

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-21-08869 CI
)
)

GIRDWOOD PLAINTIFFS' OPPOSITION TO
ALASKA REDISTRICTING BOARD'S BRIEF

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TABLE OF CONTENTS

I.	INTRODUCTION.....	4
II.	CHALLENGES TO SENATE DISTRICT L ARE PERMISSIBLE AS MODIFYING THAT DISTRICT WAS AN INTEGRAL PART OF EFFECTUATING THE COURT’S ORDER.....	6
III.	THE BOARD CONSPIRED TO EFFECTUATE ITS PRIOR AGREEMENT TO MAXIMIZE EAGLE RIVER’S INFLUENCE.	9
A.	The Three Majority Board Members Were Aligned from the Outset and Engaged in Backchannel Communications throughout the Remand Process...	9
B.	Member Simpson Considered the Pairings from a Political Perspective and Regularly Reviewed Partisan Political Blogs.....	16
C.	Member Marcum Appeared to Have Partisan Objectives.	18
IV.	THE BOARD DID NOT TAKE A HARD LOOK AT THE OPTIONS; RATHER, ITS STATED JUSTIFICATIONS FOR ADOPTING OPTION 3B ARE CONTRARY TO THE RECORD AND PHYSICAL REALITY.....	20
A.	The Board Majority Ignored that JBER Was Already in a District with Downtown.	21
B.	The Board Majority Ignored that JBER Was Not Zoned for Any District 24 High School.....	24
C.	The Board Majority Ignored that the Only Portion of JBER Included in District 24 Was Unpopulated.	26
D.	The Board Majority Prioritized the Alleged JBER Community of Interest, which Did not Provide Public Testimony, Over the Interests of Affected Communities that Did Provide Testimony.....	28
E.	The Board Majority Provided No Real Reasons to Pair Districts 9 and 10, Despite Overwhelming Testimony Against It.....	32
F.	Member Simpson Demonstrated a Basic Misunderstanding of the Court’s Ruling and the Concept of Fair Representation, Ignored Actual Testimony About Vote Dilution, and Improperly Relied on the Prior Map. ..	35

V. SENATE DISTRICTS E AND L DILUTE THE VOTING POWER OF DISTRICTS 9 AND 23 WHILE MAXIMIZING THE POWER OF DISTRICTS 10 AND 24. 36

VI. CONCLUSION 40

I. INTRODUCTION

Louis Theiss, Ken Waugh, and Jennifer Wingard (“Girdwood Plaintiffs”) oppose the Alaska Redistricting Board’s (“Board”) effort to characterize its remand process as proper. This Court and the Supreme Court previously found that the Board engaged in unconstitutional political gerrymandering. Specifically, this Court found “substantial evidence of secretive procedures, regional partisanship, and selective ignorance of political subdivisions and communities of interest... [and] an illegitimate purpose.”¹ Yet the Board approaches this case much as it approached the remand: with no contrition, with no acknowledgment of the Court’s reprimand, assuming that it is entitled to a full measure of respect and deference. On remand, the Board majority should not be allowed to simply wipe the slate clean² of its questionable credibility and improper motivation. The stain of the successful East Anchorage challenge remains on this Board. Accordingly, in evaluating the Board’s second attempt to place Eagle River into two senate districts and maximize its influence, this Court must build on the existing record—not just the written record, but the findings and conclusions the Court reached regarding the Board majority’s conduct and motives.

The Board’s actions are, generally, reviewed under a deferential arbitrary and capricious standard, but this does not mean that the Board is “the ultimate arbiter of reasonableness.”³ As the Court explained in its prior ruling, the Board is accountable to

¹ FFCL at 70.

² *See* ARB Opening Brief at 11.

³ FFCL at 141.

the public.⁴ Its public process is an integral part of the checks and balances imposed by the Alaska Constitution.⁵ In the prior case, the Court found that paying lip service to the public hearing requirement was inadequate. As the Court asked, “If the Board could hold public hearings but with no intent to ever listen to or incorporate public comments in the first place, then what purpose would those public hearings serve?”⁶ Allowing the Board to pay lip service to public process without listening to it invites “the specter of a ‘partisan gerrymander’[.]”⁷ Instead, the Board must “either accommodate the clear weight of public opinion or explain why it cannot,” which removes “the danger of hidden partisan agendas.”⁸

The specter of a partisan gerrymander already looms in this case. The Board raises technical arguments to avoid facing it, but as this brief demonstrates, the Board majority on remand again engaged in secret communications, again pushed through a shared agenda of splitting Eagle River for partisan advantage, and again ignored not just the weight of the testimony, but in some instances the actual borders and geography of the districts at issue. Overwhelmingly, the public asked the Board to keep Eagle River together, to keep South Anchorage together, to keep downtown together. The Board did not accommodate this, and it did not explain why it could not. The Court should find that

⁴ *Id.*

⁵ FFCL at 140-41.

⁶ FFCL at 142.

⁷ FFCL at 142.

⁸ FFCL at 143.

the Board acted arbitrarily and capriciously, in a manner that violated the Alaska Constitution.

II. CHALLENGES TO SENATE DISTRICT L ARE PERMISSIBLE AS MODIFYING THAT DISTRICT WAS AN INTEGRAL PART OF EFFECTUATING THE COURT’S ORDER.

The Girdwood Plaintiffs challenged the Board’s adoption of Option 3B. Their personal concern is for themselves, as the pairing of Districts 9 and 22 in Senate District E dilutes the vote of Girdwood and District 9; but they are also entitled to challenge the Board’s decision to pair Districts 23 and 24 in Senate District L.

The Board argues that “to the degree [Girdwood Plaintiffs] now pursue a backdoor challenge to Senate District L, such a challenge is time barred under the Constitution.”⁹ The Board ignores this Court’s finding that the Board cracked Eagle River to effectuate a partisan gerrymander and incorrectly asserts that “Senate District L was expressly and unsuccessfully challenged in the first round of litigation.”¹⁰

In its February 16, 2022 ruling, this Court found that the 2021 Proclamation ignored the communities of interest in Eagle River and Muldoon,¹¹ that the primary justification for pairing North Eagle River with JBER was Member Marcum’s personal preferences,¹² that “[t]he vast majority of both East Anchorage and Eagle River residents

⁹ ARB’s Opening Brief at 40.

¹⁰ *Id.*

¹¹ FFCL at 70.

¹² FFCL at 70.

were strongly against splitting either region and combining one with the other[,]”¹³ that the three Republican appointees on the Board had apparently reached a secret consensus “on the one consistency among Board Member Marcum’s proposed maps—splitting Eagle River and pairing North Eagle River with JBER[,]”¹⁴ that the reason for pairing North Eagle River with JBER was to give Eagle River “more representation,”¹⁵ and that “the Eagle River Valley/South Muldoon [pairing] was ultimately a down-the-road consequence of the North Eagle River and JBER pairing.”¹⁶

Consistent with its findings, the Court concluded that “it was not necessary to [pair Eagle River and JBER] under the VRA, the constitution, or any other law”¹⁷ and that in doing so, the Board intentionally discriminated against the voters of the Muldoon community of interest in favor of the Eagle River community of interest, violating the Muldoon voters’ rights to fair and effective representation under the equal protection clause of the Alaska Constitution.¹⁸ The Alaska Supreme Court affirmed “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.”¹⁹

¹³ FFCL at 52.

¹⁴ FFCL at 50.

¹⁵ FFCL at 69.

¹⁶ FFCL at 68.

¹⁷ FFCL at 70.

¹⁸ *See* FFCL at 71.

¹⁹ March 25, 2022, Interim Order of the Alaska Supreme Court at 6 (S-18332).

The Board’s argument that Senate District L was affirmed myopically ignores that the reason that Senate District K was an unconstitutional political gerrymander was because it was a downstream consequence of the Board’s cracking of the Eagle River community of interest to give Eagle River more representation at the expense of the Muldoon community of interest. The Girdwood Plaintiffs’ claim is that the new Senate District E is a similarly unconstitutional downstream consequence of *the exact same political gerrymander*.²⁰

The Board relies on *In re 2001 Redistricting Cases* to argue that any challenges to Senate District L are time-barred.²¹ In that case, the Alaska Supreme Court held that a challenge to the compactness of a certain house district was untimely because it “could have been raised against the original Proclamation Plan but w[as] not[.]”²² Here, the Board is judicially estopped from arguing that Girdwood Plaintiffs’ claims are untimely,²³ Senate District L was, in fact, successfully challenged in the first round of litigation, and the Girdwood Plaintiffs had no cause to challenge Senate District L after the 2021 Proclamation was released because the downstream consequence of the Board’s

²⁰ ARB200970 (“When you make the pairings that are described for JBER and Eagle River, it leaves 22 as – you know, with no place to go really except 9.”).

²¹ *In re 2001 Redistricting Cases*, 47 P.3d 1089, 1092 (Alaska 2002).

²² *Id.* at 1090.

²³ *See Zwiacher v. Capstone Fam. Med. Clinic, LLC*, 476 P.3d 1139, 1143 (Alaska 2020) (“Judicial estoppel is a discretionary, equitable doctrine used to prevent parties from playing fast and loose with the judicial system. Judicial estoppel bars a party from contradicting previous declarations made during the same or an earlier proceeding if the change in position would adversely affect the proceedings or constitute a fraud on the court.” (internal quotation marks and citations omitted)).

gerrymander was the fair and effective representation of Muldoon voters, not District 9 voters.

Arguing that the Girdwood Plaintiffs cannot challenge the Board's new map is a backdoor attempt to protect the Board's new gerrymander from proper review, which would curtail the Girdwood Plaintiffs' Article VI, §11 right to bring their claims. The Court should reject this effort and consider the claims on their merits.

III. THE BOARD CONSPIRED TO EFFECTUATE ITS PRIOR AGREEMENT TO MAXIMIZE EAGLE RIVER'S INFLUENCE.

The majority Board members who voted to adopt Option 3B appear to have made up their minds early in the process, without waiting for or listening to the public testimony they insisted was so important, and to have communicated their intentions between them. As detailed below, the Board's private correspondence—a portion of which was provided by the Board in this litigation—confirms this.

A. The Three Majority Board Members Were Aligned from the Outset and Engaged in Backchannel Communications throughout the Remand Process.

Based on their e-mail and text correspondence, the majority Board members appear to have had an agreement regarding the timing, process, and outcome of the remand.

The majority Board members were in favor of extending the public process as long as possible, while the minority Board members urged a more expedited timeframe. The majority members appear to have coordinated their approach.

On March 25, Mr. Torkelson circulated draft agendas to the Board that contemplated meetings on April 2, 4, 5, and 6 if needed, commenting that “if the Supreme Court does not require any changes, or if they require a large scale re-do, then these would be subject to change.”²⁴ The agenda had been drafted in anticipation of an April 1 ruling from the Alaska Supreme Court, but that Court issued its decision a week early, on March 25. The ruling did not require large-scale changes, and in fact required fewer changes than the Superior Court had ordered in its February 16 decision.

On March 28, at 8:30 am, Member Borromeo e-mailed the Board to propose a sooner meeting time in light of the early ruling, stating “I think we should notice a public meeting as early as tomorrow—and every day after—so we can meet as soon as possible.”²⁵ In a follow-up message, she stated her opinion “that this could take 15 minutes to clear up.”²⁶

Chair Binkley and Member Simpson appear to have had a private phone conversation on March 28, after receiving Member Borromeo’s proposal.²⁷ Subsequently, on March 31, at 3:53 pm, Member Simpson sent an e-mail to the group that urged for a lengthier public process.²⁸ In response, Mr. Torkelson reiterated that the Board’s

²⁴ ARB2-500139.

²⁵ ARB2-500117.

²⁶ ARB2-500117.

²⁷ ARB2-507073.

²⁸ ARB2-501465.

publicly-noticed meeting schedule included meetings for April 4, 5, and 6, and that the notices indicated the Board would adopt a revised plan on April 6.²⁹

Early in the morning the next day, April 1, 2022, Members Binkley and Marcum appear to have had a private phone call.³⁰ Many e-mails followed, with Members Borromeo and Bahnke objecting to drawing out the remand process. Member Bahnke pointed out the urgency of the Board’s task on remand:

This could also smack [of] delay tactics. I’ve already seen on social media people predicting that the board majority will try to delay as much as possible to force an e[l]jection under the current proclamation. Please advise as to how this will impact the upcoming elections.”³¹

At one point, Chair Binkley attempted to cancel the April 2 meeting,³² but Members Borromeo and Bahnke insisted it take place so that the public testimony process could begin.³³ The Board’s attorney participated in these conversations as well but his comments, and certain Board member comments, were redacted from the documents that have been provided.

Ultimately, at its April 4 meeting, the Board settled on a lengthy public process lasting until April 13 or 14. Members Bahnke and Borromeo questioned the need for an extensive process given that the Board had already heard testimony to move quickly and

²⁹ ARB2-501465-66.

³⁰ ARB2-507072.

³¹ ARB2-500073.

³² ARB2-500946.

³³ ARB2-500052.

to use the constitutionally acceptable pairings proposed in November 2021.³⁴ But Majority Board members insisted on a longer public process “to meaningfully implement the findings of the Supreme Court,”³⁵ “to give the public their due,”³⁶ and “allow the public to engage and look at that plan.”³⁷ Member Simpson went so far as to state: “I refuse to be badgered into a decision made on partial information before I'm ready to do it.”³⁸

Private side communications between the three majority Board members continued throughout the remand process. Very few of them were in writing, perhaps in recognition that they would be requested in any ensuing litigation.³⁹ In addition to the private phone calls noted above, Member Marcum and Chair Binkley appear to have had a private phone conversation on April 8.⁴⁰ Member Marcum and Member Simpson appear to have had a private phone conversation on April 11.⁴¹ Phone records were not provided, so additional conversations may have taken place; these are merely the ones referenced in the members’ disclosed text messages. Notably, neither Member Borromeo

³⁴ ARB2000235-37.

³⁵ ARB2000240-41.

³⁶ ARB2000238.

³⁷ ARB2000232.

³⁸ ARB2000240.

³⁹ The Board appears to have been counseled not to put things in writing. On April 1, in an e-mail protesting further delay of the remand process, Member Borromeo commented “And before we go down the 'don't put this or that in email' all of what I'm saying is public record.” ARB2-500073.

⁴⁰ ARB2-507072.

⁴¹ ARB2-507074.

nor Member Bahnke appears to have been included in *any* of these post-remand conversations.

During the Board meetings, Chair Binkley and Member Marcum spoke frequently, asking questions and making comments in a manner that demonstrated a strong preference for Option 3B. Member Simpson rarely spoke, but there is at least one indication that he had the same preference early on. On April 6, 2022, just a few days into the remand proceedings, Member Simpson e-mailed Mr. Torkelson requesting changes to the scale of Option 3B that would make it appear more favorable from a constitutional perspective:

For further public review and as a point of reference, I think it would be good to also have an even larger scale version that shows the whole boundary area between 9 and 22. One map shown today had that. The obvious connection is more apparent when you can see the entire districts.⁴²

As explained above, the three majority Board members had insisted on a lengthy public process ostensibly to allow the public to weigh in on the map options. Member Simpson, memorably, had stated on April 4: “I refuse to be badgered into a decision made on partial information before I’m ready to do it.”⁴³ Yet they do not appear to have even listened to the public testimony.

On April 13, at 12:35 pm, a mere twenty-five minutes before the Board’s final meeting, where members cast their votes, Member Binkley texted Member Simpson to say “I was wrong... The community adjacent to Eagle River is Chugiak. The Mountains

⁴² ARB2-502750.

⁴³ ARB2000240 (April 4, 2022).

and park to the east are the Chugach mountains.”⁴⁴ The text seemingly referenced a private side conversation between the two members, as the Board itself had not met publicly since April 9, and the location of Chugiak and the Chugach mountain range had not been in question at that meeting. Member Simpson responded with a thumbs-up, and asked “Is Chugiak more properly 23 or 24? I mean 22 or 24.”⁴⁵ Chair Binkley clarified for him that “It is in 24. Also Peters Creek and Eklutna are in 24.”⁴⁶ This exchange demonstrates that even heading into their final, crucially important meeting, these two members still lacked an understanding of the basic geography of the districts in question, and were still confused about which communities were where—which district contained Eagle River, which contained Chugiak, where the uninhabited wilderness of Chugach State Park was. In other words, they appear to have paid no attention to the days of written and live testimony from innumerable members of the public *about these very districts*, focusing *on the location of these very communities and geographic features*, as part of the lengthy public process they had insisted was so important.

This disregard for public testimony, and lack of awareness of what was in the districts at issue, show that they did not actually take a “hard look” at the pairing options—instead, they took an outcome-oriented approach, and paid attention to the details only as much as they needed to say the right words on the public record when explaining their choice.

⁴⁴ ARB2-507073.

⁴⁵ *Id.*

⁴⁶ *Id.*

Additional evidence supports a finding that the three majority Board members had reached a side consensus on the outcome of the remand process. On April 13, 2022, in the midst of the Board’s public deliberations, right after he had shared his comments favoring Option 3B and while the other Board members were commenting, Member Simpson had the following exchange with his wife by text message:⁴⁷



It is telling that Member Simpson and his wife did not say “John is agreeing with you,” or “Bethany agrees with you.” Instead, they said the other majority members were “doing well,” evidently in service of a pre-arranged and pre-discussed common goal.

⁴⁷ ARB2-507136.

B. Member Simpson Considered the Pairings from a Political Perspective and Regularly Reviewed Partisan Political Blogs.

As the Court noted in its prior decision, Member Simpson testified that he was appointed to the Board because “they were looking for a Republican from Southeast[,]”⁴⁸ in apparent disregard of the Constitution’s requirement in Article VI, § 8(a) that appointments should be made without regard to political affiliation. The Court also referenced the majority Board members’ “purported neutrality and ignorance of incumbents,”⁴⁹ and that Member Marcum had disavowed any knowledge of incumbents⁵⁰ despite later admitting, and being seen in video recordings, receiving incumbent information and discussing it with Member Simpson.⁵¹ This problem—of majority Board members considering and aiming to achieve political outcomes—persisted on remand.

On March 26, 2022, the day after the Alaska Supreme Court issued its decision but before the Board had met to discuss it, Member Simpson sent the following email sharing his candid thoughts on the decision to an undisclosed number of his contacts:⁵²

The Supremes also upheld the Superior Court's ruling that we had politically gerrymandered one Senate district in Anchorage by the way we paired two House districts there. The House districts were not challenged, so we have to double back and find a different pairing. To me this implies that what the

⁴⁸ FFCL at 145.

⁴⁹ FFCL at 21.

⁵⁰ FFCL at 21.

⁵¹ FFCL at 19, 57-58.

⁵² The Board failed to produce Member Simpson’s original message, which appears to have been sent out to multiple people under multiple subject headings; the e-mails produced by the Board included only responses from recipients, where Member Simpson’s original message appeared below. It is therefore unknown how widely Member Simpson distributed this message or if he sent and received other messages regarding his opinions about the remand process.

court perceived as a political gerrymander must be replaced with a different political gerrymander more to their liking. The district in question paired two house districts that were both majority non-minority, one of which was reliably republican and the other was republican 2/3 of the time. Not clear to me why this is bad but the Ds will push to dilute both of them to make it easier to elect their candidates.⁵³

This e-mail shows two things: (1) that Member Simpson continued to consider the Anchorage senate pairings in partisan political terms, preferring to pair a district aligned with his political party with a swing district; and (2) he lacked respect for the Courts' decisions, and believed that the Courts had not made an impartial decision, but had rather made their rulings to benefit the other political party.

As the Girdwood Plaintiffs pointed out in their Opening Brief, Members Binkley and Marcum had likewise expressed disdain for the Courts' rulings, stating that they disagreed with them and disputing certain of this Court's findings.⁵⁴ All three of the majority Board members thus dismissed the Courts' rulings in documented statements. As the Court reviews their actions and reasons for adopting Option 3B, these Board members do not deserve the benefit of the doubt or any presumption that they engaged in their remand work in a good faith effort to comply with the Courts' orders.

In addition, documents provided by the Board in discovery show that during the remand process, Member Simpson's contacts regularly sent him links to articles and posts

⁵³ ARB2-507161-62.

⁵⁴ Girdwood Plaintiffs' Opening Brief at 27 and n.58.

discussing the Board’s work from a political perspective, such as posts from Must Read Alaska (a conservative blog) and the Midnight Sun (a progressive blog).⁵⁵

Member Simpson made his feelings on some of these articles clear, for example responding to one such e-mail by calling Matt Buxton, who operates The Midnight Sun, a “POS” (shorthand for “piece of shit”).⁵⁶ He forwarded another article to a writer for Must Read Alaska with whom he appears to be friendly, who responded with a one-line comment: “Those 2 women are bitches of the highest order!”,⁵⁷ presumably referring to Members Bahnke and Borromeo, who had opposed the adoption of Option 3B.

Based on his personal correspondence, Member Simpson appears to have been preoccupied by partisan politics and various political parties’ preferences in a way that improperly influenced his vote for Option 3B.

C. Member Marcum Appeared to Have Partisan Objectives.

Member Marcum also appears to have been preoccupied with partisan political goals. The e-mails produced by the Board in this litigation revealed that she subscribed to the mailing list of the National Republican Redistricting Trust (“NRRT”). On Friday, April 8, 2022, Marcum received four identical notices from the National Republican Redistricting Trust (“Notices”) in two separate emails, inviting recipients to “join us for

⁵⁵ *E.g.*, ARB2-507140-41, ARB2-507137-38, ARB2-507147, ARB2-507148; Exhibit 3 (articles linked in cited e-mails).

⁵⁶ ARB2-507137.

⁵⁷ ARB2-507140. The recipients of his email include Win Gruening, who is identified on the Must Read Alaska website as a “senior contributor.” *See* Exhibit 4, Must Read Alaska, Tag: Win Gruening, <https://mustreadalaska.com/tag/win-gruening/> (last accessed May 9, 2022).

NRRT’s final monthly webinar of the 2020 redistricting cycle.”⁵⁸ The Notices stated that the webinars were private: “Monthly updates are open to Republican legislators, their staff, and other Republican attendees only. Webinars are not for public consumption and should not be recorded in any way.”⁵⁹ The NRRT explains its purpose as coordination of the GOP’s 50-state redistricting effort, and explains that redistricting is important because:

The district lines drawn in 2021 and 2022 will be in place for ten years. The legislators and members of Congress elected from those districts will set the policies of our states and our nation for decades to come. How lines are drawn now will matter for the preservation of our shared conservative values for future generations.⁶⁰

No other emails from the NRRT to Member Marcum were produced by the Board, despite the fact that the Trust sent monthly notices. There are two possible explanations: either Member Marcum withheld e-mails from production, or she first joined NRRT during the remand process. Either is problematic. Withholding documents is problematic for obvious reasons that bear on an individual’s credibility and good faith. For a Board member to join a partisan organization devoted to affecting legislative maps is problematic from a constitutional perspective. While individual Board members are free to hold their own personal political beliefs, the Constitution requires the redistricting process itself to be nonpartisan, and renders it inappropriate for a Board member to allow

⁵⁸ ARB2-502232–35.

⁵⁹ ARB2-502232–35.

⁶⁰ Exhibit 5, National Republican Redistricting Trust website, *available at*: thenrrt.org/about-us/.

partisan politics to guide their decision, especially when that decision is contrary to the weight of the public testimony. Being a registered party member does not automatically cross this constitutional line, but joining an organization devoted to achieving a specific political party's goals through redistricting *while serving on Alaska's Redistricting Board*, does cross that line.

Member Marcum's credibility remains an issue. Even in public deliberations on April 13, after having this Court find that she had reviewed incumbent data *as established by her own testimony and video evidence*, Member Marcum denied that she had reviewed incumbent data, stating: "contrary to what has been claimed here, I actually did not read the incumbent data that was e-mailed to all members of the [B]oard. I did not then and I do not now care about incumbents. That is not our role, and I take that seriously."⁶¹

Member Marcum's involvement with NRRT, coupled with the Court's earlier finding that she had acted to increase Eagle River's representation for partisan objectives and her ongoing denial that she had reviewed incumbent data, renders her vote for Option 3B, and her reasons for that vote, suspect.

IV. THE BOARD DID NOT TAKE A HARD LOOK AT THE OPTIONS; RATHER, ITS STATED JUSTIFICATIONS FOR ADOPTING OPTION 3B ARE CONTRARY TO THE RECORD AND PHYSICAL REALITY.

The Board's justifications for its adoption of Option 3B are tenuous at best and spurious at worst. The record and documents provided in discovery demonstrate that the

⁶¹ ARB2001004.

adoption of Option 3B was—for the three majority Board members—a foregone conclusion from the outset of the remand proceedings, and a continuation of their prior agreement to maximize Eagle River’s Senate representation. The Board majority certainly did not take the requisite hard look at the evidence, because if it had, the majority members could not have reached the conclusions they shared on April 13.

In its prior order, this Court found there had been some justification for pairing North Anchorage with Eagle River; but it also held that Board needed a reason to go against the weight of testimony and community preferences.

At its final meeting on April 13, each Board member put on the record why they were voting for a particular map. All three majority Board members cited the military population on JBER as their primary reason for a 23/24 pairing. Their reasons were largely aligned with each other—but not the record that had been created through public testimony. Rather, as explained below, they consistently went against the weight of the public testimony, and ignored both the preferences and factual realities of the communities who participated in the process.

A. The Board Majority Ignored that JBER Was Already in a District with Downtown.

Much of the Board majority’s resistance to Option 2 was that it would place JBER in a district with downtown. Member Marcum stated that “[d]owntown has almost nothing in common with the military base”⁶² and downtown “absolutely makes the least

⁶² ARB2000980.

sense of any possible pairing for District 23, JBER.”⁶³ Member Simpson stated that “I think pairing the military bases with downtown overlooks JBER as a significant community of interest[.]”⁶⁴ Chair Binkley shared similar comments, explaining that he had considerable familiarity with downtown Anchorage: he had an office there for many years for the Alaska Cruise Association, he owned a condo there, he had familiarity with the railroad infrastructure by virtue of his seat on the Alaska Railroad Board. He stated that based on his experience, he “just [did not] see . . . an enormous connection between those areas and the military population on JBER, as opposed to the military and JBER to the – JBER to the military bedroom communities to the north.”⁶⁵

All of these comments ignored that the Board itself *had already placed JBER in a district with downtown*. Although the Board majority attempted to name District 23 the “JBER district” or the “military district,” these terms are misnomers—District 24 also includes significant portions of downtown Anchorage, Government Hill, Ship Creek, and Northeast Anchorage, including a portion of North Muldoon. This point was made, repeatedly, by members of the public.⁶⁶ It was even the subject of numerous community

⁶³ ARB2000980.

⁶⁴ ARB2000968.

⁶⁵ ARB2000987-988. Despite Chair Binkley’s considerable experience with downtown Anchorage, he apparently overlooked the fact that the railroad infrastructure is largely contained, including the main station in Anchorage, within the part of downtown that is districted with JBER in District 23, and the Alaska Cruise Association office, located at K Street and 4th Avenue, is also districted with JBER in District 23, a district that he supported and voted for as being socio-economically integrated.

⁶⁶ Some individuals sent in similarly worded comments opposing a downtown division. *E.g.*, ARB2001331, ARB2001332, ARB2001334, ARB2001335, ARB2001338, ARB2001341. Many others—including downtown, Government Hill, and Eagle River residents—provided

resolutions, including resolutions from the Anchorage Downtown Partnership, the Downtown Community Council, and the Government Hill Community Council, all of which begged the Board to keep the core downtown area together and not pair it with Eagle River.⁶⁷ As Yarrow Silvers, one of the East Anchorage Plaintiffs who watched the remand proceedings closely, commented on April 13 while listening to the Board’s deliberations: “I have read through the testimony files and listened to the testimony. Not one single JBER resident that I can see has testified and asked to be placed with Eagle River.”⁶⁸

Chair Binkley’s position is particularly puzzling given the comments he shared about his personal experience with the downtown area. They demonstrate that he was unaware of where the boundaries of District 23 actually are. He characterized downtown as including the Alaska Railroad area and the Alaska Cruise Association office, stating that downtown was focused on tourism and professional workers such as attorneys. But nearly everything he mentioned *is in District 23*: two state courthouses and one federal courthouse are in District 23, the Alaska Railroad Depot is in District 23, the Alaska Cruise Association office is in District 23. A later comment from Member Borromeo revealed that Chair Binkley’s condo is in Ship Creek, which is also in District 23.

detailed personal testimony about downtown. *E.g.*, ARB2001358, ARB2001363, ARB2001373, ARB2001377, ARB2001378, ARB2001386, ARB2001500, ARB2001501, ARB2001561, ARB2001570, ARB2001577-ARB2001578, ARB2001661, ARB2001675.

⁶⁷ *Infra* at 28-30.

⁶⁸ ARB2001813.

Despite the utter lack of testimony from JBER residents and the overwhelming testimony from downtown and Government Hill residents and community governments, and despite the fact that the Board had *already* placed JBER in a house district with half of downtown, the Board majority insisted that JBER and downtown could never be paired, and instead paired the entirety of North Anchorage—from downtown, to Ship Creek, to Government Hill, to JBER, to North Muldoon—with Eagle River, solely to preserve the alleged close connection between JBER and Eagle River. Based on the comments shared by Chair Binkley and Member Marcum on April 13, it did this without even a cursory look at the geographic boundaries of District 23. Disregarding or purposefully misrepresenting the actual geography to justify the Board’s preferred pairings is certainly an arbitrary and capricious action.

B. The Board Majority Ignored that JBER Was Not Zoned for Any District 24 High School.

Member Binkley cited schools as a reason to pair Districts 23 and 24, stating: “They [military families] send their kids to middle school and high school there[,]” noting that there may be “exceptions to that,” but “the overall weight of that testimony was compelling to that pairing.”⁶⁹ But this comment, again, ignores the actual testimony on that point.

⁶⁹ ARB2000968.

The Board did not receive extensive testimony on the subject of JBER's school zones, but the testimony it did receive is summarized in the following written comment from Denny Wells:

Representative Lance Pruitt stated that JBER students go to Eagle River High School. This is a factually accurate but misleading and incomplete statement. JBER High School boundaries are not included in maps from the Anchorage School District, but if you look up JBER addresses via the Anchorage School District School finder, you will see that addresses in the Richardson portion of the base, accessed via the Richardson gate, are zoned to Eagle River, while the addresses in the Elmendorf portion of JBER accessed via Government Hill, Boniface, and Muldoon gates are zoned to Bartlett. The Downtown and Government Hill portions of District 23 are zoned to West High School. In total, in district 23, the populations in the various High School boundaries are these:

Bartlett High School (inside District 23) – 8733 people

West High School (inside District 17 [renumbered 19]) – 4802 people

Eagle River High School (inside District 22 [renumbered 10]) – 4488 people

Two items of note in this data: (1) Eagle River is the smallest (by population) High School connection for District 23, and (2) even if you find the connection to Eagle River High School persuasive, Eagle River High School is the High School of District 22 [renumbered 10]. The High School of District 24 is Chugiak High School. In fact, the school district boundary between Chugiak High School and Eagle River High School is very similar to the boundary you defined between District 22 and 24. If this High School argument is granted any weight, it should weigh in favor of pairing District 23 with 17 [renumbered 19] first, and District 23 with 22 [renumbered 10] second, and it establishes no particular connection between District 23 and 24.⁷⁰

As Mr. Wells testified, clearly and citing his source for specific details, JBER families are zoned for three schools, *not one of which is in District 24*. Over 75% of the JBER-dwelling population is zoned for West High School in District 19 or Bartlett High School in District 23, while 0% is zoned for District 24. Chair Binkley's statement that he found

⁷⁰ ARB2001753. This comment uses the previous district numbering.

the school relationship between District 23 and 24 “compelling” reveals that he had not actually listened to the testimony. Ignoring geographic reality to achieve a pre-ordained outcome is arbitrary and capricious.

C. The Board Majority Ignored that the Only Portion of JBER Included in District 24 Was Unpopulated.

Chair Binkley and Member Marcum also gave significant weight to the fact that a portion of JBER is physically included in District 24, with Chair Binkley stating that it was “one of the most compelling” facts.⁷¹ Member Marcum stated that because of the geographical overlap, the pairing would “create a full and complete JBER Senate district.”⁷²

This, again, ignores the factual geography and the actual fact-based testimony that was presented. Mr. Wells testified on April 9 that the corner of JBER inside the District 24 boundary is actually unpopulated:

The claim that District 24 is a district of JBER is -- is true, only in the most obscure academic sense. District 24 includes a small portion of JBER, but this portion of JBER has exactly zero population except in precisely one census block. And (indiscernible) put that up on the screen. Awesome. That -- that block appears to be noise from the Census Bureau's anonymization efforts. This is the block outlined in red. It is bounded by Eagle River, the squiggly line on the upper right by the Inlet above, and by Otter Lake down to the south. That -- that block has a stated population of 197 people, but no physical infrastructure in which those people might live.⁷³

⁷¹ ARB2001003; ARB2000986.

⁷² ARB2001003. It is notable that the area of JBER in District 24 is substantially less than the area of downtown that is districted in District 23, and yet, Marcum did not once consider on the record pairing the two downtown districts as a senate district.

⁷³ ARB2000837.

Mr. Wells explained that this was not unique in census data:

In my map drawing of the Anchorage assembly seats, I spotted several anomalous census blocks like this in the Anchorage Bowl. The most obvious was a block that covered the Hickel/Minnesota Parkway, what name you want to apply to it, between International Airport and Raspberry Roads. It is not a census block that encompasses surrounding land, just the road itself, yet it has a population of 19.⁷⁴

Mr. Wells noted that while the Board was prohibited by statute from adjusting census numbers in its work, it was not precluded “from putting the census numbers in context.”⁷⁵

Chair Binkley and Member Marcum appear to have ignored this testimony, which once again was detailed and cited to specific sources and images. There was no contrary testimony; rather, other testimony supported Mr. Wells’ comments, such as when other individuals pointed out that there is no access from JBER into District 24: “JBER interacts with the areas where their gates are, which are NOT into Chugiak or Eagle River.”⁷⁶

The majority’s unbending commitment to keeping the populated portions of JBER in a senate district with its uninhabited corner seems particularly odd in light of its lack of concern for dividing downtown Anchorage in half.

⁷⁴ ARB2000838.

⁷⁵ *Id.*

⁷⁶ ARB2001772.

D. The Board Majority Prioritized the Alleged JBER Community of Interest, which Did not Provide Public Testimony, Over the Interests of Affected Communities that Did Provide Testimony.

The Board majority echoed each other in calling JBER a “community of interest.”⁷⁷ Member Simpson stated that “the overall weight” of testimony supported that “Eagle River, Chugiak, and JBER . . . has essentially developed as a bedroom community for – the military families.”⁷⁸ The majority members also cited testimony that a significant number of military members reside in District 24.

He commented that pairing North Anchorage with downtown Anchorage would be “partisan” because it would diminish the voice of the military.⁷⁹ Chair Binkley said the same, that “putting the more conservative or swing district of the military base with downtown would drown out the military voters” and run contrary to the Superior Court’s admonition against “regional partisanship.”

The vast weight of the testimony on Senate District L was in favor of pairing downtown (District 19) with North Anchorage (District 23). This testimony came from community councils and community entities as well as individual residents in those districts.

⁷⁷ ARB2000968, ARB2000980-981.

⁷⁸ ARB2000968.

⁷⁹ ARB2000974.

The Downtown Community Council (“DCC”), Government Hill Community Council (“GHCC”), and Anchorage Downtown Partnership (“ADP”) all formally supported a pairing of downtown with North Anchorage.⁸⁰

The DCC Resolution notes that the Board had divided downtown into separate house districts by drawing a line down Fourth Avenue, and called this “division of our downtown core” “lamentable.”⁸¹ It stated that the Board would be “furthering this fracture by putting us in two Senate seats” which would “further dissolve[] the voice of the downtown core[.]”⁸² It concluded by requesting that the Board “support a consolidated downtown voice” by pairing Districts 19 and 23 together.⁸³

The ADP Resolution mentioned the Downtown Improvement District,⁸⁴ which is a special business assessment district established by the Anchorage Assembly in 1998.⁸⁵ On a north-south basis, it extends from First Avenue to Ninth Avenue.⁸⁶ ADP noted that District 23 included a number of different neighborhoods, including “parts of the Central Business District, Downtown Improvement District, Port of Alaska and Alaska Railroad, JBER, and a commercial district of Mountain View,” while District 24 “includes Eagle

⁸⁰ ARB2001782-83 (ADP Resolution); ARB2001381 (testimony from Government Hill Community Council President); Exhibit 1 (Downtown Community Council Resolution).

⁸¹ Exhibit 1.

⁸² *Id.*

⁸³ *Id.* The Resolution referred to District 17, which was the number of the main downtown district before it was renumbered on the April maps.

⁸⁴ ARB2001782.

⁸⁵ Exhibit 2, AO No. 2000-98.

⁸⁶ *Id.* at 5.

River, which is predominantly rural and residential[.]”⁸⁷ ADP concluded by saying that downtown Anchorage was “unique within the Municipality of Anchorage and the State of Alaska as a strong urban core and should have compact and cohesive representation[.]”⁸⁸

The GHCC President wrote in on behalf of the council to support pairing District 23 with District 19 (formerly numbered 17). She stated that “balancing the districts by sheer numbers alone does not give any of us ‘fair representation.’”⁸⁹ She noted that “the South Chugiak area [District 24] is rural Alaskan in distance, lifestyles, and values, and does not represent Government Hill, JBER, or downtown Anchorage.”⁹⁰

The Girdwood Plaintiffs’ Opening Brief addresses the testimony from Girdwood, South Anchorage, and other District 9 communities asking not to be paired with Eagle River.⁹¹ It also noted that during the MOA reapportionment, numerous communities on the Hillside and in South Anchorage formally requested that they not be placed in a district with Eagle River, including the Hillside Home and Landowners Organization,⁹² Hillside Community Council,⁹³ and the Huffman/O’Malley Community Council.⁹⁴ These resolutions were all provided to the Board.

⁸⁷ ARB2001782

⁸⁸ *Id.*

⁸⁹ ARB2001381.

⁹⁰ *Id.*

⁹¹ Girdwood Plaintiffs’ Opening Brief §IV.A.

⁹² ARB2-501785.

⁹³ ARB2-501786.

⁹⁴ ARB2-501787.

By contrast, *no* formal resolutions or messages were received from community councils or other community government bodies in any Eagle River communities—nor were any resolutions or messages received from any community government body or entity representing the JBER population. While a few individual commentators supported a 23/24 pairing or a 9/10 pairing, the majority of the testimony was against it. Actual residents of those districts were overwhelmingly in favor of Option 2.

Residents sent specific personal testimony, such as one individual who wrote: “I live downtown. I work downtown. I walk downtown. Downtown Anchorage is one compact and historic part of the city. Please do not separate this core of the city into separate Senate districts. Maintain Downtown Anchorage in one Senate district.”⁹⁵ A Government Hill resident wrote:

Government Hill is moments away from the very epicenter of downtown Anchorage, while the “far north neighborhoods” are as far away as possible, there are very little true commonalities between us and them, with regards to issues such as planning and zoning, infrastructure, and even typical residential lot sizes.

Government Hill and Downtown each share an enormous amount of frontage with the industrial zone: heavy commercial, railroad yard, port of Alaska, and oil tank district that basically split us apart. Still, we face similar issues when dealing with that area, while the “northern neighborhoods” virtually have no interest in what goes on in the downtown area.

To put us in the same group with Chugiak, et. al., would make Government Hill nearly voiceless and not involved with any issues that would affect the Hill and its proximity, while the proposed northern communities would have no interest in our concerns.⁹⁶

⁹⁵ ARB2001501.

⁹⁶ ARB2001358.

Numerous Eagle River residents wrote to object to the North Anchorage-Eagle River pairing. The following is a fairly typical comment:

I have been a resident of Eagle River for over 10 years. I am very much AGAINST any Senate pairing that puts my house with downtown Anchorage instead of with my community and neighbors. Our home is immediately across the street from the other House seat which I consider my community. I want to be represented by someone who represents the issues of my community. Eagle River should be paired with Eagle River.⁹⁷

These are merely representative samples; the record is replete with other District 19, 23, and 24 residents who testified to the reasons that Eagle River should be paired with Eagle River, and downtown with North Anchorage.⁹⁸

E. The Board Majority Provided No Real Reasons to Pair Districts 9 and 10, Despite Overwhelming Testimony Against It.

Member Simpson, when opening his comments, stated that Board had “sought to find pairings that have some reasonable rational relationship[.]”⁹⁹ But that does not appear to be true for Senate District E. The Board provided few reasons to make the District 9 and 10 pairing.

Member Marcum stated that it was a “natural pairing” as the “Chugach Mountain

⁹⁷ ARB2001363.

⁹⁸ *E.g.*, ARB2001127; ARB2001239; ARB2001240; ARB2001341;
ARB2001358; ARB2001363; ARB2001373; ARB2001375; ARB2001377;
ARB2001378; ARB2001500; ARB2001501; ARB2001570; ARB2001594;
ARB2001615; ARB20A01631; ARB2001634; ARB2001639; ARB2001653;
ARB2001757; ARB2001765; ARB2001810.

⁹⁹ ARB2000971.

district.”¹⁰⁰ She also noted that both districts “have their own road services.”¹⁰¹ Chair Binkley similarly stated that the districts both have road service districts, both included the Chugach Mountains, and that citizens of those districts “deal with wildlife closer to their homes,” have “higher snow loads,” and face “wildfire dangers.”¹⁰² Chair Binkley stated that both districts were “large, more rural, and share a really long, physical border,” which makes them constitutionally contiguous.¹⁰³

Once again, the Board majority seemed unaware of the districts’ actual borders. While all of District 10 may be rural Eagle River, a significant portion of District 9 is urban Anchorage. The road service area connection is similarly misleading, because the road service areas in the two districts are completely separate.¹⁰⁴ Saying Districts 9 and 10 are connected because they both have road service areas is like saying they are connected because they both have roads.¹⁰⁵ By contrast, District 10 shares a dedicated road service district with District 24, the Chugiak, Birchwood, Eagle River Rural Road Service Area (“CBERRRSA”).¹⁰⁶

¹⁰⁰ ARB2001004, 2001005.

¹⁰¹ ARB2001005.

¹⁰² ARB2000984.

¹⁰³ ARB2000985.

¹⁰⁴ ARB2001577-ARB2001578.

¹⁰⁵ This recognition of similar issues facing different areas is merely an indication of similarity or homogeneity, not actual socio-economic integration in the constitutional sense. *See Carpenter v. Hammond*, 667 P.2d 1204, 1218 (1983) (Matthews, J. concurring).

¹⁰⁶ *Id.*

Indeed, Members Simpson and Marcum openly acknowledged that the Senate E pairing of Districts 9 and 10 was a downstream consequence of the 23 and 24 pairing.¹⁰⁷ Member Simpson justified the pairing solely on grounds of contiguity, a reason also cited by Chair Binkley. It bears noting that Member Simpson adjusted his understanding of contiguity to suit his preferred outcome here: he had previously objected to a proposed Southeast district for having what he called “false contiguity” that connected two population centers via a thinly populated area that included a section of open water,¹⁰⁸ but when it came to Senate District E, he did not think Districts 9 and 10’s connection through the uninhabited wilderness of Chugach State Park was “false contiguity.”¹⁰⁹ As Plaintiff Louis Theiss testified in his affidavit:

The only geographic connection between District 9 (South Anchorage/Girdwood/Turnagain Arm) and District 10 (Eagle River Valley) is the uninhabited, uninhabitable, inaccessible mountainous wilderness of Chugach State Park. In a practical sense, connecting District 9 to District 10 using Chugach State Park would be like connecting us to District 24 using Turnagain Arm and Cook Inlet. The park may as well be open sea.¹¹⁰

Numerous individuals provided testimony in line with Mr. Theiss’s affidavit, pointing out the lack of a practicable connection between District 9 and District 10.¹¹¹

As the Girdwood Plaintiffs argued in their Opening Brief, the Board paired Districts 9 and 10 solely on the basis of technical contiguity, in defiance of a host of

¹⁰⁷ ARB2000970 (Simpson); ARB2001005 (Marcum).

¹⁰⁸ See ARB2000972-973.

¹⁰⁹ ARB2000973.

¹¹⁰ Theiss Aff. ¶2.

¹¹¹ See Girdwood Plaintiffs’ Opening Brief §§IV.A-B.

reasons, factual reality, and overwhelming testimony, in favor of pairing Eagle River with Eagle River and District 9 with its true neighbors in East Anchorage.

F. Member Simpson Demonstrated a Basic Misunderstanding of the Court’s Ruling and the Concept of Fair Representation, Ignored Actual Testimony About Vote Dilution, and Improperly Relied on the Prior Map.

Member Simpson commented that there was no “real advantage to the Eagle River districts, in terms of splitting them or combining them.”¹¹² He also demonstrated a lack of understanding of the concept of fair representation, stating that numerical population was all that mattered: “whichever two you pair for a senate district, there’s going to be 37 – or 36 or 37,000 people in it, and they all get a vote, and they’re all going to have a senator and a representative.”¹¹³ These comments disregarded this Court’s ruling that providing Eagle River with two senators would increase its voting strength, and dilute the strength of districts with which it was paired.¹¹⁴ They also demonstrated a lack of understanding of the principle of fair representation, which is “the right to group effectiveness or an equally powerful vote.”¹¹⁵

If Member Simpson ignored the Court, perhaps it is not surprising that he similarly ignored the public who provided testimony. Numerous residents of downtown, Government Hill, Girdwood, and South Anchorage testified that their vote would be overwhelmed by a pairing with an Eagle River district; and as noted above, not a single

¹¹² ARB2000969.

¹¹³ ARB2000970.

¹¹⁴ FFCL at 69.

¹¹⁵ FFCL at 101.

JBER resident testified against being paired with downtown. Despite this, Member Simpson disregarded this testimony, instead commenting that adopting Option 2 would “diminish the voice” of the military and concluding that this would, in some unexplained way, be “partisan.”¹¹⁶

Member Simpson provided one final improper justification for his vote: He stated it was important that Districts 23 and 24 were paired in the 2021 Proclamation, because candidates may have already formed their expectations and plans based on the prior map, so if the pairing stated in place, “it’s just one less thing to be changed.”¹¹⁷ There was no testimony on this in the record, and it is nonsensical for a Board to retain a pairing from an unconstitutional map based solely on speculation that some potential candidate may have relied on it, despite the extensive public remand process to explore other options. Moreover, it is also true that the same number of senate districts change under each plan, so while Districts 23 and 24 are the same, others necessarily changed, upending expectations and plans. Member Simpson’s purported justification simply shows more Eagle River favoritism.

V. SENATE DISTRICTS E AND L DILUTE THE VOTING POWER OF DISTRICTS 9 AND 23 WHILE MAXIMIZING THE POWER OF DISTRICTS 10 AND 24.

The Board argues that the Girdwood Plaintiffs’ challenge to Senate District E must fail “because Girdwood lacks sufficient population to control even who is elected to

¹¹⁶ ARB2000974.

¹¹⁷ ARB2000970.

represent its house district let alone a senate district.” As an initial matter, no Alaska court has held that a class of voters must have sufficient voting strength to control its own house or senate district to be “politically salient.” To the contrary, the question is whether the right of “individual members of a geographic group or community [to have] their votes protected from disproportionate dilution by the votes of another geographic group or community” has been impaired.¹¹⁸ The Board’s argument also misses the point: the Girdwood Plaintiffs brought their claim to protect the voting strength of District 9 as a whole, not solely those of their own community. As discussed below, and as explained in the Supplemental Report of Dr. Hensel, the Board’s pairing South Anchorage/Girdwood/Turnagain Arm with Eagle River Valley does, in fact, dilute District 9 voters’ right to proportional representation.

The Board elides the substantial differences in voting patterns between District 10 and Districts 11 and 13, the other possible pairings for District 9 where Girdwood is located, and it mischaracterizes the voting patterns of District 9. The Board asserts, by looking exclusively at election data from 2018, that “[v]oters in the 2022 Proclamation House District 10 have similar candidate preferences to the Anchorage Hillside.”¹¹⁹ Even under the 2018 data, although it is true that Districts 10, 11, and 13 did choose the same candidates in the 2018 election, the margins were significantly smaller in Districts 11 and 13, indicating that whereas pairing District 9, which leans Republican, “but voted for the Democratic candidate in the 2014 US House election and for President Biden in the 2020

¹¹⁸ *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1371 (1987).

¹¹⁹ ARB Opening Brief at 30.

election[,]” with Eagle River Valley would dilute the proportional representation of Girdwood insofar as strongly Republican Eagle River would overwhelm Girdwood’s influence in the senate, pairing District 9 with Districts 11 or 13 would give Girdwood a meaningful opportunity to influence state senate elections at the margin.¹²⁰

As Dr. Hensel wrote, “[o]ne confident prediction we can make, then, is that since the boundaries of House Districts 10 and 24 and their politically conservative voting pattern have changed little since 2013, their influence on a paired district will be strongly conservative.”¹²¹ Accordingly, splitting Eagle River across two senate districts will drown out the influence of Districts 9 and 23. The discrimination in favor of conservative interests is clear under the Board’s argument that Girdwood’s population is too small to influence a house or senate district, as the same is true of the JBER population, and yet the three Board members who voted in favor of Option 3B all based their decision on concern that the “military” vote would be diluted if District 23 were paired with downtown.¹²²

¹²⁰ Hensel Report at 7–8.

¹²¹ Hensel Supplemental Report at 2.

¹²² *Id.* at 1 (“As concerns JBER, if we assume that most of the military members legally residing there vote in the JBER #2 precinct in District 23 (consisting of Ship Creek, Government Hill, Northeast Muldoon and JBER), then they comprise approximately one quarter of the voters in District 23, or one eighth of any senate district in which they are included.”); ARB2000968:1–4; ARB2000980:22–ARB2000981:7, ARB2000989:14–ARB2000990:13.

JBER voters are demographically diverse, which belies “the ARB’s stance that the military has such strong connections and affinity with Eagle River that other possible pairings would be prejudicial.”¹²³

While ethnic/racial and income characteristics of higher-ranking military members resemble those of the Eagle River population, officers comprise only 18% of the armed forces. The population characteristics of the military’s majority more closely resemble those of other parts of the municipality. In terms of ethnic/racial diversity, 77% of all officers and 88% of those in the higher ranks identify as white, as compared to 67% of all enlisted personnel. Andrew Gray testified to the ARB that, based on his analysis and comparison of census tracts and precinct boundaries, JBER’s population, “with 60.7% of the voting age population identifying as white and just under 40% identifying as non-white,” is even more diverse than that of the military overall.¹²⁴

Because of that diversity, and because, as Mr. Torkelson cautioned, voting data regarding 2020 precinct level voting preferences is unreliable going back to 2014, “we cannot reliably predict how precincts JBER #2 or Girdwood would vote in state elections.”¹²⁵

Thus, the majority Board members’ identification of the military as a politically salient class insofar as it identified the military as a community of interest, without data, and based on little more than Marcum’s personal opinion, that must be protected is best understood as a pretextual rationale for pairing District 23 with District 24, and pairing District 9 with District 10 for partisan purposes. Although the future voting patterns of Districts 9 and 23, and future voting patterns of the purported military community of

¹²³ *Id.* at 3.

¹²⁴ *Id.* at 3 (quoting ARB2-500282).

¹²⁵ *Id.* at 2. To clarify, the district-level voting information, which Dr. Hensel relied on in his prior Report, is reliable; the precinct-level information is ambiguous. *See id.* at 2.

interest, are uncertain and unpredictable, the solidly conservative voting patterns of Districts 10 and 24 are not.¹²⁶ By splitting the natural pairing of Districts 10 and 24 to enhance conservative voting power in the senate, Girdwood's votes are diluted and Girdwood voters are deprived of their right to "fair and effective representation" in that the possibility that they could influence a senate election is virtually foreclosed.¹²⁷

VI. CONCLUSION

The Board should not be permitted to repeat its gerrymander by reciting lengthy reasons that eschew reality and disregard the extensive public process on remand. This would work an injustice on the State of Alaska for the next decade by allowing partisan maps to dominate, while providing a guidebook for future Boards to launder gerrymandered maps through the courts.

If there were more time, the Girdwood Plaintiffs would develop and present a more extensive case; but the impending June 1 deadline for candidate filing constrains the scope of their arguments and evidence. The Girdwood Plaintiffs therefore ask the Court to take a close look at the Board's conduct, stated rationale, and as much of the record as it can

¹²⁶ Hensel Supplemental Report at 2.

¹²⁷ *Hickel v. Se. Conf.*, 846 P.2d 38, 47 (1992), *as modified on reh'g* (Mar. 12, 1993) ("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. The former is quantitative, or purely numerical, in nature; the latter is qualitative." (quoting *Kenai Peninsula Borough*, 743 P.2d at 1366–67)).

reasonably review on the given timeframe, and render a fair decision that takes into account the prior record and ruling in this action.

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