

1 IN THE SUPREME COURT FOR THE STATE OF ALASKA

2 )  
3 In the Matter of the 2021 )  
4 Redistricting Cases )  
5 (Alaska Redistricting Board/Girdwood )  
6 Plaintiffs/East Anchorage Plaintiffs) )  
7 ) Supreme Court No. S-18419  
8 )  
9 Trial Court Case No. 3AN-21-08869CI (consolidated)

8 **STATEMENT OF POINTS ON APPEAL**

9 Appellant Alaska Redistricting Board (“Board”), by and through its attorneys  
10 Schwabe, Williamson & Wyatt, P.C., hereby submits its statement of points on appeal  
11 pursuant to Alaska Rule of Appellate Procedure 216.5(b):  
12

13 1. The Superior Court applied the wrong equal protection standard, using a  
14 heightened standard for fundamental rights, in contravention of this Court’s holding  
15 that “a voter’s right to an equally geographically effective or powerful vote, while not  
16 a fundamental right, [] represent[s] a significant constitutional interest.”<sup>1</sup>  
17

18 2. The Superior Court erred in holding that under the Alaska Constitution  
19 creating Senate District E out of two contiguous, unchallenged house districts within  
20 the same municipality violated the equal protection clause’s prohibition against diluting  
21 voting power based on voters’ geographic or regional location, absent any evidence of  
22 regional partisanship.  
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<sup>1</sup> *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1371-72 (Alaska 1987).

1           3.     The Superior Court erred in ruling that the collateral attack on Senate  
2 District L from the original November 2021 Proclamation was not time barred under  
3 Alaska Constitution Article VI, Section 11.  
4

5           4.     The Superior Court erred in ruling that under the Alaska Constitution  
6 “Girdwood voters” are a “politically salient class,” “community of interest,” or a  
7 protected class for equal protection analysis.  
8

9           5.     The Superior Court erred by ruling different neighborhoods within the  
10 Municipality of Anchorage—specifically, residents living in South Anchorage and in  
11 Eagle River—constitute different “communities of interest” for equal protection  
12 analysis under the Alaska Constitution.  
13

14           6.     The Superior Court erred in ignoring the overwhelming evidence that the  
15 Board exhaustively discussed in open session the two potential Anchorage Senate  
16 District options, and instead relying upon plaintiffs’ mere speculation and inference that  
17 the Board engaged in “secretive deliberations.”  
18

19           7.     The Superior Court erred in determining that its prior finding of improper  
20 intent carried forward to the Board on remand and overcame the presumption of good  
21 faith.  
22

23           8.     The Superior Court erred in reversing the burden of proof on  
24 discriminatory intent, imposing on the Board an obligation of proving it had a change  
25 of heart and ensured a cure of all potential taint of improper motive.  
26

1           9.     The Superior Court erred in finding that the Board reached a secret or  
2 tacit agreement on senate pairings when the decision and rationale was plainly made  
3 and stated on the record in an open session.  
4

5           10.    The Superior Court erred in adopting a new standard under Article VI,  
6 Section 10 that allows the court to substitute its judgment for the judgment of the Board  
7 and places the wisdom of the redistricting plan at issue.  
8

9           11.    The Superior Court exceeded its authority delegated by the Constitution  
10 to compel the adoption of a map it prefers, but was not selected by the majority of the  
11 Board.  
12

13           12.    The Superior Court erred in creating new implicit findings and  
14 conclusions from its previous February 15, 2022 Findings of Facts and Conclusions of  
15 Law that require the redrawing of Senate District L or placement of House Districts 23  
16 and 10 into the same senate district.  
17

18           13.    The Superior Court erred in issuing conflicting decisions on the same day,  
19 ordering in one that the Board was not required to replace Senate District L and that its  
20 remand order did not require pairing two Eagle River house districts together, and in  
21 the second order concluding the opposite.  
22

23           14.    The Superior Court erred in issuing conflicting decisions on the same day,  
24 ordering in one that “The Court declared Senate District K was unconstitutional, and  
25  
26

1 the specific constitutional infirmity identified by the Court has been remedied,”<sup>2</sup> and in  
2 the second that the preexisting unaltered Senate District L can be challenged anew  
3 because it is “tainted by this court’s prior finding of discriminatory intent.”<sup>3</sup>  
4

5 DATED at Anchorage, Alaska this 17th day of May, 2022.

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25 <sup>2</sup> Order Denying East Anchorage Motion to Reject Amended Redistricting Plan but  
26 Granting in Part Clarification, at 4 (May 16, 2022).

<sup>3</sup> Order re Girdwood Challenge to Amended Plan, at 21 (May 16, 2022).