

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of the 2021)
Redistricting Plan) Case No.: 3AN-21-08869 CI
) 4BE-21-00372 CI
)

CALISTA PLAINTIFFS' PRE-CONFERENCE REPORT

Plaintiffs Calista Corporation, William Naneng, and Harley Sundown (collectively “Calista Plaintiffs”) submit the following issues to be addressed at the January 7, 2022, Discovery and Scheduling Conference.

A. ISSUES

1. *Trial Procedure*

The Calista Plaintiffs are in favor of the Court’s proposed Option A for the trial procedure, i.e., for all cases to be presented individually and sequentially. All plaintiffs’ attorneys met and conferred on January 5, 2022 and agreed on the following order: East Anchorage Plaintiffs, Valdez, Mat-Su Borough, Calista Plaintiffs, Skagway. On a break from a deposition on January 6, 2022, the Board’s counsel stated it opposed this option and intended to request that the trial be conducted pursuant to Option B, because Option A would pose an undue burden on the Board.

Respectfully, this case, although consolidated, still comprises five separate challenges to the 2021 Proclamation Map, and each plaintiff has a right to present the best case it can and have it be heard on the merits with the benefit of the Court’s full attention.

The plaintiffs have made significant efforts to reach alignment on procedural issues so that this case can proceed expeditiously, but their substantive positions are not all aligned. Even so, Plaintiffs have been flexible and made significant accommodation for the Board’s convenience on substantive pretrial proceedings, including by sharing deposition days, designating a “lead attorney” to ask common questions at depositions, et cetera. However, requiring them to share an entire trial goes too far, to the point of prejudicing the merits of their cases. As a matter of due process, therefore, the Calista Plaintiffs believe that Option A is the only permissible way forward.

Moreover, the Board overstates the burden on Board members, given that the trial will be conducted by Zoom. The slight inconvenience to Board members—requiring them to appear for an hour or two by Zoom on multiple days, instead of devoting full-day blocks to testimony—is slight compared to the monumental importance of this case, which will decide the legislative districts in the State of Alaska for the next decade.

The Calista Plaintiffs will be prepared to discuss this issue in more detail as needed at the Conference.

2. *Response to Defendants’ Motion to Modify the Fourth Pretrial Order*

On January 5, 2022, the Board filed *Redistricting Defendants’ Objection to and Motion to Modify the Fourth Pretrial Order*. The Board argues that due process requires that it must be afforded time to review the plaintiffs’ expert affidavits before filing its direct testimony affidavits, or that it should have an opportunity to supplement the pre-filed direct testimony of its lay witnesses after reviewing the plaintiffs’ expert affidavits.

The Board insists that it must have an opportunity to confront the testimony as a matter of due process and emphasizes that it does not have expert testimony of its own that can be used for that purpose.

As a preliminary matter, the Board *could* present expert testimony in response to the plaintiffs' expert testimony; but it has thus far indicated that it intends to make the strategy decision to not advance its own experts. The Calista Plaintiffs do not believe the Board's litigation choice necessitates modification of the pretrial order, and it certainly does not justify a delay that would cause all of the Board's pretrial testimony to be filed on the eve of trial.

The Board's alternative proposal that it be permitted to introduce supplemental direct testimony at trial through lay witnesses should be rejected as asymmetrical and contrary to fundamental fairness, unless the Court were to also allow plaintiffs to reserve any unused trial time for rebuttal cases where they would be similarly permitted to introduce supplemental direct testimony via live questioning.

Despite that, the Calista Plaintiffs do not object to a modification that incorporates the Board's other proposal, i.e., that allows the Board an opportunity to supplement its lay testimony after the plaintiffs' expert testimony is filed—provided the supplementation is made promptly and is limited in scope to issues raised for the first time in the experts' affidavits.

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DATED: January 6, 2022

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CERTIFICATE OF SERVICE

On January 6, 2022, a copy of the foregoing was served by e-mail on:

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