



ALASKA REDISTRICTING BOARD

Alaska Redistricting Board Meeting May 22, 2022 | 3:00 p.m. Teleconference Call

The Alaska Redistricting Board met on May 22, 2022. Present participants are below:

John Binkley	Chair of the Board
Melanie Bahnke	Board Member
Bethany Marcum	Board Member
Budd Simpson	Board Member
Nicole Borromeo	Board Member
Peter Torkelson	Executive Director
Matt Singer	Legal Counsel

Agenda

- Call to Order & Establish Quorum
- Adoption of Agenda
- Litigation Report from Counsel
- Board Discussion and Possible Action Regarding Litigation, including Discussion regarding Scope of authority of Litigation Subcommittee
- Board Member Comments
- Adjournment

Call to Order

Chairman Binkley called the meeting to order at 3:00 p.m. With all board members present, a quorum was established.

Adoption of Agenda

Member Simpson moved to approve the agenda as presented; Member Marcum seconded the motion.

Member Borromeo moved to amend the original motion to adopt the original agenda as presented by adding "Public Testimony" to the agenda to preserve public participation.

The following discussion was held on the motion:

- Member Binkley noted that the purpose of this meeting is not to discuss redistricting but to receive an update from counsel on litigation and to address concerns raised by board members on the direction of litigation and the board's Litigation Subcommittee.
- Member Bahnke spoke in favor of the motion and noted that public testimony has been allowed at almost all Redistricting Board meetings.
- Member Simpson agreed that there is a role for public testimony at meetings but also agrees with Member Binkley's statement that today's meeting is not appropriate for public testimony. Member Simpson expressed support in opening the next board meeting for public testimony. Member



ALASKA REDISTRICTING BOARD

Simpson noted that the Redistricting Board website still serves as a platform for the public to provide testimony at any time.

- Member Marcum noted that the board has not taken public testimony for all meetings, but the board has given much opportunity for the public to testify during the mapping process and when decisions are being made. During this meeting, no decisions are being made and the public was not noticed about an opportunity to provide public testimony at this meeting.

Member Bahnke requested a roll call vote on the motion to amend the agenda to add public testimony.

- Member Bahnke – Yes
- Member Binkley – No
- Member Borromeo – Yes
- Member Marcum – No
- Member Simpson – No

The motion failed 2 to 3.

Member Bahnke moved to amend the original motion to add two items to the agenda: 1) After “Litigation Report from Counsel” add a discussion on the scope and authority of the Litigation Committee and 2) Prior to adjournment, add “Board Member Comments”.

Member Bahnke would like to ensure that each board member can provide board member comments and we need to discuss the Litigation Subcommittee’s scope of authority prior to discussion possible action on litigation.

Member Binkley clarified that the agenda would be amended to include board discussion, possible action on litigation, and discussion on the scope of authority of the Litigation Subcommittee under Agenda Item #4, Board Member Comments would be Agenda item #5, and Adjournment would be Agenda Item #6.

Member Bahnke requested unanimous consent on the proposed motion. There was no objection to Member Bahnke’s request.

The motion passed unanimously.

Litigation Report from Counsel

Matt Singer, the board’s legal counsel, reported the following on the current litigation process:

- There have been two recent legal challenges to the amended Proclamation plan: 1) East Anchorage plaintiffs filed a motion asserting that the amended plan violated the Superior Court’s prior remand order and 2) Girdwood plaintiffs filed to intervene in the case asserting that the amended plan violated Section 6 of the constitution and the Equal Protection Clause.
- The Superior Court quickly issued two decisions on May 16th:
 - Judge Matthews denied the East Anchorage plaintiff’s challenge and found that the April amended plan did not violate the court’s order in any way and that the pairing of Eagle River House districts, as advocated for by the East Anchorage plaintiffs, was not violated.



ALASKA REDISTRICTING BOARD

- The court granted part of the relief sought by Girdwood plaintiffs and found that Senate District E violated the Equal Protection Clause for a variety of reasons laid out by Judge Matthews.
- All parties have been mindful of the June 1st candidate filing deadline, including Judge Matthews.
- The board appointed a Litigation Committee in December 2021 which has been supervising legal counsel since its appointment about 6 months ago. The committee directed Matt Singer to file a petition for review which was first submitted a Notice of Appeal on May 17, 2021 and a substantive brief was prepared and filed on May 18, 2021. The Girdwood plaintiffs filed an opposition on May 20, 2021.
- Two board members have expressed concern that the Litigation Committee acted without authority when they directed Matt Singer to file the petition for review. A brief has been filed by the two board members to make this assertion. Matt Singer addressed this issue and noted the following:
 - The prior motion of the board in December 2021 appointed the Litigation Committee and gave it authority over day-to-day decisions and strategy in litigation.
 - The motion also reserved to the full board decisions that would change the Proclamation plan; this power was not delegated to the Litigation Committee. This has proven to be the case.
 - Matt Singer understands some board members' concerns about the Litigation Committee only being appointed to handle a prior lawsuit and that now a new lawsuit is being handled. This is factually incorrect as the Girdwood Plaintiffs intervened in the existing case rather than filing a new lawsuit. Judge Matthews granted them the motion to intervene, and the board is still in the same case.
- While Matt Singer does not believe the Litigation Committee acted out of authority, Matt Singer also recommended that if the board desires to address the concerns expressed by some board members, it would be appropriate to consider a motion to approve and ratify the Litigation Committee's decision to seek appellate review of the Girdwood plaintiff decision and confirm that the Litigation Committee will continue to supervise the litigation strategy until the board has final approval of the Proclamation plan.
- The Supreme Court is working hard to achieve the June 1st deadline. Matt expects that the court will quickly issue a decision and a public meeting may need to quickly be noticed depending on when the court issues a decision.

Board Discussion and Possible Action Regarding Litigation, including Discussion regarding Scope of authority of Litigation Subcommittee

The board noted the following in response to legal counsel's report on litigation:

- Member Bahnke noted that more time was spent discussing the technical question raised by her and Member Borromeo and there has not been much opportunity to analyze the filings and the board's response to the claims prior to the responses being filed. The board did not vote on the responses filed thus making the filings unauthorized.
- Member Bahnke requested to observe Litigation Committee meetings as there are no meeting minutes from the committee meetings.
- Member Borromeo recited the motion made on December 15, 2021 by Matt Singer: "I move to appoint a Litigation Subcommittee consisting of 2 members to work with the legal counsel and Executive Director to oversee the pending litigation. In coordination with counsel and staff the



ALASKA REDISTRICTING BOARD

committee shall be delegated responsibility for routine day-to-day litigation and strategy. Any final decision that would directly impact our Proclamation plan is reserved for decision by the full board.”

- Member Borromeo noted the following points:
 - Based off the motion, the purpose of the committee is to oversee the pending litigation; the only litigation that was pending was related to the initial five lawsuits challenging the 2021 Proclamation. The committee was not granted oversight over all litigations, only the pending litigation on the board’s 2021 Proclamation.
 - The committee only possessed delegated responsibility for routine day-to-day strategy.
 - The motion states that any decision that directly impacts the board’s Proclamation must be reserved for the full Board, however, hardly any decisions came before the full Board related to litigation after that.
 - As the drafter of the motion, Matt Singer should have known the limitations of the authority as it related to the Litigation Committee and should not have been using the Litigation Committee to usurp the board’s governing powers.
 - Member Borromeo’s message to the Supreme Court was not sudden. As early as April 11th, Member Borromeo had begun expressing concerns on the Litigation Committee’s scope of authority.
- Member Binkley expressed agreement with Matt Singer’s analysis and interpretation of the authority delegated to the Litigation Committee.

Member Marcum moved to approve and ratify the decision of the Litigation Committee to seek appellate review of the Superior Court’s decision about the Girdwood Plaintiff’s legal challenge and confirmed that the board delegates to the Litigation Committee ongoing authority to supervise Counsel and defend the board’s redistricting plan in Superior Court and Supreme Court until there is final court approval, and all appeals are final. Member Binkley seconded the motion.

The board discussed the following on the motion:

- Member Marcum expressed support of the motion and stated that the Litigation Committee has had clear authority to act as it was clear that board decisions would be related to drawing maps and plans, and making pairings. Member Marcum disagrees with the Superior Court’s decision and an appellate review is important; the board should want to seek guidance on this to inform future boards.
- Member Bahnke spoke in opposition of the motion as such decision to appeal should be decided by the full board, as it impacts the final Proclamation, and follow the same process as the last round of litigation.
- Member Simpson stated that his votes have solely been made on his own judgement without any outside influence.

Member Borromeo moved to amend the original motion to add that if the board majority feels strongly about the appeal, then the appeal should personally be paid for by them or by Matt Singer’s firm as a pro bono service on the case. Member Bahnke seconded.

Member Borromeo noted that in November to early December 2021, a legal debt was incurred of approximately \$80,000.00, the standard for reapportionment processes. Currently, the board faces legal fees of about \$1 million and will continue to incur fees. Should much of the board continue to move



ALASKA REDISTRICTING BOARD

forward in appealing, Member Borromeo suggested that the board majority personally pay for the legal fees or have Matt Singer's firm provide pro bono work on the case.

The board completed a roll call vote on the motion to amend the original motion:

- Member Bahnke – Yes
- Member Binkley – No
- Member Borromeo – Yes
- Member Marcum – No
- Member Simpson – No

The motion to amend the original motion failed 2 to 3.

The board discussed the following on the original motion:

- Member Bahnke requested that Matt Singer recite Alaska Constitution Article VI, Section 9 to which he recited a sentence from the section for the board: *"Concurrence of three members of the Redistricting Board is required for actions of the Board, but a lesser number may conduct hearings."* Member Bahnke stated that the motion is illegal as the board cannot assume the Litigation Committee has the authority to litigate on behalf of the full board.
- Member Simpson stated that any member who considers the motion improper or unconstitutional should vote against the motion. There is a separate filing before the Supreme Court presented by and on behalf of some board members addressing a procedural question. If there is an issue, the court will determine that.
- Member Borromeo requested that Member Marcum amend the original motion and separate each action into separate motions.

Member Bahnke moved to amend the original motion to separate each action into separate motions to allow board members to vote on each individual proposed action. Member Borromeo seconded.

The board discussed the following on the proposed motion:

- Member Bahnke stated that there are too many actions in one motion and requested that the board separate each action into one motion, which has been done in the past.
- Member Marcum noted that the original motion does not create new allowances for the Litigation Committee. The motion confirms what has already been established by ratifying their actions and allowing continued operation. Member Marcum expressed opposition to the proposed amendment.
- Member Borromeo noted that the Litigation Committee has usurped the governance powers of the board in a manner that is contrary to what they were intended to do in the first place.

The board took a roll call vote on the motion to amend the original motion:

- Member Bahnke – Yes
- Member Binkley – No
- Member Borromeo – Yes



ALASKA REDISTRICTING BOARD

- Member Marcum – No
- Member Simpson – No

The motion to amend the original motion failed 2 to 3.

The board took a roll call vote on the original motion:

- Member Bahnke – No
- Member Binkley – Yes
- Member Borromeo – No
- Member Marcum – Yes
- Member Simpson – Yes

The motion passed 3 to 2.

Board Member Comments

The following comments were given by board members:

- Member Bahnke: *"First of all, I'm glad we actually had a meeting. Like I and Nicole said, we've been begging for weeks to have a meeting. Even though we might have been outvoted once again, at least this has happened, somewhat, before the public eyes. We're required to make our stance known on record, not behind closed doors or the shroud of a board committee. I still stand by the fact that we took proper procedural actions in February when we decided to appeal that case and I respected that process. That didn't happen this time around so I still believe that our filing to appeal was not properly sanctioned and even though we're now backpedaling and retroactively ratifying it, the court filing deadline was Friday. So, we've missed that deadline. We'll see what the courts decide – whether it's on technically or merit – I feel confident that the Supreme Court, in its great wisdom and authority, will make a decision which we'll have to abide by. I do feel like these last few weeks of not having a meeting – first of all, the Anchorage Senate maps are an attempt to silence certain parts of Anchorage voters. The board process has sought to silence those of us who disagree with gerrymandering and now this meeting, by way of not allowing the public to comment, is silencing the public and I believe the board majority will seek to silence the court as evidence by our Chairman disregarding the Supreme Court's order on the Cantwell appendage. I'm just baffled by the continued lack of respect for the process. How many times are we going to have to take this to the court? I guess this is hopefully the last one, but \$1 million later. I don't know what it's going to take for us to say we can't gerrymander; it's that simple. Our filing in the court says that we should have had a meeting to vote on this. I would have respected the outcome just like I did in February, but that did not happen. We did not have a meeting to vote to appeal. That appeal is not valid.*
- Member Borromeo: *"I do want to say thank you very much to the entire board for noticing a public hearing, holding a meeting today, because it is important, and process does matter. While I agree with Melanie that, ultimately, the two of us may not have the vote to withdraw this appeal to the Supreme Court, that's not what this is about. To me at least, It's about following the constitution, keeping our decisions from being made behind closed doors but out in public so the public can be privy to the decisions that we are making. I know that there was some*



ALASKA REDISTRICTING BOARD

uncomfortable and quite unfortunate information that was disclosed today during the meeting and it's a shame that it's come to this point. If we just could have just met as a board, I don't think that two of us would have had to secure our own conflict counsel to require the board to have a public meeting. That's all we wanted – that's really all that we know that we are entitled to and hopefully the next board will do things a little bit differently than this board has and will learn from it as a state. I didn't want to email the Supreme Court and counsel – I did it on Wednesday. I gave the board two full days to get together and hold a meeting to ratify the decisions and probably to have moved the filing that we ended up doing – Melanie and I – on Friday. Now, as a result of the board dragging its feet and failing to meet, that motion that Melanie and I filed through our independent conflict counsel – which by the way, for the record, isn't being paid for by the State of Alaska. We're taking care of that on our own, pro bono, right now, and we're going to fundraise afterward for our attorney, but that's another matter – it may be dispositive, and this appeal may not be able to go forward. So, I hope that as a board, we have collectively learned from this, as individuals we have learned from it as well. I do maintain that I am willing to sit down and meet and work with the board to do our constitutional duties, but I'm not going to rubber stamp decisions that are made with two of us instead of all five behind closed doors, and then find out about it during the public process like everyone else does. That's not the type of board that I was appointed to sit on.

- Member Marcum: *"I just want to note for the record that we are not silencing the public. We have been noticing all board meetings as required by law properly. Our board has given more opportunities for public testimony than ever before in the state redistricting process. In fact, the web portal is open for testimony right now and I welcome comments from the public now and until all litigation challenges are final. So, I encourage the public to participate in the process and contrary to what you've heard, we welcome your comments.*
- Member Bahnke requested that the full board be kept informed of the Litigation Committee's meetings, decisions, actions, and deliberations.
- Member Binkley: *"With regards to costs, there have been about \$1 million to date spent on litigation and legal work by the Alaska Redistricting Board, but to give the public some comparison, the previous board 10 years ago, in their deliberation and getting to their final Proclamation plan, spent \$3.5 million so it's not unusual that there are very high legal costs associated with redistricting. That went over a number of years as we anticipate this will. This time, we've already been at it a couple of years and it may be longer, but it's not unusual for those types of sums to be spent by redistricting boards. Also, in litigation, it sometimes strategic and sometimes adversarial and there's no secret to the fact that two of the board members have dissented from what the majority desired in terms of the final map and how the litigation was approached. It's unfortunate that that's the case, but that's the choice we find ourselves in. It makes sense, at least to me, to confirm the authority of the Litigation Committee in terms of carrying out the board's wishes."*

Adjournment

Member Marcum moved to adjourn the meeting; Member Simpson seconded.

The meeting adjourned at 3:20 p.m.