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

In the Matter of the	)	
	)	
2021 REDISTRICTING PLAN.	)	Case No. 3AN-21-08869CI
	)	

ORDER DENYING EAST ANCHORAGE MOTION TO REJECT AMENDED REDISTRICTING PLAN BUT GRANTING IN PART CLARIFICATION

I. INTRODUCTION

On April 18, 2022, the East Anchorage Plaintiffs filed a *Motion to Reject Amended Redistricting Proclamation Plan and for Modification of Order on Remand.* The following day, the Alaska Redistricting Board (Board) filed its Opposition, and East Anchorage filed its Reply April 20, 2022. East Anchorage asks the Court to reject the Amended Proclamation plan for failure to comply with the March 30, 2022 Order as it relates to the Anchorage Senate Districts. East Anchorage also moves the Court to modify the Order to adopt a proposed map identified as "Option 2." Otherwise, East Anchorage Plaintiffs ask the Court to modify the Order to clarify that "all the unconstitutional pairings underlying Senate District K must be corrected."

II. ARGUMENT

A. The Court Resolves East Anchorage's Motion Upon Review of the Entire Record

As a threshold matter, the Court is cognizant of the Board's assertion that it should wait for the record to proceed with a decision on East Anchorage's motion. The parties' positions were clarified at oral argument to reflect the shared sentiment that, to the extent that the Court resolves the motion by simply clarifying the its past Orders, it is not necessary to wait to receive and review the record. By contrast, parties seem to agree that should the Courts' resolution more accurately be described as a review of the April 15, 2022 Proclamation Plan, the Court should do so only once it has had the opportunity to review the full record.

In light of East Anchorage's arguments and the questions they raise, it would insufficiently address the entirety of East Anchorage's motion if the Court were to resolve the Motion with only an order clarifying the confines of past Orders. Therefore, the Court opted to hold off on a decision until receiving the record, and sets forth its decision having reviewed and considered the record submitted by the Board.

B. The Court's Orders Did Not Mandate that the Board Pair, or Decline to Pair, any Specific Districts as Such a Mandate would Fall Outside of this Court's Authority

East Anchorage interprets this Court's February 15, 2022 Order to mandate that House District 24, Eagle River Valley, and House District 10, North Eagle River/Chugiak, be combined into one Senate District. Plaintiffs clarified at oral argument that they understood the Court's Order to conclude that any senate district that split House Districts 24 and 10 was unconstitutional. The Court notes that house district 24, North Eagle River, remains paired with House District 23, the JBER District, comprising Senate District L. House District 10 is no longer paired with South Muldoon, but is now paired with House District 9, which comprises a portion of South Anchorage and Girdwood.

By contrast, the Board argues that East Anchorage challenged Senate District L, the JBER/Eagle River district that is still paired in the final plan, and the Court did not determine it was unconstitutional.[1] Likewise, the Court did not conclude that the two Eagle River house districts must be paired into one senate district, or otherwise conclude that any other pairing was unconstitutional. In so doing, the Board argues that the East Anchorage Plaintiffs were denied the relief they seek, said relief being that the Court pair certain house districts together, and as such as such cannot bring it in a subsequent action, as they are attempting to do here.

East Anchorage's argument emanates from its interpretation of this Court's February 15, 2022 Order, and subsequent March 30, 2022 Order. Thus, it is necessary to briefly clarify the confines of both. The Court's past orders do not, and cannot, set forth a mandate that any district must, or cannot be paired. The Court's Order only declared

[1] ARB's Opposition to East Anchorage Plaintiff's Motion to Reject Amended Proclamation Plan at 2 [hereinafter Opposition].

Senate District K in violation of Alaska's Equal Protection Clause and required changes be made to bring it into compliance with the Constitution. To the extent that either party argues that the Court did, or did not, require a particular pairing, they are mistaken. The Court is precluded from drawing districts.[2] Thus, the Court cannot, and did not, mandate that any districts be paired, or specifically decline to do so. The Court can only review the map for constitutionality. It is the Board's duty to draw the boundaries.

C. The Board Did Not Exceed its Authority on Remand

East Anchorage argues that the Board exceeded its authority on remand, arguing that the Board was limited to disrupting the Senate Districts only to the extent necessary to fix the constitutional infirmity.[3] The bigger question seems to be when the Board receives a remand, what the scope of that remand is. It is unclear to what extent the Board can make changes that go beyond what is necessary to correct the constitutional defect, and deciding this issue would require the Court to determine where the line is.

To be sure, the Court reviews the Board's plan "to ensure that the Board did not exceed its delegated authority and to determine if the plan is 'reasonable and not arbitrary.'"[4] In the context of a remand to the trial court from an appellate court, "[w]hen an appellate court issues a specific mandate a trial court has no authority to deviate from it."[5] The Court cannot mandate that the Board draw districts with specific boundaries or pair particular house districts.[6]

In 2011, the Board was required to redraw House Districts. However, the Board was required to redraw all House Districts, even unchallenged districts, in order to follow

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[2] *In re 2011 Redistricting Cases*, 294 P.3d 1032, 1037 (Alaska 2012) (The Court may not "substitute its judgement as to the sagacity of a redistricting plan for that of the Board, as the wisdom of the plan is not a subject for review."); *Groh v. Egan*, 526 P.2d 863, 889 (Alaska 1974) ([I]t is not our function to develop apportionment schemes for the State of Alaska. We are limited in review to determining whether a plan adopted by the governor suffers state or federal constitutional defects alleged by the parties in the litigation before us. . . . [p]articularly where specific objections have not been presented to us, we do not believe it appropriate to substitute ou[r] judgment for that if the constitutionally empowered authority regarding the wisdom of delicate adjustment to be made in political boundaries.").
[3] Motion to Reject Proclamation Plan at 9.
[4] *In Re 2011 Redistricting Cases* 294 P.3d 1032, 1037 (Alaska 2012).
[5] *State Com. Fisheries Entry Comm'n v. Carlson*, 65 P.3d 851, 873 (Alaska 2003).
[6] *In re 2011 Redistricting Cases*, 294 P.3d 1032, 1037 (Alaska 2012).

the *Hickel* process, which it failed to do the first time. *Hickel's* strictly procedural mandate is in contrast to the situation here, where the Board was directed to correct a specific unconstitutional pairing, not redraw districts with a different process. The Court in *In Re 2011* found that because the Board declined to redraw all districts that were originally drawn considering the VRA first, rather than following the *Hickel* process, and only redrew a small amount, the Court was left with "nothing to show that if the Board had considered the Alaska constitutional requirements first, as instructed, these districts would have remained the same."[7]

Yet, the remand before this Court is dissimilar to *In Re 2011*. *In Re 2011* required the Board to effectively go back to the drawing board. This Court's Order did not require that. It also did not preclude that. The Court cannot dictate the specific changes that occur; it can only determine whether a redistricting map is constitutional or not. It does not comport with that principle to interpret the Order to dictate that Option 2 had to be adopted.

Further, even assuming this Court had effectively mandated a specific pairing by concluding that any pairing but Eagle River and Eagle River would be unconstitutional, creating that pairing would have created a cascading effect on the map and required a number of other districts to be changed as well. It is of note that both map 2 and map 3B both changed only four Senate Districts.[8] There is an equal cascading effect evident to both maps. It is unlikely the Court could have mandated the Board correct the constitutional infirmity, but limited the Board to a specific number of changed districts. That would likely be beyond the Court's authority. The Court declared Senate District K was unconstitutional, and the specific constitutional infirmity identified by the Court has been remedied. To the extent that parties argue that Option 2 was the better option, that is not for the Court to decide.

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[7] *Id.* at 1038.
[8] Tr. 19:16-21 (April 13, 2022); ARB 2000966.

D. The Court's Previous Finding of Illegitimate Purpose May be a Consideration Upon Review of a New Pairing, but Does Not Justify Forgoing the Remaining Analysis Under the Equal Protection Clause

East Anchorage also contends that the revised Proclamation Plan "accomplishes the Board's unrelenting mission to provide Eagle River voters with more representation than other Anchorage residents."[9] Plaintiffs argue that this is a "continuation of intent," intent which has already been proven, akin to the Fruit of the Poisonous Tree.

In response, the Board works through the Equal Protection Analysis in light of what it insists are new facts and a new record that was developed on remand. The Court, in concluding there was illegitimate intent, applied the neutral factors test set forth in *Kenai Peninsula Borough*. This Court found evidence of secretive procedures, regional partisanship, and boundaries that inexplicably ignored communities of interest.

The Board asserts that in creating the amended Proclamation Plan, there is no longer evidence of secretive procedures. Whereas in creating the initial Plan, the Board did not make clear which proposals it was considering adopting, took minimal public testimony, and seemed to come to some kind of agreement between a majority of parties, all of which left the Court with the distinct impression that there were secretive procedures that took place. On remand, the Board publicly deliberated and proposed two plans, "Option 2" and "Option 3B," the latter of which was ultimately adopted as the final proclamation. The Board published these plans to the public,[10] noticed the public of the opportunity to provide testimony,[11] and took ample written and spoken testimony.[12] A majority of the Board then voted to adopt Option 3B, though two Board members objected.[13] This open process, the Board now argues, belies any argument that secretive procedures were at play.

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[9] Motion to Reject Proclamation Plan at 8.
[10] Tr. 113:24-25, 114:1 (April 6, 2022); ARB 2001828.
[11] ARB 2001831; ARB 2001828.
[12] ARB 2001227-2001824; *see* ARB 2000076-ARB 2000083.
[13] Tr. 68:16-69:8 (April 13, 2022), ARB 2001016.

The Board continues to argue that there is no evidence of regional partisanship regarding JBER, or any other district that is potentially impacted by Eagle River's Senate pairings. It argues that the same is true as to evidence of communities of interest. Finally, the Board argues that the Court cannot revisit East Anchorage's grievances, as East Anchorage is asking the Court to provide relief on issues it already considered, and already declined to provide.

East Anchorage, however, takes a different approach, relying on the Court's initial conclusion that Senate District K was drawn with illegitimate purpose. East Anchorage argues that the intent behind the illegitimate purpose carries over where the Board continued to attempt to find a way to keep Eagle River split into two districts and allow it "more representation."[14] The premise is so long as the intent continues, the constitutional violation continues as well. Pertinent to this analysis is that no finding of dilutive effect is required in the neutral factors test set forth in *Kenai*. Once illegitimate *purpose* is found, the burden shifts to the Board.

i. Discriminatory Intent in Alaska and Related Federal Cases

Under Alaska's Equal Protection Clause, challengers of otherwise neutral state action must show that the government acted with "a discriminatory purpose."[15] In the redistricting context, the Alaska Supreme Court has described "a voter's right to an equally geographically effective or powerful vote" as "a significant constitutional interest."[16] The Alaska Redistricting Board ("Board") therefore "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."[17] Whether the Board's purpose is discriminatory depends on any "proof of a legitimate purpose" or "a substantial relationship between the Board's means and ends."[18] The Court has

[14] Motion to Reject Proclamation Plan at 8.
[15] *State v. Schmidt*, 323 P.3d 647, 659 (Alaska 2014).
[16] *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1372 (Alaska 1987).
[17] *In re 2001 Redistricting Cases*, 44 P.3d 141, 144 (Alaska 2002). The Court cited the concurring opinion in *Karcher v. Daggett* for the notion that a "group of voters must establish that it belongs to [a] 'politically salient class' as [the] first element of [a] claim of invidious discrimination." 462 U.S. 725, 754 (1983) (Stevens, J., concurring).
[18] *Kenai Peninsula Borough*, 743 P.2d at 1373 n.40.

recognized that one way to "raise an inference of intentional discrimination" is by showing that "a redistricting plan unnecessarily divides a municipality in a way that dilutes the effective strength of municipal voters."[19] Such regional gerrymandering can be rebutted by showing that the "intentional discrimination resulted in increased proportionality of geographic representation in the state legislature."[20] *In re 2001 Redistricting Cases* also clarifies that this inference extends to any "politically salient class," not just boroughs and municipalities.[21] Although the Court has previously confronted arguments of "regional partisanship," *i.e.*, favoring certain geographic communities over others, in the equal protection context, "political partisanship" has not yet been squarely addressed.[22]

There are multiple ways of proving discriminatory intent. While the easiest may be direct evidence of discriminatory intent,[23] intent can be shown through circumstantial evidence as well. The Court has previously pointed to the existence of "secretive procedures" and boundaries that "selectively ignore political subdivisions and communities of interest" as indicia of "an illegitimate purpose."[24] And in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*,[25] the U.S. Supreme Court detailed several factors that it had previously used when determining the existence of discriminatory intent. These factors include: (1) discriminatory effect;[26] (2) the historical background, *i.e.*, whether the action is the latest in "a series of official actions taken for invidious purposes"; (3) the preceding sequence of events, *i.e.*, the timing of the action relevant to other events; (4) departures from normal procedures; (5) departures from substantive norms, *i.e.*, whether the factors normally relevant would counsel a different

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[19] *In re 2001 Redistricting Cases*, 44 P.3d 141, 144 (Alaska 2002); *accord Kenai Peninsula Borough*, 743 P.2d at 1370-73.
[20] *Kenai Peninsula Borough*, 743 P.2d at 1372.
[21] *In re 2001 Redistricting Cases*, 44 P.3d at 144.
[22] *Cf. Rucho v. Common Cause*, 139 S. Ct. 2484, 2498-502 (2019) (holding that partisan gerrymandering claims are nonjusticiable under the federal Equal Protection Clause).
[23] *See, e.g.*, *Kenai Peninsula Borough*, 743 P.2d at 1372 ("A totality of the circumstances assessment of the Board's reapportionment process is unnecessary here because the Board's intent was discriminatory on its face.").
[24] *Id.*
[25] 429 U.S. 252 (1977).
[26] There are also rare cases where "a clear pattern" emerges in the application of an otherwise facially neutral law that is "unexplainable on grounds other than [intentional discrimination]," and thus proof of discriminatory effect alone is sufficient. *Id.* at 266; *see also Yick Wo v. Hopkins*, 118 U.S. 356 (1886) (laundromat licensing); *Gomillion v. Lightfoot*, 364 U.S. 339 (1960) (redistricting).

conclusion; and (6) legislative history, *e.g.*, "contemporary statements by members of the decisionmaking body."[27] And federal appellate courts have also recognized additional factors: "(6) the foreseeability of the disparate impact; (7) knowledge of that impact, and (8) the availability of less discriminatory alternatives."[28]

ii. This Court's FFCL and Order and the Effect of the Alaska Supreme Court's Decision on Appeal

Although not explicitly stating as much, this Court previously relied on three of the types of circumstantial evidence described in *Arlington Heights* to reach its conclusion that the Board acted with discriminatory intent.[29] For example, the Board never stated that its intent was to create two solidly Republican senate districts, but Member Marcum's statements on the record strongly support this inference.[30] The use of executive sessions and the immediate adoption of senate pairings without discussion on the record likewise evinced departures from the usual procedures.[31] And the reasons the Board Members gave to explain the pairings departed greatly from public testimony and from the relatively limited factors that govern senate pairings under the Alaska Constitution.[32]

Several of this Court's findings, affirmed on appeal, are also relevant here. First, this Court found that both Eagle River and Muldoon constitute distinct "communities of interest."[33] Although it was ostensibly part of the first round of litigation, the parties presented no evidence on JBER and this Court never found that JBER was itself a "community of interest." Regardless, JBER is largely self-contained within its own house district, so there is no danger of it being split and paired with other districts in such a way as to dilute its voting strength.[34] And although the Alaska Supreme Court affirmed the

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[27] *Arlington Heights*, 429 U.S. at 267-68; *see also Alaska Inter-Tribal Council v. State*, 110 P.3d 947, 960-62 (Alaska 2005) (applying *Arlington Heights* framework).
[28] *Greater Birmingham Ministries v. Sec'y of State for State of Alabama*, 992 F.3d 1299, 1322 (11th Cir. 2021).
[29] This Court also applied the *Arlington Heights* analysis in its decision on the Girdwood challenge, also issued today.
[30] Findings of Face and Conclusions of Law and Order at 68-69. Relying on *Kenai*, this court described such statements as evincing "regional partisanship." [hereinafter FFCL and Order].
[31] FFCL and Order at 65-66.
[32] FFCL and Order at 70; *see also* Alaska Const. art. VI, § 6.
[33] FFCL and Order at 68.
[34] This is particularly telling as Board Members after remand repeatedly referred to JBER as a "community of interest" to justify pairing it with Eagle River. The Board may be estopped from asserting such rationales

"determination that the Board's Senate K pairing of house districts constituted an unconstitutional political gerrymander," nothing in the order addresses the Court's reasoning.[35]

Second, this Court held that "the Board intentionally discriminated against residents of East Anchorage in favor of Eagle River, and this intentional discrimination had an illegitimate purpose."[36] This Court described that the Board's purpose in creating Senate District K was to "give[] Eagle River more representation,"[37] whereas the dilution of Muldoon was "a down-the-road consequence."[38] In other words, this Court never explicitly ruled that Muldoon was an intended target of the Board's improper purpose, but that any dilution was essentially collateral damage. Again, the Alaska Supreme Court affirmed that Senate District K "violat[ed] equal protection under the Alaska Constitution," but it did not expressly identify the Board's discriminatory purpose.[39] The Court cited *Hickel*'s definition of gerrymandering, which in turn quoted the concurrence from *Carpenter v. Hammond*.[40] That definition states that gerrymandering requires acting "with the purpose of bestowing advantages on some and thus disadvantaging others," while observing that the intent "to benefit the political party in power" is an improper motive that may be relatively easy to prove.[41] Although the Board did its utmost to dispel any such negative inference by at least eliminating the appearance of secretive procedures and not holding executive sessions this time, the fact that the Board did so before cannot be ignored.

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now that were not actually proven, much less asserted, in the first round of litigation.

[35] Order, *ITMO 2021 Redistricting Cases*, S-18332, at 6 (Alaska Mar. 25, 2022). Nor did the Court use the term "regional partisanship." Without the Court's full opinion, this court is left to an educated guess at what precise "constitutional error" must be fixed on remand.

[36] FFCL and Order at 70.

[37] FFCL and Order at 69.

[38] FFCL and Order at 68.

[39] Order, *ITMO 2021 Redistricting Cases*, S-18332, at 6 & n.14 (Alaska Mar. 25, 2022) (supporting conclusion that "partisan gerrymandering" is cognizable under the Alaska Constitution).

[40] *See Hickel v. Se. Conf.*, 846 P.2d 38, 45 (Alaska 1992), *as modified on reh'g* (Mar. 12, 1993).

[41] *Carpenter v. Hammond*, 667 P.2d 1204, 1220 (Alaska 1983) (Matthews, J., concurring).

iii. The Lingering Effect of Prior Discriminatory Intent

The East Anchorage plaintiffs (and the Girdwood challengers) raise an interesting argument, *i.e.*, that the JBER-Eagle River pairing was the result of a tainted process and thus "fruit of the poisonous tree." In essence, because this court already found that the Board acted with discriminatory intent by creating Senate District K to give Eagle River more representation, the Board cannot dispel this unconstitutional intent by simply readopting the same JBER-Eagle River pairing with more discussion.

Courts applying the *Arlington Heights* factors have likewise concluded that subsequent events cannot always remove the effect of prior discriminatory intent. In *Hunter v. Underwood*, the U.S. Supreme Court confronted a provision of the Alabama Constitution of 1901 that disenfranchised those with convictions for crimes of "moral turpitude."[42] Although the Court reasoned that the language was facially neutral, the challengers provided ample evidence under the *Arlington Heights* factors that the voting restriction "was enacted with the intent of disenfranchising blacks."[43] Indeed, the original language of the provision included the crime of "miscegenation," although later courts had apparently already struck down that crime and others.[44] The State thus argued that despite the obvious discriminatory intent in 1901, "events occurring in the succeeding 80 years had legitimated the provision."[45] But the Court was not convinced:

> Without deciding whether [the constitutional provision] would be valid if enacted today without any impermissible motivation, we simply observe that its original enactment was motivated by a desire to discriminate against blacks on account of race and the section continues to this day to have that effect. As such, it violates equal protection under *Arlington Heights*.[46]

And more recently, district courts applying *Arlington Heights* and *Hunter* have struck down longstanding immigration laws, initially passed in the 1920s and 1950s amid

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[42] 471 U.S. 222, 224 (1985).
[43] *Id.* at 229.
[44] *Id.* at 226, 233.
[45] *Id.* at 233.
[46] *Id.*; *cf. Cotton v. Fordice*, 157 F.3d 388, 391 n.8 (5th Cir. 1998) (distinguishing *Hunter* by noting that the Court only discounted "involuntary" pruning of the language by courts as opposed to legislative or voter-approved amendments and reenactments).

widespread, open animus toward immigrants.[47] But, the US Supreme Court has also cautioned against imputing the motivations of prior legislatures to subsequent acts. *Abbott v. Perez* is particularly relevant as it deals with discriminatory intent in redistricting.[48] This Court has discussed *Abbott* and its holding on bad intent in more detail in the decision issued today in the Girdwood challenge, so that explanation and discussion is simply incorporated here.

In summary, the Board's prior discriminatory intent remains a "factor" to be considered alongside all other *Arlington Heights* factors, but the bad prior intent is not dispositive. East Anchorage, like the Girdwood challengers still ultimately bears the burden of proving that discriminatory intent was a "motivating factor" for the subsequent action.[49]

Returning to the question presented here, this Court found that the Board was motivated by a desire to effectively bolster the voting strength of Eagle River and give it two Senate seats. In light of secretive procedures employed in the first round of redistricting, this Court reasoned that the Board (or at least three members thereof) acted with discriminatory intent. The Alaska Supreme Court then affirmed that Senate District K was a "political gerrymander." Thus, prior intent that has been held unconstitutional is certainly a factor that must be considered when reviewing the Board's updated map.

But East Anchorage's arguments go too far. East Anchorage argues that it has already proven that the Board's intent was "unlawful," and thus "there is no requirement" that they must "continue to prove the dilutive and discriminatory effect resulting from the Board's unconstitutional and discriminatory intent." Because "the Board's intent was to dilute the voting power of a geographic group compared to another," East Anchorage

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[47] *See, e.g.*, *United States v. Carrillo-Lopez*, 555 F. Supp. 3d 996, 1019 (D. Nev. 2021) (finding that Congressional reenactment of immigration laws in 1952 "not only failed to reconcile with the racial animus of the Act of 1929, but was further embroiled by contemporary racial animus"). *But see United States v. Hernandez-Lopez*, No. CR H-21-440, 2022 WL 313774, at *5-6 (S.D. Tex. Feb. 2, 2022) (refusing to consider the intent of the 1929 Congress and finding no discriminatory intent in the same statute).
[48] *Abbott v. Perez*, 138 S. Ct. 2305, 2313 (2018).
[49] *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977) (clarifying that discriminatory intent need not be the "dominant" or "primary" concern, but must be a "motivating factor").

argues that "[t]he only way to cure this illegitimate 'purpose' is to undo its execution."[50] But this position is largely identical to that rejected by the *Abbott* Court. East Anchorage asks this Court to impute the Board's prior intent to its subsequent acts and shift the burden onto the Board to explain how it "cured" any constitutional infirmities. In effect, East Anchorage is now asking the Court to foreclose any further inquiry. That is simply a step too far. Instead, this Court must evaluate the actions of the Board following remand in light of the entire record.[51] Even a gerrymandering Board is entitled to Due Process and an opportunity to defend its record on remand. Under the circumstances, it would thus be improper to apply the Board's intent from November 2021 as the sole deciding factor when reviewing the Board's subsequent actions.

III. CONCLUSION

Ultimately, this Court does not agree with East Anchorage's premise that this Court's illegitimate purpose finding carries over in a dispositive fashion to any decision made on remand. Therefore, East Anchorage's Motion to Reject Proclamation Plan is DENIED. Yet, plaintiffs are encouraged to review the Court's Order relative to the Girdwood plaintiffs challenge, as the conclusion of that order resolves issues important to East Anchorage's motion here.

IT IS SO ORDERED.

DATED at Anchorage, Alaska this 16th day of May, 2022.

Thomas A. Matthews
Superior Court Judge

[50] Motion to Reject Proclamation Plan at 13.

[51] *Abbott*, 138 S. Ct. at 2324 (recognizing a "presumption of legislative good faith" when reviewing redistricting plans); *cf. Luper v. City of Wasilla*, 215 P.3d 342, 345 (Alaska 2009) (applying "a presumption of validity" to agency decisions); *Treacy v. Municipality of Anchorage*, 91 P.3d 252, 260 (Alaska 2004) ("A duly enacted law or rule, including a municipal ordinance, is presumed to be constitutional.").

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