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*Attorney for Petitioners Evan Frasure,
 Lorna Finman and Lou Esposito*

IN THE SUPREME COURT OF THE STATE OF IDAHO

EVAN FRASURE, LORNA FINMAN,
and LOU ESPOSITO, Commissioners
of the Idaho Redistricting Commission,

Petitioner,

vs.

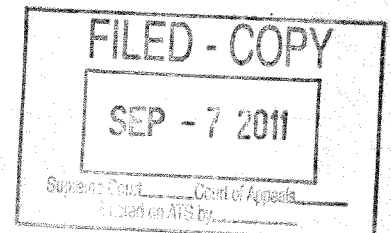
THE IDAHO REDISTRICTING
COMMISSION,

Respondent.

Supreme Court Case No.

39128

PETITION FOR JUDICIAL REVIEW



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**PETITIONERS EVAN FRASURE, LORNA FINMAN and LOU
ESPOSITO,** Republican Commissioners of the Idaho Redistricting Commission, by
and through their attorney, Christ T. Troupis, hereby file this Petition seeking judicial
review of the legislative and Congressional District apportionment, following the
failure of the Idaho Redistricting Commission to propose a constitutional
apportionment plan on September 6, 2011.

JURISDICTION

1. Article III, Section 2(2) of the Idaho Constitution provides for the formation of a Redistricting Commission. It states:

“Whenever there is reason to reapportion the legislature or to provide for new congressional district boundaries in the state, or both, because of a new federal census or because of a decision of a court of competent jurisdiction, a commission for reapportionment shall be formed on order of the secretary of state.”
2. Article III, Section 2(4) of the Idaho Constitution further requires that the Redistricting Commission file a proposed plan for apportionment within 90 days of its organization. It states:

“Within ninety days after the commission has been organized or the necessary census data are available, whichever is later, the commission shall file a proposed plan for apportioning the senate and house of representatives of the legislature with the office of the secretary of state. At the same time, and with the same effect, the commission shall prepare and file a plan for congressional districts.”
3. The current Idaho Redistricting Commission was organized on June 7, 2011 and the time period within which it was required by the Idaho Constitution to file a proposed plan for apportionment expired on September 6, 2011. On that date, the Commission had not approved a reapportionment plan to send to the Legislature and its six members were deadlocked along party lines on all of the various proposed plans. Commission members and the public have submitted in excess of 80 proposed plans during the period that the Commission convened, but none of those plans were approved.
4. This Petition is authorized under the Idaho Constitution, Article III, Section 2(5) which provides that: “The Supreme Court shall have original jurisdiction over actions involving challenges to legislative apportionment.” This Petition is

authorized because the failure of the Idaho Redistricting Commission to propose a new plan of apportionment to the legislature that complies with the requirements of the Idaho and U.S. Constitutions leaves in place the existing apportionment plan. The existing apportionment of legislative districts no longer complies with these Constitutional requirements because population distribution and density in Idaho have changed dramatically, and the new census requires re-apportionment to comply with the Constitutional requirement of “one man-one vote.”

5. Petitioners Evan Frasure, Lorna Finman and Lou Esposito have standing to bring this Petition as registered Idaho voters, and as the three appointed Republican Commissioners of the Idaho Redistricting Commission. They have proposed several reapportionment plans to the Idaho Redistricting Commission, and considered plans proposed by the public and the three Democratic members of the Commission. Each of the plans proposed by the Petitioners complied with the requirements of the Idaho Constitution. Some of the plans also complied with the statutory guidelines enacted by the Idaho Legislature. All of the plans proposed by the Petitioners have been rejected by the three appointed Democratic Party members of the Commission, George Moses, Julie Kane, and Allen Anderson.
6. The Petitioners, Republican members of the Commission, believe that the primary reason for the failure of the Commission to reach a compromise agreement on reapportionment plans for Congressional and Legislative Districts is the fact that the Democratic members of the Commission contend that the

only relevant standard for a plan is the Idaho Constitution's requirement that a plan split a minimum number of counties. The Petitioners contend that the "minimum county split" requirement of the Idaho Constitution Article II, §5, should, to the extent possible, be construed and applied consistently with the additional statutory criteria set out in Idaho Code §72-1506. The Petitioners contend that, to the extent possible, that the "minimum county split" requirement should be applied in conjunction with the statutory criteria. The Democratic members of the Commission contend that the sole criteria required to be considered for the plan is the "minimum county split" requirement, and that to the extent that Idaho Code §72-1506 criteria would result in splitting of a greater number of counties, that those statutory criteria are unconstitutional.

7. Article II, §5 of the Idaho Constitution provides:

"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."

8. Idaho Code §72-1506 provides the following additional guidelines for legislative reapportionment.

"Congressional and legislative redistricting plans considered by the commission, and plans adopted by the commission, shall be governed by the following criteria:

(1) The total state population as reported by the U.S. census bureau, and the population of subunits determined therefrom, shall be exclusive permissible data.

(2) To the maximum extent possible, districts shall preserve traditional neighborhoods and local communities of interest.

(3) Districts shall be substantially equal in population and should seek to comply with all applicable federal standards and statutes.

(4) To the maximum extent possible, the plan should avoid drawing districts that are oddly shaped.

(5) Division of counties shall be avoided whenever possible. In the event that a county must be divided, the number of such divisions, per county, should be kept to a minimum.

(6) To the extent that counties must be divided to create districts, such districts shall be composed of contiguous counties.

(7) District boundaries shall retain the local voting precinct boundary lines to the extent those lines comply with the provisions of section 34-306, Idaho Code. When the commission determines, by an affirmative vote of at least five (5) members recorded in its minutes, that it cannot complete its duties for a legislative district by fully complying with the provisions of this subsection, this subsection shall not apply to the commission or legislative redistricting plan it shall adopt.

(8) Counties shall not be divided to protect a particular political party or a particular incumbent.

(9) When a legislative district contains more than one (1) county or a portion of a county, the counties or portion of a county in the district shall be directly connected by roads and highways which are designated as part of the interstate highway system, the United States highway system or the state highway system. When the commission determines, by an affirmative vote of at least five (5) members recorded in its minutes, that it cannot complete its duties for a legislative district by fully complying with the provisions of this subsection, this subsection shall not apply to the commission or legislative redistricting plan it shall adopt."

9. In light of the position taken by the Democratic members of the Commission that the only applicable criteria is the "minimum county split" requirement of

the Idaho Constitution, the Petitioners presented four (4) alternative Legislative District plans, and one Congressional District plan. Two (2) plans address only the “minimum county split” requirement of the Idaho Constitution, and two (2) plans also address the statutory criteria set out in Idaho Code §72-1506. The plans presented by Petitioners are set out as follows:

MINIMUM COUNTY SPLIT PLANS

a. L-77 “least county splits” plan – splits 5 counties, without regard to the number of trans-county districts (10), resulting in 7.85% total population deviation. A copy of that proposed plan is attached hereto, marked Exhibit A, and incorporated herein by reference.

b. L-76 “minimum trans-county district splits” plan – splits 5 counties, but minimizes the number of trans-county districts as well (7), resulting in total population deviation of 8.03%. A copy of that proposed plan is attached hereto, marked Exhibit B, and incorporated herein by reference.

ALL CRITERIA PLANS

a. L-68 - “Zero (0) deviation plan” – achieves complete uniformity of population distribution in districts without violating road criteria, but violates the statutory precinct split criteria, resulting in total population deviation of 0%. A copy of that proposed plan is attached hereto, marked Exhibit C, and incorporated herein by reference.

b. L-82 – “Final L-34 Plan” – The preferred legislative apportionment plan because it satisfies all Constitutional and statutory criteria with deviation of 8.76%, but requires approval of deviation from statutory road requirement. A

copy of that proposed plan is attached hereto, marked Exhibit D, and incorporated herein by reference.

10. The Democrat members of the Commission argued that the only applicable criteria is the Idaho Constitution's requirement that any proposed legislative district plan split the least number of counties. Thus, the only plans they proposed ignored the statutory criteria and dealt exclusively with this minimum county split requirement as the sole applicable criteria. The Democrat members of the Commission proposed a minimum county split plan that splits five (5) counties, but results in a greater population deviation than the Republican minimum county split plan. Although they initially argued that the rationale for this plan was the constitutional requirement of minimal county splits, they admitted that their actual goal in proposing this plan was to protect Democrat incumbents and build additional Democrat districts in violation of Idaho Code §72-1506(8). Attached hereto, marked Exhibit E, and incorporated herein by reference, is a true and accurate copy of the Democrat's proposed partial plan for legislative apportionment protecting their incumbents.
11. Petitioners opposed the Democrat reapportionment plan because exclusively following the Idaho Constitution's requirement of "minimum county splits" would not serve the best interests of Idaho voters. For the same reason, Petitioners believe that their plan, L-82, is far better for Idaho citizens than any of the minimum county split plans proposed, because it takes into account communities of interest and connection of voters by roads in districts of multiple counties, criteria that the legislature established to promote equal protection.

12. Petitioners also proposed a reapportionment plan for Congressional Districts, which plan is not required to follow the Legislative District plan. That plan, C-38, was acknowledged by the Democrat members of the Commission as acceptable, although they did not vote to approve it. The rationale for C-38 was set out as follows:

“This congressional map seeks to maintain historical precedence, and follow all constitutional and statutory regulations. Historically, the Idaho congressional line has bisected Ada County running from the north to the south since 1971. The overall deviation of this plan is 0.0%. In order to achieve this, 6 precincts are split. This map minimized impact to the voting populations to balance the two districts.”

A true and accurate copy of this apportionment plan is attached hereto, marked Exhibit F, and incorporated herein by reference.

13. Petitioners believe that the stalemate between the members of the Commission was caused by the uncertainty as to whether the statutory criteria should have been considered by the Commission in adopting plans of reapportionment, as opposed to the “minimum county split” being the sole criteria. Therefore, Petitioners ask this Court to issue declaratory relief answering that question for the Commission. If the Court were to give such direction to the Commission, Petitioners believe that the impasse would be resolved within three (3) working days, and ask this Court to authorize the Commission to reconvene for that period of time.
14. With respect to the Congressional District Plan, Petitioners contend that their plan, C-38, meets all constitutional criteria and that the Democrat members of the Commission have conceded that this plan complies with all of those requirements. Therefore, Petitioners request that this Court adopt that plan.
15. In the event that this Court selects and adopts a plan of legislative district reapportionment, Petitioners propose the following:

a. In the event that this Court decides that the sole applicable criteria is the number of county splits, the plans proposed by the Petitioners, L-77 and L-76, are preferable to any plan proposed by the Democrat members of the Commission because have a smaller population deviation while achieving the least number of county splits and trans-county districts.

b. In the event that this Court decides that the statutory criteria should be applied in conjunction with the Constitution's requirement of minimum county splits, the plans proposed by the Petitioners, L-68 and L-82, comply with statutory requirements and achieve a smallest population deviation of the proposed plans.

AGENCY RECORD

16. Judicial review is sought of the existing apportionment plan, and the proposed plans and actions of the Idaho Redistricting Commission. The Commission held numerous hearings and received testimony and other evidence with respect to the various proposed redistricting plans. Transcripts of those hearings and the evidence received will be submitted to this Court for its review.
17. Service of this Petition for Judicial Review of Agency Action has been made on the Idaho Attorney General as counsel for the Idaho Redistricting Commission and the Idaho Secretary of State at the time of the filing of this Petition.

PRAYER FOR RELIEF

18. Petitioners ask this Court to issue declaratory relief with respect to the issue that has resulted in a stalemate for the Commission, to wit: whether the Commission should formulate a plan that addresses only the Constitutional requirement of "minimum county splits" set out in Idaho Constitution Article II, Section 5, or

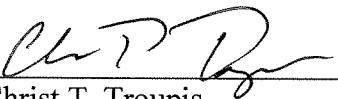
should formulate a plan that takes into account the additional statutory criteria set out in Idaho Code Section 72-1506.

19. Petitioners further ask this Court to extend the jurisdictional authority of the Commission by three (3) days, and authorize the Commission to reconvene for three (3) days to attempt to formulate a Legislative District plan consistent with the direction of the Court and Idaho law.
20. Petitioners further request that this Court adopt Petitioner's Congressional District Plan, C-38.
21. Alternatively, if this Court determines that it should adopt a plan for legislative district apportionment, the Petitioners request that the Court adopt one of the plans proposed by Petitioners because those plans will best serve the interests of all Idaho citizens and comply with both the constitutional and statutory requirements of Idaho law.

Respectfully Submitted,

Dated: September 7, 2011.

TROUPIS LAW OFFICE, P.A.



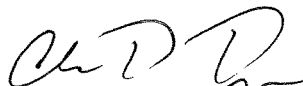
Christ T. Troupis
Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of September, 2011, I served the foregoing *Petition for Judicial Review* by U.S. Mail, first class postage prepaid, addressed to the following persons:

Lawrence Wasden
Brian Kane
Office of the Attorney General
700 W. Jefferson Street
P.O. Box 83720
Boise, ID 83720-0010

Ben Ysursa,
Idaho Secretary of State
PO Box 83720
Boise ID 83720-0080



Christ T. Troupis

"FORMER LEAST COUNTY SPLITS" L77

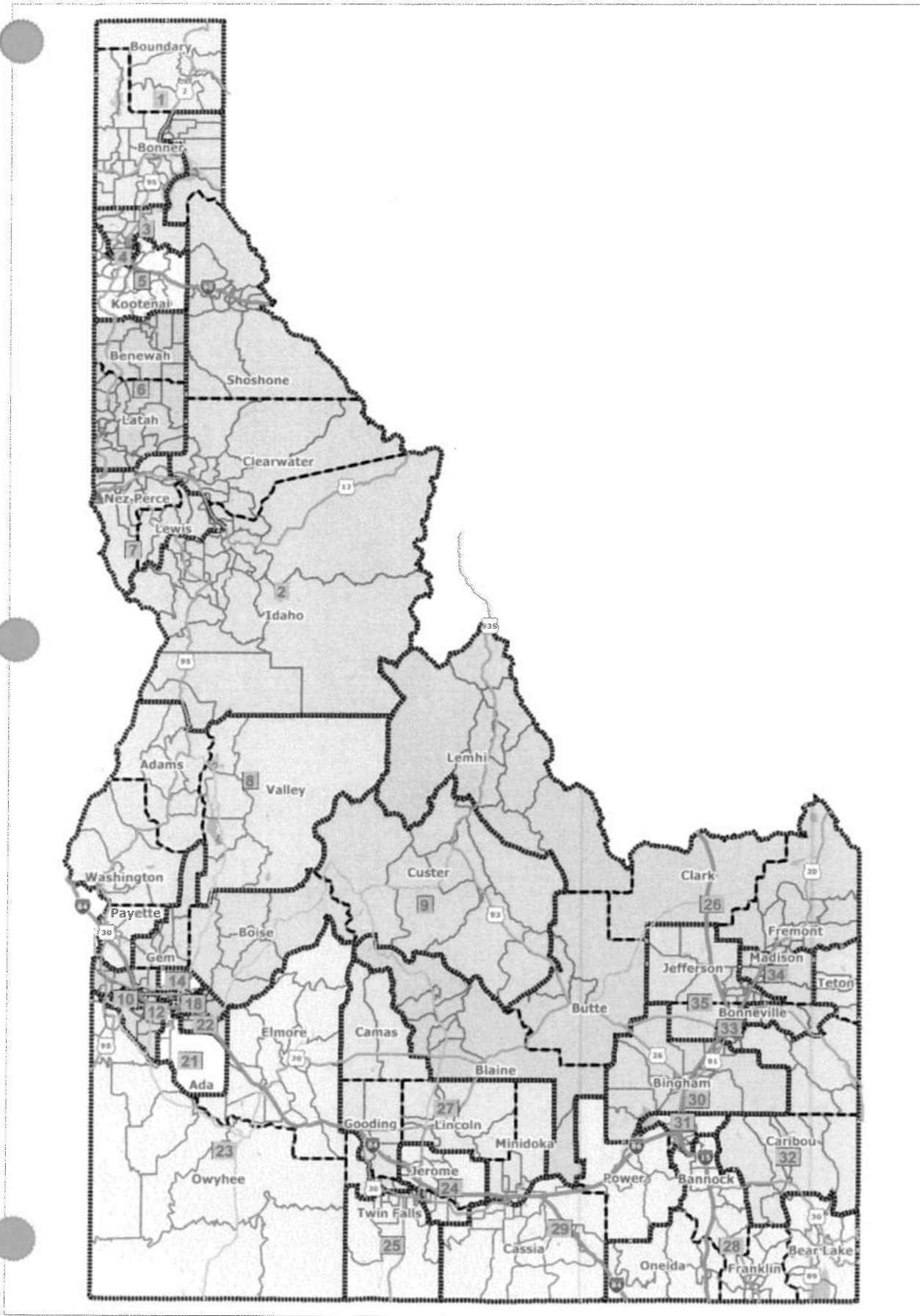


EXHIBIT A

"Minimum TRANS COUNTY SPLITS" - L76

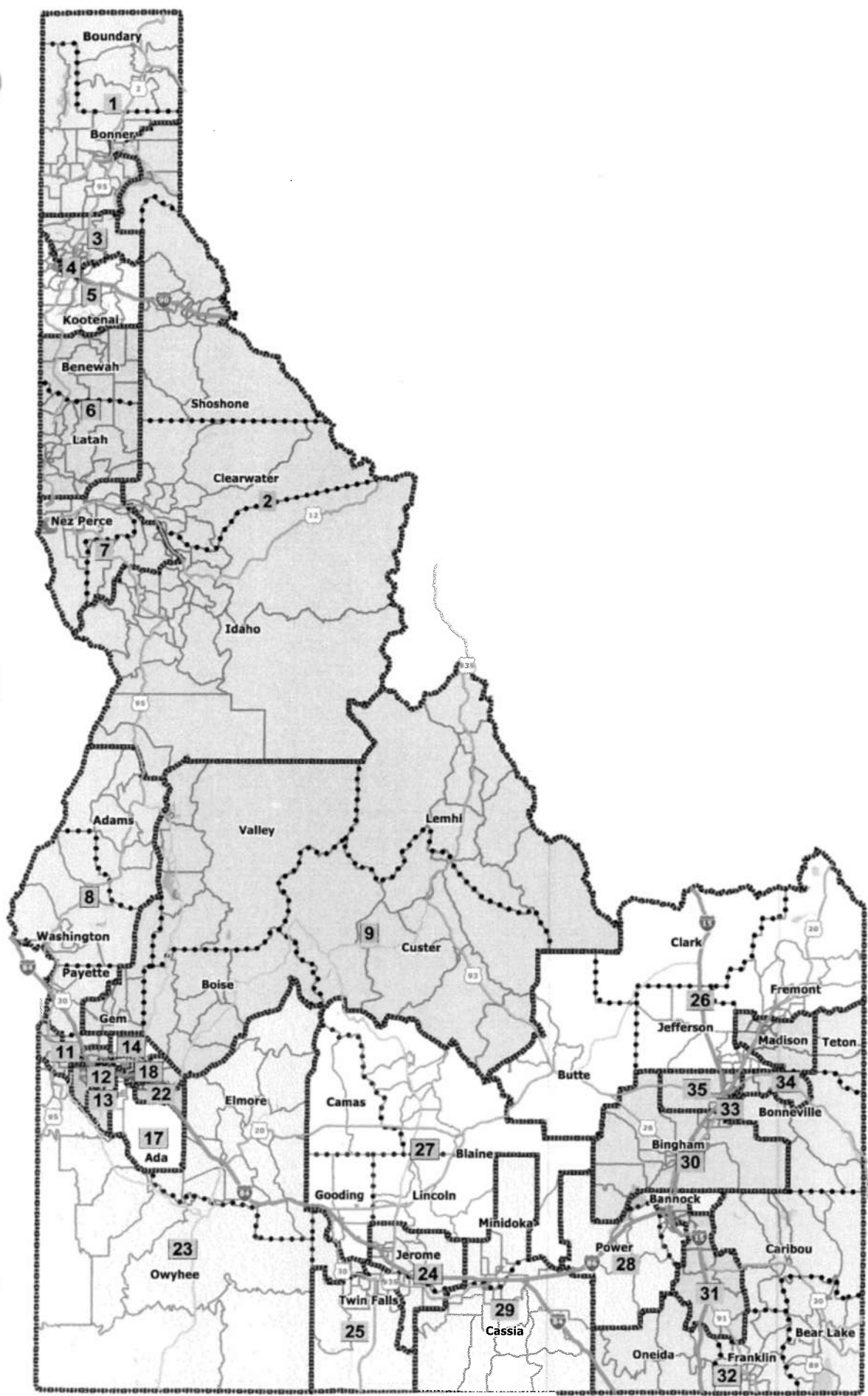


EXHIBIT B

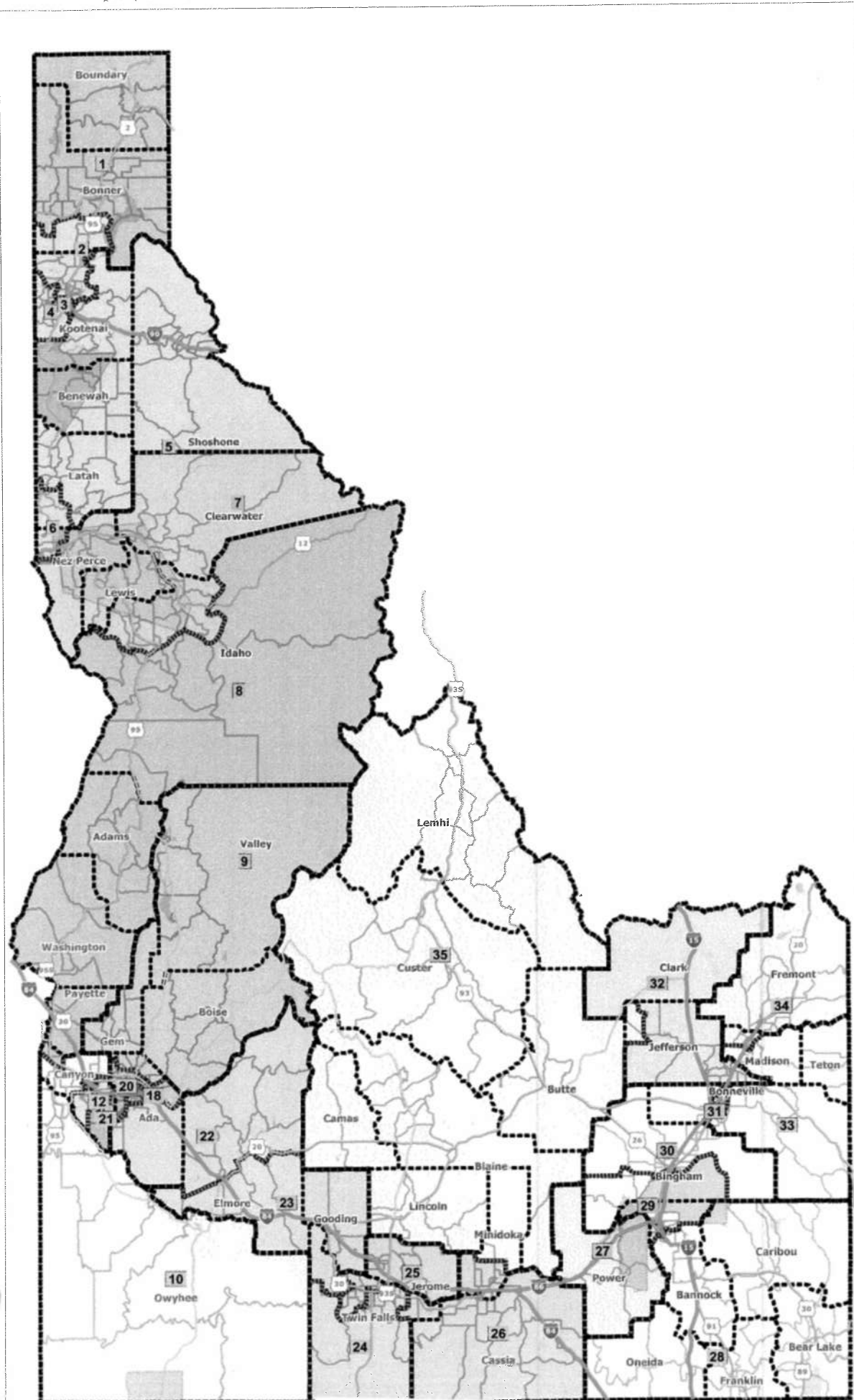


EXHIBIT C

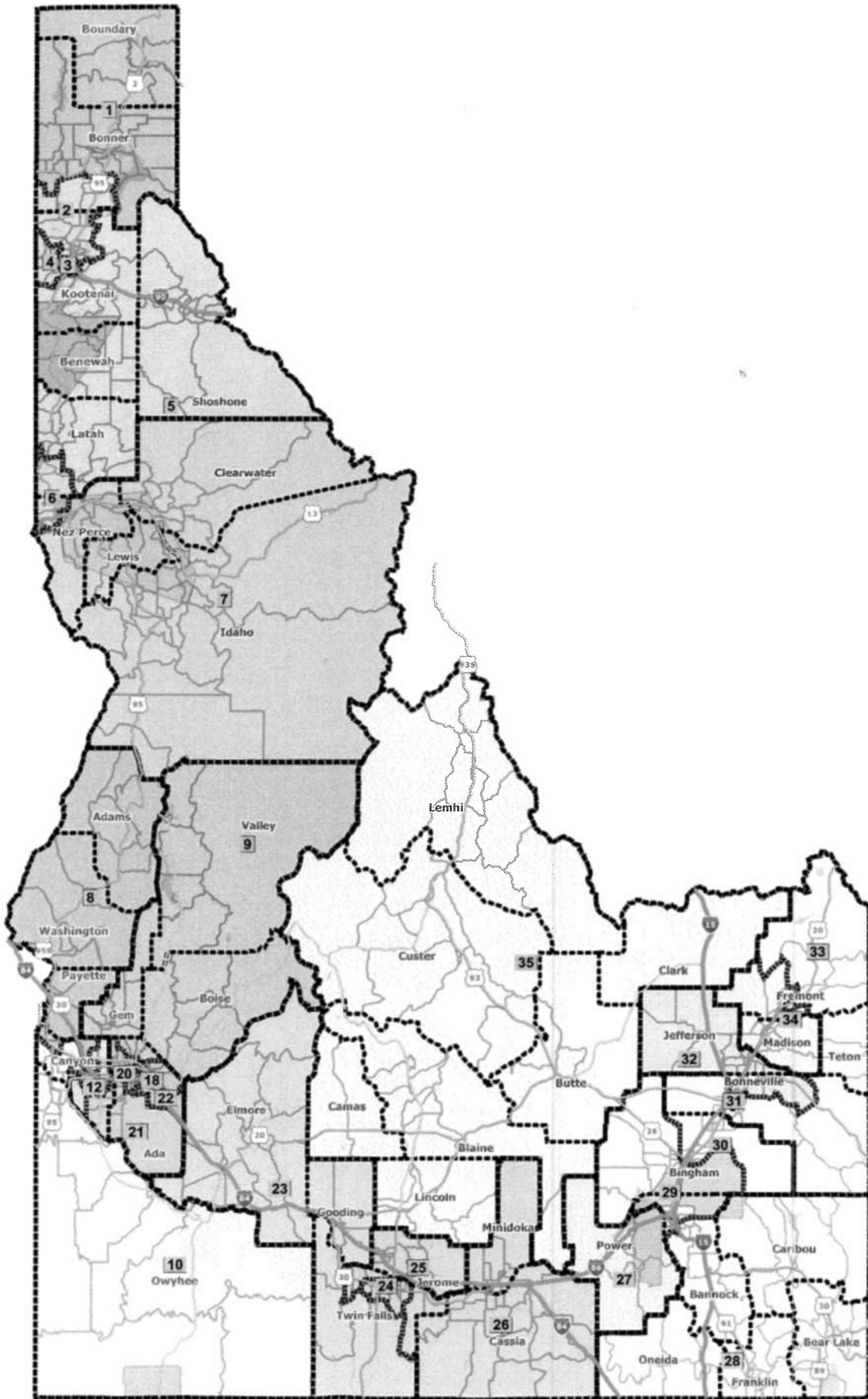
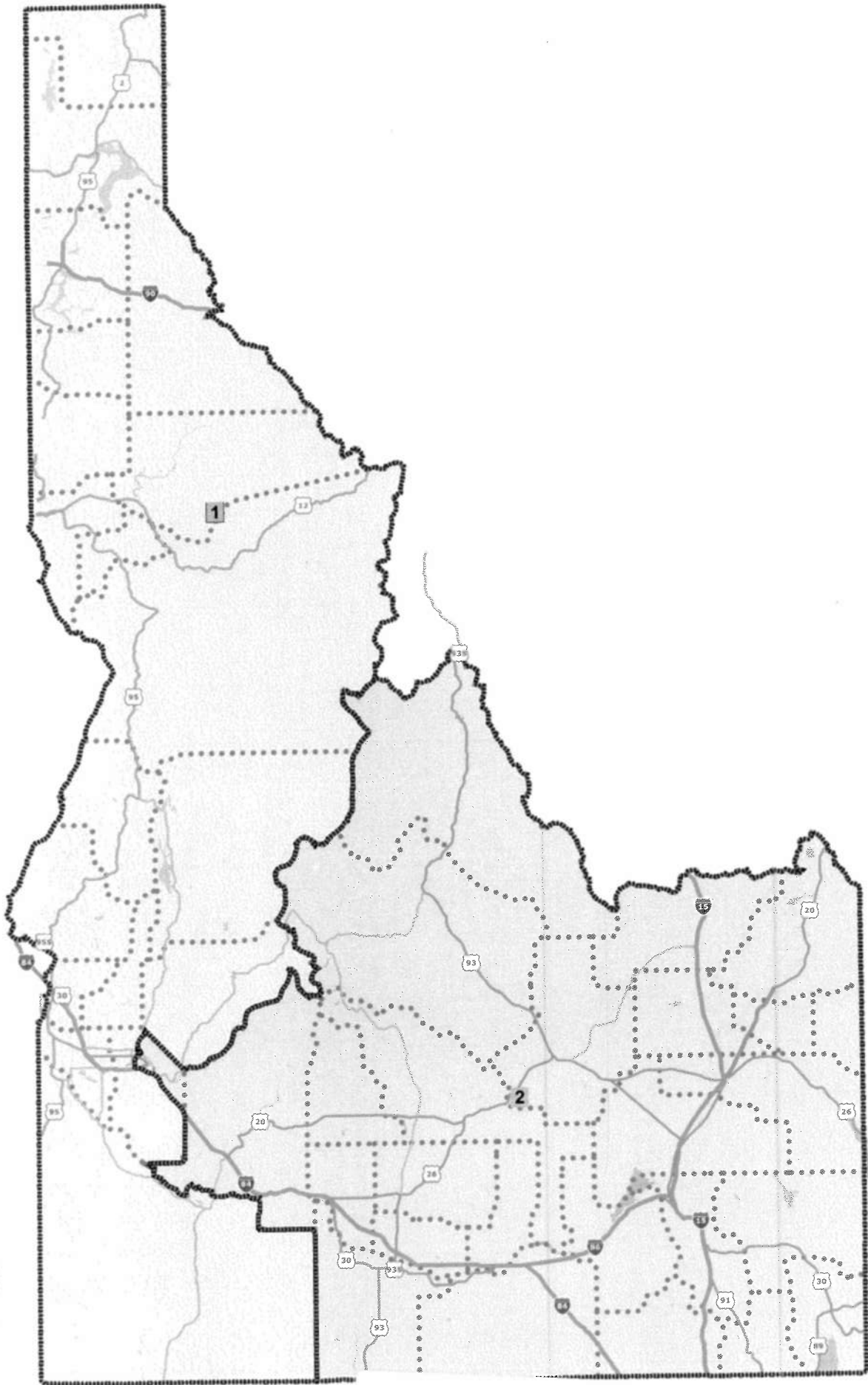


EXHIBIT D

Red and White





Ada County - C38

1

2

Eagle

Hidden Spring

Robie

Garden City

Boise City

Meridian

