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ALASKA REDISTRICTING BOARD

Date: Monday May 15, 2023

Time: 1:00pm

Place: Anchorage Legislative Information Office, Denali Conference Room, 1st Floor
1500 West Benson Blvd, Anchorage 99503 or watch at: <http://akl.tv>

Public Testimony in Person at LIO or via Dial-in Teleconference

*Teleconference public listen-in and testimony phone numbers:
Anchorage 563-9085, Juneau 586-9085, Other 844-586-9085*

Agenda

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



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DRAFT

**Alaska Redistricting Board Meeting
April 2, 2022 | 2:00 p.m.
Anchorage Legislative Information Office and Zoom Virtual Meeting
1500 West Benson Blvd, Anchorage, AK 99503**

The Alaska Redistricting Board met on April 2, 2022. Present participants are below:

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

Agenda

- Call to Order & Establish Quorum
- Adoption of Agenda
- Adoption of Minutes
- Public Testimony
- Review of Supreme Court Decision
- Discussion
- Adjournment

Call to Order

Chairman Binkley called the meeting to order at 2:00 p.m. Member Simpson's absence is excused. All other members are present, and a quorum was established.

Adoption of Agenda

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

The motion passed unanimously.

Adoption of Minutes

Member Borromeo moved to approve the February 16, 2022 board meeting minutes. Member Marcum seconded.

The motion passed unanimously.



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Public Testimony

Public testimony was given as follows:

- Anchorage resident, Anna Brawley, suggested that if the board considers any House District changes, House Districts 14 and 16 should be paired together because West Anchorage and Midtown Anchorage have a fair amount of continuity and are connected by Northern Lights Blvd. Spenard and Turnagain are also similar neighborhoods with similar interests.
- Fairbanks resident, Kasey Casort, informed the board she wasn't surprised by the Alaska Supreme Court's decision to overturn the gerrymandered maps. Kasey mentioned previous call-ins that specifically identified the areas that would be unconstitutional. She was in a state of disbelief that there was new testimony when there was a large amount of previous testimony ignored. Kasey asked and urged the board to immediately wrap up this confusing process by adopting a map that has already been vetted through the whole public process, which would mean adopting the Senate pairings that were proposed by Board Member Melanie Bahnke. In conclusion, Kasey would love to see the redistricting process be wrapped up quickly and constitutionally so that we can focus on our upcoming special election and our first election cycle.
- Nicky Eisman, urged the board to adopt the Senate pairings suggested by Member Bahnke and would like the process to be done as soon as possible. Regarding the error of including Goldstream Valley residents in its current district, the residents are largely urban in nature and drive to work in Fairbanks every day. They also play there; any other characterization is false. All testimony of Goldstream Valley supported the area being included with the Fairbanks district. Nicky referenced the evening at the Carlson Center where public testimony was last taken. Nicky watched several people "being grilled" by board members; this resulted in her decision not to testify as she'd intended.
- Anchorage resident, Carolyn Cliff, lives in the new District 21 which borders Districts 20-J, 19-J, and 12-F. District 22-K is also grouped with District 21. Carolyn stated map 1 does not show a population area in their district because it's all on Elmendorf AFB. There is also no way to get from her district to Eagle River without traveling through two other districts. Carolyn stated that her district and Eagle River are not contiguous or socioeconomically integrated. Carolyn expressed support for Member Bahnke's proposed maps (no details specified).
- Fairbanks resident, Luke Hopkins, stated that in the last redistricting cycle, the board's decision placed then-District 38 of Fairbanks North Star Borough all the way to the west coast of Alaska. There were objections to this board decision and court action found that its boundaries did not meet the constitutional requirements. Luke Hopkins opposed, and continues to oppose, the board's decision to place Goldstream Valley residents in a district that is non-contiguous, non-compact, and has little to no socioeconomic integration to the communities that are now in the House District 36. Many Goldstream residents report back to the local government where their schools, libraries, and churches are, and other



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communities in District 36 can only be reached by plane. Luke hoped the board would remove District 36 from the Cantwell appendage.

- Fairbanks resident, Elyse Gutenberg, expressed concern about Goldstream Valley being placed in District 36 which places a suburban neighborhood with deep ties to Fairbanks into a rural district. Many Goldstream Valley residents attend or work at the university, which is not a far drive. They also live, work, shop, and vote in Fairbanks. The Cantwell appendage creates a non-compact district that is unconstitutional and is not socioeconomically integrated. Like Cantwell, Goldstream Valley was gerrymandered.
- Fairbanks resident, Bernie Hoffman, opposed the placement of Goldstream Valley into the rural district area. Goldstream is being treated like Cantwell, and this is not being done properly per the Alaska Supreme Court. This seemed unfair. Bernie asked the board to please consider Goldstream and Member Bahnke's proposed plan to come up with new pairings and get the new elections going.
- Girdwood resident, Mike Edgington, thanked the board for creating a cohesive District 9 and testified on the Senate pairings from his perspective on the southern part of Anchorage. At the November 8th meeting, Mike recalled Member Bahnke suggesting Senate pairings that paired Districts 9 and 11 together. Through discussions with his community that same evening, this pairing generally had wide local support and Mike was surprised to see a different pairing the following morning: House District 9 (rural) and District 10 (suburban). Mike testified in favor of pairing Districts 9 and 11 that combines the southern parts (Hillside, Bear Valley, Glen Alps) with Whittier/Girdwood/Turnagain Arm. Mike also spoke in favor of pairing House Districts 22 and 24. Mike strongly opposed pairing House District 9 (Turnagain Arm) with House District 22 (Eagle River) because these districts are non-contiguous due to the separation of the two districts by the Chugach Mountains.
- Fairbanks resident, David Guttenberg, referred to the 2012 redistricting process where Goldstream Valley was placed in a rural district stretching out to the coast; this was declared unconstitutional and was changed. During the current process, the board has placed Goldstream Valley in a rural district contrary to the resolution adopted by the Fairbanks North Star Borough Assembly. This resolution was misrepresented by the board. David urged the board to fix this issue simply by doing so in the interior.
- Anchorage resident, Jamie Rodriguez, testified in favor of the "second to the left" Senate pairings that were presented by Member Bahnke. These pairings have already been considered on the record; considered by the public testimony; make sense geographically; uphold the idea of "one person, one vote"; are socioeconomically integrated; do not affect the deviation; keep Muldoon, West Anchorage, Hillside, and Eagle River together. Jamie stated that the board needed to act immediately and comply with the court's requirements to make the maps legal and minimize costs and time. Jamie noted it was in the public's interest to adopt legal maps that check all constitutional requirements as proposed by Member Bahnke.



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- Anchorage resident, Karen Williams, noted that East Anchorage is diverse and pairing an East Anchorage district with a South Anchorage, or an Eagle River district, is unfair and does not allow the diverse community to have accurate representation. Karen noted that it is important for the community to elect a Senator that understands the community's needs. Karen testified in support of the Senate pairings proposed by Member Bahnke.
- Anchorage resident, Rich Curtner, informed the board that that the Alaska Black Caucus is in support of pairing House Districts 20 (North and South Muldoon) in District K. Doing so is the simplest and best solution and should be done as soon as possible.
- Anchorage resident, Kay Brown, urged the board to follow the Alaska Supreme Court's directions as expeditiously as possible. The court's directions are very straightforward and can be done quickly. Kay emphasized that this process needs to be completed as soon as possible as it negatively impacts elections, giving everyone uncertainty.
- Anchorage resident, Benny Wells, testified against the Goldstream Valley placement, the Cantwell finger, and the Senate pairings in Anchorage, particularly the Eagle River/Muldoon and North Muldoon/U-Med District). Benny encouraged the board to use the pairings proposed by Member Bahnke, as they are consistent with the testimony given by the public. There were several testimonies also given from the Hillside and Eagle River communities asking the board to pair these two communities. Benny suggested pairing Districts 9 and 11 and Districts 14 and 16.
- Anchorage resident, Yarrow Silvers, requested that the board redo the Senate pairings without delay so Alaskans can vote from a fully constitutional map. Yarrow spoke in support of the Senate pairings proposed by Member Bahnke as they would fix the constitutional errors, have broad public support, and respect communities. The pairings also keep Eagle River as one community, Muldoon as one community, connects the U-Med and Airport Heights areas, and reconnects the north and south sides of 4th Avenue in downtown. Yarrow asked the board to develop a truncation process that is transparent and random. Yarrow stated that the public's trust in the board was broken because the board stated that no members were knowledgeable about incumbent information when at least two members looked at and discussed the information on camera before voting. Additionally, the action on the South Anchorage pairing was done without discussion or reasoning as to why it was split apart at the last minute, making it seem as though someone reviewed political data the night before and decided the new pairing gave a partisan advantage. Yarrow asked that the board follow the Alaska State Constitution, which does not allow politically based mapping, and asked board members attending public sessions virtually to turn on their cameras.
- Anchorage resident, Chris Stern, noted that the board should group based on communities as it is a relevant data point to be used in the redistricting process. Chris urged the board to quickly complete the adoption of the Senate pairings put forward by Member Bahnke; there is no need to begin a new map.
- Anchorage resident, Candace Oxford, spoke against South Muldoon being paired with Eagle River to give more representation to Eagle River. Candace believed this was undemocratic.



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and unfair to the Muldoon community. Candace implored the board to adopt Member Bahnke's maps before the next election.

- Anchorage resident, Joelle Hall, stated that the board has an opportunity to repair the Senate pairings to fulfill their duty to Alaskans. There is no reason to delay the process with Member Bahnke's proposed Senate pairings on the record which gives the board the ability to swiftly complete the process. There has been public concern about the board's decision to present maps to the public for final consideration that did not include Senate pairings; the judge also called this out. This meeting could have been avoidable with all the public testimony already given to the board.
- Anchorage resident, George Martinez, testified on behalf of himself, but also noted that he is one of the plaintiffs in the East Anchorage lawsuit. Written testimony has been submitted on behalf of himself and the other plaintiffs, too. George hoped the board would consider that detailed testimony. George urged the board to move expeditiously and effectively to take the direction given by the courts and to consider the cost of this process to taxpayers and the erosion of the public's trust.
- Anchorage resident, Bruce Farnsworth, stated that the pairings adopted by the board only make sense if the goal is to water down the votes of eastside residents in Anchorage. To see the socioeconomic similarities, one would only need to drive from North to South Muldoon; there is no significant change and it's a working-class neighborhood that is very different from Eagle River. Bruce urged the board to adopt the Senate pairings proposed by Member Bahnke.
- From Anchorage, Representative Matt Claman, noted that the Trial Court was specific about criticizing the board for not announcing the Senate pairings that were under consideration. The court's opinion made it very clear that the board needs to publicly say what else is being considered and announce it in a manner that gives time for public comment. The window of time to propose a new map and obtain public comment is very limited. Representative Claman recommended that the board look at the affidavit from Chase Hensell, who testified on behalf of East Anchorage plaintiffs; this affidavit gave a detailed explanation of how North and South Muldoon are a single community of interest and how Eagle River and Chugiak are a single community of interest. The Hensell proposal noted that Chugiak-Eagle River is a single community of interest because it is the only community that has its own volunteer fire department, the municipal parks and funding are managed differently than the Municipality of Anchorage, and Chugiak-Eagle River has many residents who see themselves as a unified community separate from the rest of Anchorage. Representative Claman urged the board to adopt the pairings proposed by Member Bahnke.
- House District 17 resident, Veri di Suvero, having attended several redistricting board meetings, spoke from a personal capacity and was glad to see that this process was happening right now in hopes that the Senate pairings will move quickly. Veri di testified that as someone who lives in House District 17 and travels to work in House District 23, there is not a lot of change when passing through the Park Strip. The pairing would make logical sense. Veri di urged the board to comply with the court's requirements immediately to



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minimize confusion. It would be in the public's interest to adopt a map with the final Senate pairings soon so that voters could familiarize themselves. It would be best to do this quickly and in a legal way by adopting Member Bahnke's pairings.

- Anchorage resident, Chris Constant, pointed out that when looking closely at the map, there is a small residential section on the west southern portion of House District 23 with a couple of thousand residents. On the far east southern corner of the same district, there is a tiny neighborhood on Muldoon with a few hundred residents. That population borders Joint Base Elmendorf Richardson and now those residents are suddenly part of South Eklutna. To get from one end of the southern portion of the district, you must move through three Senate districts to get there – stated this division is harmful. The North Anchorage District should include Districts 17, 18, 20, and 23. The House Districts work well, but the board was asked to consider how the narrow populations of the district in the two corners mentioned are in any way associated with the Chugiak-Eagle River community.
- Anchorage resident, Cliff Grove, noted that the board has heard some incisive and well-thought-out comments that Chris agreed with. The board's action items, in Chris's opinion, are short and simple.
- Anchorage resident, Celeste Hodge Growden, echoed the comments shared by Rich Curtner from the Alaska Black Caucus (ABC). ABC does not have permanent friends or enemies, what they do have is permanent interest. The main interest is championing the lives of black and BIPOC communities. At every turn, unfortunately, they must fight for justice in economics, education, and health. Now, they are fighting for justice in redistricting. This is exhausting, old, and must stop. Celeste urged the board to follow the court's direction now, not tomorrow or several days from now.
- Alaskans for Fair Redistricting member, David Dunsmore, reviewed the Superior and Supreme Courts' decisions and determined that the pairings proposed by Member Bahnke are the fairest pairings to address the concerns raised by the Supreme Court. The board can quickly make changes. The following Senate pairings by Member Bahnke are supported for the following reasons:
 - Districts 22 and 24: This is most logical.
 - Districts 20 and 21: Muldoon area is an integrated community of interest.
 - Districts 18 and 19: Keeps 2 Senate districts in East Anchorage.
 - Districts 23 and 17: Keeps the historic neighborhoods of Downtown and Government Hill in the same Senate district.
 - Districts 16 and 14: Keeps Spenard and Turnagain in the same district, often referred to as "Spenardagain" as it's looked at as one community.



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- Districts 13 and 12: Creates a midtown residential core district rather than splitting these communities into South Anchorage.
- Districts 15 and 10: Keeps Southport, Bay Shore, and Klatt in one district and allows the pairing of Districts of 11 and 9, which the board had reached consensus on at one point in the process to keep the hillside in one district.
- First Alaskans Institute, Liz Medicine Crow, expressed appreciation for the testimonies given by the Alaska Black Caucus and encouraged the board to follow the court's directions immediately without delaying the process and delaying voters during elections. Liz testified in favor of the East Anchorage Senate pairings proposed by Member Bahnke that have already been vetted and do not diminish the population over the deviations that were already outlined.
- Eagle River resident, Susan Fischetti, testified that over the last 40 years, the Eagle River population has more than doubled and has always been represented by 2 senators. Randy Phillips once represented Muldoon in Eagle River in the 80s and 90s - he did well and this worked fine. He attended community council meetings and supported schools and businesses, and East Anchorage as a whole. In 2000, they were paired with Hillside all the way to Hope, posing a "geographical nightmare". Past senators tried to represent Eagle River but never connected to what was important to the community in Eagle River. Now, Chugiak and Eagle River each have their own Senator and there have been no complaints. Eagle River is adjacent to Joint Base Elmendorf-Richardson and many Chugiak residents are in the military.

Review of Superior Court Decision

Matt Singer updated the board and gave a brief summary on the following litigation process regarding the board's November Proclamation Plan:

- There were five lawsuits filed by the constitutional deadline for legal challenges on December 10th.
 - The Matanuska-Susitna Borough challenged the population of the Matanuska-Susitna Borough District and the combination of Valdez and the Matanuska-Susitna communities in District 29.
 - The City of Valdez challenged District 29. A preference was indicated for the Richardson Highway and the House District.
 - The City of Skagway indicated a preference to be with Downtown Juneau instead of the north-end of Juneau.
 - Calista's lawsuit had a primary focus on how Hooper Bay and Scammon Bay would be districted. In addition, there was focus on the representation for the Calista shareholders and the residents of Southwest Alaska.



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- The East Anchorage Plaintiffs challenged and primarily focused on Senate District K.
- The Trial Courts experienced a compressed time frame for litigation due to the delay of the U.S. Census. An expedited trial began on January 21st and concluded in early February.
- The Trial Court issued a 171-page decision on February 16:
 - The court directed the board to redo House Districts 3 and 4 in Southeast Alaska and Senate District K.
 - It was found that the plan was constitutional.
 - There were four petitions for review to the Supreme Court. Those were argued to the State Supreme Court on March 18th, the Supreme Court issued an order a week later, on March 25th.

Matt Singer stated that it is common for the Alaska Supreme Court to issue a short preliminary order to the litigants in expedited cases. A detailed opinion and explanation of the Court's reasoning with a detailed analysis can be expected further into the future.

- The court's decision agreed with the board that the House Districts 3 & 4 were constitutional. No further work is necessary regarding the Southeast Alaska Districts.
- The court ruled against Valdez and Matanuska-Susitna appeals. Findings suggested that District 29 was compact, socioeconomically integrated, and that Valdez could be in a house district with its neighbors to the west and Matanuska-Susitna.
- The court found that House District 36 is not compact due to the addition of the Cantwell Appendage, providing a specific directive that the Cantwell Appendage should be returned to District 30 within the Denali Borough.
- The court found that testimony for Senate District K was invalid and violated the Alaska equal protection clause. The district as drawn, will need to be replaced.
 - The Supreme Court remanded the case to the Superior Court for further proceedings, which transferred the jurisdiction dispute away from the Supreme Court back to the Trial Court.
 - On March 30, Judge Mathews, remanded that matter back to the board, all consistent with the process set forth in our constitution, Article 6, Section 11.
 - Judge Mathews in the remanded order, consistent with the Supreme Court, directed the board to do the following:
 1. Remove the Cantwell Appendage from District 36.



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2. Address the constitutional deficiency in Senate District K.
3. Adjust District 30 accordingly.

Matt Singer recommended that the board invite the public to offer solutions regarding Senate District K. The board should then present its ideas in a public meeting, providing the public a chance to give feedback. It is additionally recommended that this meeting take place before April 15 in order to offer Judge Mathews a revised proclamation plan on time.

Member Bahnke stated that further discussion about the process will take place at Monday morning's meeting.

Adjournment

Member Borromeo moved to adjourn the meeting. Member Bahnke seconded the motion.

The board adjourned at 3:42 p.m.



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**Alaska Redistricting Board Meeting
April 4, 2022 | 8:00 a.m.
Anchorage Legislative Information Office and Zoom Virtual Meeting
1500 West Benson Blvd, Anchorage, AK 99503**

The Alaska Redistricting Board met on April 4, 2022. Present participants are below:

John Binkley
Melanie Bahnke
Bethany Marcum
Budd Simpson
Nicole Borromeo
Peter Torkelson
Matt Singer

Chair of the Board
Board Member
Board Member
Board Member
Board Member
Executive Director
Legal Counsel

Agenda

- Call to Order & Establish Quorum
- Adoption of Agenda
- Adoption of Minutes

Call to Order

Chairman Binkley called the meeting to order at 8:00 a.m. With all 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.

Public Testimony

There were no members of the public present to provide a testimony.

Discussion: Process

- Member Simpson informed the Board that the judge who now has control over the review process pertaining to the 2021 Redistricting Plan, has given the Alaska Redistricting Board until April 15th, 2022, to provide a status report. They are anticipating that the status report includes a new senate pairing. The goal is to finish the process before April 15th.
- Member Borromeo expressed that moving forward today, she would like to see the Board



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dealing with Cantwell, which she believed could be wrapped up in 15 minutes. Additionally, she would like to introduce alternative pairings for Anchorage, have them sit out today and tomorrow, and then have the Board act on those final pairings on Wednesday, April 6, 2022.

- Member Borromeo added that the public has had five months to consider the Senate hearings to follow the redistricting litigation. There was a slew of public testimony that came in over the weekend and the message has been loud and clear that they'd like to get this done as soon as possible from the Board's position and not to delay the matters anymore.
- Member Simpson concurred with the suggestion to address Cantwell today. They have clear directive from the court on that. In response to Member Borromeo's timeline for this process, Member Simpson recommended giving others a bit more time to weigh in on the matter before scheduling a vote. Member Borromeo responded that she is willing to push this out as far as Thursday, April 7, 2022. She respectfully requested that if there are going to be alternative pairings from this Board, that they put them on the record.
- Member Bahnke added that during the meeting on Saturday, April 2, the resounding message was to move quickly and not belabor this process further; most of the verbal and written testimony suggested adopting certain Senate pairings. She added that the courts have been very specific and instructed them to fix only two specific parts of their proclamation: the Cantwell House District and Senate District K. Member Bahnke is open to introducing the Senate pairings today to get them on the record but emphasized moving things along.
- Matt Singer, the Board's Legal Counsel, encouraged Board members to follow the basic steps that are in Section 10 of the Constitution. Regarding Cantwell, Mr. Singer suggested that if a Board member has a proposal for what District 36 and District 30 should look like, after a correction, the Board could adopt that as a proposed solution today. From there, they can post it to the website to give the public an opportunity to comment on it, have a public hearing on that, and then at the next Board meeting adopt that solution as the final decision. He agreed with Member Bahnke's comments that it's likely to be uncontroversial, but every now and again there may be a small error and they would benefit from public testimony. Next steps include seeing if there's an agreement to adopt a revised District 36 and District 30, posting this information to the website, and inviting public comments. After hearing public testimony, the Board will adopt a final solution to District 36 and District 30. These are the same steps that he encouraged for the Senate District K.

Member Borromeo moved to adopt version four (V4) of the proposed solution for the remand from the court system, which would return Cantwell to the Denali Borough, with a final decision made by Wednesday, April 6, 2022. Member Simpson seconded the motion for purposes of discussion. Peter Torkelson, Executive Director, shared screenshots showing the differences between districts and their boundaries using color-coded maps.

The following is a discussion on the motion:

- Member Bahnke asked Chairman Binkley how they should address the current motion on the table. Chairman Binkley noted that there is a legitimate motion on the table and, following



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discussion, they have two options: (1) the individual who made the motion can withdraw the motion, or (2) the individual who made the motion can ask to amend the motion. Additionally, there can be an amendment from another member, or they can move to table the motion. If moving to table the motion, there is no discussion that takes place, instead the Board would immediately vote on tabling the motion.

- The Board's Legal Counsel, Matt Singer, advised members to follow the process set forth in Section 10, which would involve today's motion being one that adopts the current revision as a proposed correction to the proclamation plan. Then, the Board can adopt proposed corrections and publish them for public review. Finally, the Board would come back to adopt the final proclamation plan. Rather than adopt the correction today or adopt the correction, and vote on it Wednesday, Mr. Singer recommended adopting a proposed plan, publishing it for public review, and then adopt a final plan—which is the process laid out under Section 10.
- Member Marcum requested additional time to compare the solution she worked on to what is being proposed. Additionally, she is not prepared to vote on even adopting a proposed correction until she has had a chance to review everything. Member Marcum requested the Board go at ease for ten minutes before voting on the proposed motion for her to review the changes. Chairman Binkley confirmed her request.
- Matt Singer recommended the motion includes the words "proposed correction" per Section 10 guidelines. After confirming the verbiage, the Board should publish it to the website as a "proposed correction" for public review and testimony, and then adopt a final plan.

Member Borromeo withdrew the initial motion and entertained a new motion. Member Borromeo moved to propose a correction to Section 10 that would fix Districts 36, 30, and 29, with the stipulation that action to adopt the proposed correction take place on Wednesday, April 6, 2022. Member Simpson seconded the motion.

The following is a discussion on the motion:

- This correction would return Cantwell to the Denali Borough, where it would remain within the constitutionally permitted deviations, and then all three districts would be more compact.
- Before proceeding with a vote on the motion proposed by Member Borromeo, Chairman Binkley confirmed with the Board that they will stand *at ease* until 9:00 AM so that Member Marcum can cross-check the proposed changes.

The Board reconvened at 9:00 AM. Member Simpson suggested adopting the motion for publication as a proposed solution. This gives Member Marcum and the Executive Director, Peter Torkelson, time to review the changes together, and if there are any issues, they can be reported during the meeting on Wednesday, April 6.

The Board voted as follows:

- Member Bahnke – Yes
- Member Binkley – Yes



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- Member Borromeo – Yes
- Member Marcum – Yes
- Member Simpson – Yes

The motion passed unanimously.

Member Borromeo moved to propose a correction to Senate District K: move the commonly termed Bahnke pairings, which are Districts 22 & 24, 20 & 21, 18 & 19, 23 & 17, 16 & 14, 13 & 12, 15 & 10, 11 & 9, with the stipulation that action to adopt the proposed correction take place on Wednesday, April 6, 2022. Member Bahnke seconded the motion.

The following is a discussion on the motion:

- Member Bahnke noted that they received a lot of public testimony in favor of these Senate pairings. While the Board does not have to apply the same criteria to Senate pairings as they do when determining house boundaries, Member Bahnke felt like the pairings are socio-economically integrated, compact, and contiguous. The pairings meet all the constitutional criteria. The map has been out since November 2021 and has had a chance to undergo public scrutiny. Member Bahnke requested that they vote on this on Wednesday, April 6, to move things forward and ensure the state has some certainty regarding which maps they will be voting for and that the maps are constitutional and fair.
- Member Marcum requested clarification as to whether “Wednesday” is part of the motion or if that was just a suggestion. Member Marcum informed the board she will not be prepared to vote on Wednesday, April 6, but is open to adopting this as a potential correction for the purpose of discussion. She added that she has heard from multiple members of the community asking about possible pairings and what can and can't be done. Through those conversations, it appears others are also working on pairings as Member Marcum has been. That said, she would like to see what members of the community come up with. This pairing was introduced in fall 2021, but that was before the judiciary weighed in on several changes that they required. Now that the judiciary has weighed in and their attorney has gone on record interpreting what it means, Member Marcum noted that the public may not have had enough time to incorporate the feedback into the pairings.
- Member Borromeo said that they had roughly 30 Alaskans provide testimony before their Saturday meeting. Those that weighed in on this issue emphasized two things: (1) Adopt the Senate pairings proposed by Member Bahnke; and (2) Get it done promptly. Member Borromeo requested that if other Board members have plans in mind, they should put it in writing so the Board can discuss in an open forum.
- Member Bahnke explained that only yesterday, their attorney gave the interpretation of the Supreme Court ruling, which has been out since March 25th. While they could have met earlier, they decided to abide by the publicly noticed meeting dates. The Supreme Court ruled a week earlier than they had to so that Alaskans could move along with an election and have some certainty about what maps they are going to be voting under. Member Bahnke suggested that Member Marcum send the Board any other maps she would like considered for discussion.



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- Chairman Binkley recalled two things that he took away from the Superior Court's instruction on remand back to the Board: (1) Do not act too quickly; and (2) When you do have a plan, allow the public to engage and review the plan. He recommended giving deference to the court, since they put a deadline of April 15th for the Board to provide a status update; however, they did not say to have a final decision by April 15th. Chairman Binkley added it is important to listen to the Supreme Court to ensure they don't rush this.
- Member Simpson noted that in review of the proclamation map and cross-checking the pairings provided by Member Bahnke, it appeared that the content was different. Considering this, he surmised it may take more time to assimilate the information.
- Matt Singer commented that some members of the public seem to be advocating for the Board to adopt eight new senate districts in Anchorage, while other members of the public suggested specifically adopting four of the eight senate districts that Member Bahnke proposed in November 2021. All said, Mr. Singer encouraged as much clarity with the motion on the table as to how many districts Member Bahnke is proposing to change. The second suggestion was to have the Board consider picking a day when both the Board and public can share any proposed plans they have, whether that be tomorrow or Wednesday; either way, he suggested the Board select a day so that all alternatives can be fully presented.

Member Borromeo restated the motion for clarity: *Member Borromeo moved to consider a proposed correction to Section 10 of the court order, the Bahnke pairings, which are Districts 22 and 24 (Eagle River), 20 and 21 (Muldoon), 18 and 19 (Mountain View and Russian Jack), 23 and 17 (JBER, Government Hill, and part of Downtown), 16 and 14 (Turnagain and Spenard), 13 and 12 (Midtown), 15 and 10 (Bluff), and 9 (Hillside).*

The Board voted as follows:

- Member Bahnke – Yes
- Member Binkley – Yes
- Member Borromeo – Yes
- Member Marcum – Yes
- Member Simpson – Yes

The motion passed unanimously.

Chairman Binkley confirmed that by Wednesday of this week, third parties will have an opportunity to submit their ideas for Senate hearings to comply with the court order. Member Borromeo supported having a public hearing on Tuesday following today's meeting to provide an opportunity for public input. The Board concurred with this, and the meeting will continue Tuesday, April 5, 2022, for ongoing public testimony pertaining to the court ruling.

Public Testimony



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- Suzanne Fuschetti agreed with Member Simpson that the Board should allow more time since the judge's decision was only a few weeks ago. Susan recalled that during the Saturday testimony period, one person urged to end the process quickly. As a resident of Eagle River Valley for 40 years, Susan testified prior that the pairing of Eagle River with East Anchorage should be approved because it has been done before. Now that the judge has taken that option off the table to finalize a plan, Ms. Fuschetti strongly urged the Board to pair Eagle River Valley with South Hillside. These districts share several socio-economic profiles regarding local roads, service areas, wildfire and wildlife issues, avalanches, and public safety concerns.
- Jamie Allard, an Eagle River resident, testified against adopting the Bahnke plan. She expressed her opinion that the plan is partisan in its current form, is politically unbalanced and unfair, and does not accurately represent the people of Anchorage and Eagle River. Ms. Allard suggested the Board reevaluate the timeframe to incorporate enough time and public input to produce a plan that reflects nonpartisan efforts and incorporates what constituents want.
- Denny Wells, an Anchorage resident, pointed out that the suggestion for Eagle River to have two senators is not ideal, considering there is no other place in the state with similar community size that has two House seats; also, he added it is irrational to split up Eagle River.

Adjournment

Member Borromeo moved to adjourn the meeting. Member Bahnke seconded the motion.

The board adjourned at 9:57 a.m.



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DRAFT

**Alaska Redistricting Board Meeting
April 5, 2022 | 10:00 a.m.
Anchorage Legislative Information Office and Zoom Virtual Meeting
1500 West Benson Blvd, Anchorage, AK 99503**

The Alaska Redistricting Board met on April 5, 2022. Present participants are below:

John Binkley
Melanie Bahnke
Bethany Marcum
Budd Simpson
Nicole Borromeo
Peter Torkelson
Matt Singer

Chair of the Board
Board Member
Board Member
Board Member
Board Member
Executive Director
Legal Counsel

Agenda

- Call to Order & Establish Quorum
- Adoption of Agenda
- Public Testimony

Call to Order

Chairman Binkley called the meeting to order at 10:00 a.m. With all board members present, a quorum was established.

Adoption of Agenda

Member Borromeo moved to approve the agenda with an amendment to add Agenda Item #4 for Board Comments following Public Testimony. Member Simpson seconded the motion.

The motion passed unanimously.

Public Testimony

- Anchorage resident, Carolyn Clift, thanked the board for presenting the new map that placed the North and South Muldoon areas into one Senate District K. Carolyn also noted that there is no contiguous transportation or socioeconomic integration between South Muldoon and Eagle River. Carolyn urged the board to adopt the new map that links the North and South Muldoon communities.
- North Pole resident, Barbara Tyndall, testified against the "Bahnke Plan" or "Senate Minority Plan" and stated that a socioeconomic profile and more Senate alignment is needed. The



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proposed map seemed to be politically motivated to change Senate seats.

- Anchorage Assembly member, Christopher Constant, expressed concern about the Senate pairing of Districts 23 and 24. Christopher lives in House District 23, and to get to the main body of the district, he must drive 20-30 miles and drive through multiple communities to do so. This is the same for others in his community. The finger in the north was a prime concern.

Christopher suggested the following:

- Pair Districts 23 and 17 together, this would unite neighbors who live across the street.
- Make minimal changes to boundaries that make the map unconstitutional.

Christopher described the reapportionment process in the Municipality of Anchorage. The city ran a robust public process with over 20 opportunities for public testimony, had a public portal to receive public comment, hired a contractor who proposed several maps and opened the mapmaking process to the public. The final map adopted was a map submitted by a member of the public. Two proposed maps paired Chugiak-Eagle River with Hillside Anchorage; this pairing resulted in a community uproar in overwhelming opposition.

The Anchorage Assembly listened to the community's feedback and Christopher expressed hope for the board to do the same, too, with the testimonies given by the public and resolutions written by community councils that oppose the pairing of Chugiak-Eagle River with South Anchorage. Christopher referenced several public comments and resolutions by community councils that were written expressing this opposition.

- Eagle River resident, Susan Fischetti, reminded the board that the court decision was given 10 days ago, so there is no rush to adopt the pairings proposed by Member Bahnke right away. Because of the recent court decision, Susan's testimony has changed since her testimony on February 28, 2022. It seems as if this process is being used to promote the board's special interests rather than doing what is best for the state. Since 1974, Chugiak-Eagle River has been paired with the valley and the hillside, so this is not a new pairing. Chugiak-Eagle River has been represented by two Senate members since 1974. Senate District K is what the judge would like to be reworked; the Bahnke plan changes almost every district.
- Fairbanks resident, Patty Wisel, testified against the "Bahnke Plan" and requested that the board consider a plan that is more representative of similar socioeconomic profiles and equal Senate seat alignment.
- Anchorage resident, Robert Hockema, testified in favor of Member Bahnke's proposed Senate pairings because it keeps communities of interest representing Alaskans' interests. The suggested pairings connect North and South Muldoon, the best contiguous pairing. It is superior to the U-Med connection to the west and superior to the alternative Abbott Loop district with different community interests and priorities.

Although Muldoon and Eagle River have historically been paired, this does not mean it was a



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fair pairing because state and local official processes have consistently disenfranchised Muldoon.

This pairing also keeps important communities together that have repeatedly asked to remain together during old state and municipal reapportionment testimonies. The pairings include the following: Spenard and Turnagain (Districts 14 and 16), Airport Heights and Midtown (Districts 18 and 19), Hillside and Southside (Districts 9 and 11), Southport, Klatt, and Oceanview (Districts 10 and 15).

Lastly, the pairing shares JBER with Anchorage as opposed to handing it over to Eagle River by default as past reapportionments have done. These pairings make sense, are defensible in court, have broad support, and deserve discussion by the board. Board members must be transparent. The process must be completed quickly considering the upcoming elections. The more clarity voters have, the better equipped they are to hold a fair, trusted election process.

- Alaskans for Fair Redistricting member, Randy Ruedrich, testified that regarding the pairing of East Anchorage and Chugiak-Eagle River, the two areas have always been paired in various ways for various reasons, primarily due to a "numbers game".

Regarding the repair of the House Districts, Randy suggested that the board only reassemble the map to the necessary extent and complete one repair as directed by the court. Changing districts may impact the people who have already declared that they are running for office.

Randy submitted a map on April 4, 2022, that represents eight of the Anchorage Senate seats, three of which are not changed:

- Senate Seat F for Districts 11 and 12
- Senate Seat H for Districts 15 and 16
- Senate Seat L for Districts 23 and 24. There is a remainder of 10 House seats.

Randy referenced a testimony he gave in November stating that South Eagle River could be paired with District 22 or 9 in the current map. If it was paired with District 9, municipal uplands would be placed together where the commonalities are road service and fire service areas and issues. This pairing was done in 2001 by combining parts of the Senate district. Randy referenced the 2001 instance where House District 18 went unchallenged after being redrawn due to court action. Randy went on to note that Eagle River was combined with South Anchorage to create a Senate seat now that they have grown large enough to each have a House seat; this will serve the areas well.

Next, House Districts 10 and 13 in South Anchorage would form Senate District G, an area that could potentially be bifurcated by Dimond Boulevard. To the north is Senate District I that pairs House Districts 14 and 17 in Central Anchorage. These two districts were the historical residential development area of the city; thus, redevelopment is a key component of this area making it a benefit to share a Senator with Spenard, through Chester Creek, into the South



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Addition.

District 18 has always been seen as the U-Med District while District 19 is often ignored as a U-Med District where the Alaska Regional complex sits. The Providence and Alaska Native health campuses are on District 18. Both districts together create a medical community for the surrounding residents, some of which have moved to the areas to be closer to healthcare facilities. House Districts 20 and 21 lie along either side of Muldoon Road into Senate District K in East Anchorage. This combines North Muldoon with the areas to the south. Districts 23 and 24 should be maintained due to the historical military significance. For context, Eagle River was developed with off-base housing designed for military members. Randy noted that he has not engaged in changing the pair of Districts 23 and 24.

- Anchorage resident, Yarrow Silvers, testified in representation of herself, but the proposal introduced in her testimony is on behalf of the East Anchorage plaintiffs. The "Bahnke Plan" respects communities and socioeconomic integration. The plan is not based on partisan data and is informed by public testimony; this is evident by the compact spaces, areas of contiguity, and general support - all of which have not been seen in the more partisan proposal that has caused strong opposition by the people impacted by these pairings. The Supreme Court has ordered the board to correct the constitutional areas and make other revisions to the proclamation plan. The following pairings proposed by Yarrow and the East Anchorage plaintiffs are the following:
 - Senate District B - House Districts 9 and 10
 - Senate District F - House Districts 11 and 12
 - Senate District G - House Districts 13 and 14
 - Senate District H - House Districts 15 and 16
 - Senate District I - House Districts 17 and 23
 - Senate District J - House Districts 18 and 19
 - Senate District K - House Districts 20 and 21
 - Senate District L - House Districts 22 and 24

The above pairings contain the minimum changes necessary to fix the constitutional errors, are logical, respect communities, and were introduced during the initial Senate pairing process, where they had general support. The East Anchorage plaintiffs have submitted additional details on this proposal via email.

- Doyon/Sealaska/Ahtna/Fairbanks Native Association/Tanana Chiefs Conference Coalition member, Tanner Amdur-Clark, testified on behalf of the coalition in support of the proposal put forth by the board at the April 4, 2022 meeting that puts Cantwell in District 30 instead of District 36 as the borders are being put back along the borough boundaries in a contiguous way. The board was encouraged to make minimal changes necessary to comply with the court, particularly on the House side. New mapping proposals could open the court up to additional litigation.



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- Alaska Black Caucus President/CEO, Celeste Hodge Growden, agreed with an earlier comment observing "badgering testifiers" and noted that this should stop. Celeste spoke in favor of pairing House Districts 20 and 21 with Senate District K, and noted that there had been a very long history of federal, state, and local officials using the redistricting process as a mechanism for excluding voters of color. This unjust pairing happened with the late Senator Bettye Davis; it was wrong then, and it is wrong now. For many reasons, groups of color cannot testify during business hours due to work and cannot break away from tending to their families on the weekends. Celeste noted that she was advocating for the BIPOC community and urged the board to correct the error of the Senate District K by pairing House Districts 20 and 21.
- Anchorage resident, George Martinez, congratulated the board because history was made. Several references to "fixing the error identified by the Supreme Court" have been made. This error is significant and historical because it results from partisan gerrymandering that the Supreme Court has found unconstitutional for the first time in Alaska. The error was also a direct violation of equal protection, the "one person, one vote" principle, and the right to political representation - all values must be aligned with the remedy to the error. So far, this alignment has not been made by the board or legal counsel. The equal representation of East Anchorage is what is most important to George's family and neighbors. Gerrymandering must stop. Districts 20 and 21 must be combined. Muldoon deserves equal representation.
- North Pole resident, Michael Ryan, spoke in opposition of the Senate minority plan on the "Bahnke map" as it seemed to be politically motivated and would result in the loss of two Senate seats.
- Senator Tom Begich stated that there have been several references to a "Senate minority map" that is equated to the map adopted by the board and is also referred to as the "Bahnke map". Senator Begich clarified that these maps are not connected, and that he has had no communication with Member Bahnke throughout the redistricting process. The map developed by Senator Begich with members of, not just the Senate Minority Caucus, but the Senate majority, was the map he'd hoped to have considered. The Hickel process, along with others, were designed to prevent gerrymandering. The court now recognizes that there is a standard for political gerrymandering and the standard should be adhered to. Maps should be repaired in the least disruptive way possible.

Senator Begich referenced the Superior Court's decision that was upheld by the Supreme Court decision. Page 65 of the Supreme Court's decision indicates that overwhelming testimony was against combining Eagle River and Muldoon. Further, it was clear to the court that most of the public comments were in favor of keeping Eagle River and Muldoon together in their own respective Senate seats. This implies that House Districts 22 and 24 (Eagle River) should be combined in a Senate seat, and the two Muldoon seats should be combined into one Senate seat. These two pairings will reverse the error found by the courts and remove the political gerrymandering that has occurred in this process.

Senator Begich cited the Superior Court point on page 70 stating that the court found the board intentionally discriminated against East Anchorage residents in favor of Eagle River and further



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acknowledged that the two separate entities must be combined to remedy this issue.

Senator Begich addressed the text messages that were presented in court between him and Member Borromeo, clarifying that these were suggestions for pairings that were rejected by Member Borromeo. Any other assertions are false.

- Anchorage Resident, Mike Robbins, testified in support of the revised redistricting plan as it supports districts with socioeconomic profiles by putting neighborhoods together that share the most common values and demographics.

Mike suggested the following pairings:

- House Districts 10 and 13 (similar to current alignment)
- House Districts 11 and 12 (declared by the Board in November '21)
- House Districts 14 and 17 (similar in business characteristics)
- House Districts 15 and 16 (declared by the Board in November '21)
- House Districts 18 and 19 (shared diversity and socioeconomic linkages)
- House Districts 20 and 21 (same roadway, neighborhoods, dynamics)
- House Districts 22 and 9 (similar voter demographics)
- House Districts 23 and 24 (several military members along highway, strong socioeconomic relationships)

Mike encouraged the board to not adopt the "Bahnke plan" and noted that his recommendations establish fair Senate pairings for Anchorage.

- Anchorage resident, Alex Baker, testified in support of House Districts 17 and 23 being a Senate pairing. Government Hill and Downtown share the same Anchorage Assembly members. As a Downtown resident, he is in Government Hill a couple of times per week, usually for the Anchorage Curling Club. The Joint Base Elmendorf Richardson and Government Hill communities are very integrated as many people come from the base into downtown from the bridge. Alex also spoke about the frequency of updates on written testimony. He checked what his neighbors and community members were putting on the written record, which hasn't been updated since April 2nd. The public testimony has not been updated in a few days, impacting transparency from the board to the public. Alex asked the board to update the website after every meeting so the public can be able to testify based on up-to-date information.
- Anchorage resident, Fred Brown, testified in favor of Districts 22 and 9 being paired for the following reasons:
 - They supply and support their road service areas in the foothills of the Chugach Mountains and share the common need for road maintenance.



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- The two districts share the risk of fire and the need for fire protection.

The proposal outlined by Randy Ruedrich would satisfy the homeowner's associations' concerns.

- Anchorage resident, Jamie Rodriguez, testified against the pairing of Districts 22 and 9. The court rejected the Northeast Anchorage pairing because it was a "wild overreach" of the constitutional requirements. The board discussed a proposed replacement on April 4, 2022, that would repeat the same overreach but worse. The replacement proposal paired Districts 22 and 9 making it political gerrymandering by capturing another Senate seat for Eagle River to replace the Northeast Anchorage plan. The driving distance between Eagle River and Southeast Anchorage is approximately 27 miles, Eagle River and Girdwood is 67 miles, Eagle River and Whittier is 87 miles, and Eagle River and Portage is 108 miles. All the destinations mentioned are in District 9. To get from Eagle River to Southeast Anchorage, five to six unrelated House districts must be crossed. Jamie urged the board to do their job fairly and correctly for all Alaskans regardless of political affiliation.
- Eagle River resident, Dan Saddler, testified powerfully against the "Bahnke Plan" and expressed concern about the rushed process giving the public limited time to review, analyze, and comment on the plan. This plan seems to be the product of planning by a subset of the board in a process hidden from public view. There also appears to be a coordinated effort to "ramrod this plan through by the sheer weight of public comments, sometimes the same person commenting a dozen or more times. That should be a perversion of the 'one person, one vote' standard that should be at the heart of the redistricting process." Dan testified in support of the revised map that pairs Districts 22 and 9 as offered by AFFER for the following reasons:
 - These residents share common interests through the foothills and the upper slopes of the Chugach Mountains.
 - These communities rely on their local road service boards to maintain their roads.
 - These communities face similar road conditions and hazards: bears, wildfires, rush reliable utility services, and extreme weather conditions.
 - These communities are socioeconomically integrated simply by being part of the Municipality of Anchorage.
 - These communities are contiguous and joined in the uplands of the Chugach mountains.

Please reject the "Bahnke plan" and approve a plan that pairs House Districts 22 and 9 to make one Senate pairing.

- Anchorage resident, Gretchen Stoddard, expressed understanding for House Districts 9 and 10 being paired because the two districts share an elementary school, middle school, and high



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school, and there is a bridge going over the Seward Highway that closely links the two districts. If the board chooses to pair House District 9 with another district other than House District 10, Gretchen asked the board to give the public time to provide comments and analyze the proposed change. Gretchen did not feel that District 9 would be paired well with any other district. Gretchen did not immediately agree with the idea of District 9 being paired with an Eagle River district.

- Anchorage resident, Ann Brown, testified against the "Bahnke Plan" as a resident of District 9 and testified in support of Districts 22 and 9.
- Anchorage resident, Brian Hove, previously testified in support of House Districts 15 and 16. Since then, much has happened with litigation and the courts identifying deficiencies. As a result, Districts 15 and 16 have been separated. As Brian reviewed the proposed map, some pairings confused him, such as Districts 14 and 16. With the map offered by Randy Ruedrich, Brian noticed that Anchorage House districts have long and short boundaries, and the communities are connected, by and large, on the long side with north and south pairings: Districts 15 and 16, 14 and 17, 13 and 10, 12, and 11, 18 and 19, 20 and 21. These pairings make sense due to the transportation and main roadways going north to south. In summary, Brian testified in support of Districts 15 and 16 and Randy Ruedrich's proposed Senate pairings in Anchorage.
- Alaskans for Fair Redistricting (AFFR) member, Robin O'Donoghue, urged the board to only adopt a constitutional plan that complies with the court ruling and pairs the Muldoon districts (Districts 20 and 21) together and the Eagle River (Districts 22 and 24) districts together. Doing so would address the constitutional error as identified by the court ruling outlined on the 69th page. These pairings are also consistent with most of the public testimony received by the board and were suggested to the board by AFFR.
- Anchorage resident, Kathy Hosford, testified against the Municipality of Skagway being paired with Downtown Juneau because this pairing seemed to be a partisan issue. Kathy hoped the board would consider redistricting that is fair to everyone and not rush the process.
- Portage resident, Joanne Blackford, testified that the residents of Portage have unique experiences and lifestyles. They should not be part of the Municipality of Anchorage because Anchorage handles urban concerns. Anchorage does not understand high tides or low tides and how this impacts residents. Portage residents don't receive anything from Anchorage except for political planning that they are usually not part of. Portage also does not have links to Girdwood. The State of Alaska, combined with Anchorage, spends about \$1 million per year maintaining Girdwood, but nothing is done in Portage. Kathy gave an example of a dangerous curve she is aware of at Mile Post 89 at the right-hand turn. This curve was not designed for fifth wheels. Additionally, the Portage Valley Community Council does not meet because they have nowhere to meet. Portage does not prefer to be paired with Girdwood as they do not share the same approaches. Portage prefers being paired with Kenai, where they have Attorney Generals who are privy to the impact of high tides. Kenai also has several locations along the Seward Highway. Portage would like to be defined as a rural village outside of Anchorage so they can request their proper needs and complete their planning.



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As it currently stands, Portage is most understood by Eagle River as they are willing to take more calls and are overworked. Joanne urged the board to equitably release Portage from their relationship with the Municipality of Anchorage.

The board held some discussion while awaiting the next testifier:

- Member Marcum expressed appreciation for the feedback and public comments given on the Senate pairings and the rationale behind these hearings.
- Member Bahnke asked Matt Singer if he will be advising the board about potential issues with maps in relation to the court rulings. Matt Singer answered that he is available to board members to provide legal advice and/or answer questions at public board meetings. Matt Singer advised that the board finish the work publicly outside of executive session.
- April 6, 2022 (the date of the next board meeting) is the deadline for the public to submit proposals for the correction of Senate District K.
- The board agreed to begin the April 6th Alaska Redistricting Board meeting with discussion, public testimony, and action on House Districts 29, 30, and 36. Following that discussion, the board will take public testimony on all other topics, and then consider proposals of alternative pairings.
- Member Bahnke noted the importance of the board designating time to debate and discuss the proposed maps and have this discussion on record.

Member Borromeo moved for the board to consider the maximum participation plan advanced by the East Anchorage plaintiffs and the proposed plan by Randy Ruedrich on behalf of the Alaskans for Fair and Equitable Redistricting (AFFER) for consideration of the proposed corrections to the unconstitutional now-standing Senate District K; Member Bahnke seconded the motion.

The following discussion was held on the motion:

- Member Borromeo had heard and read several testimonies supporting these plans and would like to add these two plans for consideration.
- Member Simpson supported the motion and was in favor of moving the process forward and rejected the allegation of there being a delay tactic in place.
- Member Bahnke was in support of this motion to allow the proposed plans to be posted for public viewing.
- Peter Torkelson noted that the proposal from Anchorage resident, Mike Robbins, aligns with the AFFER proposal which is covered in the motion.

The motion passed unanimously.



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Member Marcum moved for the board to schedule meetings as follows:

- Thursday, April 7, 2022, at 12:00 p.m. to 2:00 p.m. for public testimony
- Saturday, April 9, 2022, at 12:00 to 2:00 p.m. for public testimony
- Wednesday, April 13, 2022, at 10:00 a.m. (*no end time specified*)
- Thursday, April 14, 2022, at 10:00 a.m. (*no end time specified*)

Member Simpson seconded the motion.

The following discussion was held on the motion:

- Member Borromeo has all-day meetings on April 13 and 14 and proposed to hold a public hearing on April 8 to take public testimony. All board members who can participate can do so from 10 a.m. to 12:00 p.m. which would hopefully alleviate some pressure on April 13th and 14th.
- All members of the board were in favor with Member Borromeo's proposal.

The motion was amended to add a public hearing on April 8, 2022, at 10:00 a.m. to 12:00 p.m.

The motion passed unanimously.

Adjournment

Member Simpson moved to adjourn the Board meeting; Member Bahnke seconded the motion.

The board adjourned at 1:11 p.m.



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**Alaska Redistricting Board Meeting
April 6, 2022 | 10:00 a.m.
Anchorage Legislative Information Office and Zoom Virtual Meeting
1500 West Benson Blvd, Anchorage, AK 99503**

The Alaska Redistricting Board met on April 6, 2022. Present participants are below:

John Binkley
Melanie Bahnke
Bethany Marcum
Budd Simpson
Nicole Borromeo
Peter Torkelson
Matt Singer

Chair of the Board
Board Member
Board Member
Board Member
Board Member
Executive Director
Legal Counsel

Agenda

- Call to Order & Establish Quorum
- Adoption of Agenda
- Public Testimony Specific to District 29, 30, and 36
- Possible Adoption of Revised District 29, 30, and 36
- Public Testimony, All Topics
- Consideration of Alternative Pairings Proposals
- Adjournment

Call to Order

Chairman Binkley called the meeting to order at 10:02 a.m. With all board members present, a quorum was established.

Adoption of Agenda

Member Borromeo moved to approve the agenda as it was written. Member Simpson seconded the motion.

The motion passed unanimously.

Public Testimony Specific to District 29, 30, and 36

There were no members of the public present to testify on the changes on remand to the "Cantwell carveout" in House Districts 29, 30, and 36.

Public testimony was closed.

Possible Adoption of Revised District 29, 30, and 36



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Member Borromeo moved her proposed corrections to House Districts 29, 30, and 36 that would return the community of Cantwell to the Denali Borough in line with the Alaska Supreme Court's directions to the board on remand; Member Simpson seconded the motion.

The Board voted as follows:

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

The motion passed 4 to 1.

Public Testimony, All Topics

- Anchorage resident, Cristine Hinter, urged the board to consider a plan that is more representative of the similar socioeconomic profiles and equitable seat assignments.
- Anchorage resident, Elizabeth Roderick, testified against pairing South Anchorage with Eagle River and encouraged the board to support the proposal for East Anchorage that is in most alignment with the court ruling.
- Anchorage resident, Leon Jaimes, testified against pairing Eagle River with South Anchorage and encouraged the board to take the solution proposed by the plaintiffs from East Anchorage to keep the Muldoon districts and the Eagle River districts together.
- Anchorage resident, Frank McQueary, gave some historical perspective as his company supplied technology to Alaskans for Fair Redistricting (AFFR) in the last redistricting process. During Frank's involvement in this process, he observed that the AFFR plan presented the least possible opportunities for additional litigation. Shuffling every pairing in Anchorage, as other proposals do, could potentially open the board up to further litigation. Frank testified in favor of the AFFR plan and testified against pairing Districts 22 and 9. Frank urged the board to not reshuffle the map entirely.
- Anchorage resident, Ray Kreig, testified in support of Alaskans for Fair and Equitable Redistricting's (AFFER) proposed Senate pairings and referred to the court rulings on the Senate districts that should be revisited. AFFER pairs House Districts 22 and 9 to create Senate District E in the East Anchorage uplands where local service areas and snow management are common and key issues in both House districts. Other similarities between these districts are the real estate, socioeconomic uniformity, and neighborhood settings. Additionally, these districts maintain their own roads and do not rely on the Municipality of Anchorage to maintain their roads. This pairing has also been done historically. Three other Anchorage Senate districts had revised pairings to facilitate the court-required action and four districts were unchanged. The alternative "Bahnke pairings" disrupt all eight Anchorage Senate pairings.
- Anchorage resident, Ellen Jaimes, encouraged the board to adopt a proposal that is most aligned with the Supreme Court ruling that creates the least amount of change. Ellen testified against



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pairing House Districts 9 and 22.

- AFFER member, Randy Ruedrich, requested a minor repair to the proposed plan submitted by AFFER at the Alaska Redistricting Board meeting on April 5, 2022. Randy reminded the board that the Municipality of Anchorage is, by law, a socioeconomically integrated entity, so the only requirement left to consider is the constitutionally directed contiguity. The following Senate pairings were proposed: Districts 9 and 22, 10 and 13, 11 and 12, 15 and 16, 17 and 18, 14 and 19, and 20 and 21. Randy did not review incumbent information to result in these suggested pairings. Randy stated that Districts 9 and 22 both have unique characteristics, were combined in a House seat, and should be considered for a Senate seat. Additionally, the two districts have significant contact that is considered practicable.
- Anchorage resident, Steve Straight, testified in support of pairing House Districts 22 and 9 for the following shared commonalities:
 - During the winter, snow is a more significant issue in the elevated areas than it is in the lowlands.
 - There is large fire risk with no hydrants in these areas.
 - There are non-standard roads that have not been passed by city codes, making them a challenge for water trucks to travel up and down the hills.
 - With aviation, there is a challenge to complete water jobs in the mountain areas because of turbulence issues.
 - These areas run on septic systems, not on main city water systems.
- Anchorage resident, Rachel Laiki, testified against pairing Eagle River with South Anchorage because the communities are not contiguous, do not have many things in common, and are too far apart to troubleshoot the issues experienced from having common geographical traits. Rachael testified in support of the East Anchorage plan as it is much more aligned with the court ruling.
- Anchorage resident, Doug Robbins, testified against pairing House Districts 22 and 9 because these communities do not have many things in common, are not contiguous, and demographics published by the State of Alaska in 2017 (in the Alaska Economic Trends report) show that Hillside Anchorage is a distinct community in terms of marital status, household income, voter turnout, and education. The communities he can walk or bike to are the communities that are contiguous and socioeconomically integrated with his own. Doug referred to the unconstitutionality found by the Supreme Court for the Senate District K pairing. He expressed that he was amazed by what seemed like a lack of remorse from the "Republican mapmakers who willfully proposed an illegal map to leverage the Republican majority in Eagle River into an additional Senate seat." Doug testified in support of Option 1 because it reflects the integrated communities, particularly in Hillside Anchorage. Option 2 represents the fewest number of changes to the pairings that the courts already approved; Doug noted this option is also a reasonable choice.



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- Anchorage resident, Carl Berger, testified against pairing House Districts 9 and 22 as they both appear to be two non-contiguous districts that go against the court ruling. Carl testified in support of Option 1.
- Anchorage resident, Veronica Sajer, testified in support of the East Anchorage proposal because it is most aligned with the court's ruling and expressed strong opposition to pairing South Anchorage with Eagle River.
- Anchorage resident, Joni Bruner, testified against pairing South Anchorage with Eagle River and encouraged the board to support the East Anchorage proposal that is most closely aligned with the court rulings and has minimal changes.
- Anchorage resident, Kimberly Hunt, testified against pairing House Districts 9 and 22 because they are non-contiguous, separated by mountains, and represent cohesive communities that would be diluted. Kimberly supports a map that is in close alignment with the court rulings and has the smallest changes.
- Anchorage resident, Loy Thurman, spoke as a resident of District 8 (Big Lake), which has now been pushed out of the valley. Big Lake is the largest growing area with anticipation for continued growth. Even as such, Big Lake did not have any new representatives assigned. The old District 8 is now pushed into the Bush, which is "an irritation" to District 8 because it is on the west end of the valley. Currently, District 8 stretches from Point Mackenzie to Anderson in Fairbanks. Additionally, Cantwell has been gerrymandered across Glennallen. Loy added that Eagle River districts should remain together due to the socioeconomic factors differing from South Anchorage.
- Anchorage resident, Randy Philips, has previously represented North and South Mountain View, Nunaka Valley, Muldoon, Chugiak, Eagle River, Eklutna, and Fort Richardson. Randy offered his observations as a resource to the board:
 - Eagle River has a different road service area than Hillside Anchorage.
 - Hillside has 18-19 separate road service areas, and Eagle River has one.
 - The Chugach State Park is the only connector between Eagle River and Hillside.
 - Most Eagle River water sewers are public.
 - Chugiak Fire Service is separate from the Municipality of Anchorage.
 - When Randy represented Eagle River and Anchorage, Eagle River was a middle-class community, and East Anchorage was a working-class community.
- Eagle River resident, Susan Fischetti, testified in support of pairing House Districts 9 and 22 as they are contiguous and likely share more landmass along the district lines from the Chugach State Park than any other Anchorage district. The demographics of both districts are also very similar such as household, age, and marital status. Eagle River also has a separate road service area from Hillside and the Municipality of Anchorage. Susan supported the Option 3 map because it has the least impact on all the other districts.



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- Anchorage resident, Denny Wells, pointed out that the board has two non-partisan board members, and three board members connected to a specific political party. There are two maps proposed by non-partisan groups and one by a member who has been the chair of a political party. The public perception is that the board is not exercising diligence in being non-partisan, especially when being connected to a particular political party. Denny expressed the importance of the board proposing maps that are not politically gerrymandered, such as Options 1 and 2.

While Districts 9, 11, 22, and 24 have a demographic of high-income households over 75% white, what distinguishes them is that Districts 22 and 24 share the core of Eagle River. Districts 9 and 11 share the Hillside Homeowners Association. Districts 9 and 22 share the Chugach State Park but do not have a common political entity. Options 1 and 2 pair House Districts 22 and 24 and Districts 23 and 17 together; these pairings keep the Eagle River and Downtown Communities together. Denny's Muldoon duplex is also usually rented out by enlisted military members. Lastly, the Anchorage reapportionment process divided the community into six, and the Senate pairings were split into eight. Although they are different numbers, the same communities still share the same issues.

During this process, several community councils and other groups opposed the pairing of Hillside and Eagle River. Denny encouraged the board to read the formal resolutions of the following councils: Huffman/O' Malley Community Council, Rabbit Creek Community Council, Home and Landowners Association, Baxter Community Council, and the Girdwood Board of Supervisors.

- Anchorage resident, Judy Eledge, testified in favor of Option 3 because it is the fairest among the maps and she believed that House Districts 15 and 16 should be paired together. These districts are closely related, as she has seen through her experience as a Sand Lake resident. Judy also testified in support of House Districts 22 and 9 being paired together as before, and she noted both districts share similar interests.
- Anchorage resident, Ted Eiseheid, testified in support of House Districts 22 and 24 being paired together and gave some insight on his experience working in the Mat-Su Borough as an East Anchorage resident. Ted commutes through Districts 22 and 24 and sees the connections that could make both districts one Senate districts. This pairing is logical. In Ted's skiing experience in the Arctic Valley (northeast of his East Anchorage home), it is hard to see Districts 9 and 22 as a logical pairing. If one drove from Ted's house to Districts 22 and 24, they would likely agree that the two districts are a logical Senate pairing. If one went on a ski tour in Arctic Indian, they would probably not see the connection between Districts 22 and 9 because there is mostly wilderness. Ted cautioned the board on the perception of their decisions and expressed the importance to him, as an Alaskan citizen, that he feels the board's decision is fair. Lastly, there are plenty of military members who live in East Anchorage by Ted which shows that not all live in Chugiak-Eagle River.
- Anchorage resident, Jason Norris, testified in support of Option 1. When the original Senate pairings were reviewed, one argument was that Eagle River residents shop in Muldoon, making it permissible to pair the communities. This same argument does not apply to Districts 22 and 9. The obvious connection is between Districts 22 and 24. Jason testified against Option 3 as the map seems to be gerrymandered.



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Consideration of Alternative Pairings Proposals

Member Marcum explained the rationale behind her proposed Senate pairings:

- While pairing districts, Member Marcum kept in mind the constitutionally required contiguity and geographic features to be used as boundaries.
- Member Marcum began with the response to the court ruling and paired Districts 20 and 21 (also proposed by Member Bahnke), this pairing joins residential neighborhoods that exist along the east-to-west transportation corridor of Debarr Road.
- Districts 9 and 22 were paired using the Ship Creek drainage as the geographic feature that links the two districts. Ship Creek is in the eastern portion of District 22 and drains near Bird Creek.
- Districts 10 and 13 were paired because this pairing is nearly the same as the current Senate District L. This unites the neighborhoods that travel along the three major north-south transportation roads: Old Seward Highway, C Street, and Hickel Parkway/Minnesota Highway.
- Districts 14 and 19 were paired to combine two primary Midtown Anchorage roads into one Senate pairing. Both districts also share the same business infrastructure.
- Four districts remain intact from the current Proclamation plan:
 - Districts 23 and 24 must be paired to keep Joint Base Elmendorf-Richardson (JBER) whole.
 - Districts 17 and 18 unites the areas around the Merrill Field infrastructure.
 - Districts 11 and 12 unites the areas around the shared boundary of Abbott Road.
 - Districts 15 and 16 is a coastal district for Cook Inlet.
- The pairings of District 23 and 24 leaves District 22 to be paired with District 9.
- Muldoon would only have two Senators as opposed to one Senator because of Districts 20 and 21 being paired.
- These proposed pairings acknowledge the public testimony heard by Muldoon and Eagle River residents.

Member Marcum reviewed the proposed Senate pairings from a 40-year Eagle River resident, Craig Campbell. The board held discussion on the proposed pairings:

- Member Borromeo stated the unconstitutionality of this proposed map as Districts 9 and 21 are not contiguous and the court will likely strike this down immediately. Member Marcum responded that the testifier submitted a solution to make these districts contiguous.
- Member Bahnke noted that the remand does not authorize the modification of House districts



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other than the Cantwell solution.

- Matt Singer clarified that the court has remanded to the board to correct the Cantwell appendage and Senate District K. Matt encouraged the board to be able to explain how each change it makes is directly linked to the two areas identified by the court. The board must have a sufficient explanation for any adjustments made to the House map to fix Senate District K.
- Member Simpson expressed disinterest in adjusting House districts as it may extend beyond the board's authority, but Member Simpson noted that there is no objection to accepting this map for consideration as there may be a part of the map that could be used as a compromise.
- Member Borromeo spoke against the consideration of the proposed plan and stated the plan likely will not pass muster.

Member Marcum moved for the board to adopt the proposed plan as submitted by Craig Campbell as a potential correction for publication on the website and to receive public testimony; Member Simpson seconded the motion.

The following discussion was held on the motion:

- Member Simpson noted his hesitation in seconding the motion for reasons stated earlier but does not object the map being moved forward for public comment.
- Member Bahnke spoke against presenting an unconstitutional map to the board and suggested that the plan could be posted on the website for public viewing, but not consideration. Districts 9 and 21 are not contiguous and could confuse the public if the board adopts the plan as a possible solution to Senate District K.
- Member Borromeo noted that the board has abused the public's trust and asked the board to not adopt the proposed unconstitutional plan. Member Borromeo noted that the mapmaker did not have the benefit of a Voting Rights Act consultant to review the map.
- Member Marcum clarified that the proposal includes a solution to the non-contiguosity of Districts 9 and 21.
- Chairman Binkley expressed support of the motion as the board has asked the public to provide input and it would be disingenuous to not allow the public to comment on the proposed plan.
- Matt Singer stated that the board should be focused on Section 6 of the Alaska Constitution and advised the board to present options that hold the requirements of the constitution. Matt Singer recommended against pairing Districts 9 and 21.

The board voted as follows:

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



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- Member Simpson – No

The motion failed 2 to 3.

Member Borromeo made the following statement regarding the withdrawal of Option 1 for consideration: “While I do believe that there was overwhelming public support for this option back in November, I recognize that times have changed, and the Superior Court and the Supreme Court have spoken. So, while it may have been a more perfect option, Options 2 and 3 are sufficient for the board to consider and I’d like to withdraw the commonly referred to “Bahnke pairings”.

Member Borromeo moved to withdraw Option 1 for the board’s consideration; Member Bahnke seconded the motion.

The following discussion was held on the motion:

- Member Bahnke noted that, given the narrow scope of the remand, she will be voting in favor of the motion.
- Member Simpson spoke in favor of the motion. It has the inherent issue of requiring a change to every Senate district with no minimalistic approach to the court remand.

Member Bahnke called the question. The motion passed unanimously.

The board now presents Options 2 and 3-B for consideration by the public.

Board Member Comments

- Member Borromeo stated that the withdrawal of Option 1 for consideration will streamline the process and proposed that, going forward, the two options remain for public through Friday, April 8th, and the board act on April 9th as there is no reason to belabor the public process further.
- Member Marcum proposed to continue with the meetings that have been publicly noticed. This will also allow the public to have time to digest the proposed options.
- Member Simpson stated that he will not be ready to address the proposed options substantively by April 9th.
- Chairman Binkley concurred with Member Simpson’s comments and acknowledged the public’s interest in the proposed solution to Senate District K. Thus, the board should continue with the noticed public meeting schedule.
- Member Borromeo called to the board’s attention the fiftieth page of the trial court order and noted the amassing testimony on each side. The public has meaningfully weighed in and there are thoughtful proposals and reasons on record. Member Borromeo noted there is no reason to delay the process and the board should take action on April 9th or 10th. Member Borromeo stated that she is unavailable on April 13th and 14th.
- Member Marcum noted that the timeline put forward by Member Borromeo could still be



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accommodated.

- Member Bahnke requested adequate time to debate and discuss the proposed options prior to acting.
- Member Borromeo suggested that the board meet on April 10th for the board to begin debating the proposed options and reiterated that she will be in all-day meetings on April 13th and 14th.
- After discussion, the board agreed to hold the April 13th and 14th meetings potentially in the evening pending Member Borromeo's schedule on those days.

Adjournment

Member Bahnke moved to adjourn the board meeting; Member Simpson seconded the motion.

The board adjourned at 1:03 p.m.



ALASKA REDISTRICTING BOARD

DRAFT

**Alaska Redistricting Board Meeting
April 7, 2022 | 12:00 p.m.
Anchorage Legislative Information Office and Zoom Virtual Meeting
1500 West Benson Blvd, Anchorage, AK 99503**

The Alaska Redistricting Board met on April 7, 2022. Present participants are below:

John Binkley
Melanie Bahnke
Bethany Marcum
Budd Simpson
Nicole Borromeo
Peter Torkelson

Chair of the Board
Board Member
Board Member
Board Member
Board Member
Executive Director

Agenda

- Call to Order & Establish Quorum
- Adoption of Agenda
- Public Testimony
- Adjournment

Call to Order

Chairman Binkley called the meeting to order at 12:00 p.m. With all board members present, a quorum was established.

Adoption of Agenda

Member Bahnke moved to approve the agenda as presented. Ms. Marcum seconded the motion.

The motion passed unanimously.

Public Testimony

Public testimony was given as follows:

- Rabbit Creek Community Council Member, Ann Rappoport, testified that the council strongly opposed any redistricting that combines the Rabbit Creek and Hillside communities with Eagle River for the purposes of government representation. The council has also submitted extended comments on this matter when the Anchorage Assembly redrew districts; the same requirements held to the Anchorage Assembly also apply to the Alaska Redistricting Board. Eagle River and Hillside are not contiguous, compact, or relatively socioeconomically integrated. Both communities are separated by an uninhabited area (Chugach State Park). Also, the constitution requires that local government boundaries are also considered, and the Anchorage Assembly has



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kept Hillside together. East Anchorage neighborhoods should also be kept together. The following reasons for opposing the Hillside and Eagle River pairing were also listed:

- Hillside frequently deals with water septic issues and wildfire risks.
- There are limited road service areas.
- Hillside students attend different schools than Eagle River students.
- both communities travel on different roads to travel to Downtown Anchorage.

Ann referred to the 2010 Hillside District Plan that defines Hillside boundaries and included a public process. This plan speaks to the community's preferences. The Rabbit Creek Community urged the board to adopt a map that keeps neighborhoods together which can be done with the proposed Option 2 Map, or the original map proposed by Member Bahnke.

- Anchorage resident, Cyndi Saunders, agreed with Ann Rappoport's testimony and testified in favor of the Option 2 Map. Some concern was expressed on prior board members' comments about making the map look beautiful as opposed to looking at voting boundaries. Cyndi asked for the board's explanation of this. Cyndi testified against pairing Eagle River and Anchorage together.

Member Binkley explained to Cyndi that in terms of a map being "beautiful", he does not specifically recall the instance, he explained that the terminology refers to the idea that the map could appear complex in some House districts more than others. The word "beautiful" could be referring to the compactness of the district or its clearly drawn bounds.

- Eagle River resident, Susan Fischetti, testified in support of a Chugach Mountain district as outlined in the Option 3-B Map for the following reasons:
 - Districts 22 and 9 are the two large districts with several acres of parks and mountains; there are no other districts like this.
 - Upper Hillside and Eagle River have previously been combined as a Senate pairing and it is still logical to pair them.
 - Anchorage has become more urbanized. Eagle River and Hillside residents chose a suburban lifestyle surrounded by mountains and wildlife rather than the city.
 - Joint Base Elmendorf Richardson (JBER) districts should remain intact, and this map achieves that.

Susan agreed that there is public confusion about the Anchorage Assembly redistricting process where several community members testified to keep the Assembly districts separate. Now, the public is struggling with the changes being presented by the board and this may impact their willingness to call in.



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- Anchorage resident, Leon Jaimes, noted that he is not confused by the municipal redistricting and Senate pairings and testified in support of the Option 2 Map. This map addresses the correction requested by the court to fix the Senate District K pairings and keeps communities of interest together such as Eagle River, Muldoon, and South Anchorage.

When Leon moved here in 2012, he researched neighborhoods to live in and many responses were given about living in Eagle River and no responses indicated that Eagle River was similar to South Anchorage. Muldoon and East Anchorage were seen as a community. Leon still follows some of the same online forums discussing moving to Alaska and the same discussions are still being held. A geographic connection does not make two districts contiguous.

- Anchorage resident, Judy Eledge, testified in favor of the Option 3-B map for the following reasons:
 - The map revises Senate District K as the court ruling requests.
 - The map has a logical pairing of House Districts 9 and 22 that are most similar and were paired when Tom Bundy was elected.
 - House Districts 9 and 22 are contiguous districts with a long, common boundary and similar road and snow removal services.
 - House Districts 9 and 22 mainly consist of high-income single-family homes.
 - It may not be contiguous, but it keeps similar communities together. Based on testimony heard, that is what the general public wants.

Judy testified against the Option 2 Map as she believed that military voters should not be paired with Downtown Anchorage because it would diminish their representation.

- Anchorage resident, Yarrow Silvers, cautioned the board to avoid the appearance of gerrymandering and referred to the court ruling that found the Senate District K pairing to be unconstitutional as it split Eagle River into two districts to increase the majority party representation at the expense of East Anchorage voters. Yarrow testified against Map 3-B because it would split Eagle River into two separate Senate districts again to increase the majority party's representation at the expense of voters outside of Eagle River. The map swaps the voters' voices who will be silenced and does not correct the constitutional error. There have also been consistent public testimonies from Eagle River residents to keep their communities intact. Yarrow cautioned the board about adopting pairings by an individual "who chairs the Alaskan Republican Party and uses political data to map but also sent this board a chart that shows how the political data relates to proposed pairings, who the incumbents are, and even a column that appears to indicate whether certain incumbents were electable or not - a chart which was referenced by at least two board members during the process and whose initial suggested Eagle River pairings were found to be unconstitutional."

Yarrow expressed support for a simple fix that keeps Muldoon communities intact and Eagle River communities intact and asked the board to reject politically motivated pairings that give other communities more representation at the expense of other communities of interest. Yarrow



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asked the board to stop utilizing contiguity of a type that has been described by the Supreme Court Justice as second-rate contiguity and what has been described by Budd Simpson as "basically affixion". For context behind her statement, Yarow referred to a quote by Member Simpson at the Alaska Redistricting Board meeting held on February 3, 2022: "And so I could not ever describe 33 as compact. It's barely contiguous, and by barely, I mean the part that connects the northern part of that to the southern part basically has almost no people in it. It is basically affixion in my mind."

Yarrow also referenced a discussion between Supreme Court Justice Matthews and the board's legal counsel, Matt Singer, on March 18, 2022, about salt contiguity being second-rate. In this discussion, Matt Singer stated the board's perspective to see salt contiguity as second-rate. Yarrow referred to statements made by Member Marcum regarding the need to pair Joint Base Elmendorf-Richardson (JBER) with Eagle River to remain intact and represented together. Yarrow assured Member Marcum that the area is a block of trees with no infrastructure and likely has few residents. Thus, is no justification for breaking down Eagle River, Downtown, and South Anchorage using second-rate contiguity.

Yarrow pointed out that service members live all over Anchorage and are represented by their place of residence, not their workplace. Yarrow opposed the idea of JBER communities only being represented by Eagle River, where there is no access to JBER. However, there are access gates to JBER in Anchorage, where JBER residents are integrated with the surrounding communities in North Anchorage District 17. Yarrow referred to the historical connections with past maps and noted that maps are recreated every ten years as the populations change. Back then, Eagle River's population was vastly different, requiring the community to be split into two Senate districts but now has an opportunity to be a single Senate District. Yarrow testified in support of keeping Eagle River communities intact and encouraged the board to listen to Eagle River residents who have testified to preserve their communities. North Eagle River has the same independent road service areas and snow removal services as South Eagle River. Pairing South Anchorage with Eagle River opens the board up to further lawsuits from Eagle River and South Anchorage residents.

Yarrow expressed concern with political blocks urging people to testify based on politically motivated reasons, such as saving a certain number of Republican Senate seats. This action has resulted in submitting the same form letter daily and changing testimonies compared to what was said one month ago in the municipal redistricting process. The Anchorage Assembly's redistricting resulted in a 3.6% deviation in municipal maps based on public testimony. In contrast, the Anchorage pairings under consideration do not practicably change variations.

- Jamie, a House District 28 (soon to be District 9) resident, clarified that this district includes Southeast Anchorage, Girdwood, Portage, and Whittier. Jamie researched some numbers that were shared with the board:
 - Eagle River to Southeast Anchorage distance: 27 miles
 - Eagle River to Girdwood distance: 67 miles
 - Eagle River to Portage distance: 78 miles



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- Eagle River to Whittier distance: 87 miles (includes tunnel scheduling)
Depending on the route taken, one must cross 6-8 unrelated House districts from Eagle River to Southeast Anchorage. Jamie testified in support of keeping Eagle River districts intact.
- Anchorage resident, Lee Hammermeister, testified in favor of Option 3-B. Lee is a lifelong Eagle River resident and remembers attending school with students who lived on Joint Base Elmendorf-Richardson (JBER). A portion of JBER workers lived in Eagle River and their children attended school in Eagle River. Additionally, the distance between the district pairings in Option 3-B is closer than the long drive for the alternative pairing presented in Option 2, which would take over one hour. Overall, it is more sensible for Eagle River to align with JBER as outlined in Option 3-B.
- Anchorage resident, Forrest McDonald, testified in support of Option 3-B and noted that this conversation was being held because board members were caught having discussions with individuals not on the board who gave the board members instructions on how to gerrymander the process. McDonald expressed concern with the board that certain public testimony from the same person, multiple times, and treating those testimonies as they have, created a perception that the board may favor non-members over others. Allowing non-board members to have more input on the process than other Alaskans disenfranchises the people that the appointed board members represent. Member Borromeo defended the matter by stating the rules that accompany the opportunity to give public testimony, and verbal assault is strictly prohibited. Member Borromeo asked Forrest McDonald if he was aware of Senator Begich's 3rd party plan submitted to the board. McDonald was aware of the plan and mentioned text conversations between the Senator and Borromeo. Member Borromeo clarified and confirmed that she acted within compliance with the board and the State Superior Courts' regulations and did preserve and submit the conversation, to which the court did not find any wrongdoings with the matter.
- Anchorage resident, Sandra Graham, testified in support of Option 3-B as she taught at Birchwood ABC Elementary several years ago. During her time there, she saw many military families attend this school. Sandra also spent time in Girdwood at her father's cabin growing up and knows that Girdwood and Eagle River have significant differences between the two communities. Sandra encouraged the board to look at the differences between the communities.
- Anchorage resident, Jieun McDonald, testified in support of Option 3-B because it is the best representation of the Korean community, and it is her opinion that the board does not consider the Korean community's best interests. Member Bahnke explained that the Senate pairings look at districts that are as contiguous as they are practical. Meaning that they touch but are also easy to travel between. Member Bahnke continued to say that all communities are important to consider when voting for what is ultimately best for the entire State of Alaska.
- Anchorage resident, Roy Syren, testified in support of Option 3-B because it is the fairest map and districts should remain together.
- Kimberly Hunt expressed concern about the credibility of her testimony on April 6, 2022 and noted that she is familiar with and misses the "pre-pipeline perspective". Hunt reiterated her support for the Option 2 map to avoid unnecessary delays and honor the court rulings. This map seems to keep contiguous communities intact.

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John Binkley, Chair
Melanie Bahnke
Nicole Borromeo
Bethany Marcum
Budd Simpson

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Adjournment

Member Simpson motions to adjourn the meeting. Member Bahnke seconds the motion. Member Borromeo adjourns the meeting at 2:02 p.m.



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**Alaska Redistricting Board Meeting
April 8, 2022 | 10:00 a.m.
Anchorage Legislative Information Office and Zoom Virtual Meeting
1500 West Benson Blvd, Anchorage, AK 99503**

The Alaska Redistricting Board met on April 8, 2022. Present participants are below:

John Binkley
Bethany Marcum
Budd Simpson
Nicole Borromeo
Peter Torkelson

Chair of the Board
Board Member
Board Member
Board Member
Executive Director

Agenda

- Call to Order & Establish Quorum
- Adoption of Agenda
- Public Testimony
- Adjournment

Call to Order

Chairman Binkley called the meeting to order at 10:02 a.m. With four out of five board members present, a quorum was established. It was noted that Member Bahnke was not in attendance due to traveling.

Adoption of Agenda

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

The motion passed unanimously.

Public Testimony

Public testimony was given as follows:

- Anchorage resident, Andrew Gray, stated his relationship with the military and Joint Base Elmendorf Richardson (JBER) as a member of the Alaska Army National Guard. During his deployment with another soldier from the trailer court across from Northway Mall, Andrew recounted a discussion. Andrew answered that he'd never met anyone who lived in a trailer park, and the other soldiers at the table during this discussion stated they'd lived in a trailer park at some point in their childhoods. Andrew recounted this moment to tell the story of many military members joining in escaping the poverty from their childhood. Andrew referred to a 2018 demographic analysis from the Council on Foreign Relations that shows over 60% of enlistments came from neighborhoods with a median household income between \$38,000 to \$80,000.



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Nineteen percent of recruits came from households of less than \$38,000. The average annual pay in Eagle River is \$129,768. More than 80% of military recruits come from families unlike those in Eagle River. As more enlisted choose to live off base, they inevitably end up in lower-cost housing in Mountain View, North Muldoon, or Midtown. Yet members of the board insist on pairing Eagle River with JBER. Higher ranking officers are the military members that can afford to live in Eagle River.

The Congressional Research Survey reports that 63% of military service members are white, and 37% are non-white. JBER is more diverse, with 60.7% of the voting-age population identifying as white and just under 40% identifying as non-white. However, 88% of senior military officers are white, and these higher-ranking officers can afford to live in Eagle River. Andrew also pointed out that the voting age population in Chugiak-Eagle River is over 73% white. Andrew argued that the Senate district pairing Eagle River with JBER is egregiously unconstitutional, if not more so. The minority residents of JBER will be overridden by Eagle River's wealthy, white residents as the goal is to increase the Senate representation of Eagle River. As Member Marcum stated on the record on November 5, 2021: "This allows Eagle River to have more representation." On April 7, 2022, Chairman Binkley explained to a testifier that the state redistricting and the Anchorage reapportionment of Assembly districts are not the same processes. During Anchorage's reapportionment, Eagle River was guaranteed two Assembly members. The tactic was to minimize the population represented by both Eagle River Assembly members to increase representation. This was achieved by several public testimonies against pairing Eagle River with any part of Anchorage.

The option most strongly considered was the pairing of Hillside and Eagle River. Andrew referred to a quote stated by Assembly member Jamie Allard at a town hall held on January 27, 2022: "It was brought up the fact that if we are connected to Hillside, or we are connected to Girdwood, you would literally have to ride a bald sheep in order to get to those areas - unless we drove approximately from our location almost an hour to get to Hillside and an hour and a half to get down to Girdwood. I would also point out that when folks are saying that we have things in common over there, look at who their elected officials are: Suzanne LaFrance and John Weddleton. Wonderful people, but you have to still ask, 'What do we have in common with those areas?' We don't." Andrew thanked Assemblywoman Allard for saving the business of the political process.

Although the message is different in redistricting, the goal is not. By avoiding the pairing of two Eagle River House districts together, which by any metric is how you would create the most compact, contiguous, and socioeconomically integrated Senate district - the board is seeking to expand Eagle River's influence in the Alaska Senate. We know from numerous studies that voter participation increases with family income. In the 2016 presidential family election, 48% of voters in the lowest income categories voted, while almost 86% of voters in the highest income categories cast a ballot. This is true in Eagle River, as they participate in elections at a significantly higher rate than the neighboring low-income voters. Therefore, if Eagle River receives two Senators, Eagle River will elect those senators.

There are no adverse consequences to the board adopting another unconstitutional gerrymandered map. There is a chance that no lawsuit will be brought forth, and the gerrymander could stand for another ten years. Even on an expedited schedule, it would take several months



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after an appeal to the Alaska Supreme Court before the board is sent back to re-work the Senate pairings. The November 2022 elections will approach, making it too late to print new ballots. No board members will be held personally liable for unconstitutional pairings and have nothing to lose but will gain continued Republican control of the Alaska Senate. Andrew testified against the Option 3-B Senate pairings and testified in favor of the Option 2 Senate Pairings that keep JBER with Downtown Anchorage, South Anchorage intact, and Eagle River intact.

- Eagle River resident, Susan Fischetti, testified in support of Option 3-B and clarified that her testimony on behalf of herself should not be confused with her testimony on behalf of the State of Alaska. Both testimonies outline two separate issues. This should also apply to the community councils who pass resolutions for the Assembly redistricting and are now carrying it over to the state. In Susan's experience attending community council meetings, there are usually six to twenty attendees that may not always represent the thousands of voters in their areas. Susan expressed concern about the "intimidation and attacks against private citizens in this office when they are nervous and fear of saying the wrong thing." Some testimonies have also gone over ten minutes and have become a numbers game while attacking Eagle River. The Option 2 map has claims of gerrymandering, not Option 3. Eagle River and Hillside Anchorage share landmass and miles along the Chugach Mountains, making them contiguous. Also, military members are prominent in Chugiak-Eagle River and should be paired with JBER. They are contiguous and have been historically paired for several years.
- Hillside Home and Landowners Association member, Katie Nolan, stated that the association has represented Hillside Anchorage since 1970, several years before being incorporated into the Municipality of Anchorage. The Hillside District Plan (a set of planning documents) was created for the community in 2010. Hillside still consists of the same areas that have been represented with the addition of community councils in various areas. The Hillside Home and Landowners Association met on April 7, 2022, to review the revised proposed maps from the board and recognized that neither map is perfect, but the map that meets Hillside's needs is Option 2. The idea that Hillside is contiguous with Eagle River ignores that one of the largest state parks in the nation is between the two communities. It is also quicker to get from Anchorage Hillside to Whittier in Kenai Peninsula than traveling to Eagle River. Additionally, there are separate road systems and different services; Eagle River has its own Parks Department, and there are things done with Eagle River that are not appropriate for Anchorage. The most significant issue is that Hillside likes seeing their representatives from Juneau at their meetings when they are not in session. Their representatives can't effectively represent an area far away from Hillside adequately. This is not the best option for the representative or the community to build a relationship. Katie referred to public comments about the Hillside community consisting of wealthy households. She stated that they also have high-density housing and workforce housing, just like other Anchorage residents.
- Soldotna resident, Joan Corr, testified in support of Option 3-B and stated that she has several friends in Rabbit Creek in Anchorage and Eagle River that would have more in common than what is shown on Option 2. Joan also does not see any similarities between military members and Downtown Anchorage.
- Girdwood Resident, Briana Sullivan, testified on behalf of herself, but also currently sits in an elected seat on the Girdwood Board of Advisors. Briana spent several years living near District 22



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and now calls District 9 home. For the same reasons cited about local government and acknowledging compact areas of town found during this process, the Senate redistricting could also follow identified voting areas of the municipality. Over the last few weeks, several members of the public have urged the board to quickly make a crucial decision, not waste time, not pair Eagle River with Girdwood, and take the Alaska Supreme Court ruling into account when making these considerations. It is prudent to solve the unconstitutional error in splitting Eagle River to give them more representation. Pairing House Districts 22 and 23 have been cautioned against by the courts.

Thus, Briana urged the board to revert to pairing House Districts 22 and 24. In the public process, we start with our roots, neighbors, communities, and representatives. These public offices are held by residents in the areas they live in who understand the nuances of their cities and have a vested interest in serving their constituents. Citizens can support and vote for their residents, so it makes sense for their representatives to be within reach. Contiguous districts make sense; please do not substantially break up communities. Connecting the extremely distant House Districts 9 and 22, where thick forests, rivers, drainages, and mountains reside in between them, causes confusion. It is far-fetched when there is another logical option.

These districts also have six to eight Senate districts in between. Most from Eagle River do not want to be paired with South Anchorage and Girdwood and vice versa. The topography information is missing from district size considerations. Hillside and South Anchorage have more in common with the Turnagain Arm and Girdwood community than with Eagle River. Briana urged Member Simpson to listen to the constitution as read, to the outpouring of public support for Option 2, and the several people providing public testimony. Briana testified against Option 3-B as it is unconstitutional and asked the board not to confuse the public with more maps.

- Juneau resident, Phil Moser, testified in support of Option 2 as it most fairly represents Anchorage and has ramifications for the entire state. South Anchorage is a diverse area, and the representation there represents the people of South Anchorage and adds a voice to diverse communities from Alaska, including Juneau. For this reason, Phil testified in support of Option 2. Through the process, there have been several warnings about constitutionality, racial non-discrimination, the mandate of the board to keep districts contiguous, and to ensure that socioeconomically integrated communities are connected. Phil has gained trust in Members Borromeo and Bahnke, who he believes have been correct through the process in warning against unconstitutionality and recommends that the board do the same.
- Anchorage resident, Leon Jaimes, referred to previous testimonies about the definition of "contiguous" and Article 6 of the Constitution. The last sentence of the article discusses drainage and other geographic features that should be used as boundaries when possible. Leon pointed out that when looking at the topography, the drainage for District 22 goes into both the Turnagain Arm and Knik Arm of the Cook Inlet. District 9 only drains into the Knik Arm. It is significant that drainage and other geographic features were included because if you look at the highest elevations between Eagle River and Whittier, that is a distinct boundary that should be considered. Leon testified in support of Option 2 as it is the only map that is practicable for Senate District K.



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- Alaskans for Fair and Equitable Redistricting member, Randy Ruedrich, stated that he has submitted a map to the board that solely focuses on the new Senate E in Option 3-B, which clearly shows the entire length of the boundary where District 9, District 22, and District 12 meet. This boundary extends east in various segments to the far east side of the Municipality of Anchorage. This map is contiguous, therefore, the words "being close to contiguous" are irrelevant. This map is also materially the same as a Senate district that has existed in the past and shows that the whole area is socioeconomically integrated with over 37 miles of contiguous territory.
- Anchorage resident, Judy Eledge, expressed that there seems to be a board member who has already decided on a map based on the nature of the questions, she is asking testifiers. Everyone should be respectful to one another, and the public should not be questioned about what they are saying. Judy testified in support of Option 3-B and expressed concern about the board being accused of gerrymandering Senate District K. However, gerrymandering can be seen in another place to support Senator Tom Begich's seat, who was also seen sending text messages to another board member about Option 2. Option 3-B is the most logical map that pairs House Districts 9 and 22. When you view the entire map, they both share common boundaries as the most contiguous districts. Judy recalled when Senator Cathy Giessel went from Hillside to Kenai in her first term, which seemed like a difficult task for her. Often, some districts were not easy to reach. Additionally, pairing House Districts 9 and 22 protects the interest of minority communities of East Anchorage, Muldoon, and Mountain View.
- Anchorage resident, Forrest McDonald, addressed several comments made by the public and pointed out board members being critical of people in support of Option 3-B and accusing them of being the same people who were against the Assembly districting pairings. Through actions and commentary, it has been made clear that the voting power and footprint is trying to be reduced as much as possible. Forrest also expressed his dismay about board members asking confrontational questions that push people to re-evaluate their opinions. Members of the public with different opinions, values, and priorities are trying to add to the equation so their voice is heard to result in a diverse array of views and opinions. Forrest wanted to know why it was appropriate for the Anchorage Assembly to not pair the two Eagle River districts and why Eagle River specifically has additional follow-up questions that are applied in the process and have not been applied to other areas in the state. There has been no explanation as to why this has happened.
- Anchorage resident, Yarrow Silvers, testified against Option 3-B and stated that the burden of proof for using second-rate contiguity and salt contiguity, as described by Justice Matthews and Matthew Singer, combined with splitting the communities of Downtown Anchorage, South Anchorage, Eagle River, and Joint Base Elmendorf-Richardson (JBER) falls on those who think these actions are logical and rational. There has been no sensible argument about using second-rate contiguity and salt contiguity. Option 3-B splits every Anchorage community apart. Keeping communities together is not gerrymandering. Splitting communities is gerrymandering.
- Girdwood Board of Supervisors member, Mike Edgington, stated that the Girdwood Board of Supervisors recently met to review the newly proposed three maps by the Alaska Redistricting Board. The Girdwood Board unanimously voted that Maps 1 and 2 represented more compact and contiguous Senate districts than Map 3. The board also supports similar maps that combine



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Eagle River with South Anchorage, Hillside, Turnagain Arm, and Girdwood. The main reason for keeping these maps is the contiguousness across the Chugach State Park.

- Anchorage resident, Doug Robbins, quoted the Alaska Constitution describing the legal criteria for redistricting: "Range and other geographic features shall be used in describing boundaries whenever possible." This informed Doug that Option 3, as modified, contradicts the criteria defined in the constitution for designating Senate districts. To validate the pairing, you would have to consider that the Chugach Mountains are not a geographic feature, which is false, or that there is no other possible way to join districts, which is also incorrect. Option 3 cannot stand, according to the constitution.
- Anchorage resident, Julie Coulombe, stated that she was engaged in the reapportionment process and has not called to testify because she has been torn on the maps. During the reapportionment process, she and other community members fought hard to combine Eagle River with South Anchorage. The main issue is that, during reapportionment, a small population of South Anchorage was combined with a large Eagle River population, giving an inaccurate representation of South Anchorage residents. Julie can now support the pairing of Eagle River and South Anchorage because the South Anchorage population has been balanced to provide fair representation. Julie struggled with Option 2 and Option 3-B because of the combination of Hillside and Eagle River since this is what she fought against in the Assembly districts. When you are making lines for Senate districts, it's much different than the Assembly because Senators tackle different issues than Assembly members.

Julie pointed out that, during the reapportionment process, there were many arguments that Eagle River and South Anchorage are contiguous by the Chugach State Park, but in this redistricting process, there are arguments about it not being contiguous. Julie has lived in Eagle River for 20 years, South Anchorage for 15 years, and has lived on JBER. Through Julie's experience in Eagle River, Julie knows a heavy military population in Eagle River. Julie expressed she did not believe a Downtown Anchorage representative well represents the JBER community. Julie cautioned the board against how they have been treating the public, which has intimidated the public into testifying. Overall, Julie does not fully support any of the maps, but Option 3-B better represents JBER residents, and the South Anchorage area combined with Eagle River would also have fair representation.

Adjournment

The meeting adjourned at 12:05 p.m.



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DRAFT

**Alaska Redistricting Board Meeting
April 9, 2022 | 12:00 p.m.
Anchorage Legislative Information Office and Zoom Virtual Meeting
1500 West Benson Blvd, Anchorage, AK 99503**

The Alaska Redistricting Board met on April 9, 2022. Present participants are below:

John Binkley
Melanie Bahnke
Bethany Marcum
Budd Simpson
Nicole Borromeo
Peter Torkelson

Chair of the Board
Board Member
Board Member
Board Member
Board Member
Executive Director

Agenda

- Call to Order & Establish Quorum
- Adoption of Agenda
- Public Testimony
- Adjournment

Call to Order

Chairman Binkley called the meeting to order at 12:06 p.m. With all board members present, a quorum was established.

Adoption of Agenda

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

The motion passed unanimously.

Public Testimony

Public testimony was given as follows:

- Anchorage resident, Katherine McDonald, spoke as an Anchorage resident who has lived in various parts of Anchorage, but now resides in District 9 (Hillside Anchorage). Katherine reviewed a timeline of her public comments:
 - September 18, 2021: Testified on releasing Senate district pairings early for public comment and submitted maps for Anchorage
 - November 7, 2021: Proposed Senate pairings, not including Eagle River districts



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- November 8, 2021: Katherine testified and applauded the board for proposing to pair District 9 with an O'Malley district
- November 9, 2021: Board voted on Senate pairings for Anchorage with no justification, Districts 9 and 10 paired which was unaligned with the unanimous public testimony from the day prior
- April 5, 2022: Written testimony submitted with rankings of support on proposed maps placing Option 1 first as it pairs Districts 9 and 11. Upon further education, it was realized that Option 1 was non-compliant with court ruling, applauded the board for removing the option for consideration
- April 9, 2022: Testified in support of Option 2

Katherine noted that if she was in the board's shoes, she would be concerned about the appearance of political gerrymandering by adopting Option 3-B which continues to split Eagle River to give more representation.

- Anchorage resident, Denny Wells, testified in support of Option 2 and stated that the board is fortunate to have the Municipality of Anchorage divided into an exact number of 16 House seats with the addition of Whittier. Further, the Chugiak-Eagle River area now has two House seats, giving the board the maximum opportunity to unite the community. Future boards may not be as fortunate to be in this situation and may need to pair Chugiak-Eagle River with South Anchorage or another district outside of their area. According to the 2020 US Census data, the board does not need to divide Eagle River or South Anchorage. The Superior Court found that the Senate K pair ignored communities of interest in Eagle River and South Muldoon with very little justification. The court reviewed the board's arguments (contiguity through the Chugach, JBER connection to Eagle River) for this pairing and still found little reason. Denny went on to note the following:
 - Downtown Anchorage is split along 4th Avenue and Downtown Anchorage is a community of interest that should be paired with Eagle River.
 - Eagle River is split along the Glenn Highway along with a divide along a residential street in Eagle River, a small neighborhood road where neighbors know one another and should be in the same district. Member Marcum's statement to a member of the public that there is only one Eagle River House seat while the other is a Chugiak/Peters Creek/JBER House seat is factually inaccurate as District 24 has 7,586 residents from Eagle River and Eagle River Valley community councils. The Eagle River Fred Meyer, business boulevard, and Carr's are all in District 24. Thus, this district is most certainly an Eagle River House seat.
 - District 24 includes a small portion of JBER, but it has no population except for one census block that appears to be noise from the bureau's anonymization efforts. The block is bounded by Eagle River, the Inlet, and Otter Lake and has a population of 197 people with no visible infrastructure.



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- The District 23 and 24 pairings have been justified through the military connection between JBER and Chugiak-Eagle River. Through Denny's experience in his photography business, he has seen this connection to be true.
- Denny has heard concerns that JBER is more like Chugiak-Eagle River than Downtown Anchorage. This argument ignores the 7,200 residents in District 23 who live in Muldoon and Downtown Anchorage, where the Muldoon residents have more in common with Downtown Anchorage than Chugiak-Eagle River. For example, residents live in older houses on smaller lots, use the city water and sewer service, and use the city-maintained roads.
- Parts of Downtown and Muldoon in District 23 are 43% white, District 17 is 51% white, and District 24 is 73% white. The Downtown and Muldoon parts of District 23 are more like the population of District 17 Downtown than in District 24. The JBER part of District 23 is 59% white, closer to District 17's 51% white population. District 23 is 52% white; taking a minority population and combining it with a 73% white district when there are other available options is a sign of racial gerrymandering.
- The pairing of Districts 22 and 9 has been justified because both districts have rural road services, share the same roads, and use septic systems. These justifications also apply to the pairing of Districts 22 and 24. Several houses have wells and septic systems, a long contiguous border with the Chugach, and the same road service area.
- Denny has heard that the pairings in Option 3-B are justified through the Ship Creek hunting area in District 22. If you rely on the constitutional verbiage about drainages justifying Senate pairings, the Ship Creek drainage would support Districts 22 and 23, not Districts 23 and 24, making both pairs well due to the Eagle River drainage.
- Anchorage resident, Jason Warfield, testified in support of Option 3-B which joins Districts 9 and 22. The Hillside Community has generally spoke against this pairing. In the municipal reapportionment process, part of Hillside was combined with municipal District 2. Putting a portion of District 6 (about 12,000 people) into municipal District 2 would result in underrepresentation due to population disparity. The Option 3-B pairings, while not optimal, also represent the fairest map. The two districts share a 35-mile border and are demographically similar; an argument made during municipal reapportionment when trying to pair municipal Districts 6 and 2. Both communities have a similar population and would be equally represented by their state senators. The map also pairs JBER with Eagle River instead of pairing it with Downtown Anchorage. Through Jason's experience working at an auto shop in Downtown Anchorage, several military clients lived in Eagle River, not Downtown Anchorage.
- Sterling resident, Queen Parker, testified in support of Option 3-B because it would be fair for all residents.
- Anchorage resident, Laura Bonner, testified in support of pairing the two Eagle River districts, keeping Girdwood with South Anchorage, and pairing Downtown Anchorage districts together. Laura believed these pairings to be reflected in Option 2.



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- Anchorage resident, Yarrow Silvers, addressed various comments and characterizations heard over the last week:
 - It was heard that Option 2 is partisan, a map arrived at by the East Anchorage plaintiffs with legal guidance who advised that pairing Muldoon with Eagle River, and then pairing districts that were left unpaired, was the method that most closely followed the court remand. No incumbent or partisan data was used to develop these maps. Yarrow is unaware of where incumbents reside.
 - Both makers of Option 3-B, Member Marcum and Randy Ruedrich, have viewed incumbent information during the mapping process. In contrast, Option 2 pairings were based on logic, reason, similarity between communities, the constitution, and the remand requirements.
 - Cathy Giessel has stated preference on Option 2 to be a “very elegant solution” that she prefers.
 - Most of the testimony backs up the non-partisan and inherently fair nature of Option 2 which has broad bipartisan support. Several testimonies have been heard on the irrationality of Option 3-B from organizations and individuals who are not left-wing.
 - Despite the quick timeline of the process and there being a significant number of public testimonies during the municipal reapportionment process, Chairman Binkley has indicated that those testimonies do not count because the numbers and considerations are different. The only difference is that the lowest deviations were sacrificed to have meaningful contiguity in municipal districts resulting in a municipal map with deviations of 5%. While it was originally believed by the mapmakers that South Anchorage and Eagle River had socioeconomic similarities, both community’s residents stated that they do not and the Anchorage Assembly listened to that feedback.
 - Option 2 reflects a map that gives effective local representation to unique communities regardless of political affiliation. If the board adopts a map that uses second-rate or false contiguity for pairings, then the burden of proof falls on the board to show why a constitutional map is not possible.
 - It has been heard that District 23 does not include Eagle River, but it includes the northern part of Eagle River including parts of the business district.
 - It has been heard that Eagle River and South Anchorage share the longest border. Member Simpson’s statements about another part of the map as “basically affixion” is true in the case of Eagle River and South Anchorage being referred to as “sharing the longest border”. It is irrational to pair Districts 9 and 22.
 - Regarding statements about JBER and Eagle River being paired together, this pairing would ignore the communities of Downtown Anchorage, Government Hill, and South Anchorage. These communities would be split to accommodate this pairing. JBER is integrated into the municipality, including Government Hill and Downtown Anchorage



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where a JBER access gate is located and used by most service members. Additionally, service members who reside off-base are represented by the communities in which they reside. Service members who live on JBER are connected to the communities surrounding their respective gates. Even if the Eagle River and JBER pairings were historically done, it does not mean they should be paired presently.

- Senator Roger Holland testified in support of Option 2 and noted that South Anchorage (District 28) and the Muldoon curve (District 27) have different family types with additional needs. During the tax proposals that Senator Holland worked on recently, Muldoon projects had high-ticket intersection issues with much concrete work, and South Anchorage projects were much smaller. Senator Holland understood that the Chugach Mountains make Eagle River and South Anchorage contiguous, but this link is impassable. The constitution states contiguity as a factor, but contiguity also means access and flow, and there is no flow of trade or commerce between Eagle River and South Anchorage. As a senator, representing Eagle River and South Anchorage is challenging if a senator's intentions are to be present and representative of the communities. Option 2 has pairings that solve many complications that Senator Holland has seen in District N (Districts 27 and 28).
- Anchorage resident, Lora Reinbold, was a 10-year Huffman resident, 15-year Eagle River resident, and has spent time in Girdwood with family members who have cabins there. Through Lora's knowledge of these areas, she testified against Option 3-B for the appearance of political gerrymandering and testified in support of Option 2 that pairs House Districts 22 and 24 together. Lora encouraged the board to keep Eagle River communities together.
- Anchorage resident, Lance Pruitt, testified in support of Option 3-B because it considers the military community, a key group that has not had a strong presence in public testimonies. Lance stated that Eagle River High School would not exist without military families present to populate the high school. Also, the board must consider military personnel on voting ballots. There is usually a higher turnout at the ballots during presidential elections. Lance spoke against arguments on Senators having long-distance travels from Eagle River to South Anchorage and stated that a senator will likely spend more time in far districts as they want to ensure that communities know they are being heard and considered.
- Alaskans for Fair Redistricting (AFFR) member, Joelle Hall, testified on behalf of AFFR in support of Option 2 because it has side-by-side districts with no contortions required. The court has found that Eagle River is a community of interest whose needs can be considered with context to the larger Municipality of Anchorage. This leads to the debate on one of contiguity: the dividing line of Districts 22 and 24 is the majority of Eagle River Road, the heart of Eagle River that runs 13 miles. The neighborhoods on both sides attend the same elementary schools, recreate at the same parks, and shop at the same places. The contiguity of Option 2 is better than Option 3-B.
- Girdwood resident, Mike Edgington, testified in support of Option 2 because it is the most rational option. Mike reviewed his location history for the last 4.5 years which indicated he rarely visited Eagle River but visited South Anchorage often, more than once per week – this is likely the same for his neighbors in Girdwood. Mike referred to a discussion on second-rate contiguity between Judge Matthews and the board's legal counsel, Matt Singer. In this discussion, the sea and unpopulated mountains are used as contiguity, and this type of second-rate contiguity has been



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used to justify Option 3-B. This does not make sense as there is no practical way of traveling along the Chugach Mountains between districts. Also, several testifiers supporting Option 3-B have mentioned objections to a proposal in the reapportionment process to combine some of Hillside Anchorage with Eagle River; this was true later in the process, but at the beginning, the city's contractor proposed other maps. One of the maps combine South Anchorage, Girdwood, and Turnagain Arm with Eagle River. Mike heard several objections from his community to this combination as they felt the two communities were not connected.

- Anchorage resident, Judy Eledge, testified in favor of Option 3-B and requested that public testifiers not be accused for their reasons for testifying. Anchorage and Eagle River residents share similar socioeconomic backgrounds. Judy noted that she has consulted with a friend who is an attorney that confirmed the constitution does not state that there must be a transportation corridor, but there must be a geographical link shared.
- Anchorage resident, Leighan Gonzales, testified in favor of Option 2. Leighan expressed concern about the board asking questions about the constitution to public testifiers who are not subject-matter experts on the constitution. Leighan asked the board to follow the public's request to keep East Anchorage together, keep Downtown Anchorage together, and keep Eagle River together.
- Girdwood resident, Margarite Leeds, testified in support of Option 2 which pairs Girdwood with South Anchorage – two communities that share common interests and allows fair representation. Margarite testified against Option 3-B because the map pairs communities together with differing concerns. For example, Eagle River has well-developed infrastructure while Girdwood has underdeveloped infrastructure. This option also violates the Supreme Court ruling that splitting Eagle River would result in political gerrymandering.
- Girdwood resident, Erik Steinfort, testified in support of Option 2 and testified against Option 3-B. Erik stated that there seems to be intent to dilute Girdwood's voting representation and an attempt at gerrymandering.
- Eagle River resident, Lisa Gentemann, testified in support of Option 2 because it keeps Eagle River districts together. Lisa testified against Option 3-B because it would make door-knocking during campaigns a challenge. The houses in Eagle River are already far apart.
- Anchorage resident, Shelley Chafin, testified in favor of Option 2 and asked the board to follow the guidelines set forth by Judge Matthews.
- Anchorage resident, Robert Hockema, stated that there is an automatic assumption that JBER belongs to Eagle River and vice versa since many JBER families reside in Eagle River. This is false – JBER belongs to all of Anchorage because JBER residents live and play in Anchorage. JBER residents on the airport side are most associated with Downtown Anchorage while residents on the Fort Richardson side are most associated with Muldoon and Eagle River. However, all JBER residents still travel to Anchorage.



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- Anchorage resident, Corwyn Wilkey, testified in favor of Option2 because it is the constitutional choice that keeps communities together. Corwyn testified against Option 3-B as it seems to be an attempt at political gerrymandering.
- Anchorage resident, Miles Baker, testified in support of Option 2 because it pairs Districts 17 and 24. Miles owns a home in Government Hill, a sizeable community that does not work, live, or have access to JBER. There is no intent in Mile's part to disenfranchise military members and veterans. The results of the September 11th tragedy have significantly limited the public's access to JBER, thus making it unrealistic to use a "purely geographic bird's eye view to develop district boundaries."
- Eagle River resident, Dan Saddler, testified in support of Option 3-B because it pairs Districts 9 and 22 together. Both districts encompass a semi-rural area characterized by people living in the Chugach Mountains. While the argument has been made on this pairing creating barriers for Senators, they also have access to constituents by phone, mail, teleconference, email, and internet. Dan testified against Option 2 which would pair Districts 17 and 23. Dan has represented District 18 in the State House, which linked these two areas. During this time, Dan learned both communities were different from one another. Dan cautioned against characterizing the motive of board members and against inferring any partisanship on the part of testifiers.

Adjournment

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

The meeting adjourned at 2:13 p.m.



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DRAFT

**Alaska Redistricting Board Meeting
April 13, 2022 | 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 April 13, 2022. Present participants are below:

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

Agenda

- Call to Order & Establish Quorum
- Adoption of Agenda
- Discussion of Proposed Anchorage Senate Pairings
- Possible Adoption of Senate Pairings
- Possible Adoption of Revised Proclamation
- Adjournment

Call to Order

Chairman Binkley called the meeting to order at 1:02 p.m. With all board members present, a quorum was established.

Adoption of Agenda

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

The motion passed unanimously.

Discussion of Proposed Anchorage Senate Pairings

Member Borromeo moved to vote and call the question on Option 2; Member Bahnke seconded the motion.

Member Borromeo amended the motion to adopt Option 2 and entertain a vote on the option after discussion by the board; Member Bahnke seconded the motion.

The following discussion was held on the motion:

- Member Bahnke expressed gratitude for comments and proposed Senate pairings from the public



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and stated that Option 3-B is not the most contiguous map as it splits Eagle River, a community of interest, and creates a Senate district with a mountain range, wilderness, and unpopulated areas in between. There are commonalities between Eagle River and Hillside, and Eagle River and Joint Base Elmendorf-Richardson (JBER). However, the constitution requires the board to consider contiguity. Member Bahnke referred to a discussion between Alaska Supreme Court Judge Matthews and the board's legal counsel, Matt Singer, regarding false contiguity where Matt Singer stated this was the board's position as it used unpopulated links. Member Bahnke also referred to Member Simpson's statement on fictional contiguity in Southeast Alaska which Member Bahnke found to apply to Option 3-B.

Member Bahnke referred to the constitution stating that each Senate district shall be composed as near as practicable of two contiguous House district with consideration that can be given to government boundaries and geographical features when possible. Member Bahnke referred to the 27th page of the Superior Court ruling which defines that contiguity criteria into required territory, which is bordering, touching or that every district part is reachable without crossing the district boundary. Considering Alaska's size and numerous archipelagos, the court noted that a contiguous district may contain some amount of open sea within reason. A coastal district could also be considered contiguous with any other coastal district by sharing the open sea. In Kenai, the Supreme Court noted the anomalous result and determined that contiguity could not be separated from the concept of compactness when crafting Senate districts. Member Bahnke supports Option 2 as it is both contiguous and compact.

- Member Bahnke expressed concern about the Supreme Court remand which was to correct the constitutional deficiencies in the map adopted in November 2021. The court noted partisan gerrymandering as the intent was stated in the record and reflected in the outcome. This time, the intent has not been stated but the outcome remains the same as the map still presents gerrymandering by giving Eagle River more representation in Option 3-B. Option 3-B also requires one to cross several districts to move between House districts.
- Member Simpson expressed gratitude to redistricting process participants and the public for submitting written and verbal testimonies. Member Simpson recalled the board's process to result in two final options for public consideration: Options 2 and 3-B. Member Simpson noted the commonalities between both options:
 - Both options only change four districts (a reasonable number of changes).
 - Both options resolve Senate District K in the same way (pairing Districts 20 and 21).
 - Both options maintain the pairings of Districts 11 and 12, and Districts 15 and 16.

Member Simpson supported pairing Districts 23 and 24; this pairing is a more compelling solution because pairing the military bases with Downtown Anchorage overlooks JBER as a significant community of interest. This could present the board with a constitutional challenge. Additionally, regardless of if Eagle River is paired or split, that would not happen at the expense of the Muldoon community as Muldoon is taken care of in both versions. There are no advantages to splitting or combining the Eagle River House districts because these districts were approved at both levels of the court, are within the municipality, and contain approximately the same number of residents.



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- Member Simpson addressed the pairing of Districts 22 and 9 as there have been several testimonies and discussion on this pairing. When completing the pairings as Member Simpson described for JBER and Eagle River, that leaves District 22 with no other option but District 9. The debate of contiguity has been present with this pairing and the concept of “as nearly as practicable”, as stated by the constitution, has been misconstrued, in Member Simpson’s opinion. Member Simpson stated that practicable means that something is capable of being done and noted that a different standard applies to the creation of House districts. Member Simpson noted that there is nothing wrong with pairing Districts 9 and 22; they are contiguous, share an approximately 35-mile border, consists of two districts that are socioeconomically and demographically similar in many ways, and are included in the Municipality of Anchorage and therefore are legally socioeconomically integrated.
- Member Simpson briefly addressed the charges of partisan gerrymandering that have been discussed frequently through the process and noted that on the final day of testimony, Republican Senators Reinbold and Holland, along with some members from Governor Dunleavy’s office, testified against Option 3-B. Member Simpson noted that his board seat was appointed by Governor Dunleavy, yet Member Simpson is in support of Option 3-B. These testimonies opposing Option 3-B goes against the argument that the board is attempting to protect or enhance Republican seats or interest. Member Simpson stated that the most partisan area of the map is the proposed pairing of JBER and Downtown as it would diminish the voice of military personnel and Member Simpson does not support this. For this reason, Member Simpson is in support of Option 3-B.
- Member Borromeo expressed disagreement with Member Simpson’s rationale for supporting Option 3-B and stated that currently, the most practicable means of transportation is by car and is not sensible to expect residents of both districts to get from Eagle River to Whittier on foot through the Chugach range. It falls to the board to put rationale on the record for splitting Eagle River. Member Borromeo reminded the board that they were unanimously found to be guilty of partisan gerrymandering by the Supreme Court and noted that the board’s intent has not changed with Option 3-B still giving Eagle River more representation.
- Member Borromeo reviewed the 56th page of the court ruling and the US Census data for Eagle River that shows Eagle River is 7% of the state’s population. Under the new plan, Eagle River will have 20% of the senate. When the court reviews this decision, they will review the board’s process, substance, and rationale of the decision. Member Borromeo asked the courts to not send the proclamation back to the board as the process will continue to be delayed and the board has been derelict in its duties.
- Member Marcum spoke against Option 2 as it removes District 23 from its current pairing to be paired with District 17. Downtown Anchorage and JBER do not have any commonalities. Downtown Anchorage consists of the arts, tourism, and professional services; this is not what JBER consists of. The pairing of Districts 23 and 17 can be seen as an intentional action to break up the military community, a community of interest. Member Marcum expressed support for pairing Districts 23 and 24.
- Chairman Binkley expressed gratitude to the public for their participation in the redistricting process and stated that there has been testimony in support of Districts 22 and 24 being paired



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together since these areas are closely tied together. Testimonies in support of this pairing includes testimony from former Republican senators which shows that this pairing does not have political intent.

- Chairman Binkley stated that the board has also heard testimonies in support of Districts 22 and 9 since both Eagle River and Upper Hillside are the rural parts of the Municipality of Anchorage. Both districts share several commonalities including larger lot sizes, single-family homes, share, road service areas, geographical features such as the Chugach Mountains and the Chugach State Park, wildlife, and wildfire risks. With these similarities, a senator could very well represent the two districts while understanding the priorities of the constituents.
- Chairman Binkley stated that he found the pairing of Districts 23 and 24 to be the most compelling as JBER extends from District 23 into District 24 and there are several active and retired military members that live in District 24 and have connections to District 23. Also, there is a direct highway connection between the two districts along the Glenn Highway which links the bases and Arctic Valley. In contrast, pairing JBER and Downtown Anchorage is not compelling. Chairman Binkley noted that through his experience owning property and working Downtown, the Downtown portion of District 17 is primarily defined by professional services (attorneys, accountants, etc.), arts, shopping, and entertainment. Furthermore, testimony has clearly established that the military community is a community of interest just as Eagle River is one – one community of interest should not be switched out for another. Several residents have testified that District 24 residents travel to District 23 to shop and receive medical services. The board has also heard that Eagle River High School would likely not exist without the military community which helps to populate the school. Chairman Binkley cautioned the board against pairing in a way that would result in further challenges and delays. While Chairman Binkley believes both proposed options have valid approaches and neither plan is wrong or right in comparison to the other, Chairman Binkley is more comfortable supporting Option 3-B.
- Member Bahnke stated that if the board adopts Option 3-B, the board would be adopting a plan drafted by Randy Ruedrich who was found to have supplied incumbent information to two members of the board. Member Bahnke stated she did not review incumbent data and that it is audacious for the board to not think that Judge Matthews will not sense political gerrymandering. Member Bahnke expressed hope for the court to correct the issues.
- Member Borromeo addressed the rationale stated by Members Binkley, Marcum, and Simpson:
 - The military is not a protected class. JBER is not protected or entitled to any special consideration.
 - Socioeconomic integration should not be considered as a factor at this point in the process. The board should only consider Article 6, Section 6 of the Alaska Constitution, and pair two districts as contiguous as practicable.
 - The two districts that are contiguous as practicable are the two Eagle River districts.
 - Something not said lightly was that most public testimony was “canned and inconsistent”.
 - In at least one case, to Member Borromeo’s knowledge, a testimony was submitted



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without knowledge of the person whose name was used to submit the testimony because his wife was “put up to it by Jamie Allard who’s also filed to run in the district.”

- The court has ordered the board to stop gerrymandering, but the board continues to do so.
 - JBER is a transient community because JBER residents are ordered to reside in Anchorage, and most leave after their term is complete. Thus, they are not a community of interest because the military does not share the same experiences and knowledge.
 - Evidence presented by East Anchorage plaintiffs during litigation has resulted in the public’s trust in the board to be tarnished.
- Member Bahnke expressed her utmost respect for the military and spoke against the insinuation that Option 2 would disenfranchise the military community. Member Bahnke stated she continues to view the split of Eagle River as an attempt to provide Eagle River with more senators than their population warrants. Option 3-B would provide another way to still split Eagle River and give that community more representation.

Chairman Binkley called the question on the motion.

The board voted as follows:

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

The motion failed at 2 to 3.

Possible Adoption of Senate Pairings

Member Marcum moved to adopt Option 3-B for Senate pairings; Member Simpson seconded.

The following discussion was held on the motion:

- Member Marcum recalled the lawsuit filed by the East Anchorage plaintiffs where Senate District K was found to be invalid. Both proposed options address Senate K in the same way by pairing Districts 20 and 21 together. Even though the Muldoon/East Anchorage issue is addressed in both proposals, the East Anchorage plaintiff plans continue to advocate for one plan over the other. Member Marcum concluded that there must be some political intent. Member Marcum stated that Districts 23 and 24 both play an important role in maintaining the military community of interest. Option 3-B has a large amount of interplay between Districts 23 and 24, both of which contain a portion of JBER.
- Member Marcum addressed the Anchorage reapportionment process in relation to South Anchorage where the Assembly proposal combines Eagle River with South Anchorage - the



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same concept presented in Option 3-B which pairs Districts 9 and 22. Member Marcum spoke in favor of pairing Districts 9 and 22 because they are linked by the Chugach Mountain and from the compelling testimony heard from the public on this pairing.

- Member Marcum clarified that she has not seen and is not concerned about incumbent information.
- Member Marcum supports the pairings in Option 3-B for the following reasons:
 - Districts 20 and 21 (Senate District K): Creates a Muldoon Road district that combines both districts which both have similar infrastructure and joins the residential neighborhoods that are along the east-to-west transportation boundary of Debarr Road.
 - Districts 22 and 9: As heard in public testimony, there are over 30 miles of contiguity between both districts and residents share the same road services. The geography includes Ship Creek which goes through both districts and drains into the Ship Creek drainage in District 9.
 - Districts 10 and 13: This unites neighborhoods on the north-to-south transportation arteries of Old Seward Highway, C Street, and Minnesota.
 - Districts 14 and [19]: This takes the two primary Midtown roads from east-to-west to combine them into one Senate pairing. Both districts have similar commercial infrastructure.
 - Districts 23 and 24 (pairing from original Proclamation): Both districts have military connections and long boundaries along the Knik Arm water lake.
 - Districts 17 and 18 (pairing from original Proclamation): This unites the areas around the Merrill Field infrastructure.
 - Districts 11 and 12 (pairing from original Proclamation): This unites areas around Abbott Road and that shares parks.
 - Districts 15 and 16: (pairing from original Proclamation): This is a coastal district.
- Member Bahnke recognized that the board has been given narrow direction by the court to fix one area of the map rather than providing the best possible map. As such, the board is limited, and Member Bahnke does not believe the best possible option is offered in either proposed plan. Member Bahnke stated her respect of the court's directives and the constitution. Member Bahnke also clarified that she does not have political intent behind her actions in pursuing the pairings of the Eagle River communities and Muldoon Road communities.
- Member Borromeo referred to Yarrow Silvers and Major Felicia Wilson's testimonies against combining East Anchorage with South Anchorage and stated that East Anchorage plaintiffs have not gotten what they wanted, which is for political gerrymandering to stop.
- Member Borromeo referred to the 56th page of the court ruling outlining the findings of Member



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Marcum reviewing incumbent data.

- Member Borromeo strongly encouraged the court to exercise its powers as stated in the constitution and draw the map itself.

Member Simpson called the question.

The board votes as follows:

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

The motion passed 3 to 2.

Possible Adoption of Revised Proclamation

Peter Torkelson reviewed the revised proclamation, and the following discussion was held:

- Matt Singer recommended that the proclamation be finalized and circulated to the board for review. All remote board members should then sign the proclamation electronically.
- Matt Singer noted the importance of the adoption date on the proclamation during a legal challenge.
- Peter Torkelson stated that the truncation report for both options was run and there were no changes to the truncation, but there are some differences in constituency percentages.
- Members Bahnke and Borromeo requested that the revised proclamation have a signature page that reflects board members signing in opposition. Member Bahnke stated that she would like to sign the proclamation in person and asked for the signing to be completed during the current meeting.
- Members Bahnke and Borromeo requested for the public comment portal to remain open to the public after the adoption of the proclamation.

The board entered recess at 2:49 p.m.

The board exited recess at 3:05 p.m.

Matt Singer clarified that the constitution does not require the board to conduct more public hearings after a decision has been made and that the court was concerned that the Senate discussion in November 2021 was rushed. The board is welcome to take more public testimony, but it is not constitutionally required. Matt Singer also clarified that the re-election cutoff decision was already made and does not need to be revisited. Additional public testimony overall is not required.



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Peter reviewed the truncation changes with the board. The board had no opposition on the truncation changes

The board discussed whether to take public testimony after making a final decision on the revised proclamation:

- Matt Singer advised that there is no harm in hearing additional testimony, but the board must make a final decision at some point. Matt also noted that if the board has made a final decision, delaying the proclamation is also potentially concerning to the court.
- Matt advised the board to complete the remand work and report back to the court.
- Member Borromeo spoke in favor of making litigation as swift as possible and complying with the court order issued to give the public an opportunity to react to the board's actions.
- Matt Singer confirmed that the constitution and the Superior Court's decision does not require the board to hold public testimony after a decision has been made. Matt Singer stated that the board has complied with the process outlined in Section 10 of Article 6 in the constitution by adopting both options to publish for public viewing and having seven days of public hearings on alternative solutions to the court's remand.
- Member Marcum expressed concern in misleading the public by allowing them to testify in-person about a vote that is final where there is no motion offered for reconsideration of that vote.
- Member Borromeo noted that the purpose of holding public testimony is to allow the public to react to the final plan and expressed concern about the legal counsel's interpretation of the constitution.
- Member Simpson noted that the public will continue having an opportunity to provide their opinion through the website portal.
- Chairman Binkley agreed with Member Simpson's comments.

Member Marcum moved for the board to adopt the amended Proclamation of Redistricting as of April 13, 2022; Member Simpson seconded.

Member Borromeo requested time to review additional information with the new Senate district letters included.

The board entered recess at 3:44 p.m.

The board exited recess at 3:50 p.m.

The board voted as follows:

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



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- Member Simpson – Yes
- Member Binkley – Yes

The motion passed 3 to 2.

Board Member Comments

The following closing comments were given by board members:

- Member Bahnke apologized to Alaskans as she does not believe the board complied with the court's order by submitting a map that continues to split and give Eagle River more representation. Member Bahnke expressed hope for the court to move swiftly. Member Bahnke thanked the public for providing their testimonies.
- Member Borromeo expressed gratitude to Alaskans for engaging in the redistricting process. Member Borromeo gave a message to her son as the first time he votes will be under the maps drawn by her. Member Borromeo noted that he will be called to difficult tasks requiring him to step out of his comfort zone, make sacrifices, and be tempted to sacrifice his integrity. Member Borromeo encouraged him not to sacrifice integrity as he will not be able to get it back. Member Borromeo also urged Alaskans to not be discouraged by the process. Member Borromeo expressed opposition in signing onto a map that splits and gives Eagle River more representation. Member Borromeo expressed pride that out of this process, there is a new law that states that any future partisan gerrymandering attempts will be struck down by the courts.

Adjournment

Member Borromeo moved to adjourn the meeting. Member Simpson seconded the motion.

The board adjourned at 3:58 p.m.



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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



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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.



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- 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



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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



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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



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- 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*



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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.



ALASKA REDISTRICTING BOARD

Alaska Redistricting Board Meeting May 24, 2022 | 3:00 p.m. Teleconference Call

The Alaska Redistricting Board met on May 24, 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
- Adoption of Amended Interim Plan with Anchorage Senate Pairings per Alaska Supreme Court Order
- 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 Bahnke seconded the motion.

Member Bahnke requested an explanation of the court order by Matt Singer prior to the adoption of the amendment of the interim plan.

The motion passed.

Adoption of Amended Interim Plan with Anchorage Senate Pairings per Alaska Supreme Court Order

Matt Singer gave an overview of the court ruling: The Alaska Supreme Court issued a dispositional order which states the result of the appeal but does not give the court's full reasoning; this will follow later in a written opinion. The dispositional order affirmed the lower Superior Court's ruling in finding Senate Districts E and L to be unconstitutional. The order affirmed Judge Matthews' order for the board to adopt the Senate pairings in the proposed plan referred to as "Option 2" on an interim basis for the upcoming 2022 State of Alaska elections. The court held that Judge Matthews' order to later adopt a final plan



ALASKA REDISTRICTING BOARD

remains stayed.

Matt Singer interprets the last sentence on the court order to be direction to the board to adopt a specific interim plan for the 2022 state elections while the other action pertaining to the stay order should await further guidance from a court-issued opinion.

Matt Singer and Peter Torkelson have recommended that the Board add language to the Proclamation that clearly indicates that the specified plan is only adopted on an interim basis for the 2022 state elections and will remain in place until the Board acts again. Peter Torkelson noted that the "Public Notice" section of the www.alaska.gov website has been updated with a draft version of the Proclamation language to be considered by the Board and the Option 2 proposed plan map.

Member Bahnke moved to adopt the amended interim Proclamation plan as ordered by the Supreme Court; Member Borromeo seconded the motion.

The following discussion was held on the motion:

- Member Bahnke expressed gratitude for receiving guidance from the Supreme Court and spoke in favor of the motion.
- Member Simpson expressed intent to support the motion.

Chairman Binkley requested a roll call vote:

- Member Bahnke – Yes
- Member Binkley – Yes
- Member Borromeo – Yes
- Member Marcum – Yes
- Member Simpson – Yes

The motion passed unanimously.

Board Member Comments

- Member Bahnke thanked the following parties: 1) the public for participating in the redistricting process, 2) the litigants on the East Anchorage and Girdwood Senate pairings, 3) the reporters on the redistricting process, and 4) Superior Court Justice Judge Matthews and the Supreme Court.
- Member Marcum stated an apology to military members for the ramifications that will be made to military voters on Joint Base Elmendorf-Richardson (JBER).
- Member Borromeo expressed appreciation to all Alaska Redistricting Board members and staff, noted that the three branches of government are important and should remain independent, and expressed commitment to finishing the redistricting process on a positive note.

3901 Old Seward Hwy. Ste. 141
Anchorage, Alaska 99503
www.akredistrict.org
907.563.0300



John Binkley, Chair
Melanie Bahnke
Nicole Borromeo
Bethany Marcum
Budd Simpson

ALASKA REDISTRICTING BOARD

- Member Binkley expressed gratitude to all those who were thanked previously by other board members, specifically the Supreme Court for their expeditious decision to the public to carry on with the June 1, 2022 filing deadline for the state elections to occur on time.

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

Member Bahnke requested that public comment be included in the agenda if the Board holds another meeting.

The Board meeting adjourned at 3:20 p.m.

ALASKA REDISTRICTING BOARD WEBSITE RESPONSE

Date: May 26, 2022, 3:56 pm

First Name: **Cari**

Last Name: **Rousselle**

Group Affiliation, if applicable:

Your ZIP Code: **99507**

Issue of Concern (Please provide map name if applicable):

Public Comment: **The games you have been playing have removed Judge Matthews from 800 Family Law cases for what I believe to be 8 weeks. My family and I have been put on hold for weeks while waiting for a ruling on the well-being of our child. As a result, Matthews can't even remember what has happened in my case as I was forced to wait from 12.30.21 - 3.23.22 due to the back log. I was then forced to wait from 3.23.22-4.28.22 and have been waiting since 4.28.22 on a ruling on a case which started in 8.1.21. To find out once again that my daughter and her well-being has been put on hold again due to what you perceive to be more important than her will not go unforgotten.**

ALASKA REDISTRICTING BOARD WEBSITE RESPONSE

Via Email:

Date: July 20, 2022, 11:10 am

From: Irena W Reutov

Public Comment: As a member of the Fox Creek and Fritz Creek communities and employee of the Kenai Borough school district I implore you to NOT redistrict us to Kodiak!! It is shameful of everyone who is trying to move this along and make it pass. I see absolutely no upside to making this change it will only hurt these communities, and for what?? The communities down East End Rd are already overlooked so much when it comes to any kind of funding ei: schools, roads, ect. If we are moved to the Kodiak Borough there will be no one to speak for us! Stop trying to silence these communities by moved us to a place we be ignored!!

ALASKA REDISTRICTING BOARD WEBSITE RESPONSE

Date: August 17, 2022, 10:30 am

First Name: **Julie**

Last Name: **Wegner**

Group Affiliation, if applicable: **53 mile chena hot springs rd**

Your ZIP Code: **99716**

Issue of Concern: **Our area 53 mile Chena Hot Springs District**

Public Comment: **The redistricting of chena hot springs rd is totally out of line. We live off of the 53 mile post near chena hot springs. There is only 1 road to get anywhere from here and that is chena hot springs rd. You have changed our district to goldstream 1. That is approx 80 miles 1 way to vote vs 30 at Two Rivers which we have to drive by to get to Goldstream 1 another 50 miles away. Not very good planning and a huge issue. I would like to petition to get the Hot springs area back to Two Rivers34**

ALASKA REDISTRICTING BOARD WEBSITE RESPONSE

Date: August 31, 2022, 8:47 am

First Name: **Julie**

Last Name: **Wegner**

Group Affiliation, if applicable: **West Fork Chena Hot Springs**

Your ZIP Code: **99716**

Issue of Concern (Please provide map name if applicable): **Redistrict**

Public Comment: **We live towards the end of Chena Hot Springs road 53 mile, and have been put in a new district that is no where near where we live. Goldstream 1 is a good 80 miles away from out home. We only have 1 road to go on and that is chena hot springs rd that is closest to Two Rivers district. Our address is considered Two Rivers as well. Why on earth would they put this area to vote in Goldstream area. This is ludicrous!**

ALASKA REDISTRICTING BOARD WEBSITE RESPONSE

Date: September 15, 2022, 7:00 pm

First Name: **Jane**

Last Name: **Sellin**

Group Affiliation, if applicable:

Your ZIP Code: **99709**

Issue of Concern: **Goldstream valley**

Public Comment: **I do not understand why my area has been placed in this huge district. People in Goldstream work and shop in Fairbanks. We are in the Fairbanks North Star borough & share concerns of our community.**

ALASKA REDISTRICTING BOARD WEBSITE RESPONSE

Date: September 20, 2022, 7:00 am

First Name: **Julie**

Last Name: **Wegner**

Group Affiliation, if applicable:

Your ZIP Code: **99716**

Issue of Concern (Please provide map name if applicable): **District issue**

Public Comment: **It appears you made district areas without taking our road system into consideration. Please don't make us drive 80 miles to vote in a district we have no part of. Please take the end of chena hot springs road and put it back In to the Two Rivers district. This would be a common sense change for the betterment of the area!**

ALASKA REDISTRICTING BOARD WEBSITE RESPONSE

Date: October 4, 2022, 10:31 am

First Name: **George**

Last Name: **Winford**

Group Affiliation, if applicable:

Your ZIP Code: **99709**

Issue of Concern: **Change in Polling Station Due to Redistricting (Map 35-R)**

Public Comment: **Several of my neighbors (I live at 587 Dalton Tr in Fairbanks) have had their polling station changed from the church by Ballaine Lake to Effie Kokrine Charter School. Instead of a one-mile trip, we now have a three or four-mile trip to our polling station. I am fifty-two years old, and I have used the church by Ballaine Lake to vote my entire life.**

When you deliberately make it more inconvenient for people to vote, you are creating mistrust in the entire election and democratic process.

ALASKA REDISTRICTING BOARD WEBSITE RESPONSE

Via Email

Date: November 24, 2022, 8:12 pm

First Name: **Winston**

Last Name: **Gillies**

Public Comment: Nikiski has nothing in common with South Anchorage or Girdwood. Nikiski shares much more common interest with Kenai. Its a no brainer.

Winston Gillies
Kenai 99611

Notice: This opinion is subject to correction before publication in the PACIFIC REPORTER. Readers are requested to bring errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, phone (907) 264-0608, fax (907) 264-0878, email corrections@akcourts.gov.

THE SUPREME COURT OF THE STATE OF ALASKA

IN THE MATTER OF THE 2021)
REDISTRICTING CASES) Supreme Court Nos. 18332/18419
(Matanuska-Susitna Borough, S-18328)) (Consolidated)
(City of Valdez, S-18329))
(Municipality of Skagway, S-18330)) Superior Court No. 3AN-21-08869 CI
(Alaska Redistricting Board, S-18332))
(Alaska Redistricting Board, S-18419)) OPINION
)
) No. 7646 – April 21, 2023

Petitions for Review from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Thomas A. Matthews, Judge.

Appearances: Matthew Singer, Lee C. Baxter, and Kayla J. F. Tanner, Schwabe, Williamson & Wyatt, P.C., Anchorage, for Petitioner/Respondent Alaska Redistricting Board. Robin O. Brena and Jon S. Wakeland, Brena, Bell & Walker, P.C., Anchorage, for Petitioners/Respondents Municipality of Skagway Borough and Brad Ryan. Robin O. Brena, Jake W. Staser, Jon S. Wakeland, and Laura S. Gould, Brena, Bell & Walker, P.C., Anchorage, for Petitioners/Respondents City of Valdez and Mark Detter. Stacey C. Stone, Holmes Weddle & Barcott, P.C., Anchorage, for Petitioners/Respondents Matanuska-Susitna Borough and Michael Brown. Holly C. Wells, Mara E. Michaletz, and Zoe A. Danner, Birch Horton Bittner & Cherot, Anchorage, for Respondents Felisa Wilson, George Martinez, and Yarrow Silvers. Eva R. Gardner, Michael S. Schechter, and Benjamin J. Farkash, Ashburn & Mason, P.C., Anchorage, for Respondents Calista Corporation, William Naneng, and Harley Sundown in No. S-18332 and for Respondents Louis Theiss, Ken Waugh, and Jennifer

Wingard in No. S-18419. Nathaniel H. Amdur-Clark and Whitney A. Leonard, Sonosky, Chambers, Sachse, Miller & Monkman, LLP, Anchorage, for Intervenor Respondents Doyon Limited; Tanana Chiefs Conference; Fairbanks Native Association; Ahtna, Inc.; Sealaska Corporation; Donald Charlie, Sr.; Rhonda Pitka; Cherise Beatus; and Gordon Carlson in No. S-18332. Susan Orlansky and Richard Curtner, American Civil Liberties Union of Alaska Foundation, Anchorage, for Amici Curiae Alaska Black Caucus; National Association for the Advancement of Colored People Anchorage, Alaska Branch #1000; Enclaces; The Korean American Community of Anchorage, Inc.; Native Movement; and First Alaskans Institute in No. S-18332.

Before: Winfree, Chief Justice, Borghesan and Henderson, Justices, and Matthews and Eastaugh, Senior Justices.*
[Maassen and Carney, Justices, not participating.]

WINFREE, Chief Justice.

EASTAUGH, Senior Justice, concurring.

I. INTRODUCTION

Alaska's legislative redistricting occurs every decade shortly after the United States decennial census is released, governed primarily by the Alaska Constitution. The most recent redistricting efforts began in earnest in August 2021, shortly after the 2020 census information was received. On November 10 the Alaska Redistricting Board adopted a final redistricting plan for 40 House of Representative districts and 20 Senate districts (each composed of 2 House districts). Five separate challenges to the final plan were filed in superior court. In mid-February 2022 the superior court concluded that two House districts were unconstitutional on due-process-

* Sitting by assignment made under article IV, section 16 of the Alaska Constitution.

related grounds and that one unrelated Senate district was unconstitutional on gerrymander grounds. The superior court directed further redistricting efforts.

Four petitions for our review quickly were filed, and we granted review. The primary competing claims were that the superior court erred (1) by concluding that the two House districts and the Senate district were unconstitutional, and (2) by *not* concluding that (a) the two House districts were unconstitutional for additional reasons and (b) other House districts also were unconstitutional. In an expedited summary order we reversed the superior court's ruling regarding the two House districts, affirmed the superior court's ruling regarding the Senate district, and, with one limited exception, affirmed the superior court's ruling that the remaining disputed House districts satisfied constitutional requirements. We remanded for further redistricting efforts consistent with our order.

The Board adopted an amended final plan in mid-April 2022 and another challenge was filed in superior court; in mid-May the superior court concluded that the amended plan's revision for the previously unconstitutional Senate district also was an unconstitutional gerrymander. The superior court directed that an alternative amended plan, previously considered by the Board but not adopted as the amended final plan, be used as an interim plan for the November 2022 elections and that further redistricting efforts be undertaken for a second amended final plan for the rest of the decade. A petition for our review quickly was filed, challenging the superior court's rulings on the merits of the amended plan and contending that using the interim plan was erroneous. We granted review and stayed the superior court's order pending our ruling; in an expedited summary order we affirmed the superior court's conclusion that the relevant Senate district pairings were an unconstitutional gerrymander, affirmed the superior court's order for the interim redistricting plan, and lifted the stay except for the stay of further redistricting efforts pending our formal written decision.

We now explain the reasoning behind our summary orders. For context we start with Alaska’s constitutional framework for redistricting. We then detail the parties’ arguments in the first round of petitions for review and explain our first summary order. We next detail the parties’ arguments in the final petition for review and explain our second summary order, including the implementation of an interim redistricting plan for the November 2022 election cycle. Finally, we lift the stay on further redistricting efforts and explain what must be accomplished to successfully implement a final redistricting plan for the remainder of the decade.

II. CONSTITUTIONAL BACKDROP

A. Article VI, Section 6: Substantive Standards; Gerrymandering Concerns

Article VI, section 6 sets out House and Senate district requirements.¹ A House district shall “contain a population as near as practicable” to 1/40th of the State’s total population.² House districts must be contiguous and compact and must “contain[] as nearly as practicable a relatively integrated socio-economic area.”³ We have explained that a House district is contiguous if it is not split into separate parts.⁴ But, of course: “Absolute contiguity of land masses is impossible in Alaska, considering her numerous archipelagos. Accordingly, a contiguous district may contain some amount

¹ Article VI, § 4 provides for 40 House districts and 20 Senate districts composed of 2 House districts each. *Cf.* article VI, § 6 (stating that Senate district “shall be composed *as near as practicable* of two contiguous [H]ouse districts” (emphasis added)).

² Alaska Const. art. VI, § 6.

³ *Id.*

⁴ *See Hickel v. Se. Conf.*, 846 P.2d 38, 45 (Alaska 1992), *as modified on denial of reh’g* (Mar. 12, 1993).

of open sea.”⁵

Compactness and socioeconomic integration are important constraints on technically contiguous House districts stretching to Alaska’s distant regions.⁶ A House district is more compact when its perimeter is small relative to its area;⁷ although irregular shapes are expected because of Alaska’s geography, oddly placed corridors and appendages are suspect.⁸ Socioeconomic integration is a more nebulous concept. We have explained that, in general, the constitutional convention delegates intended House districts to group people living in neighboring areas and following “similar economic pursuits.”⁹ Although the Constitution uses flexible language, such as “as nearly as practicable” and “relatively,” to describe the socioeconomic integration requirement, we have said that socioeconomic integration may be sacrificed “only to maximize the other constitutional requirements of contiguity and compactness.”¹⁰ A House district contained entirely within a borough by definition meets the socioeconomic integration requirement.¹¹ But socioeconomic integration otherwise generally requires “proof of

⁵ *Id.*

⁶ *Id.* at 45-46.

⁷ *Id.* at 45.

⁸ *Id.* at 45-46.

⁹ *Id.* at 46-47.

¹⁰ *Id.* at 45 n.10.

¹¹ *In re 2001 Redistricting Cases (2001 Redistricting I)*, 44 P.3d 141, 146 (Alaska 2002) (referring to Anchorage, a consolidated city and borough, as “by definition socio-economically integrated”); *Hickel*, 846 P.2d at 51 (“By statute, a borough must have a population which ‘is interrelated and integrated as to its social, cultural, and economic activities.’ ” (quoting AS 29.05.031)). *Cf. id.* at 51 n.20 (stating (continued...))

actual interaction and interconnectedness rather than mere homogeneity.”¹²

A “[S]enate district shall be composed as near as practicable of two contiguous [H]ouse districts,”¹³ meaning that the two House districts comprising a Senate district must share a border. Compactness and relative socioeconomic integration requirements do not explicitly apply to Senate districts.¹⁴ But local government boundaries may be given consideration when creating election districts,¹⁵ and, when describing election district boundaries, “[d]rainage and other geographic features shall be used.”¹⁶ These factors — contiguity, adherence to local boundaries, and reliance on geographic features — reflect a desired measure of interconnectedness between the

¹¹ (...continued)
that splitting “a borough which otherwise [could] support an election district will be an indication of gerrymandering . . . for not preserving the government boundaries”).

¹² *Hickel*, 846 P.2d at 46 (quoting *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1363 (Alaska 1987)).

¹³ Alaska Const. art. VI, § 6.

¹⁴ *Cf. id.* (expressly requiring consideration of compactness and socioeconomic integration only for House districts); *see also Kenai Peninsula*, 743 P.2d at 1365 & n.21 (explaining, under former article VI, § 6, that “provisions of article VI, section 6 which set forth socio-economic integration, compactness and contiguity requirements are inapplicable to redistricting and reapportionment of [S]enate districts” but also noting that “[S]enate districts which meander and ignore political subdivision boundaries and communities of interest will be suspect under the Alaska equal protection clause”); *Braun v. Denali Borough*, 193 P.3d 719, 730 (Alaska 2008) (noting we have declined to extend socioeconomic integration requirement to Senate districts (citing *Kenai Peninsula*, 743 P.2d at 1365)).

¹⁵ Alaska Const. art. VI, § 6; *cf. Hickel*, 846 P.2d at 51 n.20 (stating that splitting “a borough which otherwise [could] support an election district will be an indication of gerrymandering for not preserving the government boundaries”).

¹⁶ Alaska Const. art. VI, § 6.

House districts that are combined to form a Senate district.

Ample evidence illustrates the constitutional convention delegates' intent to protect against gerrymandering when they drafted article VI, section 6.¹⁷ As adopted, section 6 contained guiding language for constructing House districts nearly identical to its current text: "Each new district so created shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area. Each shall contain a population at least equal to the quotient obtained by dividing the total civilian population by [40]."¹⁸ Delegate John Hellenthal, chair of the Committee on Suffrage, Elections, and Apportionment, explained that the committee's proposed

¹⁷ See generally Gordon S. Harrison, Comment, *The Aftermath of In Re 2001 Redistricting Cases: The Need for a New Constitutional Scheme for Legislative Redistricting in Alaska*, 23 ALASKA L. REV. 51, 55-57 (2006) (discussing constitutional convention proceedings in which delegates explained desire to prevent gerrymandering and how proposed provisions would prevent such practices). Although the delegates usually referred to "gerrymandering" in general, without specifying concerns about partisan gerrymandering in particular, context clues discussed next plainly demonstrate that partisan gerrymandering was at the front of their minds. Furthermore, the delegates likely used "gerrymander" in accordance with its contemporaneous legal usage:

A name given to the process of dividing a state or other territory into the authorized civil or political divisions, but with such a geographical arrangement as to accomplish a sinister or unlawful purpose, as, for instance, to secure a majority for a given political party in districts where the result would be otherwise if they were divided according to obvious natural lines

Gerrymander, BLACK'S LAW DICTIONARY (4th ed. 1951).

¹⁸ Former Alaska Const. art. VI, § 6 (1956). In *Egan v. Hammond* we struck down the language specifying that reapportionment be based on the "civilian population," excluding military personnel as a class, under the U.S. Constitution. 502 P.2d 856, 869 (Alaska 1972).

contiguity, compactness, socioeconomic integration, and population quotient requirements acted together to “prohibit[] gerrymandering which would . . . take place were 40 districts arbitrarily set up by the [redistricting entity].”¹⁹ As we discuss below, he expressed similar gerrymandering concerns when discussing who would apply these standards.

In *Hickel v. Southeast Conference* we expressly noted that “[t]he requirements of contiguity, compactness and socio-economic integration were incorporated by the framers of the reapportionment provisions to prevent gerrymandering.”²⁰ We also pointed to both *Carpenter v. Hammond* and Black’s Law Dictionary when defining gerrymandering broadly as “the dividing of an area into political units ‘in an unnatural way with the purpose of bestowing advantages on some and thus disadvantaging others.’”²¹

Gerrymandering often takes one of two forms, “packing” or “cracking.”²²

¹⁹ 3 Proceedings of the Alaska Constitutional Convention (PACC) 1846 (Jan. 11, 1956) (statement of Del. John S. Hellenthal); see Harrison, *supra* note 17 at 56 (providing Delegate Hellenthal’s title).

²⁰ 846 P.2d at 45; see also *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1367-68 (Alaska 1987) (discussing how gerrymandering that purposefully “exclude[s] a certain group from political participation” may violate right to fair and effective representation under equal protection analysis).

²¹ *Hickel*, 846 P.2d at 45 & n.11 (quoting *Carpenter v. Hammond*, 667 P.2d 1204, 1220 (Alaska 1983) (Matthews, J., concurring) and citing BLACK’S LAW DICTIONARY (6th ed. 1990)). We understand the words “natural” and “unnatural” in the definitions of gerrymandering (*see* text above and *supra* note 17) to be relative terms denoting the extent to which districts comply with or depart from traditional redistricting principles such as those set out in article VI, § 6 of the Constitution.

²² Royce Crocker, *Congressional Redistricting: An Overview*, CONGRESSIONAL RESEARCH SERVICE 15 (Nov. 21, 2012).

“Packing” occurs when groups of voters of similar expected voting behavior are unnaturally concentrated in a single district; this may create a “wasted” excess of votes that otherwise might have influenced candidate selection in one or more other districts.²³ “Cracking” occurs when like-minded voters are unnaturally divided into two or more districts; this often is done to reduce the split group’s ability to elect a candidate of its choice.²⁴ But if a group constitutes a supermajority, splitting it into two districts also may enhance its power by enabling it to elect candidates in both districts. Another form is incumbent gerrymandering: “a redistricting plan that favors incumbents, often without regard for their partisan affiliation, and aims to maintain the status quo with respect to the parties’ distribution of seats within a state and to protect incumbents.”²⁵

B. Article VI, Sections 3 And 8: Redistricting Entity; Gerrymandering Concerns

The Constitution originally placed redistricting powers with the governor, who was to appoint an independent advisory board to assist in the redistricting process.²⁶ The advisory board was to consist of five members.²⁷ At least one member was to be selected from each of four specified areas of the state, none could be a public employee

²³ *Id.*

²⁴ *Id.* at 5, 15.

²⁵ *Id.* at 6.

²⁶ Former Alaska Const. art. VI, §§ 3, 8 (1956); *see Carpenter*, 667 P.2d at 1206 & n.1 (discussing process for 1980 redistricting cycle; noting article VI, § 3 authorizing governor to conduct redistricting and article VI, § 8 directing governor to appoint advisory redistricting board).

²⁷ Former Alaska Const. art. VI, § 8.

or official, and all were to be appointed “without regard to political affiliation.”²⁸ Delegate Hellenthal explained that a governor’s reliance on the advisory board’s advice and compliance with article VI, section 6 would limit gerrymandering.²⁹ He also focused on limiting gerrymandering when discussing nuances of proposed terminology for article VI, section 8.³⁰ He unsuccessfully advocated for the use of the word “nonpartisan” in section 8’s description of advisory board members, explaining that “the whole purpose of this article [was] to de-emphasize politics.”³¹ But he successfully advocated for a prohibition against board members also simultaneously serving as public officials or employees, reasoning that “a public official was too politically inclined” and that public employees “likewise would be subject to political pressures.”³²

When Delegate Hellenthal presented his committee’s proposal for constitutional redistricting provisions, he said:

[T]he goal of all apportionment plans is simple[.] [T]he goal is adequate and true representation by the people in their elected legislature[:] true, just, and fair representation. And in deciding and in weighing this plan, never lose sight of that

²⁸ *Id.*

²⁹ 3 PACC 1846 (Jan. 11, 1956) (statement of Del. John S. Hellenthal).

³⁰ 3 PACC 1846 (Jan. 11, 1956) (statement of Del. John S. Hellenthal).

³¹ 3 PACC 1958-60 (Jan. 12, 1956) (statement of Del. John S. Hellenthal and ensuing debate).

³² 3 PACC 1955 (Jan. 12, 1956) (statement of Del. John S. Hellenthal); *see also* 3 PACC 1956-57 (Jan. 12, 1956) (statement of Del. Steve McCutcheon) (expressing concerns about special interest groups influencing redistricting and supporting prohibition against public officials serving as Board members because “[i]t is one small board that sits once every 10 years and certainly we should be able to find five or six people out of the whole of Alaska [who] would qualify . . . and who will be objective in their consideration”).

goal, and keep it foremost in your mind; and the details that we will present are merely the details of achieving true representation, which, of course, is the very cornerstone of a democratic government.^[33]

Delegate Hellenthal clearly believed the end result was a “modern and progressive” framework for true, just, and fair legislative representation for all Alaskans.³⁴ But litigation during the first three redistricting cycles after statehood³⁵ led to 1999 constitutional amendments removing redistricting from the governor’s control and

³³ 3 PACC 1835 (Jan. 11, 1956) (statement of Del. John S. Hellenthal).

³⁴ John S. Hellenthal, *Alaska’s Heralded Constitution: The Forty-Ninth State Sets an Example*, 44 A.B.A. J. 1447, 1148-49 (1958) (describing one of several “modern and progressive features” of Alaska Constitution as creating “truly representative legislature” and “[a]utomatic reapportionment every ten years by the governor acting on the advice of an *independent* board” (emphasis added)).

³⁵ See generally Harrison, *supra* note 17, at 58-60 (describing redistricting litigation in 1990, 1980, and 1970 redistricting cycles when governors controlled process). As the Comment reflects, we resolved challenges in those redistricting cycles by twice agreeing with challenges (one led by future Republican Governor Jay Hammond and one by Republican Senator Cliff Groh) to Democrat Governor William Egan’s redistricting efforts; agreeing with challenges to Republican Governor Jay Hammond’s redistricting efforts; agreeing with challenges to Democrat Governor William Sheffield’s redistricting efforts (in redistricting efforts begun by Republican Governor Jay Hammond); and agreeing with challenges to Alaskan Independence Party Governor Walter Hickel’s redistricting efforts. *Id.*; see also *Hickel v. Se. Conf.*, 846 P.2d 38, 57 (Alaska 1992) (holding plan unconstitutional for several article VI, section 6 violations); *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1373 (Alaska 1987) (holding Senate district unconstitutional due to discriminatory intent and disproportionality though not remanding due to de minimis effect); *Carpenter v. Hammond*, 667 P.2d 1204, 1215 (Alaska 1983) (holding plan unconstitutional due to record “devoid of evidence of” socioeconomic integration within the House district at issue); *Groh v. Egan*, 526 P.2d 863, 882 (Alaska 1974) (holding plan unconstitutional due to unjustifiable population variances); *Egan v. Hammond*, 502 P.2d 856, 866-68 (Alaska 1972) (same).

placing it in the hands of a constitutionally created Redistricting Board, while preserving essentially the same redistricting standards.³⁶ The existing board member qualifications remained,³⁷ but a new appointment process was put in place.³⁸ Appointments now are made in the following order: the governor appoints two members, the presiding officer of the Senate appoints a member, the presiding officer of the House of Representatives appoints a member, and the Chief Justice of the Alaska Supreme Court appoints the final member.³⁹ There must be at least one member from each of the four state judicial districts.⁴⁰ The members serve until all redistricting plan challenges have been resolved and a final redistricting plan has been implemented.⁴¹ No member may be a legislative candidate in the general election following the final redistricting plan's implementation.⁴²

Legislative history and information presented to those voting on the amendments reflect considerable focus on limiting gerrymandering. Representative

³⁶ Compare former Alaska Const. art. VI, §§ 6, 8 (instructing governor to appoint each member of board, which serves in advisory role to governor, and to redistrict according to contiguity, compactness, socioeconomic integration, and population quotient requirements), *with* Alaska Const. art. VI, §§ 6, 8 (expanding board member appointment authority to other government officials, removing limitation that board serve in advisory capacity, and maintaining substantive redistricting requirements).

³⁷ Alaska Const. art. VI, § 8(a) (providing appointments shall be made without regard to political affiliation and members may not be public officials or employees while serving on board); Alaska Const. art. VI § 8(b) (providing for geographic representation).

³⁸ Alaska Const. art. VI, § 8(b).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Alaska Const. art. VI, § 8(c).

Brian Porter, a legislative sponsor of the constitutional amendment resolution, repeatedly emphasized the intent to have a more objective and non-partisan redistricting process.⁴³ Representative Jeannette James supported the goal of eliminating gerrymandering because “to make [redistricting] be an advantage for one party or the other, no matter which it is,” did not serve the public.⁴⁴ Representative Ethan Berkowitz recognized the need to reduce historical gerrymandering,⁴⁵ while Representative Con Bunde also noted the judiciary’s check against gerrymandering.⁴⁶ State senators similarly indicated an intent to deter partisan politics during the redistricting process,⁴⁷

⁴³ Testimony of Brian Porter, Representative, Resolution Sponsor, Tape 98-44, Side B, No. 128, Hearing on H.J.R. 44 Before Sen. Jud. Comm., 20th Leg., 2d Sess. (Apr. 29, 1998); Testimony of Brian Porter, Representative, Resolution Sponsor, Tape 98-49, Side B at 1:14:58-15:17, 1:19:31-20:24, Hearing on H.J.R. 44 Before the H. Fin. Comm., 20th Leg., 2d Sess. (Mar. 3, 1998).

⁴⁴ Comment of Jeannette James, Representative, Tape 98-12, Side A, No. 1669, Hearing on H.J.R. 44 Before the H. Jud. Comm., 20th Leg., 2d Sess. (Feb. 6, 1998).

⁴⁵ Statement of Ethan Berkowitz, Representative, Tape 98-15, Side A, No. 2326, Hearing on H.J.R. 44 Before the H. Jud. Comm., 20th Leg., 2d Sess. (Feb. 11, 1998).

⁴⁶ Statement of Con Bunde, Representative, Vice Chairman, Tape 98-15, Side B, No. 241 at 53:25-54:05, Hearing on H.J.R. 44 Before the H. Jud. Comm., 20th Leg., 2d Sess. (Feb. 11, 1998).

⁴⁷ Senator Drue Pearce suggested support for an earlier draft amendment under which the Board would have been appointed entirely by supreme court justices, keeping elected officials completely out of the process. Comment of Drue Pearce, Senator, Tape 98-161, Side A, Hearing on H.J.R. 44 Before the Sen. Fin. Comm., 20th Leg., 2d Sess. (May 8, 1998). Responding to critiques from a Department of Law representative that Board appointments by the governor “provide[d] an important safety valve” that would “protect the interest of the people,” Senator Sean Parnell insisted that
(continued...)

and a formal legislative analysis referred to avoiding partisan political influence on redistricting as the amendments' reason and intent.⁴⁸ To the extent we can determine the voters' intent when approving the 1999 amendments,⁴⁹ both proponents and opponents of the amendments believed their positions limited gerrymandering.⁵⁰

C. Related Constitutional Provisions And Concerns

1. Equal protection

The United States and Alaska Constitutions guarantee equal protection

⁴⁷ (...continued)

the pre-amendment system was the most partisan option and that the courts were the true safety valve. Comment of Sean Parnell, Senator, Tape 161, Side A, Hearing on H.J.R. 44 Before the Sen. Fin. Comm., 20th Leg., 2d Sess. (May 8, 1998).

⁴⁸ See H. Jud. Comm., Sectional Analysis of Proposed H.J.R. 44, 20th Leg., 2d Sess. at 1 (Feb. 4, 1998) (explaining changes to board selection process as “intended to remove reapportionment and redistricting as far as possible from the partisan political arena”).

⁴⁹ See *Wielechowski v. State*, 403 P.3d 1141, 1150 (Alaska 2017) (looking to “any published arguments . . . to determine what meaning voters may have attached to the [proposed constitutional amendment],” including ballot initiative language, news articles, and sponsor statements (alterations in original) (quoting *Alaskans for a Common Language, Inc. v. Kritz*, 170 P.3d 183, 193 (Alaska 2007))).

⁵⁰ The statement supporting the amendments, advocated by Representatives Brian S. Porter and Eldon Mulder, criticized the former redistricting procedure and plans for “being partisan and gerrymandered rather than creating redistricting plans based on bipartisan fairness and objectivity.” *State of Alaska Official Election Pamphlet* 100 (Region III ed., Nov. 3, 1998). Amendment opponents represented by Deborah Bonito, then-Chair of the Alaska Democratic Party, were concerned that the amendment would “allow[] legislators to be directly involved in who determines the legislative lines they are subject to” and reduce the role of the governor, “Alaska’s only elected official without a direct interest in the shape of individual election districts.” *Id.* at 100-01.

under the law.⁵¹ “In the context of voting rights in redistricting and reapportionment litigation, there are two principles of equal protection, namely that of ‘one person, one vote’ — the right to an equally weighted vote — and of ‘fair and effective representation’ — the right to group effectiveness or an equally powerful vote.”⁵² Fair representation, although “not a fundamental right, . . . represent[s] a significant constitutional interest.”⁵³ We have explained that, unlike the “quantitative” one person, one vote inquiry, the fair representation question is “qualitative” and “more nebulous.”⁵⁴ But Alaska’s fair representation standard is stricter than the federal standard because Alaska’s equal protection clause requires a more demanding review than its federal analog.⁵⁵

⁵¹ U.S. Const. amend. XIV, § 1; Alaska Const. art. I, § 1.

⁵² *Hickel v. Se. Conf.*, 846 P.2d 38, 47 (Alaska 1992) (quoting *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1366 (Alaska 1987)).

⁵³ *Kenai Peninsula*, 743 P.2d at 1372.

⁵⁴ *Hickel*, 846 P.2d at 47, 48-49.

⁵⁵ *Braun v. Denali Borough*, 193 P.3d 719, 731 (Alaska 2008) (“In the context of reapportionment cases, the Alaska Constitution’s equal protection standard is stricter than its federal counterpart.”); *Hickel*, 846 P.2d at 49 (“The equal protection clause of the Alaska Constitution imposes a more strict standard than its federal counterpart.”); *see also Ross v. State, Dep’t of Revenue*, 292 P.3d 906, 910-11 (Alaska 2012) (explaining that Alaska’s equal protection clause is “more demanding” than its federal counterpart); *Kenai Peninsula*, 743 P.2d at 1371 (explaining that when “no fundamental right [is] at stake, the equal protection clause of the Alaska Constitution imposes a stricter standard than its federal counterpart”).

A redistricting plan satisfying Alaska’s more stringent requirements thus likely survives federal scrutiny; a plan failing to meet Alaska’s requirements is invalid regardless of federal law. *Cf. Ross*, 292 P.3d at 910-11 (explaining that, because of “more demanding” standards, “if [a] rule does not violate Alaska’s Equal Protection (continued...)”).

In *Kenai Peninsula Borough v. State* we set out the controlling three-step equal protection analysis in redistricting, requiring an inquiry into and a balancing of competing voter and state interests.⁵⁶ First, what is the nature of the individual’s constitutional interest at stake and what weight should it be given?⁵⁷ Second, what is the purpose of the state action and, to counterbalance the weight given to the individual’s interest, what level of importance must it have?⁵⁸ Third, assuming the state action has a proper purpose, how close must the relationship be between the state’s purpose and its chosen means?⁵⁹ Nonetheless, if the purpose is intended discrimination against a class of voters, the purpose will be considered illegitimate without needing to ask about the relationship between purpose and efficacy; an equal protection violation will be established absent a demonstration that a greater proportionality of representation will result from its action.⁶⁰

⁵⁵ (...continued)
Clause, it does not violate the federal Equal Protection Clause”).

⁵⁶ 743 P.2d at 1371; *see also Braun*, 193 P.3d at 731.

⁵⁷ *Kenai Peninsula*, 743 P.2d at 1371 (stating that nature of interest is most important variable and that primacy of interest fixes review level and burden state has to justify action).

⁵⁸ *Id.* (stating that, depending on review level, state purpose ranges from legitimate objective (low end) to compelling state interest (high end)).

⁵⁹ *Id.* (stating that, depending on review level, fit between state’s means and ends ranges from substantial relationship (low end) to close fit (high end) and that purpose must be implemented with least restrictive alternative).

⁶⁰ *Id.* at 1372; *Braun*, 193 P.3d at 731 (summarizing *Kenai Peninsula* holding). To the extent that *Braun, id.*, and *2001 Redistricting 1*, 44 P.2d 141, 144 (Alaska 2002), might suggest that intentional discrimination is a required element of an equal protection claim in the redistricting context, we disavow that language.

When determining whether a Board has discriminatory intent, courts should look to the “totality of the circumstances,” including the Board’s process and the substance of its decision.⁶¹ As we explained in *Kenai Peninsula*:

Wholesale exclusion of any geographic area from the reapportionment process and the use of any secretive procedures suggest an illegitimate purpose. District boundaries which meander and selectively ignore political subdivisions and communities of interest, and evidence of regional partisanship are also suggestive. The presentation of evidence that indicates, when considered with the totality of the circumstances, that the Board acted intentionally to discriminate against the voters of a geographic area will serve to compel the Board to demonstrate that its acts aimed to effectuate proportional representation.^[62]

Districts drawn with an illegitimate purpose are unconstitutional even if the negative effect on proportional representation is slight,⁶³ but the harm’s extent becomes more relevant when fashioning a remedy.⁶⁴ For example, in *Kenai Peninsula* we granted declaratory relief, as opposed to requiring the Board to redraw the challenged district, because the disproportionate representation was de minimis.⁶⁵

⁶¹ *Kenai Peninsula*, 743 P.2d at 1372.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at 1373 (“[T]he degree of disproportionality will be considered in determining the appropriate relief to be granted.”).

⁶⁵ *Id.*

2. Due process

The Alaska Constitution mandates that “[n]o person shall be deprived of life, liberty, or property, without due process of law.”⁶⁶ Due process has both a procedural and a substantive component.⁶⁷ Procedural due process “requires that adequate and fair procedures be employed when state action threatens protected life, liberty, or property interests.”⁶⁸ “At a minimum, due process requires that the parties receive notice and an opportunity to be heard.”⁶⁹ “Substantive due process is a doctrine that is meant to guard against unfair, irrational, or arbitrary state conduct that ‘shock[s] the universal sense of justice.’ ”⁷⁰ As the superior court pointed out, courts in other jurisdictions have found due process violations if state action “seriously undermine[s] the fundamental fairness of the electoral process.”⁷¹

We have not previously explored how the due process clause may apply to redistricting challenges,⁷² but due process issues are raised tangentially in the matters before us. We note these issues when relevant, but, as we will explain, we see no need to delve into them at this time.

⁶⁶ Alaska Const. art. I, § 7.

⁶⁷ *Doe v. State, Dep’t of Pub. Safety*, 444 P.3d 116, 124-25 (Alaska 2019).

⁶⁸ *Id.* at 124.

⁶⁹ *Hagblom v. City of Dillingham*, 191 P.3d 991, 995 (Alaska 2008).

⁷⁰ *Doe*, 444 P.3d at 125 (alteration in original) (quoting *Church v. State, Dep’t of Revenue*, 973 P.2d 1125, 1130 (Alaska 1999)).

⁷¹ See, e.g., *Duncan v. Poythress*, 657 F.2d 691, 700 (5th Cir. 1981).

⁷² Cf. *2001 Redistricting I*, 44 P.3d 141, 147 (Alaska 2002) (holding only that challengers’ due process claims “ha[d] no merit”).

3. The “*Hickel* Process” and the Voting Rights Act

The federal Voting Rights Act (VRA) — intended to protect the voting power of racial minorities — applies to state redistricting.⁷³ “Under section 5 of the [VRA], a reapportionment plan is invalid if it ‘would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.’ ”⁷⁴ We have noted that a “state may constitutionally reapportion districts to enhance the voting strength of minorities in order to facilitate compliance with the [VRA].”⁷⁵

In *Hickel* we issued a remand order directing the Board to follow an order of priorities relating to redistricting affected by the VRA:

Priority must be given first to the Federal Constitution, second to the federal [VRA], and third to the requirements of article VI, section 6 of the Alaska Constitution. The requirements of article VI, section 6 shall receive priority *inter se* in the following order: (1) contiguousness and compactness, (2) relative socioeconomic integration, (3) consideration of local government boundaries, [and] (4) use of drainage and other geographic features in describing boundaries.^[76]

But we cautioned that “[t]he [VRA] need not be elevated in stature so that

⁷³ *Hickel v. Se. Conf.*, 846 P.2d 38, 49 (Alaska 1992); 52 U.S.C. §§ 10301-508.

⁷⁴ *Hickel*, 846 P.2d at 49 (quoting *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1361 (Alaska 1987)).

⁷⁵ *Id.* at 49-50 (quoting *Kenai Peninsula*, 743 P.2d at 1361).

⁷⁶ *Id.* at 62.

the requirements of the Alaska Constitution are unnecessarily compromised.”⁷⁷ We later clarified:

The *Hickel* process provides the Board with defined procedural steps that, when followed, ensure redistricting satisfies federal law without doing unnecessary violence to the Alaska Constitution. The Board must first design a plan focusing on compliance with the article VI, section 6 requirements of contiguity, compactness, and relative socioeconomic integration; it may consider local government boundaries and should use drainage and other geographic features in describing boundaries wherever possible. Once such a plan is drawn, the Board must determine whether it complies with the [VRA] and, to the extent it is noncompliant, make revisions that deviate from the Alaska Constitution when deviation is “the only means available to satisfy [VRA] requirements.”^[78]

We also noted United States Supreme Court decisions subsequent to *Hickel* “establish[ing] that under the [VRA], a jurisdiction cannot unnecessarily depart from traditional redistricting principles to draw districts using race as ‘the predominant, overriding factor.’ ”⁷⁹ We observed that “[f]ollowing the *Hickel* process will facilitate compliance with federal constitutional law by ensuring that traditional redistricting principles are not ‘subordinated to race.’ ”⁸⁰

⁷⁷ *Id.* at 51 n.22.

⁷⁸ *In re 2011 Redistricting Cases (2011 Redistricting I)*, 274 P.3d 466, 467-68 (Alaska 2012) (quoting *Hickel*, 846 P.2d at 51 n.22).

⁷⁹ *Id.* at 468 (footnote omitted) (quoting *Miller v. Johnson*, 515 U.S. 900, 920 (1995)).

⁸⁰ *Id.* (quoting *Bush v. Vera*, 517 U.S. 952, 959 (1996)).

The Board’s compliance with the *Hickel* process is challenged in the matters before us.

D. Article VI, Section 10: Redistricting Process

Article VI, section 10(b) requires a majority vote of the Board to approve a redistricting plan.⁸¹ Section 10(a) outlines an expedited procedure the Board must follow when crafting a redistricting plan:

Within thirty days after the official reporting of the decennial census of the United States or thirty days after being duly appointed, whichever occurs last, the board shall adopt one or more proposed redistricting plans. The board shall hold public hearings on the proposed plan, or, if no single proposed plan is agreed on, on all plans proposed by the board. No later than ninety days after the board has been appointed and the official reporting of the decennial census of the United States, the board shall adopt a final redistricting plan and issue a proclamation of redistricting. The final plan shall set out boundaries of house and senate districts and shall be effective for the election of members of the legislature until after the official reporting of the next decennial census of the United States.

We have yet to construe several portions of section 10. We have not previously decided whether a “proposed redistricting plan” includes both House and Senate districts. We also have not previously decided whether the public hearings requirement applies to all plans put forward by the Board or only those promulgated within the initial 30 days.⁸² And we have not previously determined whether a plan

⁸¹ Alaska Const. art. VI, § 10(b).

⁸² We have characterized section 10’s public hearings requirement as:

Under article VI, section 10 of the Alaska Constitution, the Alaska Redistricting Board . . . must adopt one or more

(continued...)

drafted by a third party and offered for public comment counts for the 30-day deadline’s purposes. These questions are before us now.

E. Article VI, Section 11: Plan Challenges

Article VI, section 11 gives “[a]ny qualified voter” the right to challenge the Board’s final redistricting plan or compel the Board to perform its duties.⁸³ Original jurisdiction for such challenges lies with the superior court.⁸⁴ Appellate jurisdiction rests with this court, and we must review the case “on the law and the facts.”⁸⁵ We review redistricting plans “de novo upon the record developed in the superior court,”⁸⁶ but, as in other matters, we afford some deference to the superior court’s findings when it was “in the best position to decide the issue,” such as for witness credibility.⁸⁷

⁸² (...continued)
proposed redistricting plans within 30 days after receiving official census data from the federal government. The Board must then hold public hearings on the proposed plans and adopt a final plan within 90 days of the census reporting.

In re 2011 Redistricting Cases (2011 Redistricting III), 294 P.3d 1032, 1033 (Alaska 2012). Although not based on any holding, this characterization implies that the public hearings requirement applies only to plans proposed within the 30-day window.

⁸³ Alaska Const. art. VI, § 11.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Groh v. Egan*, 526 P.2d 863, 867 (Alaska 1974).

⁸⁷ *See In re Hospitalization of Lucy G.*, 448 P.3d 868, 877-78 (Alaska 2019) (explaining that involuntary commitment and medication proceedings warrant clear error review of factual findings but independent review of superior court’s decisions based on those factual findings); *Miller v. Fenton*, 474 U.S. 104, 114-15 (1985) (discussing situations, such as evaluating witness credibility, in which appellate court should defer (continued...))

Courts review Board redistricting plans as if they were “a regulation adopted under a delegation of authority from the legislature to an administrative agency to formulate policy and promulgate regulations[:] . . . first to ensure that the agency has not exceeded the power delegated to it, and second to determine whether the regulation is reasonable and not arbitrary.”⁸⁸ Determining whether a regulation is reasonable primarily concerns whether “the agency has taken a hard look at the salient problems and has genuinely engaged in reasoned decision making.”⁸⁹ “[W]e always have authority to review the constitutionality of the action taken, but we . . . may not substitute [our] judgment as to the sagacity of a regulation for that of the administrative agency.”⁹⁰ Similarly we do not substitute our judgment as to the sagacity of a redistricting map

⁸⁷ (...continued)

to trial court’s application of law to fact); HARRY T. EDWARDS & LINDA A. ELLIOTT, FEDERAL STANDARDS OF REVIEW: REVIEW OF DISTRICT COURT DECISIONS AND AGENCY ACTIONS 24 (3d ed. 2018) (quoting *Inwood Labs., Inc. v. Ives Labs., Inc.*, 456 U.S. 844, 855 (1982)).

⁸⁸ *Groh*, 526 P.2d at 866; see also *2011 Redistricting III*, 294 P.3d at 1037. In *Groh* we justified this deferential standard of review to the Board based on the contemporary constitutional mandate that the executive branch was in charge of reapportionment. See 526 P.2d at 866. We have not yet considered the deference due a Board’s decisions in light of the 1999 constitutional amendments, instead citing earlier cases for justification that the Board is treated the same as an administrative agency. See, e.g., *2011 Redistricting III*, 294 P.3d at 1037 & nn.16-19. Although the justification for deferring to the Board’s decision no longer is the same, we still treat the Board as an administrative agency and afford it a more deferential standard of review given that its decision-making power is constitutionally vested, although it is unclear whether the Board has any particular “expertise” beyond its initial training sessions for appointed members.

⁸⁹ *2001 Redistricting I*, 44 P.3d 141, 143 n.5 (Alaska 2002) (quoting *Interior Alaska Airboat Ass’n v. State, Bd. of Game*, 18 P.3d 686, 690 (Alaska 2001)).

⁹⁰ *Groh*, 526 P.2d at 866-67.

adopted by the Board.

III. 2021 REDISTRICTING PROCESS ROUND 1: BOARD’S FINAL PLAN; SUPERIOR COURT’S DECISION; PETITIONS FOR REVIEW

A. Board Proceedings

The Board’s five members were appointed in July and August 2020. Governor Mike Dunleavy appointed Budd Simpson (from Juneau, First Judicial District) and Bethany Marcum (from Anchorage, Third Judicial District); Senate President Cathy Giessel appointed John Binkley (from Fairbanks, Fourth Judicial District); House Speaker Bryce Edgmon appointed Nicole Borromeo (from Anchorage, Third Judicial District); and Chief Justice Joel Bolger appointed Melanie Bahnke (from Nome, Second Judicial District). The members elected Binkley as Board Chair.

The Board first met in September 2020, and it met numerous times through July 2021 for “organizational work, procurement, training and planning.” Among other things, the Board selected an executive director, adopted policies, interviewed and selected legal counsel, hired a VRA consultant, received training on the redistricting software, and attended the National Conference of State Legislatures “Ready to Redistrict” conference.

On August 12 the United States Census Bureau reported the 2020 census results to Alaska. The Board then had until September 11 to “adopt one or more proposed redistricting plans” for public hearings and until November 10 to adopt a final plan.⁹¹ The Board held meetings and took public testimony August 23-24 and September 7-9. On September 9 — within the required 30-day period — the Board adopted two proposed redistricting plans with 40 House districts, but no Senate district

⁹¹ Alaska Const. art. VI, § 10(a) (requiring Board to adopt one or more proposed redistricting plans within 30 days of receiving official census information; to hold public hearings; and to adopt final plan within 90 days).

pairings. On September 20 — after the initial 30-day period — the Board adopted updated versions of the first two plans, as well as four third-party plans. The Board then took the six adopted plans on a “road show” from September 27 to November 1, holding public hearings throughout Alaska. These hearings included some testimony about possible Senate district pairings.

The Board reconvened in Anchorage November 2-5. On November 5 the Board voted 4-1 (with Member Marcum disagreeing) to approve the final House redistricting map. On November 8 the Board began working on Senate district pairings, and took two hours of public testimony. On November 9 the Board exited an executive session and without meaningful discussion immediately adopted, by a 3-2 vote with Board Members Bahnke and Borromeo disagreeing, a number of Senate pairings, including pairing House Districts 21 and 22 to create Senate District K. On November 10 the Board adopted its final state-wide redistricting plan; Board Members Binkley, Marcum, and Simpson signed in support and Board Members Bahnke and Borromeo signed in opposition.

B. Superior Court Proceedings

Five separate challenges to the Board’s plan were filed in superior court and consolidated into one case. The challengers included: (1) Matanuska-Susitna Borough (Mat-Su Borough) and voter Michael Brown (collectively Mat-Su); (2) City of Valdez and voter Mark Detter (collectively Valdez); (3) Municipality of Skagway Borough and voter Brad Ryan (collectively Skagway); (4) East Anchorage voters Felisa Wilson, George Martinez, and Yarrow Silvers (collectively East Anchorage); and (5) Calista Corporation, William Naneng, and Harley Sundown (collectively Calista). The superior court also heard from several intervenors: Doyon, Limited; Tanana Chiefs Conference; Fairbanks Native Association; Ahtna, Inc.; Sealaska Corporation; Donald Charlie, Sr.; Rhonda Pitka; Cherise Beatus; and Gordon Carlson. Participating jointly as amici curiae

were Alaska Black Caucus; National Association for the Advancement of Colored People Anchorage, Alaska Branch #1000; Enclaces; Korean American Community of Anchorage, Inc.; Native Movement; and First Alaskans Institute. We refer to this group as “amici curiae Alaska Black Caucus.”

The superior court conducted a 12-day bench trial starting January 21, 2022. Pretrial proceedings took place on a highly condensed schedule: The parties took depositions of Board members and other witnesses and filed direct testimony by depositions and affidavits in advance of trial. Cross-examination and redirect testimony were permitted at the trial.

The superior court issued its decision on February 15, making the following legal conclusions and remanding to the Board to remedy deficiencies in the final plan:

1. The Board violated the rights of the East Anchorage Plaintiffs under the Equal Protection Clause of the Alaska Constitution . . . by pairing House District 21-South Muldoon with the geographically and demographically distinct House District 22-Eagle River Valley to create Senate District K.
2. The Board violated the rights of the East Anchorage and Skagway Plaintiffs under the Due [Process] Clause of the Alaska Constitution . . . by failing to take a “hard look” at House District 3 and Senate District K in light of the clear weight of public testimony.
3. The Board violated Article VI, Section 10 by failing to hold meaningful public hearings on proposed Senate Districts prior to adoption.
4. The Board violated Article VI, Section 10 by failing to include Senate District pairings in any proposed plan adopted before the 30-day constitutional deadline.
5. The Board violated Article VI, Section 10 by failing to make a good-faith effort to accommodate public testimony in regard to House District 3 and Senate

District K.

6. The Board violated the Open Meetings Act . . . in its improper use of executive session, but the violation does not, on balance, require the Court to void all actions taken by the Board in executive sessions.
7. In all other respects, the Board did not violate the Plaintiffs' rights under Article I, Sections 1 and 7, or Article VI, Sections 6 and 10.

This matter should be remanded to the Board to address the deficiencies in the Board plan consistent with this order.

C. Petitions For Review

The Board, Skagway, Mat-Su, and Valdez petitioned for our review of portions of the superior court's decision.⁹² We granted review, later issuing a summary order resolving the petitions and noting that a full explanation would follow.⁹³

1. The Board's petition

The Board's petition focuses on East Anchorage's successful challenge to Senate District K and on Skagway's successful challenge to House Districts 3 and 4. The Board contends that its mapping of House Districts 3 and 4 and Senate District K did not violate article VI, section 10 and that the superior court's textual interpretation of section 10 and reasoning by analogy to federal administrative procedures law were erroneous. The Board adds that Senate District K did not discriminate against distinct communities of interest in East Anchorage and thus did not violate the right to fair representation under Alaska's equal protection law. The Board further argues that it did

⁹² See Alaska R. App. P. 216.5(h) (providing for immediate petition for review to supreme court of superior court decision remanding to Board).

⁹³ We attach as Appendix A copies of relevant election district maps the Board published with its November 2021 redistricting proclamation. Our earlier summary order resolving the petitions for review is attached as Appendix B.

not violate the Open Meetings Act; that, even if it did, a waiver of attorney-client privilege is not an appropriate remedy for violations of the Act; and that the superior court erred in its handling of the Board's discovery requests and proposed witness testimony.

2. Skagway's petition

Skagway contends that, although the superior court correctly invalidated House Districts 3 and 4 on due process grounds, the court also should have invalidated the districts for violating article VI, section 6's socioeconomic integration requirement. Skagway also contends the superior court erred by concluding that the Board followed the *Hickel* process and by not addressing Skagway's equal protection argument.

3. Mat-Su's and Valdez's petitions

Mat-Su and Valdez primarily challenge the superior court's determinations that House Districts 29 and 36 satisfy Alaska's constitutional requirements. They contend that the superior court erred when it concluded the Board had followed the *Hickel* process, the Board's Open Meeting Act violations did not justify voiding any action taken, and the Board gave salient issues a "hard look" when creating the House district combining portions of the Mat-Su Borough and the Valdez area.

IV. RESOLUTION OF ROUND 1 PETITIONS FOR REVIEW

A. Common Issues

1. The superior court did not err when it concluded that the Board sufficiently followed the *Hickel* Process.

Not long after receiving the 2020 census data in mid-August 2021 the Board held a mapping work session, and the members learned that the mapping software could display race data. Although Board members clearly were interested in how race data changed based on district boundary lines, they made comments reflecting an understanding that race data and VRA requirements should not be considered until later

in the process. At this work session Member Bahnke drew what would become House Districts 37, 38, 39, and 40, covering much of Alaska; as she drew the districts, she nonetheless asked about certain race data.

On September 8 the Board orally affirmed that it would proceed without the race data being visible on the districting software. On September 9 the Board adopted two proposed redistricting plans, “Board Composite v.1” and “Board Composite v.2.” Member Bahnke requested that the Board engage with its VRA expert “as soon as practicable” after adopting the proposed plans, “at least to look at what [has been] developed.” House Districts 37, 38, 39, and 40 — referred to as early as November 2 as the “VRA Districts” by the Board — did not significantly change between September 9 and the final redistricting plan adopted in November.

From September 17 to 20 the Board took public testimony, replaced Composites v.1 and v.2 with Composites v.3 and v.4, and adopted four third-party plans for consideration. It then embarked on its public hearing road show from September 27 to November 1. After the road show the Board received a VRA compliance report. The report found that Districts 37, 38, 39, and 40 complied with the VRA. It also noted that because three of these four districts “experienced population growth which outpaced increases in the overall state population,” the Board was able “to draw compact, contiguous districts which retain[ed] existing socio-economic integration while retaining core constituencies.” The Board then adopted the final House districts map on November 5.

At trial challengers contended that the Board “locked in” Districts 37, 38, 39, and 40 as “VRA Districts” at an early stage of the process, violating the *Hickel* process. They argued that, having done so without entertaining modifications, the Valdez area was paired with portions of the Mat-Su Borough because the Board no longer had anywhere else to put the Valdez area.

The superior court found:

The transcripts and videos of public Board meetings make it abundantly clear that Board Members were actively considering VRA-related issues since the beginning of the process. And the fact that all four of the Board's proposed plans contained identical versions of Districts 37, 38, 39, and 40 also creates a strong inference that the Board never truly considered available alternatives.

The superior court particularly noted that there were “very few changes to the so-called VRA districts throughout the entire process”; that “the Board [was] made aware of past VRA districts and requirements”; that “it was capable of viewing and had racial data displayed during several public work sessions in August and September”; that Member Bankhe made comments “throughout the redistricting process evidenc[ing] a strong preoccupation with both VRA requirements and the percentage of Alaska Natives in rural areas”; and that “by early September, the Board was requesting its VRA consultants to analyze the proposed plans ‘as soon as practicable.’ ”

Despite these findings the superior court ultimately determined that the Board sufficiently followed the *Hickel* process, and the court declined to grant relief on the basis of any deviations. The court discussed how the Board clearly would have violated the *Hickel* process if it meant “that the Board can never consider VRA implications prior to adoption of the final house plan.” But the court ultimately interpreted *Hickel* and our subsequent case law to mean that the Board may take “VRA requirements into account during the final stretch of the redistricting process” and that the Board sufficiently complied with the *Hickel* process.

Mat-Su, Skagway, and Valdez contend the superior court erred when it determined that the Board sufficiently followed the *Hickel* process. The Board responds that it completed “all of its proposed plans without analyzing or applying the VRA, or even considering racial data . . . until the proposed plans were set.” Disputing the

assertion that “VRA Districts” were locked in, the Board points to the superior court’s observation that House Districts 37, 38, and 39 were modified up until the last day.

Whether the Board violated the *Hickel* process is much less obvious in the matters now before us compared with *Hickel* or the 2011 redistricting cases. The Board clearly was aware of race data at the start, but we agree with the superior court that this seemed to be a part of learning “the basics of the redistricting process and how to use the districting software.” Referring to these districts as “VRA districts” early in the process also seems reasonable given their historic consideration under the VRA,⁹⁴ and it would not necessarily mean that these districts were drawn with the VRA in mind during the redistricting process. We agree with the superior court that, given *Hickel*’s avoidance of the constitutional language of “proposed” and “final” plans, the Board is not required to save VRA considerations until the very end of the 90-day period for adopting a final redistricting plan.⁹⁵ Designing a proposed plan without specific attempts to meet VRA requirements and then submitting it to VRA experts, regardless of where the Board is in its timeline for adopting a final plan, satisfies the *Hickel* process.

We thus affirm the superior court’s conclusion that the Board sufficiently complied with the *Hickel* process.

2. The superior court did not err by concluding that it was not in the public’s best interest to vacate Board actions resulting from Open Meetings Act violations.

Many times throughout its work the Board met in executive session under

⁹⁴ See *2011 Redistricting III*, 294 P.3d 1032, 1035-36 (Alaska 2012) (identifying 2011 VRA regions that are similar to those identified in 2021).

⁹⁵ See *Hickel v. Se. Conf.*, 846 P.2d 38, 51 n.22 (Alaska 1992).

the Open Meetings Act (OMA),⁹⁶ and the Board's executive sessions were a significant issue at trial. The executive sessions were particularly problematic because they hindered the superior court's ability to review the Board's actions.

Toward the end of the Board's November 3 meeting, the members discussed the Valdez area's House district placement. The Board appears to have been deciding between pairing the Valdez area with portions of the Mat-Su Borough or with some Prince William Sound communities. Several members opined that an executive session might be necessary to discuss legal issues about pairing the Valdez area with portions of the Mat-Su Borough. The Board took a short break; immediately upon return Member Simpson moved to enter into executive session "under AS 44.62.310(c), subsections (3) and (4)," without further specification.⁹⁷ The executive session lasted

⁹⁶ The OMA, instructing governmental bodies to make meetings open to the public, applies to "[a]ll meetings of a governmental body of a public entity of the state." AS 44.62.310(a). The OMA is meant to maintain open deliberations, prevent governmental agencies from deciding "what is good for the people to know and what is not good for them to know," and protect "the people's right to remain informed . . . so that they may retain control over the instruments they have created." AS 44.62.312. Consideration of matters required by law to be kept confidential or matters "not subject to public disclosure" need not be open to the public and can instead be "discussed at a meeting in executive session." AS 44.62.310(b), (c)(3), (c)(4). The OMA's remedy for executive sessions held contrary to the statutory terms is that, subject to a lawsuit, the hidden action is voidable but can be cured by "conducting a substantial and public reconsideration of the matters considered at the original meeting." AS 44.62.310(f).

⁹⁷ *Cf.* AS 44.62.310(b) ("The motion to convene in executive session must clearly and with specificity describe the subject of the proposed executive session without defeating the purpose of addressing the subject in private. Subjects may not be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question."). As the superior court noted, vague motions to enter into executive session hinder the ability to determine "whether a particular executive session was held in accordance with the law." We are unable to
(continued...)

through the end of the day's meeting. That evening Member Borrromeo sent text messages to two individuals asking for case law supporting a pairing of the Valdez area and portions of the Mat-Su Borough.

November 4 was a full-day mapping work session. The Board reviewed a map pairing the Valdez area with portions of the Mat-Su Borough. Board members discussed that the pairing was socioeconomically integrated and compact and that the Board's legal counsel had advised them there was historical precedent for the pairing. There was no further discussion of pairing the Valdez area with Prince William Sound communities. When Member Marcum suggested that the Board reconsider, Member Borrromeo explained that three Board members were not willing to place the Valdez area in "the Interior" House district and that the Anchorage area apparently was not a viable pairing option due to other constitutional concerns. The Board eventually agreed that Member Marcum could propose pairing the Valdez area and the Anchorage area.

On November 5 the Board entered into executive session twice. After Member Simpson mentioned "a Voting Rights issue" he moved to enter into executive session "for the purpose of receiving legal advice . . . under AS 44.62.310, involving matters which by law or ordinance are required to be confidential, and matters involving consideration of government records that by law are not subject to public disclosure."⁹⁸ The Board returned from executive session and entered a mapping work session. Member Marcum mentioned that, despite public testimony demonstrating Valdez area

⁹⁷ (...continued)

discern how these allowances for executive session applied to the Board's discussion about pairing the Valdez area with portions of the Mat-Su Borough.

⁹⁸ We are unable to discern how these allowances for executive session applied to the Board's discussion about pairing the Valdez area with portions of the Mat-Su Borough.

voters and Mat-Su Borough voters did not want to be paired together, after consulting with legal counsel the pairing appeared to be the only available option. Following more public testimony, Member Bahnke suggested that the Board enter into executive session for legal advice on the “whole new map that [was] on the table for consideration.” Member Borromeo moved to enter into executive session under AS 44.62.310(c)(3) and (4), again without offering an explanation beyond the statutory language;⁹⁹ the motion passed. When the Board exited executive session it appeared to have narrowed its choices to two maps, both pairing the Valdez area with portions of the Mat-Su Borough. The Board ultimately voted and approved a final House district map with that pairing.

On November 8, when the Board began work on Senate district pairings, it took two hours of public testimony before entering into executive session. This was the only public testimony taken specifically for Senate district pairings, and residents from both Anchorage and Eagle River tended to support pairing the North and South Muldoon House districts together and the North and South Eagle River House districts together. The Board entered into executive session to “speak with [its] legal counsel and voting rights consultant” upon a motion by Member Borromeo citing “legal and other . . . purposes relating to receiving legal counsel.”¹⁰⁰

After the executive session ended, the Board conducted a work session for over three hours. During the work session Member Bahnke “strongly” recommended pairing the Eagle River House districts together, but Member Marcum stated there was a “socioeconomic connection between [Joint Base Elmendorf - Richardson (JBER)] and

⁹⁹ We are unable to discern how these allowances for executive session applied to the Board’s discussion about pairing the Valdez area with portions of the Mat-Su Borough.

¹⁰⁰ We are unable to discern how this topic fit within the statutory allowances for executive session.

[North] Eagle River” and said their two House districts should be paired together. The Board ended the day with an executive session, apparently seeking legal advice on the Senate district pairings.¹⁰¹

When the Board reconvened on November 9 it continued in executive session. The Board then resumed public session, and without any substantive discussion on the record, Member Marcum moved that the Board combine the South Eagle River House district with the South Muldoon House district to make up Senate District K. Members Binkley, Marcum, and Simpson voted in favor, with Members Bahnke and Borromeo opposed.

The propriety of the Board’s various executive sessions first came before us in January 2022 after challengers asked the superior court to conduct a private review of certain Board communications, contending that “the Board [had] improperly utilized executive sessions to conduct what should have been public deliberations.” The superior court found that the challengers had a reasonable basis to believe that in camera review¹⁰² may show that some of the documents might not be subject to the attorney-client

¹⁰¹ We are unable to discern how this topic fit within the statutory allowances for executive session.

¹⁰² When a party asserts that a requested document or communication is privileged, the superior court may privately review evidence “to determine the applicability of the” asserted privilege only upon “ ‘a showing of a factual basis adequate to support a good faith belief by a reasonable person,’ . . . that in camera review of the materials may reveal evidence to establish” whether the asserted privilege applies. *Cent. Constr. Co. v. Home Indem. Co.*, 794 P.2d 595, 598-99 (Alaska 1990) (omission in original) (quoting *United States v. Zolin*, 491 U.S. 554, 572 (1989)).

privilege¹⁰³ due to the interplay of the OMA, the Public Records Act¹⁰⁴ and the appearance of the Board utilizing executive sessions to obtain general redistricting legal advice rather than specific litigation advice. Shortly before trial began, the superior court ordered a private review of some documents the Board had claimed were privileged.

The Board filed an emergency petition for review, asking us to decide that the order for in camera review would violate its privilege rights and that the OMA neither applies to the Board nor provides for in camera review of otherwise privileged documents as a remedy for violation. We denied the petition for review. Although the superior court ultimately determined that most of the documents were privileged, it ordered a few “be produced over the Board’s objection.” The superior court explained in its February 15 decision that it would have ordered production of additional documents regarding whether “discussions held during executive session” violated the OMA but that the violations did not appear to be in bad faith and the current state of the law made it unclear whether doing so was an available remedy.

In its February 15 decision the superior court additionally determined that the Board likely violated the OMA when “at least three Board members reached a ‘consensus’ outside of the public view” regarding Senate District K.¹⁰⁵ But because the

¹⁰³ See Alaska R. Evid. 503 (establishing scope of lawyer-client privilege).

¹⁰⁴ See AS 40.25.120 (affording right to every person “to inspect a public record in the state” subject to specific exceptions).

¹⁰⁵ The court found the Board also violated procedural requirements under the OMA when the Board convened executive sessions “following a vague motion which did not specify the meeting’s subject.” Although stating that these violations “harm[] the public confidence in public entities generally and more importantly in the highly visible and consequential redistricting process,” the superior court concluded that they did not, on balance, “outweigh the harm that would be caused were [it] to void the Senate
(continued...)

Board publicly voted to adopt Senate District K, the court concluded that it was not a voidable action. The court noted that it had struggled to discern the extent to which the Board conducted executive session for inappropriate reasons. The court also suggested that an “appropriate remedy for violation of the OMA would include opening the door to discussions held during executive session, regardless of the presence of an attorney” in light of the “strong public policy in favor of open government.”

a. The Board’s OMA arguments

The Board challenges the superior court’s determination that the Board engaged in “secret deliberations on senate pairings” and the superior court’s suggestion that improperly entering into executive sessions might waive the attorney-client privilege. Unlike the Board’s position in the superior court, the Board does not now assert that it is exempt from the OMA.¹⁰⁶ Because the superior court did not invalidate

¹⁰⁵ (...continued)
pairings on that basis alone.”

¹⁰⁶ The OMA’s plain language seems to support the superior court’s conclusion that the OMA applies to the Board. Subject to certain exceptions not relevant here, the OMA applies to “[a]ll meetings of a governmental body of a public entity of the state,” and “governmental body” is defined broadly to mean: “[A]n assembly, council, board, commission, committee, or other similar body of a public entity with the authority to establish policies or make decisions for the public entity.” AS 44.62.310(a), (h)(1). Prior to the 1999 constitutional amendments creating the independent redistricting board, we held that the governor’s advisory board was subject to the OMA. *See Hickel v. Se. Conf.*, 846 P.2d 38, 57 (Alaska 1992). And in *2001 Redistricting I* we reviewed the Board’s alleged OMA violations without reconsidering whether it still applied in light of the 1999 amendments changing Board appointment procedure. 44 P.3d 141, 147 (Alaska 2002). The OMA is unenforceable against the legislative and judicial branches of government. *See Abood v. League of Women Voters*, 743 P.2d 333, 337-40 (Alaska 1987) (holding that whether OMA applied to legislature was nonjusticiable issue because “[t]he Alaska Constitution expressly commits to the legislature authority to adopt its own rules of procedure” and that whether to conduct business “in open or closed sessions is (continued...)

Senate District K due to OMA violations and because we view the alleged abuse of executive session as more pertinent to the superior court’s blended due process and “hard look” analysis we address later, we focus solely on the superior court’s suggested remedy that OMA violations might act to waive the Board’s attorney-client privilege in some situations. We address this issue because of the Board’s continuing work.

The Board contends that the only remedy for an OMA violation is voiding the action wrongfully taken in executive session, not “abrogat[ing] the government’s attorney-client privilege.” We agree with the Board that the only remedy for an action taken during an OMA violation is voiding the action, “if the court finds that, considering all of the circumstances, the public interest in compliance with [the OMA] outweighs the harm that would be caused to the public interest and to the public entity by voiding the action.”¹⁰⁷ But we also recognize that the OMA reflects a body of law distinct from the law of privilege¹⁰⁸ and that matters discussed during an executive session are not automatically privileged merely because an attorney for the governing body is present

¹⁰⁶ (...continued)

a procedural question . . . traditionally . . . the subject of legislative rules”). But there is no express constitutional reservation of authority to the Board to promulgate its own procedural rules, and the Board thus is subject to Alaska Statutes that do not interfere with its constitutionally granted powers. *Compare* Alaska Const. art. II, § 12, *and* art. IV, §§ 8, 15, *with* art. VI, § 9 (expressly reserving rule-making powers to the legislature, judiciary, and judicial council, but not to the Board).

¹⁰⁷ AS 44.62.310(f).

¹⁰⁸ Generally, “[c]ourts consistently ‘find no language in the [OMA] that would support the assertion that the Legislature intended to create an absolute privilege for all communications occurring while a public body is in a closed session.’ ” ANN TAYLOR SCHWING, *OPEN MEETING LAWS* § 7.11 F. (3d ed. 2011) (quoting *State ex rel. Upper Republican Nat. Res. Dist. v. Honorable Dist. Judges*, 728 N.W.2d 275, 279 (Neb. 2007)).

for the discussions. There are limits on using the OMA’s executive session provisions for legal advice pertaining to the business of a government agency.¹⁰⁹ But we do not need to explore those limits at this time.

b. Mat-Su’s OMA arguments

Mat-Su contends that the superior court failed to address a potential OMA violation raised by Mat-Su at trial and that the court erred when it failed to void Board actions after the Board violated the OMA. At trial Mat-Su raised the question whether the Board violated the OMA by improperly entering into executive session on November 3 and deciding to place the Valdez area with portions of the Mat-Su Borough in House District 29. Mat-Su asserted that the Board improperly discussed the placements “outside the view of the public eye” and that, in combination with some other “very egregious actions” by the Board, it warranted remanding the entire final plan for reconsideration.

Mat-Su is correct that the superior court’s February 15 decision overlooked Mat-Su’s challenge to the November 3 executive session, and we therefore give it our independent review.¹¹⁰ Mat-Su argues that, procedurally, the Board’s motions to enter

¹⁰⁹ See *Cool Homes, Inc. v. Fairbanks North Star Borough*, 860 P.2d 1248, 1262 (Alaska 1993) (“It is not enough that the public body be involved in litigation. Rather, the rationale for the confidentiality of the specific communication at issue must be one which the confidentiality doctrine seeks to protect: candid discussion of the facts and litigation strategies.”). We recognize that our case law addressing the intersection of statutory or constitutional public hearings requirements and privileged communication has room for development. Cf. *Detroit News, Inc. v. Indep. Citizens Redistricting Comm’n*, 976 N.W.2d 612, 628-29 (Mich. 2021) (holding privilege did not attach to recording and materials stemming from improperly held closed-session meeting discussing work within Redistricting Commission’s core business in light of constitutional mandate for open meetings).

¹¹⁰ See Alaska Const. art. VI, § 11 (“On appeal from the superior court, the
(continued...)”)

into executive sessions were not sufficiently specific. Mat-Su argues that substantively the Board violated the OMA because: it started discussing placing the Valdez area with Prince William Sound communities on November 3; it entered into an executive session that lasted until the end of the day; Member Borromeo sent texts to two individuals asking for case law permitting the Valdez area to be paired with portions of the Mat-Su Borough;¹¹¹ and when the Board returned to open session on November 4, a majority of the members seemed to be in agreement that the Valdez area and portions of the Mat-Su Borough could be paired together, but the Board had “never engage[d] in a mapping session of the [Valdez area] with the Prince William Sound communities” despite Member Marcum continuing to state that other combinations might be more compact, contiguous, and socioeconomically integrated. Mat-Su contends that, taken together, these facts demonstrate the Board improperly deliberated outside the public eye about placing the Valdez area.

The Board responds by pointing to parts of the November 4 public proceedings when members were discussing the Valdez area. The Board also asserts that the public interest would not be served by voiding its final plan because of any procedural mistakes it made when calling executive sessions.

We agree with Mat-Su that on November 3, 4, and 5 the Board entered into executive sessions without clearly and specifically describing the subject of the proposed

¹¹⁰ (...continued)
cause shall be reviewed by the supreme court on the law and the facts.”).

¹¹¹ Mat-Su argues, without citing authority, that these text messages during executive session violated the OMA, but the statutory language has no prohibition against such communications. We do not further address this issue.

session as required by law.¹¹² Instead of merely reciting the statutory language explaining broad subject categories that may be considered in executive session, the Board should have been more specific about the matters to be discussed, though not to the extent of defeating “the purpose of addressing the subject in private.”¹¹³ The Board’s actions appear suspect, defeat the public’s ability to witness deliberations, and cause courts to struggle in reviewing the constitutionality of the Board’s actions. But despite likely inappropriate uses of executive session, the Board’s public discussions about where to place the Valdez area are sufficient for appellate review and allow us to determine whether the Board gave the issue a hard look. Under the circumstances — particularly given the compressed timeline for the Board’s work and redistricting’s importance to all Alaskans — the superior court did not err by concluding that it would not be in the public interest to void the Board’s entire final plan due to some OMA violations.¹¹⁴

3. Making the traditional hard look analysis more restrictive by blending it with other constitutional concerns was error.

A court’s review of a redistricting plan is similar to its review of “a regulation adopted under a delegation of authority from the legislature to an administrative agency to formulate policy and promulgate regulations[:] first to

¹¹² See AS 44.62.310(b) (requiring that motion for executive session “must clearly and with specificity describe the subject” to be discussed).

¹¹³ *Id.*

¹¹⁴ See AS 44.62.310(f) (“A court may hold that an action taken at a meeting held in violation of this section is void only if the court finds that, considering all of the circumstances, the public interest in compliance with this section outweighs the harm that would be caused to the public interest and to the public entity by voiding the action.”). However, if in future redistricting efforts the Board appears to abuse executive sessions, injunctive relief under Alaska Civil Rule 65(a) or (b) may be warranted.

insure that the agency has not exceeded the power delegated to it, and second to determine whether the regulation is reasonable and not arbitrary.”¹¹⁵ The superior court conducted a “first impression” analysis to determine “the legal standards by which the concept of ‘unreasonableness’ should be measured” for the Board’s redistricting plan. After reviewing Constitutional Convention minutes, legislative history from the 1999 amendments to article VI, and federal statutes and case law, the superior court concluded:

[T]he spirit of [a]rticle VI, [s]ection 10 . . . compels the Board to present the public with a number of equally constitutional redistricting plans and then let the people have a say about which plan they prefer. While the Board need not respond to every single comment received, the Board must make a good-faith effort to consider and incorporate the clear weight of public comment, unless state or federal law requires otherwise. . . . [T]he Board must give some deference to the public’s judgment. If the Board adopts a final plan contrary to the preponderance of public testimony, it must state on the record legitimate reasons for its decision. (Footnote omitted.)

This appears to be the standard the superior court used for its blended “hard look” and due process analysis.¹¹⁶

¹¹⁵ *Groh v. Egan*, 526 P.2d 863, 866 (Alaska 1974); *see also 2011 Redistricting III*, 294 P.3d 1032, 1037 (Alaska 2012).

¹¹⁶ The superior court adopted this blended approach based on our traditional hard look requirement and constitutional procedural and substantive due process requirements, as well as the public hearings requirement under article VI, section 10. Although before us there were challenges to the court’s overall “hard look” test, they did not detail the extent to which substantive due process concerns might apply. We accordingly do not parse the applicability of substantive due process to the “hard look” analysis. *See Balough v. Fairbanks North Star Borough*, 995 P.2d 245, 263 (Alaska 2000) (describing heavy burden on party asserting substantive due process violation “for if any conceivable legitimate public policy for the [state action] is apparent on its face (continued...)”).

The superior court then concluded that the Board gave a hard look to House District 29’s combination of the Valdez area with portions of the Mat-Su Borough, noting that the Board had “carefully considered the available options[,] . . . acted reasonably,” and “certainly did not ignore public testimony.” Regarding Senate District K, however, the court concluded that “the Board obviously violated the ‘hard look’ standard by ignoring public comment on the senate pairings,” apparently “to accommodate the wishes of a single Member.” The court similarly concluded that the Board “failed to take a hard look at [House] Districts 3 and 4” because it did not “make a good-faith attempt to incorporate the public testimony.” The Board, Mat-Su, and Valdez challenge aspects of the superior court’s hard look analysis.

a. Our view of the superior court’s hard look analysis

Rather than requiring the Board to “make a good-faith effort to consider and incorporate the clear weight of public comment” or “give some deference to the public’s judgment,” the hard look analysis has more nuance. A redistricting plan is reasonable if “the [Board] has taken a hard look at the salient problems and has genuinely engaged in reasoned decision making.”¹¹⁷ If public comments introduce a “salient problem,” such as a defect under article VI, section 6, it would be unreasonable to ignore the problem when drawing district boundaries; absent some evidence explaining the Board’s action and how it took the problem into account, a court could conclude that the Board failed to take a hard look. But if public comments merely reflect

¹¹⁶ (...continued)
or is offered by those defending the [action], the opponents of the [action] must disprove the factual basis for such a justification” (quoting *Concerned Citizens of S. Kenai Peninsula v. Kenai Peninsula Borough*, 527 P.2d 447, 452 (Alaska 1974))). If relevant in future redistricting litigation, parties should more robustly address this concept.

¹¹⁷ *2001 Redistricting I*, 44 P.3d 141, 143 n.5 (Alaska 2002) (quoting *Interior Alaska Airboat Ass’n v. State, Bd. of Game*, 18 P.3d 686, 690 (Alaska 2001)).

preferences for district boundaries without implicating substantive redistricting requirements, drawing district boundaries based on demonstrated substantive redistricting requirements and not the “weight of public comment” likely would not violate the hard look requirement. We nonetheless note that a Board’s failure to follow a clear majority preference between two otherwise equally constitutional legislative districts under article VI, section 6 may be evidence supporting a gerrymandering claim.

b. The Board’s arguments

The Board contends that the superior court’s erroneous hard look analysis caused the court to err when it invalidated House Districts 3 and 4 and Senate District K. Because the court invalidated Senate District K on grounds beyond the hard look analysis — specifically for unconstitutional political gerrymandering, a ruling which we affirm below — we do not address the Board’s argument on this point. But the court ruled that House Districts 3 and 4 were unconstitutional based solely on its “weight of public testimony” approach to the hard look analysis. Because the court otherwise agreed substantive redistricting requirements were satisfied and no salient problems were raised that the Board failed to consider, we reverse the court’s invalidation of House Districts 3 and 4 and its accompanying remand to the Board.

c. Mat-Su’s and Valdez’s arguments

Mat-Su contends that in light of the superior court’s approach to the hard look requirement, “the court erred when it found that the Board took a ‘hard look’ at testimony offered by Valdez and [Mat-Su]” regarding House District 29. Because Mat-Su’s assertion relies entirely on the misguided standard for the hard look analysis without pointing to any discrete salient problems (beyond the weight of public preference) that the Board did not consider, we reject its argument and turn to Valdez’s arguments about the Board’s creation of House Districts 29 and 36.

Valdez first argues that the Board did not engage in reasoned decision-

making about forming District 29 because the Board “spent minimal time analyzing how to accommodate the strong public testimony against pairing [the Valdez area] and [portions of the Mat-Su Borough] together in a district.” Again, this argument alone is insufficient to invalidate House District 29 without the public comments having raised some salient problem that the Board failed to address.

Valdez also argues that it is evident the Board did not give House District 29 a hard look because (1) “District 29 in the Final Plan is virtually unchanged from Member Borromeo’s proposed plan, . . . which was developed prior to the Board’s public hearing tour with minimal involvement of other Board members,” and (2) what turned out to be the final plan “was adopted outside of the constitutionally mandated [30-day] deadline for adopting proposed plans set forth in article VI, section 10” and was “an entirely new 40[-]district plan with radically different districts than those” of the original version it replaced. But a proposed election district’s evolution over the course of redistricting, without more, lends little insight into whether the Board gave it a hard look, and the superior court discussed this factor when rejecting the argument that the Board violated the *Hickel* process. And Valdez presents no legal support for its argument that adopting a final redistricting plan developed after the first 30 days of the redistricting process is unconstitutional; such a position would make the constitutional public hearing requirement virtually meaningless.

Valdez also appears to argue that the Board impermissibly “constrained the range of redistricting options it considered based upon the mistaken legal premise that the [Fairbanks North Star Borough (FNSB)] could not be included in more than one district that included population from outside of FNSB.” Valdez asserts that “[t]he [superior] court erred in holding that the Board properly viewed any redistricting alternative that placed population from FNSB in more than one district [with population from outside FNSB] as not viable.” The Board responds that *Hickel* instructs, when

possible, to “include all of a borough’s excess population in one other district”¹¹⁸ and that “*2001 Redistricting [I]* does not suggest otherwise.”¹¹⁹ We conclude, given that the Board was able to keep FNSB’s excess population together in one House district while abiding by other constitutional requirements, the Board did not act arbitrarily or unreasonably by doing so without considering additional plans that would split FNSB’s excess population between multiple House districts.

Valdez’s remaining hard look arguments about District 29 focus on the Valdez area being more socioeconomically integrated with communities other than those in the Mat-Su Borough and the Board making only passing mention of the other article VI, section 6 requirements. But, as we note throughout this opinion, the Constitution does not require the most possible socioeconomic integration, particularly if other constitutional requirements may be compromised.¹²⁰ The superior court described Board-identified socioeconomic connections between the Valdez area and the Mat-Su Borough, and we agree with the superior court that the described socioeconomic integration level satisfied section 6’s “relatively integrated socio-economic area”

¹¹⁸ See 846 P.2d 38, 52 (Alaska 1992) (“This result is compelled not only by the article VI, section 6 requirements, but also by the state equal protection clause which guarantees the right to proportional geographic representation.”).

¹¹⁹ See 44 P.3d at 144 (instructing that Board may combine excess populations from adjoining boroughs).

¹²⁰ See *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1362-63 (Alaska 1987) (discussing socioeconomic integration under sufficiency standard); see also *Hickel*, 846 P.2d at 45 n.10 (explaining that socioeconomic integration requirement is more flexible than contiguity and compactness requirements such that degree of integration can be reduced if necessary “to maximize the other constitutional requirements of contiguity and compactness”).

requirement.¹²¹ The court’s February 15 decision discussed the Board’s impressive steps when drawing the Valdez area House district boundaries, and we affirm the court’s conclusion that — for the hard look analysis — the Board acted reasonably in making ultimately unsuccessful efforts to keep the Valdez and Mat-Su Borough areas in separate House districts.

Valdez relatedly argues that the Board improperly neglected constitutional redistricting criteria while prioritizing individual Board member goals.¹²² Valdez first asserts that certain Board members were too deferential to the “Doyon Coalition’s goal of keeping Interior Doyon and Ahtna villages together in one District” at the expense of putting the Valdez area with portions of the Mat-Su Borough. Valdez next asserts that “the Board openly sought to maximize the percentage of Native voters in District 36,” constituting gerrymandering and warranting remand of the final plan. Valdez also argues that Member Binkley prioritized “protecting the borough boundaries of FNSB,” impermissibly foreclosing “consideration of numerous viable redistricting options including districting [the Valdez area] with Richardson Highway communities and the FNSB.” Valdez finally argues that the Board improperly relied on “ANCSA boundaries¹²³ to support the creation of District 36 and justify keeping Bering Straits

¹²¹ Alaska Const. art. VI, § 6; *see Hickel*, 846 P.2d at 46-47 (describing comparable scenarios satisfying socioeconomic integration requirement).

¹²² Valdez raises similar arguments when challenging Districts 29 and 36 as not complying with article VI, section 6 requirements. Valdez couches these arguments under the *Hickel* requirement that the Board “is not permitted to diminish the degree of socio-economic integration in order to achieve other policy goals,” *see* 846 P.2d at 45 n.10, but because Valdez seems also to challenge the Board’s hard look requirement, we discuss it here.

¹²³ “ANCSA boundaries” refers to the Alaska Native Claims Settlement Act
(continued...)

communities separate from Doyon communities,” warranting remand because it created “District 29, which is not socio-economically integrated, and District 36, which is neither socio-economically integrated nor compact.”

The first three arguments quickly can be dispensed with for similar reasons. We agree with the superior court that the “practice of assigning each [Board] Member a region and ultimately deferring to those [m]embers’ judgment on their assigned regions” is somewhat troubling. But it is not necessarily improper to consider a Board member’s personal regional experiences if constitutional requirements are met, and the line between excessive deference to and independent agreement with a Board member is difficult to monitor. As discussed earlier, we also agree with the superior court that the Board did not violate the *Hickel* process, and thus any alleged premature VRA considerations likely did not interfere with the Board taking a hard look at the issues Valdez raised. Despite Valdez seemingly indicating otherwise, the hard look analysis does not require that the Board consider every possible permutation of statewide House districts.¹²⁴ The expedited nature of the redistricting process also means that when changes are made toward the end of the process — an appropriate result almost

¹²³ (...continued)

of 1971. *See generally* 43 U.S.C. §§ 1601-1629h. “Under that Act, the state was divided into 12 regions, and separate corporations were established for each region. By the division it was sought to establish homogeneous groupings of Native peoples having a common heritage and sharing common interests.” *Groh v. Egan*, 526 P.2d 863, 877 (Alaska 1974) (footnote omitted).

¹²⁴ *See, e.g., Motor Vehicle Mfrs. Ass’n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 51 (1983) (“It is true that a rulemaking ‘cannot be found wanting simply because the agency failed to include every alternative device and thought conceivable by the mind of man . . . regardless of how uncommon or unknown that alternative may have been’” (quoting *Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 551 (1978))).

inevitably happening after public hearings — the Board cannot be expected to reconsider every subsequently possible permutation in light of new boundaries. Finally, we note the zero-sum nature of redistricting: accepting Valdez’s proposed House district in turn would have affected House districts throughout interior Alaska; municipalities and voters in the affected areas likely would have raised the same arguments Valdez raises, suggesting that the Board was biased in favor of the Valdez area and that adopting Valdez’s proposed House district “locked in” unfavorable House districts in Alaska’s interior region.

Valdez’s fourth argument — that the Board improperly relied upon ANCSA boundaries for House District 36 — challenges the superior court’s assertion that “ANCSA regions are indicative of socio-economic integration and may be used to guide redistricting decisions, and they may even justify some degree of population deviation.” Valdez argues that because the “purpose of ANCSA was to form ‘homogeneous grouping’ of Alaska Natives in 1970,” ANCSA does not reflect the present-day Alaskan populations nor “the article VI, section 6 constitutional standards for contiguity, compactness, or socio-economic integration.” Valdez then points to various statistics tending to show that “ANCSA boundaries do not provide evidence of socio-economic integration among non-Native populations.” Finally, Valdez argues that, to the extent ANCSA boundaries are relevant to drawing districts, the relevance is limited only to justifying a population deviation greater than ten percent.

Valdez is correct that we previously have discussed using ANCSA boundaries in redistricting only as a justification for “a population deviation greater than 10 percent.”¹²⁵ But in the present case evidence about ANCSA boundaries was tied to socioeconomic integration. For example, there was testimony that Doyon region villages

¹²⁵ *Hickel*, 846 P.2d at 48; *see also Kenai Peninsula*, 743 P.2d at 1359 n.10.

likely to have been moved from District 36 to accommodate the Valdez area were “predominantly Alaska Native” and that the ANCSA boundary would be helpful to assess socioeconomic integration among the villages. Another witness explained how ANCSA boundaries can be significant for non-Native residents because they tend to delineate service areas for non-profit healthcare providers. And an expert witness analogously testified, when questioned about the boundary between Districts 36 and 39 coinciding with school district boundaries, that interactions between communities related to school functions could be a further indicia of socioeconomic integration within District 36. Finally, as discussed in more detail below, we agree with the 2001 redistricting superior court’s reasoning affording more flexibility for rural communities when discussing socioeconomic integration.¹²⁶

For the foregoing reasons, we affirm the superior court’s ruling that the Board gave a constitutionally sufficient hard look at where to place the Valdez area.

B. Mat-Su’s And Valdez’s Substantive Constitutional Challenges

1. Aside from the “Cantwell Appendage,” Mat-Su’s and Valdez’s article IV, section 6 arguments fail.

Mat-Su and Valdez contend the superior court erred by concluding that House Districts 29 and 36 are constitutional under article VI, section 6.¹²⁷ They assert that the districts are not compact and are not socioeconomically integrated. Mat-Su

¹²⁶ See *In re 2001 Redistricting Cases*, No. 3AN-01-8914 CI, 61 (Alaska Super., Feb. 1, 2002) (explaining that rural communities are not necessarily “interconnected by road systems” or “integrated as a result of repeated and systematic face to face interaction” but may be “linked by common culture, values, and needs”).

¹²⁷ House District 29 contains portions of the Mat-Su Borough, including parts of Palmer and Wasilla, as well as the Valdez area. House District 36 is quite large; it includes Holy Cross and Huslia in the western portion, stretches east to the Canadian border, has Fairbanks’s Goldstream Valley, and has an appendage cutting into the Denali Borough and the Mat-Su Borough to reach Cantwell. See Appendix A.

additionally asserts that the Board did not create districts “as near as practicable” to the population quotient because the Mat-Su districts as a whole are overpopulated compared to other districts.¹²⁸ We address each argument in turn.

a. Compactness

i. House District 29

Mat-Su takes issue with House District 29 extending to the Valdez area without containing Richardson Highway communities on the road between the Valdez area and the Mat-Su Borough. Mat-Su asserts that the “cutout of the road system makes the shape of the district less compact and orphans [the Valdez area] from its transportation link to the [Mat-Su Borough] and the communities in its immediate area that it associates with regularly.”

We have instructed that “ ‘corridors’ of land that extend to include a populated area, but not the less-populated land around it, may run afoul of the compactness requirement.”¹²⁹ House District 29 does not contain the Richardson Highway communities along the road to the Valdez area, but it contains the “less-populated land” around Valdez. Mat-Su cites no relevant authority for its proposition that inability to travel by road between communities in a House district without leaving the district renders it non-compact. Indeed, it would be unworkable in rural Alaska to impose a requirement of being able to travel by road between any two points in a district without crossing district borders.¹³⁰ The superior court did not err by determining that

¹²⁸ Alaska Const. art. VI, § 6 (requiring house districts to “contain a population as near as practicable to the quotient obtained by dividing the population of the state by forty”).

¹²⁹ *Hickel*, 846 P.2d at 45-46.

¹³⁰ *See, e.g., In re 2001 Redistricting Cases (2001 Redistricting II)*, 47 P.3d (continued...)

“[House] District 29’s shape is the natural result of Alaska’s landscape and irregular features” and that it is compact.

ii. House District 36

House District 36 is a large, horseshoe-shaped district composed of portions of three different boroughs and encompassing 35% of Alaska’s land. An “appendage” of House District 36 reaches between House Districts 29 and 30 to include Cantwell, but not the surrounding land or communities.¹³¹ Cantwell otherwise likely would have been placed with the rest of the Denali Borough in House District 30. As a Denali Borough community, Cantwell would have been sufficiently socioeconomically integrated with the rest of the Denali Borough within House District 30 as a matter of law.¹³²

¹³⁰ (...continued)
1089, 1092 (Alaska 2002) (“[N]either size nor lack of direct road access makes a district unconstitutionally non-compact . . .”). On the other hand, in areas dependent on road transportation direct road access is a feature of communities of interest and socioeconomic integration.

¹³¹ Valdez argues that House District 36 also contains an inappropriate appendage “carv[ing] out Glennallen and neighboring population along the Glenn Highway.” This argument fails; District 36 contains several communities along the Richardson and Glenn Highways near Glennallen but does not appear to carve out a bizarre appendage or corridor. *See Hickel*, 846 P.2d at 45-46 (“ ‘[C]orridors’ of land that extend to include a populated area, but not the less-populated land around it, may run afoul of the compactness requirement. Likewise, appendages attached to otherwise compact areas may violate the requirement of compact districting.”).

¹³² *2001 Redistricting I*, 44 P.3d 141, 146 (Alaska 2002) (referring to Anchorage, a consolidated city and borough, as “by definition socio-economically integrated”); *Hickel*, 846 P.2d at 51 (“By statute, a borough must have a population which ‘is interrelated and integrated as to its social, cultural, and economic activities.’ ” (quoting AS 29.05.031)); *cf. id.* at 51 n.20 (stating that splitting “a borough which otherwise [could] support an election district will be an indication of gerrymandering for not preserving the government boundaries”).

The superior court acknowledged that the Cantwell appendage makes House District 36 less compact; the court then examined whether House District 36 is socioeconomically integrated and adopted the Board’s argument that including “Cantwell [was] justified because Cantwell is socio-economically integrated with the Ahtna region (the rest of which was placed with District 36).” This analysis runs afoul of our *Hickel* guidance: “The requirements of article VI, section 6 shall receive priority *inter se* in the following order: (1) contiguousness and compactness, (2) relative socioeconomic integration, (3) consideration of local government boundaries, (4) use of drainage and other geographic features in describing boundaries.”¹³³ Both the Board and the superior court appear to have prioritized more socioeconomic integration over compactness.

The Board recognized that adding Cantwell to House District 36 created potential compactness problems. One Board member asked the Board’s attorney:

[W]e have noted the socioeconomic reasons for taking Cantwell out. Obviously it is not a compact change, right, so do you have any concerns about the compactness, or do you believe that in this instance, for socioeconomic reasons that we took Cantwell out of the [Denali] borough probably are sufficient to overcome the . . . loss of compactness with that removal?

The attorney agreed that adding Cantwell rendered House District 36 less compact, advising that whether it made sense was “a coin toss” and that the Board was “balancing constitutional concerns.”

When a more compact district would be sufficiently socioeconomically integrated, the Board may not sacrifice compactness in favor of greater socioeconomic

¹³³ *Hickel*, 846 P.2d at 62; *cf. id.* at 45 n.10 (providing socioeconomic integration may be diminished only to maximize contiguity and compactness).

integration.¹³⁴ We therefore hold that the Cantwell appendage to House District 36 was unconstitutionally drawn.

b. Socioeconomic integration

i. House District 29

Valdez and Mat-Su first argue that the superior court misapplied precedent by assuming that if the Valdez area and the Mat-Su Borough independently were socioeconomically integrated with Anchorage, then they also must be socioeconomically integrated with each other. The court was “greatly influenced” by its interpretation of *Kenai Peninsula*,¹³⁵ relying heavily on a “regional integration” concept to determine that the Valdez area and the Mat-Su Borough are socioeconomically integrated. The court said its conclusion that House District 29 is socioeconomically integrated may have been different had it not interpreted *Kenai Peninsula* to hold that “regional integration” is sufficient to achieve socioeconomic integration. Valdez further contends the court misconstrued precedent by assuming that the Mat-Su Borough and the Valdez area each are socioeconomically integrated with Anchorage. Because the court’s interpretation of *Kenai Peninsula* was erroneous, we do not need to reach whether the two areas each are socioeconomically integrated with Anchorage.

In *Kenai Peninsula* we considered whether a House district containing North Kenai and South Anchorage was socioeconomically integrated.¹³⁶ We saw minimal interaction; we said: “[T]o the extent that they interact at all, they do so as a

¹³⁴ *Id.* at 62 (prioritizing article VI, section 6 requirements as follows: “(1) contiguousness and compactness, (2) relative socioeconomic integration”).

¹³⁵ 743 P.2d 1352 (Alaska 1987).

¹³⁶ *Id.* at 1361-62.

consequence of the nexus between Kenai and Anchorage.”¹³⁷ We framed the issue as “whether interaction between the communities comprising [the challenged district] and communities outside the district but within a common region sufficiently demonstrates the requisite interconnectedness and interaction mandated by article VI, section 6.”¹³⁸ We considered that North Kenai and South Anchorage are geographically close, that they are connected by highways and daily airline flights, and that both are “linked to the hub of Anchorage”; we also noted that the North Kenai and South Anchorage areas were linked economically and socially.¹³⁹ Determining that the challenge “[drew] too fine a distinction between the interaction of North Kenai with Anchorage and that of North Kenai with South Anchorage,” we held that “any distinctions between Anchorage and South Anchorage [were] too insignificant to constitute a basis for invalidating the state’s plan.”¹⁴⁰

Analogizing North Kenai and South Anchorage to the Valdez area and the Mat-Su Borough, the superior court concluded they were “relatively socio-economically

¹³⁷ *Id.* at 1362.

¹³⁸ *Id.* at 1363.

¹³⁹ *Id.* at 1362-63.

¹⁴⁰ *Id.* at 1363 & n.17. We since have cited *Kenai Peninsula* for the following:

In areas where a common region is divided into several districts, significant socio-economic integration between communities within a district outside the region and the region in general “demonstrates the requisite interconnectedness and interaction,” even though there may be little actual interaction between the areas joined in a district.

Hickel v. Se. Conf., 846 P.2d 38, 46 (Alaska 1992).

integrated . . . because both communities are socio-economically integrated with Anchorage.” But this conclusion takes *Kenai Peninsula* too far. Even if both the Valdez area and the Mat-Su Borough were socioeconomically integrated with Anchorage, it does not necessarily follow that they are socioeconomically integrated with each other. North Kenai was socioeconomically integrated with South Anchorage primarily because evidence supported a conclusion that North Kenai was socioeconomically integrated with Anchorage as a whole.¹⁴¹ South Anchorage and Anchorage were not merely socioeconomically integrated, they were indistinguishable for the constitutional analysis.¹⁴² The same cannot be said of the Mat-Su Borough or the Valdez area; each community is entirely separate from, rather than a neighborhood or region within, Anchorage.

Mat-Su and Valdez next contend that the superior court erred when it determined House District 29 was socioeconomically integrated partly because it was drawn similarly in the 2002 and 2013 redistricting proclamations. We previously have noted that the requirement for House districts to be “relatively” integrated “means that we compare proposed districts to other previously existing and proposed districts as well as principal alternative districts to determine if socio-economic links are sufficient.”¹⁴³ With this principle in mind, the superior court compared House District 29 in the 2021 Proclamation with House District 9 from the 2010 redistricting cycle and House District 12 from the 2000 redistricting cycle. The court noted substantial similarities between the earlier House districts, including that they both paired portions of the Mat-Su Borough with the Valdez area. The court reasoned that prior redistricting pairings were evidence

¹⁴¹ See *Kenai Peninsula*, 743 P.2d at 1362-63.

¹⁴² See *id.* at 1363 & n.17.

¹⁴³ *Hickel*, 846 P.2d at 47.

that the Mat-Su Borough and the Valdez area are “relatively integrated.”¹⁴⁴

Mat-Su and Valdez disagree. Valdez contends that the crucial difference from the historic districts is House District 29 does not contain the Richardson Highway communities that rendered the prior districts socioeconomically integrated. But, as we discuss below, in addition to considering the historical districts, the superior court generally found evidence of sufficient interactions between the Valdez area and the Mat-Su Borough to render House District 29 socioeconomically integrated. The Valdez area’s greater socioeconomic integration with certain Richardson Highway communities does not preclude a finding that the Valdez area is also socioeconomically integrated with the Mat-Su Borough.

The superior court’s factual inquiry into interactions between the Valdez area and the Mat-Su Borough found “evidence of at least minimal socio-economic links”:

These include geographic proximity and connection via the road system, shared interests in the outdoor recreation industry, and common hunting and fishing areas in the region around Lake Louise, Klutina Lake, and Eureka. They also have at least some shared ties to the oil industry. The nearest hospital to Valdez, at least by road, is located in the Mat-Su Borough. Similarly, the nearest car dealerships[] and large box stores are located in the Mat-Su. Valdez and Mat-Su also share an interest in maintenance and development of the state highway system

The communities in District 29 are served by school

¹⁴⁴ Using prior redistricting maps to support or oppose current redistricting options has limitations. Redistricting occurs every decade, and in the intervening years community population and socioeconomic integration may wax and wane. As we discuss below in connection with the second round of the 2021 redistricting cycle litigation, the nature of legal challenges, if any, raised and resolved in prior redistricting cycles also are important. For example, a prior House or Senate district that never was challenged is not dispositive evidence of constitutional compliance.

districts that are a part of home rule or first-class municipalities or boroughs, meaning their funding is obtained in part from a local tax base, and these home rule communities also have a shared interest in debt reimbursement from the legislature. Similarly, Valdez school sports teams compete against sports teams in the Mat-Su Borough. (Footnotes omitted.)

Mat-Su and Valdez do not challenge these findings, instead asserting that these interactions are insufficient to satisfy article VI, section 6's socioeconomic integration requirement because the Board failed to engage in reasoned decision-making and did not maximize socioeconomic integration. But, as the superior court correctly pointed out, we have not required that the Board maximize socioeconomic integration in every House district nor have we held that there is a right to be paired with other most closely integrated communities.¹⁴⁵ The interactions the court identified align with the types of interactions previously identified as evidencing socioeconomic integration. In particular, the shared recreation and fishing sites, transportation networks, economic links, interests in the state highway system's development, and competition between sports teams all are considerations similar to those previously recognized as supporting finding socioeconomic integration.¹⁴⁶ Although the court placed too much emphasis on both communities' connections with Anchorage, we affirm the court's determination that House District 29 is sufficiently socioeconomically integrated to satisfy article VI, section 6.

¹⁴⁵ Mat-Su concedes this point in its petition: “[T]here is nothing in case law that provides for a right to be placed together with other socioeconomic areas, even areas in which a location may be *more* socioeconomically integrated, so long as the other area the location is placed with is also socioeconomically integrated.” (Emphasis in original.)

¹⁴⁶ See *Kenai Peninsula*, 743 P.2d at 1362-63; see also *Hickel*, 846 P.2d at 46-47.

ii. House District 36

Valdez's sole contention is that there is insufficient evidence of interaction and interconnectedness between communities within this extremely large House district. This argument failed before the superior court and fails with us as well.

During the 2001 redistricting cycle a superior court facing a similar argument commented on the practicalities of socioeconomic integration in rural Alaska:

Often the communities within such large districts are geographically isolated and small in population. They are not interconnected by road systems or by other convenient means of transportation. Such communities are not integrated as a result of repeated and systematic face to face interaction. Rather they are linked by common culture, values, and needs. The constitutional requirement of socio-economic integration does not depend on repeated and systematic interaction among each and every community within a district. Rather, the requirement in Article VI, Section 6 of the Alaska Constitution may, by its very terms, be satisfied if the "area" comprising the district is relatively socio-economically integrated without regard to whether each community within the "area" directly and repeatedly interacts with every other community in the area.^[147]

This understanding of socioeconomic integration in rural House districts provides needed flexibility for pairing rural communities that cannot have the extensive interconnectedness and interaction of urban communities. For example, isolated rural communities off the road system may be interconnected through their use of and dependence on the same rivers for travel and fishing and the same migratory animals for

¹⁴⁷ *In re 2001 Redistricting Cases*, No. 3AN-01-8914 CI, 61 (Alaska Super., Feb. 1, 2002).

subsistence. Although we have noted that mere homogeneity generally is insufficient,¹⁴⁸ socioeconomic integration in this rural Alaska context can be supported by evidence of interdependence and related “common culture, values, and needs” rather than requiring interactions between all communities.¹⁴⁹

The superior court noted that House “District 36 generally (though not perfectly) encompasses the Doyon and Ahtna ANCSA regions.” The court cited trial evidence that the region’s people share socioeconomic similarities, as “they engage in subsistence, access similar types of healthcare, face similar challenges with regard to access to utilities, and have similar concerns with regard to the quality of rural schools.” There also was trial testimony that Doyon and Ahtna have primarily Athabascan shareholders sharing “common language and culture.”

We affirm the superior court’s determination that House District 36 is sufficiently socioeconomically integrated to satisfy article VI, section 6.

c. “As near as practicable” to the population quotient

Mat-Su contends that the Board violated article VI, section 6’s requirement that each House district “contain a population as near as practicable to the quotient obtained by dividing the population of the state by forty.”¹⁵⁰ Mat-Su argues that House Districts 25-30, containing the Mat-Su Borough, are unconstitutionally overpopulated. It is true that House Districts 25-30 each are overpopulated and that House Districts 25-29 each are overpopulated by about 2.5%.

¹⁴⁸ *Hickel*, 846 P.2d at 46.

¹⁴⁹ *In re 2001 Redistricting Cases*, No. 3AN-01-8914 CI, at 61 (Alaska Super., Feb. 1, 2002); *see also Kenai Peninsula*, 743 P.2d at 1363 (discussing socioeconomic integration requirements in context of what is “reasonable and not arbitrary”).

¹⁵⁰ Alaska Const. art. VI, § 6.

Before the 1999 constitutional amendments, maximum deviations below ten percent were insufficient, without more, to make out a prima facie case that a plan or part thereof was unconstitutional.¹⁵¹ The section as amended now requires “equality of population ‘as near as practicable’ ”;¹⁵² we have noted that modern technology “will often make it practicable to achieve deviations substantially below the ten percent federal threshold, particularly in urban areas.”¹⁵³ But Mat-Su seems to misunderstand our *2001 Redistricting I* analysis.

We concluded in that case that the Board had failed to draw Anchorage House districts containing as near as practicable the population quotient when the districts had maximum population deviations of 9.5%.¹⁵⁴ The Board had made a mistaken assumption that deviations within 10% automatically satisfied the constitutional requirement and accordingly had failed to attempt to further minimize the population deviations.¹⁵⁵ We explained that, because the Board had made no effort to further reduce population deviations, “the burden shifted to the [B]oard to demonstrate that further minimizing the deviations would have been impracticable in light of competing

¹⁵¹ *2001 Redistricting I*, 44 P.3d 141, 145 (Alaska 2002); see *White v. Regester*, 412 U.S. 755, 764 (1973) (instructing that districts differing from one another by more than 9.9% likely “would not be tolerable without justification ‘based on legitimate considerations incident to the effectuation of a rational state policy’ ” (quoting *Reynolds v. Sims*, 377 U.S. 533, 579 (1964))).

¹⁵² *2001 Redistricting I*, 44 P.3d at 145-46.

¹⁵³ *Id.* at 146.

¹⁵⁴ *Id.* at 145-46.

¹⁵⁵ *Id.* at 146.

requirements imposed under either federal or state law.”¹⁵⁶

Mat-Su interprets that decision as requiring the Board to “justify any failure to reduce population deviance across districts” and asserts that the Board failed to meet this burden. But that is not what *2001 Redistricting I* requires, and Mat-Su points to nothing in the record indicating the Board failed to make efforts to reduce population deviations in the Mat-Su Borough. We agree with the superior court that the Board was not required to further justify the noted de minimis deviations.

2. Mat-Su’s equal protection challenge fails.

a. One person, one vote

Mat-Su argues that the House districts’ over-populations also violate the constitutional “one person, one vote” requirement. Equal protection requires the State to “make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable.”¹⁵⁷ “[T]he overriding objective must be substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the state.”¹⁵⁸ We have noted that “minor deviations from mathematical equality . . . are insufficient to make out a prima facie case of invidious discrimination.”¹⁵⁹ As Mat-Su correctly recognizes, article VI, section 6’s population equality and one person, one vote requirements are “by and large synonymous.” For the same reason we affirmed the

¹⁵⁶ *Id.*

¹⁵⁷ *Hickel v. Se. Conf.*, 846 P.2d 38, 47 (Alaska 1992) (quoting *Reynolds v. Sims*, 377 U.S. 533, 577 (1964)).

¹⁵⁸ *Id.* (quoting *Reynolds*, 377 U.S. at 579).

¹⁵⁹ *Id.* at 47-48 (quoting *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1366 (Alaska 1987)).

superior court’s decision on Mat-Su’s challenge to article VI, section 6’s population quotient requirement, we affirm the court’s decision that House Districts 25-30 satisfy the “one person, one vote” requirement under an equal protection analysis.

b. Fair and effective representation

Mat-Su also argues that the Mat-Su Borough and its citizens are denied fair and effective representation in violation of equal protection. Mat-Su argues that the Board prioritized the Fairbanks and Anchorage areas over the Mat-Su Borough, evidencing discriminatory intent against the Mat-Su Borough.¹⁶⁰

The superior court found that the small over-populations in the Mat-Su Borough House districts resulted from bringing 4,000 Valdez area residents into House District 29. But, as we already have discussed, the evidence indicates the Board considered the available options and ultimately determined constitutional considerations were best served by placing the Valdez area with the Mat-Su Borough. We see no evidence that the Board’s decision was predicated on an illegitimate intent to favor the Fairbanks or Anchorage areas or that there are partisan overtones to the decision. As the Board persuasively points out, the Mat-Su Borough’s population equaled 5.84 House districts, the Board proposed a plan with 6 House districts in the area, and the Board’s final plan created 6 House districts over which Mat-Su Borough voters have control.

We are not persuaded that the Board acted with discriminatory intent such that the Mat-Su Borough and its voters were denied fair and effective representation in violation of equal protection.

¹⁶⁰ See *supra* pp. 14-17 (discussing equal protection analysis for fair representation claims). Mat-Su Borough does not engage in the traditional three-step analysis, focusing only on alleged discriminatory intent.

C. Skagway's Substantive Constitutional Challenges

Skagway contends that the superior court should have determined House Districts 3 and 4 violate article VI, section 6's socioeconomic integration requirement and that it should have considered Skagway's equal protection claim. House Districts 3 and 4 include the Juneau, Skagway, and Haines Boroughs, as well as other southeast Alaska communities.¹⁶¹ Skagway contended, and the superior court agreed, that a clear majority of people testifying about Skagway's placement preferred districting Skagway with downtown Juneau. The Board conceded in its petition to us that a "Board member noted that the weight of public testimony tipped in favor of keeping Skagway and downtown Juneau districted together," although that member ultimately did not vote for that option.

At trial Skagway argued that its separation from downtown Juneau, with which it has strong socioeconomic ties, violated article VI, section 6's socioeconomic integration requirement; that the Board violated Skagway's equal protection rights; and that the Board violated article VI, section 10's public hearings requirement and thus Skagway's due process rights. The superior court rejected Skagway's section 6 socioeconomic integration challenge, and, believing that it encompassed the fair representation argument as well, rejected it without a separate analysis. The court instead invalidated House Districts 3 and 4 under its blended "hard look" and due process analysis because the Board failed "to make a good-faith attempt to incorporate the public testimony of Alaska citizens," who favored keeping Skagway with downtown

¹⁶¹ The 2010 redistricting cycle had placed Skagway in a House district with downtown Juneau. In this cycle, the Board unanimously voted to place Skagway, fellow port towns Haines and Gustavus, and part of Juneau's Mendenhall neighborhood in House District 3; Mendenhall was split between House Districts 3 and 4. *See* Appendix A.

Juneau. Because we reverse the superior court’s “hard look” invalidation of House Districts 3 and 4, we address Skagway’s arguments.

1. Socioeconomic integration

Skagway argues that it is more socioeconomically integrated with downtown Juneau than any other part of the Juneau Borough, including the Mendenhall neighborhood. Skagway mistakenly asserts that socioeconomic integration must be maximized, but, as we have discussed earlier, article VI, section 6 calls for House districts “containing as nearly as practicable a relatively integrated socio-economic area”; this flexible language means that some degree of integration can be sacrificed to achieve greater contiguity and compactness.¹⁶² The Board correctly notes that House Districts 3 and 4 are more compact than the 2010 redistricting cycle’s districts, and Skagway does not meaningfully contest this point. And in line with our *Groh v. Egan* holding, trial evidence supports a conclusion that House District 3 is sufficiently socioeconomically integrated because the Skagway, Haines, and Juneau Boroughs share “close transportation ties,” “Juneau serv[es] as an economic hub for Haines and Skagway,” and the three communities historically “have always been closely linked.”¹⁶³ Skagway notes that *Groh* was decided before Juneau’s Mendenhall neighborhood was fully developed. But as we stated in *Hickel*: “In areas where a common region is divided into several districts, significant socio-economic integration between communities within a district

¹⁶² *Hickel*, 846 P.2d at 45 n.10. Skagway refers to *Hickel*’s Appendix E, the superior court’s explanation of its changes to the special masters’ interim redistricting plan. *Id.* at 63-96. In *Hickel* the superior court said it made changes “to establish contiguity, to maximize socio-economic integration, to avoid pitting incumbent minorities one against another, and to equalize population.” *Id.* at 73. As the Board points out, that superior court merely was explaining changes, not announcing a new rule of law.

¹⁶³ 526 P.2d 863, 879 (Alaska 1974).

outside the region and the region in general ‘demonstrates the requisite interconnectedness and interaction,’ even though there may be little actual interaction between the areas joined in a district.’¹⁶⁴ Juneau fits within this description.

Skagway also asserts that the Board’s map failed to keep the Mendenhall neighborhood intact, contending that the Board erred by ignoring neighborhood boundaries absent overriding constitutional considerations.¹⁶⁵ But Skagway tethers this contention only to the Constitution’s socioeconomic integration requirement. We fail to see how merely dividing the Mendenhall neighborhood into two different House district renders either district vulnerable to a challenge that it is not socioeconomically integrated.

We affirm the superior court’s holding that Districts 3 and 4 did not violate article VI, section 6’s socioeconomic integration requirement.

2. Fair representation and geographic discrimination

Skagway contends that placing its voters with the Mendenhall neighborhood dilutes Skagway’s votes, implicating equal protection. It faults the superior court for failing to address this issue even though Skagway briefed it at trial. But Skagway’s trial brief minimally addressed the fair and effective representation issue. After setting out a short rule statement, Skagway asserted, without pointing to any evidence or making any substantive argument, that the Board “ignore[d] political subdivision boundaries and communities of interest” when it “combin[ed] Skagway with

¹⁶⁴ 846 P.2d at 46 (quoting *Kenai Peninsula*, 743 P.2d at 1363). We note that this statement should not be expanded to mean that outside communities integrated with one part of a *borough* are always integrated with all parts of that borough.

¹⁶⁵ See *2001 Redistricting II*, 47 P.3d 1089, 1091 (Alaska 2002) (quoting approvingly superior court’s statement that maintaining neighborhood boundaries is an “admirable goal” but “not constitutionally required” and concluding districts that split Eagle River were not unconstitutional merely because they split neighborhoods).

dissimilar communities.” And contrary to Skagway’s argument to us, the superior court *did* address Skagway’s equal protection claim, saying that it was the same as Skagway’s socioeconomic integration claim and thus did “not merit being addressed twice.”

Skagway’s petition for review does little to bolster its contention. Skagway asserts that its 4,000 voters will be drowned out by Mendenhall’s 14,000 voters. Skagway also emphasizes advisory votes taken in 2000 and 2004 when Skagway and downtown Juneau voters supported increasing access to Juneau by expanding the ferry system, but Mendenhall voters seemed more supportive of a proposed road. But, like Mat-Su, Skagway fails to engage in the traditional three-step equal protection analysis for fair representation claims. Aside from noting that Member Simpson apparently favored the road, Skagway points to no evidence of discriminatory intent, such as secretive procedures, ignoring political subdivisions and communities of interest, or regional partisanship affecting House Districts 3 and 4.

Alaska’s equal protection clause would be far too restrictive if a community’s fair representation claim could be based on nothing more than a disagreement with other communities in its House district about a single public policy issue. Nor does Skagway’s relatively small population compared to Mendenhall’s create an equal protection claim. The ideal population for a House district is roughly 18,000 voters; Skagway’s 4,000 voters will be overwhelmed by non-Skagway voters in any district, such as, for example, inclusion with downtown Juneau. We see no equal protection violation regarding Skagway and House Districts 3 and 4.¹⁶⁶

¹⁶⁶ During the Constitutional Convention the redistricting goal was expressed as achieving “adequate and true representation by the people in their elected legislature, true, just, and fair representation.” *See* 3 PACC 1835 (Jan. 11, 1956) (statement of Del. John S. Hellenthal). In the second round of 2021 redistricting litigation, discussed later in this decision, evidence included an email from Member Simpson clearly expressing
(continued...)

D. The Board’s East Anchorage Ruling Challenges

The superior court considered East Anchorage’s challenges to the South Muldoon (House District 21) and Eagle River (House District 22) Senate District K pairing based on article VI, sections 6 and 10 and Alaska’s equal protection and due process clauses. The court held that the Senate district did not violate section 6 but that it violated section 10, due process rights, and the equal protection clause. The Board challenges nearly every aspect of the court’s findings and conclusions on this matter, ranging from pure questions of law to fact-intensive inquiries. The Board also raises two general evidentiary issues which we discuss here because they effectively are relevant only to our East Anchorage discussion.

1. The Board’s evidentiary issues

a. The superior court did not abuse its discretion when it denied the Board’s requests to compel discovery.¹⁶⁷

Many individual plaintiffs objected to the Board’s discovery requests. The relevant requests sought production of all communications: (1) “[y]ou have sent to or

¹⁶⁶ (...continued)

an approach to redistricting that involved ensuring more safe Republican seats and keeping Democrats at bay. A portion of the email — expressing Member Simpson’s approval that our March order reversing the superior court’s remand of House Districts 3 and 4 will leave “Skagway . . . stuck with that arrangement for the next 10 years, at least” — may suggest some kind of geographic or political bias played a role. But we see nothing in Skagway’s petition for review suggesting that political advantage played a role in House Districts 3 and 4, and this email was not part of that record. Without more information — perhaps unavailable due to the Board’s improper use of executive sessions — we do not further pursue the issue.

¹⁶⁷ “We generally review a trial court’s discovery rulings for abuse of discretion.” *Marron v. Stromstad*, 123 P.3d 992, 998 (Alaska 2005). Whether the superior court “weighed the appropriate factors in issuing a discovery order” is a matter we review de novo. *Id.*

received from anyone . . . that relate in any way to the 2021 redistricting process”; (2) “[y]ou have sent or received that relate in any way to [y]our participation in this lawsuit”; and (3) “between or among the [p]laintiffs that relate in any way to the 2021 redistricting process or the subject-matter of their lawsuit.” Without first attempting to confer with the plaintiffs the Board sought to compel discovery; the superior court characterized the Board’s argument as “the communications [were] relevant to show bias and motive for impeachment purposes.”

The superior court denied the Board’s request to compel discovery, ruling that the Board’s production requests would elicit information only tangentially relevant to the proceedings and that the benefit of the information did not outweigh the burdens of production. The court recognized that “Alaska provides for liberal civil discovery”¹⁶⁸ and that “ ‘evidence of bias is relevant and probative’^[169] in most instances.” But the court relied on limiting factors from Alaska Civil Rule 26(b)(2)(A)¹⁷⁰ and an additional instruction under Alaska Civil Rule 90.8(d) that “[t]he record in the superior court proceeding consists of the record from the [Board] . . . as supplemented by such

¹⁶⁸ *State v. Doe*, 378 P.3d 704, 706 (Alaska 2016).

¹⁶⁹ *Ray v. Draeger*, 353 P.3d 806, 811 (Alaska 2015).

¹⁷⁰ The relevant Rule 26(b)(2)(A) factors counseling denial of the Board’s request were:

The discovery sought . . . [was] obtainable from some other source that [was] more convenient, less burdensome, or less expensive; . . . [and] the burden or expense of the proposed discovery outweigh[ed] its likely benefit, taking into account the needs of the case, the amount in controversy, the parties’ resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.

additional evidence as the court, in its discretion, may permit.” The court reasoned that the requests were overly broad and burdensome; that the information was obtainable (or already available) through other avenues, such as deposition or cross-examination; and that the requests had limited relevance due to the scope of the proceedings. The court also noted that the Board had not filed a certification of good faith attempts to confer as required by Rule 37(a)(2)(B) and that the Board justified this omission based only on the expedited nature of the proceedings without citing authority.

The Board suggests that the superior court unfairly discussed the Board’s political leanings without allowing “the Board to discover and present evidence of the political affiliation and biases of the plaintiffs to the redistricting matters.” These arguments notwithstanding, the Board fails to request any specific relief from us related to the court’s alleged discovery error; the Board certainly does not suggest that the court’s decision on the merits of the Board’s redistricting efforts should be reversed due to the alleged error. Although evidence of party or witness bias typically is relevant and probative, the Board fails to persuade us that the superior court acted unreasonably by not compelling the disputed production. We find it particularly notable that the Board has not explained how further knowledge of any plan challenger’s political motivations would have meaningfully benefitted the Board’s trial position that its final redistricting plan satisfied the Alaska Constitution’s requirements and did not involve partisan gerrymandering. The court did not abuse its discretion by denying the Board’s request to compel production.

b. The superior court did not abuse its discretion when it adopted streamlined proceedings regarding witness testimony at trial.¹⁷¹

Because this was an expedited case with a short time for trial, the superior court relied on Board members' depositions submitted by the plaintiffs and allowed the parties to pre-file direct testimony rather than giving live direct testimony. Although the court had allowed for live re-direct examination of witnesses who were cross-examined by other parties, East Anchorage did not cross-examine Board members. The court denied the Board's subsequent request to engage in re-direct examination of its members. The court indicated that the Board could instead submit supplemental Board member affidavits. The Board did not do so. But the Board now complains about the court not allowing live re-direct examination of the Board members, contending that the court's "heavy reliance" on depositions in its analysis of the Board's "secretive process" involving the Senate district pairings prejudiced the Board by denying it "the opportunity to explain its decisions."¹⁷²

The Board cites case law supporting the general proposition that a civil

¹⁷¹ "We exercise our independent judgment when interpreting Alaska's civil rules, but [we] review a superior court's procedural decisions for abuse of discretion." *Werba v. Ass'n of Vill. Council Presidents*, 480 P.3d 1200, 1204 (Alaska 2021) (alteration in original) (quoting *Rockstad v. Erikson*, 113 P.3d 1215, 1219-20 (Alaska 2005)).

¹⁷² We find it difficult to give serious consideration to the Board's contention that it has been denied the opportunity to explain its Senate District K pairing decision. Had the Board conducted redistricting business in open sessions, the public could have had a real-time understanding of the Board members' positions and reasoning. And Board members surely could have explained their decisions when they gave sworn depositions, pre-filed affidavit testimony, or were given the chance to file later supplemental affidavit testimony.

litigant has the right to confront adverse witnesses.¹⁷³ But we struggle to comprehend how the right to confront witnesses *against* the Board gives rise to a right to confront the Board members' own pre-filed depositions and affidavits. The depositions and affidavits gave the Board members a full and unfettered opportunity to justify and explain their decision and actions regarding Senate District K. And the Board chose not to submit supplemental affidavits despite being given the opportunity to do so. We see no error on this point.

The Board also contends that Alaska Civil Rule 46(b) dictates the order of evidence presented at trial and argues that the superior court should have allowed the Board "to put on its case." But that Rule instructs that the order of evidence is left to the court's "sound discretion."¹⁷⁴ The court did not abuse its discretion in the way it permitted witness testimony, especially in light of the abridged timeline for the proceedings, and any possible error would have been rendered harmless had the Board accepted the court's invitation to file supplemental affidavits. Indeed, we commend the superior court's tremendous efforts expediting the trial and its final decision in this challenging litigation.

2. The Board's article VI, section 10 arguments

We now review the superior court's application of article VI, section 10's public hearings requirement.¹⁷⁵

¹⁷³ See *Thorne v. Dep't of Pub. Safety*, 774 P.2d 1326, 1332 & n.14 (Alaska 1989) (holding "right to confront and cross-examine witnesses is one right, founded upon due process and fundamental fairness, which civil defendants do enjoy").

¹⁷⁴ Alaska R. Civ. P. 46(b).

¹⁷⁵ We do not reach the superior court's blended "hard look" and due process analysis regarding Senate District K because we affirm its remand to the Board on
(continued...)

a. Superior court’s article VI, section 10 ruling

The superior court concluded that the Board’s Senate district pairings violated article VI, section 10 in two ways. The first violation related to article VI, section 10’s requirement that the Board adopt one or more “proposed redistricting plans” within the first 30 days of its tenure; the court interpreted this as meaning that the Board must adopt a draft of both the House districts and Senate district pairings within the first 30 days. The court concluded that the Board violated section 10 by not adopting a Senate plan within the first 30 days. The court also expressed skepticism that “third-party plans” with Senate district pairings were adequate because they were not “proposed” by the Board.

The second violation was based on section 10’s public hearings requirement; the superior court considered this issue intertwined with procedural due process. The court found: “[T]here was no opportunity for the public to comment on the Senate pairings that were actually proposed by the members of the Board.” The court noted that the Board had taken third-party maps with Senate district pairings on its statewide public hearings road show but that the Board did not “hold public hearings on Senate pairings it actually proposed on the final [H]ouse map.” The court also found that the Board did not “make good-faith attempts to incorporate public testimony into the Board’s final plan,” observing that “the vast majority of both East Anchorage and Eagle River residents were strongly against splitting either region and combining one with the other.” The court concluded that by failing “to take an appropriate ‘hard look’ at the Senate pairings,” the Board had violated East Anchorage Plaintiffs’s constitutional rights under article VI, section 10.

¹⁷⁵ (...continued)
unconstitutional political gerrymander grounds.

b. Article VI, section 10’s 30-day deadline and the meaning of “proposed redistricting plan”

The Board does not meaningfully contest the superior court’s interpretation of “proposed redistricting plan” to include a House district map with Senate district pairings, pointing only to evidence suggesting that past Boards waited until late in the process to make Senate pairings. The Board asserts that adopting third-party Senate plans for its public road show nine days late, even if unconstitutional, was “harmless” and did not prevent the public from offering meaningful feedback on the Senate district plans. East Anchorage acknowledges that third-party maps included Senate district pairings, arguing generally that the Board “failed to hold any hearings regarding any specified [S]enate pairings proposal, and actively shut down discussion and testimony at its public meetings before November 8.” East Anchorage cites citizens’ testimony from October 4 and 30 requesting that the Board release Senate pairings for comment.

We agree with the superior court’s thorough analysis of the question, and we hold that article VI, section 10 calls for one or more “proposed redistricting plans” — including both House and Senate districts — within the first 30 days. It is difficult to see how section 10’s drafters could have envisioned a timeline allowing the Board to promulgate only a House district map within the first 30 days and then wait until the very end of the 90-day redistricting period to propose Senate districts: Senate district pairings then conceivably could escape scrutiny at public hearings. But we disagree with the superior court that the Senate district maps drawn by third parties, adopted by the Board and taken on the road show, are categorically inadequate for section 10 purposes. Third-party participation and input should be welcome, and section 10 states that the Board need only “adopt” a proposed redistricting plan, not that it need propose the adopted plan. The Board “adopted” third-party plans with Senate district pairings to take on its

road show, albeit over a week late.¹⁷⁶

We therefore agree with the Board that its failure to adopt a Senate district plan within 30 days was harmless error. Despite the roughly one-week delay in initially adopting a proposed plan that included Senate districts, the public had an opportunity to comment on potential Senate district pairings throughout the Board’s public road show and toward the end of the 90-day period when the Board was focused on making the Senate pairings. Had the Board actually refused to adopt and present any Senate district plans until later in the process, we might draw a different conclusion.

c. Article VI, section 10’s public hearings requirement and procedural due process

i. Hearings

The superior court concluded that article VI, section 10 requires “public hearings . . . on all plans proposed by the Board.” (Alteration in original.) That provision states:

Within thirty days after the official reporting of the decennial census of the United States or thirty days after being duly appointed, whichever occurs last, the board shall adopt one or more proposed redistricting plans. *The board shall hold public hearings on the proposed plan, or, if no single proposed plan is agreed on, on all plans proposed by the board.*^[177]

¹⁷⁶ Adopting proposed plans for public comment is designed to focus public attention and testimony on the Board’s proposals. That purpose is not well-served by indiscriminately adopting third-party plans with no suggestion of tentative Board approval, and even less so by Senate districts proposed in the third-party plans based on House districts substantially different from those the Board tentatively endorsed. In this case the Board may not have complied with the spirit of article VI, § 10, but the Board’s actions were minimally compliant with its literal requirements.

¹⁷⁷ Alaska Constitution, art. VI, § 10 (emphasis added).

The superior court’s interpretation appears to be taken out of context. The most natural reading is that public hearings are required on one or more plans adopted within the 30-day window. We have interpreted, but not previously held, that section 10 requires hearings only on plans proposed or adopted within the first 30 days:

Under article VI, section 10 of the Alaska Constitution, the Alaska Redistricting Board (the Board) must adopt one or more proposed redistricting plans within 30 days after receiving official census data from the federal government. *The Board must then hold public hearings on the proposed plans and adopt a final plan within 90 days of the census reporting.*^[178]

The emphasized text can be read to mean that, if the Board cannot agree on one plan within 30 days, *all* plans, regardless of when they are proposed, are subject to the public hearings requirement. This highly semantic reading seems unnatural; we instead hold that section 10 requires hearings on plans adopted within the first 30 days.

ii. Procedural due process

Procedural due process under article I, section 7 — prohibiting the deprivation of life, liberty, or property without due process of law — requires, at a minimum, appropriate “notice and an opportunity to be heard” given the context.¹⁷⁹ The superior court did not tether its limited procedural due process analysis to a specific right to which procedural due process might apply, and the parties did not grapple with this threshold issue in their petitions for review. And we found no arguments in the parties’ petitions for review about how procedural due process requirements actually play a role in this context. Much like the superior court’s substantive due process analogy in its

¹⁷⁸ *2011 Redistricting III*, 294 P.3d 1032, 1033 (Alaska 2012) (emphasis added).

¹⁷⁹ *Hagblom v. City of Dillingham*, 191 P.3d 991, 995 (Alaska 2008).

“hard look” analysis, there is less here than meets the eye.¹⁸⁰

To the extent the superior court considered that East Anchorage’s due process rights were violated, we note the following. At least one proposed third-party redistricting map presented on the road show districted part of the Eagle River area with part of the Muldoon area. Given the volume of comments throughout the 90-day process about the Muldoon and Eagle River areas and their possible pairing, it would be difficult to conclude that there was no notice or meaningful opportunity to comment. Amici curiae Alaska Black Caucus’s own compilation of public comments amply demonstrates this. And the Board’s proposed plan was not a surprise; the Board did exactly what East Anchorage feared and testified against. East Anchorage thus had a chance to adequately comment on the Board’s plans.

3. The Board’s equal protection arguments¹⁸¹

The superior court considered whether the Board created the two Eagle River area Senate Districts, K and L, with an illegitimate purpose. The court analyzed “whether there were secret procedures in the contemplation and adoption of these senate districts, whether there is evidence of partisanship, and whether the adopted senate boundaries selectively ignore political subdivisions and communities of interest.”¹⁸²

The superior court found “evidence of secretive procedures . . . in the Board’s consideration and deliberation” of the Senate districts’ pairings. The court pointed to “overwhelming public testimony against splitting and combining Eagle River”

¹⁸⁰ See *supra* note 116 and related text.

¹⁸¹ See *supra* pp. 14-17 (discussing analytical framework for equal protection claim).

¹⁸² See *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1372 (Alaska 1987) (establishing neutral factors test).

with the East Anchorage South Muldoon community that seemed to have been ignored by the three Board members who voted in favor of the Senate district pairings. Noting that immediately following an executive session one Board member moved to accept the Senate district pairings, the court reasoned that this “evidences not only secretive procedures, but suggests that certain Board members came to some kind of consensus either during executive session, or altogether outside of the meeting processes.” The court discussed statements by the two Board members who did not support the Senate pairings, including statements that the Board had engaged in “naked gerrymandering” and that the Board members favoring the Senate district pairings “recognized that it was not possible to ‘get to North Muldoon,’ so instead South Muldoon was paired.”

The superior court also found evidence of regional partisanship. The court noted the expert witness testimony about the Eagle River and South Muldoon House districts’ political leanings, that the adopted Senate pairings would minimize South Muldoon’s voting strength, and that there would be no competition in its Senate seat election. The court also pointed to the statement of one Board member, who favored these pairings, that splitting Eagle River gave it “more representation” and that Eagle River would control two Senate seats rather than one.

Finally, the superior court found that the Eagle River and Muldoon areas are separate “communities of interest.” It based this determination on “ample public comment” and trial testimony, including that of an expert witness. The court found that “evidence in the record makes clear that any interaction [between Eagle River and Muldoon] includes only Eagle River residents driving into or through Muldoon, with Muldoon residents having no regular travel to or interaction with Eagle River.” The court thus concluded “that the Board intentionally discriminated against residents of East Anchorage in favor of Eagle River[] and [that] this intentional discrimination had an illegitimate purpose.”

The superior court then considered whether the pairings nonetheless led to more proportional representation. It found that “[p]airing Eagle River Valley with South Muldoon creates an average deviation of -1.68%, whereas pairing both Eagle River districts creates an average deviation of -1.18%.” The court concluded that the challenged Senate pairings did not lead to more proportional representation.¹⁸³

Finding an equal protection violation, the superior court then turned to the remedy. It found that the effect of disproportionality in Senate District K was de minimis. But distinguishing this case from *Kenai Peninsula*, the court noted that although “ultimately illegitimate, [the *Kenai Peninsula* Board] lacked the secretive processes and discrimination against the communities of interest and political areas apparent in this case.” The court found that a mere declaration of unconstitutionality under a declaratory judgment was not appropriate and remanded the Senate district pairings to the Board, citing *Kenai Peninsula*’s dissent.¹⁸⁴

a. “Politically salient class” versus “communities of interest”

An equal protection claim requires an assertion that two groups are being treated differently; the Board contests the notion that the Muldoon and Eagle River areas are, for equal protection purposes, different communities. This is a somewhat confusing issue because we have used two different terms to describe groups of people who may be able to bring fair representation claims: “politically salient class” and “communities

¹⁸³ As the Board points out, the superior court’s characterization of “under” and “over” representation was incorrect. We also note that the court’s approach to the “proportionality of representation” defense reflects a misunderstanding of the defense. We address these issues below.

¹⁸⁴ See *Kenai Peninsula*, 743 P.2d at 1374-75 (Compton, J., dissenting) (explaining that merely offering declaratory relief in face of unconstitutional district does not suffice nor does it deter future boards).

of interest.”¹⁸⁵

The Board advocates using “politically salient class,” stating that we “clarified” it as the proper term after the 1999 constitutional amendments.¹⁸⁶ We first used that term in the redistricting context in *2001 Redistricting I* when characterizing *Kenai Peninsula* as discussing politically salient classes.¹⁸⁷ In *Braun v. Denali Borough* we repeated the characterization,¹⁸⁸ and in *2011 Redistricting I* we cited the term’s use in *2001 Redistricting I*.¹⁸⁹ But the *Kenai Peninsula* reference in *2001 Redistricting I* does not contain the phrase “politically salient class” — the phrase does not appear in the opinion.¹⁹⁰ We appear to have borrowed the term from a concurring opinion in the United States Supreme Court’s *Karcher v. Daggett* decision.¹⁹¹ Contrary to the Board’s

¹⁸⁵ Compare *Kenai Peninsula*, 743 P.2d at 1365 n.21, 1372 (“[S]enate districts which meander and ignore political subdivision boundaries and communities of interest will be suspect under the Alaska equal protection clause.”), with *Braun v. Denali Borough*, 193 P.3d 719, 730 (Alaska 2008) (describing *Kenai Peninsula* holding “that the [B]oard cannot intentionally discriminate against a borough or any other politically salient class of voters by invidiously minimizing that class’s right to an equally effective vote” (quoting *2001 Redistricting I*, 44 P.3d 141, 144 (Alaska 2002))).

¹⁸⁶ The Board presumably focuses on “politically salient class” because in *2001 Redistricting I* we used the term in a footnote discussing “racial or political groups.” 44 P.3d at 144 n.8.

¹⁸⁷ *Id.* at 144 (citing *Kenai Peninsula*, 743 P.2d at 1370-73).

¹⁸⁸ 193 P.3d at 730 (quoting discussion from *2001 Redistricting I*, 44 P.3d at 144).

¹⁸⁹ *2011 Redistricting I*, 274 P.3d 466, 469 (Alaska 2012).

¹⁹⁰ See generally *Kenai Peninsula*, 743 P.2d at 1352.

¹⁹¹ See 462 U.S. 725, 754 (1983) (Stevens, J., concurring); *2001 Redistricting I*, 44 P.3d at 144 n.8.

assertion, we see nothing about our use of the term “politically salient class” suggesting we intended to “clarify,” or even discuss, that the term was a change from the term “communities of interest.”

The Board calls *Kenai Peninsula*’s mention of “communities of interest” “vague dicta.” We disagree that the phrase qualifies as dicta; we used it when explaining the various factors we would consider to evaluate the equal protection claim before us.¹⁹² And the Board engages with the same factors throughout its briefing. More aptly qualifying as “vague dicta” was our cursory use of the phrase “politically salient class” — which seems not to be a widely used redistricting term of art — when briefly describing *Kenai Peninsula*’s equal protection test in an inapposite context.

At trial the Board argued that East Anchorage “do[es] not state what race or ethnic group is being disenfranchised by the pairings” and that East Anchorage had not shown its voters to be “politically cohesive” or likely to vote in the same way. But the contexts in which we have used the term “politically salient class” do not support the Board’s implication that the term relates only to race or political affiliation. We used the term in *2001 Redistricting I* to correct the Board’s misunderstanding that *Kenai Peninsula* “entitle[s] political subdivisions to control a particular number of seats based upon their populations.”¹⁹³ That was not our holding in *Kenai Peninsula*; we “simply held that the board cannot intentionally discriminate against a borough or any other ‘politically salient class’ of voters by invidiously minimizing that class’s right to an equally effective vote.”¹⁹⁴ Nor did the *Kenai Peninsula* holding referred to by *2001*

¹⁹² *Kenai Peninsula*, 743 P.2d at 1372.

¹⁹³ *2001 Redistricting I*, 44 P.3d at 144.

¹⁹⁴ *Id.* We drew the phrase from Justice Stevens’s *Karcher* concurrence, (continued...)

Redistricting I turn on racial discrimination or political party discrimination; the House district in dispute was deemed unconstitutional because of geographic discrimination.¹⁹⁵ *2001 Redistricting I* used the term in the context of a voter dilution claim.¹⁹⁶ *Braun v. Denali Borough*, a case about a borough reapportionment plan, referenced *2001 Redistricting I* for a similar proposition: equal protection did not guarantee Healy voters majority control of the Denali Borough Assembly merely because Healy had a majority of the population.¹⁹⁷ No redistricting decision has discussed “politically salient class” in the context of a challenge based on race or political affiliation. As East Anchorage points out, “community of interest” and “politically salient class” are simply phrases courts use “to name and refer to identifiable groups which are alleged to have been treated differently from other groups for purposes of conducting an equal protection analysis.”

To allow for meaningful judicial review in redistricting cases, we formally adopt Professor Nicholas O. Stephanopoulos’s “community of interest” definition, which in large part is consistent with our case law: A community of interest “is (1) a geographically defined group of people who (2) share similar social, cultural, and economic interests and (3) believe they are part of the same coherent entity. The first

¹⁹⁴ (...continued)
defining a “politically salient class” as “one whose geographical distribution is sufficiently ascertainable that it could have been taken into account in drawing district boundaries.” 462 U.S. at 754 (Stevens, J., concurring). Justice Stevens’s definition contains no mention of race or political party. *Id.*

¹⁹⁵ *Kenai Peninsula*, 743 P.2d at 1370-73. Indeed, we *dismissed* an equal protection claim in *Kenai Peninsula* based on political party discrimination. *Id.* at 1369-70.

¹⁹⁶ 44 P.3d at 144.

¹⁹⁷ 193 P.3d 719, 729-30 (Alaska 2008).

element, geographic demarcation, is necessary because of the American commitment to geographic districting.”¹⁹⁸

b. Whether socioeconomic integration and “communities of interest” are synonymous

The Board argues that taking “communities of interest” into account already is required by article VI, section 6’s mandate that House districts be socioeconomically integrated. The Board cites two examples of “[l]egal commenta[ry]” supporting this view. The first is a chart from the Brennan Center for Justice, simply compiling definitions of “community of interest” from numerous states using the term, and listing article VI, section 6 as the source of Alaska’s “community of interest” inquiry.¹⁹⁹ This informative resource is hardly “legal commentary”; it is a two-page chart expressing no

¹⁹⁸ Nicholas O. Stephanopoulos, *Redistricting and the Territorial Community*, 160 U. PA. L. REV. 1379, 1430 (2012). Professor Stephanopolous used the term “territorial community” rather than “community of interest” because the latter “does not have to be spatially bounded” and “can be deemed to arise on the basis of any common concern, making the term notably imprecise and malleable.” *Id.* at 1431-32. We address this concern by simply defining community of interest using his territorial community definition. Professor Stephanopolous suggests that election district boundaries should correspond with territorial communities to the extent possible and that courts should intervene when such communities unnecessarily are fused or split and the redistricting authority offers no reasonable explanation for the community disruption. *Id.* at 1385. Our case law similarly imposes a justification duty when a plausible equal protection violation claim is made. *See Kenai Peninsula*, 743 P.2d at 1371 (“Depending upon the primacy of the interest involved, the State will have a greater or lesser burden in justifying its” questioned action). *See generally Pub. Emps. Ret. Sys. v. Gallant*, 153 P.3d 346, 349 (Alaska 2007) (“We most often review [an act treating two groups differently] ‘by asking whether a legitimate reason for disparate treatment exists, and, given a legitimate reason, whether the enactment . . . bears a fair and substantial relationship to that reason.’ ”).

¹⁹⁹ *Communities of Interest*, BRENNAN CENTER FOR JUSTICE (Nov. 2010), <https://bit.ly/BrennanCOI> (last visited Feb. 18, 2023).

view and engaging in no analysis.²⁰⁰ The Board’s second source is a 1997 Virginia Law Review article citing article VI, section 6 as support, within a broader discussion of communities of interest, that “[t]he [C]onstitution[] of Alaska . . . require[s] consideration of communities of interest in apportionment.”²⁰¹ The Board contends that article VI, section 6’s socioeconomic integration requirement is the only place in Alaska redistricting law accounting for communities of interest. But neither the Board’s sources nor our decisions support its conclusion.

A court asking whether a House district is socioeconomically integrated may look to its communities of interest because the analyses might overlap to a significant degree. But that does not mean Senate district pairings of two socioeconomically integrated House districts can never implicate concerns about fair representation for communities of interest. In *Kenai Peninsula* we stated that district boundaries “which meander and ignore political subdivision boundaries and communities of interest will be suspect under the Alaska equal protection clause.”²⁰² A community of interest, for example, could stretch across two boroughs or be contained entirely within a borough. This reasoning finds support in a special master’s report we commissioned in *Egan v. Hammond*:²⁰³ The special master suggested that “Anchorage subdivisions [could] coincide with rough communities of interest” despite Anchorage’s

²⁰⁰ *See id.*

²⁰¹ Stephen J. Malone, *Recognizing Communities of Interest in a Legislative Apportionment Plan*, 83 VA. L. REV. 461, 466 (1997).

²⁰² 743 P.2d at 1365 n.21; *see also Hickel v. Se. Conf.*, 846 P.2d 38, 48 (Alaska 1992) (stating that “a state’s desire to maintain political boundaries is sufficient justification for population deviation if consistently applied” (citing *Kenai Peninsula*, 743 P.2d at 1360)).

²⁰³ 502 P.2d 856 (Alaska 1972).

lack of “clearly delineated ethnic ghettos.”²⁰⁴

The Board misframes the issue, setting out the seemingly absurd conclusion that, under the superior court’s findings of fact and conclusions of law, “in 2002, it was constitutional to place portions of Eagle River and Muldoon in a single [*H*]ouse district because they are socioeconomically integrated, but in 2021, those areas of Anchorage cannot be in the same [*S*enate district because they are different ‘communities of interest.’ ” (Emphasis in original.) But in this case the challenge is about *splitting up* a community of interest to increase those residents’ voting power over two Senate districts rather than one, not about putting separate communities of interest from one borough — which by law are socioeconomically integrated — together in the same legislative districts. It would not be contradictory to find that the Muldoon and Eagle River areas are, as a matter of law, socioeconomically integrated but nonetheless separate communities of interest.

The Board advances no argument whether the Muldoon and Eagle River areas are separate communities of interest beyond pointing out that they are socioeconomically integrated because they are in the same borough. The superior court’s finding that the Muldoon and Eagle River areas constitute separate communities of interest was well-supported by the affidavit of East Anchorage’s expert witness, Dr. Chase Hensel, a local anthropologist. Dr. Hensel noted the “one-way flow” of Eagle

²⁰⁴ *Id.* at 894. We recognize that “ghetto” has more recently developed a colloquially pejorative connotation. *See, e.g.,* Camila Domonoske, *Segregated From Its History, How ‘Ghetto’ Lost Its Meaning*, NPR (Apr. 27, 2014), <https://www.npr.org/sections/codeswitch/2014/04/27/306829915/segregated-from-its-history-how-ghetto-lost-its-meaning>; Hugo Quintana, “*The Ghetto*”, THE MICH. DAILY (Oct. 14, 2021), <https://www.michigandaily.com/michigan-in-color/the-ghetto/> (discussing historic and slang usage of “ghetto”). For historical accuracy and in light of the term’s ongoing legal significance, *see, e.g.,* Tommie Shelby, *Justice, Work and the Ghetto Poor*, 6 L. & ETHICS HUM. RTS. 70 (2012), we quote the term as used in 1972.

River commuter traffic to East Anchorage; amici curiae Alaska Black Caucus noted that Member Marcum’s assertion about the two communities sharing close ties was limited to her observation that some Eagle River residents commute to Anchorage via Muldoon Road. Dr. Hensel pointed out that the two communities’ events and professional groups do not include one another. He noted different transportation service providers, local newspapers, histories and socioeconomic statuses, voting patterns, and racial and ethnic makeups. He also noted that Eagle River people described their community as “separate,” “independent,” “unique,” and “stand alone.”

Dr. Hensel’s data also persuasively demonstrated racial and socioeconomic disparity between the two areas. In the Bartlett High School catchment area, primarily covering North and South Muldoon, students are 18% White and 70% economically disadvantaged. By contrast, in the Eagle River High School catchment area students are 68% White and 24% economically disadvantaged. Muldoon has 9% and northeast Anchorage has 14% of residents living below the poverty line, compared to just 3% in Eagle River and 2% in Chugiak. And 75% of North Muldoon students qualified for free and reduced lunch, compared to just 16% of Eagle River Valley’s students.

North and South Muldoon are roughly 38% and 52% White respectively, while Eagle River Valley and North Eagle River are 76% and 75% White, respectively. Amici curiae Alaska Black Caucus provides similar statistics, pointing out that combining the two Muldoon House districts would create a majority-minority district, as would combining the Mountain View/Joint Base Elmendorf-Richardson (JBER) districts.

Given the definition of “community of interest” we have adopted, these observations support the superior court’s findings that the Muldoon and Eagle River areas constitute separate communities of interest and that the Board’s Senate district pairings split up the Eagle River community of interest to give it more political influence,

evidencing discriminatory intent.²⁰⁵ And even if we disagreed with the strong evidence that the Muldoon and Eagle River areas constitute separate communities of interest, it would be unwise to hold, *categorically*, that separate communities of interest cannot exist within a single borough. As Alaska’s largest city, Anchorage likely will continue growing more populous and diverse. The historical, economic, or traditional significance of neighborhoods may change with time, and courts should remain open to hearing evidence that certain Anchorage neighborhoods are sufficiently different from one another that they constitute separate communities of interest. Categorically holding that no subregion of Anchorage can be a community of interest would expose Alaskans to gerrymandering.

c. Discriminatory intent

i. Secretive procedures

The Board challenges the superior court’s “speculative” finding that the Board engaged in “secretive procedures,” a *Kenai Peninsula* fair representation test factor for discriminatory intent.²⁰⁶ But the superior court did not err by finding that the Board engaged in secretive procedures.

The Board began its Anchorage Senate district pairings on November 8. Member Bahnke first discussed her recommended Anchorage pairings, strongly expressing her feeling that the Eagle River and Muldoon areas each should be kept intact based on her review of public comments supporting the idea. Member Borromeo agreed, stating: “I don’t know why you would ever consider splitting Eagle River unless you were trying to expand Eagle River’s reach in the Senate.”

²⁰⁵ See *Kenai Peninsula*, 743 P.2d at 1372 (“District boundaries which meander and selectively ignore political subdivisions and communities of interest, and evidence of regional partisanship are also suggestive [of discriminatory intent].”).

²⁰⁶ *Id.* (setting out multifactor totality of circumstances test).

Member Marcum then presented four versions of Anchorage-area pairings, noting that her four maps paired JBER with one of the Eagle River districts based on her personal experience that Eagle River is a “bedroom community” for JBER. Extensive discussions took place about why Member Marcum believed JBER and a portion of Eagle River should be paired and about pairing South Muldoon with part of Eagle River. When asked why putting the two Eagle River House districts together was not the most logical choice, Member Marcum stated: “Eagle River has its own two separate House districts. This actually gives Eagle River the opportunity to have more representation” Member Marcum obviously meant that if the Eagle River area were placed in two distinct Senate districts, Eagle River voters could control the election of two senators rather than one.

The Board did not appear to come to an agreement on the record about any map before voting. The superior court noted:

In the midst of discussion, where several [S]enate pairings that split Eagle River and split the Muldoon area were offered by Member Marcum, Chairman Binkley states[:] “So I get a sense that there’s a majority of, not consensus for the plan that [Member Marcum] has brought forward. If that’s the case, I think we should move on to the last one that we got, which is Fairbanks.”

Member Borromeo responded: “Mr. Chairman, before we do that, . . . is it your understanding that [Member Marcum is] only presenting one? Because there’s so many I don’t know what all of the different combinations were.” The superior court noted that — and after review, we agree — it is unclear, and it was unclear to fellow Board members, which map a majority of the Board had agreed upon. The court thus inferred:

[There was] some sort of coalition or at least a tacit understanding between Members Marcum, Simpson, and

Binkley. All three appeared to agree on all four of Member Marcum's maps with little public discussion. Most surprising was that at that time, it is unclear in the transcript, and was apparently also unclear to Member Borromeo, which of Member Marcum's maps the Board had apparently reached a majority on when the deliberative discussion was ended. It seems that what the three Board Members had reached a majority [on] was the only element of the map that was consistent between them: that Eagle River was split and North Eagle River was paired with JBER. That confusion is highlighted in the Chairman's choice to move on from Anchorage Senate pairings in the midst of deliberations to talk about Fairbanks to the surprise of Members Borromeo and Bahnke. There was no further public deliberation regarding Anchorage Senate pairings after this point, yet three Board members, the only three Board Members who signed the final proclamation in support, seemed to at some point understand which set map of [S]enate pairings to offer for adoption among the four.^[207]

After discussing Fairbanks-area Senate district pairings, the Board entered into executive session to receive "legal advice with regard to the . . . proposed Senate pairings in Anchorage."²⁰⁸ Upon exiting executive session, Member Marcum immediately moved to accept the Anchorage Senate pairings without further public discussion. The superior court observed:

This evidence not only secretive procedures, but suggests that certain Board members came to some kind of consensus either during executive session, or altogether outside of the meeting processes. While the Court stops short of a finding that this happened, the Court does see ample evidence of secretive process[es] at play.

²⁰⁷ The superior court's internal citations to the record have been omitted.

²⁰⁸ We are unable to discern the specific OMA allowance relied upon for the executive session.

The Board emphasizes that on November 8 it extensively discussed possible Senate district pairings on record, including the multiple potential Anchorage Senate district pairings presented by Members Bahnke and Marcum mentioned above. The Board also points to trial testimony from Members Binkley and Simpson that Board members did not agree on the maps during executive session or between public meetings and that the Board entered into executive session on November 8 to receive legal advice about some potential Senate pairings. The Board asserts that this testimony was uncontested at trial.

Yet, as amici curiae Alaska Black Caucus notes: “The Board never discussed the relative merits of Bahnke’s plan as compared to Marcum’s. No other Board member spoke on record in favor of Marcum’s proposal, . . . yet Binkley somehow knew that a majority favored Marcum’s plan over Bahnke’s.” East Anchorage points to other evidence of secretive procedures. It notes Member Borromeo’s statements on the record that in executive session the Board likely had been advised *against* the Senate District K pairing and that Member Binkley, despite voting for splitting Muldoon, made no statement on the record supporting the pairings or explaining why he thought they “were more lawful or correct than those proposed by Member Bahnke.” East Anchorage also notes that Members Marcum and Simpson, the two members most vocally supporting the Eagle River-Muldoon pairing, “had access to incumbent information” provided by a Republican strategist, Randy Ruedrich.

Bearing in mind that the results of secretive procedures are, by their nature, difficult to prove, and, paradoxically, that habitually using executive session to conduct the Board’s business is indicative of secretive procedures, we agree with the superior court that this factor tends to weigh in favor of finding discriminatory intent.

ii. Partisanship

The superior court found evidence of regional partisanship, another *Kenai*

Peninsula equal protection discriminatory intent factor.²⁰⁹ The court framed the issue as favoring Eagle River and disfavoring Muldoon as geographic regions rather than as discriminating against a particular political party. The court stated that although South Muldoon historically was a Republican-leaning swing district, the Senate pairings would “usurp[] [its] voting strength in the event it chooses to elect a Democratic senator.” As amici curiae Alaska Black Caucus put it:

An East Anchorage [S]enate district formed from the two Muldoon [H]ouse districts would be a swing district, with no guarantee that the next senator would be a Democrat rather than a Republican. But this pairing would guarantee that the votes of East Anchorage would matter: voters could elect a senator who resides in the community, who understands its concerns, and who does not need to compromise those concerns . . . to protect the interest of voters in the other half of a district with very different needs.

The Senate District K pairing’s political undertones are impossible to ignore. We first must address the Board’s contention that we have “never recognized the viability of a partisan gerrymandering claim” and its reliance on *Rucho v. Common Cause* — holding that political gerrymandering claims are non-justiciable in federal courts — to urge us to follow the Supreme Court’s lead.²¹⁰ Contrary to the Board’s contention, we have recognized partisan gerrymandering claims. *Kenai Peninsula* adjudicated a partisan gerrymandering claim that ultimately was dismissed, but not on justiciability grounds.²¹¹ Considering the Constitutional Convention minutes, the 1999 amendments’ legislative history, and our case law, we expressly recognize that partisan

²⁰⁹ 743 P.2d at 1372 (setting out multifactor totality of circumstances test).

²¹⁰ 139 S. Ct. 2484, 2506-07 (2019).

²¹¹ See 743 P.2d at 1369-70.

gerrymandering is unconstitutional under the Alaska Constitution.

There is ample evidence of regional and political partisanship in this case. East Anchorage points out that the Board’s 3-2 majority in favor of splitting the Muldoon and Eagle River areas was comprised only of the Republican-appointed Board members. Member Simpson said at trial that, despite article VI, section 8’s instruction that Board members be chosen “without regard to political affiliation,” he was chosen because he was “a Republican from Southeast.”²¹² As the superior court acknowledged, Muldoon leans Republican but is a “highly competitive” district, whereas Eagle River is “firmly Republican.” East Anchorage notes that Randy Ruedrich, a Republican strategist and

²¹² As noted earlier, Member Simpson’s post-remand email, not available in the record for this part of our review, shows that he viewed the redistricting process through a partisan lens. *See supra* note 166. The email stated:

The Supremes also upheld the Superior Court’s ruling that we had politically gerrymandered one Senate district in Anchorage To me this implies that what the court perceived as a political gerrymander must be replaced with a different political gerrymander more to their liking. The district in question paired two [H]ouse districts that were both majority non-minority, one of which was reliably [R]epublican and the other was [R]epublican 2/3 of the time. Not clear to me why this is bad but the D[emocrat]s will push to dilute both of them to make it easier to elect their candidates.

These comments reveal more about the member’s views of the propriety of political gerrymandering than about our role in resolving constitutional challenges to a redistricting plan. We decide the redistricting cases brought to us, including the challenges to the current Board’s redistricting plans; we do not seek out the redistricting cases we hear. Our past redistricting decisions reflect that the political affiliations of those creating a redistricting plan had no bearing on our decisions. *See, e.g., supra* note 17 (discussing redistricting challenges and our decisions when governors controlled redistricting).

former chair of the Alaska Republican Party, emailed Members Marcum and Simpson “political incumbent information for each of the Board’s adopted [H]ouse districts.” Ruedrich also appears to be the only person to have testified in favor of pairing Eagle River and Muldoon during the November 8 public comments meeting. There also is Member Marcum’s statement that Eagle River would get “more representation” if it were split into two Senate districts, meaning increased Senate representation for Eagle River by controlling two firmly Republican Senate districts rather than one.

Finally, notwithstanding our deferential hard look standard, the Board’s justification for pairing a Muldoon House district and an Eagle River House district in the face of overwhelming public opposition from *both* communities is difficult to understand unless some form of regional or political partisanship were involved. And amici curiae Alaska Black Caucus persuasively illustrates how past pairings involving East Anchorage and Eagle River areas resulted in Alaska’s first Black female senator — a Democrat — losing her seat, despite having been re-elected multiple times before the pairing. Considering the rushed manner in which the Board adopted the Senate District K pairing, the nearly unanimous public opposition, and the contrasting political effects of the pairing on Muldoon’s and Eagle River’s voting power, we agree with the superior court that the record supports the inference that partisanship was at play.

d. Proportionality of representation

Kenai Peninsula instructs that a Senate district drawn with a discriminatory purpose might be justifiable if the Board can show that it led to greater “proportionality of representation.”²¹³ Equating the concept of proportionality with the degree of deviation from the ideal district population, the superior court invalidated the South Muldoon and Eagle River Senate pairings because it concluded that the Board’s plan led

²¹³ 743 P.2d at 1372.

to more population deviation than the challengers' plan.

The Board correctly points out that, when a House district is underpopulated relative to the “ideal” House district population, residents of that district are *overrepresented* because their voting power is higher relative to residents of districts with higher populations. The Board points out that the superior court got this backward; the court repeatedly referred to House districts with lower populations as *underrepresented* when it should have called them *overrepresented*. But this misses the point.

We agree with the superior court that the closer to zero a district's deviation from the ideal population is, the greater the “proportionality of representation” is *in that context*. But in the fair representation context proportional representation is the extent to which members of a particular group are represented in public office.²¹⁴ For example, in a hypothetical pairing created specifically to discriminate against Black citizens, the fact that the House districts exactly equaled the ideal district population, rather than deviating from the ideal by a percent or two, would neither be a defense nor serve the interests of justice. *Kenai Peninsula*'s discussion of “proportionality of representation” makes more sense in this context; that proportional representation inquiry concerned over- or under-representation in the State legislature based on Anchorage's share of Alaska's population, not its degree of deviation from the ideal district population.²¹⁵ We already have unequivocally stated in *Braun* and *2011 Redistricting I* that Alaskans do not

²¹⁴ See *Thornburg v. Gingles*, 478 U.S. 30, 74-77 (1986) (discussing proportional representation of Black population in state legislature); *Proportional representation*, BLACK'S LAW DICTIONARY (11th ed. 2019) (“An electoral system that allocates legislative seats to each political group in proportion to its actual voting strength in the electorate.”).

²¹⁵ 743 P.2d at 1372-73.

have an absolute right to proportional representation based on population.²¹⁶ And such an inquiry would not make sense in this case. Muldoon and Eagle River area citizens are not scattered across the state, comparable to the Black population in *Thornburg v. Gingles*,²¹⁷ but are by definition located in fixed places.

e. Conclusion

Under the totality of the circumstances, the superior court correctly concluded that Senate District K is unconstitutional due to geographic and partisan gerrymandering. And the appropriate remedy was to remand to the Board to correct the constitutional deficiency.

V. CONCLUSION OF CHALLENGES TO 2021 PROCLAMATION

We AFFIRM the superior court’s determination that House Districts 3 and 4 comply with article VI, section 6 of the Alaska Constitution and should not otherwise be vacated due to procedural aspects of the Board’s work. We REVERSE the superior court’s remand to the Board for further proceedings on those districts under the superior court’s hard look analysis relating to public comments on these House districts.

We AFFIRM the superior court’s determination that House Districts 29, 30, and 36 do not violate article VI, section 6 of the Alaska Constitution and should not otherwise be vacated due to procedural aspects of the Board’s work, with one exception: We conclude that the so-called “Cantwell Appendage” violates article VI, section 6 because it renders House District 36 non-compact without adequate justification. We therefore REVERSE the superior court’s determination to this limited extent.

²¹⁶ *Braun v. Denali Borough*, 193 P.3d 719, 730 (Alaska 2008); *2001 Redistricting I*, 44 P.3d 141, 144 (Alaska 2002); accord Voting Rights Act 52 U.S.C. § 10301(b) (“[N]othing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.”).

²¹⁷ *See generally* 478 U.S. at 74-77.

We AFFIRM the superior court’s determination that the Board’s Senate District K pairing of House Districts 21 and 22 constituted an unconstitutional political gerrymander violating equal protection under the Alaska Constitution.

VI. 2021 REDISTRICTING PROCESS AFTER REMAND, ROUND 2: BOARD PROCEDURES AND AMENDED PLAN; CHALLENGE AND SUPERIOR COURT’S DECISION; BOARD’S PETITION FOR REVIEW

The superior court remanded the redistricting plan back to the Board with instructions consistent with our summary order. The superior court ordered, among other things, that the Board correct the constitutional error that both we and the superior court identified with respect to Senate District K.

A. Board Proceedings On Remand

The Board met and heard public testimony almost every day April 2-9. The Board did not enter into any executive sessions, though the superior court later noted that there were indications Board Members Binkley, Marcum, and Simpson — the three members in favor of the initial Senate District K — may have been privately communicating and formed a coalition with the goal of preserving a JBER/North Eagle River Senate district.

By April 6 the Board was deciding between Options 2 and 3B for Senate district pairings. Option 2 and Option 3B both resulted in four Senate districts different from the original November 2021 plan. Both options paired North and South Muldoon into Senate District K. But where Option 2 would have combined North and South Eagle River into an Eklutna/Eagle River/Chugiak Senate district, Option 3B kept North Eagle River with JBER (Senate District L) and placed South Eagle River with South Anchorage/Girdwood/Whittier (Senate District E). The final amended plan was adopted on April 13 with Members Binkley, Marcum, and Simpson voting in favor of Option 3B and Members Bahnke and Borromeo opposed.

B. Superior Court Proceedings

Louis Theiss, Ken Waugh, and Jennifer Wingard (collectively Girdwood) appeared in the superior court later in April to challenge Senate District E as violating their equal protection rights and article VI, section 6 because it was non-compact, was “falsely contiguous,” and ignored geographic features. Girdwood also contended that again creating two separate Eagle River Senate districts, Districts K and L, constituted unlawful political gerrymandering.²¹⁸

Due to the proceeding’s expedited nature — potential legislative candidates had an impending June 1 filing deadline²¹⁹ — there was no formal discovery and the superior court held only one day of oral argument, largely working from the parties’ briefing. The court “accepted all materials submitted by the parties, regardless of timing” and reviewed them under a more relaxed standard of evidence, considering “their relevance to the issues presented” and affording them weight “under the totality of the circumstances.” The superior court issued its decision on May 16. We again commend the superior court on its expedited work resolving the challenges to the Board’s plan.

1. Girdwood’s article VI, section 6 challenge

Girdwood argued that pairing South Eagle River with South Anchorage/Girdwood/Whittier in Senate District E violated article VI, section 6’s “contiguity requirement and disregard[ed] local government boundaries without explanation.” Girdwood acknowledged that Senate District E was technically contiguous

²¹⁸ Attached as Appendix C are copies of relevant election district maps the Board published with its April 2022 amended proclamation. These maps show the contested Senate districts.

²¹⁹ AS 15.25.040(a).

— the districts physically touched at the border²²⁰ — but that this was “false contiguity” because “several hundred miles of uninhabited state park, including the Chugach Mountains, divide the actual population centers” of the Senate district. An expert witness for Girdwood, Dr. Chase Hensel, testified about this contiguity requirement, but the superior court discounted the testimony as amounting to an improper legal conclusion. The superior court held that “Senate District E does not violate [a]rticle VI, [section] 6” because the two House districts composing the Senate district share a border, fulfilling the contiguity requirement.

2. Girdwood’s equal protection challenge

Girdwood next argued that the “Board acted with illegitimate purpose when it adopted Option 3B,” violating equal protection. Girdwood pointed to the superior court’s prior findings that the Board had engaged in “secret procedures” and contended that the Board’s splitting Eagle River voters into two Senate districts was evidence of partisanship gerrymandering; Girdwood argued that the Board continued to have an illegitimate purpose when it again split Eagle River voters into two Senate districts for the amended plan. Girdwood argued that the Board’s majority coalition chose to split up communities of interest in contravention of what the majority of public commenters requested and without justification for more proportional representation.

The bulk of the superior court’s decision considered whether the new Senate district pairings violated equal protection by intentionally discriminating in favor of or against a community of interest. The court again relied on the *Kenai Peninsula* “neutral factors test” to find that, under the totality of the circumstances, the Board was

²²⁰ See Alaska Const. art. VI, § 6 (“Each [S]enate district shall be composed as near as practicable of two contiguous [H]ouse districts.”); *Hickel v. Se. Conf.*, 846 P.2d 38, 45 (Alaska 1992) (explaining territories are contiguous when they are “bordering or touching” each other).

intentionally discriminating when it engaged in unconstitutional partisan gerrymandering to ensure “two solidly Republican senate seats” in Senate Districts L and E. The court found that the Board ignored the Eagle River and South Anchorage communities of interest when constructing Senate District E because a majority of the Board “insisted continuously” that Senate District L — combining North Eagle River and JBER — “remain intact.”

The superior court initially was unsure “how much weight” to afford its March 2021 finding, that the Board had engaged in intentional discrimination when it split Eagle River voters into separate Senate districts, when considering the constitutionality of the Board’s amended plan. After reviewing federal case law addressing how to apply prior discriminatory intent in equal protection cases the court concluded that it would look at “the Board’s prior discriminatory intent as part of the ‘totality of the circumstances’ in addressing the Girdwood challenge” but that it would not be dispositive; the burden would remain on Girdwood to prove discriminatory intent.²²¹

The superior court then discussed circumstances it found relevant for the Girdwood challenge. Given that the South Anchorage/Girdwood House district is

²²¹ The superior court commented that in light of the Board’s prior partisan gerrymandering, the court would be in favor of shifting “the burden to the Board to demonstrate that its Amended Proclamation . . . w[as] made in good faith and without partisan considerations.” But the court recognized that there is a presumption of constitutionality and that the Board’s actions generally are reviewed under a deferential arbitrary and capricious standard. *See Treacy v. Mun. of Anchorage*, 91 P.3d 252, 260 (Alaska 2004) (“A duly enacted law or rule . . . is presumed to be constitutional.”); *Kodiak Island Borough v. Mahoney*, 71 P.3d 896, 899-900 (Alaska 2003) (reasoning that rules or laws created by bodies with rulemaking or lawmaking powers conferred directly by Constitution are entitled to presumption of constitutionality); *Kenai Peninsula*, 743 P.2d at 1357-58. The court utilized the deferential arbitrary and capricious standard of review for the Board’s amended plan.

Republican-leaning already, the court first noted that South Anchorage’s pairing with a strong Republican district would not “necessarily result in any significant discriminatory effect.” Second, the court found that the Board’s prior act of pairing South Eagle River with South Muldoon to “give[] Eagle River more [Senate] representation” “weigh[ed] heavily in Girdwood’s favor.” Third, the court concluded that the Board’s main rationale for ignoring “public testimony, geography, and even the boundaries of Eagle River to justify adopting Option 3B” — “‘to preserve the military community’s voting strength’ as a ‘community of interest’ ” — was not supported by the record (when the court had never found that JBER was a community of interest) and constituted “substantive departures . . . weighing heavily in Girdwood’s favor.” Fourth, the court found that “contemporaneous statements of the decision-makers” were inconclusive regarding discriminatory intent. “Ultimately, the factor that tip[ped] the balance in Girdwood’s favor [was the superior court’s] prior finding on intent.”

The superior court discussed the Board’s primary justification for selecting Option 3B: “[P]airing JBER with downtown Anchorage would result in JBER’s preference for candidates being usurped by downtown Anchorage’s preference for opposing candidates.” But because the court was not given evidence supporting that JBER was a community of interest and the Board failed to engage with comments pointing out that the large, demographically diverse “portion of Downtown” paired with JBER in House District 23 would not be served by the Senate District L pairing, the court found that the Board had “not put forth any legitimate, nondiscriminatory purpose for its actions” and thus “violated equal protection rights of the residents of Girdwood and House District 9.” The court also found that “the majority of the Board acted in concert with at least a tacit understanding that Eagle River would again be [split and] paired in such a way as to provide it with two solidly Republican senate seats — an unconstitutional partisan gerrymander.” Thus, under the totality of the circumstances,

the court concluded “that the Board intentionally discriminated against residents of District 10, including Girdwood[,] in order to favor Eagle River, and this intentional discrimination had an illegitimate purpose” violating equal protection.

The superior court remanded the proceedings to the Board to draft a constitutional plan and also ordered “the Board to adopt Option 2 on an *interim* basis for the 2022 general election.”

C. The Board’s Petition For Review

The Board petitioned for our review of the superior court’s May 2022 order, challenging both the basis for remand and the court’s imposed interim plan. We granted review, later issuing a summary order resolving the petitions and noting that a full explanation would follow.²²²

VII. RESOLUTION OF ROUND 2 PETITION FOR REVIEW

A. The Superior Court Did Not Improperly Consider The Weight Of The Public’s Testimony.

The Board argues that the superior court “recycled [its] weight-of-public-testimony standard” which had been effectively struck down by our March 25, 2022 order. The Board is correct that we struck down the court’s earlier hard look analysis and that the court continued to express concern about the weight of the public testimony regarding the amended plan. But the Board fails to recognize that the court expressly acknowledged our earlier order and noted the weight of the public testimony only in light of our pending full opinion. The court appears to have landed on the appropriate hard look analysis we discussed above: Public comment should be considered when it raises a salient issue that the Board should address if it is engaging in reasoned decision-

²²² Our summary order resolving the petition for review is attached as Appendix D.

making.²²³

The Board does not argue that the superior court’s discussion of public testimony impacted any particular step in its decision to remand the amended plan — the Board appears to understand the immense value of public testimony in the decision-making process, extensively quoting public comments in its petition for review — and asks us only to “remind lower courts that public testimony cannot change the . . . requirements of the Alaska Constitution.” We do not further address this issue.

B. The Superior Court Correctly Concluded That The Senate District Pairings Continued To Violate Equal Protection.

1. The superior court did not adopt a new burden of proof from federal case law.

The Board contends that the superior court adopted a new burden of proof. The Board seems to suggest that the court adopted a federal standard placing the burden on the Board to prove it did not violate equal protection, despite federal case law instructing courts to impose a “presumption of legislative good faith” in these circumstances.²²⁴ But the court affirmatively asserted that it did “not chang[e] the standard or the burden of proof.” Rather, the court highlighted that perhaps a new

²²³ See *2001 Redistricting I*, 44 P.3d 141, 144 n.5 (Alaska 2002) (determining whether regulation is reasonable primarily concerns whether “the [Board] has taken a hard look at the salient problems and has genuinely engaged in reasoned decision making” (quoting *Interior Alaska Airboat Ass’n v. State, Bd. of Game*, 18 P.3d 686, 690 (Alaska 2001))).

²²⁴ See *Abbott v. Perez*, 138 S. Ct. 2305, 2311 (2018) (“The allocation of the burden of proof and the presumption of legislative good faith are not changed by a finding of past discrimination, which is but ‘one evidentiary source’ relevant to the question of intent.” (quoting *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977))). We note that the Board quotes a different portion of *Abbott* in which it is less obvious that past discrimination is one factor relevant to the analysis of present discriminatory intent.

approach was warranted given our previous rejection of gerrymandering in this redistricting cycle, and the court left the matter for us to decide whether the burden of proof should be adjusted in comparable future scenarios. The Board’s argument, as we said in our earlier order, is specious.²²⁵

The Board also challenges the superior court’s subsequent review of federal case law when determining that it should include its earlier finding that the Board engaged in unconstitutional political gerrymandering in conducting its *Kenai Peninsula* neutral factors test.²²⁶ We see no error in the court’s analysis and agree that prior acts of discrimination by the same Board in the same redistricting cycle are relevant under the *Kenai Peninsula* neutral factors test.²²⁷

2. The superior court did not improperly distinguish our holding in 2001 Redistricting I.

The Board argues that, because two decades ago we upheld a House district combining the Eagle River Valley with South Anchorage, the superior court erred when it allegedly “ignored this dispositive holding and never distinguished it.”²²⁸ The Board does not suggest that it made this argument to the superior court, does not point to

²²⁵ See *infra* Appendix 2.

²²⁶ See 743 P.2d at 1372.

²²⁷ See *id.*; Alaska R. Civ. P. 90.8(d) (explaining that record before superior court in redistricting challenges “consists of the record from the Redistricting Board”); *cf. Abbott*, 138 S. Ct. at 2313, 2317, 2324-25 (holding 2013 election map that looked similar to unconstitutional 2011 map necessitated new finding of discriminatory intent because different legislature created new map).

²²⁸ See *2001 Redistricting II*, 47 P.3d 1089, 1091 (Alaska 2002) (holding House district that did not follow “natural and local government boundaries” was not automatically unconstitutional on grounds of socioeconomic integration or other article VI, section 6 concerns).

anywhere in the order following remand where the court wrestled with this concern, and does not point to any case law suggesting that approvals of prior redistricting plans have a preclusive effect on subsequent plans.

The Board appears to be making a stare decisis argument, which intuitively would be irrelevant in the redistricting context because each new redistricting cycle naturally entails new circumstances in light of new census data.²²⁹ Otherwise, every ten years the Board presumptively would be able to adopt the proclamation from the last redistricting cycle and the burden would be on voters to argue why any deviations would be justified.²³⁰ It also is important to consider whether a particular constitutional requirement was at issue and litigated in the previous redistricting cycle; the Board does not assert that partisan gerrymandering was a disputed issue we resolved. We reject the Board's argument.

3. The superior court did not err in its discussion of communities of interest.

The superior court critically reviewed the Board's assertion that military residents of JBER necessarily constitute a community of interest. The Board argues that the court's critique was erroneous because the court never defined community of interest;

²²⁹ Cf. *Thomas v. Anchorage Equal Rts. Comm'n*, 102 P.3d 937, 943 (Alaska 2004) (“The stare decisis doctrine rests on a solid bedrock of practicality: ‘no judicial system could do society’s work if it eyed each issue afresh in every case that raised it.’” (quoting *Pratt & Whitney Canada, Inc. v. United Techs.*, 852 P.2d 1173, 1175 (Alaska 1993))).

²³⁰ See *id.* (“In recognizing the importance of this doctrine, we have consistently held that a party raising a claim controlled by an existing decision bears a heavy threshold burden of showing compelling reasons for reconsidering the prior ruling: ‘We will overrule a prior decision only when clearly convinced that the rule was originally erroneous or is no longer sound because of changed conditions, and that more good than harm would result from a departure from precedent.’” (quoting *State, Com. Fisheries Entry Comm'n v. Carlson*, 65 P.3d 851, 859 (Alaska 2003))).

“obvious[ly] . . . military personnel share the same employer, the same noble mission, the same workplace, and the same shopping and medical facilities”; and “ ‘communities of interest’ is a synonym for areas that are socio-economically integrated,” such that “Eagle River and South Anchorage are not separate communities of interest that cannot be combined with other areas of Anchorage and cannot be split.” The Board’s argument somewhat misrepresents the court’s discussion. The court did not find that JBER was *not* a community of interest; rather the court pointed out that JBER previously had not been identified as a community of interest and found that the Board failed to present any evidence supporting its assertion. And the crux of the issue before us is not whether separate communities of interest can be combined, but whether a community of interest can be split to its own advantage (and to the disadvantage of separate communities of interest) by allowing it to control multiple Senate districts.

We note again, as we did when resolving the Board’s earlier petition for review, that the Board’s assertion that communities of interest are equivalent to socioeconomically integrated communities is incorrect. A community of interest almost always will be socioeconomically integrated within itself and externally with other nearby communities of interest, but a larger socioeconomically integrated community is not automatically an all-encompassing community of interest.²³¹ The Board cited no evidence, aside from its own speculation, that JBER is a community of interest; in any case, there was no showing that the House district encompassing the populated portion of the military base as a whole would tend to share political preferences more closely with an Eagle River House district than with the downtown Anchorage House district. We thus reject the Board’s argument that concerns about JBER justify splitting Eagle River.

²³¹ See Stephanopoulos, *supra* note 198, at 1430.

4. The superior court’s discussion of local government boundaries was not erroneous.

The superior court acknowledged that the disputed House districts were within the Municipality of Anchorage and therefore were socioeconomically integrated as a matter of law, but criticized the Board for not considering “local [government] boundaries, including school zones, community councils and even the Downtown Improvement District” when drawing the new senate map. The Board asserts that “high school attendance boundaries within the Anchorage School District are not ‘local government boundaries’ because all students within the Anchorage School District are governed by the same political entity: the Anchorage School District School Board.”²³² The Board also asserts that “community council boundaries within the Municipality of Anchorage are of *no constitutional import*.” (Emphasis in original.) In *2001 Redistricting II* we recognized that “respect for neighborhood boundaries is an admirable goal”; we then held that “it is not constitutionally required and must give way to other legal requirements.”²³³ Although districting along “neighborhood boundaries” is not “constitutionally required,”²³⁴ it is an unconvincing stretch for the Board to argue that

²³² The Board makes a frivolous argument that “[n]othing in the state [C]onstitution or case law suggests that the Board must consider where non-voting minor children go to school when the Board adopts legislative districts for adult voters.” The court was, of course, not considering school zones because children going to the same school might have similar voting interests, but rather because those students tend to have concerned parents and guardians who could be unified by issues surrounding the fact that their children attend the same schools. It does not seem unreasonable that “local government boundaries” might include school zones. Alaska Const. art. VI, § 6.

²³³ 47 P.3d at 1091.

²³⁴ *Id.*

they are of “no constitutional import.”²³⁵ (Emphasis omitted.) And the Board identifies no “legal requirements” that convinced it to forgo considering community boundaries.

Girdwood responds that public comments demonstrate the Board’s justification for pairing JBER with North Eagle River — recognizing JBER as a military community of interest better paired with Eagle River’s military community — was pretextual. Girdwood also points to numerous local governing entities’ comments tending to oppose the Eagle River area split. For example, the Anchorage Downtown Community Council (DCC) adopted a resolution requesting that House District 23 (containing JBER) be paired with now-House District 19 (part of downtown Anchorage). DCC suggested that splitting up the “downtown core” by pairing JBER’s district with Eagle River continued to promulgate the “unconstitutional problem” from the plan previously struck down. Girdwood argues that the Board disregarded, and perhaps did not even read, these comments given members’ statements indicating they did not grasp that JBER was placed in a House district with portions of downtown Anchorage. These public comments and local government resolutions rise to the level of “salient issues” that the Board should have addressed if it were taking a hard look at Senate redistricting.²³⁶

²³⁵ See Alaska Const. art. VI, § 6 (“Each [S]enate district shall be composed as near as practicable of two contiguous [H]ouse districts. Consideration may be given to local government boundaries.”).

²³⁶ See *supra* note 223 and accompanying text.

5. The superior court did not err when it applied the *Kenai Peninsula* neutral factors test and concluded that Senate Districts E and L constituted an unconstitutional political gerrymander.

The superior court relied on *Kenai Peninsula*'s neutral factors test to conclude that, under the totality of the circumstances, the Board intentionally discriminated when it unconstitutionally engaged in partisan gerrymandering to ensure "two solidly Republican [S]enate seats" in Senate Districts E and L. The Board contends that the court "disregarded the neutral factors test because [the test] did not allow [the court] to reach the desired result."

Rather than engaging with the entire *Kenai Peninsula* neutral factors test, the Board primarily emphasizes its more open procedures on remand and its stated rationale for pairing JBER with Eagle River. The Board points out that the court credited the Board for holding transparent meetings with ample public testimony. And, although continuing to oppose the court's emphasis on the weight of the public testimony, the Board nevertheless emphasizes public testimony favoring pairing JBER with Eagle River. The Board says it was concerned, at least in part, about minimizing the voices of the JBER area military members and veterans by pairing it with downtown Anchorage. The Board also notes that Members Bahnke and Borromeo acknowledged some similarities between Eagle River and JBER, despite voting against the pairing.

Girdwood responds that the superior court properly considered "the Board's disregard for the public testimony in context, and concluded that it was *further* evidence of illegitimate intent." (Emphasis in original.) Girdwood points to examples of Board members seeming not to have taken public comments seriously and even being confused after several days of public testimony about where "Chugiak and the Chugach mountains . . . were geographically located relative to Eagle River." Girdwood asserts that this evidence supports the court's findings that "the majority board members approached the

process with a predetermined outcome in mind,” that the “totality of the circumstances indicate[d] a goal-oriented approach[,] [and that] they paid attention to the details only as much as they needed to say the right words on the public record when explaining their choice.” We agree.

After the superior court found that the Board intentionally discriminated against certain voters, the burden switched to “the Board to demonstrate that its acts aimed to effectuate proportional representation.”²³⁷ The Board appears to suggest that its actions were justified because Girdwood’s voting power increased by 0.17% when paired with District 10 as opposed to being paired with District 13 (if Option 2 had been adopted). Aside from this being a de minimis increase in voting power for Girdwood and not being directly relevant to the proportionality of representation issue as we discussed earlier, the Board omits any discussion of discriminating in Eagle River’s favor with the aim of “effectuat[ing] proportional representation” in some other way.²³⁸ Absent such justification, we agree with the superior court that continuing to divide the Eagle River area solely “to provide it with two solidly Republican [S]enate seats” constituted “an unconstitutional partisan gerrymander” violating our equal protection doctrine.

C. The Superior Court Did Not Err When It Ordered As An Interim Plan The Only Other Alternative Considered By The Board.

The Board had adopted two potential redistricting plans for public presentation and comment and for adoption as the final amended plan, Options 2 and 3B. The Board adopted Option 3B as its final amended plan. After deciding Option 3B was unconstitutional, the superior court ordered that the Board implement Option 2 as the upcoming 2022 elections interim plan, enabling legislative candidates to file for office

²³⁷ *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1372 (Alaska 1987).

²³⁸ *See id.*

by the June 1 deadline. Because we agree with the superior court that the Board’s final amended plan — Option 3B — is unconstitutional, the issue of an interim plan remains.

The Board seemingly argues that the superior court had no authority to order the Board to adopt Option 2 as the interim proclamation plan. But the Board must have believed Option 2 fulfilled constitutional requirements, or it would not have adopted the plan for public presentation and consideration. At no point during its public discussion of the two options did a Board member assert that Option 2 was unconstitutional. We issued our May order about a week before June 1, and the Board had made no known effort to prepare or present to us another interim plan.²³⁹ We therefore affirm the superior court’s order that the Board adopt the Option 2 proclamation plan as the interim plan for the 2022 elections.

VIII. CONCLUSION OF ROUND 2 CHALLENGES TO AMENDED PROCLAMATION

We AFFIRM the superior court’s determination that the Board again engaged in unconstitutional partisan gerrymandering to increase one group’s Senate district voting power at the expense of others. Under the specific circumstances of these proceedings, we AFFIRM the superior court’s order that the Board adopt the Option 2 proclamation plan as an interim plan for the 2022 elections.

IX. FINAL REMEDY

After the second remand, the Board adopted the Option 2 proclamation plan as the 2022 elections interim plan.²⁴⁰ The question of a final redistricting plan for the

²³⁹ Cf. *2011 Redistricting I*, 274 P.3d 466, 468-69 (Alaska 2012) (inviting Board to submit proposed interim plan for our approval in light of upcoming election deadlines when remanding final plan to Board for further proceedings).

²⁴⁰ Attached as Appendix E are copies of relevant election district maps the Board published with its May 2022 interim redistricting plan proclamation.

decade remains. Having concluded that the Board engaged in unconstitutional gerrymandering in its initial final redistricting plan and that the Board then did so again in its amended final redistricting plan, our remanding for yet another redistricting plan may be questioned. Indeed, by clear implication article VI, section 11 authorizes courts to mandate a redistricting plan when, after a remand, the Board develops a new plan that is declared invalid.²⁴¹ But we will remand out of respect for the Board’s constitutional role in redistricting.

Given that the Board adopted the current interim redistricting plan for its final plan deliberations — confirming the Board’s belief that the interim plan is constitutional — and given that Alaska’s voters have not had a chance to raise challenges to that plan in the superior court:

We REMAND for the superior court to order that the Board shall have 90 days to show cause why the interim redistricting plan should not be the Board’s final redistricting plan for the 2020 redistricting cycle:

A. Upon a showing by the Board of good cause for a remand, the superior court shall REMAND to the Board for another round of redistricting efforts; or

B. Absent a showing by the Board of good cause for a remand, the superior court shall direct the Board to approve the interim redistricting plan as its final redistricting plan, allowing any legal challenges to that plan to be filed in superior court in the normal course.

²⁴¹ See Alaska Const. art. VI, § 11 (“Upon a final judicial decision that a plan is invalid, the matter shall be returned to the [B]oard for correction and development of a new plan. If that new plan is declared invalid, the matter *may* be referred again to the [B]oard.” (Emphasis added.)).

EASTAUGH, Senior Justice, concurring.

I agree in full with the court's resolution of these disputes. But I write separately because I have doubts about whether *Hickel v. Southeast Conference*¹ correctly described the priorities and order for applying the contiguity, compactness, and socio-economic integration criteria.² If I were reading the constitution in a vacuum, I would not necessarily conclude that the delegates agreed or that the Alaska Constitution's text requires that the first two criteria should have priority over the third. But there was no challenge to *Hickel*'s description of those priorities in this case, nor any contention its description should not be given stare decisis effect. Moreover, my doubts do not affect the outcome of any of the issues before us, even as to the "Cantwell Appendage," because the asserted increase in socio-economic integration in House District 36 does not outweigh the diminution in that district's compactness.

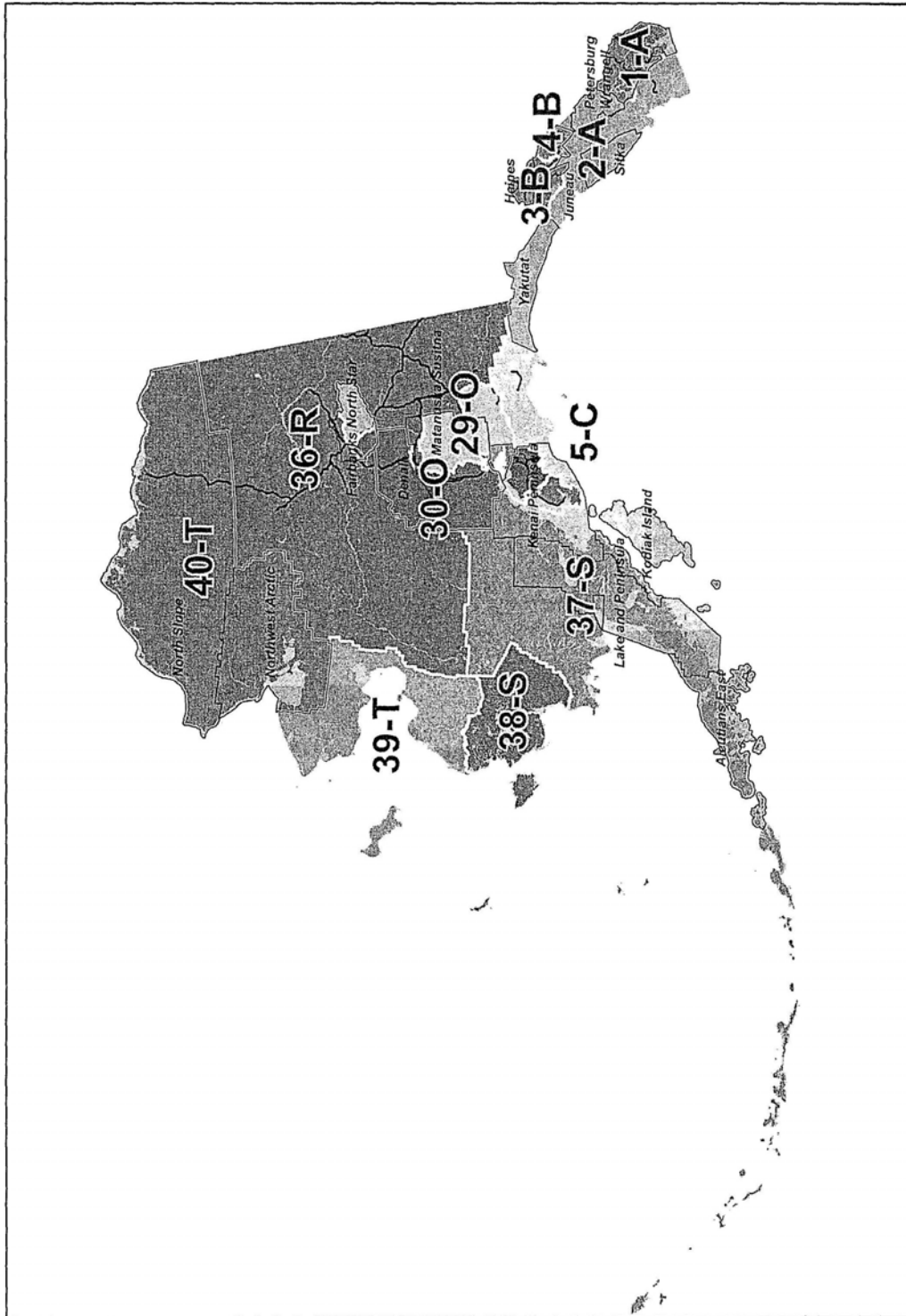
¹ 846 P.2d 38, 62 (Alaska 1992).

² *See id.* at 44-47, 62 (describing priorities and order for applying contiguity, compactness, and socio-economic integration criteria). The court's opinion today at page 53 quotes the *Hickel* passage that I find problematic.



2021 Board Proclamation Statewide

Redistricting Plan Adopted by the Alaska Redistricting Board 11/10/2021

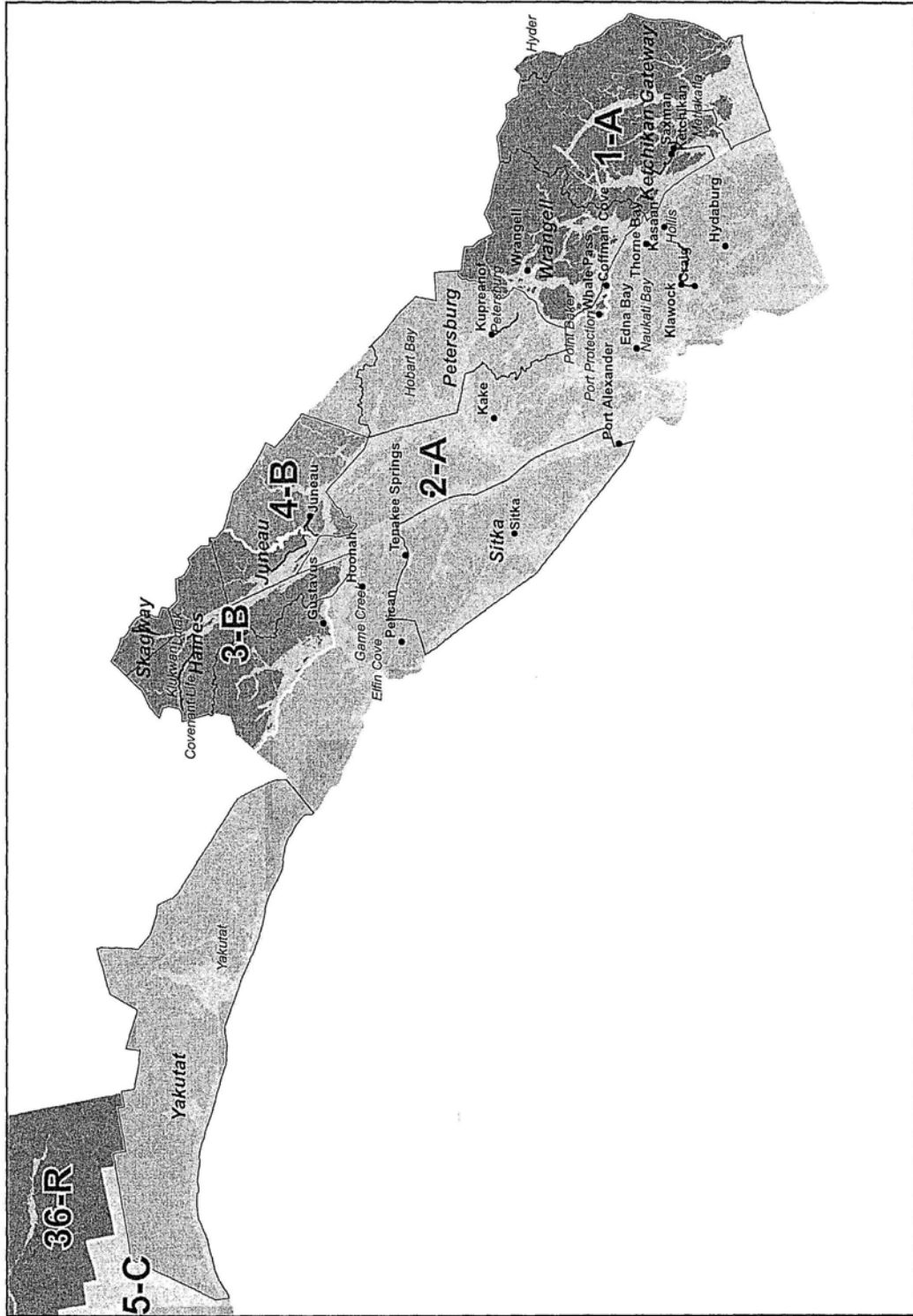


Based on 2020 Census Geography and 2020 PL94-171 Data. Map Gallery link: www.akredistrict.org/maps



2021 Board Proclamation Southeast

Redistricting Plan Adopted by the Alaska Redistricting Board 11/10/2021

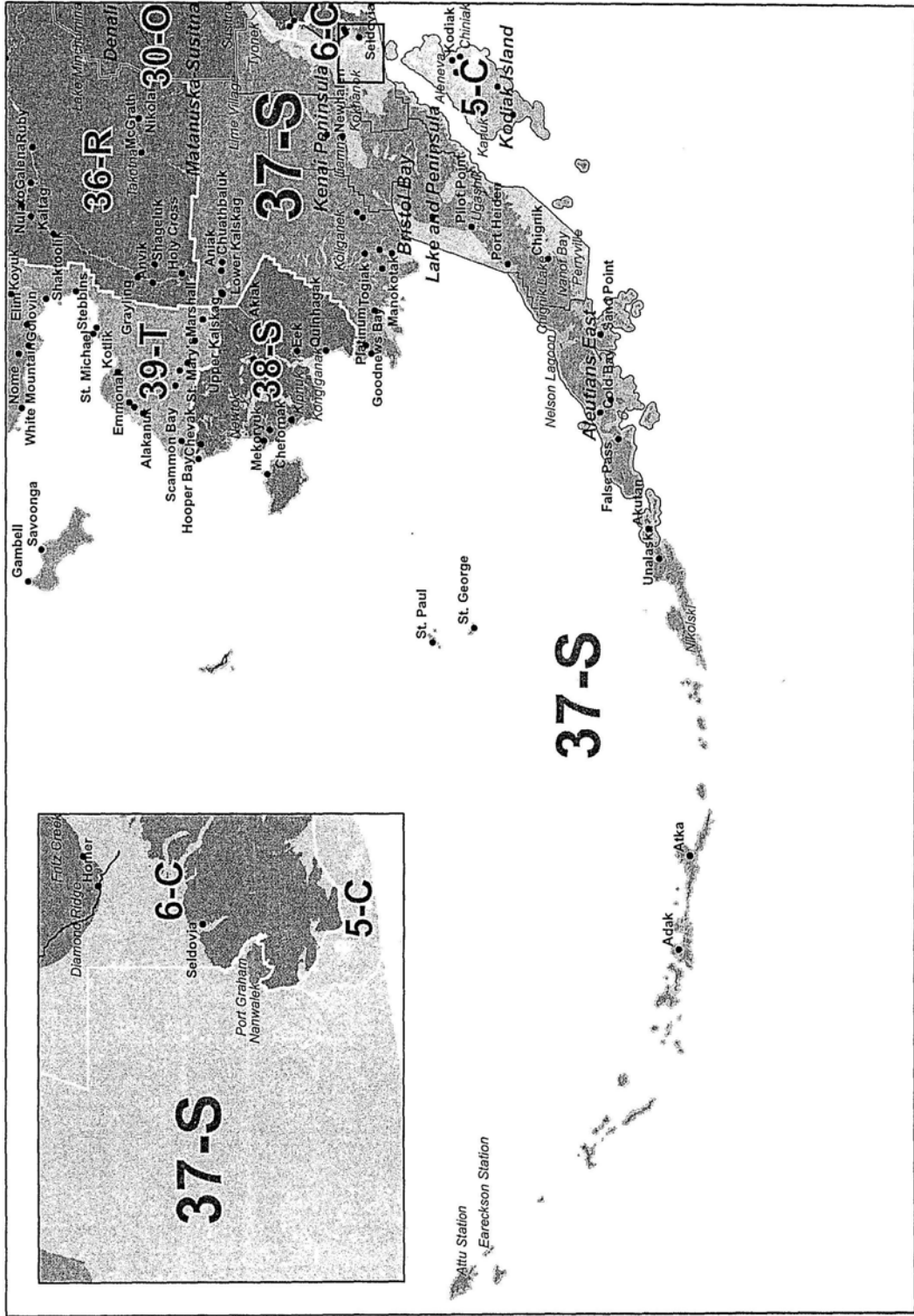


Based on 2020 Census Geography and 2020 PL94-171 Data; Map Gallery link: www.akredistrict.org/maps



2021 Board Proclamation District 37-S

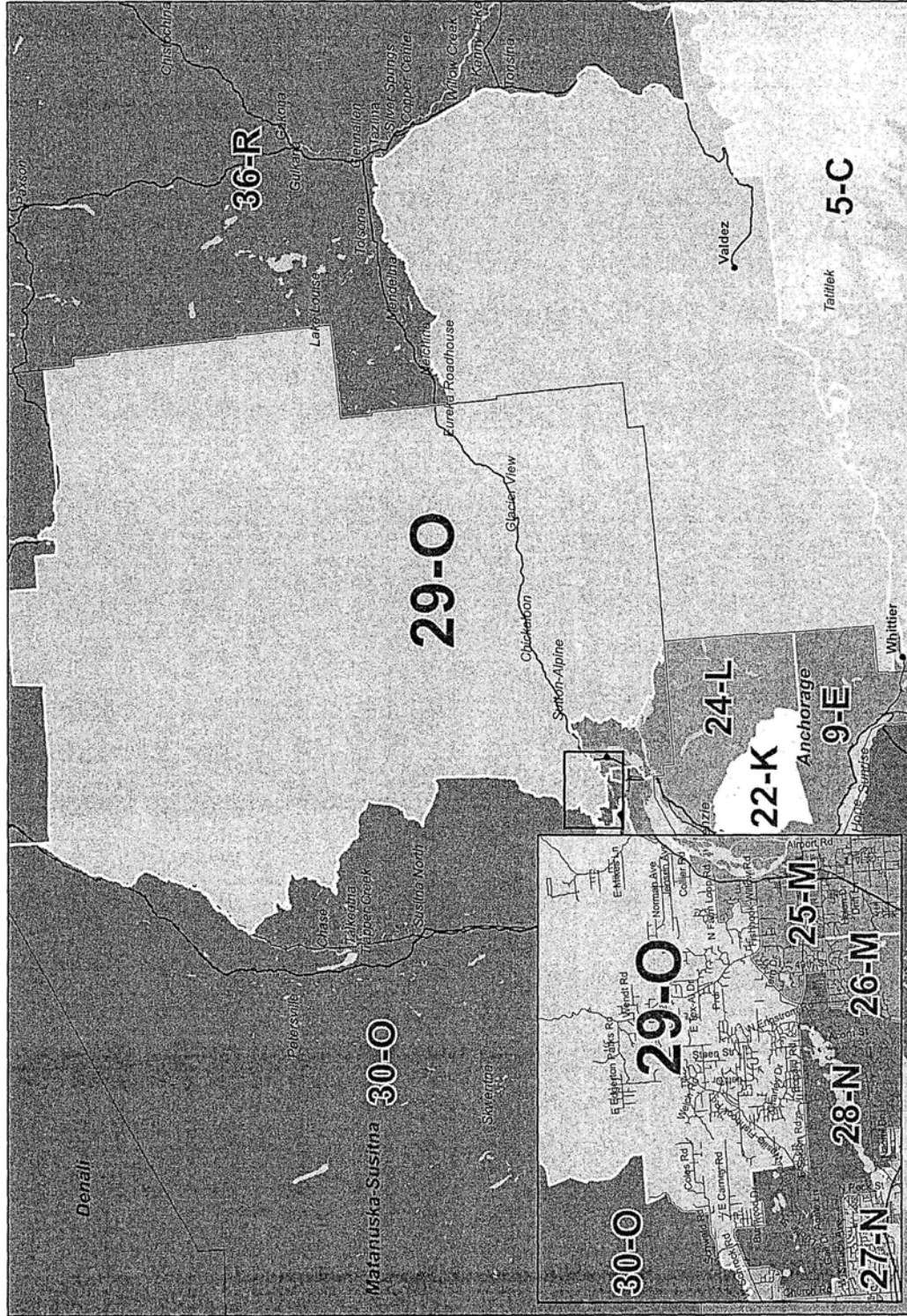
Redistricting Plan Adopted by the Alaska Redistricting Board 11/10/2021





2021 Board Proclamation District 29-O

Redistricting Plan Adopted by the Alaska Redistricting Board 11/10/2021

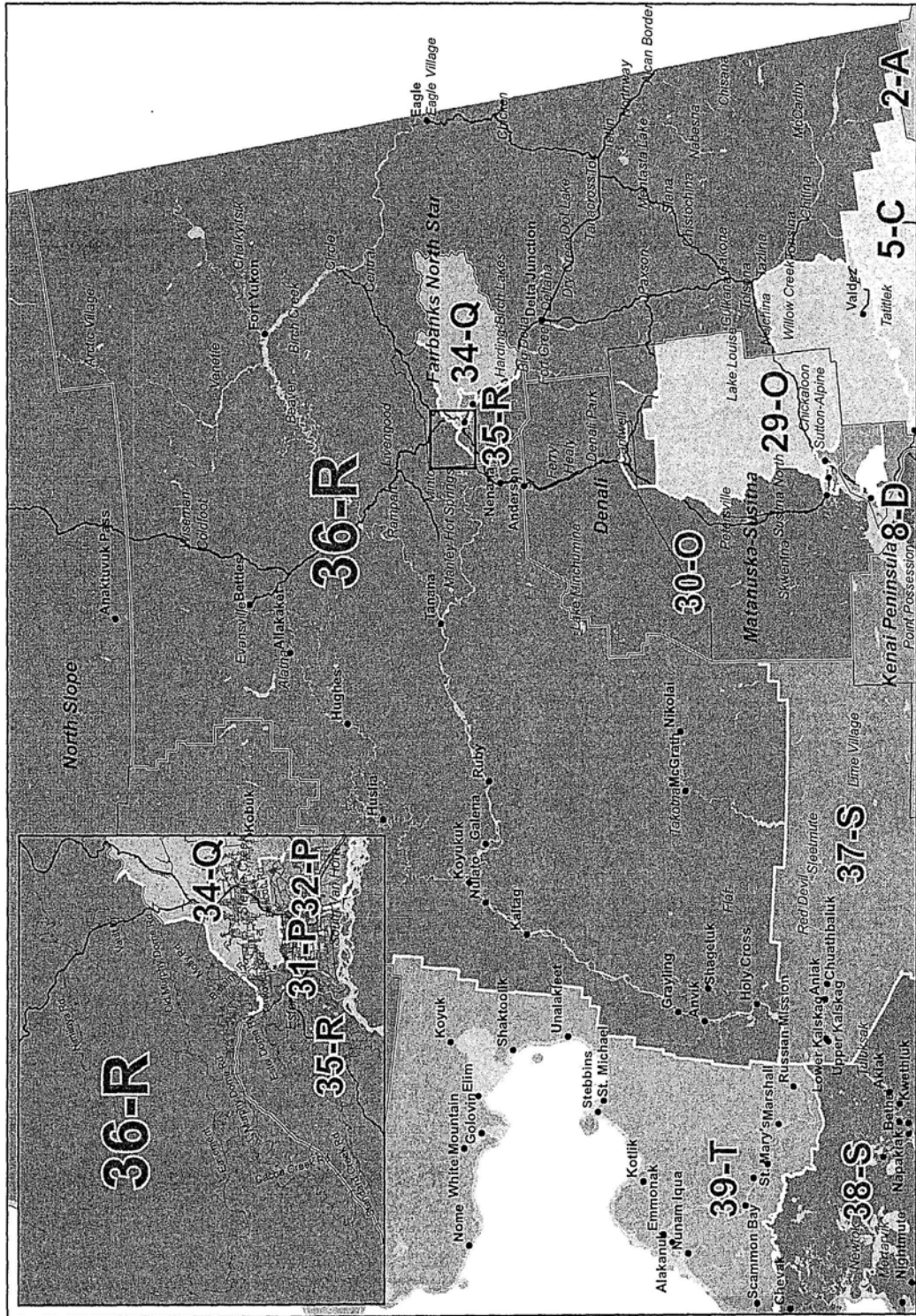


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2021 Board Proclamation District 36-R

Redistricting Plan Adopted by the Alaska Redistricting Board 11/10/2021

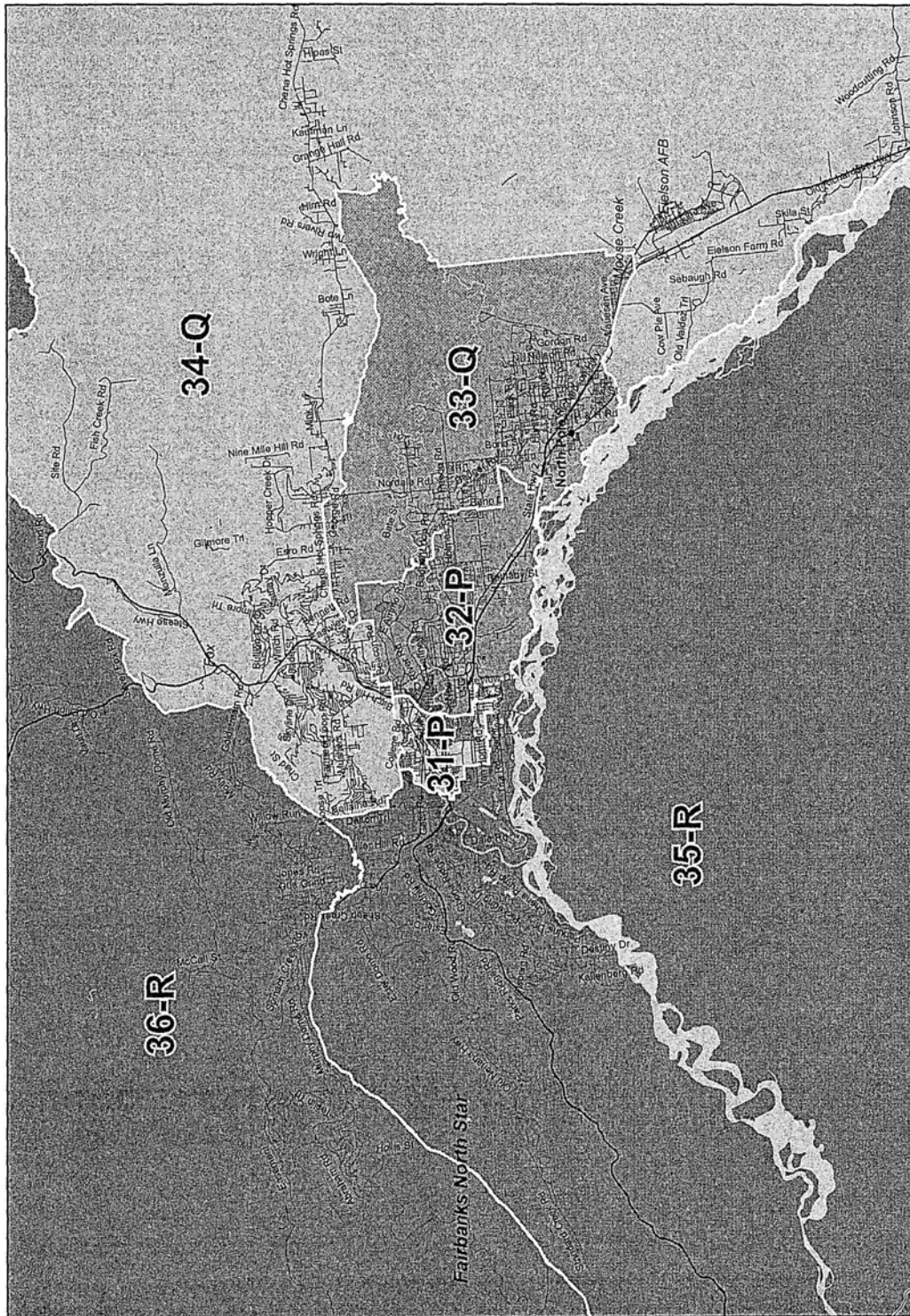


Based on 2020 Census Geography and 2020 PL94-171 Date; Map Gallery link: www.akredistrict.org/maps



2021 Board Proclamation Fairbanks

Redistricting Plan Adopted by the Alaska Redistricting Board 11/10/2021

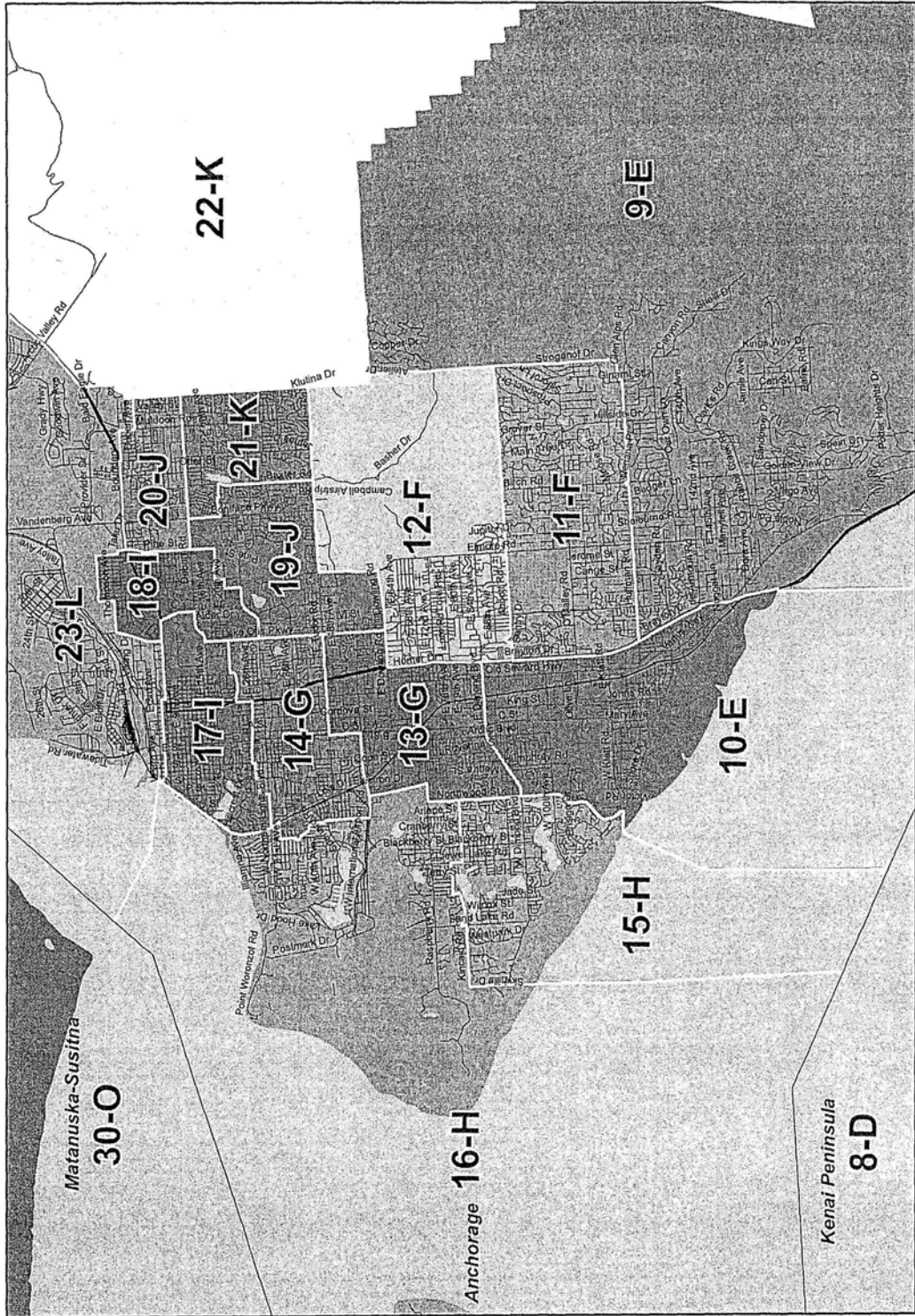


Based on 2020 Census Geography and 2020 PL94-171 Data; Map Gallery link: www.akredistrict.org/maps



2021 Board Proclamation Anchorage

Redistricting Plan Adopted by the Alaska Redistricting Board 11/10/2021

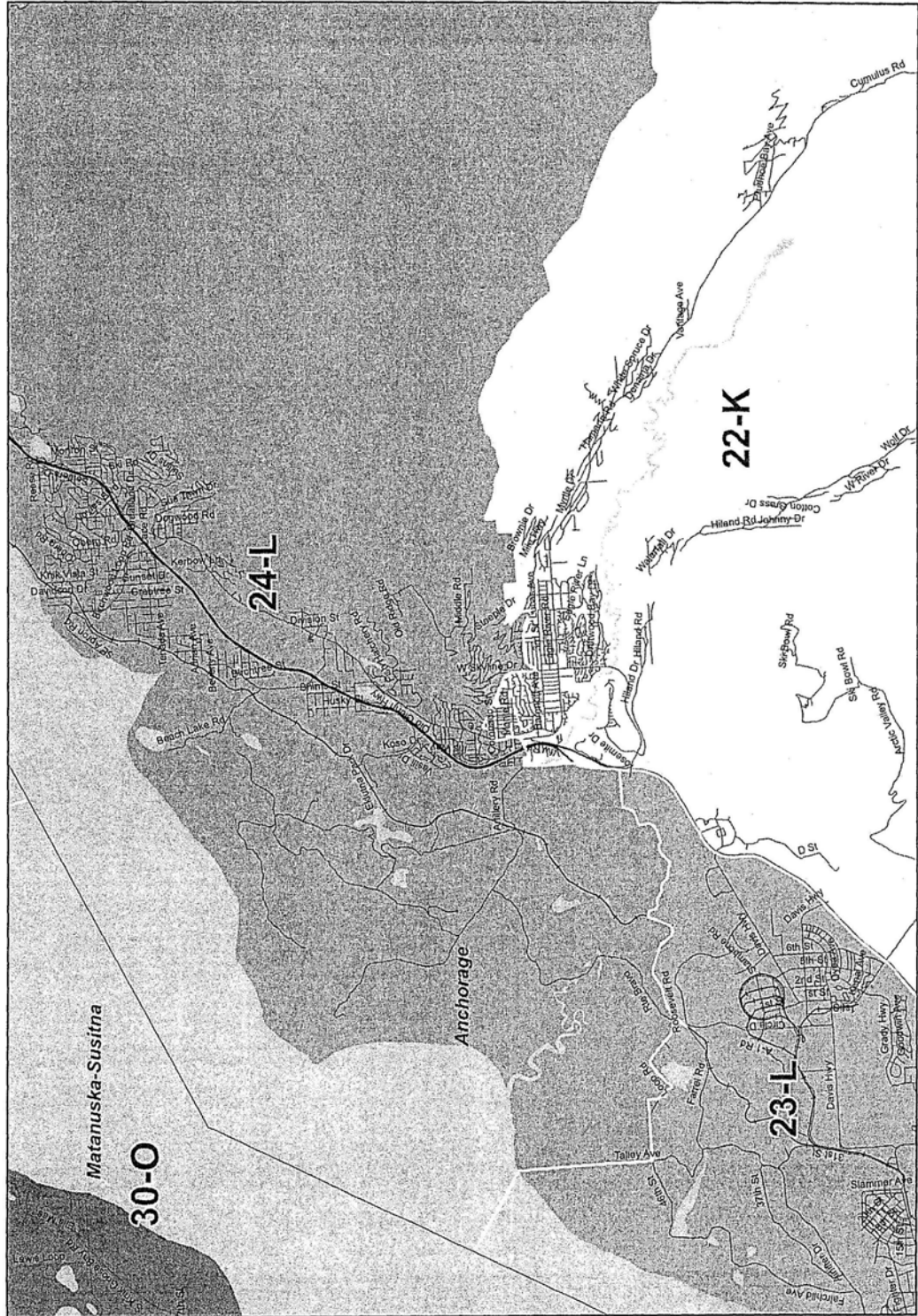


Based on 2020 Census Geography and 2020 PL94-171 Data; Map Gallery link: www.akredistrict.org/maps



2021 Board Proclamation Eagle River

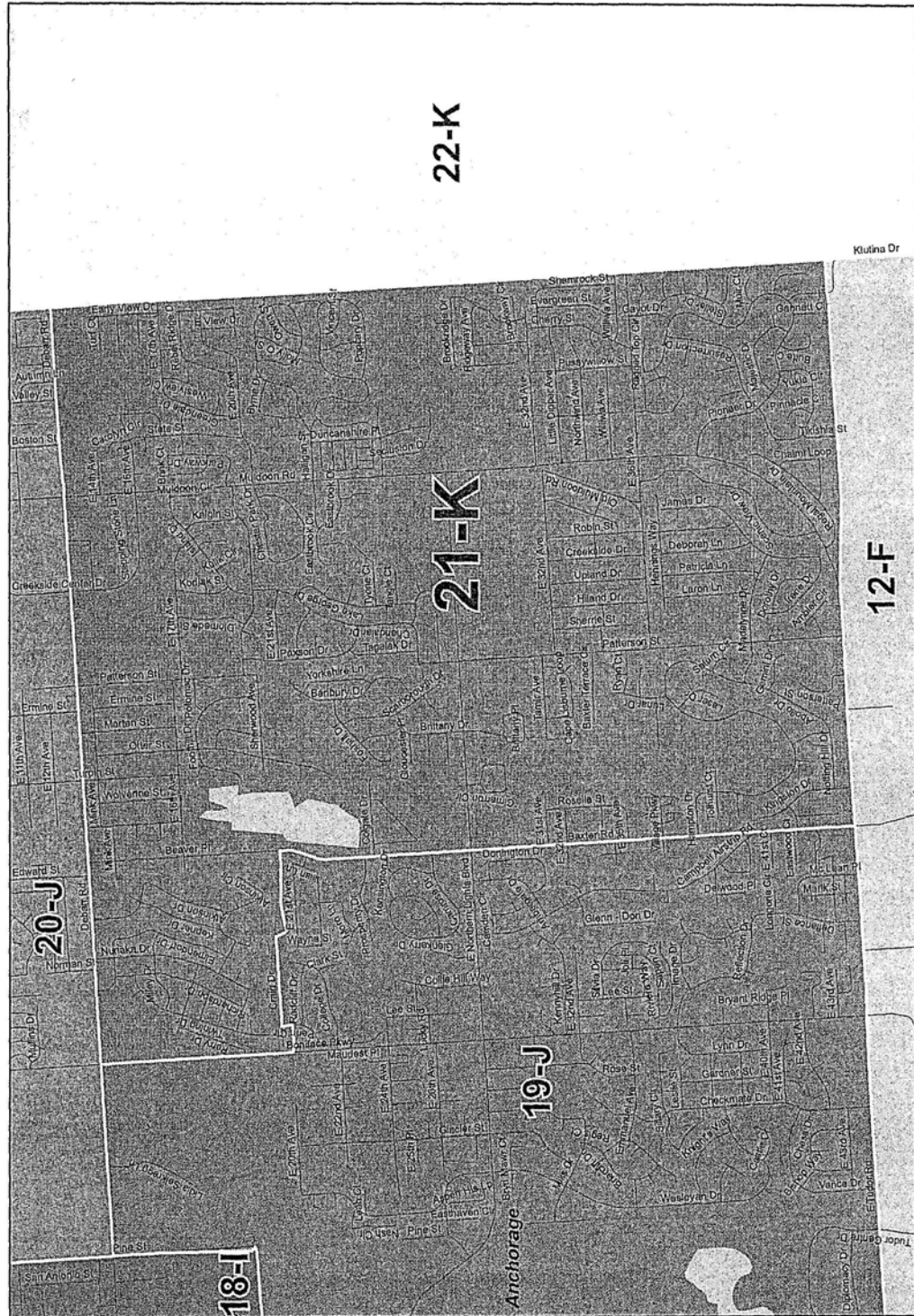
Redistricting Plan Adopted by the Alaska Redistricting Board 11/10/2021



Based on 2020 Census Geography and 2020 PL94-171 Data; Map Gallery link: www.akredistrict.org/maps



2021 Board Proclamation District 21-K
 Redistricting Plan Adopted by the Alaska Redistricting Board 11/10/2021



In the Supreme Court of the State of Alaska

In the Matter of the 2021 Redistricting Cases,
(Matanuska-Susitna Borough, S-18328)
(City of Valdez, S-18329)
(Municipality of Skagway, S-18330)
(Alaska Redistricting Board, S-18332)

Supreme Court No. S-18332

Order
Petitions for Review

Date of Order: 3/25/2022

Trial Court Case No. 3AN-21-08869CI

Before: Winfree, Chief Justice, Borghesan and Henderson, Justices,
and Matthews and Eastaugh, Senior Justices.*
Eastaugh, Senior Justice, concurring.

On February 15, 2022 the superior court remanded the underlying redistricting case to the Alaska Redistricting Board for further proceedings on House Districts 3 and 4 and Senate District K of the 2021 Proclamation of Redistricting.¹ We now have before us four petitions for review arising from that decision: by the Board, the Municipality of Skagway Borough, the Matanuska-Susitna Borough, and the City of Valdez (with qualified voters joining the municipality petitions).² Because a redistricting matter has priority over all other matters pending before this court,³ and because a decision in this redistricting

* Sitting by assignment made under article IV, section 11 of the Alaska Constitution and Alaska Administrative Rule 23(a).

¹ See generally Alaska Const. art. VI (providing for creation of Redistricting Board, redistricting process leading to redistricting proclamation, and challenges to proclamation in superior court and then this court).

² See Alaska R. App. P. 216.5(h) (providing for petitions for review of superior court decision remanding redistricting case to the Redistricting Board).

³ See Alaska Const. art. VI, § 11 (providing that redistricting matter “shall have priority over all other matters pending before the . . . court”); Alaska R. App. P. 216.5(i) (same).

matter is required by April 1,⁴ the parties followed an expedited briefing schedule for fully briefed petitions due by March 2 and fully briefed responses due by March 10. We then held oral arguments on the petitions on March 18. Having considered the parties' briefing and oral arguments, we GRANT review under all four petitions.⁵ To now further expedite the redistricting process, we set out in summary fashion our decisions on the merits of the four petitions, with a formal opinion explaining our reasoning to follow:

House Districts 3 and 4

House Districts 3 and 4 are the subject of two petitions, one by the Board and one by the Municipality of Skagway Borough. We AFFIRM the superior court's determination that the house districts comply with article VI, section 6 of the Alaska Constitution⁶ and should not otherwise be vacated due to procedural aspects of the Board's

⁴ See Alaska R. App. P. 216.5(i) (providing that appellate decisions in redistricting challenges be decided no later than 60 days before statutory filing deadline for next statewide election).

⁵ Alaska Appellate Rule 403(a)-(g) governs petitions for review and generally contemplates a process of a party petitioning for review of a trial court ruling, describing why the ruling is incorrect and why immediate review is necessary, and opposing parties then filing responses; the appellate court has an opportunity to consider whether immediate review is warranted and may order full briefing and oral argument on legal issues presented if appropriate. Given the expedited and weighty nature of redistricting matters, we allowed full briefing on the merits of the parties' challenges and the opportunity for oral argument before we considered whether to grant review. We thank the parties, their attorneys, and amici curiae for their excellent presentation of the arguments in such an expedited fashion. We recognize this was no easy feat.

⁶ Article VI, section 6 instructs:

The Redistricting Board shall establish the size and area of house districts, subject to the limitations of this article. Each

work. We REVERSE the superior court's remand to the Board for further proceedings under the superior court's "hard look" analysis relating to public comments on the house districts. There is no constitutional infirmity with House Districts 3 and 4 and no need for further work by the Board.

House Districts 29, 30, and 36

The Matanuska-Susitna Borough and the City of Valdez separately challenge the superior court's determination that House Districts 29, 30, and 36 do not violate article VI, section 6 of the Constitution and should not otherwise be vacated due to procedural aspects of the Board's work. We AFFIRM the superior court's determination, with one exception: We conclude that the so-called "Cantwell Appendage" violates article VI, section 6 of the Constitution. The Cantwell Appendage renders House District 36 non-compact without adequate justification. House District 36 reaches across a local borough boundary, within which voters are by law socio-economically integrated with other borough voters,⁷ to extract Cantwell residents from District 30 and place them in House District 36,

house district shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area. Each shall contain a population as near as practicable to the quotient obtained by dividing the population of the state by forty. Each senate district shall be composed as near as practicable of two contiguous house districts. Consideration may be given to local government boundaries. Drainage and other geographic features shall be used in describing boundaries wherever possible.

⁷ See AS 29.05.031(a)(1) (requiring "social, cultural, and economic" integration before area may be incorporated as borough or unified municipality); *In re 2001 Redistricting Cases*, 44 P.3d 141, 146 (Alaska 2002) (recognizing same); *Hickel*

based primarily on the proposition that an apparent minority of Cantwell residents — shareholders of the Alaska Native Claims Settlement Act regional corporation headquartered in House District 36 — are more socio-economically integrated with similar shareholder residents in House District 36. But the Board’s briefing about House Districts 3 and 4 argues: “Nothing in [article VI, section 6] states that the Board should disregard compactness to increase an already socio-economically integrated area’s integration.”⁸ The Board mentions in its briefing that House District 30 was about 2% overpopulated and that moving the roughly 200 Cantwell residents eliminated about half the overage to the constitutionally targeted house district population of 18,335. This rendered both House Districts about 1% overpopulated. But House District 30’s approximately 2% overpopulation with the Cantwell residents included, and House District 36’s nearly perfect population without the Cantwell residents included, are well within constitutionally allowable parameters under our case law.⁹ We therefore REVERSE the superior court’s

v. Se. Conf., 846 P.2d 38, 51-52 (Alaska 1992) (recognizing same).

⁸ *Cf. Hickel*, 846 P.2d at 62 (“The requirements of article VI, section 6 shall receive priority *inter se* in the following order: (1) contiguousness and compactness, (2) relative socioeconomic integration, (3) consideration of local government boundaries, (4) use of drainage and other geographic features in describing boundaries.”). At oral argument the Board asserted that there is no required priority among the constitutional requirements of article VI, section 6 and that the Board has broad discretion to balance those requirements. The Board did not acknowledge this aspect of *Hickel* nor did the Board suggest anywhere in its briefing or during oral argument that *Hickel* was wrongly decided or that our long-standing precedent should be overruled.

⁹ The federal “Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable,” though some deviation is expected and permissible.

determination to this limited extent, and remand to the superior court to remand this aspect of the house districts to the Board to correct the constitutional error.

Senate District K

The superior court determined that Senate District K was unconstitutional on the grounds of equal protection,¹⁰ due process,¹¹ and violating the public hearings

Reynolds v. Sims, 377 U.S. 533, 577, 579-81 (1964); U.S. Const. amend. XIV, § 1. For example, keeping political subdivisions, such as boroughs, intact may justify some population deviation. *Reynolds*, 377 U.S. at 580-81.

We previously have held that under the Alaska Constitution deviations below 10% were minimal and required no justification absent improper motive. *See Hickel*, 846 P.2d at 47-48; *cf. Braun v. Borough*, 193 P.2d 719 (2008) (analyzing deviation in borough redistricting context). Although technological advances often will make it practicable to achieve even lower deviations, and under the Alaska Constitution the Board must make a good faith effort to do so, *see In re 2001 Redistricting Cases*, 44 P.3d at 146, we have upheld deviations greater than 1%, *see In re 2001 Redistricting Cases*, 47 P.3d 1089, 1094 (Alaska 2002). Eliminating the Cantwell Appendage would improve the compactness of District 36 and keep together voters in the same borough in District 30, and there is no showing that doing so would have more than a de minimis effect on the statewide House Districts' average population deviation. The resulting roughly 2% population deviation in District 30 thus is justified.

¹⁰ *See* Alaska Const. art. I, § 1; *Kenai Peninsula*, 743 P.2d at 1366 (“In the context of voting rights in redistricting and reapportionment litigation, there are two basic principles of equal protection, namely that of ‘one person, one vote’ — the right to an equally weighted vote — and of ‘fair and effective representation’ — the right to group effectiveness or an equally powerful vote.” (quoting John R. Low-Beer, *The Constitutional Imperative of Proportional Representation*, 94 YALE L.J. 163, 163-64 (1984))).

¹¹ *See* Alaska Const. art. I, § 7; *Hagblom v. City of Dillingham*, 191 P.3d 991, 995 (Alaska 2008) (“At a minimum, due process requires that the parties receive notice and an opportunity to be heard.”).

requirement.¹² The Board challenges this determination. We note that the superior court did not rule that the underlying house districts were unconstitutional and that no party asserts that the underlying house districts are unconstitutional. The superior court's determination relates solely to the senate pairing of house districts.¹³ We AFFIRM the superior court's determination that the Board's Senate K pairing of house districts constituted an unconstitutional political gerrymander violating equal protection under the Alaska Constitution,¹⁴ and we therefore AFFIRM the superior court's remand to the Board to correct the constitutional error.

Conclusion

This matter is REMANDED to the superior court for action consistent with this order. We do not retain jurisdiction.

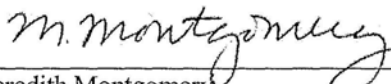
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¹² See Alaska Const. art. VI, § 10 (“Within thirty days after the official reporting of the decennial census of the United States or thirty days after being duly appointed, whichever occurs last, the board shall adopt one or more proposed redistricting plans. The board shall hold public hearings on the proposed plan, or, if no single proposed plan is agreed on, on all plans proposed by the board.”).

¹³ See Alaska Const. art. VI, § 4 (requiring Redistricting Board to create 40 separate house districts and 20 senate districts, each composed of two house districts).

¹⁴ See *Hickel*, 846 P.2d at 45 & n.11 (explaining Constitution's contiguity, compactness, and socio-economic integration requirements “were incorporated by the framers of the reapportionment provisions to prevent gerrymandering,” including political gerrymandering); *In re 2011 Redistricting Cases*, 274 P.3d 466, 468 (Alaska 2012) (“The *Hickel* process also diminishes the potential for partisan gerrymandering and promotes trust in government.”).

Clerk of the Appellate Courts


Meredith Montgomery

EASTAUGH, Senior Justice, concurring.

I agree in full with the court's resolution of these petitions. But I write separately because I have doubts about whether *Hickel v. Southeast Conference*¹ correctly described the priorities for applying the contiguity, compactness, and socio-economic integration criteria.² If I were reading the constitution in a vacuum, I would not necessarily conclude that the delegates agreed or that the Alaska Constitution's text requires that the first two criteria should have priority over the third. But there was no challenge to *Hickel*'s description of those priorities in this case, nor any contention its description should not be given stare decisis effect. Moreover, my doubts do not affect the outcome of any of these petitions, even as to the "Cantwell Appendage," because the asserted increase in socio-economic integration in House District 36 does not outweigh the diminution in that district's compactness.

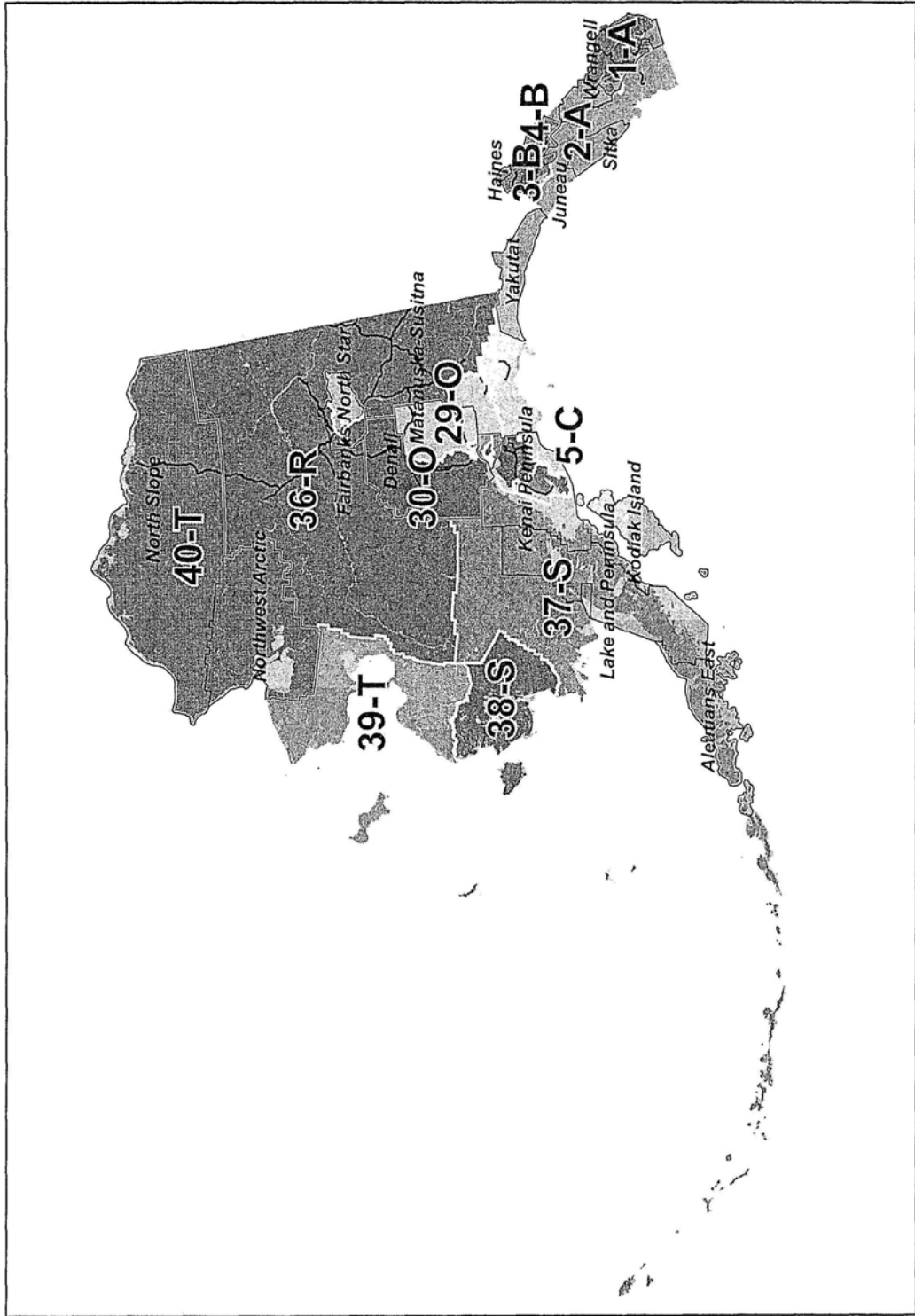
¹ 846 P.2d 38, 62 (Alaska 1992).

² See *id.* at 44-47, 62 (describing priorities for applying contiguity, compactness, and socio-economic integration criteria).



April 2022 Board Proclamation Statewide

Redistricting Plan Adopted by the Alaska Redistricting Board 04/13/2022

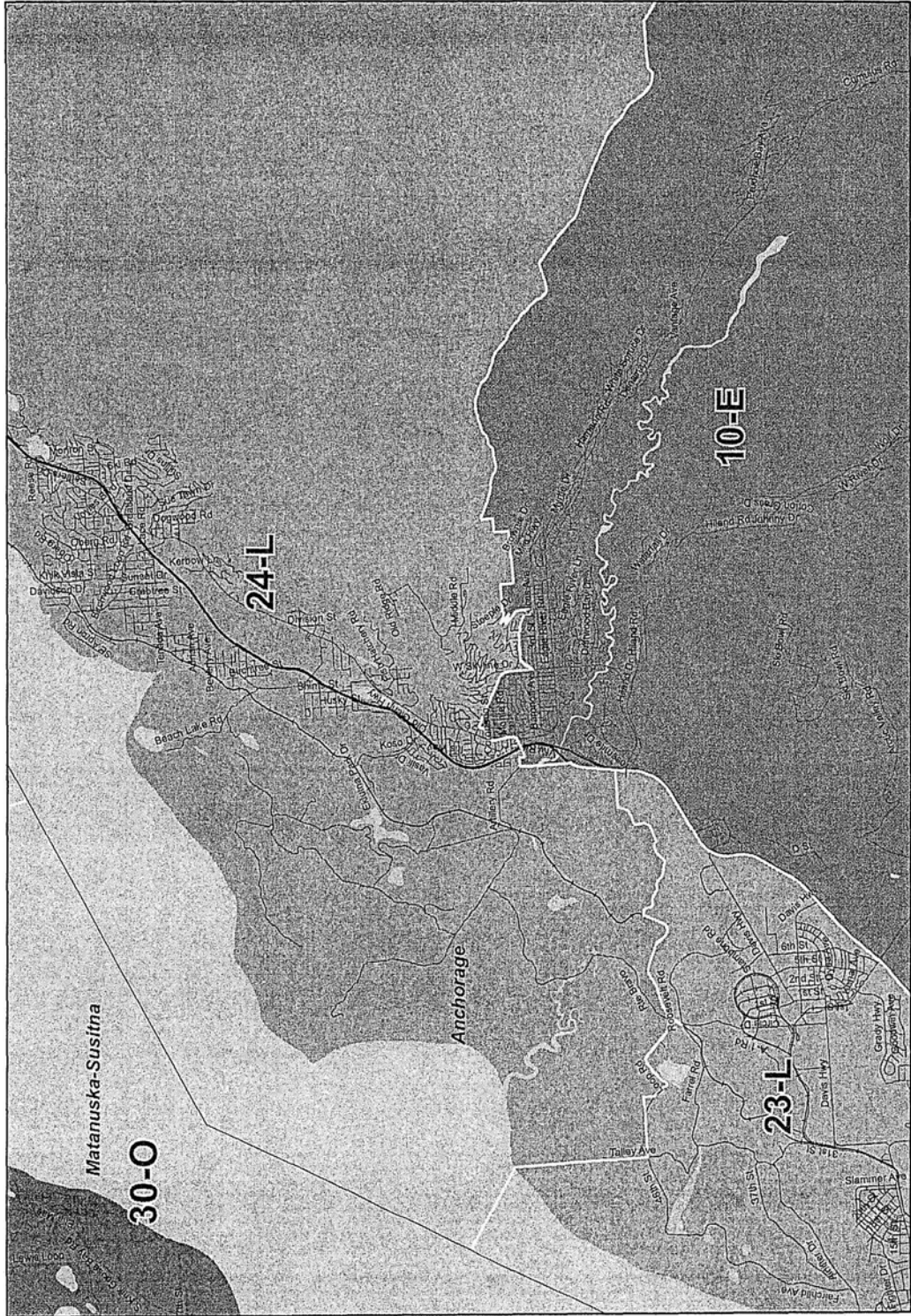


Based on 2020 Census Geography and 2020 PL94-171 Data; Map Gallery link: www.akredistrict.org/maps



April 2022 Board Proclamation Eagle River

Redistricting Plan Adopted by the Alaska Redistricting Board 04/13/2022

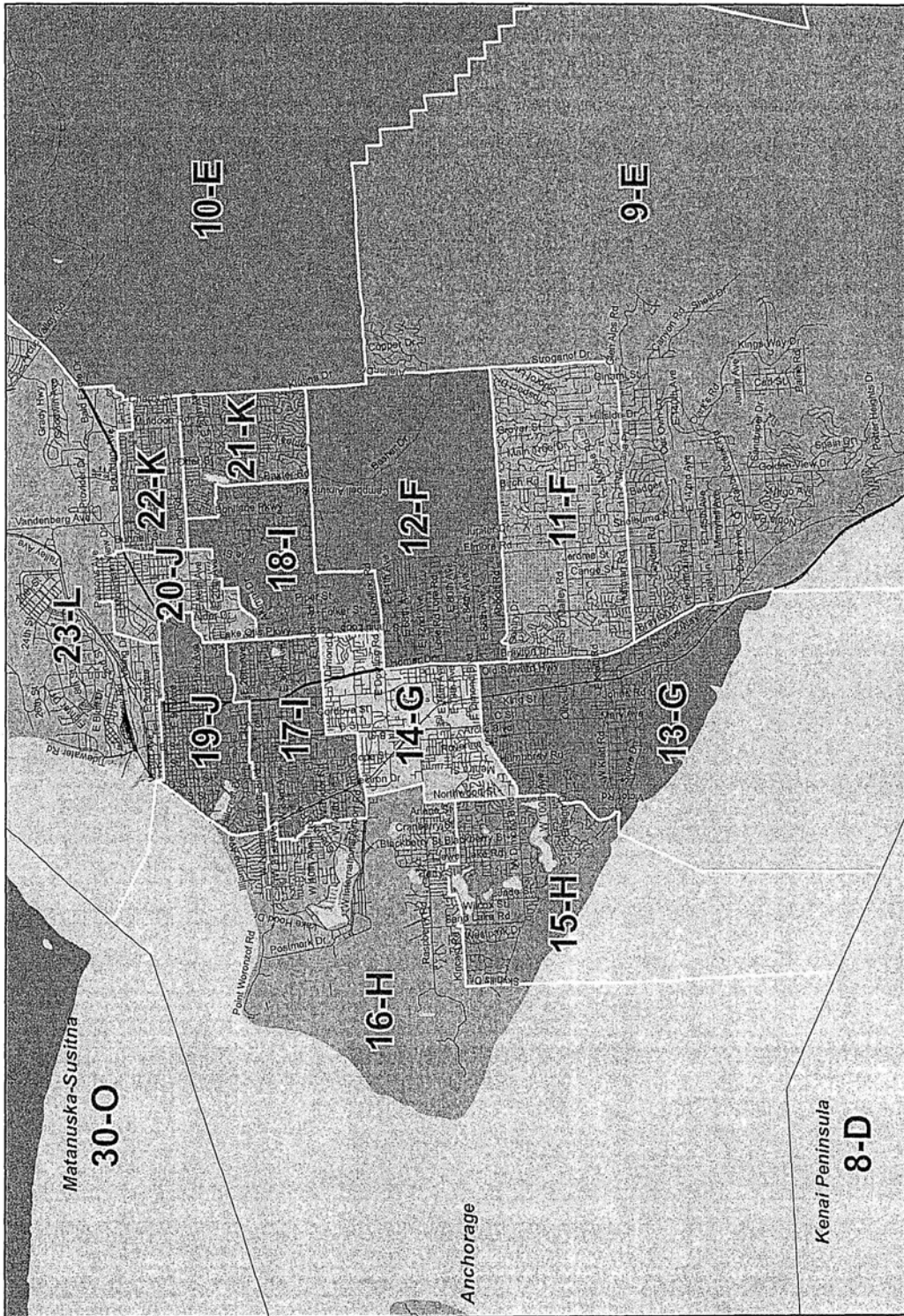


Based on 2020 Census Geography and 2020 PL94-171 Data; Map Gallery link: www.akredistrict.org/maps



April 2022 Board Proclamation Anchorage

Redistricting Plan Adopted by the Alaska Redistricting Board 04/13/2022



Based on 2020 Census Geography and 2020 PL94-171 Data; Map Gallery link: www.akredistrict.org/maps

In the Supreme Court of the State of Alaska

**In the Matter of the 2021
Redistricting Cases**
(Alaska Redistricting Board/Girdwood
Plaintiffs/East Anchorage Plaintiffs)

Supreme Court No. S-18419

Order
Petition for Review

Date of Order: 5/24/2022

Trial Court Case No. 3AN-21-08869CI

Before: Winfree, Chief Justice, Borghesan and Henderson, Justices,
and Matthews and Eastaugh, Senior Justices.*

On February 15, 2022 the superior court remanded the 2021 Proclamation of Redistricting to the Alaska Redistricting Board for further proceedings on, *inter alia*, the Board's proposed Senate District K.¹ After considering four petitions for review² on an expedited basis³ we issued an order affirming the superior court's conclusion that Senate District K was an unconstitutional political gerrymander and remanding to the

* Sitting by assignments made under article IV, section 11 of the Alaska Constitution and Alaska Administrative Rule 23(a).

¹ See generally Alaska Const. art. VI (providing for creation of redistricting board, redistricting process leading to redistricting proclamation, and challenges to proclamation in superior court and then this court).

² See Alaska R. App. P. 216.5(h) (providing for petitions for review of superior court decision remanding redistricting case to the Redistricting Board).

³ See Alaska Const. art. VI, § 11 (providing that redistricting matter "shall have priority over all other matters pending before the . . . court"); Alaska R. App. P. 216.5(i) (same).

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Order dated 5/24/2022
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superior court to remand to the Board for further proceedings to correct the unconstitutional proclamation plan.⁴

After remand the Board approved an amended proclamation plan on April 13, 2022. The amended plan was challenged in superior court by both the original East Anchorage Plaintiffs and three Alaska residents referred to as the Girdwood Plaintiffs. On May 16, 2022 the superior court decided, in relevant part, that the Board's Senate Districts E and L were a continuing unconstitutional political gerrymander, that the matter be remanded to the Board to correct the constitutional deficiency, and that the Board adopt a specified interim proclamation plan for the 2022 elections in light of the upcoming June 1 candidate filing deadline and the inability to have a new final proclamation plan approved before that date.⁵

The Board petitioned for review of the superior court's decision, challenging both the ruling on the amended proclamation plan's unconstitutionality and the specified interim plan for the 2022 elections. As with the earlier petitions for review, we ordered expedited briefing;⁶ we also entered a stay of the superior court's May 16, 2022 order pending further order of this court.⁷

⁴ *In re 2021 Alaska Redistricting Cases*, No. S-18332 (Alaska Supreme Court Order, March 25, 2022).

⁵ *See* AS 15.25.040(a) (setting date for candidate filings).

⁶ *In re 2021 Alaska Redistricting Cases*, No. S-18419 (Alaska Supreme Court Order, May 18, 2022).

⁷ *In re 2021 Alaska Redistricting Cases*, No. S-18419 (Alaska Supreme Court Order, May 19, 2022).

Having considered the parties' briefing, we GRANT review of the Board's petition.⁸ To now further expedite the redistricting process, and without seeing the need for oral argument, we set out in summary fashion our decision on the Board's petition for review with a formal opinion explaining our reasoning to follow:

Overview

As presented to us for appellate review, this matter does not involve a challenge to the Board's compliance with article VI, section 6 of the Alaska Constitution.⁹ Nor does this matter involve a claim of improper house district population

⁸ Alaska Appellate Rule 403(a)-(g) governs petitions for review and generally contemplates a process of a party petitioning for review of a trial court ruling, describing why the ruling is incorrect and why immediate review is necessary, and opposing parties then filing responses; the appellate court has an opportunity to consider whether immediate review is warranted and may order full briefing and oral argument on legal issues presented if appropriate. Given the expedited and weighty nature of redistricting matters, we allowed full briefing on the merits of the Board's challenges to the superior court's order in about two days' time for each side. We thank the parties and counsel for their cogent presentation of arguments in such an expedited fashion.

⁹ Article VI, section 6 instructs:

The Redistricting Board shall establish the size and area of house districts, subject to the limitations of this article. Each house district shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area. Each shall contain a population as near as practicable to the quotient obtained by dividing the population of the state by forty. Each senate district shall be composed as near as practicable of two contiguous house districts. Consideration may be given to local government boundaries. Drainage and other geographic features shall be used in describing boundaries wherever possible.

deviations.¹⁰ The issue before us is whether the Board’s pairing of certain house districts in senate districts¹¹ violates the Alaska Constitution’s equal protection guarantee, specifically the right to fair and effective representation.¹²

Senate Districts E and L

The superior court concluded that the Board’s amended proclamation plan reflected the Board’s continued intent to discriminate — on a partisan basis — in favor of Eagle River voters by selectively pairing two Eagle River house districts with non-Eagle River house districts, giving Eagle River voters an opportunity to elect two senators in Senate Districts E and L, to the detriment of voters in the non-Eagle River

See Hickel v. Se. Conf., 846 P.2d 38, 45 & n.11 (Alaska 1992), *as modified on denial of reh’g* (Mar. 12, 1993) (explaining Constitution’s contiguity, compactness, and socio-economic integration requirements “were incorporated by the framers of the reapportionment provisions to prevent gerrymandering,” including political gerrymandering).

¹⁰ The federal “Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable,” though some deviation is expected and permissible. *Reynolds v. Sims*, 377 U.S. 533, 577, 579-81 (1964); U.S. Const. amend. XIV, § 1.

¹¹ *See* Alaska Const. art. VI, § 4 (requiring redistricting board to create 20 senate districts, each composed of two house districts).

¹² *See* Alaska Const. art. I, § 1; *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1366 (Alaska 1987) (“In the context of voting rights in redistricting and reapportionment litigation, there are two basic principles of equal protection, namely that of ‘one person, one vote’ — the right to an equally weighted vote — and of ‘fair and effective representation’ — the right to group effectiveness or an equally powerful vote.” (quoting John R. Low-Beer, *The Constitutional Imperative of Proportional Representation*, 94 *YALE L.J.* 163, 163-64 (1984))).

house districts. The Board offers several arguments challenging the superior court's decision.

1. Burden of persuasion

The Board contends that the superior court erred as a matter of law by placing the burden of persuasion on the Board to prove it was not illegally discriminating in favor of Eagle River voters and against other voters. This argument is specious. The superior court expressly and clearly stated that it was not placing the burden of persuasion on the Board, but rather on the proclamation plan challengers. The court stated that it was a matter of first impression whether the burden of persuasion should shift after a prior determination of illegal discrimination by the Board, but the court declined to take that step, leaving the question for us to decide if appropriate. The superior court's (1) considering the previous determination of illegal discrimination as a factor in the multi-factor legal test for an equal protection claim, and (2) deciding the East Anchorage and Girdwood Plaintiffs met their burden of persuasion, does not mean the court wrongly placed the burden of persuasion on the Board.

2. Hard look analysis

The Board argues that the superior court erred as a matter of law by continuing to use the "hard look" analysis we rejected in our earlier order.¹³ After

¹³ The hard look doctrine, which we previously have applied to the Board, determines whether a proclamation plan — like a regulation — is reasonable and primarily concerns whether the Board "has taken a hard look at the salient problems and has genuinely engaged in reasoned decision making." See *In re 2001 Redistricting Cases*, 44 P.3d at 143-44, 144 n.5 (quoting *Interior Alaska Airboat Ass'n v. State, Bd. of Game*, 18 P.3d 686, 690 (Alaska 2001)) (applying hard look analysis to Board and remanding house districts for reconsideration because Board had not considered certain salient issues).

carefully reviewing the superior court's decision, we conclude that the superior court examined whether the Board took a hard look at salient problems raised by public comments rather than merely counting comments and determining whether the Board followed the majority view. This is in line with the hard look doctrine, and we see no legal error.

3. Equal protection test/conclusion

The Board argues that the superior court wrongfully added a federal law overlay to the multi-factor test used to determine whether redistricting violates equal protection in this context.¹⁴ We disagree. The superior court looked to federal law to assist in determining, as a matter of first impression, whether a prior illegal redistricting discrimination finding may be relevant to determining whether subsequent illegal redistricting discrimination occurred. We see no legal error in the superior court's determination that prior illegal redistricting discrimination may be a relevant factor when, as in this matter, the challenge to the subsequent redistricting plan is based on the

¹⁴ See *Kenai Peninsula*, 743 P.2d at 1372 (“Under such a test we look both to the process followed by the Board in formulating its decision and to the substance of the Board’s decision in order to ascertain whether the Board intentionally discriminated against a particular geographic area. Wholesale exclusion of any geographic area from the reapportionment process and the use of any secretive procedures suggest an illegitimate purpose. District boundaries which meander and selectively ignore political subdivisions and communities of interest, and evidence of regional partisanship are also suggestive. The presentation of evidence that indicates, when considered with the totality of the circumstances, that the Board acted intentionally to discriminate against the voters of a geographic area will serve to compel the Board to demonstrate that its acts aimed to effectuate proportional representation. That is, the Board will have the burden of proving that any intentional discrimination against voters of a particular area will lead to more proportional representation.”).

same contextual framework and house district pairing for senate districts.

The Board also contends that the superior court came to the wrong conclusion after applying its equal protection analysis, but we disagree. We AFFIRM the superior court's determination that the Board again engaged in unconstitutional political gerrymandering to increase the one group's voting power at the expense of others.

Interim Plan

The Board adopted two potential proclamation plans for public presentation and comment and for adoption as the amended proclamation plan, referred to as Option 2 and Option 3B. The Board adopted Option 3B. After ruling that the Board-adopted Option 3B was unconstitutional, the superior court ordered the Board to implement Option 2 as the interim plan for the upcoming 2022 elections to enable legislative candidates to file for office by the June 1 deadline. Because we agree with the superior court that the Board's proclamation plan — Option 3B — is unconstitutional, the issue of an interim plan remains.

The Board seemingly argues that the superior court had no authority to order the Board to adopt Option 2 as the interim proclamation plan. The Board presumably believed Option 2 fulfilled constitutional requirements, or it would not have adopted it for public presentation and consideration for a proclamation. We are about a week short of June 1 and the Board has made no known effort to prepare or present to us an interim plan other than Option 2.¹⁵ We therefore AFFIRM the superior court's

¹⁵ *Cf. In re 2011 Redistricting Cases*, 274 P.3d 466, 468-69 (Alaska 2012) (inviting board to submit proposed interim plan for our approval in light of upcoming election deadlines when remanding final plan to board for further proceedings).

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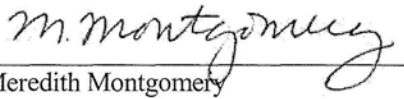
order that the Board adopt the Option 2 proclamation plan as an interim plan for the 2022 elections.

Conclusion

We DISSOLVE THE STAY of the superior court's rulings that (1) the Board's amended proclamation is unconstitutional and (2) the Board adopt the specified interim plan for the 2022 elections. The superior court's remand to the Board for further proceedings on a new proclamation plan for elections after 2022 REMAINS STAYED.

Entered at the direction of the court.

Clerk of the Appellate Courts


Meredith Montgomery

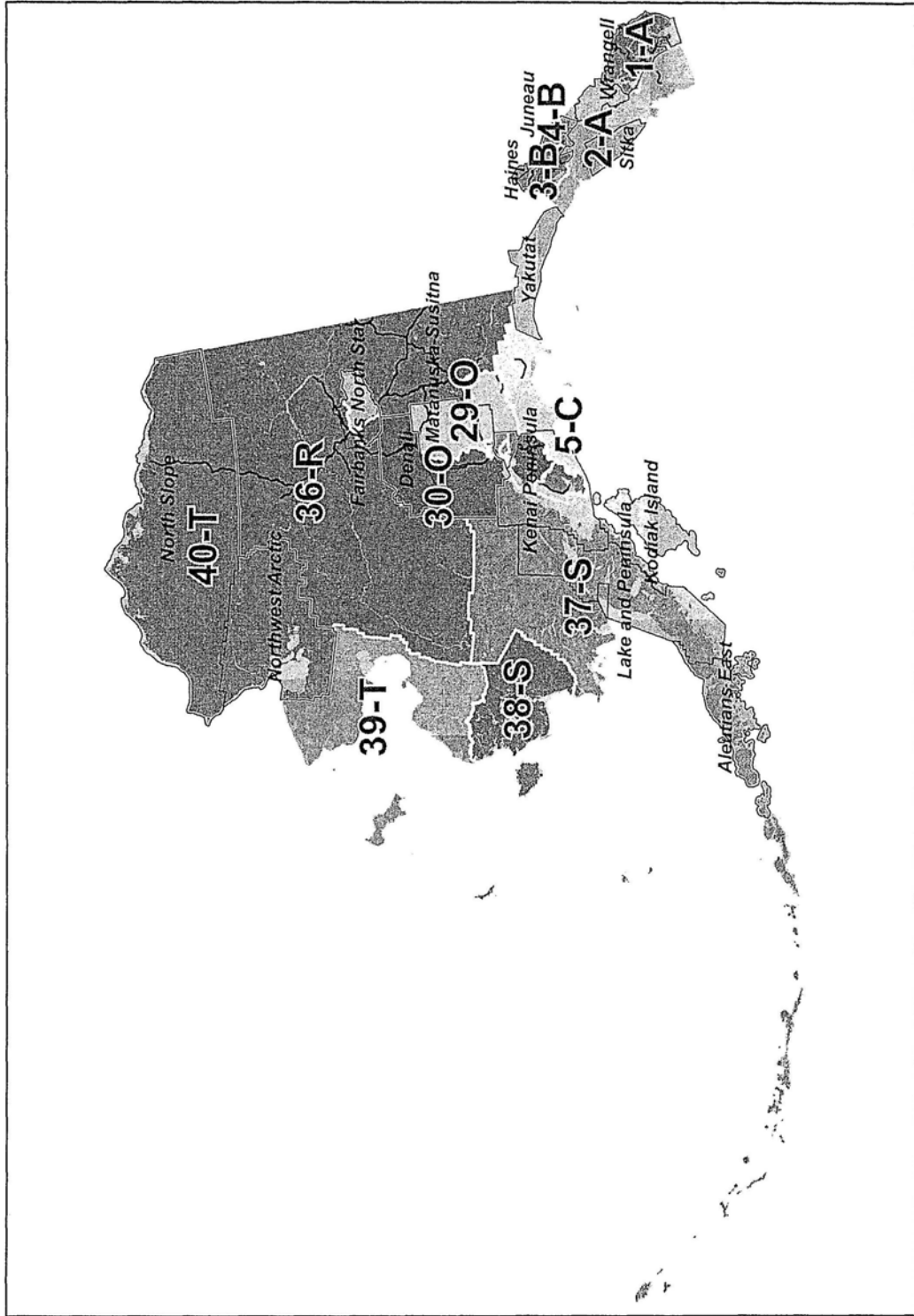
cc: Supreme Court Justices
Judge Matthews
Trial Court Clerk - Anchorage

Distribution:



May 2022 Board Proclamation Statewide

Redistricting Plan Adopted by the Alaska Redistricting Board 05/24/2022

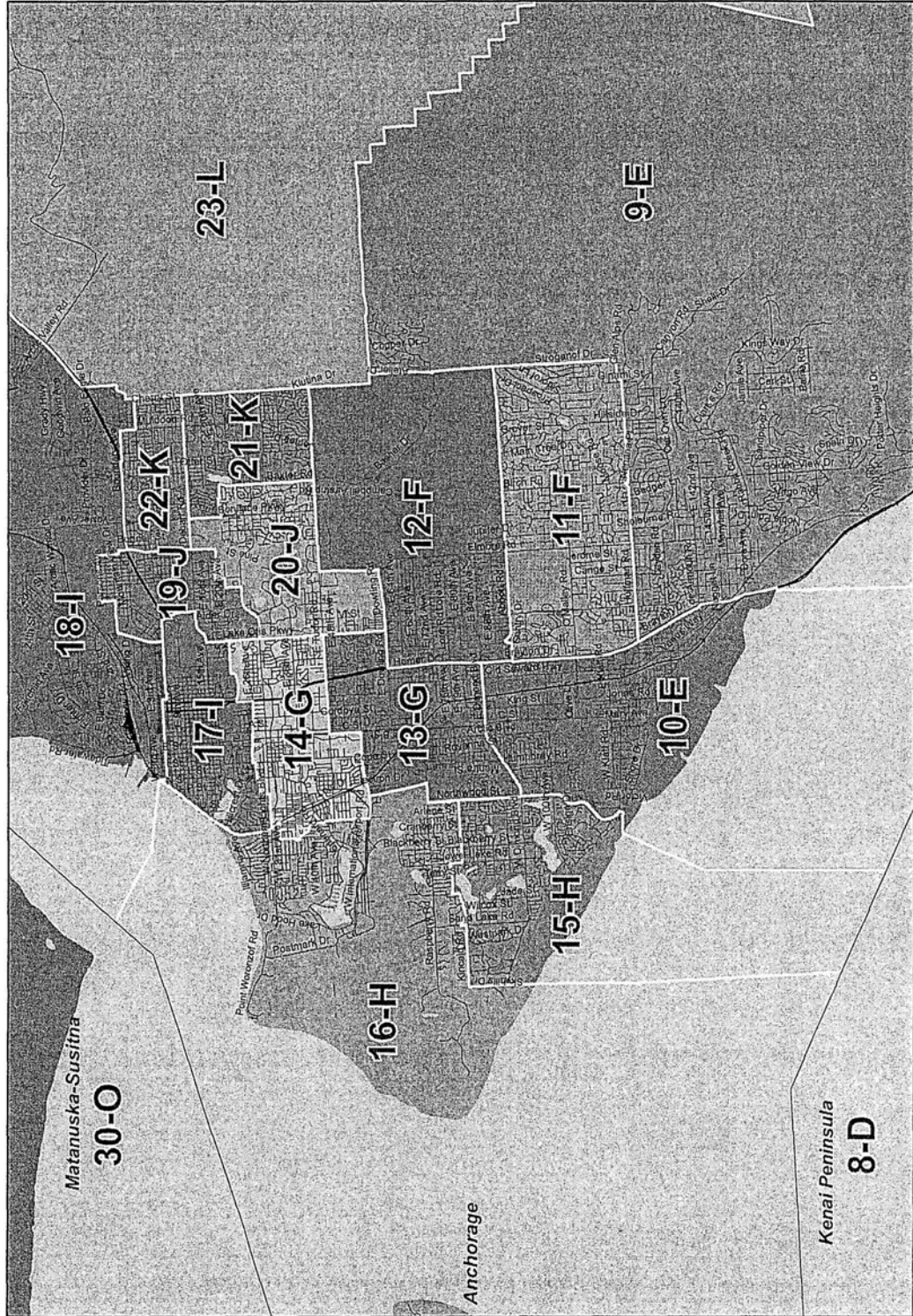


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May 2022 Board Proclamation Anchorage

Redistricting Plan Adopted by the Alaska Redistricting Board 05/24/2022

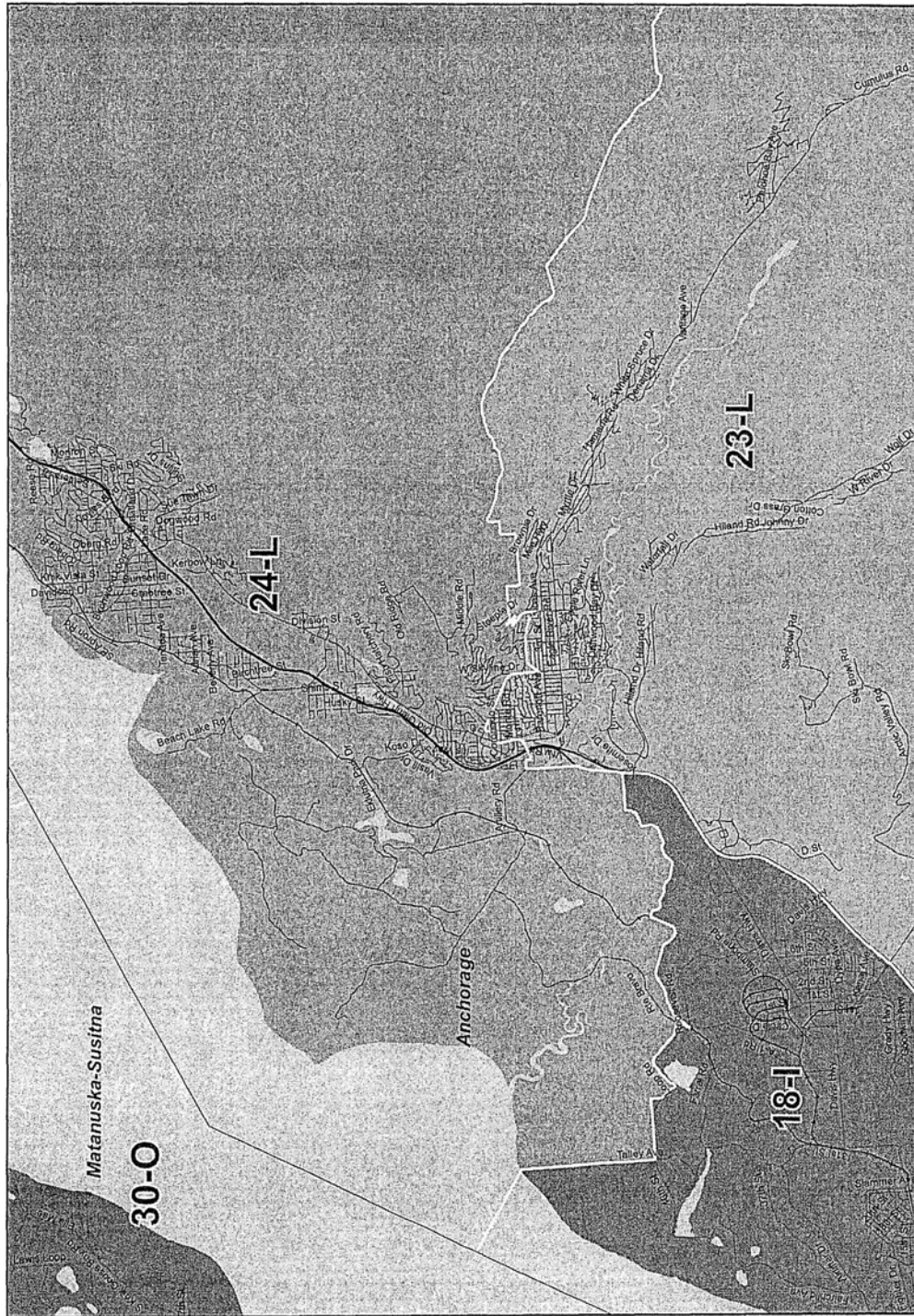


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May 2022 Board Proclamation Eagle River

Redistricting Plan Adopted by the Alaska Redistricting Board 05/24/2022



Based on 2020 Census Geography and 2020 PL94-171 Data; Map Gallery link: www.akredistrict.org/maps



ALASKA REDISTRICTING BOARD

DRAFT FINAL PROCLAMATION OF REDISTRICTING

WHEREAS, Article VI of the Alaska Constitution requires the Alaska Redistricting Board to reapportion the House of Representatives and the Senate immediately following the official reporting of each decennial census of the United States; and

WHEREAS, the United States Bureau of the Census conducted a census of the United States on April 1, 2020 and reported the results of the census to the State of Alaska on August 12, 2021; and

WHEREAS, the Alaska Redistricting Board was duly constituted in August 2020 and undertook its constitutional responsibilities for preparing a redistricting plan for the State of Alaska; and

WHEREAS, the Alaska Redistricting Board adopted draft redistricting plans on September 9, 2021, in conformity with Article VI, section 10 of the Alaska Constitution, requiring that the Board adopt a draft plan or plans within 30 days of the reporting of the Census results for Alaska; and

WHEREAS, the Alaska Redistricting Board held numerous public hearings throughout the state in conformity with Article VI, section 10 of the Alaska Constitution; and

WHEREAS, the Alaska Redistricting Board strictly adhered to the requirements of Article VI, Section 6 of the Alaska Constitution and the "Hickel process" outlined by the Alaska Supreme Court to draw districts consisting of contiguous and compact territory containing as nearly as practicable relatively integrated socio-economic areas and a population as near as practicable to 18,335; and

WHEREAS, adhering to Article VI, Section 3 of the Alaska Constitution, the Board did not adjust, alter or modify the Census enumerated population or Census block geography; and

WHEREAS, the Alaska Redistricting Board adopted its 2021 Plan and Proclamation of Redistricting on November 10, 2021 in conformity with the constitutional requirement that it do so within 90 days of the reporting of the Census results for Alaska; and

WHEREAS, the Alaska Redistricting Board adopted an Amended Plan and Proclamation of Redistricting on April 13, 2022 in response to orders from the Alaska Superior Court and the Alaska Supreme Court regarding Cantwell and Senate District K; and

WHEREAS, the Alaska Supreme Court directed that the Alaska Redistricting Board address errors with Senate District E, and make other necessary adjustments to the April 2022 Amended Proclamation Plan by adopting an interim plan for the 2022 statewide election.

WHEREAS, the Board has determined that the Interim Plan for the 2022 election shall now become the Final Proclamation Plan.

NOW, THEREFORE, THE ALASKA REDISTRICTING BOARD, hereby does PROCLAIM, ON THIS DAY May 15, 2023

First, that the state house and senate election districts described in this Redistricting Proclamation and in the report accompanying this Redistricting Proclamation, shall be implemented for legislative elections in the year 2024, and thereafter, until replaced by a valid Redistricting Proclamation adopted by this Board or following the next decennial census; and

Second, no revisions to the Senate truncation report adopted in May 2022 are required because substantial changes have not been made; and

Third, that Senate districts be assigned to election cycles according to the following schedule, using the Senate District designations in this Redistricting Proclamation:

Elected in 2022, 2026, 2030

A
C
E
G
I
K
M
O
Q
S

Elected in 2024, 2028, 2032

B
D
F
H
J
L
N
P
R
T

Fourth, that the metes and bounds district descriptions appended to this Redistricting Proclamation may be used to resolve inconsistencies between district boundaries and topographic features.

DRAFT Supplemental Redistricting Process Report
May 15, 2023

On November 10, 2021, the Alaska Redistricting Board issued its Final Plan and Proclamation of Redistricting in accordance with the provisions of Article VI of the Alaska Constitution. Rulings by the Alaska Supreme Court on March 25, 2022 and the Superior Court on March 30, 2022 required the board to make changes to Cantwell’s district assignment, to address problems with Senate District K and make other necessary adjustments. The Board met eight times between April 2 and April 13 culminating in the adoption of revised House Districts 29, 30 and 36, as well as four new Senate pairings for Anchorage.

The April 2022 Amended plan was challenged by the East Anchorage Plaintiffs and a new group of Plaintiffs from Girdwood. The Superior Court ruled against the East Anchorage Plaintiffs but agreed with Girdwood that changes were needed to Senate District E and directed the Board to adopt Anchorage Senate pairings map “Option #2” as an interim plan for the 2022 election cycle. The Board appealed to the Alaska Supreme Court which stayed the lower court’s order and agreed to consider the Board’s Petition for Review on an expedited basis. On the morning of May 24, 2022 the Supreme Court ordered the Board to adopt Anchorage Senate Pairings Option #2 as an Interim Plan for the 2022 election cycle.

The Board met at 3:00pm on the same day, May 24, and adopted Option #2 as an interim redistricting plan.

On April 23, 2021 the Alaska Supreme Court issued a final decision on all 2022 redistricting litigation.

The Board met at 1:00pm on May 15, 2023 to deliberate and chose to adopt the 2022 Interim Redistricting Plan as its Final Redistricting Proclamation for the remainder of the decade.

DRAFT

Notice

If adopted as the 2023 Final Proclamation Plan, the 2022 Interim Proclamation Plan's District Maps, Senate Table of Terms, Crosstabs and Metes and Bounds will be relabeled and included in the Final May 2023 Proclamation packet.