caused him a lot of concern in dealing with this, is that assuming that they have a map that meets the criteria that they needed to, or could adopt, was it his understanding that they would have to go through and have at least a five vote on all of those areas that may not be connected by a road, or maybe divide a precinct, prior to voting on the final map that only requires four votes. **Mr. Geddes** answered that is the way that he reads the law.

Commissioner Kane then indicated that she did not get the answer to the last question, and **Mr. Geddes** said that any time you have to divide a county, or connect a county that's not connected by a road, that says that they shall be connected, there is a provision that says with the vote of five members of the commission, that provision can be circumvented, and the same language is used with respect to precincts. **Commissioner Kane** asked if he was talking about the waiver provision that *when the commission determines, by an affirmative vote of at least five members that it cannot complete its duties for a legislative district by fully complying with the provision of this subsection, this subsection shall not apply to the commission or legislative redistricting plan it shall adopt*. **Mr. Geddes** indicated that was how he read that.

Commissioner Kane said she was just a little confused in reading the house minutes from that time, as **Representative Luker** expressed a concern, and it was about that waiver provision. She said that the minutes say that **Representative Luker** had one concern regarding the wavier provision in subsection seven and nine that gives the commission the power to waive the subsection completely, and he would prefer making a change in language that would be more specific about a particular district, rather than throwing the whole rule out by the decision of the commission. She indicated that in other words he didn't want to leave it just for the commission to vote on it wholesale, he wanted to do it district by district, so he proposed a change, and amendment which got voted down, so she was assuming that was what the intent was then to make a more wholesale wavier provision. **Mr. Geddes** said he was not sure exactly what **Representative Luker** would have envisioned in his amendment, however based on the fact that it did get voted down by a vote of 7 to 9, the legislation as they see it is what went forward to the House of Representatives, and was ultimately passed and signed into law.

Commissioner Esposito thanked **Mr. Geddes** for bringing his expertise to this, and asked him about **Commissioner Kane's** last question. He said he was not asking him to interpret what **Representative Luker** was thinking, or the other members that had voted it down, however was it the intent, at least on the Senate side, that the votes would be on an individual variance or district by district basis, and could that be possible why it was voted down as unnecessary. **Mr. Geddes** said that he thought was exactly the case, plus it was not lost on the legislature that they have an enormous amount of work to do in a relatively short amount of time. He said that he was not sure what **Representative Luker** meant when he said that he would prefer making a change in language that would be more specific to a particular district. He said that he didn't know what that means. He said that he does know that as you assemble the State of Idaho, and try to fit those thirty five puzzle pieces together, that you are probably going to find one or two places where you have to adjoin counties that

maybe don't have a highway or road connecting them. He noted that the reason that they don't, in his opinion, is because of our geography. If it was easy to build roads we would have more roads but we have to do a lot of things, we follow rivers and other geographic terrain to get to where we need to go, and in making some of those connections it just isn't practical, or possible, or maybe even necessary to have a road there. And as a result of that non existing road, or that geography, that would preclude the road from being built easily, there has been a community of interest develop, going in a different direction. He gave the example of Caribou County and Bonneville County. He said there is a county road there, they call it The Bone Road, and you can make it there during some months of the year. His experience is that one spare tire generally is not enough to make that trip. He said that you read constantly, during the summer months, about people being stranded out on that road, waiting for a day or so, for someone to come by to give them assistance and help. As a result of that, that portion of Bonneville County has developed a community of interest with Idaho Falls. On the other side of the county line, as you get into Grace Lake, and the Wyann area, that area has developed a community of interest closely aligned with Soda Springs. And so geographically that's what draws the distinction, it's just where can I get to the easiest, and share that commonality of community of interest.

Commissioner Esposito asked **Mr. Geddes** if he was involved in the original drafting of the constitutional language that was put before the public, and **Mr. Geddes** said thank goodness, no he was not. He said that happened just a few years before he got there, however he had lived with it ever since.

Commissioner Moses then asked that a hand out be distributed to **Mr. Geddes** and the commissioners. He noted that Mr. Geddes had mentioned that there were one or two places where these road things come into effect. He said that they, of course, had the obligation to implement that, so they had to look in to how many places there were, and he referred to the handout, and indicated that it is actually quite a large number of counties, and more than half of the land mass of Idaho. He said he was wondering if that was part of their deliberations, and if so, how it was handled. **Mr. Geddes** said he did not know that they deliberated on that, but he thought it was a general understanding, that as you look at that large land mass in central Idaho, it was going to be understood that you would have to make some variations, and some deviations from that provision of the law. Simply because in many cases there are no roads there, not only is there not a good community of interest, there is no road connecting a lot of that geographical land mass. So did they think that they could do that without making any deviations, he personally did not. He said that he had thought that they would have to go there, but he thought that the restriction that they put in place, the guidance that they established to allow them to deviate from that restriction, would still allow them to put communities of interest connected geographically, as perhaps a higher priority, than what it was given in the previous redistricting effort. **Commissioner Moses** indicated from what he could see they ended up with a little bit larger problem than they may have anticipated.

Commissioner Esposito then asked further about legislative intent when it came to the roads. He said if one looks at this map (Commissioner Moses' handout) they would see basically it is calling out where counties within a legislative district connected by highways, where there are portions of those counties that are not directly connected, but there are other roads through the counties within that district that tie them all together. He said that his question was in terms of the legislative intent, and would it suffice to say that as long as there is a connecting state highway that connects the counties within the district, was it necessary that all of the counties had to have a direct connection, or would it suffice so long as they connected through one or the other additional counties that had a highway. **Mr. Geddes** said that was a difficult question for him to ask because he could recall and revisit that with respect to what he contemplated. He said that where he resided in Caribou County, representing District 31, in order for him to arrive at the northern most part of his legislative district, which was Teton County, he had to physically drive through five other legislative districts to get there, or else leave the state. That created a difficult situation, and there was more than one time when he would leave his employment at 4:00, drive to Driggs to get to a meeting by 7:00, and arrive back home at 2:00 in the morning. **Commissioner Esposito** then rephrased his question, and said that recognizing the problems with District 31, with no connecting highway, however if you looked at some of the other districts, on the map, there are the connecting highways with all of the counties, so there is a way to stay in the district, to be able to get to the entire district. So his question was, as long as that's possible to stay on state highways, and get to the entire district, without going outside the district, would that meet the legislative intent? **Mr. Geddes** answered that in his opinion, having drafted that legislative intent, it certainly was better than not having something better, and that would be a highway connecting each county. He said he was not so concerned about that, however in order to meet the letter of the law, as it was established, that may still take some action, by the commission, to allow that provision to be taken into account.

Chairman Frasure said that he was still baffled by the purpose of this map. He indicated that when he looked at Lemhi County, they have a little red line at the bottom, but there was a state highway that goes directly from Lemhi County to Butte County, and there was a state highway that goes directly from Lemhi County to Custer County. He said that there was actually a state highway that goes directly from Lemhi to Clark County, so he's a little surprised that the line is there. He said he is not sure what function this map actually served, and it says affected, he thinks Caribou County would also be affected, but it isn't highlighted for whatever reason. **Commissioner Moses** said that he called to an error that he also noted, and was going to call attention to, and that Caribou, Bonneville and Owyhee should also be shaded on the map.

Chairman Frasure indicated that his point was that they could color the entire state this color, to say it was affected by the state highway system. He said they could go up into Boundary County, Bonner County, the entire state highway system is what it is, and when he looked at it, it is a requirement that Idaho County be connected with Nez Perce County. He said that the point was that this map really didn't serve any useful purpose that he could see. He said they could color the entire state, because it's all affected by the state highway statute. When

he looked at it, Fremont County would also be included in this situation, he could paint the entire state, as it was affected by the statute requirement. The point is, when they start looking at a legislative district, and he said let's use Caribou County as an example, because that's one that they were all familiar with. They had four public hearings in eastern Idaho, and at those four public hearings it was overwhelming, there was virtually no one that spoke in support of District 31, yet they see that before them again. He said that Caribou County is not connected with Bonneville County by the state highway system; it is connected directly to Bannock, and Bear Lake. If they created a legislative district, and he was trying to follow the logic of this colored map, was it ever the legislative intent that every single possible county connection had to be connected in all four directions. He said they could use Camas County, because it's right in the middle, as an example. There was a road that runs all the way through Elmore County, Camas County, into Blaine County, and another state highway that runs through Gooding County that obviously goes over into Lincoln, and he was not sure that this map was perhaps trying to imply that somehow, because there isn't a road between Camas and Lincoln, somehow then this law would make that an invalid district if you included Camas, Blaine, Lincoln, and Gooding. He said that is a current legislative district, and asked was it their intention that all four counties had to be so interconnected. He said that, to him, that's a bit of a stretch, but **Mr. Geddes** had drafted the legislation, so he was just wondering what the intent was.

Mr. Geddes said that his intent was that you should be able to maneuver from one point in your district, to another point in your district, without leaving your district.

Commissioner Moses said that the map was simply meant to depict every county in Idaho which is affected by this statute, which is to say that it shared at least one border with another county, not crossed by a state or a federal highway. **Chairman Frasure** said that it might be a bit of a challenge but he was not sure that he could find a single county that would not be affected by that statute. He said that maybe that enforces his argument, or takes away from it, but if that was the case there was not a road that connects between Twin Falls and Owyhee County, there is not a road between Owyhee and Ada County, so both of those counties were affected. There is not a road between Gem and Canyon County so they are affected, so if what they are saying is there is a state road that connects every single county, with an adjacent county, the answer would be no, and that was clearly not the intent of the law that he could see. He then asked **Mr. Geddes** if he was reading that correctly, and **Mr. Geddes** said that he thought he was. **Commissioner Esposito** then thanked **Chairman Frasure** for making the point and clarifying that.

Chairman Frasure then indicated that one of the issues that they were breaking down on, was also was that they had created new law for them. He said that he had served under **Mr. Geddes'** able leadership for years as a committee chairman, and that hopefully he did a decent job. He indicated that in trying to implement the law, half of the commission had taken those requirements very much to heart, and any time they proposed a plan that violates the statute, then they had asked the commission to vote on that decision, because they were violating it, and they had tremendous resistance to taking those individual votes. The other half of the commission had submitted plans that divided multiple precincts and multiple counties. He asked what his intent in was, as they have so far taken the position that when they violate it, as they present the plan, they were going to ask for the waiver. He asked if that was what he had intended when he passed the legislation. **Mr. Geddes** said that he had accurately characterized what the intent was from his perspective, and that is knowing that there are some instances where counties are not connected by state highways or interstate roads, they would have to have the consensus of a super majority of this commission to establish that as acceptable.

Commissioner Kane thanked **Mr. Geddes** for coming. **Chairman Frasure** added that they appreciated him coming in, and asked his help on one more point. He said that had been the big one, and that they kind of waltzed around it, and it had put them in a tough situation as a commission, and they were trying to work their way through this issue. He said that it is the opinion of half of the commission that the statute is unconstitutional, and will not hold constitutional water, because it requires five out of six of them to support it, while the overall plan, the constitution says, requires just a simple majority, just four of them to vote in that area. He said that they know that it's not been court tested yet, and it's a relatively new law, so they don't have any guidance from the courts on that particular statute. He asked if they anticipated that potential problem as it had become a major issue for them. He asked what were his thoughts or intentions on drafting that super requirement, when it takes a simple majority of the commission to pass a final plan. **Mr. Geddes** indicated there was some discussion on that, and he recalled that it was **Senator Davis** who proposed that it should be at least five commissioners, he then read from the minutes of the Senate State Affairs Committee, and said that was what occurred, **Senator Kelly** said that she understood the frustration in regard to the way **Senator Geddes's** district was laid out. *Her district is different with two very distinct characteristics, urban areas are not the same. Senator Kelly stated that she cannot support this legislation. This appears to be micromanaging a commission that already has direction and guidance in place. It is very specific to roads and requires a specific vote to make things happen which she believes has the potential for conflict with the constitutional provision. Senator Stegner stated that on a six member commission two thirds is also the simple majority. Statute requires any final action to be approved by two thirds, the reason that a five member requirement is added is to provide for more flexibility it is not a restriction. He understands why there are concerns but it really is a compromise for the commission to have some ability to work within the parameters and to not have rigid requirements that make it impossible to satisfy those requirements. Senator Davis commented that the language contained in subpart seven is just a waiver of the rigid standard that are contained there, it is not a modification of the constitutional standard for adopting a plan.*

Chairman Frasure said that he appreciated the time that **Mr. Geddes** had taken, and said that it helped them understand more of the direction that it came from, and as **Commissioner Kane** had indicated, they certainly appreciated him taking the time to come in and enlighten them on this issue, because it's a tough one for them.

Mr. Geddes said that he hadn't turned around to see if **Speaker Denney** was there because he was sure that he could shed some more light on some of the discussions that were on the other side of the rotunda. **Chairman Frasure** indicated that unfortunately he did not see him, so he may be a one man show that day, but his perspective as the drafter of the legislation did help them understand the legislative intent because they were struggling with that particular issue. **Mr. Geddes** then wished the commissioners good luck in their efforts.

Chairman Frasure then indicated, if there was no objection, that he would like to go at ease for ten minutes to see if they were going to have a chance to hear from the Speaker, and if not then they may be heading towards adjournment for the day. He then called the commission at ease until 4:05p.m.

Chairman Frasure called the commission back to order. He said that apparently the Speaker was tied up, and that he thought they had heard enough from **Mr. Geddes**, and he thought that they got the legislative intent. He said that he wanted to thank the staff, he said that it was very nice that they put all of that in one place, so at least he understood what the logic was, and at this stage with the Speaker not available, they would just continue on. He said that they heard from one of the co-sponsors, and that was probably adequate, unless someone wanted to, they would be fine with that, and he didn't think they needed to hear from the speaker. With that he said they were back to where they were on consideration of the plans, and they were getting close to wrapping this up for the day, and he called on **Commissioner Esposito**.

Commissioner Esposito said that he would like to return to L38, and that he had a motion on the table to vote for the variance on the on precinct, so he would like to return to that and call for that vote. **Chairman Frasure** indicated that prior to going at recess he did have that motion and they did hold it. He said that he didn't know if that had helped, getting the legislative intent, and what the legislature intended to do with these provisions, however they did have a proper motion, and that is to vote for a waiver of L38, in regards to the one precinct in Bonneville County. He said that the motion was to approve the waiver of section 34-306 (*sic*), in regards to the precinct, and he reminded the commission that this would require a vote of five commissioners to agree to waive that requirement in regards to this.

Commissioner Andersen asked if they were going to have any discussion on this. He said that he appreciated the presentation that was made earlier, and he said that a statement was put on his desk, and he assumed that everyone had received one, from the Ada County Commissioners. He said that it states; *Precincts will be Redrawn in 2012 - As county commissioners, we are tasked by I.C. 34-301 to establish precinct boundaries every two years. With the recent implementation of consolidated elections this past January, the importance of precinct boundaries has grown exponentially. In order to accommodate the addition of schools, cities, fire districts, we will be starting from a clean slate when we draw our lines. We encourage you to do the same. While altering precincts requires a vote, it should be unanimous in Ada County; as precincts will be redrawn next year.* So again, **Commissioner Andersen** said that he thinks it's a situation where they don't really need to address that at this point, as he thought it would be addressed in the final map.

Commissioner Esposito said that, once again, he thought that they heard loud and clear that the redrawing of the precinct lines was up to the county clerks. He indicated that it was not their job to be doing that, as much as the county commissioners, and the Ada County Commissioners would like them to do their job for them. He said that he would maintain that it was not for them to be redrawing their lines as they are following clear road boundaries and existing precinct lines, and what they do with the precincts inside those boundaries of the district was up to them. He said it was unfortunate, that they had pointed out time and time again, especially Canyon County and Twin Falls County, had lots of problems with their precincts. But he would also maintain that they had ample opportunity, over the last ten years, to fix those precinct boundaries, and for this commission to then endeavor to get into the business of redrawing precinct boundaries for each one of the counties that have approached them, would not be what they were chartered for, and it would be folly on their part. He said that he was going to come back to the direction that the constitution and the legislature had given them. That if they were going to split a precinct, that they go with the required vote, they had a vote in front of them, it's unfortunate that Ada County did not avail themselves of redrawing precinct lines, and he believed that they actually had the opportunity this spring to do that. They chose not to, so be that as it may, the issue before them was of splitting a precinct over in Bonneville County, and he would like to proceed with the vote unless there was further discussion.

Chairman Frasure observed that this particular clean up was going down a four or five lane highway as he understood it, and it eliminated the old ditch bank that it used to follow. He said he didn't know if the ditch bank even existed any more. He said this was following exactly what the county clerks had asked them to do, and he would hope that any waiver they requested would follow natural boundaries and conform to the requirements that are contained in 34-301 (*sic*). This was just a cleanup, again they would see very few precinct splits from his side, or provisions where the road issue was violated. He said that this was simply an attempt to follow the statute. He said if it was voted down, they understood that it is voted down, and they would not make that change. He said that the power does resided with the commission, and it did require a vote of five commissioners to approve the division of that precinct, and to follow the road in Idaho Falls. He said that this had been before them for ten days now, and they had delayed all day on it. As there was no further discussion, **Chairman Frasure** pointed out that it did require a five out of six vote, and he requested that the secretary read the roll. The motion failed with **Commissioner Kane**, **Commissioner Moses**, and **Commissioner Andersen** voting no, and **Commissioner Esposito**, **Commissioner Finman** and **Commissioner Frasure** voting yes. **Commissioner Kane** commented that she was voting no because she thought it was a preliminary thing, and they did not know if this plan was going to be one that they were going to deal with in the end, and as their position was pretty clear, that they don't have a problem with waiving any of these five person rules, however she was going to vote no because she didn't think it was necessary to do it at this point, and she would be glad to do it when it comes down to developing a plan and voting on the

plan. **Commissioner Moses** said that, without reference to the merits of the proposal, but only because of procedural deficiencies he voted no.

Chairman Frasure indicated that less than five had voted in the affirmative, so this request to waive the statute was not granted, and had been defeated. He said that the procedure on this, it was pretty clear from the testimony of **Mr. Geddes**, that this was meant to be a rare event, and not just an overall thing. He said that procedural wise he thought they were flying right in the face of the statute to say that they were going to wait and vote 36 exemptions all in one vote. He stated that they carefully needed to consider each one of these, and if they didn't like it, they could certainly vote them down, and go on. He said with that, the motion had been defeated and that waiver had not been approved and so they would follow the statute.

As there was no further business to come before the commission, **Commissioner Andersen** moved to adjourn until 10:00 the following morning. As all were in agreement, **Chairman Frasure** adjourned the commission until 10:00 a.m. the following morning.