

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

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

**RESPONSE TO ALASKA REDISTRICTING BOARD'S OBJECTIONS TO
CALISTA PLAINTIFFS' PRE-FILED EXPERT TESTIMONY**

Plaintiffs Calista Corporation, William Naneng, and Harley Sundown (collectively “Calista Plaintiffs”) submit the following response to the Alaska Redistricting Board’s (Board) Objections to Calista Plaintiffs’ Pre-Filed Expert Testimony.

I. Response to Board’s “General Objection”

The Board’s fundamental objection to Mr. Ruedrich’s testimony is that he is not qualified to opine regarding whether the Board’s 2021 Proclamation maps are consistent with the requirements of the Alaska Constitution because he is not an attorney. The Board correctly cites Alaska Evidence Rule 702, which is the relevant evidence rule governing the admissibility of expert testimony in Alaska state courts, but draws the wrong conclusion: Under Evidence Rule 702 and the caselaw interpreting it, it is well established that Mr. Ruedrich is qualified by his “practical experience in the relevant

field” to offer an expert opinion regarding the constitutional conformance of the districts established by the Board’s 2021 Proclamation.¹

The Court is the gatekeeper of expert testimony.² Accordingly, the primary issue before the Court is whether Mr. Ruedrich is sufficiently experienced with the redistricting process that his testimony may be admitted as expert testimony.³ Although the Board argues that Mr. Ruedrich is not an attorney and thus may not opine on the legal requirements for the redistricting process, Mr. Ruedrich testified:

I have worked for Alaskans for Fair and Equitable Redistricting (AFFER) on redistricting activities in the 2011, 2013, and 2021 redistricting cycles. AFFER provides independent Alaskan redistricting guidance to its clients. AFFER was formed in 2010 and again in 2021 to provide technical support and consulting services to Alaskan organizations needing to participate in the Statewide redistricting process. It is the goal of AFFER to draw meaningful boundaries that follow easily identifiable lines and geographic features, that also protect communities, regional interests, and legal rights of individuals. From its inception, AFFER has worked with a combination

¹ Alaska R. Evid. 702(a); Alaska R. Evid. 703; *Marron v. Stromstad*, 123 P.3d 992, 1007 (Alaska 2005) (“For example, both Federal and Alaska Rule of Evidence 702 require that all experts be properly qualified by *knowledge, skill, experience, training, or education*. In addition, the expert’s knowledge must assist the trier of fact to understand the evidence or to determine a fact in issue. Under Rule 703, the facts of data in the particular case upon which an expert bases an opinion or inference must be of a type reasonably relied upon by experts in the particular field.” (emphasis added) (internal quotation marks omitted)); *Barton v. North Slope Borough Sch. Dist.*, 268 P.3d 350–51 (Alaska 2012) (referencing “Alaska’s liberal standard favoring the admissibility of expert testimony . . . to increase the information available to the fact-finder” (quotation omitted) (omission in original)).

² *Cora G. v. Dep’t of Health and Soc. Servs., Off. Of Children’s Servs.*, 461 P.3d 1265, 1277–78 (Alaska 2020) (discussing that “[i]n most civil and criminal matters it is thus left to the trial court’s discretion whether expert testimony is appropriate in a given case, and if so, whether a proposed expert witness is qualified to testify on a particular issue”).

³ The bulk of the Board’s objections, certain of which are addressed *infra*, go to the weight, not the admissibility of Mr. Ruedrich’s testimony. But the primary issue before the Court is whether Mr. Ruedrich has sufficient experience with redistricting in Alaska to be qualified as an expert in the subject.

of rural native corporations and individuals from both side[s] of the political aisle.⁴

In short, Mr. Ruedrich has long experience with the redistricting process in Alaska, and to provide competent advice to AFFER clients, he necessarily must understand what the law requires when districts are drawn.

Indeed, if, as the Board suggests, it is necessary to be an attorney to apply the legal and constitutional principles that govern the redistricting process, then the Board's 2021 Proclamation could not stand as three of the five Board Members, as well as its Executive Director, would have lacked the knowledge, skill, experience, training, and education necessary to draw a constitutional Statewide map. The Board received legal advice through the redistricting process, but the responsibility to weigh the constitutional factors and other legal requirements governing redistricting and exercise judgment to draw a Statewide map that conforms to those requirements is the Board's alone.

The Board's position is internally inconsistent: On the one hand, the Board argues that Mr. Ruedrich "is not an expert on the Alaska Constitution or whether something meets the dictates thereof[]," but on the other hand, the Board allows that Mr. Ruedrich "may opine as to his opinion of whether a more cohesive or more socio-economically connected communit[y] exist[s]."⁵ Socio-economic integration is, of course, one of the factors enumerated in article VI, section 6 of the Alaska Constitution governing house

⁴ Ruedrich Aff. at 1–2; *see also* January 12, 2022, Deposition of Randy Ruedrich at 10:22–13:15.

⁵ Board's Objections to Calista Plaintiffs' Pre-Filed Expert Testimony at 3.

districts.⁶ The others are that districts must be compact, contiguous, and that they “shall contain a population as near as practicable to the quotient obtained by dividing the population of the state by forty.”⁷ Senate districts “shall be composed as near as practicable of two contiguous house districts.”⁸ Local government boundaries may be taken into account, and “[d]rainage and other geographic features shall be used in describing boundaries wherever possible.”⁹ In the context of redistricting, there is no meaningful difference between opining that a particular district is not socio-economically integrated, compact, or contiguous, and opining that it is not constitutional, or vice versa.¹⁰

By way of analogy, experts are routinely called to testify in eminent domain litigation in Alaska, which, like redistricting litigation, is grounded in the Alaska

⁶ Alaska Const. art VI, § 6.

⁷ *Id.*

⁸ *Id.* The Board objects to Mr. Ruedrich’s statement on page 10 of his testimony that “[a]n ideal 2021 Alaska Senate District would contain 36,670 people,” arguing that “Article VI, Section 6 and caselaw interpreting it, refuse to apply the factors that are applicable to the house districts—including population requirements—applicable to senate districts.” Board’s Objections to Calista Plaintiffs’ Pre-Filed Expert Testimony at 2 n.1. Setting aside that the Board does not cite any caselaw for its argument purportedly grounded in caselaw, Mr. Ruedrich’s statement regarding the size of an ideal senate district should be uncontroversial in that two house districts comprise one senate district, and an ideal house district under the 2020 census numbers has a population of 18,335 under article VI, section 6. If all house districts were ideal, then each senate district would contain 36,670 people. Mr. Ruedrich did not testify that an ideal senate district would contain 36,670 people under the Alaska Constitution or Alaska law.

⁹ Alaska Const. art. VI, § 6.

¹⁰ Moreover, none of the criteria in article VI, section 6 are arcane legal concepts that require special training in the law to understand or apply. For example, while reasonable minds may disagree about whether a particular district is compact, an attorney would have no special insight into the issue by virtue of her legal training. And in fact, a person with technical scientific training adept with the application of mathematical concepts could be better situated than a lawyer to analytically consider the compactness of a particular district. A mathematician, or a person with a Ph.D. in chemical engineering, would likely have such skills.

Constitution. “The central objective in eminent domain proceedings such as the one before us is the determination of just compensation for the property condemned.”¹¹ “[J]ust compensation” is a constitutional term of art found in article I, section 18 of the Alaska Constitution, which provides: “Private property shall not be taken or damaged for public use without just compensation.”¹² Expert testimony regarding just compensation is a critical component of takings litigation.¹³ It is the trier-of-fact’s obligation to determine what just compensation is, but courts commonly allow the testimony of non-attorney experts who offer opinions regarding what just compensation is in a particular takings context.¹⁴ Whether evaluating just compensation, or compactness, contiguity, and socio-economic integration, expert opinions have a role to play in the judicial process.

Here, where the trier-of-fact is the Court, there is little risk that a non-attorney redistricting expert’s opinions regarding whether certain house and senate districts comply with the requirements of the Alaska Constitution will mislead the factfinder or be more prejudicial than probative. Mr. Ruedrich’s long experience with the redistricting

¹¹ *Babinec v. State*, 512 P.2d 563, 570 (Alaska 1973).

¹² Alaska Const. art I, § 18.

¹³ See, e.g., *R & Y, Inc. v. Municipality of Anchorage*, 34 P.3d 289, 294–95 (Alaska 2001) (discussing a trial court’s reliance on expert testimony in a takings case); *Dash v. State*, 491 P.2d 1069, 1071 (Alaska 1971) (concluding that “it is undesirable for [the Alaska Supreme Court] to severely restrict the role of the expert witness in eminent domain cases by delineating strict testimonial boundaries”); *Res. Invs. v. State, Dep’t of Transp. & Pub. Facilities*, 687 P.2d 280, 283–84 (Alaska 1984) (discussing that expert testimony was “necessary” when considering an appropriate costs award in an eminent domain case).

¹⁴ See *id.*; see also *Kenai Landing, Inc. v. Cook Inlet Nat. Gas Storage Alaska, LLC*, 441 P.3d 954, 965 (Alaska 2019) (discussing that trial courts have discretion to rely on expert testimony in takings cases and adopt particular methodologies utilized by experts based upon their findings regarding the credibility of a particular expert and the reliability of that expert’s methodology).

process has given him insights that will aid the Court in evaluating the constitutionality of aspects of the 2021 Proclamation.

The Board and the Court will have ample opportunity to test Mr. Ruedrich's opinions when he testifies at trial, and the Court has the discretion to give Mr. Ruedrich's testimony the weight that it deems appropriate after his opinions have been fully vetted. But under the "liberal" standard governing the admissibility of expert testimony in Alaska, Mr. Ruedrich is well qualified by his years of involvement with redistricting in Alaska, and by his technical background, to offer opinions germane to facts in issue.¹⁵

The Board's second general objection is not so much an objection as a mischaracterization of Mr. Ruedrich's testimony. The Board asserts that "Mr. Ruedrich's expert testimony is the following: those who live within the boundaries of an ANCSA regional corporation's boundaries—whether shareholders of the regional corporation or not—are entitled to be placed in as few house districts as possible and are entitled to have those house districts paired to form senate districts that maximize their voting strength."¹⁶ The Board did not cite to Mr. Ruedrich's testimony when mischaracterizing his testimony because it could not—the above is simply not Mr. Ruedrich's testimony. The Board's

¹⁵ *Cooper v. Thompson*, 353 P.3d 782, 792–93 (Alaska 2015) ("Although the application of Rule 702 expresses liberal admissibility standard for expert testimony, a trial court's power to qualify a witness as an expert in a particular area includes the power to exclude opinions that are beyond the witness's expertise. Trial courts do not need to choose between admitting every opinion an expert witness seeks to introduce and excluding the witness altogether; instead, trial courts have the authority to limit expert witnesses' testimony to the areas within their expertise." (internal quotations and citations omitted)). Here, there is no risk that admitting any testimony could improperly influence a jury's findings; the Court is well-situated to consider Mr. Ruedrich's opinions and then rely on them as it deems appropriate when it issues the findings of fact and conclusions of law that will resolve this matter at the trial level.

¹⁶ Board's Objections to Calista Plaintiffs' Pre-Filed Expert Testimony at 1.

mischaracterization may accurately reflect its mistaken view of Calista Plaintiffs' theory, but it is not a fair reading of what Mr. Ruedrich had to say.¹⁷

Because the Board's mischaracterization is not an objection *per se*, but rather seems to be an attempt to frame certain issues for the Court in a way it deems beneficial to its case, no response is required.¹⁸

II. Response to the Board's Specific Objections to Ruedrich Testimony

A. Mr. Ruedrich is qualified by knowledge, skill, and experience to opine on whether districts conform to the requirements of the Alaska Constitution and Alaska law.

The Board has bolded certain excerpts of Mr. Ruedrich's testimony and lodged an objection to those excerpts as improper expert opinion on legal conclusions. As discussed above, Mr. Ruedrich has the appropriate knowledge, skill, and practical experience in the relevant field to offer his opinions regarding the extent to which the 2021 Proclamation is consistent with the redistricting requirements found in article VI, section 6, the extent to which it is not, and how it could be improved. The Court has the discretion both to admit Mr. Ruedrich as an expert, and to ascribe the weight to his testimony that it deems appropriate after he has been cross-examined by the Board, and after the Court has had

¹⁷ It is unclear how the Board reads Mr. Ruedrich's opinion to be that ANCSA regional corporation regions are entitled to be placed in as few house and senate districts as possible when Mr. Ruedrich's opinions regarding which districts certain Calista villages should be placed in results in the Calista Region being spread across three house and two senate districts, just as it is in the 2021 Proclamation maps, even though the population of the Calista Region could be housed in two house districts and one senate district. For an accurate articulation of the Calista Plaintiffs' legal theories, see Calista Plaintiffs' *Trial Brief*.

¹⁸ Mr. Ruedrich did testify that the Calista Region was treated dissimilarly to the other ANCSA regions, but he did not testify that ANCSA regions are entitled to be placed in as few districts as theoretically possible. Ruedrich Aff. 16.

the opportunity to inquire of Mr. Ruedrich regarding any questions it may have about his opinions.

In the event that the Court would consider entertaining the Board's premature and unfounded objections regarding Mr. Ruedrich's qualifications as a redistricting expert, the Calista Plaintiffs respectfully suggest that the proper remedy would be a brief colloquy with Mr. Ruedrich where the Court could confirm that Mr. Ruedrich has the requisite practical experience in the field to form the expert opinions that he offers in his pre-filed direct testimony.

B. Response to the Board's "Additional Specific Objections."

"Page 9 Map. Objection, foundation, hearsay. [Alaska Rules of Evidence 802, 901]"¹⁹

Response: The map of Alaska Native languages spoken in Alaska referenced on page 9 of Mr. Ruedrich's affidavit is admissible through the January 18, 2022, affidavit of Achim Hettel.²⁰

"Page 13. 'During the 2021 Redistricting process, Calista leadership and the people from the region advocated for the following: . . .' **Objection.** Hearsay, foundation. [Alaska Rule of Evidence 802, 901] The entire paragraph and its subparts add are purported to be the desires advocated for all people from a vast region. Mr. Ruedrich

¹⁹ Board's Objections to Calista Plaintiffs' Pre-Filed Expert Testimony at 8.

²⁰ See Hettel Aff. ¶ 6.

does not explain how he knows the desires and what each individual, including non-Calista shareholders, living in the region advocated for, if anything.”²¹

Response: Mr. Ruedrich is not offering any specific out-of-court statements for their truth, but rather testifying to his personal knowledge of the positions advocated for by Calista leadership via his professional relationship with Calista Corporation during the 2021 redistricting cycle. Additionally, Mr. Ruedrich testified that he relied on his involvement in the 2021 redistricting process, as well as his review of Board meeting testimony and deliberations, and the Board’s own record shows that there was significant public testimony from persons within the Calista Region consistent with the goals that Mr. Ruedrich testified to in his affidavit.²²

“Page 14. ‘The residual Calista Region population in District 39 is not properly served by a house representative and senator who are not from the Calista Region.’

Objection. Improper expert testimony, conclusory. [Alaska Rules of Evidence 602, 702-703] Mr. Ruedrich has not explained the factual basis for his opinion that a representative not from the region will not work for their constituents, even if a minority of them.”²³

Response: Mischaracterizes the evidence. Mr. Ruedrich did not testify that a representative who is not from the Calista Region will not work for Calista Region constituents.

²¹ *Id.*

²² See Ruedrich Aff. at 5.

²³ Board’s Objections to Calista Plaintiffs’ Pre-Filed Expert Testimony at 8.

“Page 15. ‘I know from experience that the region is politically aligned regarding other issues as well, but I am less familiar with the specifics of those issues.’ Objection.

Improper expert testimony, conclusory. [Alaska Rules of Evidence 602, 702-703] Mr. Ruedrich has not explained the factual basis for his opinion that the region is politically aligned regarding the vague ‘other issues.’ ”²⁴

Response: Mr. Ruedrich’s full answer referenced above by the Board is as follows: “Based on my long history and experience with people in the region, I have understood the villages of the Calista Region to be socio-economically integrated. My experience is consistent with the testimony I have heard or seen before the Board and in this litigation. As I understand it. The common economic endeavor that is Calista Corporation connects the region economically and contributes to the region’s political alignment in regards to issues material to Calista’s interests. I know from experience that the region is politically aligned regarding other issues as well, but I am less familiar with the specifics of those issues.”

The Board extracted a sentence from a longer answer; in context, it is clear that Mr. Ruedrich was speaking to his knowledge of the Calista Region and the way that the Calista Corporation benefits the region economically and creates general alignment regarding Calista-related issues. Mr. Ruedrich testified based on his experience that he knows that the region aligns politically regarding other issues as well, but forthrightly

²⁴ *Id.*

acknowledged that he is less familiar with the specifics of those issues as they do not directly relate to his work with Calista.

“Page 15. ‘Calista’s boundary encompasses the YK Delta and is a visible measure of economic and cultural integration.’ **Objection.** Improper expert testimony, conclusory. [Alaska Rules of Evidence 602, 702-703] Mr. Ruedrich has not explained the factual basis for his opinion that the area is economically and socially integrated.”²⁵

Response: Mr. Ruedrich explained that he has experience working with Calista since 2011, and through his knowledge of Calista, its region, and the work that it does, he knows that the area within its boundaries are socio-economically integrated.

“Page 16. ‘With fewer people, District 38 as the 100% Calista Region population district, is put at an electoral disadvantage for future Senate District S elections . . .’

Objection. Improper expert testimony, conclusory, foundation. [Alaska Rules of Evidence 602, 702-703] Mr. Ruedrich has not explained the factual basis for his opinion that the residents of the Calista region vote as a cohesive unit or that an electoral disadvantage will occur in future elections.”²⁶

Response: Mischaracterizes the evidence. Mr. Ruedrich did not testify that the residents of the Calista Region vote as a cohesive unit. The remainder of the quote from Mr. Ruedrich’s testimony is: “because of its lower population relative to District 37.”²⁷ Mr. Ruedrich’s opinion is a simple mathematical observation that in an election where

²⁵ Board’s Objections to Calista Plaintiffs’ Pre-Filed Expert Testimony at 9.

²⁶ Board’s Objections to Calista Plaintiffs’ Pre-Filed Expert Testimony at 9.

²⁷ Ruedrich Aff. at 16.

one senate candidate is strongly favored by District 37 voters and one candidate is strongly favored by District 38 voters, District 37 voters would have an advantage with a larger share of the overall population in District S.

“Page 18. ‘That shortfall of 482 people may prove significant in a future Senate District S election.’ **Objection.** Improper opinion testimony, conclusory, foundation. [Alaska Rules of Evidence 602, 702-703] Mr. Ruedrich has not explained the factual basis or underlying knowledge for his opinion that the district has any real or materially different impact from the current voting impact of the Calista Region. Mr. Ruedrich is guessing.”²⁸

Response: Misstates the evidence. Mr. Ruedrich testified that: “The Board actions discussed above diluted the Calista Region’s population in District 37 and left District 38 with a negative -2.68% population deviation. That shortfall of 482 people may prove significant in a future Senate District S election.” Mr. Ruedrich did not testify that the -2.68% deviation in the 2021 District 38 “has any real or materially different impact from the current voting impact of the Calista Region.” Mr. Ruedrich testified in absolute terms that a -2.68% deviation in a house district, which translates to 482 fewer people than an ideal house district, could place that districts population at a disadvantage in a senate election where the house district it is paired with to form a senate district has a larger population and the two districts face divergent issues and are not, as a general matter, socio-economically integrated.

²⁸ Board’s Objections to Calista Plaintiffs’ Pre-Filed Expert Testimony at 9.

“Page 18. ‘The Board’s district boundaries dividing the Calista Region into three house districts and two senate districts are tied to historical maps of the past several decades.’ **Objection.** Foundation. [Alaska Rule of Evidence 602] Mr. Ruedrich does not identify the basis of his knowledge to state what the Board relied on in mapping the applicable districts.”²⁹

Response: Misstates the evidence. Mr. Ruedrich testified that he has been involved in the redistricting process in Alaska as a professional consultant with AFFER since the 2011 cycle.³⁰ Accordingly, he is sufficiently familiar with historical redistricting maps to know whether the 2021 Proclamation districts covering the Calista Region relate to prior maps insofar as the Calista Region has been divided into three house districts and two senate districts over the past several decades. Mr. Ruedrich’s observation that the 2021 Proclamation maps covering the Calista Region have identifiable similarities with historical redistricting maps of the region is not testimony that the Board relied on the historical maps in the 2021 redistricting cycle, it is testimony that the similarities between the maps are notable.

Page 18. ‘and Port Graham in District 37 clearly dilutes the Calista Region population’s voting power in District 37, and more importantly, in Senate District S.’

Objection. Improper opinion testimony, conclusory, foundation. [Alaska Rules of

²⁹ *Id.*

³⁰ Ruedrich Aff. at 1.

Evidence 602, 702-703] Mr. Ruedrich has not explained the factual basis or underlying knowledge for his opinion that dilution is occurring.

Response: Mr. Ruedrich's testimony that "the Board action placing the Kenai Peninsula Borough villages for Tyonek, Nanwalek, and Port Graham in District 37 clearly dilutes the Calista Region population's voting power in District 37, and more importantly, in Senate District S" is straightforward: He offered the observation that if there are fewer Calista Region residents in District S than there would be if the Board had not broken the Kenai Peninsula Borough to include Tyonek, Nanwalek, and Port Graham in District 37, and had instead added more Calista villages from the Lower Kuskokwim Delta, then District S would contain more people from the Calista Region, District T would contain fewer people from Calista villages, and the Calista Region's population would be less diluted in Senate District S relative to its 0.74 senate district size.³¹

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³¹ See Ruedrich Aff. 15–16.

CERTIFICATE OF SERVICE

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