

Legal Requirements of Idaho Redistricting

September 1, 2021

Commission for Reapportionment

- Idaho Code §§ 72-1501 - 1510
- Cannot become a candidate
 - Creates a vacancy
- Cannot be a candidate for legislature within 5 years of service
- Cannot serve on a future Commission

Commission Organization— Idaho Code § 72-1505

- Subject to Open Meetings Law
- Must provide notice of all meetings to citizen or organization requesting same
- Copies of census database/other databases must be provided to citizens
- Meetings held around state
- Citizens can present plans (Public Record)
 - Plan must include citizen's mailing address/phone number.

Open Meetings Law

- Applies to the Commission (I.C. § 72-1505(1))
- Notice and Agenda of Meetings (I.C. § 72-1505(2))
- Quorum of the Commission is 4 (I.C. § 72-1505(5))
 - Necessary to make decisions
 - Fewer may take testimony but no decisions
 - Members must be present to vote (no proxies) (I.C. § 72-1505(6)).

Public Records Law

- Idaho Code § 74-109(6)—draft plans/
research by commission members
- Records consisting of draft congressional and legislative redistricting plans and documents specifically related to such draft redistricting plans or research requests submitted to the commission staff by a member of the commission for reapportionment for the purpose of placing such draft redistricting plan into form suitable for presentation to the full membership of the commission, unless the individual commission member having submitted or requested such plans or research agrees to waive the provisions of confidentiality provided by this subsection.

Federal Congressional Redistricting Criteria

- *Karcher v. Daggett*, 462 US 725 (1983).
 - Equal population
 - *Vieth v. Jubelirer*, 541 US 267 (2004).
 - Confirmed equal population

Legal Requirements of Plan

- One Person/One Vote
 - 35 districts
 - Article III, sec. 4.
 - Within 10% deviation = Presumptively Constitutional (*Hellar v. Cenarrusa*, 106 Idaho 586, 589 (1984)).
 - 10.69% struck down: *Smith v. Idaho Comm'n on Redistricting*, 136 Idaho 542 (2001).
 - Minimal county splits (Article III, sec. 5).

Article III, § 5

- Section 5. SENATORIAL AND REPRESENTATIVE DISTRICTS. A senatorial or representative district, when more than one county shall constitute the same, shall be **composed of contiguous counties, and a county may be divided in creating districts only to the extent it is reasonably determined by statute that counties must be divided to create senatorial and representative districts which comply with the constitution of the United States. A county may be divided into more than one legislative district when districts are wholly contained within a single county.** No floterial district shall be created. Multi-member districts may be created in any district composed of more than one county only to the extent that two representatives may be elected from a district from which one senator is elected. The provisions of this section shall apply to any apportionment adopted following the 1990 decennial census.

Twin Falls County v. Idaho Comm'n on Redistricting

- There is a hierarchy of applicable law governing the development of a plan for apportioning the legislature: the United States Constitution is the paramount authority; the requirements of the Idaho Constitution rank second; and, if the requirements of both the State and Federal Constitutions are satisfied, statutory provisions are to be considered. A lower ranking source of law in this hierarchy is ineffective to the extent that it conflicts with a superior source of law. *Bingham County v. Idaho Comm'n for Reapportionment*, 137 Idaho 870, 874, 55 P.3d 863, 867 (2002).
- **The Hierarchy:**
 - (1) Comply with U.S. Constitution =/- 10%;
 - (2) County divisions minimized;
 - Counties can only be divided to meet the constitutional standards of equal protection
 - County divisions for other reasons is not permitted.
 - (3) Requirements of Idaho Code § 72-1506 are subordinate

Idaho Code § 72-1506

- Additional mandatory (but subordinate) provisions:
 - (2) shall to maximum extent possible preserve traditional neighborhoods and communities of interest.
 - (7) shall retain local voting precinct boundary lines. May be set aside with 5 votes of commission recorded in minutes that it cannot comply.
 - (8) Shall not divide counties to protect political party or incumbent
 - (9) Counties shall be connected by roads/highways that are part of the Interstate Highway System, U.S. Highway System, or State Highway System. May be set aside with 5 votes.

Additional Legal Requirements

- Should avoid oddly shaped districts (I.C. § 72-1506(4))

Final Report

- Due in 90 Days (I.C. § 72-1508)
 - Stalemate: *In Re Constitutionality of Idaho Legislative Reapportionment Plan of 2002; Evan Frasure, Lorna Finman, and Lou Esposito v. The Idaho Redistricting Commission*, Supreme Ct. Dckt. Nos. 39127-2011 & 39128-2011 Order (September 9, 2011)
 - If deadline missed, Court cannot order commission to continue/reconvene; SOS organize a new commission.
- Filed with Secretary of State
- Spread on Journals of House/Senate
 - No approval by legislature

Legal Challenge

- Idaho Supreme Court—Article III, sec. 2, para. 5
 - Supreme Court shall have original jurisdiction over challenges.
 - Criteria spelled out in *Twin Falls County v. Idaho Com'n on Redistricting*, 152 Idaho 346, 348-351 (2012).
 - Direct Commission to reconvene/adopt a plan. *See Bingham County v. Comm'n for Reapportionment*, 137 Idaho 872, 878 (2001).

Questions?

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