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

MATANUSKA-SUSITNA BOROUGH and MICHAEL BROWN, individually, Plaintiffs, v. ALASKA REDISTRICTING BOARD, Defendant.	Case No. 3PA-21-02397CI

MOTION TO INTERVENE AS DEFENDANTS PURSUANT TO RULE 24(a) AND 24(b)

Doyon, Limited; Tanana Chiefs Conference; Fairbanks Native Association; Ahtna, Inc.; Sealaska; Donald Charlie, Sr.; Rhonda Pitka; Cherise Beatus; and Gordon Carlson (collectively, "Intervenors") move to intervene in this action as defendants in support of the House district map adopted by the Alaska Redistricting Board in its November 10, 2021 Proclamation of Redistricting ("Final Map"). The Intervenors are Alaska Native individuals and organizations with a strong interest in the redistricting process, including (as relevant here) an interest in achieving unified and effective representation for Alaska Native individuals and villages in the Interior region of Alaska.

The Intervenors satisfy the test for intervention as a matter of right under Alaska Rule of Civil Procedure ("Civil Rule") 24(a) because this motion is timely; the Intervenors have a direct,

protectable interest that may be impaired by the outcome of this litigation; and their interests are not adequately represented by any existing party. In the alternative, intervention is also proper under Civil Rule 24(b) because the Intervenors' arguments in defense of the Final Map indisputably share questions of law and fact with the claims at issue in this case. The Intervenors are also in a unique position to assist in the disposition of this action by providing evidence as to the constitutional redistricting factors relevant to the claims here.

This motion is supported by the memorandum of points and authorities filed herewith. For the reasons stated in the accompanying memorandum, the Intervenors respectfully request that the Court grant this motion and allow them to intervene as defendants in this action.

DATED this 10th day of December, 2021, at Anchorage, Alaska.

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Chief/Chairman

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Certificate of Service

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MATANUSKA-SUSITNA BOROUGH and MICHAEL BROWN, individually,	)	
Plaintiffs,	)	
v.	)	Case No. 3PA-21-02397CI
ALASKA REDISTRICTING BOARD,	)	
Defendant.	)	

MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE AS DEFENDANTS PURSUANT TO RULE 24(a) AND 24(b)

Doyon, Limited ("Doyon"); Tanana Chiefs Conference ("TCC"); Fairbanks Native Association ("FNA"); Ahtna, Inc. ("Ahtna"); Sealaska; Donald Charlie, Sr.; Rhonda Pitka; Cherise Beatus; and Gordon Carlson (collectively, "Intervenors") seek to intervene in this action as defendants in support of the House district map adopted by the Alaska Redistricting Board in its November 10, 2021 Proclamation of Redistricting ("Final Map"). As voters, participants in the Board's public process, and residents of House districts challenged by the plaintiffs, the Intervenors have a direct and constitutionally protected interest in this litigation. Moreover, as organizations that serve Alaska Natives across Interior and Southeast Alaska, several of the Intervenors are also in a unique position to present evidence relating to the socio-economic

integration of the challenged districts. The Intervenors satisfy the elements of the test for intervention as a matter of right under Alaska Rule of Civil Procedure ("Civil Rule") 24(a), and their participation would materially contribute to the litigation of this case. In the alternative, intervention is also appropriate under Civil Rule 24(b). Accordingly, the Intervenors respectfully request that the Court grant their motion.

DESCRIPTION OF INTERVENORS

Donald Charlie, Sr., Rhonda Pitka, Cherise Beatus, and Gordon Carlson (collectively, "Individual Intervenors") are each registered Alaska voters with an interest in the Alaska redistricting process and the outcome of this litigation. Donald Charlie, Sr. is a registered Alaska voter residing in Nenana, which is located in District 36 in the Board's Final Map. Charlie is Second Chief of the Nenana Native Association, a federally recognized Indian Tribe, and is a Doyon shareholder. Rhonda Pitka is a registered Alaska voter residing in Beaver, which is located in District 36 in the Board's Final Map. Pitka is Chief of the Native Village of Beaver, and is a Doyon shareholder. Cherise Beatus is a registered Alaska voter residing in Valdez, which is located in District 29 in the Board's Final Map, and is a Doyon shareholder. Gordon Carlson is the Vice President of the Native Village of Cantwell, and an Ahtna shareholder. He is a registered Alaska voter residing in Cantwell, which is located in District 36 in the Board's Final Map.

Doyon, TCC, FNA, Ahtna, and Sealaska (collectively, "Organizational Intervenors") are organizations dedicated to the advancement of Alaska Native people, each of which has an interest in this litigation on behalf of their members or shareholders. As discussed in more detail below, the Organizational Intervenors also participated extensively as a coalition in the redistricting process, including through oral and written testimony and by submitting a proposed redistricting plan for all 40 House districts.

Doyon is the regional Native corporation organized under the Alaska Native Claims Settlement Act ("ANCSA") to receive settlement lands and funds on behalf of the aboriginal peoples of the areas covered by the operations of TCC (including the areas around the Koyukuk, Middle and Upper Yukon Rivers, Upper Kuskokwim, and Tanana River).[1] A core component of Doyon's mission is "to promote the economic and social well-being of our shareholders and future shareholders, [and] to strengthen our Native way of life."[2] The borders of District 36 in the Final Map largely match Doyon's ANCSA regional boundary, and many Doyon shareholders reside in that district. However, Doyon shareholders also reside in each of the districts challenged by the plaintiffs in this litigation.

Dena' Nena' Henash, better known as the Tanana Chiefs Conference or "TCC", is an Alaska Native non-profit inter-tribal consortium "charged with advancing tribal self-determination and enhancing regional Native unity."[3] TCC's region covers an area of 235,000 square miles in Interior Alaska, and is entirely contained within the borders of District 36 in the Final Map (except for the portions that fall within the Fairbanks North Star Borough, which is contained in Districts 31-36). TCC provides a wide range of health care and social services in a way that balances traditional Athabascan and Alaska Native values with modern demands to 40 Alaskan communities, including 37 federally-recognized Tribes in Alaska's vast Interior region.[4] TCC has

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[1] *See* 43 U.S.C. § 1606(a)(5).

[2] Doyon, Ltd., *About Us*, https://www.doyon.com/about/ (last visited Dec. 8, 2021).

[3] Tanana Chiefs Conference, *About Us*, https://www.tananachiefs.org/about/ (last visited Dec. 8, 2021).

[4] The federally recognized Tribes located in the Tanana Chiefs Conference region are as follows: Alatna Village, Allakaket Village, Anvik Village, Arctic Village, Beaver Village, Birch Creek Tribe, Chalkyitsik Village, Circle Native Community, Evansville Village (aka Bettles Field), Galena Village (aka Louden Village), Healy Lake Village, Holy Cross Tribe, Hughes Village, Huslia Village, Koyukuk Native Village, Manley Hot Springs Village, McGrath Native Village, Native Village of Eagle, Native Village of Fort Yukon, Native Village of Minto, Native Village of Ruby, Native Village of Stevens, Native Village of Tanacross, Native Village of Tanana, Native Village of Tetlin, Native Village of Venetie Tribal Government, Nenana Native Association, Nikolai Village, Northway Village, Nulato Village, Organized

an interest in a unified voice and effective political representation for the people of the Interior region and the Alaska Native villages it represents.[5]

FNA is an Alaska non-profit corporation formed for the purpose of promoting "the spirituality, identity, unity, and physical and mental health of all Native people by providing quality programs and information to support personal, family, and community growth."[6] FNA provides a range of social services,[7] and it serves all residents of the greater Fairbanks area—including members and individuals residing in challenged District 36. FNA's vision for a "unified, healthy, and empowered Native community that embraces all cultures"[8] includes an interest in a unified voice and effective political representation for the Alaska Native people of Interior Alaska.

Ahtna is the regional Native corporation organized under ANCSA to receive settlement lands and funds on behalf of the aboriginal peoples of the areas covered by the operations of the Copper River Native Association (including the areas around Copper Center, Glenallen, Chitina, and Mentasta).[9] All of the Alaska Native communities within Ahtna's ANCSA region, including the Native Village of Cantwell, are located within District 36 of the Board's Final Map. (Some predominantly non-Native communities within the Ahtna region are included within District 29.) Ahtna shareholders reside in each of the districts challenged by the plaintiffs in this litigation.

Village of Grayling (a.k.a. Holikachuk), Rampart Village, Shageluk Native Village, Takotna Village, Telida Village, Village of Dot Lake, and Village of Kaltag. *See* Indian Entities Recognized by and Eligible To Receive Services from the United States Bureau of Indian Affairs, 86 Fed. Reg. 7554, 7557-58 (Jan. 29, 2021).

[5] Tanana Chiefs Conference, *Who we are*, https://www.tananachiefs.org/about/who-we-are/ (last visited Dec. 8, 2021).

[6] Fairbanks Native Association, *Amended Articles of Incorporation*, Article II, *available at* https://www.fairbanksnative.org/about-fna/profile/ (last visited Dec. 8, 2021).

[7] *See* Fairbanks Native Association, *Our Services*, https://www.fairbanksnative.org/our-services/ (last visited Dec. 8, 2021).

[8] Fairbanks Native Association, *Our Vision and Mission*, https://www.fairbanksnative.org/about-fna/profile/ (last visited Dec. 8, 2021).

[9] *See* 43 U.S.C. § 1606(a)(12).

Ahtna's mission includes promoting "responsible economic growth for future generations of Ahtna people," "with the goal of preserving, strengthening, and enhancing a cultural identity that has existed for thousands of years."[10] This mission includes an interest in a unified voice and effective political representation for its region, its shareholders, and the Alaska Native peoples of Interior Alaska.

Sealaska is the regional Native corporation organized under ANCSA to receive settlement lands and funds on behalf of the aboriginal peoples of Southeast Alaska.[11] Throughout this redistricting process, Sealaska has maintained its interest in "developing a statewide redistricting map that respects socioeconomically integrated regions and connections across Alaskan communities, ANCSA regional boundaries, geographic features, and communities of interest, while maintaining low population deviations."[12] The challenged House district boundaries contained in the Final Map meet these criteria, and Sealaska therefore maintains an interest in this litigation. In addition, Sealaska shareholders reside in each of the districts challenged by the plaintiffs in this litigation.

ARGUMENT

I. THE COURT SHOULD GRANT INTERVENTION AS A MATTER OF RIGHT UNDER RULE 24(a).

Under Rule 24(a), "anyone shall be permitted to intervene in an action" if the applicant has an interest "relating to the . . . transaction which is the subject of the action" and "disposition of the action may as a practical matter impair or impede" that interest, unless the interest "is

[10] Ahtna, Inc., *About Us*, https://www.ahtna.com/about/about-us/ (last visited Dec. 8, 2021).

[11] *See* 43 U.S.C. § 1606(a)(10).

[12] Sealaska, *Written Testimony to the Alaska Redistricting Board*, October 30, 2021, *available at* https://www.akredistrict.org/board-audio-minutes (last visited Dec. 8, 2021).

adequately represented by existing parties."[13] In interpreting Rule 24(a), the Alaska Supreme Court has set out a four-part test for determining whether a party has a right to intervene:

> (1) the motion must be timely; (2) the applicant must show an interest in the subject matter of the action; (3) it must be shown that this interest may be impaired as a consequence of the action; and (4) it must be shown that the interest is not adequately represented by an existing party.[14]

If that standard is met, a court *must* grant intervention.[15] The Alaska Supreme Court has also emphasized that the Alaska courts "favor allowing access to courts and will liberally construe Alaska Civil Rule 24(a)."[16]

Here the proposed intervenors satisfy all four elements of the test, and the Court should accordingly grant intervention as a matter of right.

A. The Motion to Intervene Is Timely.

The Intervenors' motion is filed just 8 days after the complaint and before any other litigation or procedural activity has taken place in the case. It is timely under any reasonable interpretation of the applicable standard.

The timeliness of a motion to intervene depends on the context of a particular case, assessed through a four-part test: Alaska courts "consider the length of the delay before the movant filed, the prejudice to existing parties if the motion is granted, the prejudice to the proposed intervenors if the motion is denied, and any 'idiocratic circumstances' that militate for or against intervention."[17] The "most important consideration" in this analysis "is the prejudice caused by

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[13] Alaska R. Civ. P. 24(a).

[14] *Hopper v. Est. of Goard*, 386 P.3d 1245, 1247 (Alaska 2017) (quoting *State v. Weidner*, 684 P.2d 103, 113 (Alaska 1984)).

[15] *See* Alaska R. Civ. P. 24(a) (providing that "anyone *shall* be permitted to intervene" if they meet the standard set out in the rule (emphasis added)).

[16] *Alaskans for a Common Language, Inc. v. Kritz*, 3 P.3d 906, 912 (Alaska 2000).

[17] *Anchorage Baptist Temple v. Coonrod*, 166 P.3d 29, 33 n.12 (Alaska 2007) (quoting *Scammon Bay Ass'n, Inc. v. Ulak*, 126 P.3d 138, 143 (Alaska 2005)).

the applicant's delay in making its motion," if any.[18] Where a motion to intervene is filed before the answer to the complaint is due, both Alaska courts and federal courts have generally found the motion to be timely.[19]

Here, all of the relevant factors indicate that the motion is timely. The length of time between the filing of the complaint and the Intervenors' filing of the instant motion was short: just 8 days. Under Civil Rule 12(a), the Board's answer to the complaint is not due until at least December 22, another 12 days from now.[20] No proceedings have yet taken place, nor have any related redistricting cases been consolidated pursuant to Civil Rule 90.8(f).[21] Because the litigation has only just begun, the Intervenors would be able to join the litigation where it stands, without any delay, and there can be no prejudice to the other parties.[22] On the other hand, as discussed in detail below, the Intervenors would be severely prejudiced if intervention is denied because they will lose the opportunity to protect their interests by litigating and presenting evidence in support of the Final Map. Finally, to the extent that it is relevant as a unique factor in the redistricting context, this motion was filed within the 30-day period for filing challenges to the Proclamation of Redistricting.[23]

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[18] *Scammon Bay Ass'n*, 126 P.3d at 143.

[19] *Anchorage Baptist Temple*, 166 P.3d at 33 n.12 (citing *NW. Forest Res. Council v. Glickman*, 82 F.3d 825, 837 (9th Cir. 1996)); *cf. Scammon Bay Ass'n*, 126 P.3d at 143-46 (finding intervention timely over *two years* into the litigation process, when the situation changed such that an entity's interests became jeopardized).

[20] The publicly available docket on Courtview does not indicate whether service has yet been effected.

[21] *See also* Presiding Judges' Administrative Order Regarding Redistricting Challenges, *In re Redistricting Challenges* (Nov. 19, 2021).

[22] For purposes of timeliness, the relevant inquiry is not "the prejudice that would follow from granting intervention generally" but rather "the prejudice specifically resulting from [a movant's] lack of diligence, if any, in moving to intervene." *Scammon Bay Ass'n*, 126 P.3d at 145 (citing (*Stallworth v. Monsanto Co.*, 558 F.2d 257, 267 (5th Cir. 1977)). Here, there has been no lack of diligence in moving to intervene.

[23] *See* Alaska Const. art. VI, § 11; *see also* Alaska R. Civ. P. 90.8(b)(1).

B. The Intervenors Have a Direct, Substantial, and Protectable Interest in the Subject of this Action.

Under the second intervention factor, the Alaska Supreme Court has further elaborated that "the requisite interest for intervention as a matter of right must be direct, substantial, and significantly protectable."[24] Courts may look to other elements of Alaska law in determining whether an asserted interest meets this standard.[25] For the reasons described below, the Individual Intervenors and the Organizational Intervenors all have a "direct, substantial, and significantly protectable" interest in this action challenging the Proclamation of Redistricting and the Final Map.

1. Individual Intervenors

Each of the Individual Intervenors is a registered Alaska voter and therefore has a constitutionally protected right to participate in legal challenges to the Redistricting Board's Proclamation. Article 6, section 11 of the Alaska Constitution provides that "[a]ny qualified voter may apply to the superior court to compel the Redistricting Board . . . to correct any error in redistricting." The Alaska Supreme Court has interpreted this right broadly, holding that "'[a]ny qualified voter' is authorized to institute and maintain a reapportionment suit" regarding alleged errors in any district, regardless of whether the voter resides in the challenged district.[26] And just as citizens have a right to *challenge* districts they believe to be unconstitutional, section 11 similarly encompasses Intervenors' right to participate in the litigation *defending* the House districts drawn by the Board. These are two sides of the same coin.

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[24] *Hopper*, 386 P.3d at 1248 (quoting *Weidner*, 684 P.2d at 113).

[25] *See id.* (looking to the Alaska Statutes and Civil Rule 17 to conclude that conservators had a legally protectable interest in litigation concerning ward's financial dealings).

[26] *Carpenter v. Hammond*, 667 P.2d 1204, 1209 (1983) (alteration in original).

This constitutionally protected interest gives the Intervenors standing to participate in this lawsuit,[27] and it is similarly adequate to satisfy the "interest" prong of the Rule 24 inquiry. Where the constitution grants citizens a specific right, the Supreme Court has recognized that citizens may have "a constitutionally based, heightened interest in a lawsuit" in which they seek to intervene.[28] That is precisely the case here, where each of the Individual Intervenors is a qualified voter with a constitutionally protected right to participate in the redistricting litigation, and particularly where they live and vote in districts challenged by the plaintiffs. Such an interest "is a 'direct, substantial and significantly protectable' interest as required by Civil Rule 24(a),"[29] and the Intervenors have therefore satisfied this prong of the test.

In addition to their specific constitutional right, the Individual Intervenors also have common law standing to participate in this litigation. As citizens of Alaska, each Individual Intervenor has an interest in a constitutionally proper redistricting process.[30] Each Individual Intervenor also resides in a House district challenged by the plaintiffs in this action.[31] Although residency in a district is not necessary to establish standing for purposes of redistricting litigation, it heightens the Individual Intervenors' interest in this action because the outcome of this litigation could directly impact the districts in which the Individual Intervenors will vote.[32]

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[27] *Id.*

[28] *Alaskans for a Common Language*, 3 P.3d at 912 (recognizing that citizens who participated in the constitutionally-sanctioned initiative process had a heightened interest in defending the initiative); *see also Anchorage Baptist Temple*, 166 P.3d at 34 (recognizing equal protection issue as sufficient grounds to establish interest for purposes of intervention); *McCormick v. Smith*, 793 P.2d 1042, 1044 (Alaska 1990) (recognizing voters' right to intervene in a case involving a recall election because the right to recall is provided by the Alaska Constitution).

[29] *Alaskans for a Common Language*, 3 P.3d at 912 (quoting *Weidner*, 684 P.2d at 113).

[30] *See Hammond*, 667 P.2d at 1210.

[31] The plaintiffs in this action challenged House districts 25, 26, 27, 28, 29, 30, and 36. *See* Compl. ¶¶ 28, 46, 47.

[32] Intervenor Rhonda Pitka also testified before the Board during the public comment process, further demonstrating her interest in this action under common law standing principles. *See* Alaska Redistricting

2. Organizational Intervenors

The Organizational Intervenors have a protectable interest for purposes of Rule 24(a) because they have standing to assert their members' interest in this litigation, and also because the organizations themselves participated in the proceedings before the Redistricting Board and have an interest in defending the elements of their proposed redistricting map that were adopted by the Board in its Final Map.

"[A]n association has standing to bring suit on behalf of its members" if three criteria are met: "(1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.[33] This test applies equally to entities seeking to participate as plaintiffs and those seeking to participate as defendants, as is the case here.[34] The Organizational Intervenors satisfy all three prongs of the test.

First, members of each Organizational Intervenor have a constitutionally protected right to participate in the redistricting litigation as Alaska voters, as discussed above.[35] As Alaska-based non-profit and for-profit corporations whose members are Alaska Native individuals, each Organizational Intervenor has numerous members who are qualified Alaska voters and therefore "would otherwise have standing to sue in their own right."[36]

Board, Meeting Minutes (Aug. 23, 2021), *available at* https://www.akredistrict.org/board-audio-minutes (Dec. 15, 2021 Board Packet) (last visited Dec. 8, 2021).

[33] *Alaskans for a Common Language*, 3 P.3d at 915 (citing *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977)).

[34] *Id.* at 915 n.39 (citing *Trustees for Alaska v. State*, 736 P.2d 324, 327 (Alaska 1987)).

[35] *See* Alaska Const. art. VI, § 11.

[36] *See Alaskans for a Common Language*, 3 P.3d at 915.

Second, the interests at stake here—unified and effective representation for Alaska Native individuals and villages in the Interior region of Alaska—are germane to the Organizational Intervenors' purposes. Each Organizational Intervenor works toward the social and economic advancement of the Alaska Native people it serves,[37] a goal which is closely tied to and directly furthered by adequate representation of Alaska Native voices in state government. This interest would be directly impaired if the plaintiffs' challenge to the Final Map is successful.

And third, the Organizational Intervenors are equipped to represent their members in this litigation because it does not require the participation of individual members. The claims asserted by the plaintiffs seek to compel the Board to re-draw certain House districts, and the intervenors seek rejection of those claims; nothing about the claims or relief would require the participation of particular individual citizens. Although several of the Organizational Intervenors' members have chosen to participate in this litigation as intervenors, the organizations' other members need not participate in order to fully develop and litigate the claims at issue here. Indeed, the representation of Alaska Native voices in state elections is a collective interest that the Organizational Intervenors are well suited to represent. Accordingly, the Organizational Intervenors satisfy all three prongs of the test for organizational standing, and they have standing to participate in this litigation on behalf of their members.

Moreover, the Organizational Intervenors also have a direct interest in this action because they participated extensively in the Board's proceedings leading up to the adoption of the Proclamation of Redistricting. The Organizational Intervenors, working together as a coalition often referred to as the "Doyon Coalition," developed and submitted a proposed redistricting plan to the Board. The Board then "adopted [the] proposed plan submitted by the Doyon Coalition for

[37] *See supra* at 3-5.

inclusion in the statewide public hearing tour,"[38] in accordance with Article VI, section 10(a) of the Alaska Constitution. Each one of the Organizational Intervenors submitted testimony during the public hearings held by the Board pursuant to section 10(a).[39] Several elements of the Doyon Coalition's proposed map were ultimately incorporated into the Final Map adopted by the Board in its Proclamation, including elements of House District 36 which encompasses much of the Interior Alaska region inhabited by TCC's, Doyon's, and Ahtna's members.[40] Clearly, the members of the Doyon Coalition (i.e., the Organizational Intervenors here) have a strong interest in defending the adoption of House districts similar to those proposed by the Coalition.[41] The Organizational Intervenors therefore have a direct, substantial, and significantly protectable interest in this litigation both on their own and on behalf of their members.

Finally, there is direct precedent for recognizing the interests asserted here. When a similar group of organizations and individuals sought to intervene as defendants in the 2001 redistricting litigation—including two of the Organizational Intervenors here, Doyon and TCC—the Superior Court granted intervention, finding that the intervenors had met each prong of the test for Rule 24(a) intervention.[42] The Court should follow the same approach here.

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[38] Alaska Redistricting Board, *Doyon Coalition Proposed Plan*, https://www.akredistrict.org/map-gallery/doyon-coalition-plan/ (last visited Dec. 8, 2021).

[39] *See, e.g.*, Testimony before the Alaska Redistricting Board, September 18, 2021, *available at* https://www.akredistrict.org/board-audio-minutes (last visited Dec. 8, 2021) ("[The coalition of Doyon, TCC, FNA, Sealaska, and Ahtna] represents a broad range of interests across the State of Alaska, with a particular focus on ensuring effective and fair representation for Rural Alaska."). The coalition also provided testimony to the Board on numerous other occasions and participated in the statewide public comment "road show" in order to answer questions from Alaska citizens about its proposed map and seek input for updates and improvements to its map.

[40] *See* Alaska Redistricting Board, Proclamation of Redistricting (Nov. 10, 2021), *available at* https://www.akredistrict.org/2021-proclamation/ (last visited Dec. 8, 2021).

[41] *See Alaskans for a Common Language*, 3 P.3d at 912-13 (recognizing initiative sponsors' interest in defending their successful ballot initiative).

[42] *See* Order Allowing Intervention, *In re 2001 Redistricting Cases*, No. 3AN-01-8914 CI (Alaska Super. Ct. Oct. 5, 2001) (attached hereto as Exhibit A).

C. This Action May Impair the Intervenors' Interests.

Just as the Intervenors have a direct interest in this action, it is equally clear that their interests may be impaired or impeded by the outcome of the litigation. If the plaintiffs are successful in their challenge to the disputed House districts, it will harm the Intervenors' interests in multiple ways.

At the most general level, every voter has an interest in a constitutionally proper redistricting plan; that is why Article VI, section 11 gives "any qualified voter" a right to challenge the redistricting plan. Intervenors believe the final House district map adopted by the Board is not only constitutional but provides for fair and effective representation for the Native peoples of the Interior region; accordingly, not only will their interests be impaired if the map (or a portion of it) is struck down by the courts, but making the changes urged by the plaintiffs would reduce the fairness and effectiveness of this representation. More specifically, the Board's Final Map carefully accounts for ANCSA corporation boundaries as a key component of maintaining the constitutionally required socio-economic integration of each House district.[43] If the plaintiffs are successful in this action and the challenged districts are declared invalid, the Alaska Constitution *requires* the Board to redraw these districts.[44] The plaintiffs' success in this lawsuit would therefore have a direct impact on the Intervenors' interests. Critically, because redistricting is a zero-sum game, changes to the boundaries of *any* district necessarily will have reverberating effects on other districts. Therefore, if any portion of the Final Map is struck down, boundaries will need to be redrawn, and the Intervenors' interest in preserving those boundaries would be impaired.

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[43] *See* Alaska Const. art. VI, § 6.

[44] *See* Alaska Const. art. VI, § 11 ("Upon a final judicial decision that a plan is invalid, the matter shall be returned to the board for correction and development of a new plan.").

The Final Map adopted by the Board also properly protects the Individual Intervenors' (and the Organizational Intervenors' members') right to equal protection and an equally powerful vote, by carefully balancing population with the other constitutional considerations.[45] If portions of the Final Map are struck down and the districts are redrawn, the Intervenors' (and Intervenors' members') equal protection rights could be directly impaired.

All of these impacts are particularly direct in the current case. The plaintiffs specifically challenge certain districts—especially districts 36 and 29—which contain the regions directly represented by several of the Organizational Intervenors and where the Individual Intervenors reside and vote. In addition, the Organizational Intervenors have members or shareholders residing in all of the challenged districts. And finally, much of the Organizational Intervenors' advocacy during the redistricting process was specifically concerned with creating a unified Interior district with substantially similar borders to District 36 in the Final Map. These factors supported Doyon and TCC's successful motion to intervene in the 2001 redistricting litigation, and they similarly support intervention here.[46]

D. The Board Cannot Adequately Represent Intervenors' Interests.

Because the Intervenors' interests diverge significantly from the Redistricting Board's interests, and because the Intervenors have an interest in and unique capacity to present evidence

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[45] *See* Alaska Const. art. VI, § 6; *see also, e.g., Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1366 (Alaska 1987) ("[T]here 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.").

[46] Order Allowing Intervention, *In re 2001 Redistricting Cases*, No. 3AN-01-8914 CI (Alaska Super. Ct. Oct. 5, 2001). That direct impact distinguishes this case from at least one other instance where the court found an impact too speculative because it concerned a district that was not directly challenged and only *may* have been altered on remand, depending on how the Board chose to redraw the districts. *See* Order Denying Ketchikan's Motion to Intervene and Allowing Participation as Amicus Curiae Only, at 3, *In re 2011 Redistricting Cases*, No. 4FA-11-2209 CI (Alaska Super. Ct. Sept. 9, 2011) (attached hereto as Exhibit B). In that case, unlike here, the proposed intervenor did "not oppose the arguments of the other parties on the merits" and instead was concerned with possible impacts later in the process. *Id.* at 5.

regarding the claims at issue here, the Intervenors' interests are not adequately represented by any other party, including the Redistricting Board. Courts "presume that the state will adequately represent the interests of all of its citizens in trying to uphold a [state action] against a constitutional challenge," but that presumption can be rebutted by "a showing of collusion, adversity of interest, possible nonfeasance, or incompetence."[47] Consistent with their general approach that "favor[s] allowing access to courts and . . . liberally construe[s] Alaska Civil Rule 24(a),"[48] in practice the Alaska courts have applied this standard in a manner that frequently allows parties to intervene on the same side of a case as the State. In effect, Alaska Courts have understood "adverse" interests in this context to mean divergent interests rather than directly opposing interests.

In *Anchorage Baptist Temple v. Coonrod*, for instance, the Alaska Supreme Court held that three churches should have been allowed to intervene on the same side as the State because they intended to raise a constitutional issue that the State was unlikely to raise, and this was sufficient to demonstrate an "adverse" interest.[49] In *Alaskans for a Common Language*, the Supreme Court found adversity of interest where prior actions by the Attorney General had created the possibility of a public perception that the State would not zealously defend the challenged ballot initiative.[50] Similarly, in granting intervenor status to the similar coalition of Alaska Native voters and organizations in *In re 2001 Redistricting Cases*, the superior court implicitly recognized that the Board could not adequately represent the intervenors' interests, to such an extent that their interests could be considered "adverse."[51]

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[47] *Anchorage Baptist Temple*, 166 P.3d at 34 (quoting *Alaskans for a Common Language*, 3 P.3d at 913).

[48] *Alaskans for a Common Language*, 3 P.3d at 912.

[49] *Anchorage Baptist Temple*, 166 P.3d at 35.

[50] *Alaskans for a Common Language*, 3 P.3d at 913-14.

[51] *See* Order Allowing Intervention, *In re 2001 Redistricting Cases*, No. 3AN-01-8914 CI (Alaska Super. Ct. Oct. 5, 2001).

The same is true here. As an entity created pursuant to the Alaska Constitution to carry out constitutionally prescribed redistricting duties, the Redistricting Board serves all citizens of the State.[52] The Board may not advocate for or seek to protect a particular group's interests, including the Intervenors' interests in preserving components of the House Districts they advocated for. The Board's interests therefore can be said to be "adverse" to the Intervenors' interests for purposes of this standard. Moreover, as organizations serving Alaska Native people in Interior Alaska, several of the Intervenors are in a unique position to present evidence regarding the constitutional socio-economic integration factor for the Interior districts challenged by the plaintiffs, including House districts 29 and 36. This particular competence possessed by the Intervenors (and not possessed by the Board) also weighs in favor of finding that the Intervenors' interests cannot be adequately represented by the Board. The Intervenors have accordingly rebutted the presumption of adequate representation, and this prong of the intervention test is met.

For these reasons, the Intervenors amply satisfy all four of the factors for intervention as a matter of right, and the Court should grant intervention pursuant to Civil Rule 24(a).

II. IN THE ALTERNATIVE, PERMISSIVE INTERVENTION IS APPROPRIATE UNDER RULE 24(b).

If the Court were to conclude that Intervenors do not meet the standard for intervention as a matter of right under Civil Rule 24(a), the Court should nonetheless grant permissive intervention pursuant to Rule 24(b). Rule 24(b) provides: "Upon timely application anyone may be permitted to intervene in an action when an applicant's claim or defense and the main action have a question of law or fact in common." Here, the Intervenors' motion is timely.[53] And it is beyond reasonable dispute that the Intervenors' defense—*i.e.*, their argument that the House districts adopted in the

[52] Alaska Const. art. VI, § 8.

[53] *See supra* Section I.A.

Proclamation of Redistricting are constitutional—shares questions of law *and* fact with the claims asserted in this action.

Moreover, granting intervention would assist in the disposition of this litigation because of the Intervenors' unique expertise and ability to present evidence regarding application of the constitutional redistricting factors to several of the districts challenged here.[54] The Intervenors intend to present evidence that will complement the evidence presented by the Board, and they will coordinate with the Board to avoid any duplication. Only intervention can achieve this benefit; because the Intervenors intend to present evidence to the court (as is specifically permitted in redistricting litigation[55]), their ability to protect their interests and assist the litigation in this manner would not be equally served through amicus participation. This Court should accordingly permit the Intervenors to intervene in this matter under Rule 24(b) even if it does not grant intervention as a matter of right.

CONCLUSION

For the foregoing reasons, the Intervenors have shown that intervention is proper under Civil Rule 24(a), and the Court should grant intervention as a matter of right. In the alternative, permissive intervention is proper and would be beneficial in this litigation, and the Court should grant intervention under Rule 24(b).

DATED this 10th day of December, 2021, at Anchorage, Alaska.

DOYON, LIMITED
Allen Todd
General Counsel
Alaska Bar. No. 9811082

[54] *See supra* Section I.D.

[55] Alaska R. Civ. P. 90.8(d).

TANANA CHIEFS CONFERENCE
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Chief/Chairman

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By: */s/ Nathaniel Amdur-Clark*
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Certificate of Service

I certify that on December 10, 2021, a copy of the foregoing document was served via email on:

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and courtesy copy to:

Matthew Singer – msinger@schwabe.com

/s/ Karin Gustafson
Karin Gustafson

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

IN RE 2001 REDISTRICTING CASES,

Plaintiffs,

v.

ALASKA REDISTRICTING BOARD, et al.,

Defendants.

Consolidated Case No. 3AN-01-8914 Civil
1KE-01-0316 CI 3AN-01-8996 CI
4FA-01-1592 CI 3AN-01-8908 CI
4FA-01-1608 CI 3AN-01-9026 CI
3VA-01-0040 CI 3AN-01-8995 CI

ORDER ALLOWING INTERVENTION

This court has carefully considered the motion to permit intervention by Walter Sobeloff, Sr., Robin Renfroe, Richard Glenn, Steve Ginnis, Walter Johnson, Dewey Skan, Teresa Nelson, Gail Schubert, Doyon, Limited, and Tanana Chiefs Conference, Inc., and the parties' responses to the motion. The court finds that the movants have met the standards for intervention as of right pursuant to Alaska Civil Procedure Rule 24(a) and for permissive intervention pursuant to Alaska Civil Procedure Rule 24(b). Therefore, the motion to intervene is GRANTED.

DATED this 5 day of ~~September~~ October, 2001.

...ify that on 10/8/01 a copy of the above was mailed to each of the following at their addresses of record: Feldman, Orlansky, Botelho, Baldwin
Secretary/Deputy Clerk
Gerdelsky, Parker, Cole, Ginsberg, Klose, Alaska, Kleinkauf, Wolland, Jacobson, Walker, Lamoureux, Eggers

Mark Rindner
Alaska Superior Court Judge

SEP 1 2001

LAW OFFICES OF
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

IN RE: 2011 REDISTRICTING CASES:)
)
)
Case No. 4FA-11-2209CI

Order Denying Ketchikan's Motion to Intervene and Allowing Participation as Amicus Curiae Only

I. Redistricting Litigation Context

The Alaska Constitution zealously safeguards the bedrock of democracy: the fair representation of its citizens in the legislature. The mandates for the creation of 40 house districts and 20 senate districts are designed to effectuate a body of governance that is as representative as possible given the breadth and scope of the state. Issues regarding whether a particular redistricting plan comports with the constitutional goals are anticipated by the Alaska Constitution.[1] Indeed, the court is not aware of any other type of litigation under the Alaska Constitution that has mandatory priority of all other matters. Court rules implementing procedures for hearing redistricting cases in an expedited manner are designed to not only make findings of fact and conclusions of law on the merits, but to do so in a time frame that allows the trial court findings to be reviewed by the Alaska Supreme Court, implement judicial changes, if any, and to have districts finalized in time for elections to occur on time and without disruption.[2]

Redistricting consideration occurs every decade predicated upon the decennial U.S. census. The Redistricting Board has 30 days after the release of the census data to develop a proposed plan and 90 days to adopt a redistricting plan consistent with the

[1] AK Const. Art. VI Sec. 11
[2] Alaska R. Civ. P. 90.8(c)

results of the census.[3] Individuals and organizations who believe the redistricting plan does not comport with Alaska law have 30 days after the adoption of the plan to file a lawsuit.[4] Litigation most recently occurred in 2001 and involved many parties, including political parties and tribes.

II. Current Litigation

The 2010 census resulting in the redistricting plan is at issue in the instant litigation. Unlike the plan arising from the 2000 census, the current litigation resulted in only three lawsuits. The Fairbanks filed cases involve House Districts 1-6, House District 38 and Senate Districts A and B. The Juneau filed case involves only one district House District 32. Everyone else in the state, including the Ketchikan Gateway Borough, accepted the redistricting plan. Thus, unlike the 2000 census, the current litigation is focused on few plaintiffs and few districts. And, based on the pleadings and comments from counsel at scheduling meetings, the legal issue is likely to be tightly focused on whether the federal Voting Rights Act requirements justify deviation from the Alaska Constitutional requirements of contiguity, continuity, and socio-economic integration. The extant parties have met and agreed upon pretrial deadlines and procedures designed to address these issues within the shortened time frame demanded for this type of litigation. Trial is scheduled for the week of 9 January 2012.

On 29 August 2011 the Ketchikan Gateway Borough filed a motion to intervene, or in the alternative, for leave to participate as an amicus curiae. Consistent with the expedited character of this case, the court ordered the parties to file responsive pleadings on shortened time. The motion is now ripe.

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[3] AK Const. Art. VI Sec. 10
[4] Alaska R. Civ. P. 90.8(b)(1)

III. Intervention

A. *Introduction.* Ketchikan is concerned that a remedy to Petersburg's complaint may impermissibly dilute the votes of Ketchikan residents by inclusion in an unreasonably large population or divide Ketchikan residents into two separate house districts. Ketchikan moves to intervene by right and in the alternative to permissively intervene, and in the second alternative to participate as amicus curiae. Both Fairbanks Plaintiffs, Petersburg, and the Board opposes Ketchikan's motion to intervene, but do not oppose amicus curiae participation

B. Rules. A four-part test is imposed to determine if the court is required to grant intervention as a matter of right: (1) the motion must be timely; (2) the applicant must show an interest in the subject matter of the action; (3) it must be shown that this interest may be impaired as a consequence of the action; and (4) it must be shown that the interest is not adequately represented by an existing party.[5]

Permissive Intervention may take place when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.[6]

C. *Arguments.* Ketchikan argues (1) that they are timely, as an answer in this case was just filed on August 10th; (2) their interest in the subject matter is significant, as they have participated actively in the redistricting process; (3) their interest may be impacted due to Petersburg's complaints and the various remedies available; (4) their interests are not adequately represented by the Board because the Board divided

[5] Alaska R. Civ. P. 24(a)
[6] Alaska R. Civ. P. 24(b)

Ketchikan in between two districts in previous plan proposals and does not recognize the importance of following municipal boundaries.

Ketchikan argues they should be able to permissively intervene because they share common issues of law and fact with the defendant and want to uphold the Board's decision. Ketchikan also argues that no party can claim prejudice from the intervention of Ketchikan, as little or no discovery is required with respect to them.

Fairbanks plaintiffs argue that Ketchikan's motion is untimely within the unique context of redistricting. FNSB argues that Ketchikan's interest is not significant because they are not alleging that Petersburg's complaint is incorrect and does not have an interest with respect to either of the Fairbanks suits. Fairbanks plaintiffs also argue that Ketchikan's interest is more aligned with the plaintiffs in this case, as they also object to breaking up municipal boundaries. FNSB and Petersburg contend that the appropriate time for Ketchikan to address their concerns is when the Board is actually implementing the court's order. Petersburg argues that Ketchikan is adequately represented because the Board is defending their plan vigorously. Petersburg argues that Ketchikan intervention will dilute the parties' focus on presenting their position in this expedited litigation.

The Board argues that Ketchikan lacks standing to intervene in this case because Ketchikan is not a "qualified voter" and therefore lacks standing to participate as a party.

In Ketchikan's reply they argue the general practice has been to allow municipal participation as a party if another party has voter standing.

Ketchikan also points out that while it is correct that the Board implements the changes, the court guides and directs the implementation in the first place.

D. Intervention by Right. Ketchikan is not entitled to intervene by right for the following reasons. First, Ketchikan did not timely file within 30 days of the final plan[7].

Second, while Ketchikan has a significant interest in the redistricting plan, they do not have a significant interest in this specific litigation, as they do not oppose the arguments of the other parties on the merits. If we follow Ketchikan's logic, almost anyone in any area of Alaska has a significant interest because any change implemented by the Board has the capability of affecting other districts, therefore any voter that is content with their district and wants to protect it should join.

Third, while Ketchikan's interest may be impaired, this is speculative and contingent on particular outcomes chosen by the Board. It appears that even if Ketchikan is a party, the court will not be able to tell the Board specifically how to remedy the situation as the court guides and does not implement.

And finally, the Board is representing Ketchikan's interest by defending the plan. Ketchikan would be making many of the same legal arguments as the Board. It is unclear what other legal arguments Ketchikan could bring to the table as Ketchikan's interest may not necessarily bear on whether Petersburg is redistricted appropriately. Ketchikan would mostly be echoing the Board, although Ketchikan agrees with the plaintiffs general argument that municipality boundaries should be respected.

E. Permissive Intervention. Allowing Ketchikan to permissively intervene would create delay for the other parties.

Status as a party invokes a variety of benefits and burdens. For instance, a party has a right to file pleadings on its own behalf, including independent claims for relief by

[7] Alaska Civil Rule 90.8

way of cross-complaints or third party complaints, be served by all parties with all pleadings, promulgate discovery, conduct depositions, and present evidence at trial. The burden on other parties is significant in this case where time is limited both for discovery and trial, but also the extant parties would be compelled to share very limited trial time.

The advent of another party, or parties, in not consistent with orderly and expedited resolution of issues at hand, particularly since issues of socio-economic integration do not appear to be a factual issue but rather whether deviation from that requirement, as well as others, is justified by the federal Voting Rights Act. Those issues are being vigorously pursued by all parties and there is no benefit to allowing an entity to intervene that would outweigh the burden of adding another party at this point. This is particularly true where Ketchikan's claim is only one of *futurity*. There is no decision yet made regarding whether the redistricting plan will be modified at all. If the plan is modified, then Ketchikan is in no different position than other districts that may have existing boundaries modified.

The board has already conducted numerous hearing around the state in preparation for the completion of the plan. Evidence of antipathy or disconnectedness between the people of Ketchikan and Craig does nothing to advance the issues of whether the existing plan is legally sufficient or not.

F. Conclusion Regarding Intervention. Ketchikan has not satisfied the factors to intervene by right. Ketchikan could intervene permissively at the court's discretion, but it has the potential to delay the expedited nature of the case without contributing any new legal argument. Ketchikan's motion to intervene is DENIED.

IV. Amicus Curiae

A. Introduction. Amicus curiae mainly participate in three different ways (1) writing a brief; (2) presenting testimony in court; (3) providing the court with a learned treatise. Amicus curiae most often participate on the appellate level; it is rarely done at the trial court level. Given the importance of elections in a democracy, the request by Ketchikan for participation as amicus curiae should be considered.

B. Rule. Alaska Rules of Appellate Procedure 212(c)(9) Brief of an Amicus Curiae. The only Alaska rule regarding amicus curiae is, as noted above, appellate in nature. It does offer some guidance on the nature and extent of how an amicus curiae participates in an action.

A brief of an amicus curiae may be filed only if accompanied by written consent of all the parties, or by leave of the appellate court granted on motion, or at the request of the appellate court. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Unless all parties otherwise consent, any amicus curiae shall file its brief within the time allowed to the party whose position as to affirmance or reversal the amicus brief will support, unless the court for cause shown shall grant leave for later filing, in which event it shall specify within what period an opposing party may answer. The brief shall be in the form prescribed by this rule and shall be duplicated and served pursuant to the requirements of Rule 212(a)(2). A motion of an amicus curiae to participate in the oral argument will be granted only for **extraordinary** reasons.

C. *Discussion.* While amicus curiae participation is rare at the trial court level, it does occur in complex cases and is usually offered to an entity that is denied the right to intervene. Ketchikan has been denied the right to intervene in this case for the reasons noted above. The same reason for not allowing Ketchikan to intervene as a party militate that the role of any amicus curiae not include the ability to otherwise participate as a party. The crux of the matter is to provide a mechanism by which Ketchikan can meaningfully comment on the evidence, state its position, and explain its motives without impeding, delaying, or complicating this already extraordinary action.

D. *Arguments.* In Ketchikan's reply they discuss their amicus participation. Ketchikan argues that if the court conducts a trial and does not allow briefing after the evidentiary phase, briefing is ultimately not a meaningful option and again request permissive intervention. Ketchikan argues that they should be able to make closing remarks or write a brief at the close of evidence. They specifically want to present evidence on the animosity between the Ketchikan and the City of Craig and how it would be a bad idea to redistrict them together.

E. *Conclusion Regarding Amicus Curiae.* Ketchikan's arguments for the expanded role of an amicus curiae to participate in the action as a limited party by presenting evidence and making arguments at trial are misplaced. Ketchikan can monitor the progress of the case on its own and shall be permitted to file an amicus brief which shall be due within a 3 days after the close of evidence. This brief shall not exceed 15 pages. Ketchikan shall not be allowed to present testimony or have any oral argument. Ketchikan shall serve all extant parties with this brief No extant party need serve

anything on Ketchikan. Subject to these qualifications, Ketchikan's motion for amicus curiae status is GRANTED.

This order is being served electronically to extant parties and faxed to Ketchikan. No further service will follow.

DATED at Fairbanks, Alaska, this 9th of September 2011.

Michael P. McConahy
Superior Court Judge

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