

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' TRIAL BRIEF AND OPENING STATEMENT

Calista Corporation, William Naneng, and Harley Sundown (“Calista Plaintiffs”) filed suit to protect the voting power of individuals within the Calista Region. Calista Corporation is an Alaska Native Regional Corporation (“ANC”) organized under the Alaska Native Claims Settlement Act (“ANCSA”). Its area (“Calista Region”) includes the rural Yukon-Kuskokwim Delta (“YK Delta”) region of Western Alaska. William Naneng and Harley Sundown both live in the Calista Region, in Hooper Bay and Scammon Bay, respectively, two rural coastal villages that form a tight-knit trio with the nearby village Chevak and share Bethel as their hub community.

In the 2021 redistricting maps, the Alaska Redistricting Board (“Board”) split the Calista Region into three house districts and two senate districts. Based on its 2020 Census population of 27,034, the Calista Region is equivalent to 1.47 ideal house districts, or 0.73 ideal senate districts. Despite this significant population, the Board scattered the Calista Region across three house districts and two senate districts in a manner that fractures its voting power, rather than consolidates it. The Board split Hooper Bay and Scammon Bay from their sister city of Chevak as well as their hub city of Bethel and placed them into District 39 and Senate District T, a district where the Calista Region has

very little population. It did this despite requests from Calista, residents of the region, and Hooper Bay itself that asked it to place Hooper Bay and Scammon Bay in District 38 and Senate District S, where residents' votes would have more power. The Board also did this despite extensive testimony that Hooper Bay and Scammon Bay were intensely socio-economically integrated with District 38, through shared culture, language, family and community relations, economics, transportation, social services, and infrastructure.

Concerningly, the Board scattered the population of the Calista Region across multiple districts *while at the same time* respecting the population and boundaries of all other 11 ANC regions.¹ It is not consistent with the precepts of equal protection to preserve the borders of the other 11 ANC regions, and maximize the proportional representation of persons within those boundaries, at the expense of the socio-economically integrated Calista Region's population's voting power.

I. The Calista Plaintiffs' Claims

In their First Amended Complaint, the Calista Plaintiffs assert two claims. Count I, Violation of Redistricting Criteria, alleges that the Board failed to follow the requirements of the Alaska Constitution, article VI, section 6 when it excluded Hooper Bay and Scammon Bay from District 38 and included Tyonek in District 37. Count II, Violation of Equal Protection, alleges that the house and senate districts created by the Board dilute the voting power of the Calista Region and deprive residents of the Calista

¹ ANCSA created 13 ANCs, but one of those corporations was formed for the benefit of Alaska Natives living outside of Alaska and was not granted land under ANCSA. Thus, there are 12 ANC regions in Alaska.

Region of their right to an equally effective vote, in violation of article I, section 1 of the Alaska Constitution.²

The Calista Plaintiffs request that the Court correct the Board’s violations by remanding this case to the Board with instructions to: (1) place Hooper Bay and Scammon Bay in District 38, and (2) to reduce population deviation of the districts, place Kwigillingok, Kongiganak, and Quinhagak in District 37.

II. Governing Legal Principles

“[T]he right to vote is fundamental.”³ In *Kenai Peninsula Borough v. State*, the Alaska Supreme Court adopted the principle under the equal protection clause of the federal constitution that “the achieving of fair and effective representation for all citizens is concededly the basic aim of legislative apportionment.”⁴ Consistent with that principle, “it is implicit in our constitutional structure that similarly situated communities be treated in a similar manner.”⁵ Accordingly, “a voter’s right to an equally geographically effective or powerful vote, while not a fundamental right, [is] a significant constitutional interest.”⁶

² The Calista Plaintiffs originally asserted a Voting Rights Act claim as well, but the Board demanded that they remove that claim on threat of removal to federal court. Given the mandatory timelines involved in this case, removal—even if unsuccessful—would have jeopardized the Calista Plaintiffs’ ability to participate in the consolidated case, so they acceded to the Board’s demand and reserved their Voting Rights Claim for a potential separate federal proceeding.

³ *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1371 (Alaska 1987) (citing *Vogler v. Miller*, 651 P.2d 1, 3 (Alaska 1982)).

⁴ *Id.* at 1367 (discussing “[t]hat the equal protection clause protects the rights of voters to an equally meaningful vote”) (quotation omitted).

⁵ *Id.* at 1371–72 (citing Alaska Const. art II, § 19; *Abrams v. State*, 534 P.2d 91, 94 (Alaska 1975)).

⁶ *Id.* at 1372.

This reflects the principle of “one person, one vote,” which is the basis for the Calista Plaintiffs’ equal protection claim.

But merely having the ability to go to a polling place and drop a ballot in a box does not satisfy “one person, one vote.” The way districts are drawn matters. For example, if a cohesive voting population with integrated interests were consolidated in one district where it has a majority, it would gain the full benefit of its voting power; but if it were spread across three districts, and in the minority in each one, its voters’ power would be diluted. The extreme and intentional end of this is gerrymandering, but even unintentional errors in redistricting can have an improper diluting effect that undermines “one person, one vote.”

Article VI of the Alaska Constitution seeks to achieve fair representation by specifying certain criteria the Board should use in drawing Alaska’s legislative districts. Section 6 directs the Board to create districts of an appropriate population that are geographically compact, contiguous, and relatively socio-economically integrated. Absent the requirement for socio-economic integration, the work of the Board could arguably be done by a computer; the Board’s primary task is thus to take testimony on socio-economic integration and attempt to harmonize that with the other more easily-quantified factors.

Section 6 also directs the Board to give consideration to “local government boundaries.” The Alaska Supreme Court has explained that “a borough is by definition

socio-economically integrated,”⁷ and that local government boundaries can bound “a politically salient class of voters” whose votes must be protected from dilution.⁸ For this reason, the Alaska Supreme Court has directed the Board to avoid breaking borough boundaries when drawing house district maps.⁹

This direction applies to ANC boundaries as well, especially in unorganized areas of the State where there are no boroughs or municipalities. The geographic boundaries of ANCs formed under ANCSA contain socio-economically integrated populations with political interests that align, similar to borough populations.¹⁰ The Alaska Supreme Court has thus directed that ANC boundaries must be afforded similar deference in the redistricting process.¹¹

⁷ *In re 2001 Redistricting Cases*, 47 P.3d 1089, 1091 n.8 (quoting *Hickel v. Se Conference*, 846 P.2d 38, 52 (Alaska 1992), as modified on reh 'g (Mar. 12, 1993)).

⁸ *See In re 2011 Redistricting Cases*, 274 P.3d 466, 469 (Alaska 2012).

⁹ *See, e.g., Hickel*, 846 P.2d at 57 (holding that breaking the Mat-Su Borough’s boundaries more times than necessary “unfairly dilute[d] the proportional representation guaranteed to the Mat-Su Borough’s residents”).

¹⁰ The United States Supreme Court has explained that “ANCs come in two varieties: regional ANCs and village ANCS. To form the regional ANCs, the Act directed the Secretary of the Interior to divide Alaska into 12 geographic regions. [85 Stat. 688, 43 U.S.C.] § 1606(a). Within each region, Alaska Natives were instructed to ‘incorporate under the laws of Alaska a Regional Corporation to conduct business for profit.’ § 1606(d). To form the village ANCs, the Act identified approximately 200 Alaska ‘Native villages’ For each Alaska Native village, ANCSA ordered the ‘Native residents’ to create an accompanying village corporation to ‘hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf’ of the village §§ 1602(j), 1607 (a). ANCSA then directed the Secretary to prepare a roll showing the region and, if applicable, village to which each living Alaska Native belonged. § 1604. Enrolled Alaska Natives then received shares in their respective ANCs. §§ 1606(g), 1607.” *Yellen v. Confederated Tribes of Chehalis Rsrv.*, 141 S. Ct. 2434, 2439 (2021). Thus, like boroughs, ANCs are socio-economically integrated by statute; ANC regions share a common economic purpose that contributes to the political alignment of the Native populations within their borders. Moreover, the social and cultural connections within and between Alaska Native villages within the subregions delineated by ANC boundaries predate the political entities that they now exist within by centuries.

¹¹ *See, e.g., Groh v. Egan*, 526 O,2d 863, 877 (Alaska 1974) (discussing that preserving ANC boundary lines could “constitute justification for some population deviation”).

In *Hickel v. Southeast Conference*, the Court explained that ANC boundaries were political boundaries of sufficient importance that they could justify population deviations greater than ten percent, where the Board consistently utilizes them in drawing its districts.¹² In other words, it has found that ANC boundaries are sufficiently important geographic demarcations of socio-economic integration that the constitution’s population requirement could, on balance, be subordinate to maintaining those boundaries.

The evidence at trial will show that the Board did, in fact, recognize the importance of ANC boundaries when it built the 2021 maps. But uniquely among the 12 regional ANCs, the Board chose to break the Calista Region into more House districts and more Senate districts than its population would naturally fit within, which impedes the constitutionally significant interest of a “geographically effective or powerful vote” for the people within the Calista Region. The Board diluted the votes of the people who live within the Calista Region and treated similarly situated communities differently. Both of those actions are prohibited under Alaska law.

III. Evidence at Trial

The Calista Plaintiffs aim to present a straightforward answer to the question before the court: did the Board’s House Districts 37, 38, and 39, and Senate Districts S and T, which scattered the highly socio-economically integrated population of the Calista Region across three house districts and two senate districts, improperly diminish the

¹² 846 P.2d at 48 (citing *Groh*, 526 P.2d at 877).

region’s voting power? The Calista Plaintiffs expect to demonstrate that the answer is yes, and that the Board should have protected the region’s representation by placing Hooper Bay and Scammon Bay into District 38, and Kwigillingok, Kongiganak, and Quinhagak into District 37, which would have concentrated more of its population into two house districts and one senate district.

To support their claims, the Calista Plaintiffs intend to call five lay witnesses, one expert witness, and one member of the Board.

The Calista Plaintiffs’ lay witnesses, whose direct testimony has been prefiled, are:

- Andrew Guy, Calista Corporation President and CEO.
- Thom Leonard, Calista Corporation Director of Corporate Communications and Shareholder Services.
- William Naneng, a resident of Hooper Bay.
- Harley Sundown, a resident of Scammon Bay.
- Myron Naneng, a resident of Bethel who is from and works in Hooper Bay.

These lay witnesses will address the strong socio-economic integration of the Calista Region with particular emphasis on Hooper Bay, Scammon Bay, Chevak, and Bethel; the dramatic population growth the Calista Region experienced since the last U.S. Census; and the Calista Region’s historic under-representation and the problems this has caused.

The Calista Plaintiffs’ expert witness is Randy Ruedrich of Alaskans for Fair and Equitable Redistricting (“AFFER”). His opinion testimony, which supports the Calista Plaintiffs’ claims from a primarily technical perspective, has been prefiled. Mr. Ruedrich (via third party company E-Terra) has provided an interactive map, included in Calista’s

exhibits, that may be of assistance to the Court in understanding the region. The map allows the user to turn on and off different layers, such as ANC boundaries and 2021 Board districts, and is available online (URL: <https://arcg.is/0yLX4m>) as well as in a PDF format provided to the Court.

The Calista Plaintiffs also intend to call Board Chairman John Binkley. In accordance with the Fourth Pretrial Order, they plan to elicit his testimony during cross-examination.

In addition to relying on their own testimony and exhibits, the Calista Plaintiffs reserve the right to rely on the entirety of the evidentiary record that has been submitted to the Court in this consolidated case. Specifically, this includes:

- all testimony and evidence presented by other parties at trial;
- each Board member’s deposition testimony (per the Court’s oral ruling on January 16, 2022 and Civil Rule 90.8), which has been or will be lodged by the Court;
- the Board’s record of its proceedings, ARB000001-ARB007232 as supplemented by ARB007233-ARB010821; and
- all certified transcripts of Board proceedings that have been prepared at the direction of the Board or other parties.

IV. Anticipated “Problem Areas” at Trial

There are unresolved evidentiary objections asserted by the Board toward the Calista Plaintiffs’ testimony and vice versa. However, in light of the fact that this is a bench trial, the Calista Plaintiffs will not object if the Court determines that all evidence should be admitted, with the Court deciding how much weight it is appropriate to give the testimony.

There are no pending motions or rulings deferred to trial that affect the Calista Plaintiffs' case. The Calista Plaintiffs are not subject to the Board's Motion to Compel, nor were their claims targeted in the Board's Motion to Dismiss.

V. CONCLUSION

The Calista Plaintiffs look forward to presenting their case at trial.

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DATED: January 18, 2022

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