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AUTHORITIES PRINCIPALLY RELIED ON

Alaska Constitution, article I

Section 1. Inherent Rights. This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.

INTERESTS OF THE AMICI

Amici are six nonprofit, nonpartisan organizations who collectively reflect some of the diversity in Alaska in general and in East Anchorage in particular:

- The Alaska Black Caucus and the NAACP Anchorage, Alaska Branch #1000 work to support and to give voice to the interests of African-Americans in Alaska.
- Enlaces empowers, educates, and engages Alaska's Latino community.
- The Korean American Community of Anchorage, Inc., pursues the rights and interests of Korean Americans living in Anchorage.
- Native Movement and First Alaskans Institute focus on advancing the interests of Alaska's Native population.

Many members of the minority groups represented by Amici live and vote in Downtown and East Anchorage, the areas affected by the senate districts at issue in this litigation.

Amici have joined together in this litigation because all are concerned by the Redistricting Board's decision to create two senate districts affecting East and North Anchorage that each combines a district of diverse, working-class neighborhoods with a district of much more affluent, predominantly White, and more conservative neighborhoods in Eagle River and Chugiak, over the opposition of the vast majority of residents of both Anchorage and Eagle River who spoke to the Board on this question. Voters from both areas described Muldoon and Eagle River/Chugiak as two distinct communities of interest. Overwhelmingly, they favored keeping these communities intact for purposes of defining senate seats, and they opposed creating senate districts by joining an Anchorage house district with an Eagle River house district. Given the ease with which the desires of both communities of interest could have been accommodated, and the

absence of justification for splitting them, Amici perceive an intent by the Board to dilute the voting strength of the residents in East Anchorage and to increase the voting strength of Eagle River/Chugiak residents, in violation of the Alaska Constitution’s guarantee of equal protection. Amici joined this litigation to help ensure that their voices are heard by the courts and through the ballot box.

STATEMENT OF FACTS

The Proclamation House Districts

Throughout the 2021 redistricting process, a recurrent theme of public comment was the profound differences between East Anchorage and Eagle River/Chugiak.¹ People described each as a vibrant community, with its own identity. Dozens wrote and testified about the importance of keeping each community intact *and* separate.

Some preliminary maps drawn by the Board or third parties proposed house districts that combined a portion of Anchorage with a portion of Eagle River or other neighborhoods north of the Anchorage Bowl.² Approximately 300 people – both Anchorage residents and Eagle River residents – submitted comments asking the Board to keep their areas separate and not mixed in a district with the other. [Amici Exc. 2-9; ARB Exc. 804 n.320 (both providing citations)] Sample comments include:

Eagle River is much more affluent with more single-family homes and the Muldoon Community with lower income and a much larger amount of dense housing. [Bob Reupke (ARB 3519)]

We [in East Anchorage] are one of the most ethnically, racially, and socioeconomic diverse areas in the United States along with being the most

¹ This brief adopts local usage and refers to the Anchorage Bowl area as “Anchorage” to distinguish it from neighborhoods to the north, such as Eagle River, Peters Creek, Birchwood, and Chugiak. This brief often refers to the northern neighborhoods collectively as “Eagle River” or “Eagle River/Chugiak.”

² See, e.g., Alaska Redistricting Board Record (“ARB”) 657 (AFFER proposal), 10708, 10737-40 (Board’s v.1), 10766, 10796 (Board’s v.2), 1027 (Board’s v.3).

population dense area of all of Alaska. We are a strong distinct community. [Paul Robarge (ARB 3539)]

[T]he Mountain View and Muldoon districts have a sort of identity of their own based on demographics and the communities that have formed there. Their needs and priorities might be very different from those of a more conservative, higher income district that doesn't have as diverse of a population. [Kimberly Hunt (ARB 2652)]

The communities of Chugiak/Eagle River are distinct culturally and socio-economically from the Anchorage Bowl and there is a well-organized movement for them to leave the Municipality of Anchorage and form their own borough (Eagle Exit). [Melody Bechberger (ARB 1895-96)]

[Opposing any district straddling Anchorage and Eagle River]: People who live in each respective area have different concerns and their prospective representatives should be able to represent those concerns wholistically and not be torn between two contrasting stakeholder groups. [Laura Perry (ARB 3415)]

Eagle River residents were particularly vocal against being joined with Anchorage.

Some typical comments are set forth here:

Eagle River needs to be separate from JBER and East Anchorage. [Denise Allen (ARB 1808)]

Eagle river wants to be kept separate from Anchorage for a reason! If we wanted Anchorage involvement, then we'd live there. Leave us alone. [MB (ARB 1855)]

Eagle River should stay own district. [JoAnne Beckes (ARB 1901)]³

[Combining Eagle River and East Anchorage in a house district] is only to corrupt Anchorage voting. Democrats are trying to ruin our beautiful state. This is like mixing Beverly Hills with Compton. [Tara Davis (ARB 2220)]

Eagle River is a community within itself with different needs and considerations than those of Anchorage. Many of us have specifically chosen to live here over Anchorage because the community is different and has a uniqueness of its own. The people here want to be represented differently than the rest of Anchorage. [Jessica Flournoy (ARB 2380)]

³ Under the 2013 Proclamation Plan, Eagle River had its own house and senate seats; part of JBER was included in one district but no part of civilian Anchorage. See ARB 1576. The request to "stay own district" was oft-repeated.

Eagle River is a separate entity and culture. East Anchorage is a loss [sic] collection of neighborhoods. These do not go well together. [Debra Isel (ARB 2845)]

Eagle River is nothing like Anchorage, as we have totally different issues . . . Rural versus city, small town versus big town, conservative vs. liberal, etc. Things would be SO much better if Eagle River were totally separate from Anchorage[.] [Cathy Medland (ARB 3207)]

Near the end of the redistricting process, Board Member Bethany Marcum presented a new proposal that would join in a single house district a portion of Anchorage and a portion of Eagle River/Chugiak. [ARB 9108, 9110 (Tr. 128-29, 137-43)] That plan was modified in further discussion. [ARB 7744-45, 7751 (Tr. 4-7, 31)] Fourteen people testified at the next public hearing to urge that distinct communities in Anchorage not be broken up and that the Board reject the suggestion to create house districts that combine Anchorage and Eagle River neighborhoods.⁴ Just four people testified in favor of Marcum's revised proposal.⁵

The Board listened to the public. Recognizing that it could comply with the constitutional requirements for house districts without combining Anchorage and Eagle River neighborhoods in a single district, the Board drew compliant house districts that place Anchorage and Eagle River in separate districts.⁶

⁴ See ARB 7756-58, 7760-63, 7766-67, 7769, 7773-76, 7781-83 (Tr. 51-54 (Yarrow Silvers), 56-57 (Joelle Hall), 58-59 (Felisa Wilson), 67-68 (Donna Mears), 72-79 (David Dunsmore), 93-94 (Erin Willahan), 102-05 (Celeste Hodge-Growden), 121 (Alex Baker), 122-24 (Zack Fields), 126-27 (Kendra Kloster), 129-30 (Tanner Amdur-Clark), 151-52 (Lacey Hemming), 154-55 (John Nelson), 156-58 (Kirk Rose)).

⁵ See ARB 7763-64, 7774, 7777, 7781 (Tr. 80-82 (Chris Nelson), 124-25 (Kelli Toth), 134-37 (Jamie Allard), 150-51 (Ann Brown)).

⁶ See ARB Exc. 316-17, 339-45 (HDs 18-24); see also ARB Exc. 145, 147-48 (Board minutes note how the Board revised its preliminary maps to listen to the public and to keep Eagle River and East Anchorage in separate districts). The final vote to adopt the 40 Proclamation House Districts was 3-2, with Marcum and Chair John Binkley dissenting. [ARB 7807-09 (Tr. 257-62)]

The Proclamation Senate Districts

Although the Board made no official pronouncements about possible pairings to form senate districts before it made its final decision on house districts [ARB Exc. 800, 802], maps submitted by third parties did show proposed pairings.⁷ Some of the public comments on the maps specifically expressed support for proposed house districts that would allow a separate senate seat for Eagle River/Chugiak, leaving the Anchorage districts to be combined with each other.⁸ Few, if any, comments specifically endorsed a plan for senate seats that would pair an Eagle River district with an Anchorage district.

The Board began its formal discussion of how to pair the 40 Proclamation House Districts into 20 Proclamation Senate Districts by taking public testimony. [ARB Exc. 239 (Tr. 4)] Ten people spoke about how the Anchorage and Eagle River house districts should be paired into senate seats. Of these, nine supported pairing Anchorage districts with each other, and not with Eagle River.⁹ Only one (a Republican strategist) spoke in favor of pairing each of the Eagle River/Chugiak districts with an Anchorage district.¹⁰

Numerous people wrote to express their opinions on senate seats. Of the comments related to senate districts affecting Anchorage and Eagle River, the overwhelming majority favored keeping the Eagle River/Chugiak house districts together and the two Muldoon

⁷ Compare ARB 1342-87 (Board's v.3), 1389-1434 (Board's v.4) with ARB 646 (Alaska Democratic Party plan), 683-90 and 1295-1340 (AFFR plans), 1233-93 (AFFER plan), 1436-81 (Doyon plan), 1483-1528 (Senate Minority Caucus plan).

⁸ Some such comments include the statements at ARB 1863, 1895-96, 1941, 1955, 2045, 2241, 2285-86, 2322, 2355, 2387-88, 2454, 2495, 2506, 2533, 2551, 2590, 2603, 2887, 2912, 2981, 3160, 3254, 3255, 3269, 3350-51, 3352, 3530, 3535, 3551, 3698, 3871, 3885, 3886, 3913, 4058-59, 4251.

⁹ See ARB Exc. 240-63 (Tr. 8-9 (Alex Baker), 12-14 (Jeremy Houston), 22-24 (David Dunsmore), 33-36 (Yarrow Silvers), 37-38 (Roger Branson), 51-53 (Tahnee Seccareccia), 88 (Donna Mears), 96-98 (Christopher Constant), 98-99 (Felisa Wilson)).

¹⁰ See ARB Exc. 254-55 (Tr. 65-69 (Randy Ruedrich)).

house districts together; they opposed pairing an Eagle River district with any part of Muldoon, Government Hill, Mountain View, or Downtown.¹¹ The Board allowed time for members to review the comments that had been submitted before the Board made decisions about the Anchorage and Eagle River senate districts. [ARB Exc. 271-72 (Tr. 133-34)]

In formal sessions on November 8, the Board worked its way around the state, discussing pairings region-by-region. [ARB Exc. 269-71, 273-91 (Tr. 124-30, 138-213)] Where choices were geographically possible, justifications for proposed pairings stressed public testimony, the similarities between the districts being paired, and the goal of making logical pairings. [*E.g.*, ARB Exc. 273-79, 290-91 (Tr. 138-64, 207-13)]

The discussion of the Anchorage area differed. Melanie Bahnke presented a plan that paired the two Eagle River/Chugiak districts with each other for one senate seat, and paired the two Muldoon districts with each other for another senate seat. She based her plan on the large amount of testimony that asked the Board not to split either Eagle River or Muldoon. [ARB Exc. 279-80 (Tr. 165-67); ARB 1104 (Bahnke's map)] Nicole Borromeo supported Bahnke's plan. [ARB Exc. 280-81 (Tr. 168-73)]¹²

Marcum next described her plans. She had four different schemes, but for all of them she said she started with the "physical, as well as socio-economic connection between JBER and Eagle River," which she found supported pairing House Districts 23 and 24 (using the final numbers), thereby combining Government Hill, JBER, and a portion of

¹¹ See *infra* at 8-10 (quoting some of the comments); *supra* at n.8; Amici Exc. 10-14 (providing citations to additional comments).

¹² Supporting the decision to start by pairing the two Eagle River seats with each other, Borromeo stated: "It makes complete logical sense that Eagle River would be united in a Senate seat. I don't know why you would ever consider splitting Eagle River unless you were trying to expand Eagle River's reach in the Senate, which I'm not suggesting that that would be something the Board should ever entertain, as a matter of fairness." [ARB Exc. 280 (Tr. 168-69)]

Northeast Anchorage with North Eagle River/Chugiak. [ARB Exc. 281-82 (Tr. 173-76); ARB 1103 (Marcum's map)] When challenged, Marcum cited principally her personal experiences from living in the area. [ARB Exc. 283-84 (Tr. 181-82)] She proffered no rationale for pairing JBER with North Eagle River rather than with South Eagle River. As a consequence of pairing one of the Eagle River house districts with an Anchorage house district, Marcum had to pair the other Eagle River house district with a different Anchorage house district; she paired HD 22 (South Eagle River) with HD 21 (South Muldoon). [ARB Exc. 285 (Tr. 187-89)] Marcum described what she called "very strong socioeconomic ties" between Eagle River and Muldoon:

When people from Eagle River come to town, they drive down Muldoon. . . . That is where we stop and where we shop and where we get gas, and we're going back and forth to Eagle River. And so there are very strong socioeconomic ties between that part of Anchorage and the other part of Anchorage further out the highway. [ARB Exc. 285 (Tr. 189)]

Borromeo in response noted the lack of evidence that East Anchorage residents drive to Eagle River to shop; she also cited the substantial public opposition to splitting either Eagle River or East Anchorage. [ARB Exc. 285, 287 (Tr. 189, 196-97)]

When asked about the ties *between* the two Eagle River districts that were not being respected, Marcum replied:

Eagle River has its own two separate House districts. This actually gives Eagle River the opportunity to have more representation, so they're certainly not going to be disenfranchised by this process. [ARB Exc. 282 (Tr. 176)]

Without a formal vote or any clear statement on record of the preference of Budd Simpson or himself, Chair Binkley stated he understood that a majority favored Marcum's proposal [ARB Exc. 279-89 (Tr. 165-204)], and he had the Board move on to discuss pairings in and around Fairbanks. The Board did not make clear at that time what pairings were adopted for the rest of Anchorage. [*Id.*; see ARB Exc. 819 (superior court decision)]

Community reaction to the idea of pairing each of the two Eagle River/Chugiak house districts with an Anchorage house district was swift and strongly opposed to this plan. Vigorous opposition came from both Eagle River and East Anchorage. [Amici Exc. 10-13] Typical comments included:

I'd like to encourage the board to keep the two Eagle River area house seats (24 and 22) together. These two communities are the most socioeconomically integrated, share many of the same school districts, sports centers, community activities, community councils, and much more. . . . [Eagle River and East Anchorage] are entirely distinct, share no school district boundaries or community councils, and are very different communities. East Anchorage is incredibly diverse and tends to be on a far lower socioeconomic mark than Eagle River which has among the highest average household income in the state. Pairing these two districts would result in conflicting interests in many cases which would make it unfair to share a senator. Looking at the possible pairings, it seems unnecessary as well. [Erik Gunderson (ARB 2507)]

East ANC is a vastly different community than ER. Look at the demographics, election results, school compositions, etc. East ANC is unique, and it is important that it is represented by members actually within the community and understanding of and ready to work with and for the diverse population. I'm concerned about the potential further marginalization of East ANC constituents, many minority, when set in the same box as ER. [Tanner Johnson (ARB 2902)]

East Anchorage, along Muldoon has a bustling and diverse community that works together. There are many people of color and immigrants in that area. Splitting them up and pairing them with the predominantly white ER weakens their representation and violates the spirit if not the letter of the VRA. [Steven Aufrect (ARB 1850-51)]

Leaders from Eagle River reject affordable housing and social service programs that directly benefit underserved communities like East Anchorage. They treat socio-economically diverse areas of Anchorage with disdain and as a dumping ground for what they don't want in Eagle River. East Anchorage needs representation with a deep appreciation that recognizes the social-economic diversity of the area and a willingness to connect with community members where they are at[.] [Brenda Bergsrud (ARB 1923)]

Eagle River and East Anchorage are incredibly distinct areas – economically, culturally, and racially. Trying to join these communities into a district is an attempt to silence the diverse Muldoon area with overwhelmingly white

Eagle River. . . [The] only justification for doing so is partisan gain. [Burke Croft (ARB 2187)]

Government Hill is an urban, racially diverse neighborhood that has nothing in common with the overwhelmingly White exurban community of Chugiak. [Zack Fields (ARB 2353)]

[T]he board's proposal to pair Eagle River's House district with Northeast Anchorage and JBER . . . further marginalizes the voice of our communities that have historically been oppressed and pushed away from decision making processes . . . These communities also have distinct identities and characteristics and it would be a disservice to them by dismissing these differing qualities. . . . [Other available pairings] would respect the distinct voices of the people from Eagle River and East Anchorage. [Su Chon (ARB 2096)]

Trying to honor any supposed ties between JBER and ER comes at the expense of socio economic ties throughout the rest of town, including East Anchorage, Spenard/Turnagain, Downtown/Government Hill and JBER. Trying to redistrict in this way based on the fact that people from ER drive to Anchorage to shop is not a legitimate reason in the least to redistrict this way and disregard all the ways in which Anchorage residents/voters would be negatively affected. Please choose pairings that more accurately represent all areas and don't marginalize those who are diverse and not rich. [Jonathan Marsh (ARB 3131)]

East Anchorage [residents] have been suffering from lack of adequate Senate representation for the past 10 years and with this pairing, will suffer even more grievously for another ten years. The idea that driving down Muldoon to go shopping in Anchorage makes ER socio-economically tied to East Anchorage is about the most convincing evidence there is that Eagle River, a community that is largely affluent and white, cannot even begin to understand the issues and concerns faced by a district that has high racial diversity, lower on average economic status, and may not be able to afford 3 meals a day[.] [Yarrow Silvers (ARB 3892-93)]

Because Eagle River residents **commute** via Muldoon Road on their way to other parts of Anchorage does not mean they have an appreciation for the needs in that part of our community. . . . [T]here are no circumstances under which a rational person would have reached this conclusion [as to senate districts]. [LuAnn Piccard (ARB 3435-36) (emphasis in original)]

[A]ny senator who must represent both Anchorage and Eagle River is signed up for a near impossible task, because . . . the needs and socio-economic status are vastly different. [Derek Reed (ARB 3499)]

[T]his is a clear attempt to keep my neighbors and my family from having a Senator who represents and fights for Muldoon. I know that my neighbors in Muldoon care about the same issues that I do – not meaning in terms of

partisanship but in terms of caring about the economic development, safety, parks, & trails in our community and the schools shared by our kids. . . . To split our community in half for the purposes of grabbing power undermines the Board's claim to making fair maps and decimates my, and the public's, confidence that these maps were drawn fairly. [Charles Seaca (ARB 3649)]

Eagle River is distinct geographically, demographically, and the area's politics are so different that there is active support for a resolution to separate Eagle River from the rest of the MOA Eagle River. [Michelle Turner (ARB 4060-61)]

You are making it impossible to have a voice putting my side of town under Lora Reinbold . . . keep Eagle River in Eagle River and East side with the East side . . . last time you did this it took Senator Bettye Davis from us and from us having a voice. . . . It is really sad that you are not taking your residents of color into consideration it seems as though you are just having a white supremacy mindset. [Rozlyn Grady (ARB 2479)]

Given the absence of any persuasive justification for not adopting the more logical pairing of the two northern communities, many people suspected that the real motive was partisan: by linking the more conservative Eagle River neighborhoods with more swing districts in Anchorage, the plan seemed designed specifically to increase the likelihood of electing two senators from Eagle River/Chugiak, who would vote for the more conservative, more Republican perspective of those areas.¹³

Only a handful wrote to support the pairings that Marcum proposed.¹⁴

Notwithstanding the very strong public opposition to Marcum's plan and the existence of a viable alternative, by a 3–2 vote the Board formally adopted Marcum's proposal for the Anchorage-area senate seats [ARB Exc. 296-98 (Tr. 2-4)], and, by the same margin, rejected a motion to reconsider. [ARB Exc. 299-303 (Tr. 8-14)]

¹³ See *supra* at 8-10 (quoting some such comments); Amici Exc. 10-13 (citing comments that include similar accusations).

¹⁴ See Amici Exc. 14 (citing comments from the 9 people who wrote to support the house district pairings that Marcum proposed).

The Eagle River/Chugiak districts are very different from the Anchorage house districts with which they are joined.

Data support the public’s perceptions that Eagle River and Chugiak (HDs 22 and 24) are demographically quite different from the Anchorage house districts to which they are joined (HDs 21 and 23). The Eagle River/Chugiak districts are predominantly White, while South Muldoon and Government Hill/JBER/Northeast Anchorage are much more diverse. Looking at voting-age population, the Board’s data establish:

South Muldoon	HD 21	56.35% White	43.65% Minority
South Eagle River	HD 22	76.91% White	23.09% Minority
Govt. Hill/JBER	HD 23	53.37% White	46.63% Minority
N. ER/Chugiak	HD 24	76.41% White	23.59% Minority ¹⁵

Looking at *total* population, as distinct from *voting-age* population, as a better way to describe the character of a community, the minority percentages in HDs 21 and 23 are higher: HD 21 is 49.17% minority, and HD 23 is 48.11% minority.¹⁶

It is uncontested that HDs 21 and 23, along with HDs 20 and 18, with which these districts logically could be paired,¹⁷ are ethnically extremely diverse districts, whereas HDs 22 and 24 are among the most predominantly White districts anywhere in the state.¹⁸ Moreover, had the pairings that Bahnke proposed been adopted, both the combined Muldoon senate district and the combined Government Hill/JBER/Mountain View/Fairview senate district would have been majority minority.¹⁹

¹⁵ See Amici Exc. 1; see also ARB Exc. 427 (containing some of the same data).

¹⁶ See Amici Exc. 1.

¹⁷ HD 20 (North Muldoon) has a voting-age population that is 58.97% minority. HD 18 (Mountain View/Fairview) has a voting-age population of 66.01% minority. [*Id.*]

¹⁸ Only 11 of the 40 house districts have a voting-age population that is less than 24% minority. [Amici Exc. 1]

¹⁹ Simple math shows that a senate district combining HDs 20 and 21, the North and

Public comments also stressed that, besides the differences in diversity, the districts in North and East Anchorage have a lower average income than the Eagle River/Chugiak districts, with denser housing, more apartments and other multi-family dwellings, and fewer single-family homes on large lots. In short, the two Anchorage districts that were each joined with an Eagle River district have much more in common with adjacent Anchorage districts than they do with the Eagle River districts, just as the Eagle River districts have much more in common with each other than with any Anchorage district.

The purported “very close” ties that Marcum cited as a justification for combining Eagle River and East Anchorage rest solely on where Eagle River residents drive and shop when they come to Anchorage. This is largely a one-way link: Eagle River residents drive into Anchorage to work and to shop, but not vice versa. More important, as some writers perceptively explained, the commuter pattern that brings suburban residents into a city to work or shop does not at all indicate that commuters and locals share the kinds of values, concerns, and political interests that voters want asserted by their senator in Juneau.

Voting patterns, described below through an historical lens, confirm the sharp differences in political perspective between Eagle River/Chugiak and East Anchorage. These differences support the claims by many that the pairings for senate seats seem to have been adopted to serve partisan interests.

An historical example validates Amici’s fears that East Anchorage voices will be diluted when diverse Anchorage neighborhoods are joined with richer, Whiter suburban districts in Eagle River.

In 2000, Bettye Davis was elected as Alaska’s first Black woman senator. Davis’s district, then called Senate District K, consisted of former HDs 21 and 22, which covered

South Muldoon districts, would have had a voting-age population that was 51.12% minority, based on the data in the Board’s exhibits at Amici Exc. 1 and ARB Exc. 427. A senate seat combining HDs 18 and 23 (Mountain View/Fairview and Government Hill/JBER) would have had a voting-age population that is 55.94% minority.

neighborhoods in central and East Anchorage.²⁰ These were “swing” districts, which in the then-recent past had sometimes elected a Democrat and sometimes elected a Republican; perhaps reflecting the increasing diversity of the communities, they tended increasingly to vote Democratic.²¹

All legislative districts were subject to redistricting following the 2000 census. The voters included within Senate District K did not change substantially; Davis’s term was not truncated in 2002, as would have been required if there had been a substantial change in her constituency.²² Davis won re-election in 2004 and in 2008.²³

Redistricting following the 2010 census dramatically shifted the boundaries of Davis’s district. The 2011 Proclamation put Davis into Senate District M, which consisted of HDs 25 and 26. HD 25 was a South Muldoon district; HD 26 combined a small portion of North Muldoon with Eagle River.²⁴ In 2012, Davis was opposed in her bid for re-election by Anna Fairclough, who lived in Eagle River.²⁵ Forced to contend in a district

²⁰ See Amici Exc. 15-19 (affidavit of counsel explaining the exhibits submitted to the superior court), 20-23 (maps of the 2000 districts).

²¹ In 1996, Davis, running as a Democrat, lost a bid to be elected in Senate District K, and HDs 21 and 22 both elected Republican representatives. [Amici Exc. 25-26] In 1998, HD 21 elected a Democrat, while HD 22 chose a Republican. [*Id.* at 27] In 2000, when Davis won her senate seat with 50.76% of the vote, both HD 21 and HD 22 elected a Democrat to the state legislature, with 53-55% of the vote. [*Id.* at 29-30]

²² See ARB 6973-74 (Tr. 17-21) (explaining guidelines for truncating senate terms); see generally *Egan v. Hammond*, 502 P.2d 856, 873-74 (Alaska 1972).

²³ See Amici Exc. 37, 39. Reflecting the continued “swing” nature of the district, Davis’s margin of victory each time was relatively small: she received scarcely more than a majority of the vote each time – 52.98% in 2004 and 56.81% in 2008. The Democratic candidates in HDs 21 and 22 also prevailed in those years, but the pro-Democrat vote in the Baxter Bog district (HD 21) never exceeded 59% of the total. [Amici Exc. 31, 38, 40]

²⁴ See Amici Exc. 41, 45.

²⁵ See *id.* at 42-44.

that combined portions of East Anchorage with population from Eagle River, Davis lost decisively – 62.12% to 37.66%.²⁶

After the 2012 election, the Supreme Court declared the 2011 Proclamation Plan unconstitutional.²⁷ The redrawn 2013 Proclamation Plan created Senate District G (containing parts of JBER and Eagle River) and Senate District H (containing areas in North and East Anchorage).²⁸ New Senate District H was most like Davis’s former district; it combined HD 15 (North Muldoon and part of JBER) and HD 16 (College Gate). [ARB 1576; Amici Exc. 56, 60]

From 2014 through 2020, Senate District G (the Eagle River district) remained solidly Republican, electing Anna Fairclough in 2014 and Lora Reinbold in 2018.²⁹

Senate District H was much more of a swing district. In 2016, voters in Senate District H elected Bill Wielechowski, a Democrat, and re-elected him in 2020; he received approximately 57% of the vote each time.³⁰ In the two Senate District H house districts, HD 15 chose a Republican legislator in each election between 2014 and 2020, while HD 16 chose a Democrat – but the results in both districts were often fairly close.³¹ South Muldoon (HD 27) was a swing district, too, narrowly electing a Republican in 2016 and

²⁶ See *id.* at 47.

²⁷ See *In re 2011 Redistricting Cases*, 294 P.3d 1032 (Alaska 2012); *In re 2011 Redistricting Cases*, 274 P.3d 466 (Alaska 2012).

²⁸ See Amici Exc. 49, 53, 56, 60 (maps).

²⁹ See *id.* at 76 (2014 results), 83 (2018 results). And both house districts within Senate District G (HDs 13 and 14) elected a Republican in each election between 2014 and 2020. See *id.* at 78, 79 (2014 results), 81 (2016 results), 84 (2018 results), 88 (2020 results).

³⁰ See *id.* at 80 (2016 results), 87 (2020 results).

³¹ See *id.* at 79 (2014 results), 81 (2016 results), 84 (2018 results), 88-89 (2020 results).

2018, and a Democrat in 2020.³²

The combination of Eagle River and East Anchorage inevitably will give an edge to the more conservative, more Republican voters: The bare-majority progressive vote from East Anchorage will never prevail over the strong conservative vote from Eagle River. Keeping East Anchorage intact would create a district where both sides have a chance.

This history validates the fears expressed in the written and oral testimony described earlier: that splitting East Anchorage and re-pairing a part of that community with a part of Eagle River will result in the same loss of representation of the interests of East Anchorage as occurred in 2012. Moreover, now *two* sets of diverse Anchorage neighborhoods have been joined with significantly Whiter, more affluent, and more conservative neighborhoods to the north.

ARGUMENTS

I. THE BOARD’S PLAN VIOLATES THE ALASKA EQUAL PROTECTION CLAUSE BY SPLITTING THE COMMUNITY OF EAST ANCHORAGE AND INTENTIONALLY GIVING DISPROPORTIONATE VOTING STRENGTH TO EAGLE RIVER.

To the drafters of Alaska’s Constitution, “the goal of all apportionment plans is simple: the goal is adequate and true representation by the people in their elected legislature, true, just, and fair representation.”³³ This goal is the antithesis of any effort by a redistricting board to manipulate reapportionment for partisan gain or to favor any one group over another.

To effectuate the goal of “true, just, and fair representation,” this Court has made

³² See *id.* at 82 (2016 results), 85 (2018 results), 90 (2020 results).

³³ 3 Proceedings of the Constitutional Convention 1835 (Jan. 11, 1956), quoted in *Hickel v. Southeast Conference*, 846 P.2d 38, 44 (Alaska 1992).

clear that any redistricting plan must satisfy not only the minimum requirements of Article VI, but also the requirements of the Alaska Constitution's equal protection clause.³⁴ In the context of redistricting, the guarantee of equal protection means that all eligible voters in the state must have a mathematically equal vote³⁵ and "an equally meaningful vote," such that the voting strength of one identifiable group is not minimized in comparison to the voting strength of another group.³⁶

The "qualitative" requirement of an equally meaningful vote can be violated even when the "quantitative" requirement of an equally weighted vote is satisfied:

Under this qualitative principle, certain mathematically palatable apportionment schemes will be overturned because they systematically circumscribe the voting impact of specific population groups. This principle recognizes the danger that racial and political groups will be fenced out of the political process and their voting strength invidiously minimized.³⁷

These equal protection principles unquestionably apply to state senate seats.³⁸

Sometimes, given Alaska's geography, only one permissible pairing of house districts exists, and voters in two house districts must share a senator even when the residents of the two districts have little in common. But where there are choices, Alaska law requires that the Board choose pairings that respect the equal protection rights of all groups, especially, as this Court said in *Hickel*, when racial and political groups otherwise

³⁴ See *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1370-73 (Alaska 1987).

³⁵ See *Hickel*, 846 P.2d at 47-48; *Kenai Peninsula Borough*, 743 P.2d at 1366.

³⁶ *Kenai Peninsula Borough*, 743 P.2d at 1367; see *Hickel*, 846 P.2d at 48-49.

³⁷ *Hickel*, 846 P.2d at 49 (internal quotation marks omitted).

³⁸ See *Kenai Peninsula Borough*, 743 P.2d at 1366-73; see also *In re 2011 Redistricting Cases*, 274 P.3d at 469 (recognizing that a plaintiff could state a voter dilution claim with respect to a senate seat); *Hickel*, 846 P.2d at 73 ("There is an Alaska equal protection guarantee against hodge-podge senate pairings." (opinion of the superior court)).

might be fenced out of the political process.³⁹

In deciding whether a particular redistricting plan violates the guarantee of equal protection, this Court applies the familiar three-step analysis.⁴⁰ The first step is to determine the weight of the constitutional interest that is impaired.⁴¹ Placing a neighborhood into one senate district rather than another can implicate the right of members of an identifiable group or community to have their votes protected against disproportionate dilution by the votes of another geographic group or community.⁴² This Court has declared that the right to a geographically equally effective or powerful vote is “a significant constitutional interest.”⁴³ Here, the significant constitutional interest at stake is the right of East Anchorage voters to a geographically equally meaningful vote, as compared to voters of other areas, such as Eagle River. Factually, as shown *supra* at 12-15, the record shows that this interest is infringed by the Board’s decision to split East Anchorage and to deny that community an opportunity to vote as a unit.

The Board insists that East Anchorage and Eagle River cannot be different groups for equal protection purposes, because both are part of the Municipality of Anchorage. In the Board’s view, any pairing of adjoining house districts within a borough or municipality is essentially unreviewable by the courts. [ARB Br. 26-27, 47-49] This misreads the case law. Nothing in this Court’s discussion of equally meaningful geographic representation

³⁹ See *Hickel*, 846 P.2d at 48-49.

⁴⁰ See *Kenai Peninsula Borough*, 743 P.2d at 1370-72.

⁴¹ See *Planned Parenthood of the Great Northwest v. State*, 375 P.3d 1122, 1137 (Alaska 2016); *Kenai Peninsula Borough*, 743 P.2d at 1371.

⁴² See *Kenai Peninsula Borough*, 743 P.2d at 1371-72.

⁴³ *Id.* at 1372.

is limited to ensuring that all boroughs have an equally powerful vote. *Hickel* explicitly addresses the importance of protecting “racial and political groups” that risk being fenced out of the political process.⁴⁴ In practice, such groups often reside in different areas *within* a municipality or borough.

When government action infringes on a significant or important right, at the second step of the equal protection analysis the court must determine whether the action was taken to serve a government interest that is both legitimate and important.⁴⁵ If the record makes clear that the Board’s intent was to dilute the voting power of one geographical group as compared to another, that is an illegitimate purpose – and the equal protection challenge prevails.⁴⁶ If an actual discriminatory intent is not proved, but there is an appearance of an intent to dilute the voting strength of one group as compared to another, then the burden shifts to the Board to prove it had a proper purpose.⁴⁷

To assess whether a record establishes a discriminatory intent, this Court follows the “neutral factors test” espoused by Justice Powell in *Davis v. Bandemer*.⁴⁸ In Justice Powell’s words, “[D]istrict lines should be determined in accordance with neutral and

⁴⁴ See 846 P.2d at 49.

⁴⁵ See *Watson v. State*, 487 P.3d 568, 571 (Alaska 2021) (“When an important individual right is implicated, we require a close relationship between the challenged classification and an important government interest in the classification.” (footnote omitted)); *Malabed v. North Slope Borough*, 70 P.3d 416, 421 (Alaska 2003) (where an important interest is implicated, the State’s interest must be “not only legitimate, but important,” and “the nexus between the enactment and the important interest it serves [must] be close”).

⁴⁶ See *Kenai Peninsula Borough*, 743 P.2d at 1372.

⁴⁷ See *id.* at 1372-73.

⁴⁸ See *id.* at 1372; see generally *Davis v. Bandemer*, 478 U.S. 109, 161-62 (1986) (Powell, J., concurring and dissenting).

legitimate criteria. When deciding where those lines will fall, the State should treat its voters as standing in the same position, regardless of their political beliefs or party affiliation.”⁴⁹ Using the “neutral factors” test, courts assess whether the totality of circumstances indicates an intent to discriminate against voters in a particular geographic area. The reviewing court considers both the Board’s process and the substance of its decision.⁵⁰ Secretive procedures suggest an illegitimate purpose.⁵¹ So do “[d]istrict boundaries that meander and selectively ignore political subdivisions and communities of interest, and evidence of regional partisanship.”⁵² When the totality of circumstances suggests an intent to discriminate against one geographic area, the Redistricting Board must justify its decision as having been taken to ensure proportional representation.⁵³ Absent evidence of intentional discrimination, the court would evaluate the “fit” between the government’s interest and the means it chose to achieve its legitimate interest.⁵⁴

The Board’s decision to split East Anchorage and to combine South Muldoon with Eagle River fails the equal protection analysis. Quite like in the *Kenai Peninsula Borough* case, the record reveals discriminatory intent.⁵⁵ One Board member (Marcum) explicitly articulated an improper purpose behind the pairings she proposed: to give Eagle River extra

⁴⁹ *Davis*, 478 U.S. at 167 (Powell, J., concurring and dissenting).

⁵⁰ *See Kenai Peninsula Borough*, 743 P.2d at 1372.

⁵¹ *See id.*

⁵² *Id.*

⁵³ *See id.* at 1372-73.

⁵⁴ *See Planned Parenthood of the Great Northwest*, 375 P.3d at 1137; *Kenai Peninsula Borough*, 743 P.2d at 1371.

⁵⁵ *See ARB Exc. 818-23* (superior court explained its conclusion that the record shows intentional discrimination against East Anchorage in favor of Eagle River).

representation. [ARB Exc. 282 (Tr. 176)] When this statement was called to her attention, Marcum did not disavow it or claim she was misunderstood. [ARB Exc. 299-302 (Tr. 8-11)] No one (either in the Board’s meetings or before this Court) contended that splitting two strongly-identified communities of interest – Eagle River/Chugiak and East Anchorage – is *necessary* to achieve proportional representation. And no one explained why splitting two communities in ways that dozens of people from both communities opposed is preferable to the easily available alternative pairings that would preserve both communities. While the Board is entitled to choose between two equally justifiable pairings, no case insulates a pairing that impairs the interest of one geographic group in having an equally meaningful vote, when an alternative exists that does not impair the interests of anyone.

Even apart from Marcum’s statement, the totality of circumstances evidences an intent to discriminate against East Anchorage. First, the process is suspect. Marcum’s proposal for pairing house districts was not developed in a public session; she presented her plan following a work session. [ARB Exc. 272, 281-89 (Tr. 136-37, 173-202)] The Board never discussed the relative merits of Bahnke’s plan as compared to Marcum’s. No other Board member spoke on record in favor of Marcum’s proposal, and two members vigorously opposed it, yet Binkley somehow knew that a majority favored Marcum’s plan over Bahnke’s. [ARB Exc. 279-89 (Tr. 165-204); *id.* at 820-21 (superior court observed that the South Muldoon/Eagle River pairing was never debated or explained)]

Substantively, the adopted pairings “selectively ignore political subdivisions and communities of interest.”⁵⁶ For the most part, the Board was quite intentional about pairing similar house districts and respecting communities of interest wherever possible. [*E.g.*,

⁵⁶ *Kenai Peninsula Borough*, 743 P.2d at 1372.

ARB Exc. 273-79, 290-91 (Tr. 138-64, 207-13)] But the majority abandoned this principle when pairing Eagle River districts with Anchorage districts. Disregarding a huge amount of public testimony,⁵⁷ the Board split two communities of interest despite an alternative proposal to create senate seats by combining contiguous districts in an obvious way that would keep both these communities intact, without harming strongly voiced desires of other communities to remain together.

Astute observers suspected that the true goal of Marcum’s pairings was to bestow a political advantage on the Whiter, richer, more conservative voters of Eagle River, giving them the chance to dominate two senate seats when their combined population provides sufficient population for just one senate seat.⁵⁸ That only one person, a well-known Republican strategist, testified in the final session in favor of Marcum’s proposal [ARB Exc. 254-55 (Tr. 65-69)] reinforces the inference that the true motive for splitting both communities of interest was to dilute the voting strength of East Anchorage as compared to Eagle River.⁵⁹

Eagle River and East Anchorage are geographically distinct areas, even if (for the moment) both are within the boundaries of a municipality. Both areas are entitled to an equally meaningful vote, unless important countervailing interests make this impossible. Contrary to the Board’s claim, Eagle River and East Anchorage are not legally “the same”

⁵⁷ The Board has not challenged the superior court’s summary that the Board disregarded “nearly universal public opinion from both Eagle River residents and East Anchorage residents insisting that Eagle River and East Anchorage be kept together in their own respective senate districts” and that it was “clearly possible, and a minimal burden on the Board to do so.” [ARB Exc. 805] *See supra* at 2-4, 8-10 (quoting selected comments); Amici Exc. 2-13 (citing hundreds of public comments).

⁵⁸ *See, e.g., supra* at 8-10 (quoting a few such comments); Amici Exc. 10-13 (including citations to other comparable statements).

⁵⁹ *See also* ARB Exc. 810-11 (superior court noted testimony that Marcum admitted reviewing maps that showed where incumbents reside while speaking with Simpson).

for purposes of an equal protection analysis, where the record establishes that these distinct geographic areas are very different racially, ethnically, economically, and politically. Both sets of voices deserve an equal chance to be heard on election day.

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

II. THE SUPERIOR COURT'S DUE PROCESS ANALYSIS ALSO SUPPORTS VACATING THE BOARD'S DECISION TO PAIR EAGLE RIVER DISTRICTS WITH ANCHORAGE DISTRICTS.

Members and supporters of the Amici organizations took time to testify and to submit written comments, because they believed that the public input solicited by the Board would be taken into account when the Board made its decisions. They were gratified when the Board listened and defined house districts that protected the separate communities of East Anchorage and Eagle River. [*E.g.*, ARB Exc. 236] They were dismayed when the Board, without justification, disregarded the overwhelming weight of public preferences and split both East Anchorage and Eagle River to create two senate districts that unnecessarily blend portions of these two distinct communities. *See, supra*, at 4, 8-10.

The Board vigorously attacks the superior court's emphasis on public testimony – but the Board has grossly oversimplified the court's analysis. [ARB Br. 21-32] Given the complexities of redistricting in Alaska, obviously not all public preferences can be accommodated, and the superior court did not require that. However, when strong

preferences can be accommodated without undermining any constitutional requirement for redistricting and the Board opts to ignore the weight of the testimony, courts rightly should question whether the Board was influenced by improper considerations.⁶⁰

The obligation of the Board to hold hearings was added to the constitution in 1998, thereby elevating the role of public input. [ARB Exc. 892-93, citing Alaska Constitution art. VI, § 10] The public hearing requirement would be meaningless if the Board may blithely ignore strong expressions from the public, in favor of the mere preferences of one Board member, honored by two colleagues to create a majority, when the public preference easily can be implemented without violating the rights of voters in any part of the state.

The analogy to an administrative agency's obligation to respond to significant public comments [ARB Exc. 889-91] is fair, since the Board functions as a type of specialized agency. This Court invoked the "hard look" test in a prior redistricting case.⁶¹ The Board here did not take a "hard look" at the options for pairing house districts in East Anchorage and Eagle River. Discussion was cut off by the chair. [ARB Exc. 289 (Tr. 202-04)] Slim justification was offered for the pairings the majority chose; no rationale was given for disregarding a massive amount of public opinion and heeding instead a minority view. [ARB Exc. 281-89 (Tr. 173-202)] The Board did not even discuss the alternative plan that honored the strong public sentiment. [*Id.*; *see also id.* at 805, 820-21, 901] With three Republican-selected members outvoting the two members selected by a Democratic legislator and the Chief Justice, the record supports the inference that the chosen pairings are based on partisanship rather than any legitimate principle. Alaska's constitution demands better.

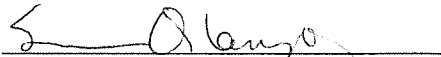
⁶⁰ See *Hickel*, 846 P.2d at 51 ("Logical and natural boundaries cannot be ignored without raising the specter of gerrymandering.").

⁶¹ See *In re 2001 Redistricting Cases*, 44 P.3d 141, 144, 145 (Alaska 2002).

CONCLUSION

This Court should vacate the Board's decisions to pair Eagle River/Chugiak house districts with Anchorage house districts to create Senate Districts K and L. This Court should remand with instructions to pair the two Eagle River/Chugiak districts to form one senate district, pair the two Muldoon districts to form another, and re-pair adjoining house districts as necessary in a constitutional manner.

Respectfully submitted, this 10 day of March, 2022.


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IN THE SUPREME COURT FOR THE STATE OF ALASKA

IN THE MATTER OF THE)
2021 REDISTRICTING CASES,) No. S-18332
(Alaska Redistricting Board, S-18332)
_____)

Superior court: 3AN-21-08869CI

CERTIFICATE OF SERVICE AND TYPEFACE

I hereby certify that on the 10th day of March, 2022, a true and correct copy of the Brief of Amici Curiae Alaska Black Caucus, National Association for the Advancement of Colored People Anchorage, Alaska Branch #1000, Enlaces, The Korean American Community of Anchorage, Inc., Native Movement, and First Alaskans Institute, the Amici Curiae’s Excerpts of Record, and this Certificate of Service and Typeface were served via email upon the following:

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I further certify, pursuant to App. R. 513.5, that the Brief of Amici Curiae is prepared in 13-point proportionately spaced Times New Roman typeface.

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