

IN THE SUPREME COURT OF THE STATE OF ALASKA

In the Matter of the
2021 Redistricting Plan.

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Supreme Ct. No. S-18332
Superior Court Case Nos.
3AN-21-08869 CI, 3VA-21-00080 CI

MOTION FOR RECONSIDERATION

The City of Valdez and Mark Detter (Valdez), through their counsel, Brena, Bell & Walker, P.C., hereby moves this Court, in accordance with Alaska Rule of Appellate Procedure 503(h), for reconsideration of the Order on Petitions for Review dated March 25, 2022 (Order). Specifically, Valdez asks this Court to reconsider its general acceptance of “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 [Alaska Redistricting Board’s (Board)] work.”¹

The Order correctly determined that the Cantwell Appendage violates article VI, section 6, and Senate District K constitutes an improper gerrymander. This Court’s finding that the Board improperly diminished compactness in order to keep a minority of ANCSA shareholders together via the Cantwell Appendage applies equally to the entirety of District 36, which is less than 30 percent Alaska Native overall.² The Cantwell Appendage reflects the Board’s overarching motivation to bestow advantages on some Alaskans while disadvantaging others, which is gerrymandering.³ Not only did gerrymandering occur with

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¹ Order at 3.
² Ex. VDZ-3003 at 1216 (Brace) [EXC.VDZ-1683].
³ *Hickel*, 846 P.2d at 45 (quoting *Carpenter*, 667 P.2d at 1220) (defining gerrymandering as “dividing of an area into political units ‘in an unnatural way with the purpose of bestowing advantages on some and thus disadvantaging others.’”).

regard to Senate District K, but it also occurred during the formation of the house districts challenged by Valdez. This Court should expand its holding to address the improper motivations that were also pervasive in the creation of Districts 29, 36, and 39.

By focusing on maximizing the electoral influence of Alaska Native voters residing in specific ANCSA regions, the Board improperly constrained the range of alternatives considered, including alternatives that would have improved the constitutional criteria of compactness, socio-economic integration, and one-person-one-vote. The record establishes that District 36 is intended to maximize the electoral influence of Doyon and Ahtna, and District 39 is intended to maximize the electoral influence of Bering Straits.⁴ As a result of these upstream decisions, the Board orphaned Valdez from both the Richardson Highway corridor and Prince William Sound for the first time in history.

The superior court found it was “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.”⁵ The Board refused to consider redistricting alternatives that did not entirely separate communities in the Doyon region from Alaska Native communities in the Bering

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⁴ See e.g., Findings of Fact and Conclusions of Law (FFCL) at 127-28 (footnotes omitted) (“Member Bahnke’s statements throughout the redistricting process evidence a strong preoccupation with both VRA requirements and the percentage of Alaska Natives in rural areas. She was also in charge of drawing the so-called VRA districts.”); FFCL at 116 n. 685 (“this court believes it was highly inappropriate for Member Bahnke to remove her “redistricting board hat” and advocate against Calista.”).

⁵ FFCL at 127-128

Straits or Calista regions.⁶ During the 2011 redistricting process, the Board recognized that it was “simply not possible to maintain all the Doyon Villages in one district when taking into consideration all of the constitutional requirements.”⁷ In 2021, the Board entirely ignored these concerns. The result is District 36, which “wouldn’t be compact by any stretch of the imagination,”⁸ and adjacent Districts 39 and 40, which have the highest population deviations in the entire plan.⁹ If the Board had fully considered its options in the VRA Districts and the the Fairbanks area, the massive horseshoe shape of District 36 could have been avoided thereby allowing Valdez to be districted with its neighboring socio-economically integrated communities.

At the end of the November 3 Board Meeting, Chairman Binkley stated that the Board should engage in a mapping exercise to explore alternatives for Valdez.¹⁰ However, the Board instead entered into executive session to discuss what they “might bother to do”¹¹ and emerged with consensus that District 29 was constitutionally permissible based upon precedent never discussed in open session. The Board never explored any alternatives that

⁶ Both the Board and Intervenors repeatedly relied on the premise that this Court has previously disavowed combining Native populations from coastal Alaska with those in Interior Alaska. However, this Court’s statement regarding combining such populations was fact specific and addressed combining Inupiaq populations from the North Slope with interior Athabaskan populations, separated by the Brooks Range; *See Hickel v. S.E. Conf.*, 846 P.2d 38, 53-54 (Alaska 1992), *as modified on reh’g* (Mar. 12, 1993).

⁷ *In re: 2011 Redistricting Cases*, 2013 WL 6074059, at *25 (Alaska Super.)

⁸ Board Meeting Tr. 198:9-12 (Nov. 3, 2021) [ARB007558] [EXC.VDZ-0607] (“if you want to talk about compact, look at the Doyon region in version 3 and 4. That wouldn’t be compact by any stretch of the imagination.”).

⁹ Trial Tr. 1294:15 – 1295:1 (Brace) (District 39 is the most underpopulated district at negative 4.81 percent or 882 people and District 40 is the most overpopulated district at 2.67 percent or 489 people) [EXC.VDZ-1637].

¹⁰ Board Meeting Tr. 335:6 – 336:20 (Nov. 3, 2021) [ARB007695-007696].

¹¹ Board Meeting Tr. 335:6 – 336:20 (Nov. 3, 2021) [ARB007695-007696] [EXC.VDZ-0744-45].

created a Richardson Highway district, which has been described as the “*the most strongly integrated economic corridor in the state*,”¹² and failed to even attempt the mapping exercise Chairman Binkley described as necessary to at least take a “good shot to try and accommodate what Valdez’s desires are.”¹³

The Board merely defaulted to creating District 29 without discussing a single factor establishing socio-economic integration among the communities therein. District 29 is the only district for which the Board relied exclusively on purported precedent or previously existing districts as justification for their redistricting decisions. Indeed, contrary to this Court’s holding that analysis of socio-economic integration requires a comparison of “proposed districts to other previously existing and proposed districts as well as principal alternative districts,”¹⁴ the Board operated under the assumption that consideration of previously existing districts was impermissible until faced with creating some justification for its configuration of District 29.¹⁵ The Board also failed to analyze the nature of the previously existing district upon which it relied, District 9, and the 2011 Redistricting Board’s findings regarding the 2013 Proclamation.¹⁶

The Board’s decision-making process with regard to District 29 cannot be considered reasoned decision-making when they admittedly failed to take a “good shot” at exploring alternatives for Valdez, made upstream decisions necessitating the unprecedented configuration of District 29 based upon improper motivations, and failed to

¹² *In re 2011 Redistricting Cases*, 2013 WL 6074059 at *13 (emphasis added).

¹³ Board Meeting Tr. 335:6 – 336:20 (Nov. 3, 2021) [ARB007695-007696].

¹⁴ *Hickel*, 846 P.2d at 47.

¹⁵ Board Meeting Tr. 292:1–293:22 (Nov. 3, 2021) [ARB007652-007653] [EXC.VDZ-0701-02].

¹⁶ Valdez Petition for Review at 27-29, 52-55.

openly discuss the purported precedent advanced as the exclusive justification for the absence of socio-economic integration in District 29. Holding otherwise renders the Board's duty to evaluate alternatives and engage in reasoned decision-making meaningless.

The redistricting process in Alaska is mandated to be apolitical,¹⁷ and the Board is not permitted to diminish the constitutional redistricting criteria in order to achieve other policy goals.¹⁸ During the 2021 redistricting process, these requirements were ignored by a Board that openly advanced improper policies and deferred to individual Board members in a manner that undermined the checks and balances contemplated in the Alaska Constitution.¹⁹ The result is a redistricting plan that fails to maximize constitutional redistricting criteria and bestows advantages on some Alaskans to the detriment of others.

By determining that Districts 29 and 36 satisfy article VI, section 6 and declining to overturn the districts based upon numerous procedural defects, this Court has validated a process whereby some groups of Alaskans enjoy the benefit of advocacy from the Board, while others are disadvantaged. With the 2021 Redistricting Plan already remanded, Valdez asks this Court to require the Board to address all districts impacted by improper motivations including Districts 29, 36, and 39 and analyze alternatives for Valdez that the Board improperly failed to consider.

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¹⁷ Alaska Const. article VI, section 8(a).

¹⁸ *Hickel*, 846 P.2d at 45 n.10.

¹⁹ FFCL at 145.

RESPECTFULLY SUBMITTED this 4th day of April, 2022.

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CERTIFICATE OF SERVICE AND TYPEFACE

I hereby certify that on April 4, 2022, I served by email, upon trial counsel of record listed below, the City of Valdez and Mark Detter’s Motion for Reconsideration and this Certificate of Service and Typeface:

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I further certify that pursuant to Appellate Rule 513.5(c)(2), the typeface used in these pleadings is Times New Roman, 13-point, proportionally spaced.

DATED this 4th day of April, 2022.

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