IN THE SUPREME COURT OF THE STATE OF ALASKA

In Re 2021 Redistricting Cases.	)	Supreme Ct. No. S-18332
	)	Superior Court Case Nos.
	)	3AN-21-08869 CI
	)	1JU-21-00944 CI

MUNICIPALITY OF SKAGWAY BOROUGH AND BRAD RYAN'S RESPONSE TO THE ALASKA REDISTRICTING BOARD'S PETITION FOR REVIEW

March 10, 2022

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The Municipality of Skagway Borough and Brad Ryan ("Skagway"), through their counsel, Brena, Bell & Walker, P.C., hereby respond to the Petition for Review ("Petition") filed by the Alaska Redistricting Board ("Board") on March 2, 2022, from the superior court's Findings of Fact and Conclusions of Law and Order ("Order"), issued February 15, 2022.

I. INTRODUCTION

The superior court properly characterized the public testimony and held the Board's disregard of the public process and decision to defer to Board Member Budd Simpson was not rational decision making, did not comply with basic due process, and did not comply with the constitutional requirements that anticipate the Board will engage in a good-faith and robust public process. In response, the Board argues the role of the superior court and this Court is to defer to the Board's decision. Skagway disagrees with the Board.

Neither the superior court nor this Court may defer to the Board under the facts and circumstances of this case. Alaskans are entitled to the appointment of an apolitical Board that engages in rational decision making, complies with basic due process, and consistently complies with the constitutional requirements. Instead, Alaskans got a political Board comprised of members with predetermined agendas that traded favors with each other based on geographic appointment, solicited public comments in alignment with their agendas, and wholly ignored public comments not in alignment with their agendas.

Board Member Simpson was not an apolitical appointment as anticipated by the constitutional framers, but was specifically appointed because he was on a short-list of life long Republicans living in Southeast Alaska. He is politically active and holds Republican

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Party fundraisers at his home. He lacks even a passing familiarity with Skagway and had only spent one night in Skagway since the 1980s—and that night was at the lodge of the Republican Chair for District 3, the only person from Skagway that testified in support of Skagway being included in District 3, and her testimony appears based on misunderstanding Board Member Simpson's map.

Board Member Simpson was honest that the Board deferred to him in Southeast. The Board's Petition argues otherwise and disregards the members' own acknowledgement that the Board deferred to the member appointed from the geographic area. A process the superior court properly found troubling. A process Skagway believes is inconsistent with the constitutionally required process for the entire Board to establish districts based on the constitutional requirements, rather than on trading favors.

The public comments were overwhelmingly in favor of keeping the Mendenhall Valley and Downtown Juneau whole and separate from each other, with the dividing line in the middle of the two at Sunny Point or Fred Meyer. The Board's Petition ignores these public comments concerning the Mendenhall Valley and Downtown Juneau. In fact, not a single public comment suggested splitting the Mendenhall Valley in order to add Haines, Skagway, and Gustavus with the upper portion of the Mendenhall Valley. Not a single public comment suggested an understanding of the impact of Board Member Simpson's District 3 on the Mendenhall Valley. To be frank, even Board Member Simpson was unclear as to what major shopping and commercial areas were in District 3 and which were in District 4.

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As the superior court found, the public comments were also overwhelmingly in favor of Haines, Skagway, and Gustavus being in the same district as Downtown Juneau. The Board's Petition does not accurately represent those public comments to this Court. In fact, the Board's Petition advances public comments in support of its reading that do not reflect an understanding of the actual District 3 mapped by Board Member Simpson.

The confusion of the public as to the maps and how they would work was made worse by the Board ignoring their constitutional obligation to adopt proposed plans during the initial thirty-day period and then to permit the public to comment on those adopted plans until the Board established a final plan. Instead, the only two plans adopted during the initial thirty-day period were abandoned by the Board without meaningful public comment, and the Board then went on to adopt new and third-party maps during the public comment period. This "moving target" approach of adopting new and third-party maps after the thirty-day period for adopting proposed plans and during the public comment period is not the approach mandated by the constitution, and caused confusion throughout the process.

Board Member Simpson was also honest about his personal agenda. He stated, "from the beginning . . . it had always been my intention to . . . put Skagway and Haines with the north end."[1] This acknowledgement has all the good faith and due process one

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[1] Simpson Depo. Tr. 51:22 – 52:6 [Exc. 101-02]. He also suggested he wanted to make it more compact, but Member Simpson's District 3 is much less compact than either of Skagway's alternatives for District 3. Even when considering both District 3 and District 4, there is no significance compactness difference for the entire state-wide plan among the alternatives before this Court.

would find from a judge who announced his decision before the trial began. The superior court was absolutely right to have expected the constitutional process for public comment to have some other meaning than to fill time until Board Member Simpson did what he intended to do "from the beginning."

Board Member Simpson did not seem to understand or agree with most of the public comment. He came into the process with the preconception that the extant pairing of Skagway with Downtown Juneau "never made sense" while conceding it was "highly defensible,"[2] checked with his primary client to get its sign off of his districts,[3] "never felt that the public testimony was a vote or a scientific survey" and only "took that for what it was worth,"[4] and believed he could "more or less" draw his district line between Districts 3 and 4 wherever he wanted.[5] Beyond briefly discussing an alternative offered by Board Member Borromeo, the Board simply deferred to Board Member Simpson and accepted his district designs without substantive consideration of other viable options.[6] On this record, the superior court correctly concluded that the Board did not engage in reasoned decision making.

In addition to several viable alternatives that were before the Board, Skagway presented two alternative plans for these districts that reflect the clear weight of public

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2 Order at 121 [Exc. 902].
3 Order at 119 [Exc. 900].
4 Order at 121 [Exc. 902].
5 Trial Tr. 1822:16-22 (Simpson) [Exc. 1082]
6 Order at 119-120 [Exc. 900-01].

testimony and can be embedded into the Board's existing plan.[7] Either of the Skagway alternative maps presents a viable constitutional alternative to the Board's Districts 3 and 4, which were drawn without regard to the clear weight of the public testimony or the evidence presented on socio-economic integration and fair and effective representation for the people of Skagway and Juneau.

Establishing voting districts goes to the heart of our democracy. The Board should be required to act in good faith and provide a fair public comment process. Its decision should also reflect reasoned decision making. The Board's Petition attempts to redirect this Court from the facts of this case to a speculative parade of future horribles if public comment is afforded any weight.[8] The facts in this case are the facts before this Court, and the only horrible this Court need address is the Board insisting it has the discretion (which it may delegate to a single member) to render the entire public comment process meaningless. Deferring to Board Member Simpson while he completely ignores all public comments and does what he intended to do from the beginning falls short of the constitutional mark. The superior court correctly concluded that the Board violated due process in establishing Districts 3 and 4 despite overwhelming public testimony to the contrary on the facts of this case.

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[7] Ex. SGY-2004 at 2690, 2698 [Exc. 745-46].

[8] Board Petition at 30-32.

II. STANDARD OF REVIEW

Review of the Board's Proclamation Plan ("Plan") is *de novo*,[9] and this Court has a duty to independently measure each district in the Plan against constitutional standards.[10] This Court has established the general standard of review to be applied by the courts when exercising jurisdiction under article VI, section 11:

> We view a plan promulgated under the constitutional authorization of the governor to reapportion the legislature in the same light as we would a regulation adopted under a delegation of authority from the legislature to an administrative agency to formulate policy and promulgate regulations. We have stated that we shall review such regulations first to insure [sic] that the agency has not exceeded the power delegated to it, and second to determine whether the regulation is reasonable and not arbitrary.[11]

In determining whether a regulation (or plan) is reasonable and not arbitrary, a court must examine not policy but process and must ask whether the agency (or Board) "has failed to consider an important factor or whether it has not really taken a 'hard look' at the salient problems and has not generally engaged in reasoned decision making."[12]

The Board complains that the superior court "afforded the Board's decision and process no deference" and should have limited its review to whether the Board's plan was rational and not arbitrary.[13] But the "hard look" contemplated by the caselaw expressly

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[9] *Groh v. Egan*, 526 P.2d 863, 867 (Alaska 1974).

[10] *In re 2001 Redistricting Cases*, 44 P.3d 141, 147 (Alaska 2002) (citations omitted).

[11] *Carpenter v. Hammond*, 667 P.2d 1204, 1214 (Alaska 1983) (quoting *Groh v. Egan,*526 P.2d 863, 866 (Alaska 1974); s*ee also In re 2001 Redistricting Cases*, 2002 WL 34119573 at 19 (Alaska Super. Ct. (Feb. 1, 2002)) (citing *Carpenter,* 667 P.2d at 1214).

[12] *Interior Alaska Airboat Ass'n, Inc. v. State*, 18 P.3d 686, 693 (Alaska 2001). *See also In re 2001 Redistricting Cases*, 2002 WL 34119573 at 19 (citing *Interior Alaska Airboat*, 18 P.3d at 693).

[13] Board Petition at 18-20.

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includes examining how the Board reached its plan and is informed by persuasive authority regarding the elements of reasoned decision making.

The U.S. Supreme Court noted as follows with respect to "reasoned decision-making" in the context of administrative appeals:

> Not only must an agency's decreed result be within the scope of its lawful authority, but the process by which it reaches that result must be logical and rational. Courts enforce this principle with regularity when they set aside agency regulations which, though well within the agencies' scope of authority, are not supported by the reasons that the agencies adduce.[14]

The U.S. Supreme Court has also found "reasoned decision-making" when an agency weighed competing views, selected a formula (or plan) with adequate support in the record, provided a detailed explanation of its choice, and responded at length to contrary views.[15]

The D.C. Circuit, which regularly makes determinations with respect to "reasoned decision-making" in the extensive administrative appeals that come before it, has indicated that "reasoned decision-making" includes "an examination of the relevant data and a reasoned explanation supported by a stated connection between the facts found and the choice made."[16] The D.C. Circuit has also identified four principles to guide the inquiry regarding "reasoned decision-making," deliberation, transparency, rationality, and

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[14] *Allentown Mack Sales and Service, Inc. v. N.L.R.B.*, 522 U.S. 359, 374 (1998).

[15] *Fed. Energy Regulatory Comm'n v. Elec. Power Supply Ass'n*, 577 U.S. 260, 289-95 (2016).

[16] *Elec. Consumers Res. Council v. Fed. Energy Regulatory Comm'n*, 747 F.2d 1511, 1513 (D.C. Cir. 1984).

evidentiary propriety.[17] Regarding deliberation, "the agency must 'engage the arguments raised before it.' . . . It follows that an agency's decision is not deliberative if it fails to 'respond meaningfully to objections raised by a party.'"[18]

Regarding transparency, "the agency 'must, of course, reveal the reasoning that underlies its conclusion.'"[19] Regarding rationality, "if an agency's interpretation of a regulation [or constitutional provision] shifts such that the agency is treating like situations differently without sufficient reason, the court may reject the agency's interpretation as arbitrary."[20] And regarding evidentiary propriety, "[r]easoned decision-making also precludes the agency from offering 'an explanation . . . that runs counter to the evidence before the agency.'"[21]

The D.C. Circuit has also explained that "[a]rbitrary and capricious review demands evidence of reasoned decisionmaking *at the agency level*; agency rationales developed for the first time during litigation do not serve as adequate substitutes."[22] Courts regularly enforce the standard of "reasoned decision-making" when they remand cases because the agency fell short of "reasoned decision-making," which includes an adequate explanation of the agency's reasoning and adequate support in the record for the agency's decision. By

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[17] *Sierra Club v. Salazar*, 177 F.Supp. 3d 512, 532 (D.C. Cir. 2016) (internal citations omitted).

[18] *Sierra Club v. Salazar*, 177 F. Supp. 3d at 532.

[19] *Sierra Club v. Salazar*, 177 F. Supp. 3d at 532.

[20] *Sierra Club v. Salazar*, 177 F. Supp. 3d at 532-33.

[21] *Sierra Club v. Salazar*, 177 F. Supp. 3d at 533.

[22] *Williams Gas Processing – Gulf Coast Co., L.P. v. Fed. Energy Regulatory Comm'n*, 475 F.3d 319, 326 (D.C. Cir. 2006).

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way of example, the U.S. Supreme Court regularly remands cases for failure to engage in "reasoned decision-making,"[23] as does the D.C. Circuit.[24]

With respect to judicial review in redistricting cases in particular, this Court has stated that "review is meant to ensure that the Board's Proclamation Plan is not unreasonable and is constitutional under article VI, section 6 of the Alaska Constitution."[25] The Board's redistricting process must also be constitutional under article VI, section 10. In applying this standard to the Board's Proclamation Plan, this Court considers the evidence before it to ascertain whether the Plan is both reasonable and constitutional. The inquiry is fact-specific.

For example, the court in *Hickel*[26] carefully considered facts specific to various regions and communities in Alaska in determining whether various districts passed

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[23] *See Motor Vehicle Mfrs. Ass'n of the U.S. v. State Farm Mutual Auto. Ins. Co*., 463 U.S. 29, 51-57 (1983) (remanded due to lack of reasoned decision making, particularly a failure to offer a rational connection between facts and decision made); *Allentown Mack Sales and Service, Inc. v. Nat'l Labor Relations Bd*., 522 U.S. at 375-80 (1988) (remanded due to lack of record evidence and reasoned decision making); *Judulang v. Holder*, 565 U.S. 42, 63-64 (2011) (remanded due to lack of reasoned decision making, particularly inadequate rationale without support for decision); *Dep't of Commerce v. N.Y*., 139 S. Ct. 2551, 2575-76 (2019) (remanded due to lack of reasoned decision making, particularly inadequate explanation for agency action).

[24] *See Elec. Consumers Res. Council*, 747 F.2d at 1518 (remanded due to lack of record evidence and reasoned decision making); *Colo. Interstate Gas Co. v. Fed. Energy Regulatory Comm'n*, 850 F.2d 769, 773-75 (D.C. Cir. 1998) (remanded due to lack of reasoned decision making); *Williams Gas,* 475 F.3d at 330 (remanded for lack of reasoned decision making at the agency level); *Tarpon Transmission Co. v. Fed Energy Regulatory Comm'n*, 860 F.2d 439, 445-46 (D.C. Cir. 1988) (remanded for want of reasoned decision making).

[25] *In re 2011 Redistricting Cases*, 294 P.3d 1032 at 037 (Alaska 2012).

[26] *Hickel v. Southeast Conference,* 846 P.2d 38 (Alaska 1992), *as modified on denial of reh'g* (Mar. 12, 1993).

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constitutional muster. In its analysis of districts in Southeast Alaska, the court concluded "[l]ogical and natural boundaries cannot be ignored without raising the specter of gerrymandering."[27] The court explained:

> The trial court agreed [that Districts, 1, 2, and 3 violated article VI, section 6], finding specifically that "The districts of Southeast are not socio-economically integrated and they easily could have been." We affirm this conclusion.
>
> . . . .
>
> These districts do not contain, as nearly as practicable, relatively integrated socio-economic areas, identified with due regard for local governmental and geographic boundaries.[28]

The court in *Hickel* went through a similar fact-based review for the Matanuska-Susitna ("Mat-Su") Borough:

> District 6 merges Palmer with the Prince William Sound communities. Palmer is the governmental center of the Mat-Su Borough, an established agricultural area. In contrast, the Prince William Sound communities are oriented toward commercial fishing and maritime activities. The record does not establish any significant interaction or interconnectedness between these areas.
>
> . . . .
>
> District 28 also does not contain relatively socio-economically integrated areas. As above, the record simply does not establish significant social or economic interaction between the connected areas.[29]

The court then went through a fact-based review for Election District 35, which encompassed a vast part of interior and northern Alaska and "[b]ased on the record"

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[27] *Hickel*, 846 P.2d at 51.

[28] *Hickel*, 846 P.2d at 50.

[29] *Hickel*, 846 P.2d at 52-53.

concluded that District 35 was unconstitutional.[30] The court even addressed the issue of the division of the Aleutian Islands into two districts *sua sponte* because the division was "so plainly erroneous."[31]

Reviewing courts "always have authority to review the constitutionality of the action taken."[32] For judicial review to be meaningful, the court must be able to discern from the evidence whether the requirements of the Alaska Constitution were actually met.[33] This is not a deferential standard of review, nor should it be, when the issues before the Court are issues of constitutional compliance.

This Court has noted the difficulties in the redistricting process and added: "But these difficulties do not limit the Board's responsibility to create a constitutionally compliant redistricting plan, nor do they '*absolve this court of its duty to independently measure each district against constitutional standards*.'"[34]

III. STATEMENT OF FACTS

A. The Superior Court's Findings on Public Testimony and Due Process.

The superior court acknowledged the presented evidence that "Skagway's reliance on the tourism industry creates a logical connection with Downtown Juneau," that there

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[30] *Hickel*, 846 P.2d at 52-53.

[31] *Hickel*, 846 P.2d at 54.

[32] *Carpenter*, 667 P.2d at 1214; s*ee also In re 2001 Redistricting Cases*, 2002 WL 34119573 at 19 (citing *Carpenter,* 667 P.2d at 1214).

[33] *In re 2011 Redistricting Cases*, 294 P.3d at 1034 (citing *In re 2011 Redistricting Cases*, 274 P.3d 466, at 467-68 (Alaska 2012)).

[34] *In re 2011 Redistricting Cases*, 294 P.3d at 1035 (quoting *In re 2001 Redistricting Cases*, 44 P.3d at 147) (emphasis added).

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was "overwhelming public testimony contrary to the Board's final plan," that "Mendenhall Valley residents might actually favor policies contrary to Skagway's interests," and that Skagway's proposed maps "would satisfy the constitutional criteria while at the same time respecting the wishes of the majority of Skagway and Juneau residents . . . without affecting the boundaries for any other districts."[35]

After interpreting article VI, section 10 to impose a good-faith effort standard under which the Board "must make a good-faith effort to consider and incorporate the clear weight of public comment, unless state or federal law requires otherwise,"[36] the superior court applied this standard to the Board's Districts 3 and 4 and held:

> In light of the whole record, Skagway has shown that the Board ignored the clear weight of public testimony from Skagway and Juneau when it adopted Districts 3 and 4. Neither Member Borromeo's deference to the personal preferences of Member Simpson, nor Member Simpson's myopic focus on the single criteria of compactness constitute reasonable explanations for ignoring public testimony. The Board had multiple options available that would have satisfied both Skagway's and Juneau's reasonable requests, and Skagway has shown at trial that those requests can still be accommodated without affecting the boundaries of any other districts. More than anything, the Board's closing argument does little to instill confidence. To each of Skagway's points, the Board replied: "So what?" This is not the response the people should expect to receive from the public entity in charge of redistricting and constitutionally required to hold public hearings. Nor is this response indicative of a rational decision-making process. Skagway's unsuccessful trial arguments aside, the Board is nonetheless obligated to make a good-faith attempt to incorporate the public testimony of Alaska citizens. It simply did not. The Board therefore failed to take a hard look at Districts 3 and 4.[37]

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[35] Order at 120 [Exc. 901].

[36] Order at 143 [Exc. 924].

[37] Order at 146-47 (citations omitted) [Exc. 927-28].

B. The Board's Practice of Regional Deference.

The superior court noted that Board Member Simpson "took the lead"[38] in drafting the Southeast districts and received deference from the other Board members, finding it was "somewhat troubled by this practice of assigning each member a region and ultimately deferring to those Members' judgment on their assigned regions."[39] In its findings, however, the court did not address Board Member Simpson's lack of personal knowledge with regard to Skagway.

Board Member Simpson expressed unawareness of the socio-economic factors that shape Skagway and integrate it so closely with Downtown Juneau. Board Member Simpson has spent only one night in the Skagway area since the 1980s and that was at the lodge of the Republican Chair for District 3, Kathy Hosford, who is the only Skagway resident to share any of his redistricting views in public testimony.[40] Despite Chair Hosford's public comment that the Board's District 3 reflected the "Lynn Canal transportation corridor," Board Member Simpson agreed in his testimony that neither Auke Bay nor the Mendenhall drainage directly connects to Lynn Canal.[41] Board Member Simpson was unaware of the largest employer in Skagway,[42] the potential catastrophic impact to Skagway from the road from Juneau to Skagway he and his wife strongly

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38 Order at 144 [Exc. 925].
39 Order at 145 [Exc. 926].
40 Trial Tr. 1736:1-19 [Exc. 166], 1785:16 – 1786:1 (Simpson) [Exc. 186-87].
41 Trial Tr. 1764:5 – 1766:5 (Simpson) [Exc. 183-85].
42 Trial Tr. 1731:23 – 1732:5 (Simpson) [Exc. 164-65].

support,[43] or the potential negative impact to Skagway's fair and effective representation if Skagway is actually in a district dominated by residents of the upper Mendenhall Valley who support the road from Juneau to Skagway and lack understanding of the major industry or common concerns that dominate a port city like Skagway.[44]

C. Board Member Simpson's Preconception of the Districts.

Board Member Simpson plainly stated he was going to draw his line his way from the outset no matter what was presented to him: "from the beginning . . . it had always been my intention to make the district more compact and put Skagway and Haines with the north end."[45] The superior court found Board Member Simpson's focus on the compactness requirement to be "myopic."[46] Board Member Simpson declared the Mendenhall Valley "isn't a thing" because it is part of the Juneau borough.[47] However, he acknowledged he could have drawn the line between Districts 3 and 4 to keep the Mendenhall Valley whole in accord with public sentiment if he had not disconnected Skagway, Haines, and Gustavus from Downtown Juneau,[48] which was demonstrated by the line used in the Skagway Alternatives presented by Mr. Brace.[49] Borough Manager Ryan noted that based on the

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43 Trial Tr. 1752:17 – 1760:4 (Simpson) [Exc. 173-81].
44 Trial Tr. 1764:5 – 1766:5 (Simpson) [Exc. 183-85].
45 Simpson Depo. Tr. 51:22 – 52:6 [Exc. 101-02].
46 Order at 146 [Exc. 927].
47 Simpson Depo. Tr. 101:18-19 [Exc. 113].
48 Trial Tr. 1798:10 – 1799:10 (Simpson) [Exc. 188-89].
49 Ex. SGY-2023 [Exc. 770]; Trial Tr. 1941:6 – 1943:10 (Brace) [Exc. 212-14].

public sentiments from Skagway, Downtown Juneau, and the Mendenhall Valley, "everybody wins and nobody loses" if either of Skagway's alternative maps is used.[50]

D. The Skagway Alternative Maps.

During his trial testimony, Board Member Simpson stated he had not reviewed the alternative maps presented by Skagway in its case.[51] Having not been cross-examined on his direct testimony, Skagway expert witness Kimball Brace presented his alternative maps[52] during rebuttal testimony at trial, demonstrating both maps keep Haines, Skagway, and Gustavus with Downtown Juneau while maintaining sufficient compactness, contiguity, and population deviations.[53] Skagway Alternatives A and B permit Skagway and Haines to be in the same district as downtown Juneau to which they are most highly socio-economically integrated.

Skagway Alternative A (the donut hole) creates new districts in the same area as close as possible in population, balancing a more compact District 3 against a larger District 4:[54]

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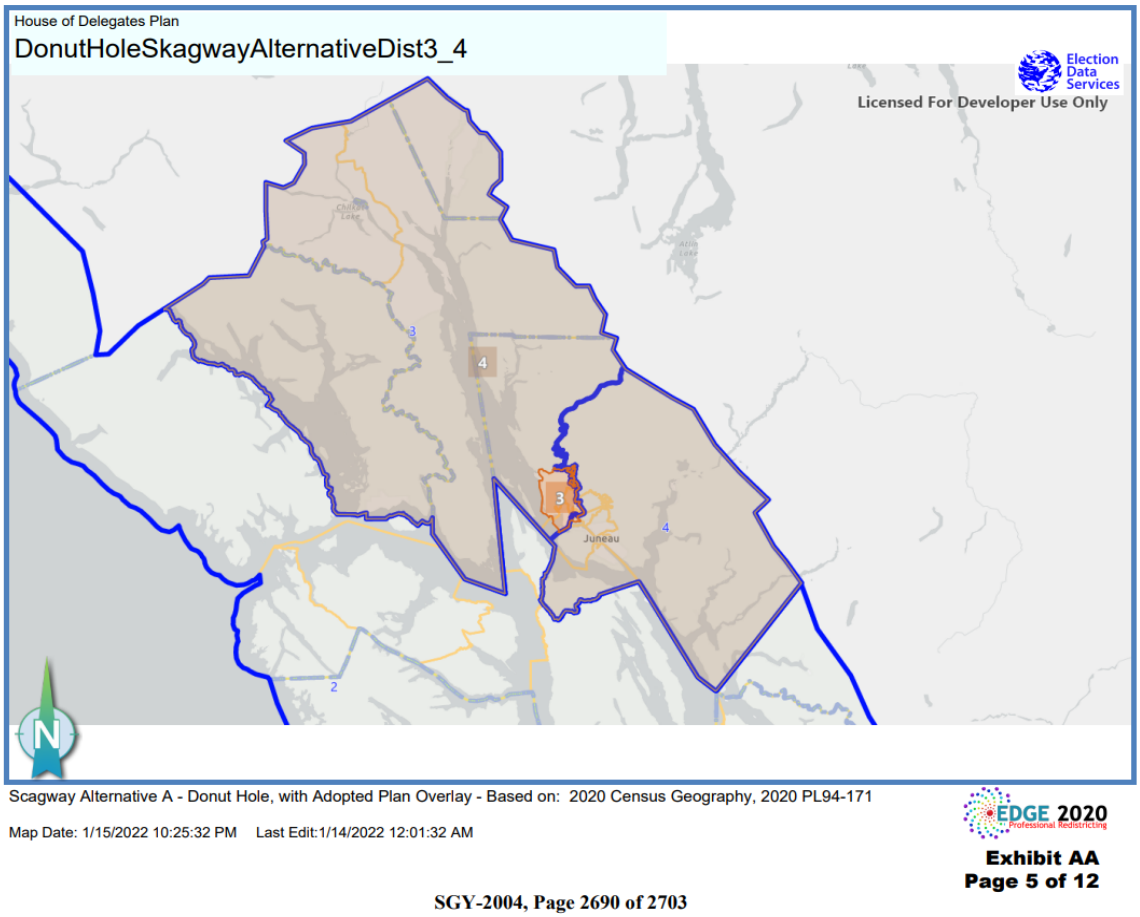
[50] Trial Tr. 1882:21 – 1884:23 (Ryan) [Exc. 196-98]; Trial Tr. 1912:17 – 1913:13 (Wrentmore) [Exc. 206-07].

[51] Trial Tr. 1824:17 – 1825:5 (Simpson) [Exc. 191-92].

[52] Ex. SGY-2004 at 2690, 2698 [Exc. 745-46].

[53] Trial Tr. 1948:23 – 1953:15 (Brace) [Exc. 215-20].

[54] SGY-2004 at 43, 2690 [Exc. 742, 745].



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Skagway Alternative B extends the new District 3 farther up the coast to include the Kensington Mine:[55]

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[55] SGY-2004 at 43, 2698 [Exc. 742, 746].

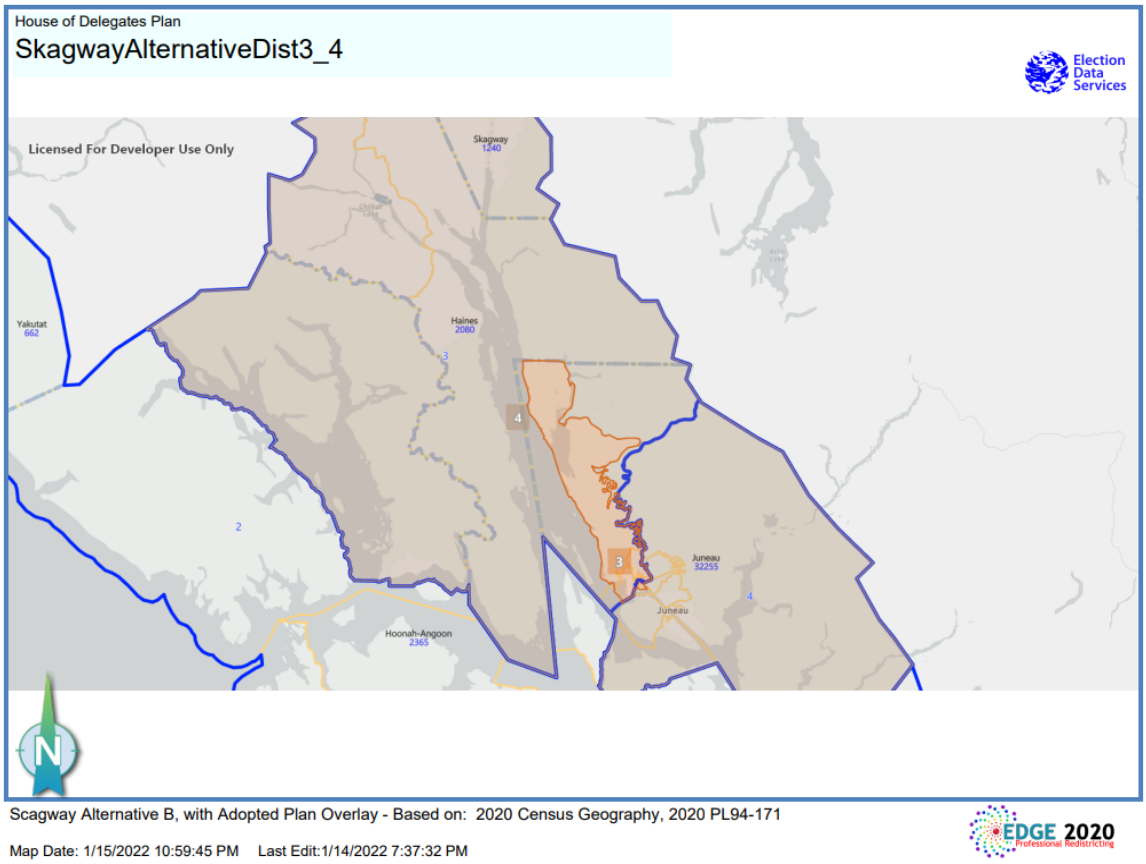

Exhibit BB
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The superior court found the Skagway alternative maps "would satisfy the constitutional criteria while at the same time respecting the wishes of the majority of Skagway and Juneau residents . . . without affecting the boundaries for any other districts."[56]

IV. ARGUMENT

This Court should deny the Board's Petition because (1) the superior court correctly characterized the overwhelming public testimony against Board Member Simpson's

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[56] Order at 120 [Exc. 901].

designs; (2) the superior court correctly gave meaning to the Board's obligation to hold public hearings and take a hard look at viable options; (3) the Skagway alternative maps satisfy the constitutional criteria where Board Member Simpson's designs do not; and (4) the Board failed to comply with the constitutional timeframe of article 10, section 6.

A. The Superior Court Correctly Characterized the Overwhelming Public Testimony Against Board Member Simpson's Designs.

The Board states "there were 23 public comments in favor of keeping the 2013 house districts with Skagway with downtown Juneau, and 11 comments in favor of placing Skagway in the more-compact district with the northern portion of Juneau."[57] This selective tally, listed in Appendix A to the Board's Petition, notably excludes or distorts much of the testimony from the Juneau public meeting on September 27, 2021, which is compiled with complete quotes in the following table:

Name	Testimony	Cite
Willie Anderson	"Haines and Skagway are a better fit to be combined with Juneau as residents from those two areas go to Juneau for shopping and other services. As you look at the district, there are two high schools in Juneau in the downtown and valley areas. When you divide the valley into sections, this results a high school that has two representatives. The school boundaries should be used as boundaries. There needs to be a level of fairness on map drawing and the issue around Andi Story's district where essentially 3 to 4 houses were placed into that district. This does not make sense.	ARB001823 [Exc. 1083]

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[57] Board Petition at 15.

	The dividing line of the districts could be at Sunny Point and Fred Meyer."	
Carole Bookless	"People with similar interests and concerns should be grouped together, certainly the people of Juneau. Two questions were asked, both of which were answered by the board: 1) If you have a municipality in the middle of an island with 33,00 people, can you fit those populations into two districts? 2) What are your criteria for having one side of the street in one district and the other side of the street in another district?"	ARB001959 [Exc. 1138]
Corinne Conlen	"Ms. Conlen noted that there is a sense of community in the valley and encouraged the board to consider the dividing line from Fred Meyer at Sunny Point."	ARB002147 [Exc. 1139]
Will Kronick	"Regarding interests in Southeast Alaska when people come in from Klukwan, Haines, and Skagway, it's usually to shop and receive services (medical and Central Council of Tlingit and Haida). The Doyon map seems to encapsulate this shared interest in the best way. The maps that combine Petersburg with Downtown Juneau do not have interests that align. It is better partnered with Sitka."	ARB003017 [Exc. 1104]
Nadine Lafebvre	"Ms. Lafebvre spoke in favor of the Alaskans for Fair Redistricting map as it follows the natural divide of Auke Bay with the Mendenhall Valley from Downtown Juneau, Lemon Creek, and Douglas Island. This map allows similar neighborhoods to work together on issues (i.e. transportation, schools, and infrastructure) that immediately impacts these areas. Haines, Skagway, and Klukwan in a rural southeast district could reflect their socio-economic integration into these communities. This would also keep the US-Canada border crossings in one district and it would give all the communities similar cultural and economic similarities that are seasonally impacted."	ARB003072 [Exc. 1140]
Morgan Lim	"The Board Composite 3 Map is not a map that I would support. I would appreciate having Downtown Juneau separated from the valley and keeping the valley whole,	ARB003087 [Exc. 1141]

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	as someone who has lived in both downtown and the valley. Both of these areas should be whole as the valley and downtown Juneau are obviously socio- economically separated. In terms of seeing the valley as a complete socio-economic space, previous testimonies about where people associate and recreate were referenced. Also, people who live in the valley feel that it is too far to drive downtown."	
Luann McVey	"Ms. McVey is a Douglas resident and agreed with comments stating that it makes sense to have a line along Sunny Point to Fred Meyer to divide Juneau into two parts. As a retired teacher, the Juneau schools reflect a combination of socio-economics. After teaching Title 9 for several years, Ms. McVey is familiar with schools who receive funding for socio-economic reasons. The recommended dividing line is a natural dividing line between the valley and the town. Haines and Skagway should be grouped with the downtown area for reasons others have mentioned such as shopping and medical services. The Doyon, Alaskans for Fair Redistricting, and the Senate Minority Caucus maps reflect what Ms. McVey values most."	ARB003199 (erroneously dated in the Board's Appendix A as 10/27/2021) [Exc. 1110]
Kim Metcalfe	"The carve-out of Andi Story's home and the impact this would have on Juneau and the political abilities of its residents was something that caught my attention. In favor of the following maps: • Senate Minority Caucus map • Board version 4 map • Doyon map	ARB003216 [Exc. 1142]
John Pugh	"Mr. Pugh spoke in favor of having the dividing line down the highway versus along the water. There is a closer connection between the Lemon Creek community to downtown than it would be to the valley. Haines and Skagway connections are mixed between the valley and downtown; they could be combined either way.	ARB003464 [Exc. 1143]

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	There are other communities that are highly connected in terms of population such as Hoonah and Tenakee Springs. In some maps, these areas were moved. Gustavus, Tenakee Springs, and Hoonah have strong connections to Juneau as they use the services in Juneau and/or residents have connections in Juneau."	
Pat Race	"Pat recommended that the board avoid any appearances of impropriety. Having grown up and living in Juneau all his life, it seems like the Mendenhall/Auke Bay areas a part of the downtown district - this is the main troubling issue. What makes more sense, which is shown on the Alaskans for Fair Redistricting and Senate Minority Caucus maps, is dividing Juneau on the north/south lines along the Egan Highway. Pat encouraged the board to read more of the comments regarding Andi Story's district. This impacts how the board appears publicly. Regarding the northern Admiralty Island on Board Proposed Plan v3, this island is part of the outer coast (Yakutat/Sitka area). People in this part of the state use Juneau primarily as their launch port, coming to and from vacation cabins. This population is not so significant where it could be lumped in with the northern or southern part of Juneau without having much impact. People who live in Auke Bay rely in services in the Mendenhall Valley."	ARB003475 [Exc. 1144]
Catherine Reardon	"Ms. Reardon strongly agrees on having a dividing line from the Fred Meyer area to Lemon Creek. What does not make sense for socio-economic integration is when there is a dividing line that goes down the highway and treats the waterside and mountainside as separate districts. There are similarities between Skagway and Downtown Juneau as they are both areas for cruise ships. When people come from Skagway, they stay in	ARB003495 [Exc. 1117]

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	downtown hotels, shop at Costco, and go to the hospital."	
Miguel Rohrbacher	"The best map presented is by the third-party group, Alaskans for Fair Redistricting, (AFFR) because of this group's process for drawing the map. While the Alaska Redistricting Board worked together to compile the maps and then show them around the state for public comment, the Alaskans for Fair Redistricting had an opposite process. AFFR gathered public input and then drew maps based on the public comment. The AFFR map respects the Juneau neighborhoods with the dividing line at Lemon Creek and the valley district going down to Auke Road versus cutting off Auke Road residents into another district. I am in favor of including Petersburg with Downtown Juneau as there are economic similarities, including the workforce. There are more than just the fishing industries represented. The regional hub for Petersburg is Juneau rather than Sitka. Haines, Skagway, and Klukwan in the rural northern southeast region seems logical and is not unprecedented. If you think about Haines and Lutak Inlet area, the subsistence use is more similar to a place like Hoonah or Angoon than it is to Juneau. Please do everything you can to avoid the appearance of drawing lines with incumbents."	ARB003571 [Exc. 1145]

Despite the Board's effort to obfuscate the record into an apparent close call, these comments make clear that even those who did not advocate for Skagway being paired with Downtown Juneau did advocate for maps that kept the Mendenhall Valley whole and separate from Downtown Juneau, which is only possible in terms of population if Skagway, Haines, and Gustavus are districted with Downtown Juneau. Moreover, no one supported the district line that Board Member Simpson drew to divide the Mendenhall Valley. The public testimony overwhelmingly supported continuing with the Mendenhall Valley in one

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district and Downtown Juneau with Skagway, Haines, and Gustavus in the other. Skagway Mayor Andrew Cremata testified as to the public testimony before the Board from the residents of Skagway and Juneau:

> Q. Of the people that testified in Skagway, would you characterize what their -- what their suggestion was to the board about whether to continue with the existing map or not?
>
> A. The overwhelming majority were to maintain the existing map. There was one voice of dissent but even they referenced the airport as being a link between Skagway and Juneau. So they weren't aware of the fact that the redistricting board put the airport in with the downtown district. So even the one dissenting voice in Skagway out of the many that commented didn't understand that the Valley was going to be split in two.
>
> Q. And then with regard to the testimony of Juneau residents, was there anybody that you are aware of that -- that supported the board's map that made any specific comment or -- or expressed any knowledge that the result of supporting that would be to split the Valley in half?
>
> A. There was not one.[58]

The record demonstrates the vast majority of public testimony from the residents of both Skagway and Juneau was in favor of (1) continuing to keep the Mendenhall Valley and Downtown Juneau whole and in separate districts with the dividing line in between the two at Fred Meyer or Sunny Point and (2) continuing to include Skagway, Haines, and Gustavus in the same district with Downtown Juneau.[59] Not a single public commenter

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[58] Trial Tr. 1624:13 – 1625:7 (Cremata) [Exc. 1054-55]; *see also,* Trial Tr. 1673:2 – 1675:19 (Walsh) (discussing the general support in Juneau for a district line in the Fred Meyer or Sunny Point area and no support for dividing the Mendenhall Valley as the Board's line does) [Exc. 1056-58].

[59] Trial Tr. 1777:4 – 1797:25 (Simpson) [Exc. 1061-81]; Ex. SGY-2011 [Exc.1122-37]; ARB001823 [Exc. 1083]; ARB001924-25 [Exc. 1084-85]; ARB001947 [Exc. 1086]; ARB001986 [Exc. 1087]; ARB002124 [Exc. 1088]; ARB002125-26 [Exc. 1089-90]; ARB002145 [Exc. 1091]; ARB002185 [Exc. 1092]; ARB002206 [Exc. 1093];

expressed a preference for splitting the Mendenhall Valley in order to district a portion of the Mendenhall Valley with Skagway, Haines, and Gustavus and to district the other portion of the Mendenhall Valley with Downtown Juneau, as Board Member Simpson's plan does.

Board Member Borromeo acknowledged that the Borough Assembly, Mayor, and City Manager of Skagway had unanimously urged the Board to continue to include Skagway, Haines, and Gustavus with Downtown Juneau.[60] Board Member Simpson also acknowledged that no one testified in favor of Districts 3 and 4 as he drew them. He acknowledged no one supported splitting the Mendenhall Valley in order to district a portion of it with Downtown Juneau and the other portion with Skagway, Haines, and Gustavus; he also acknowledged that the vast majority of people supported continuing to have Skagway, Haines, and Gustavus in the same district with Downtown Juneau. More specifically, Board Member Simpson testified:

> Q: Okay. I'd like to -- was there anybody, that you recall from your notes, that suggested that the Valley and downtown -- that the Valley should be split in half and joined with the downtown?

ARB002243 [Exc. 1094]; ARB002393 [Exc. 1095]; ARB002526 [Exc. 1096]; ARB002558 [Exc. 1097]; ARB002561 [[Exc. 1098]; ARB002569 [Exc. 1099]; ARB002630 [Exc. 1100]; ARB002661 [Exc. 1101]; ARB002885 [Exc. 1102]; ARB002998 [Exc. 1103]; ARB003017 [Exc. 1104]; ARB003056 [Exc. 1105]; ARB003073 [Exc. 1106]; ARB003120 [Exc. 1107]; ARB003189 [Exc. 1108]; ARB003195 [Exc. 1109]; ARB003199 [Exc. 1110]; ARB003211 [Exc. 1111]; ARB003268 [Exc. 1112]; ARB003276 [Exc. 1113]; ARB003422 [Exc. 1114]; ARB003452 [Exc. 1115]; ARB003456 [Exc. 1116]; ARB003495 [Exc. 1117]; ARB003659 [Exc. 1118]; ARB004009 [Exc. 1119]; ARB004236 [Exc. 1120]; ARB004263 [Exc. 1121].

[60] Borromeo Depo. Tr. 83:1-15 [Exc. 1041].

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A: Not that I recall, no.

Q: So there wasn't any public testimony at the -- at the Juneau outreach that specifically supported your division of the Valley in half; correct?

A: The question of splitting the Valley in half wasn't brought up one way or the other. *Most people in the downtown area preferred keeping the existing arrangement. They did not talk about where the Valley would be split.*

Some people did weigh in that splitting, like around Fred Meyer or something, made sense to them. I recall some of that.· But I don't think anybody ever split the Valley in half, only because it just didn't come up in that context.[61]

Board Member Simpson also acknowledged that no current public official spoke in favor of Districts 3 and 4 as he drew them.[62] Board Member Borromeo recalled the same weight of testimony:

Q: Okay. So, I'm sorry, is it fair to say that the majority of -- well, the vast majority of the people who spoke to the issue suggested that the Valley be held whole and separated from Downtown Juneau?

A: Yes.

Q: Okay So people from Downtown Juneau didn't want to split the Valley in half; right?

A: Yes.

Q: People from the Valley didn't want to split the Valley in half; right?

A: Yes.

. . .

Q: Okay. And so -- and you say, "The weight of the testimony -- starting on line 7 -- "The weight of the testimony, in my mind, weighs in favor of keeping Haines and Skagway, who are currently districted with Downtown Juneau, in the Downtown Juneau district"; right?· That was –

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[61] Simpson Depo. Tr. 115:22 – 116:18 (emphasis added) [Exc. 1036-37].

[62] Simpson Depo. Tr. 97:9-17 [Exc. 1035].

A: Yes.[63]

In light of the above, the superior court correctly held that there was "overwhelming public testimony contrary to the Board's final plan," and that Skagway's proposed maps "would satisfy the constitutional criteria while at the same time respecting the wishes of the majority of Skagway and Juneau residents."[64] While the Board consistently seeks to compare its Districts 3 and 4 only with the 2013 map, there were many viable alternative maps available that all satisfied the constitutional requirement of compactness, whereas the Board's map falls short of the requirement to maximize relative socio-economic integration.[65]

B. The Superior Court Correctly Gave Meaning to the Board's Obligation to Hold Public Hearings and Take a Hard Look at Viable Options.

In determining the application of substantive due process to the requirement that the Board hold public hearings, the superior court thoroughly examined this Court's precedent, the debates from the Alaska Constitutional Convention regarding redistricting, the legislative history of the 1998 amendments, federal caselaw applying the Administrative Procedure Act, and the underlying policy goals.[66] In attacking this holding, the Board essentially argues that holding public hearings should mean nothing more than a minimal

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63 Borromeo Depo. Tr. 95:6 – 97:10 [Exc. 1042-44].

64 Order at 120 [Exc. 901].

65 *Hickel*, 846 P.2d at 73.

66 Order at 130-143 [Exc. 911-24].

pro forma requirement.[67] The superior court's reasoned conclusion that if the Board "adopts a final plan contrary to the preponderance of public testimony, it must state on the record legitimate reasons for its decision"[68] is interpreted by the Board as "diminish[ing] Board discretion to merely tallying up public comments[.]"[69]

The Board seeks to avoid any duty to respond to public comment—and thus to remove any effective meaning from the requirement to hold public hearings—by invoking a speculative parade of horribles regarding the politicization of the redistricting process if public comment is afforded any weight.[70] There is nothing in the record to suggest that the Board's hearings were "hijacked" or dark-monied interest groups paid anyone to testify, and the courts can address such issues if and when they arise. On the contrary, the record before this Court shows that the Board members themselves were the most prominent source of soliciting testimony to support their objectives.

For example, Board Member Borromeo solicited a letter from Ahtna, Inc., to support the inclusion of Cantwell in District 36[71] and also coordinated with Doyon Limited, representative Marna Sanford to pass a Fairbanks North Star Borough ("FNSB") resolution to influence Chairman John Binkley's position on shedding population from Fairbanks; text messages between Board Member Borromeo and Ms. Sanford reveal their involvement

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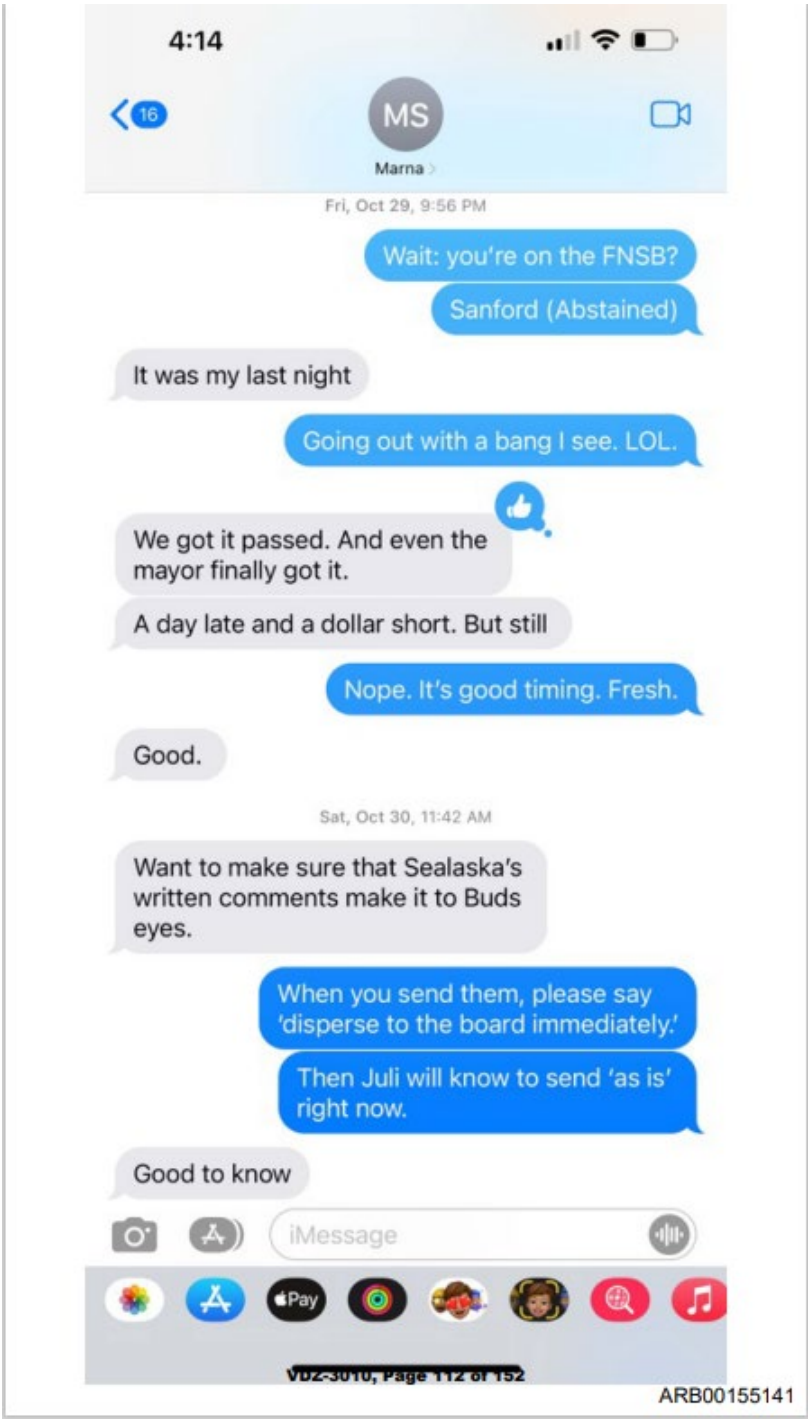
67 Board Petition at 22-27.
68 Order at 143 [Exc. 924].
69 Board Petition at 25.
70 Board Petition at 30-32.
71 Ahtna letter to Board (Nov. 3, 2021) ARB001795-96 [Exc. 7-8].

in procuring the resolution, as well as attempting to influence Board Member Simpson via Sealaska's comments:[72]



[72] Ex. VDZ-3010 at 112 [ARB00155141] [Exc. 971].

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The resolution resulted in Chairman Binkley's change of position with regard to breaking the FNSB boundary and shedding population from FNSB.[73] While Board Member Borromeo was aware that the Doyon Coalition was involved in procuring the resolution, Chairman Binkley was not.[74] The concern the Board now expresses regarding the injection of political agendas into its process is grievously belated at best.

Furthermore, the above examples demonstrate the Board's inconsistent and individualized approach to public input, uniformly deferring to Board Member Simpson in ignoring such input when it came to Skagway and Juneau but then Board Member Borromeo actively soliciting input to influence other Board members when it came to Cantwell and Fairbanks. Just as the Board ignored and emphasized the requirement for relative socio-economic integration depending on whether it suited their particular purposes,[75] this pick-and-choose approach to what weight is given to public testimony is inconsistent and arbitrary.

The record before this Court does not reflect a situation in which a disinterested and apolitical Board took a hard look at the constitutional requirements and the public input before making a reasoned decision. With regard to Skagway, Board Member Simpson was appointed in direct violation of article VI, section 8 because he was on the "short list" of Republicans from Southeast,[76] came into the process with the preconception that the

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[73] Board Meeting Tr. 40:2 – 41:22 (Nov. 4, 2021) [ARB009210-211] [Exc. 1031-31].
[74] Trial Tr. 1149:16 – 1150:12 (Jan. 27, 2022) [Exc. 1050-51].
[75] Skagway Petition for Review at 45-48.
[76] Order at 145 [Exc. 926].

pairing of Skagway with Downtown Juneau "never made sense" while conceding it was "highly defensible,"[77] checked with his primary client Sealaska to confirm their approval of his districts,[78] "never felt that the public testimony was a vote or a scientific survey" and only "took that for what it was worth,"[79] and believed he could "more or less" draw his district line between Districts 3 and 4 wherever he wanted.[80] Beyond briefly discussing an alternative offered by Board Member Borromeo, the Board simply deferred to Board Member Simpson and accepted his district designs without substantive consideration of other viable options.[81]

The superior court correctly found the Board's process in adopting Districts 3 and 4 to fall short of the hard look required for reasoned decision making:

> Member Simpson's testimony before this court also reflects a misunderstanding of the role of the Board and public hearings. He opines that he was entitled to use his own judgment based on his own experience of living in Southeast Alaska. But Member Simpson acknowledges that any substantive knowledge was not why he was chosen; instead, "they were looking for a Republican from Southeast," which he described as a "short list." Nor was he appointed for his knowledge of redistricting, as Member Simpson made a few attempts to use the software, but quickly determined it was easiest to let staff draw the maps. Although the Board's decisions are ultimately reviewed with the deference afforded an administrative agency, Member Simpson's personal views and opinions are entitled to no additional constitutional deference. When the Board adopted the maps for Districts 3 and 4, districting Skagway with Mendenhall Valley and Auke Bay, it provided no clear basis for ignoring public testimony from Skagway and Juneau on the issue. Member Simpson opined that his District 3 was "more compact and more socioeconomically connected," whereas Member

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77 Order at 121 [Exc. 902].

78 Order at 119 [Exc. 900].

79 Order at 121 [Exc. 902].

80 Trial Tr. 1822:16-22 (Simpson) [Exc. 1082].

81 Order at 119-120 [Exc. 900-01].

> Borromeo's version "doesn't make socioeconomic sense to me, as a resident of those districts." Based on her statements at that time and her later testimony, Member Borromeo appeared to harbor doubts about the reasonableness of Member Simpson's process. And yet, despite awareness of the lack of any good-faith attempt to incorporate public testimony, the Board ultimately deferred to Member Simpson's personal opinions.[82]

The Board failed to discuss or otherwise consider the several viable alternative maps before it that would have incorporated the overwhelming public testimony of Skagway and Juneau residents. In the context of this case, in which a single Board Member entered the redistricting process with his mind made up and the rest of the Board deferred to his personal preference, the requirement to hold public hearings on his plan was rendered meaningless.

While Skagway disagrees with the superior court's conclusion that Board Member Simpson's districts satisfied the constitutional requirement to maximize relative socio-economic integration, as discussed in its separate Petition, Skagway entirely agrees with the superior court's application of substantive due process to give meaning to the Board's obligation to hold public hearings. Board Member Simpson was not empowered to do whatever he liked with the Southeast districts, and the Board's adoption of his Districts 3 and 4 in the face of overwhelming public testimony to the contrary and several viable alternatives does not constitute the hard look required to comport with due process.

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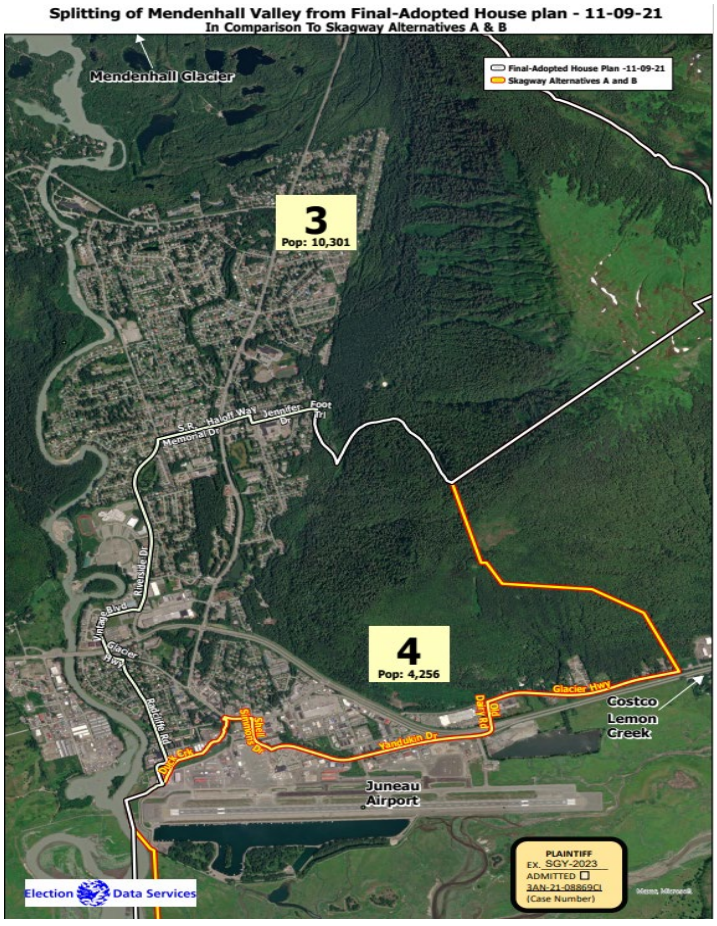
[82] Order at 145 (citations omitted) [Exc. 926].

C. The Skagway Alternative Maps Satisfy the Constitutional Criteria and Due Process Whereas Board Member Simpson's Designs Do Not.

As discussed in Skagway's separate Petition, both Skagway alternative maps permit Downtown Juneau to be separated from the Mendenhall Valley and permit the Mendenhall Valley community to be maintained as a whole community, rather than divided between the districts, in accordance with due process in light of the clear weight of public testimony discussed above. In the trial exhibit below, the white line represents Board Member Simpson's district boundary, while the orange line represents the Skagway alternative boundary that keeps the Mendenhall Valley whole by including the 4,256 residents that the Board's District 3 excludes:



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Upon remand, this Court should direct the Board to consider these viable alternatives within the hard look required by due process and the constitutional criteria.

D. The Board Failed to Comply With the Timeframe of Article 6, Section 10 of the Alaska Constitution.

The Board asserts full compliance with all requirements of article VI, section 10, but public hearings are to be held on the plans the Board developed and adopted within the thirty-day period, after which there are sixty days for public comment and for the Board to make modifications to those plans and adopt a final redistricting plan.[83] The Board argues that missing the thirty-day deadline by nine days was at most harmless error.[84] Skagway disagrees. The Board's failure to solicit public comment on the proposed plans adopted within the thirty-day period for adopting proposed plans, as well as the Board's adoption of new and third-party proposed plans outside the thirty-day period for adopting proposed plans and during the public comment period, created a "moving target" during the public comment period. Skagway believes this Court should provide clear guidance requiring compliance with these constitutional timeframes to ensure they do not continue to be eroded by future Boards.

The Board's joint drafting efforts within the thirty-day period for adopting proposed plans was limited to less than three full days. Joint drafting on V.1 and V.2 began on September 7, 2021, and those plans were subsequently adopted by the Board on

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[83] Alaska Const. art. VI, § 6.

[84] Board Petition at 36-37.

September 9, 2021.[85] V.2 was drafted in an hour over lunch by Board Member Borromeo and was considered by even her to be an incomplete exercise.[86]

V.1 and V.2 were the only two plans adopted by the Board within the thirty-day constitutionally mandated period for adopting proposed plans. Both were subsequently abandoned by the Board a mere eleven days later, on September 20, 2021, without the benefit of any apparent public hearings.[87]

By developing and adopting V.1 and V.2 over three days (September 7 through 9, 2021) and replacing both plans eleven days later (September 20, 2021), there was no meaningful public comment period for the only two plans adopted by the Board within the constitutionally mandated thirty-day adoption period for proposed plans. The constitutional process does not anticipate the Board adopting proposed plans throughout the public comment period.

The constitutional process for presenting adopted proposed plans to the public was confused when the Board abandoned adopted plans days after adoption and then adopted multiple new plans within the public comment period. Under these circumstances, the public's ability to comment on a stable set of adopted plans by the Board is constitutionally compromised. After presentation of V.3 and V.4, the Board voted to adopt those proposed plans without receiving public comment on them.[88] V.4, which was created by Board

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[85] Board Meeting Tr. 177:22 – 178:10 (Sept. 9, 2021) [ARB010001-2] [Exc. 974-75].
[86] Borromeo Depo. Tr. 168:14-20 [Exc. 1045].
[87] Board Meeting Tr.147:2-19 (Sept. 20, 2021) [ARB010290] [Exc. 978].
[88] Board Meeting Tr. 147:2 – 196:22 (Sept. 20, 2021) [ARB10290-339] [Exc. 978-1027].

Member Borromeo after the thirty-day period for adoption of proposed plans and was not even made available to other Board members until the end of the September 20, 2021, meeting.[89]

The Board also adopted five third-party plans and then promptly rescinded one it had just adopted.[90] By adopting V.3, V.4, and four third-party plans on September 20, nine days after the end of the thirty-day period for adopting of proposed plans, the Board truncated the sixty-day period for public comment on those plans. Not a single redistricting plan was available for public comment for the full sixty-day period, as anticipated by article VI, section 10.

Article VI, section 10 does not anticipate that the Board will develop and adopt radically different plans after the thirty-day period with inadequate notice and no meaningful opportunity for a public comment period. Adoption of a proposed plan is an act of legal significance. Once proposed plans are adopted by the Board within the constitutionally mandated thirty-day adoption period, the Board is constitutionally obligated to hold public hearings on those adopted plans. This Board did not.

There is no constitutional language anticipating that the public-comment period may be truncated by the adoption of multiple plans throughout the public-comment period. In this case, there was not a single proposed plan by the Board that was afforded the full opportunity for public comment anticipated in article VI, section 10. The Board is entitled

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[89] Borromeo Depo. Tr. 50:2-21 [Exc. 1040].

[90] Redistricting Process Report at 3-4 (Nov. 10, 2021) [ARB000007-8] [EXC 310-11].

to modify parts of the redistricting plans it adopted within the thirty-day period to arrive at a final redistricting plan within the sixty-day period that follows. The Board is not entitled to replace plans it adopted within the thirty-day period with radically new plans outside the thirty-day period. All six of the proposed plans that framed public comment for the redistricting process were adopted after the constitutional deadline for adopting proposed plans.

Articulating the Board's perception of their unfettered discretion, Board Member Simpson testified that the constitution "says we will adopt a final plan by a certain date, but it does not prevent us from adopting as many drafts in the interim as we feel are necessary or appropriate," and "we could adopt, over the process, as many drafts as came before us and appeared to be, you know, directed toward the final goal."[91] Board Member Borromeo testified that she voted to adopt a third-party plan for purposes of public presentations even though she did not believe it to be constitutional.[92] In the Board's view, so long as they adopt any plan by the thirty-day deadline, they are free to adopt whatever other plans they choose up to the ninety-day deadline for a final plan. Just as the Board's interpretation of the public hearing requirement renders that requirement an empty formality, so too its interpretation of the thirty-day deadline makes the deadline meaningless for providing public comment on the Board's adopted plans.

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[91] Simpson Depo. Tr. 36:5-20 [Exc. 1034].

[92] Borromeo Depo. Tr. 227:4 – 228:12 [Exc. 1046-47].

The superior court therefore erred in permitting the Board to adopt six proposed plans beyond the thirty-day deadline under article VI, section 10.[93] Unlike the plans before Judge Rindner in 2002,[94] these plans were not merely revisions of timely adopted plans, but new proposed plans adopted outside the constitutional timeframe for doing so, and the superior court's decision therefore deprives that timeframe of effective meaning. The Board's view that it is free to adopt new plans and third-party plans during the public comment period relieves the Board of properly adopting plans during the thirty-day period set by the constitution and creates a "moving target" and confusion for voters. Skagway asks this Court to make clear that the Board is not permitted to adopt proposed plans outside the express thirty-day timeframe for adopting proposed plans under article VI, section 10.

V. CONCLUSION

The public comment process anticipated by the Alaska Constitution should have significant meaning. It should require the Board to engage in a good-faith and fair public outreach process. The Board should be expected to actually listen to and consider public comment before deciding how best to establish house districts, much as a judge should be expected to listen to and consider evidence before deciding a case. That did not happen in this case when Member Simpson established District 3 and District 4.

The superior court rightly rejected the Board's claimed discretion to render the public comment process meaningless. Though the court should have rejected Districts 3

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93 Order at 149-52 [Exc. 930-33].

94 Order at 151 n.925 (citing *In re 2001 Redistricting Cases*, No. 3AN-01-08914CI, at 33 (Alaska Super., Feb. 01, 2002)) [Exc. 932].

and 4 for failure to maximize relative socio-economic integration, it properly concluded that the Board violated due process in adopting them despite overwhelming public testimony to the contrary.

The Board did not take the hard look at Districts 3 and 4 required for reasoned decision making. Board Member Simpson was appointed in direct violation of article VI, section 8 because he was on the "short list" of Republicans from Southeast,[95] came into the process with the preconception that the pairing of Skagway with Downtown Juneau "never made sense" while conceding it was "highly defensible,"[96] checked with his primary client Sealaska to confirm its approval of his districts,[97] "never felt that the public testimony was a vote or a scientific survey" and only "took that for what it was worth,"[98] and believed he could "more or less" draw his district line between Districts 3 and 4 wherever he wanted.[99] Other than an alternative offered by Board Member Borromeo, the Board simply deferred to Board Member Simpson and accepted his district designs without substantive consideration of other viable options.[100] This approach rendered the public process meaningless and this Court should affirm the superior court's ruling against it.

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95 Order at 145 [Exc. 926].
96 Order at 121 [Exc. 902].
97 Order at 119 [Exc. 900].
98 Order at 121 [Exc. 902].
99 Trial Tr. 1822:16-22 (Simpson) [Exc. 1082].
100 Order at 119-120 [Exc. 900-01].

Skagway has presented two alternative plans for these districts that can be embedded into the Board's existing plan.[101] Both alternatives comply with all constitutional standards and offer viable alternatives to the Board's unviable Districts 3 and 4. Both alternatives permit Skagway and Haines to be in the same district as Downtown Juneau to which they are most highly socio-economically integrated. Both alternatives permit Downtown Juneau to be separated from the Mendenhall Valley and permit the Mendenhall Valley community to be maintained as a whole community, rather than split in half. Both alternatives are also consistent with the vast majority of the public comment to the Board from both the Juneau and Skagway public meetings, the unanimous opinion of the elected representatives of Skagway, the opinions of the former elected legislators, the map proposed by the coalition in which Sealaska (the ANCSA regional corporation for Southeastern Alaska) joined, the Borough Manager of Skagway, and the unanimous resolution of Skagway.

Based on all the above, either of the Skagway alternative maps presents a viable constitutional alternative to the Board's Districts 3 and 4 that were drawn without regard to the evidence presented on socio-economic integration or on fair and effective representation by the people of Skagway and Juneau. This Court should reject the Board's Petition and remand for consideration of these viable alternatives and also confirm the Board's duty to comply with the express timeframe for adopting proposed plans under article VI, section 10.

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[101] Ex. SGY-2004 at 2690, 2698 [Exc. 745-46].

RESPECTFULLY SUBMITTED this 10th day of March, 2022.

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IN THE SUPREME COURT OF THE STATE OF ALASKA

In Re 2021 Redistricting Cases.	Supreme Ct. No. S-18332 Superior Court Case Nos. 3AN-21-08869 CI 1JU-21-00944 CI

CERTIFICATE OF SERVICE AND TYPEFACE

I hereby certify that on March 10, 2022, I served by email, upon counsel listed below, the Municipality of Skagway Borough and Brad Ryan's Petition for Review, Excerpt of Record, and this Certificate and Typeface:

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

DATED this 10th day of March, 2022.

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