

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

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

CALISTA PLAINTIFFS' RESPONSES TO REDISCTRICTING DEFENDANTS' FIRST SET OF DISCOVERY REQUESTS

Plaintiffs Calista Corporation, William Naneng, and Harley Sundown (collectively "Calista Plaintiffs") hereby respond to Redistricting Defendants' First Set of Discovery Requests as follows:

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Please produce all Documents that you intend to rely upon at trial and that support the contentions in Your complaint that have not previously been provided to the Alaska Redistricting Board (the "Board").

RESPONSE: As a threshold matter, the Calista Plaintiffs object to Request for Production No. 1 as vague, overly broad, and unduly burdensome. Moreover, this request potentially invades attorney work product and attorney-client privileges. Notwithstanding those objections, Calista Plaintiffs respond as follows.

At this time, with one exception that is noted below, the Calista Plaintiffs plan to rely at trial on maps, documents, and data that have already been produced by the Board. Consistent with the parties' agreement to avoid duplication of exhibits to the extent possible for the benefit of the Court and the parties, and consistent with the Board's

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request that only those Documents that have not previously been provided to the Board should be produced, the Calista Plaintiffs possess no responsive Documents at this time.

However, the Calista Plaintiffs expect to rely on a map of the Calista Region and surrounding areas with overlays of the languages and dialects spoken in that broader geographic region. The map is not yet complete, but the Calista Plaintiffs will produce it to the Board when it is available.

This response will be supplemented with this map and as additional materials are identified. Please note that the Calista Plaintiffs will consider any exhibits submitted with the Calista Plaintiffs' written direct testimony to constitute supplementation, even if a separate disclosure document and Bates-numbered production is not made. The Calista Plaintiffs reserve the right to utilize evidence proffered by other parties in the discovery process. Discovery is continuing and Calista Plaintiffs reserve the right to supplement these responses as additional evidence becomes available.

REQUEST FOR PRODUCTION NO. 2: Please produce the complete file of any retained expert witness, including all documents relied upon, all emails and text messages sent or received by the expert that relate to this litigation, including with counsel, and any and all draft reports.

RESPONSE: Please see attached production Bates numbered RUED_000001–RUED_000635, which contains the work file of the Calista Plaintiffs' retained expert Randy Ruedrich, including correspondence.

REQUEST FOR PRODUCTION NO. 3: Please produce all emails and/or text

messages You have sent or received that relate in any way to the 2021 redistricting process.

RESPONSE: The Calista Plaintiffs object to this request for production as

overbroad within the confines of this accelerated litigation. The standard for discovery is provided by Alaska Civil Rule 26(b)(1):

Parties may obtain discovery regarding any matter, not privileged which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party The information sought need not be admissible at trial if the information sought appears calculated to lead to the discovery of admissible evidence.¹

“This standard authorizes the parties to seek substantial amounts of information, but it requires parties to act reasonably. Whether information is ‘reasonably calculated to lead to the discovery of admissible evidence’ depends on the circumstances of the case, and this question is entrusted to the discretion of the trial judge[.]”²

In its summary of discovery and case management issues for the December 29, 2021, hearing, counsel for the Board requested that “the Court . . . remind plaintiffs that discovery is reciprocal, and [that] the Board has a right to explore bias and discover what motivates the challenges to the 2021 redistricting plan.”

¹ *Powercorp Alaska, LLC v. Alaska Energy Auth.*, 290 P.3d 1173, 1192 (Alaska 2012), as amended on reh’g (Jan. 7, 2013) (quoting Alaska R. Civ. P. 26(b)(1)).

² *Id.* (quoting *Lee v. State*, 141 P.3d 342, 347 (Alaska 2006)).

Yet, approximately 32 minutes into the December 29 hearing, counsel for the Board stated:

So, the reality is this is an expedited litigation, and that means everyone is going to have to do with a little less. We're going to have to be focused. We're not going to have – we're not going to see a year's worth of litigation and discovery and motions into this case. That's a reality.

The Calista Plaintiffs agree with the Board's position at the December 29 hearing: Request for Production No. 3 is not consistent with the reality that this is an expedited litigation process and all parties are going to have to do with a little less. The breadth of the Board's request contradicts the reasonable position its counsel represented to the Court and the other parties on December 29. The Calista Plaintiffs therefore object.

The burden concomitant with requiring the Calista Plaintiffs to examine and produce all of their communications regarding the redistricting process cannot be justified in the absence of any proffered substantive need for those communications. Black's Law Dictionary defines substantive evidence as: "That adduced for the purpose of proving a fact in issue, as opposed to evidence given for the purpose of discrediting a witness (i.e., showing that he is unworthy of belief), or of corroborating this testimony."³

The discovery standard is broad, but it is not unlimited and its touchstone is reasonableness. The sole reason provided by the Board for requesting these communications is so that it can suss out "bias and motivation"⁴—essentially, to inquire

³ *Newsome v. Penske Truck Leasing Corp.*, 437 F. Supp. 2d 431, 434–35 (D. Md. 2006) (quoting BLACK'S LAW DICTIONARY, 1429 (6th ed. 1990)).

⁴ Alaska Redistricting Board's Summary of Discovery and Case Management Issues for December 29, 2021 Hearing at ¶5 (Dec. 28, 2021).

into the reasons that the Calista Plaintiffs have chosen to participate in this litigation.

There is no relevance to the Calista Plaintiffs' motivation in challenging the Board's redistricting maps and the 2021 Proclamation. The Alaska Constitution requires the Board to consider five factors when it draws maps of legislative districts every ten years after each decennial census is performed. The Calista Plaintiffs contend that the Board impermissibly gave great weight to certain factors at the expense of others, which resulted in unconstitutional boundary lines that come at the expense of the political representation of persons living within the Calista Region.

The Board's actions, and whether they complied with the requirements of the Alaska Constitution, are what is under review in this case. As counsel for the Board stated at the December 29 hearing, approximately 15 minutes in: "This is primarily a review of an agency decision – it sort of operates that way." In the review of an agency decision, the analysis would be focused on the decision made by the agency and the reasons underpinning it; not the claimants' private discussions of why they chose to pursue administrative action. In the context of this case, it means that while the *Board's* e-mail correspondence is undeniably relevant, the *Calista Plaintiffs'* is not automatically so.

Moreover, under Civil Rule 26(b)(2)(B), a party "need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost." Although under a more typical litigation timeline, Calista Corporation's own database would be reasonably accessible, the resources that would be necessary for Calista to comb its databases of electronic communications constitute an undue burden under the time available before trial. It is

moreover unreasonable for the Board to expect Calista Plaintiffs' counsel to review all of the electronic communications held by Calista Corporation, as would be necessary prior to production, when it has is no stated relevance to this action.

To the extent the Board would like to look deeper into the Calista Plaintiffs' case, it will have the opportunity to do so through depositions and cross-examination—opportunities that are already provided in the pretrial order, and that do not require time-consuming and irrelevant production. The Board has not identified any reason why these existing opportunities are inadequate.

The Board's attempt to burden the Calista Plaintiffs with superfluous and irrelevant discovery production is a transparent attempt to hobble the Calista Plaintiffs' ability to prepare for trial in the short time remaining and should not be countenanced by this Court. With less than three weeks remaining until trial, if the Board insists on pushing this request, the Court should exercise its discretion under Civil Rule 26(b)(2)(A)(iii) and conclude that without a clear nexus between the substantive evidentiary needs⁵ of this matter and the discovery sought, "the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, . . . the parties'

⁵ See *id.* at 435 (discussing that substantive evidence relates to "the truth of the matter to be determined by the trier of fact[.]" whereas "impeachment evidence [such as bias evidence] is offered to discredit a witness and reduce the effectiveness of her testimony[;]" accordingly, [i]mpeachment evidence only has meaning when there is credibility to be attacked."). The Board will have ample opportunity to study the written testimony of the Calista Plaintiffs' witnesses and then cross-examine them and explore any biases that they may possess via either deposition or at trial without the need to review the whole of the Calista Plaintiffs' records regarding their participation in the 2021 redistricting process.

resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.”⁶

The Board’s own record already contains multiple communications from persons within the Calista Region advocating for the same result that the Calista Plaintiffs seek here. The needs of this litigation do not include the cumulative and duplicative communications that the Board seeks in its Request.

If the Board insists on this request, the Court should exercise its broad discretion in matters of discovery and order that the Calista Plaintiffs need not provide a response.⁷

REQUEST FOR PRODUCTION NO. 4: Please produce all emails and/or text messages You have sent or received that relate in any way to Your participation in this lawsuit. If You claim a privilege as to any such Communication, please produce a privilege log.

RESPONSE: The Calista Plaintiffs incorporate their objections to Request for Production 3 into this response.

Additionally, Request for Production No. 4 appears to seek privileged information. Request for Production No. 4 seems designed to force the Calista Plaintiffs’ counsel to produce a privilege log detailing all of their communications with their clients, rather than

⁶ Alaska R. Civ. P. 26(b)(2)(A)(iii).

⁷ See, e.g., *Punches v. McCarrey Glen Apartments, LLC*, 480 P.3d 612, 622 (Alaska 2021) (“The superior court has broad discretion to determine the scope and extent of discovery and to craft protective orders.” (quotation omitted)).

solicit admissible evidence. This will not help the Board prepare its defense—requesting the same is a make-work task. Accordingly, the Calista Plaintiffs object to Request for Production No. 4.

REQUEST FOR PRODUCTION NO. 5: Please produce all emails, texts, and any other Communications between any Calista officer, executive, director, or employee and Randy Ruedrich that relates in any manner to the 2021 Alaska redistricting process.

RESPONSE: The documents responsive to Request for Production No. 5 are a subset of the documents responsive to Request for Production No. 3 and are being produced within the response to Request for Production 3.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Please admit that non-Alaska Natives hold Calista Corporation stock.

RESPONSE: The Calista Plaintiffs object to this request as vague and ambiguous. “Alaska Native” is not defined in the Request and the Calista Plaintiffs are therefore without sufficient information to answer the Request as drafted. There are several legal definitions of “Alaska Native” in federal law, including 43 U.S.C. § 1602(b) and 45 C.F.R. 1336.10. The U.S. Census Bureau collects race and ethnicity data based on a person’s self-identification and utilizes a definition of “Alaska Native” based on guidelines from the U.S. Office of Management and Budget that differs from both 43 U.S.C. § 1602(b) and 45 C.F.R. § 1336.10.

The Calista Plaintiffs also object to this request as irrelevant and intended to harass for the reasons stated in response to Request for Admission No. 2, below.

Subject to and without waiving these objections, the Calista Plaintiffs answer as follows: Admit. There are more than 34,500 individuals who hold shares of Calista Corporation (“Shareholders”). Of those individuals, 143 active Shareholders, or 0.4%, are non-Alaska Native.

REQUEST FOR ADMISSION NO. 2: Please admit that there are individuals residing in communities identified by Calista Corporation at its website, <https://www.calistacorp.com/shareholders/shareholder-overview/communities/>, as “The villages of the Calista Region” that are not shareholders of Calista Corporation.

RESPONSE: The Calista Plaintiffs object to this request for admission as irrelevant and intended to harass. The boundaries of each ANCSA corporation, including Calista, were drawn geographically such that “each region [is] composed as far as practicable of Natives having a common heritage and sharing common interests.” 43 U.S.C. § 1606(a). Calista is specifically empowered to “provide benefits to... its shareholders’ immediate family members who are Natives or descendants of Natives to promote the health, education, or welfare of such shareholders or family members.” 43 U.S.C. § 1606(r). Moreover, a primary focus of Calista’s mission and purpose, as stated on its website at <https://www.calistacorp.com/wp-content/uploads/2020/03/Calista-mission-vision-goals.pdf>, is to “Promote in-Region economic development and partnerships,” a purpose that is targeted at its geographical region. Improving opportunity

within the Calista Region improves quality of life for all Calista shareholders and family members. The fact of non-shareholders living in the Calista region is irrelevant to the question of whether or not the Redistricting Board has created constitutional districts.

Subject to and without waiving these objections, the Calista Plaintiffs answer as follows: Admit.

REQUEST FOR ADMISSION NO. 3: Please admit that Calista Corporation is a corporate entity that does not vote in elections.

RESPONSE: The Calista Plaintiffs object to this request for admission as irrelevant and intended to harass for the reasons stated in response to Request for Admission No. 2, above. Calista appears to have been targeted because of its status as an Alaska Native Regional Corporation; for example, no such question was posed to the majority white municipal entities (Matanuska-Susitna Borough, City of Valdez, and City of Skagway) that also do not vote in elections. The Redistricting Board has not challenged Calista's standing to participate in this lawsuit, presumably because it is aware that Calista Corporation represents its shareholders and the people of the Calista Region, who do vote in elections.

Subject to and without waiving these objections, the Calista Plaintiffs answer as follows: Admit that Calista Corporation, like any organization, group, or municipal body, does not vote in elections.

REQUEST FOR ADMISSION NO. 4: Please admit that shareholders of Calista

Corporation have no greater right to vote in elections than any other eligible voter in the State of Alaska.

RESPONSE: Plaintiffs object to this request for admission as irrelevant and intended to harass for the reasons stated in response to Request for Admissions No. 2 and 3, above.

Without waiving these objections, the Calista Plaintiffs answer as follows: Admit that the shareholders of Calista Corporation and all of the people of the Calista Region have the same right as any other eligible voter to be equally and fairly represented in the Alaska Legislature. Similarly, following the principle of one person, one vote, they have no lesser right to vote in elections than any other eligible voter in the State of Alaska, i.e., they have the right not to have their voting power unfairly diluted by the drawing of unconstitutional district boundaries.

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DATED: January 3, 2022

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