



ALASKA REDISTRICTING BOARD

Alaska Redistricting Board Meeting
May 15, 2023 | 1:00 p.m.
Anchorage Legislative Information Office and Zoom Virtual Meeting
1500 West Benson Blvd, Anchorage, AK 99503

The Alaska Redistricting Board met on May 15, 2023. Present participants are below:

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| 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 |

Agenda

- Call to Order and Establish Quorum
- Adoption of Agenda
- New member swearing in, pending appointment
- Adoption of Minutes
- Public Testimony
- Review by Legal Counsel of Alaska Supreme Court Decision
In the Matter of the 2021 Redistricting Cases, April 21, 2023
- Consideration of Adoption of Interim 2022 Plan as Final 2023 Redistricting Plan
- Board member comments
- Adjournment

Call to Order

Chairman Binkley called the meeting to order at 12:59 p.m. With four board members present, a quorum was established.

Adoption of Agenda

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

The motion passed unanimously.

New Member Swearing In

Chairman noted that the Board has received a letter appointing Bethany Marcum to the vacant seat on the Board. Ms. Marcum recited the following oath of office:

I do solemnly swear that I will support and defend the Constitution of the United States and the Constitution of the State of Alaska, and that I will faithfully discharge my duties as a member of the Alaska Redistricting Board to the best of my ability.



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Adoption of Meeting Minutes

Member Bahnke moved that the Board adopt the draft minutes from meetings held in April 2022, and May 2022, ten in total, as a block.

Member Marcum seconded the motion.

Member Simpson noted that he was absent for the meetings held on April 2, and April 4, and so would refrain from voting on those two draft minutes.

Hearing no objection, the minutes were approved unanimously.

Public Testimony

Public testimony was given as follows:

- Anchorage resident, Steve Aufrecht thanked the board for two and a half years of diligent work on the various plans. Steve thanked Board staff for their professionalism and commitment to keeping the public informed and the website up to date.
- Member Marcum thanked Steve for his commitment and participation in the public process.
- Girdwood resident, Louis Theiss asked the Board in the spirit of gracious professionalism to not contest the Girdwood plaintiff's fee claim filed with the Alaska Supreme Court and thanked the Board for their public service. He noted that Girdwood and Eagle River had very different political interests.
- Member Borromeo stated that she would prefer to discuss fee litigation in executive session with legal counsel and not on the public record.
- Anchorage resident, Yarrow Silvers, stated that it had been a really long journey, but that she thanked the Board for their service and reflected that participation in the process had lead her to greater civic engagement.

Review by Legal Counsel of Alaska Supreme Court Decision

The Board's legal counsel, Matt Singer provided a summary of the Alaska Supreme Court's decision *In the Matter of the 2021 Redistricting Cases, April 21, 2023*.

- Every Redistricting plan in Alaska history has been litigated, and many have been thrown out.
- The Alaska Constitution provides just two sentences of guidance to the Board
- Cycle by cycle, litigation helps to flesh out how to do redistricting in Alaska
- The Court took time this time around in 112 pages to give more guidance to future boards providing clarity to some areas that the Board wrestled with.
- The Board's initial plan drew 5 lawsuits
- Calista, litigating the line dividing Hooper Bay from Scammon Bay



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- Skagway litigating how they were attached to the north side of CBJ rather than with downtown Juneau
- Valdez litigating their attachment to a portion of the Mat-Su Borough, even though the road connection was not included.
- Mat-Su litigated over population deviations in Mat-Su districts.
- East Anchorage plaintiffs litigated that portions of East Anchorage could not be joined with Eagle River in a Senate district
- The Superior Court found that the “Hard Look” standard required the Board to adopt whichever constitutional plan was most popular with public testifiers. The Supreme Court reversed this, and found that the Hard Look standard requires that if public testimony raises salient constitutional concerns, then the Board must address and deliberate those, but does not restrict the Board to adoption of a particular plan based on popularity.
- Because Skagway was socio-economically integrated with the City and Borough of Juneau, then it was constitutional to choose the more compact district with the northern portion of the Borough.
- Supreme Court agreed with the Board that ample hearings had been held on Senate districts.
- The Supreme Court agreed with the Board that while the Board should have been more specific when we go into Executive Session, but that there were no Open Meetings Act violations which required any decisions to be vacated.
- Because of the accelerated trial schedule, the Board members never had a chance to explain their rationale to the Court directly. That’s unfortunate. Hopefully next cycle the Board will have the benefit of a full trial.
- The Supreme Court agreed with the Board that the large interior district 36 was sufficiently compact and socio-economically integrated and that the Mat-Su districts were not unconstitutionally overpopulated at +2.5%.
- The Supreme Court agreed with the Board that the Hickel Process was followed, even though the four rural districts in northern and western Alaska were drawn early in the process and were at times referred to by members as the “VRA” districts.
- Supreme Court agreed with the Superior Court that the Amended Proclamation plan’s joining of Eagle River with Girdwood South Anchorage in a Senate district was impermissible.
- There’s a helpful discussion by the Supreme Court that tracks with reality: mere discussion about VRA districts or that Alaska Native populations live in western Alaska, or draw them early in the process provided that racial factors are not under consideration. VRA districts must be drawn early enough in the process that they can be evaluated by a VRA consultant with enough time to make changes should any be required.



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- The Supreme Court positively affirmed that the Open Meetings Act applies to the Board. While the Board operated as if it did, and assumed so, it is not a matter of settled law.
- The Supreme Court affirmed that the Board is entitled to confidential legal advice regarding potential litigation, but that general principles of law should be discuss on the public record.
- Big takeaway is that motions for Executive Session should be more specific about the purpose of the Executive Session.
- Supreme Court confirmed that taking a “hard look” means thinking about the Constitutional requirements and considering the testimony that comes before you particularly when it raises a constitutional concern. “Hard Look” process is about making reasoned decisions not about making popular decision. Supreme Court agreed with the Board in overturning the Superior courts reliance on the quantity of public testimony.
- Compactness and Contiguity do not require road connections. The fact that D29 cuts of the road to Valdez does not make it unconstitutional. Having to drive outside the district is not unconstitutional. Court makes it very clear this time around, no road connection required. Could be important in socio-economic integration or communities of interest, but inability to drive between all parts of a district does not render it non-compact.
- For the first time, the Supreme Court case establishes that Compactness and Contiguity take precedent over Socio-Economic integration. Court says in this case, that you start with Compactness and Contiguity and then move to Socio-Economic integration.
- The Supreme Court explained that within 30 days the Board most adopt at least one plan, and that plan must include Senate Pairings. Its acceptable if the Board’s plan adopted within the first 30 days comes from a third party, just as long as the Board adopts a full plan, with Senate pairings.
- In terms of developing new law while discussing the Equal Protection clause, the Supreme Court adopted a community of interest definition for the first time in this case. The Court treated Girdwood and Eagle River as separate communities of interest and defined them as a “Geographically defined group of people who share similar social, cultural and economic interests and believe they are part of the same coherent entity”. This is a new definition. This court is trying to develop a standard that future Boards can apply when evaluating a district. This will be significant when districting urban portions of Alaska. People living in close proximity who could be divided in multiple ways. In rural Alaska, where few people live, communities of interest may not be applicable, but it will likely be a topic of discussion for future boards when it comes to districting Anchorage.
- The upshot is after 6 lawsuits in total the Supreme Court found that this Board had Constitutionally districted 99.9% of Alaskans into House districts. There was one error with regard to the House, the error being that the residents of Cantwell should have been with the Denali Borough instead of with their neighbors to the east.



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- With regard to the Senate the Board got 95% of the state correct. The Court did not like the division of Eagle River.
- If you compare these results with prior Boards, last cycle the entire plan was thrown out twice. Farther back in history there are instances where the Court appointed special masters to take over redistricting from the Governor's appointed Board.
- So what's next? The Supreme Court directed two things:
 1. The Supreme Court has directed that if the Board feels additional Redistricting is necessary, it should show good cause to the Superior Court within 30 days of April 23.
 2. Or, if the Board is satisfied with the Interim Plan – does not believe that more Redistricting is necessary – then the Board should issue a proclamation of such.
- There is a constitutional litigant rule about attorney's fees. There will be some fee motions in the Alaska Supreme Court and in the Superior Court arising from the trial which occurred in January 2022.
- Board will have a little additional work to do with Counsel to get the litigation piece buttoned up.

Consideration of Adoption of Interim 2022 Plan as Final 2023 Redistricting Plan

Director Torkelson read the contents of the Draft Final 2023 Redistricting Plan into the record and noted that there were no redistricting changes between the 2022 Interim Plan and the 2023 Final Plan.

Member Borromeo moved that the Board "Adopt the Interim Plan for 2022 as the Final Proclamation Plan"

Member Bahnke seconded the motion.

Member Simpson stated that he intended to support the motion despite disagreeing with many of the representations of facts made in the Court decision but attributes those primarily due to the expedited court process. Member Simpson believes the proposed proclamation is appropriate at this time.

Member Marcum stated that she spent a lot of time reading the decision and certainly agrees with Member Simpson that there were disappointing aspect to the Court's decision. There were many things for which there was little clarity in the law, and she appreciates the clarity that the decision has brought forward. Member Marcum stated that she supports the process and believes the plan should be a product of the process and not a court direction. Perhaps there are other ways to pair Anchorage while keeping Eagle River together? Appreciates that the Court provide the Board with an opportunity to make changes if desired. She stated that she fears that by adopting a court-mandated plan the Board would be setting a precedent that sets up the Court as the redistricting authority for this cycle, which is unfortunate. It may set a better precedent if the Board could be the final decision maker.



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Member Bahnke spoke in favor of the motion. She indicated that both Court's offered the Board a second chance, and that both Senate plans were brought forward and supported by all five Board members. She does not believe that it would be a wise use of the public's resources to develop a new plan.

Chair Binkley stated that he would associate himself with the remarks of Member Simpson. This has been a long process with lots of travel and public hearings to learn about the state and do the best job pulling it all together. Each Board has more guidance so the job does get a little easier. Chair Binkley agrees with Member Marcum that the maps should be decided by the Board. He believes this is preserved in this proclamation. Chair Binkley appreciates that the process provides checks and balances to maintain public confidence in the process. He spoke in favor of the motion as it would create the least potential for confusion by the public and legislators who have pressing matters to address.

The Chair requested a role call vote on the motion with the following results:

1. Member Bahnke: Yes
2. Member Borromeo: Yes
3. Member Marcum: Yes
4. Member Simpson: Yes
5. Chair Binkley: Yes

And so the motion passed unanimously.

Adjournment

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

The meeting adjourned at 2:07 p.m.