

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
2 THIRD JUDICIAL DISTRICT AT ANCHORAGE
3

4)
5 In the Matter of the)
6 2021 Redistricting Plan.)
7)

8) Case No. 3AN-21-08869CI

9 **ALASKA REDISTRICTING BOARD’S**
10 **OPPOSITION TO EAST ANCHORAGE PLAINTIFFS’**
11 **MOTION TO REJECT AMENDED PROCLAMATION PLAN**
12 **AND FOR MODIFICATION OF ORDER ON REMAND**

13 **I. INTRODUCTION**

14 On remand, the Alaska Redistricting Board (“Board”) completed an amended
15 redistricting plan that paired the South Muldoon area (House District 21) with the North
16 Muldoon area (House District 22) to form the new Senate District K. The Board also
17 maintained Senate District L from the Board’s 2021 Redistricting Plan that paired the
18 North Eagle River-Chugiak area (House District 24) with the JBER area (House District
19 23). The Board’s creation of a new Senate District K consisting of Muldoon house
20 districts solved the East Anchorage Plaintiffs’ concern about how East Anchorage was
21 represented in the Alaska Senate. Yet the East Anchorage Plaintiffs are still not
22 satisfied.
23

24 Now the East Anchorage Plaintiffs improperly seek to have this Court revisit an
25 existing senate district from the 2021 Redistricting Plan that neither this Court nor the
26

1 Alaska Supreme Court invalidated. The East Anchorage Plaintiffs misread this Court’s
2 prior rulings and the remand instructions of the Alaska Supreme Court. For several
3 reasons, this Court should deny their motion.
4

5 First, the East Anchorage Plaintiffs’ complaints about Senate District L—a
6 senate district that was challenged but not struck down in the litigation on the 2021
7 Redistricting Plan—are barred by the doctrine of *res judicata* and collateral estoppel.
8 Article VI, Section 11 provides that any challenge to the Board’s redistricting plan must
9 be filed within 30 days of the Board’s adoption of that plan. In their initial complaint
10 regarding the 2021 Redistricting Plan, the East Anchorage Plaintiffs expressly sought
11 a ruling striking down as unconstitutional Senate District L, arguing that the Court
12 should invalidate both “Eagle River senate districts.” This Court did not grant the East
13 Anchorage Plaintiffs this relief, instead issuing a narrower order focused on the equal
14 protection implications for Muldoon voters of pairing then-House District 22 (Eagle
15 River valley) with then-House District 21 (South Muldoon). This Court did not strike
16 down Senate District L and expressly acknowledged that the Board had articulated
17 justification for pairing the North Eagle River-Chugiak and JBER districts together.¹
18 This Court declined to invalidate Senate District L,² and the East Anchorage Plaintiffs’
19 did not appeal or cross-appeal that aspect of this Court’s decision. *Res judicata* and
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24 ¹ Findings of Fact and Conclusions of Law, at 67 (Feb. 15, 2022) (“While justification for
25 pairing North Eagle River and JBER was strongly contested by other Board members, there
26 was some justification provided for uniting Districts 24 and 23.”).

² See Findings of Fact and Conclusions of Law, at 67 (Feb. 15, 2022).

1 collateral estoppel prevent the East Anchorage Plaintiffs from re-litigating a senate
2 district that was challenged and upheld in the 2021 Redistricting Litigation.

3
4 Second, the East Anchorage Plaintiffs are improperly asking this Court to ignore
5 the rules that govern challenges to the Board's redistricting plans. Alaska Civil Rule
6 90.8 governs those challenges, and neither a litigant nor a superior court may ignore its
7 provisions. That rule requires the transmittal of the Board's record to the superior court.
8
9 On remand, the Board held sessions to receive public comment and received hundreds
10 of comments regarding its proposed new senate pairings. Civil Rule 90.8 requires this
11 Court to consider that record in adjudicating any challenges to the 2022 Amended
12 Redistricting Plan. This Court cannot simply accept East Anchorage's cherry-picked
13 excerpts when neither the Plaintiffs nor the Court have received the full and complete
14 Board record.

15
16 Third, on the merits, the Alaska Supreme Court has already rejected the
17 arguments that the East Anchorage Plaintiffs make in their instant motion. In
18 challenging Senate District L, the East Anchorage Plaintiffs are asking the Court to
19 ignore the controlling precedent from the Alaska Supreme Court that the Eagle River
20 area of the Municipality of Anchorage is part of Anchorage and may be in a *house*
21 district with the Anchorage hillside. In the 2001 redistricting litigation, the Alaska
22 Supreme Court rejected the following arguments: that Eagle River-Chugiak must be
23
24 paired together and that the Eagle River-Chugiak area cannot be drawn into districts
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1 with the Anchorage hillside.³ Making the practical point that it had approved house
2 districts that place areas outside of the Municipality with areas within the Municipality
3 (northern Kenai Peninsula with South Anchorage), twenty years ago the Court affirmed
4 the house districts that combined the Eagle River area with the Anchorage hillside.
5

6 **II. FACTUAL AND PROCEDURAL BACKGROUND**

7 On November 10, 2021, the Board issued its “Final Plan and Proclamation of
8 Redistricting” (hereinafter “2021 Redistricting Plan”).⁴ Five lawsuits were filed
9 challenging the 2021 Redistricting Plan, including a challenge filed by the East
10 Anchorage Plaintiffs.⁵ The East Anchorage Plaintiffs asserted five claims,⁶ all of which
11 sought a court order that the house districts that comprised the Eagle River portion of
12 the Municipality of Anchorage had to be paired together.⁷
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14

15 Indeed, the East Anchorage Plaintiffs only asked the Court to mandate one
16 specific senate pairing: that the Eagle River area house districts had to be paired
17 together in a senate district.⁸ The East Anchorage Plaintiffs asked the Court to issue an
18 order:
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21 _____
22 ³ *In re 2001 Redistricting Cases*, 47 P.3d 1089, 1090 (Alaska 2002).

23 ⁴ Findings of Fact and Conclusions of Law, at 21.

24 ⁵ Findings of Fact and Conclusions of Law, at 22.

25 ⁶ Findings of Fact and Conclusions of Law, at Appendix D.

26 ⁷ First Amended Application to Compel the Alaska Redistricting Board to Correct its Senate District Pairings in Anchorage, at 13 (Dec. 15, 2021).

⁸ First Amended Application to Compel, at 13.

1 declaring the Board’s adoption of the Anchorage pairings void and
2 directing it to adopt the Bahnke East Anchorage/Eagle River Pairings
3 or, alternatively, lawful pairings that place both Eagle River house
4 districts in a single senate district and pair East Anchorage house
districts with contiguous communities of interest.⁹

5 After trial, this Court issued its Findings of Fact and Conclusions of Law (“Decision”).
6 The Decision did not invalidate Senate District L.¹⁰ This Court did not issue the ruling
7 desired by the East Anchorage Plaintiffs that certain house districts had to be paired
8 together to form senate districts.¹¹ This Court did not rule that Senate District L
9 unlawfully split the Eagle River “community of interest.”¹² This Court did not issue
10 any ruling that Senate District L’s composition violated the equal protection clause.¹³
11

12 The East Anchorage Plaintiffs did not petition the Alaska Supreme Court to
13 review the lawfulness of Senate District L. Only the Board, the Skagway Plaintiffs, the
14 Matanuska-Susitna Borough Plaintiffs, and the City of Valdez Plaintiffs filed petitions
15 for review with the Alaska Supreme Court.¹⁴ The East Anchorage Plaintiffs did not
16 appeal *any* portion of this Court’s Decision.
17

18 On March 25, 2022, the Alaska Supreme Court issued its order upholding this
19 Court’s decision that Senate District K (South and North Muldoon) violated equal
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22 _____
⁹ First Amended Application to Compel, at 13.

23 ¹⁰ Findings of Fact and Conclusions of Law, at 169-170.

24 ¹¹ Findings of Fact and Conclusions of Law, at 169-170.

25 ¹² Findings of Fact and Conclusions of Law, at 169-170.

26 ¹³ Findings of Fact and Conclusions of Law, at 169-170.

¹⁴ See Order Petitions for Review, S-18332, at 1 (Mar. 25, 2022).

1 protection.¹⁵ The Supreme Court reversed this court’s conclusion that the Board must
2 make a “good-faith attempt to incorporate the public testimony of Alaska citizens” in
3 drawing election districts.¹⁶ The Supreme Court also held that there was “no
4 constitutional infirmity with House Districts 3 and 4 and no need for further work of
5 the Board.”¹⁷

7 On March 30, this Court issued its Order Following Remand from the Alaska
8 Supreme Court. Because the higher court only invalidated Senate District K, and not
9 all Anchorage senate pairings, this Court pared down its remand order to the following:
10

- 11 1) To correct the Constitutional errors identified by this Court to
12 the Supreme Court in Senate District K; 2) To redraw House
13 District 36 to remove the “Cantwell Appendage”; and 3) To make
14 other revisions to the proclamation plan resulting or related to
15 these changes.¹⁸

16 Nothing in this Order required the Board to redraw Senate District L.

17 In light of these rulings, the Board reconvened starting on April 2, 2022. It held
18 seven public hearings, published two versions of Anchorage senate pairings to its
19 website, and received over 400 written submissions and live testimony of more than
20 100 Alaskans. The Board is transcribing all of these meetings and will be prepared to
21 supplement the record during the week of April 25, 2022, to include the full meeting
22

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24 ¹⁵ See Order Petitions for Review, S-18332, at 5-6 (Mar. 25, 2022).

25 ¹⁶ See Findings of Fact and Conclusions of Law, at 146-147 (Skagway).

26 ¹⁷ See Order Petitions for Review, S-18332, at 3 (Mar. 25, 2022).

¹⁸ Order Following Remand from the Alaska Supreme Court (Mar. 30, 2022).

1 transcripts, all written public testimony, all proposed plans, and the adopted 2022
2 Amended Proclamation Plan.

3
4 On remand, the Board made a good-faith effort to fix the problems identified in
5 the Alaska Supreme Court’s order on this Court’s Decision. Contrary to the East
6 Anchorage Plaintiffs’ assertions, there was a significant split in the testimony with
7 compelling arguments in favor of both the options presented to the Board. At the outset
8 of the public hearings, there was much testimony urging the Board to re-vamp all of the
9 senate districts within the Municipality of Anchorage in accordance with the “Bahnke
10 Plan.” But the Board unanimously voted to reject the Bahnke Plan because the courts
11 had invalidated only Senate District K, not all Anchorage senate districts. The Board
12 carefully considered all of the testimony, discussed the testimony as it deliberated over
13 the two options presented by the public, and ultimately voted to leave Senate District L
14 intact from the 2021 Redistricting Plan. While the record has yet to be completed and
15 bates stamped, the Board attaches hereto a full transcript from its April 13, 2022
16 hearing, which reflects that each Board member explained his and her rationale in detail
17 and considered the salient points raised by members of the public.¹⁹

21 **III. ARGUMENT**

22 Unhappy that the Board did not rubber stamp the Plaintiffs’ preferred Anchorage
23 Senate pairing plan, the Plaintiffs are back before this Court seeking to have it supplant
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25

26 ¹⁹ See Transcription of April 13, 2022 Board Meeting, attached as **Exhibit A**.

1 its judgment for the sagacity of the Board.²⁰ But their challenges are barred by *res*
2 *judicata*, collateral estoppel, and Article VI, Section 11’s 30-day statute of limitation.
3
4 Because Senate District L was challenged and upheld in the litigation over the 2021
5 Redistricting Plan, the East Anchorage Plaintiffs may not challenge Senate District L
6 again. Moreover, Senate District L is constitutional on the merits under the Alaska
7 Supreme Court’s decision in *In re 2001 Redistricting Cases*, where the Court reaffirmed
8 that voters have no constitutional right for Eagle River-Chugiak to be in a single
9 election district and that a house district that includes the Eagle River-Chugiak area and
10 the Anchorage hillside area is constitutional.²¹

11
12 **A. East Anchorage’s Challenge to Senate District L is Barred by *Res***
13 ***Judicata*/Collateral Estoppel and Article IV, Section 11’s 30-Day Statute of**
14 **Limitations.**

15 Pursuant to Section 11 of Article VI of the Alaska Constitution, any challenge
16 to the Boards’ redistricting decisions must be brought within 30 days: “Application to
17 compel the board to perform must be filed not later than thirty days following expiration
18 of the ninety-day period specified in this article.” Senate District L, combining North
19 Eagle River/Chugiak with JBER, was adopted in the November 10, 2021 Proclamation
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22 ²⁰ *In re 2011 Redistricting Cases*, 294 P.3d 1032, 1037 (Alaska 2012) (“We may not substitute
23 our judgment as to the sagacity of a redistricting plan for that of the Board, as the wisdom of
the plan is not a subject for review.”).

24 ²¹ *In re 2001 Redistricting Cases*, 47 P.3d 1089, 1090 (Alaska 2002); *see also In re 2001*
25 *Redistricting Cases*, 2002 WL 34119574, *2 (Alaska Sup. Ct. May 9, 2002) (rejecting claims
26 by Eagle River-Chugiak plaintiffs regarding the splitting of the Eagle River-Chugiak area
into multiple house districts and pairing that area with the Anchorage hillside into House
District 32).

1 Plan. East Anchorage timely challenged Senate District L and expressly sought to have
2 it invalidated. East Anchorage had the opportunity to litigate its case in a trial on the
3 merits, and it did not prevail on this issue.²² This Court did not invalidate Senate
4 District L. On appeal, East Anchorage did not seek review of this Court’s decision with
5 regard to Senate District L. The Alaska Supreme Court affirmed that Senate District K
6 was constitutionally infirm, but did not invalidate any other senate district, including
7 Senate District L.
8
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10 Pursuant to the doctrines of *res judicata* and collateral estoppel, and the 30-day
11 time bar, East Anchorage is legally prohibited from renewing a challenge it has already
12 lost.
13

14 First, allowing East Anchorage a second bite at the apple would invalidate the
15 30-day filing requirement under Section 11, and open the door to endless potential
16 challenges to the Board’s redistricting plan. With candidate filing deadlines quickly
17 approaching, allowing an end run around the constitutional statute of limitations would
18 be contrary to the public interest in a final redistricting plan.
19

20 Second, *res judicata* bars the East Anchorage challenge to Senate District L. “A
21 judgment is given *res judicata* effect by this court when it is (1) a final judgment on
22 the merits, (2) from a court of competent jurisdiction, (3) in a dispute between
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²² Findings of Fact and Conclusions of Law, at 67, 169-170 (noting the justification in the Board record for Senate District L and a list of the Court orders which does not include invalidation of Senate District L).

1 the same parties (or their privies) about the same cause of action.”²³ This Court’s
2 Decision was a final judgment on the merits of the 2021 Redistricting Plan, and was
3 treated as such by the Alaska Supreme Court on appeal. The dispute involved the same
4 parties and involved the very same senate district pairing of House District 23 and
5 House District 24. East Anchorage is not entitled to second bite at the apple.
6

7 Third, collateral estoppel bars a new challenge to Senate District L. Collateral
8 estoppel prohibits re-litigation of issues actually decided in earlier proceedings
9 where: (1) the party against whom the preclusion is employed was a party to or in
10 privity with a party to the first action; (2) the issue precluded from re-litigation is
11 identical to the issue decided in the first action; (3) the issue was resolved in the first
12 action by a final judgment on the merits; and (4) the determination of the issue was
13 essential to the final judgment.²⁴ All of these elements are satisfied here, and so again
14 East Anchorage is precluded from re-litigating an issue it has already lost.
15
16

17 **B. No Litigant May Challenge Senate District L, Which is the Exact Same**
18 **District as in the 2021 Redistricting Plan.**

19 The Board acknowledges that pursuant to Article IV, Section 11, any party
20 aggrieved by a *new* decision of the Board, that was not part of the 2021 Redistricting
21 Plan, should be entitled to seek judicial review by filing a legal challenge within 30
22 days of the Board’s April 13 2022 Amended Proclamation Plan. The Amended
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25 ²³ *Patterson v. Infinity Ins. Co.*, 303 P.3d 493, 497 (Alaska 2013) (quoting *Angleton v. Cox*,
283 P.3d 610, 614 (Alaska 2010)).

26 ²⁴ *State, Dep’t of Revenue v. BP Pipelines (Alaska) Inc.*, 354 P.3d 1053, 1068 (Alaska 2015).

1 Proclamation Plan contains four new senate districts (new Senate District K, new
2 Senate District E, new Senate District G, and new Senate District I). The Amended
3 Proclamation Plan also removed Cantwell from House District 36 and placed it in
4 House District 30. As to any of these new decisions, a legal challenge filed within 30
5 days of April 13, 2022 would be timely. In contrast, any challenge to a redistricting
6 decision contained in the Board’s November 2021 Redistricting Plan is now untimely
7 because it is beyond Section 11’s 30-day statute of limitations.
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10 The Board is working expeditiously to prepare a supplemental record and will
11 have it ready for production no later than the week of April 25. Because the Board’s
12 work on remand was limited, and because it was done entirely in public meetings on
13 the record, the Board believes that any legal challenges can likely be resolved with
14 expedited cross-motions for summary judgment after the record is finalized.
15

16 It is noteworthy that the East Anchorage Plaintiffs make no attempt in their
17 motion to apply the neutral factors test adopted by this Court to evaluate an equal
18 protection claim. That is because they cannot prevail if it is applied. That test considers
19 if there was indicia of secretive proceedings, regional partisanship, and a lack of
20 justification on the record for splitting a community of interest.²⁵ The Board anticipates
21 that should there be any such challenge, it will demonstrate a robust, inclusive public
22 process, no evidence of regional partisanship, and well-explained reasons articulated
23
24

25 _____
26 ²⁵ Findings of Fact and Conclusions of Law, at 54 (applying neutral factor test to Senate
District K under the 2021 Redistricting Plan).

1 on the record for each of its new senate districts. That the East Anchorage Plaintiffs
2 disagree that Senate District L has no bearing on its constitutionality.

3
4 As an example, the new Senate District E, pairing the Eagle River valley and the
5 Upper Hillside, is coextensive with a prior house district that the Alaska Supreme Court
6 found to be compact, contiguous and socio-economically integrated.²⁶ In *In re 2001*
7 *Redistricting Cases*, Alaska residents argued that the “Eagle River-Chugiak area is
8 socio-economically integrated area that should not have been divided” into multiple
9 house districts and should not have been drawn into a house district with the Anchorage
10 hillside.²⁷ The Alaska Supreme Court easily rejected both arguments. As to the
11 argument that the Eagle River-Chugiak area should not be split the Court reasoned:
12 “[w]hile the Eagle River-Chugiak area is socio-economically integrated, its residents
13 have no constitutional right to be in a single district.”²⁸ As to the argument that Eagle
14 River should not be in a house district with the Anchorage hillside (House District 32
15 under the 2002 Amended Redistricting Plan in that litigation), the Court noted that all
16 “communities within the Municipality of Anchorage are socio-economically integrated
17 as a matter of law, and we have previously upheld a district combining the northern
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25 ²⁶ *In re 2001 Redistricting Cases*, 47 P.3d 1089, 1090 (Alaska 2002).

26 ²⁷ *Id.*

²⁸ *Id.*

1 Kenai peninsula with Anchorage.”²⁹ The East Anchorage Plaintiffs are now making
2 the same arguments rejected in this binding precedent from two decades ago.

3
4 In pushing for their preferred Anchorage senate map, the East Anchorage
5 Plaintiffs ignore that Senate District K from the 2021 Redistricting Plan that was struck
6 down by this Court was comprised of *two* house districts, not four. Specifically, the
7 East Anchorage Plaintiffs ask for a ruling that “[r]equires the Board to correct *both* of
8 the unconstitutional pairings underlying Senate District K, pairing the Eagle River
9 house districts together and the Muldoon house districts together and only disrupt the
10 promulgated senate pairings to the extent necessary to effectuate these pairings[.]”³⁰
11 Again, the Alaska Supreme Court only affirmed the invalidation of Senate District K,
12 which was comprised of South Muldoon (then-House District 21) and Eagle River
13 (then-House District 22). There were no other house districts in Senate District K.
14
15

16 Searching for a cognizable claim to support their desired result in the Eagle
17 River-Chugiak area, the East Anchorage Plaintiffs offer contradictory arguments as to
18 the harm purportedly inflicted by Senate District L. In their actual pleading, East
19 Anchorage claims that Senate District L results in the over-representation of the Eagle
20 River-Chugiak areas in the Alaska Senate.³¹ Yet, East Anchorage’s expert in the last
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24 ²⁹ *Id.*

³⁰ East Anchorage Plaintiffs’ Motion, at 14 (emphasis in original).

25 ³¹ East Anchorage Plaintiffs’ Motion, at 2 (“Thus, on remand, the Board’s intent to split
26 Eagle River districts to *increase* the representation of the majority political party remains
...”) (emphasis added).

1 round of litigation, Dr. Chase Hensel, submitted a public comment (that East Anchorage
2 attaches to its motion) that says the exact opposite—that Senate District L results in the
3 “[d]ivision of the Eagle River community of interest” and will “dilute [Eagle River’s]
4 voting power by splitting it between two districts.”³² The fact that East Anchorage and
5 its former expert cannot agree whether Senate District L enhances or dilutes the voting
6 power of Eagle River-Chugiak residents (in reality, it does neither) strongly suggests
7 political motivations in search of a legal theory. *In re 2001 Redistricting Cases*
8 confirms that neither the East Anchorage Plaintiffs nor Eagle River-Chugiak residents
9 have their constitutional rights injured by Senate District L.
10
11

12 Setting aside the East Anchorage Plaintiff’s penchant for hyperbole, the Board’s
13 replacement of Senate District K in the 2022 Amended Redistricting Plan addresses the
14 equal protection problem identified by this Court regarding voters who reside near
15 Muldoon Road. The new Senate District K otherwise follows the requirements of the
16 Alaska Constitution. The East Anchorage Plaintiffs’ motion should be denied.
17
18

19 **C. The Court Needs the Board Record to Adjudicate New Challenges to the**
20 **Board’s 2022 Amended Redistricting Plan.**

21 The East Anchorage Plaintiffs seek to enlist this Court in achieving their political
22 desires by submitting cherry-picked testimony and without giving the Court the benefit
23 of the Board’s record. Alaska Civil Rule 90.8(d) mandates otherwise. That rule states
24 that the record in the superior court proceedings “consists of the record from the
25

26 ³² **Exhibit E** at 5 to East Anchorage Plaintiffs’ Motion to Reject.

1 Redistricting Board” and supplemented “by such additional evidence as the court, in its
2 discretion, may permit.”³³ The East Anchorage Plaintiffs ask this Court to act without
3 the record.
4

5 This Court’s review of the Board’s record following remand is crucial. The new
6 senate pairings were supported by significant public testimony to the Board. The East
7 Anchorage Plaintiffs and the Board proposed the same solution for the stricken Senate
8 District K: pair North Muldoon and South Muldoon together to form a senate district.
9 The Board adopted a new Senate District K that paired those Muldoon areas together.
10 Testimony about Senate District E focused on the rural nature of the two house districts,
11 the relationship of those neighborhoods to the geography of the Chugach Mountains
12 and Chugach State park, the common use of road service areas, and similar concerns
13 with regard to wildlife management, snow, wildfire risk, and wells and septic. While
14 others testified for different approaches to crafting Anchorage senate districts, the
15 Board acted well within its discretion when it selected one of multiple potential options
16 and explained its reasons on the record in a fulsome debate. The Board held zero
17 executive sessions and took significant time to invite testimony, listen to the public,
18 debate options in public, and then articulate a final decision. The Board understood
19 this Court’s concerns from its prior rulings and addressed them with a careful public
20 process on remand.
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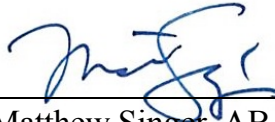
³³ Alaska Civil Rule 90.8(d).

1 **IV. CONCLUSION**

2 For the foregoing reasons, the Board respectfully requests the Court deny the
3 East Anchorage Plaintiffs’ untimely challenges to Senate District L that recycle
4 arguments previously rejected by the Alaska Supreme Court in *In re 2001 Redistricting*
5 *Cases*. While Alaskans are entitled to come forward with concerns about any new
6 changes to the redistricting plan, the East Anchorage Plaintiffs should not be permitted
7 through a late motion to re-litigate decisions that are already final and fully resolved by
8 the courts.
9
10

11 DATED at Anchorage, Alaska, this 20th day of April, 2022.

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1 CERTIFICATE OF SERVICE

2 I hereby certify that on the ____ day of April, 2022,
3 a true and correct copy of ALASKA REDISTRICTING BOARD'S
4 OPPOSITION TO EAST ANCHORAGE PLAINTIFFS' MOTION
5 TO REJECT AMENDED PROCLAMATION PLAN AND FOR
6 MODIFICATION OF ORDER ON REMAND (____ pages) was
7 served upon the following by:

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