

In the Supreme Court of the State of Idaho

IN RE: CONSTITUTIONALITY OF IDAHO)
LEGISLATIVE REAPPORTIONMENT)
PLAN OF 2002 (2002 PLAN L97) AND OF) ORDER
2002 CONGRESSIONAL)
REAPPORTIONMENT PLAN) Supreme Court Docket No. 39127-2011
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WHEREAS, this Court set out the constitutional, statutory, and legal hierarchy for legislative reapportionment in *Bingham County v. Commission for Reapportionment*, 137 Idaho 870, 55 P.3d 863 (2002) and *Bonneville County v. Ysursa*, 142 Idaho 464, 129 P.3d 1213 (2005); and

WHEREAS, this Court having issued an order on September 9, 2011 denying the Secretary of State's request for a writ of mandate and request for declaratory judgment, dismissing docket number 39128, and requiring any person desiring to challenge or defend the 2002 apportionment plan (Plan L97) to file a brief with the Court on or before September 23, 2011; and

WHEREAS, the Court's order scheduled oral argument on October 12, 2011 to consider the constitutionality of Plan L97; and

WHEREAS, on September 23, 2011 Evan Frasure, et al., and the Idaho Democratic Party filed briefing requesting, among other things, that this Court find Plan L97 unconstitutional; and

WHEREAS, the Court took notice of the brief and affidavit of the Secretary of State in docket number 39128, setting out the unconstitutional population deviation in Plan L97; and

WHEREAS, no parties came forward to defend the constitutionality of Plan L97 based on the population data from the 2010 United States Census; and

WHEREAS, the evidence before the Court establishes the population deviation in Plan L97 to be in contravention of the requirements set out in *Bingham County v. Commission for Reapportionment*;

THEREFORE, it hereby is ordered that the October 12, 2011 oral argument is vacated and that Plan L97 is declared unconstitutional and void based on the 2010 United States Census results.

DATED this 6th day of October 2011.

By Order of the Supreme Court

Stephen Kenyon

Stephen W. Kenyon, Clerk

cc: Counsel of Record