In the Supreme Court of the State of Alaska

In the Matter of the 2021 Redistricting Cases, (Matanuska-Susitna Borough, S-18328) (City of Valdez, S-18329) (Municipality of Skagway, S-18330) (Alaska Redistricting Board, S-18332)	Supreme Court No. **S-18332** **Order** Petitions for Review Date of Order: **3/25/2022**

Trial Court Case No. 3AN-21-08869CI

Before: Winfree, Chief Justice, Borghesan and Henderson, Justices, and Matthews and Eastaugh, Senior Justices.[*] Eastaugh, Senior Justice, concurring.

On February 15, 2022 the superior court remanded the underlying redistricting case to the Alaska Redistricting Board for further proceedings on House Districts 3 and 4 and Senate District K of the 2021 Proclamation of Redistricting.[1] We now have before us four petitions for review arising from that decision: by the Board, the Municipality of Skagway Borough, the Matanuska-Susitna Borough, and the City of Valdez (with qualified voters joining the municipality petitions).[2] Because a redistricting matter has priority over all other matters pending before this court,[3] and because a decision in this redistricting

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[*] Sitting by assignment made under article IV, section 11 of the Alaska Constitution and Alaska Administrative Rule 23(a).

[1] *See generally* Alaska Const. art. VI (providing for creation of Redistricting Board, redistricting process leading to redistricting proclamation, and challenges to proclamation in superior court and then this court).

[2] *See* Alaska R. App. P. 216.5(h) (providing for petitions for review of superior court decision remanding redistricting case to the Redistricting Board).

[3] *See* Alaska Const. art. VI, § 11 (providing that redistricting matter "shall have priority over all other matters pending before the . . . court"); Alaska R. App. P. 216.5(i) (same).

matter is required by April 1,[4] the parties followed an expedited briefing schedule for fully briefed petitions due by March 2 and fully briefed responses due by March 10. We then held oral arguments on the petitions on March 18. Having considered the parties' briefing and oral arguments, we GRANT review under all four petitions.[5] To now further expedite the redistricting process, we set out in summary fashion our decisions on the merits of the four petitions, with a formal opinion explaining our reasoning to follow:

House Districts 3 and 4

House Districts 3 and 4 are the subject of two petitions, one by the Board and one by the Municipality of Skagway Borough. We AFFIRM the superior court's determination that the house districts comply with article VI, section 6 of the Alaska Constitution[6] and should not otherwise be vacated due to procedural aspects of the Board's

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[4] *See* Alaska R. App. P. 216.5(i) (providing that appellate decisions in redistricting challenges be decided no later than 60 days before statutory filing deadline for next statewide election).

[5] Alaska Appellate Rule 403(a)-(g) governs petitions for review and generally contemplates a process of a party petitioning for review of a trial court ruling, describing why the ruling is incorrect and why immediate review is necessary, and opposing parties then filing responses; the appellate court has an opportunity to consider whether immediate review is warranted and may order full briefing and oral argument on legal issues presented if appropriate. Given the expedited and weighty nature of redistricting matters, we allowed full briefing on the merits of the parties' challenges and the opportunity for oral argument before we considered whether to grant review. We thank the parties, their attorneys, and amici curiae for their excellent presentation of the arguments in such an expedited fashion. We recognize this was no easy feat.

[6] Article VI, section 6 instructs:

> The Redistricting Board shall establish the size and area of house districts, subject to the limitations of this article. Each

work. We REVERSE the superior court's remand to the Board for further proceedings under the superior court's "hard look" analysis relating to public comments on the house districts. There is no constitutional infirmity with House Districts 3 and 4 and no need for further work by the Board.

House Districts 29, 30, and 36

The Matanuska-Susitna Borough and the City of Valdez separately challenge the superior court's determination that House Districts 29, 30, and 36 do not violate article VI, section 6 of the Constitution and should not otherwise be vacated due to procedural aspects of the Board's work. We AFFIRM the superior court's determination, with one exception: We conclude that the so-called "Cantwell Appendage" violates article VI, section 6 of the Constitution. The Cantwell Appendage renders House District 36 non-compact without adequate justification. House District 36 reaches across a local borough boundary, within which voters are by law socio-economically integrated with other borough voters,[7] to extract Cantwell residents from District 30 and place them in House District 36,

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> house district shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area. Each shall contain a population as near as practicable to the quotient obtained by dividing the population of the state by forty. Each senate district shall be composed as near as practicable of two contiguous house districts. Consideration may be given to local government boundaries. Drainage and other geographic features shall be used in describing boundaries wherever possible.

[7] *See* AS 29.05.031(a)(1) (requiring "social, cultural, and economic" integration before area may be incorporated as borough or unified municipality); *In re 2001 Redistricting Cases*, 44 P.3d 141, 146 (Alaska 2002) (recognizing same); *Hickel*

based primarily on the proposition that an apparent minority of Cantwell residents — shareholders of the Alaska Native Claims Settlement Act regional corporation headquartered in House District 36 — are more socio-economically integrated with similar shareholder residents in House District 36. But the Board's briefing about House Districts 3 and 4 argues: "Nothing in [article VI, section 6] states that the Board should disregard compactness to increase an already socio-economically integrated area's integration."[8] The Board mentions in its briefing that House District 30 was about 2% overpopulated and that moving the roughly 200 Cantwell residents eliminated about half the overage to the constitutionally targeted house district population of 18,335. This rendered both House Districts about 1% overpopulated. But House District 30's approximately 2% overpopulation with the Cantwell residents included, and House District 36's nearly perfect population without the Cantwell residents included, are well within constitutionally allowable parameters under our case law.[9] We therefore REVERSE the superior court's

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v. Se. Conf., 846 P.2d 38, 51-52 (Alaska 1992) (recognizing same).

[8] *Cf. Hickel*, 846 P.2d at 62 ("The requirements of article VI, section 6 shall receive priority *inter se* in the following order: (1) contiguousness and compactness, (2) relative socioeconomic integration, (3) consideration of local government boundaries, (4) use of drainage and other geographic features in describing boundaries."). At oral argument the Board asserted that there is no required priority among the constitutional requirements of article VI, section 6 and that the Board has broad discretion to balance those requirements. The Board did not acknowledge this aspect of *Hickel* nor did the Board suggest anywhere in its briefing or during oral argument that *Hickel* was wrongly decided or that our long-standing precedent should be overruled.

[9] The federal "Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable," though some deviation is expected and permissible.

determination to this limited extent, and remand to the superior court to remand this aspect of the house districts to the Board to correct the constitutional error.

Senate District K

The superior court determined that Senate District K was unconstitutional on the grounds of equal protection,[10] due process,[11] and violating the public hearings

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Reynolds v. Sims, 377 U.S. 533, 577, 579-81 (1964); U.S. Const. amend. XIV, § 1. For example, keeping political subdivisions, such as boroughs, intact may justify some population deviation. *Reynolds*, 377 U.S. at 580-81.

We previously have held that under the Alaska Constitution deviations below 10% were minimal and required no justification absent improper motive. *See Hickel*, 846 P.2d at 47-48; *cf. Braun v. Borough*, 193 P.2d 719 (2008) (analyzing deviation in borough redistricting context). Although technological advances often will make it practicable to achieve even lower deviations, and under the Alaska Constitution the Board must make a good faith effort to do so, *see In re 2001 Redistricting Cases*, 44 P.3d at 146, we have upheld deviations greater than 1%, *see In re 2001 Redistricting Cases*, 47 P.3d 1089, 1094 (Alaska 2002). Eliminating the Cantwell Appendage would improve the compactness of District 36 and keep together voters in the same borough in District 30, and there is no showing that doing so would have more than a de minimis effect on the statewide House Districts' average population deviation. The resulting roughly 2% population deviation in District 30 thus is justified.

[10] *See* Alaska Const. art. I, § 1; *Kenai Peninsula*, 743 P.2d at 1366 ("In the context of voting rights in redistricting and reapportionment litigation, there are two basic principles of equal protection, namely that of 'one person, one vote' — the right to an equally weighted vote — and of 'fair and effective representation' — the right to group effectiveness or an equally powerful vote." (quoting John R. Low-Beer, *The Constitutional Imperative of Proportional Representation*, 94 YALE L.J. 163, 163-64 (1984))).

[11] *See* Alaska Const. art. I, § 7; *Haggblom v. City of Dillingham*, 191 P.3d 991, 995 (Alaska 2008) ("At a minimum, due process requires that the parties receive notice and an opportunity to be heard.").

requirement.[12] The Board challenges this determination. We note that the superior court did not rule that the underlying house districts were unconstitutional and that no party asserts that the underlying house districts are unconstitutional. The superior court's determination relates solely to the senate pairing of house districts.[13] We AFFIRM the superior court's determination that the Board's Senate K pairing of house districts constituted an unconstitutional political gerrymander violating equal protection under the Alaska Constitution,[14] and we therefore AFFIRM the superior court's remand to the Board to correct the constitutional error.

Conclusion

This matter is REMANDED to the superior court for action consistent with this order. We do not retain jurisdiction.

Entered at the direction of the court.

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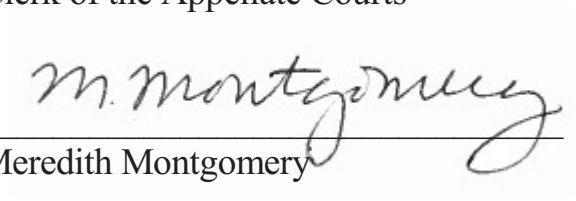
[12] *See* Alaska Const. art. VI, § 10 ("Within thirty days after the official reporting of the decennial census of the United States or thirty days after being duly appointed, whichever occurs last, the board shall adopt one or more proposed redistricting plans. The board shall hold public hearings on the proposed plan, or, if no single proposed plan is agreed on, on all plans proposed by the board.").

[13] *See* Alaska Const. art. VI, § 4 (requiring Redistricting Board to create 40 separate house districts and 20 senate districts, each composed of two house districts).

[14] *See Hickel*, 846 P.2d at 45 & n.11 (explaining Constitution's contiguity, compactness, and socio-economic integration requirements "were incorporated by the framers of the reapportionment provisions to prevent gerrymandering," including political gerrymandering); *In re 2011 Redistricting Cases*, 274 P.3d 466, 468 (Alaska 2012) ("The *Hickel* process also diminishes the potential for partisan gerrymandering and promotes trust in government.").

Clerk of the Appellate Courts



Meredith Montgomery

EASTAUGH, Senior Justice, concurring.

I agree in full with the court's resolution of these petitions. But I write separately because I have doubts about whether *Hickel v. Southeast Conference*[1] correctly described the priorities for applying the contiguity, compactness, and socio-economic integration criteria.[2] If I were reading the constitution in a vacuum, I would not necessarily conclude that the delegates agreed or that the Alaska Constitution's text requires that the first two criteria should have priority over the third. But there was no challenge to *Hickel*'s description of those priorities in this case, nor any contention its description should not be given stare decisis effect. Moreover, my doubts do not affect the outcome of any of these petitions, even as to the "Cantwell Appendage," because the asserted increase in socio-economic integration in House District 36 does not outweigh the diminution in that district's compactness.

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[1] 846 P.2d 38, 62 (Alaska 1992).

[2] *See id.* at 44-47, 62 (describing priorities for applying contiguity, compactness, and socio-economic integration criteria).

cc: Judge Matthews
Trial Court Clerk

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