

MINUTES
Approved by the Commission
Commission for Reapportionment
Wednesday, September 01, 2021
9:30 A.M.
State Capitol Building, Room WW17
Boise, Idaho

Members: (Commissioners) Cochairs Bart Davis and Dan Schmidt, Commissioners Thomas Dayley, Nels Mitchell, Amber Pence, and Eric Redman; (Commission Staff) Paul Boucher, Elizabeth Bowen, Keith Bybee, Todd Cutler, and Terri Kondeff

Absent/Excused: None

Presenters: Ron Beitelspacher, Randy Hansen, and Dr. Gary Moncrief

Also present (Signed in): Anna Azallion, Clark Corbin, Jason Hancock, Ernie Moser, Gray Murry, and Terrel Tovey

The meeting was brought to order by Legislative Services Office (LSO) Director Terri Kondeff at 9:32 a.m. A silent roll call was taken. Secretary of State Lawrence Denney read the order establishing the Commission for Reapportionment and administered the oath of office to the commissioners. **Commissioner Redman and Commissioner Mitchell moved to elect Commissioners Davis and Schmidt as cochairs. The motion passed unanimously by voice vote.**

Opening Remarks and Introductions

- Cochair Schmidt stated that he and Cochair Davis would try to alternate chair duties, but that the schedule may need to be flexible.
- Director Kondeff provided an overview of the agenda.
- Cochair Davis recognized the elected officials in the audience and asked whether they would like to be heard. Bannock County Commissioner Terrel Tovey, from the audience, stated that he could comment if provided the opportunity, but would hold comments for another time.
- Cochair Schmidt stated that the commission would encourage as much input as it can.
- Director Kondeff introduced the commission's nonpartisan staff members. She then provided a brief overview of the commission's finances, to be covered in more detail later.

Presentation by Dr. Gary Moncrief

- At 9:50 a.m., Director Kondeff introduced Dr. Gary Moncrief, who began a [presentation](#) on the history of redistricting in Idaho. Dr. Moncrief articulated the difference in meaning between the terms "redistricting," "reapportionment," and "equipopulous." Dr. Moncrief then discussed the significant court cases in Idaho and in the United States that impact redistricting. He also covered key issues such as justiciability, discrimination, and other legal issues. Dr. Moncrief then defined what constitutes equipopulous districts, adding the reasons backing deviation standards in legislative and congressional districts. He highlighted the case *Reynolds v. Simms* as an important case in the field of redistricting and gave a history of the 10% deviation in legislative districting, and the 1% for congressional, citing the "tolerable" limits for the court's standard. He noted the difficulties and complications in the Legislature while the Legislature handled redistricting, including fights, floterial districts, multimember districts, and the creation of the redistricting commission in the process. Dr. Moncrief continued by briefly describing the work and results of the 2001 and 2011 commissions, noting the plans and what the courts accepted and rejected. According to Dr. Moncrief, redistricting was at least as contentious as during the time when the Legislature performed it, and no state that ever adopted a commission returned to the old system. He described types of

independent commissions used by different states, noting the use by mainly western states, the recent adoption of commissions by others, and appointments and member selection. Dr. Moncrief explained six factors that he argues make redistricting different in the West and noted concerns particular to Idaho, including its odd shape, population, and legislative setup. He contemplated the idea of different means of representation through splitting legislative districts in half for House of Representatives elections, allowing representatives to reach more people.

- Commissioner Mitchell questioned if the commission had the statutory ability to do that. Dr. Moncrief replied that he wasn't sure whether the commission had the ability or whether it was constitutional but wanted to add the idea as a legacy.
- Cochair Davis was intrigued by the idea of dividing districts in half and asked if states that have done something similar had deviation standards as well. Dr. Moncrief replied that states did it generally because it was easier but also commented on the conflicts it could create as well.

At 10:47 a.m., Cochair Schmidt recessed the meeting until 10:55 a.m.

Presentation by Brian Kane

- Mr. Brian Kane was introduced, along with his colleague Megan Larrondo, from the Attorney General's Office. Mr. Kane then gave a PowerPoint presentation on the legal requirements of Idaho's redistricting process and provided an overview of the topics he would discuss. He began by noting sections 72-1501 through 72-1510, Idaho Code, the legal statutes that govern the commission, and noted that the members of the commission cannot run for legislative office within five years of serving on the commission and cannot serve on future commissions. Mr. Kane then identified the requirements for the Open Meetings Law. He discussed how action items are identified on meeting agendas, the processes to amend agendas, quorum requirements, and information about members being present to vote. Mr. Kane covered legislative redistricting requirements, outlining the one-person, one-vote rule, as well as the rules for population deviation and achieving minimal county splits, noting minimal county splits as an Idaho constitutional requirement. He described the importance of Section 5, Article III of the Idaho Constitution to the commission. Mr. Kane then discussed the possible outcomes of a plan being accepted or rejected by the court.
- Cochair Schmidt expressed that his understanding was members could not run in districts of which they drew lines for and inquired about congressional lines. Mr. Kane confirmed that they cannot run for a state office if they serve on the commission but noted that federal offices might have different requirements.
- Cochair Davis inquired if a commissioner would be barred from serving as a substitute House member because the language would be tied to candidacy. Mr. Kane said that it might be possible for a commissioner to serve as a substitute; however, he would advise caution, and if such a situation arrived, his office would examine it closely.
- Cochair Schmidt asked about the definition of the word "present" in the context of using Zoom meetings. Mr. Kane stated that the law clearly allows for virtual meetings. He then reviewed the Public Records Act, specifically I.C. § 74-109(6), covering draft plans and research by commission members and what needs to be made public. Mr. Kane then moved on to federal redistricting criteria, the main requirement being to make districts equal in population, unless there is an odd number population.
- Commissioner Mitchell asked if the U.S. Supreme Court case *Tennant v. Jefferson County Commission* created an exception for equipopulous districts. Mr. Kane responded that the case allows for some deviation, but the commissioners must advance a significant reason for why any deviation occurs. Commissioner Mitchell stated that Idaho also has a clear statute regarding not dividing counties. Mr. Kane observed that they can only take dividing counties so far, and the commission should keep in mind there are different standards for federal versus state deviation requirements. Commissioner Mitchell offered that in the *Tennant* case there was some deviation

that made it not exactly equal. Mr. Kane asserted that there are plans that are more defensible than others, and his advice is to adopt the most defensible plans.

- Cochair Davis asked if the commission were to divide a county, does each divide count against the minimal division. Mr. Kane said that there are still unknowns. There is a macro issue of counties and how many are divided, but another issue of how many times a single county is split. He went on to review the *Twin Falls County v. Idaho Commission on Redistricting* case and provided the court's hierarchy on how plans will be judged to be legal, commenting on some mandatory provisions. Cochair Davis then asked about the five votes standard in some of the statutory language. Mr. Kane stated that when the commission adopts a plan, some provisions may be set aside with five votes of the commission if necessary. Cochair Davis asked what happens if they don't receive five votes. Mr. Kane articulated that the statute gives a lot of discretion, and the constitution limits discretion based on historical interpretations, however he would again reiterate his advice is to be cautious. He stated the additional requirements to avoid oddly shaped districts, while also considering Idaho's already odd shape. Mr. Kane announced the final report will be due 90 days from the convening of the commission and explained circumstances that will occur, even if unable to meet the deadline. Cochair Davis inquired what happens if a deadline stretches over 90 days due to judicial challenges if a plan is submitted on day 60. Mr. Kane articulated that under statute, if the commission submits a plan, the commission can be reconvened, but that is not a guarantee. However, the court cannot order the Legislature to reapportion if the commission fails to adopt a plan. He added that, almost always, the commission is reconvened.

- Commissioner Mitchell queried about prior judicial challenges and how quickly they had to move with the Supreme Court. Mr. Kane spoke of the process, saying that the commission will hear rumors first, then if a challenge is filed, there is a tight timeframe for the challenge process.
- Commissioner Redman asked about county splits and splitting one county multiple times, to which Mr. Kane replied that that's one of the legal unknowns at the time. Mr. Kane noted that the split could help or hinder different subjects depending on the interests of the areas. Courts also have recognized there is a discretionary limit granted to the commission.

Cochair Schmidt recessed the commission from 11:36 a.m. to 1:33 p.m.

Discussion of Policies and Procedures

After recess, the next item on the agenda was consideration of the Commission's proposed rules.

- **Cochair Davis moved that the commission adopt the rules as written. The motion passed unanimously by a voice vote.**
- Commissioner Redman said that even though a second was not required, he agreed with Cochair Davis's motion.
- Cochair Schmidt commented that he would operate under the unadopted rules to accept that no second was needed. With no further discussion, he called the question. Cochair Schmidt noted that even with the newly adopted rules, common sense should still generally guide the commission.

Presentation by Mr. Keith Bybee

- Mr. Bybee described the commission's budget. He stated that the commission has \$616,700 to operate, commenting on the dates that place the commission between two fiscal years. He discussed notable expenses including the software, of which the commission came significantly under budget for, partly due to Maptitude's cost coming under estimates. Mr. Bybee then covered personnel costs, including the partisan support staff, while noting that the commissioners can opt to hire any type of staff they need, such as analysis. He then explained the commissioners' per diem rates and honoraria. He acknowledged backend items such as a server, a GIS contractor, and technical systems support. Mr. Bybee then assured the budget allows for travel, laptops, equipment, and supplies, and noted that options are available to cover all needs including large-map printing.

Mr. Bybee described the resources available in the partisan secure rooms for the commissioners of each party to help support the commission's needs. Mr. Bybee pointed to the forms covering administrative paperwork such as direct deposit and identification forms. He then explained the partisan secure rooms and how the commissioners should access those.

- Commissioner Mitchell asked whether Kinkos remains an option to print, which Mr. Bybee confirmed.
- Cochair Schmidt asked Mr. Bybee whether he was asking if they should consider buying a larger printer now, to which Mr. Bybee clarified that he was only providing options to the commissioners at the time. Mr. Bybee then explained the reimbursement form that the commissioners would use to track expenses and how to fill it out.
- Cochair Schmidt said he was surprised the commission was compensated, and the members thought they were only reimbursed expenses. He also asked if compensation included PERSI, to which Mr. Bybee answered it did not.
- Commissioner Mitchell asked Mr. Boucher if the commissioners needed to bring a passport. Mr. Boucher described the I-9 form requirements and offered for the commissioners to contact him later regarding any administrative support.

Presentation by former Commissioners Ron Beitelspacher and Randy Hansen

- Cochair Schmidt recognized Randy Hansen and Ron Beitelspacher to give an overview of their time serving the commissioners for the 2011 Commission for Reapportionment.
- Mr. Hansen advised the commissioners to listen to county clerks when traveling around the state. He said that most cities aside from Twin Falls wanted to remain as close together as possible. He noted they should listen to the people during hearings, and attempt to not divide up counties. He and Mr. Beitelspacher recommended the commission keep perspective in mind when considering divisions and where they would be drawing lines. Mr. Hansen then commented that when other commissions used powerlines as boundary lines, which made it difficult for county commissioners.
- Mr. Beitelspacher then continued Mr. Hansen's statement, telling commissioners to establish metrics before going about the task, such as considering tax district lines to find where they may want to place a boundary. Mr. Beitelspacher offered that the commission will be under a lot of political pressure and advised that they should get to know each other, saying that friendships inside the commission are more important than outside pressures. He told the commission that the parties will remain the same, however the individual voices should be heard. He then offered a story of when the 2011 commission was pressured to change a line, concluding that the commission should resist the temptation to view where legislators live.
- Mr. Beitelspacher warned that there will be problems with eastern and northern Idaho, as some people there will feel left out.
- Mr. Hansen warned the commissioners their integrity will be challenged, and it will be difficult to stay strong in some respects.
- Cochair Schmidt explained how they were preparing to begin traveling and asked for locations where the former commissioners would recommend visiting, prefacing with Ada County's massive growth. Mr. Hansen expressed that one testimony they received changed their perspective, so actively seek input and watch for little niches that could impact areas. Mr. Hansen then noted that the commission's changes affect the ease of people to be represented. Cochair Schmidt asked the presenters how many community meetings could be done in a day. Mr. Beitelspacher advised that two meetings in one day is the most the commission should push for, imparting that travel time is a challenge to planning, and opportunities to testify should be maximized.

- Commissioner Mitchell asked how long in duration the meetings for public hearings were and should be. Mr. Beitelspacher advised a minimum of two hours for hearing testimony. He advised noticing a working meeting instead of going out and doing work on their own. He also advised to not bore audiences with small logistics and instead take open comments.
- Mr. Bybee emphasized, in terms of drawing, Maptitude can cause the commissioners to paint themselves into a corner, and commissioners should have overall totals and bounds in mind. Mr. Beitelspacher agreed, stating that unexpected things along the way may cause backtracking. Cochair Davis asked about tribal site visits and if they recommended them, and he asked how the commission handled them otherwise. Mr. Hansen said the tribes came to the meetings in 2011, and the commissions listened, but split too many counties in trying to keep reservations together in one district.
- Mr. Beitelspacher advised the commission may want to identify where growth may occur and account for that while considering deviation. He also advised to listen to the county commissioners, being wary of political intentions.
- Mr. Hansen acknowledged metropolitan areas as a critical point to be aware of, accounting for similar interests such as areas having the same school districts.
- Mr. Beitelspacher added that the public comments will occasionally be politically charged.
- Cochair Davis inquired about the use of subcommittees and how they would structure them. Mr. Hansen replied that the 2011 commission used subcommittees and divided commissioners into areas, careful not to have commissioners work on their own areas of residence. Cochair Davis asked how important the partisan staff was for the past commission, to which Mr. Hansen said they exclusively used the staff provided by the state. Cochair Davis inquired about drawing and adjusting maps mid-travel and where the presenters would start if the 2011 commission had to try again Mr. Beitelspacher commented that the software facilitates better imaging of changes, and the starting point doesn't matter. Mr. Hansen disagreed with the premise, including that they considered the state as a whole when traveling. He added that the commission is limited in what it can do. They may focus on one area, but the state is in one totality, so start where the commission wants. Cochair Davis asked about site visits, having a "pro forma" map for people to comment on, and if the past commissioners encouraged it. Mr. Beitelspacher encouraged it, but added they need to display the rules and needs of the commission as well to create public understanding.

Maptitude Training

- Mr. Bybee brought up map examples to explain Maptitude. Mr. Bybee explained the tool Maptitude was specifically designed for redistricting and the commission, and he said the product itself has gotten better over the years. He then continued to explain the licenses for the software the commission had, such as the desktop version and versions for the staff and rooms. He noted that other file types and geographic maps in other datasets may not work with this software. Mr. Bybee explained how the layers work and can be viewed on the software. Mr. Bybee explained the capabilities of the system and the number of users the servers can handle. He explained the "legislative/commissioner" version of the software and its abilities. Mr. Bybee explained how the software can run a check to find errors using a reporting tool, as well as other means of gathering statistics and the software's tools. He noted certain census policies affect the commission, such as the prison population issue, and the commission will not be able to change issues of public policy. Mr. Bybee then displayed some example maps showing population changes and showed the effort that each map requires. He suggested that as the commission continues creating maps it will become easier. Mr. Bybee commented that drawing a congressional map first may be an easier task. Mr. Bybee noted the ideal size for congressional districts and gave an example of balancing the maps. He then brought attention to the boundary line within Ada County and what defines it. Mr. Bybee explained the use of the congressional change map as the starting point for basing other maps off for convenience. Mr. Bybee highlighted some of the problems on the legislative map,

showing the 2020 data over the current districts. He then pointed to the statistics demonstrated in the software which showed the change. Mr. Bybee relayed that the commissioners would be able to compare maps using shading through the software. Mr. Bybee noted the population in Madison County and how it was very close to the ideal district size. He remarked on the complications created by Bingham County, which was below the ideal district size but had a relatively large population compared to other counties and mentioned possible options for the commission to take. Mr. Bybee recommended the commissioners get familiar with the population numbers, then plan how they are going to create a statewide plan and move district lines.

- Cochair Schmidt asked if the online public tool is up and running with a limited number of datasets, which Mr. Bybee confirmed. He asked if old files will be corrupted if new data or layers are inserted after. Mr. Bybee affirmed it would not corrupt it, and Mr. Cutler also confirmed this, saying that everything works, but only the desktop version can move greater areas compared to the public's version.
- Cochair Schmidt asked if the public's maps will be sent to the commission for review through staff. Mr. Bybee reviewed the way members of the public may submit maps to the commission. Cochair Schmidt asked if the software was currently public, which the staff confirmed the site was live at the time of the meeting.
- Commissioner Dayley asked how all this data interfaces with the public comments and how the staff envisions having that data available. Mr. Bybee answered that they could provide physical or static maps for display or Mr. Cutler could join the meeting and present maps via Zoom.
- Mr. Cutler explained that each map is cataloged, and members of the public only need to state which map they wish to testify on during hearings.
- Cochair Schmidt asked about the lines on the map. Mr. Bybee clarified the map's lines and color-coding system.
- Cochair Davis asked what street the western dividing line for a part of the map was, and Mr. Bybee clarified the location of the boundary.
- Commissioner Mitchell asked if county splits pertained to congressional and legislative districts and if the criteria applied to both. Mr. Bybee confirmed this was true, stating legislative districts can deviate by population more than congressional districts.
- Commissioner Pence inquired about whether legislative districts would have precinct changes after the process. Mr. Bybee directed that clerks will answer that and noted that following precinct lines helps make elections run easier.
- Cochair Schmidt acknowledged the importance of listening to county clerks and asked when they would take their testimony, to which Mr. Bybee replied that they would testify during the public hearings, adding that the precincts would change with splits and changes made by the commission.
- Mr. Bybee then demonstrated examples of districts that would require attention and showed the challenges of the counties in northern Idaho and having to split a county up there. He then explained how to perform changes while balancing the criteria and keeping it legally defensible.
- Commissioner Mitchell wanted to look at maps from the prior commission to see the failed and successful 2011 maps, to which Mr. Bybee told the group the geography of those maps had changed.
- Cochair Schmidt inquired about the way shading occurs on the map, to which Mr. Bybee demonstrated how to make a change on the map using the lines to identify boundaries.
- Cochair Davis asked how subcommittees, aiming for target 5% deviation for example, should work out accommodating certain counties. Mr. Bybee explained limits the former commission had, such as keeping self-contained Kootenai County as a basis, which led to consequences throughout the rest of the map. He added that the commissioners should have a strategy on where they

should hold up deviations. Cochair Davis queried that they hadn't discussed subcommittees prior to that day's meeting, and he wanted to consider how the larger commission of six sets parameters for subcommittees, such as deviation highs and lows. Mr. Bybee reiterated that the former commission's decision of setting a target deviation for Kootenai County dictated terms for and affected the rest of the map.

- Cochair Schmidt summarized Mr. Bybee's description and suggested a potential strategy over county splits.
- Mr. Bybee replied that, even if the commission divided a county three times, the county is only counted as split once. He noted Twin Falls County being split only once but divided three times as well.
- Commissioner Mitchell included he needed to review the court cases, pondering the Kootenai County split.
- Mr. Bybee demonstrated a seven-county split map as an example and reinforced the idea that splits have to be kept to a minimum. He then used an example of an Ada County needing a 9.4 split due to its population but asked where the extra 0.4 should go or if they should make a 10 split.
- Cochair Schmidt proposed the group should get on computers and start playing with the software, to which Mr. Bybee replied that IT was here, and they are ready for the commissioners to get set up on their computers.

With no further business, the meeting was adjourned at 3:32 p.m.