

**IN THE SUPREME COURT OF THE STATE OF ALASKA**

In the Matter of the  
2021 Redistricting Plan.

)  
)  
) Supreme Ct. No. S-18332  
)  
)

) Superior Court Case Nos.  
) 3AN-21-08869 CI, 1JU-21-00944 CI

**MOTION FOR RECONSIDERATION**

The Municipality of Skagway Borough and Brad Ryan, (Skagway), through their counsel, Brena, Bell & Walker, P.C., hereby move this court, in accordance with Alaska Rule of Appellate Procedure 503(h), for reconsideration of the Order on Petitions for Review dated March 25, 2022 (Order). Specifically, Skagway asks this Court to reconsider its holding that “[t]here is no constitutional infirmity with House Districts 3 and 4 and no need for further work by the [Alaska Redistricting Board (Board)].”<sup>1</sup>

The Order does not provide the basis for the above holding. With regard to the constitutional requirement for compactness, the superior court found that Skagway’s redistricting alternatives presented at trial (Skagway Alternatives A and B) “satisfy the constitutional criteria while at the same time respecting the wishes of the majority of Skagway and Juneau residents . . . without affecting the boundaries for any other districts.”<sup>2</sup> The record establishes that this configuration results in far more socio-economically integrated districts and comports with the overwhelming public testimony in support of maintaining this configuration.<sup>3</sup> Skagway Alternatives A and B present equally, if not

**BRENA, BELL &  
WALKER, P.C.**  
810 N Street, Suite 100  
Anchorage, AK 99501  
Phone: (907) 258-2000  
Fax: (907) 258-2001  
www.brenalaw.com

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<sup>1</sup> Order at 3.

<sup>2</sup> Findings of Fact and Conclusions of Law (FFCL) at 120.

<sup>3</sup> FFCL at 120, 144; Skagway’s Corrected Petition for Review at 22-36.

more compact alternatives, while simultaneously maximizing socio-economic integration in Districts 3 and 4. At trial, the only expert witness testimony regarding the relative compactness of Districts 3 and 4 demonstrated both Skagway Alternatives are more compact than the Board’s configuration of those districts.<sup>4</sup> The Board failed to present any evidence to the contrary aside from Board Member Simpson’s personal view of compactness—which the superior court deemed “myopic”<sup>5</sup>—and even he acknowledged that the pairing of Skagway with downtown Juneau was “highly defensible.”<sup>6</sup>

This Court previously held that the Board may not reduce socio-economic integration except for purposes of maximizing the other constitutional requirements.<sup>7</sup> The Board “is not permitted to diminish the degree of socio-economic integration in order to achieve other policy goals”<sup>8</sup> and is, therefore, not granted unfettered discretion to ignore the socio-economic characteristics of Skagway and Juneau. Rather, the constitutional redistricting criteria are limitations on the Board’s authority and must be maximized to the greatest extent practicable. Thus, when faced with equally compact redistricting alternatives, the Board is obligated to choose the alternative that maximizes socio-economic integration. To hold otherwise renders the socio-economic integration requirement meaningless.

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Anchorage, AK 99501  
Phone: (907) 258-2000  
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www.brenalaw.com

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<sup>4</sup> Trial Tr. 1948:23 – 1953:15 (Brace) [Exc.SGY-215-220].

<sup>5</sup> FFCL at 146.

<sup>6</sup> FFCL at 144.

<sup>7</sup> *Hickel v. Southeast Conference*, 846 P.2d 38, 45 n.10 (Alaska 1992).

<sup>8</sup> *Id.*

Neither the superior court nor this Court has acknowledged or otherwise responded to Skagway’s arguments<sup>9</sup> regarding the application of the *Kenai Peninsula Borough*<sup>10</sup> case. The legal proposition relied upon by the Board and superior court—that an area outside of a borough is equally socio-economically integrated with any area within a borough regardless of the case-specific facts—abdicates the Board’s duty to engage in the comparative analysis of socio-economic integration required under Alaska law. This Court should not eliminate the requirement that the Board engage in fact-specific analysis of socio-economic integration whenever an area outside of a borough is paired with an area within a borough. Such disregard for socio-economic evidence is contrary to the plain language of article VI, section 6, which requires that districts contain “*as nearly as practicable* a relatively integrated socio-economic area” and states that “consideration *may* be given to local government boundaries” (emphasis added). In order to satisfy article VI, section 6, the Board must endeavor, to the extent practicable, to join communities with the greatest level of socio-economic integration regardless of whether they are within a borough. Otherwise, “the fundamental principle involved in apportionment—truly representative government where the interests of the people are reflected in their elected legislators . . . . [and] those areas of the state which share significant common interests are able to elect legislators representing those interests”<sup>11</sup> is severely undermined.

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Anchorage, AK 99501  
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Fax: (907) 258-2001  
www.brenalaw.com

<sup>9</sup> Skagway’s Corrected Petition for Review at 42-45.

<sup>10</sup> *Kenai Peninsula Borough v. State*, 743 P.2d 1352 (Alaska 1987).

<sup>11</sup> *Hickel*, 846 P.2d at 46 (citing *Groh v. Egan*, 526 P.2d 863, 890 (Alaska 1974)).

The Board’s overbroad application of *Kenai* ignores the context of that decision and creates an unprecedented legal standard that undermines the intent of the Alaska Constitution. In *Kenai*, there was “no constitutionally permissible alternative to joining North Kenai with South Anchorage”<sup>12</sup> and rather than treat Anchorage as indivisible, the Court thoroughly evaluated multiple socio-economic factors for North Kenai and South Anchorage.<sup>13</sup> In the present case, equally contiguous and compact alternatives exist that greatly increase socio-economic integration within Districts 3 and 4. *Kenai* should not be applied so broadly that it supplants the Board’s constitutional duty to maximize socio-economic integration to the extent practicable or renders the constitutional requirement effectively meaningless with regard to districts involving boroughs.

While this Court recognized the Board’s inconsistent application of the socio-economic integration requirement with regard to the Cantwell Appendage, the Board was also inconsistent in its belated decision to break the boundary of the Fairbanks North Star Borough (FNSB). After Chairman Binkley finally conceded on November 3, 2021 (two days before the adoption of the final house district plan), that his personal priority of protecting that boundary should be given up,<sup>14</sup> the Board spent significant time discussing where to shed population from the FNSB into District 36 to maximize socio-economic

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<sup>12</sup> *Kenai*, 743 P.2d. at 1362.

<sup>13</sup> *Kenai*, 743 P.2d at 1362-63.

<sup>14</sup> Board Meeting Tr. 252:8-21 (Nov. 3, 2021) [ARB007612] (“CHAIR BINKLEY: Well, I think, just my opinion, that—you know, and the way I look at it if I want to respect what the borough assembly did then I think it would be best, in my opinion, to respect what they’re saying and take the 4,000 people out of the borough and put into District 36.”) [Exc.SGY-21].

integration.<sup>15</sup> But under the legal theory the Board applied to Skagway and Juneau, which this Court has apparently accepted, it should not have mattered where FNSB was connected with District 36. Again, the use of and respect for borough boundaries depended entirely upon the Board members' personal priorities and negotiations during their mapping sessions.

In upholding the configuration of Districts 3 and 4 in the 2021 Proclamation Plan, this Court has approved a redistricting process whereby a single Board member's preconceived notion<sup>16</sup> of how a geographic area should be redistricted trumps the overwhelming weight of public testimony and socio-economic evidence. With the 2021 Redistricting Plan already remanded, Skagway respectfully requests the Court to reconsider this holding and direct the Board to maximize the relative socio-economic integration of Districts 3 and 4 as nearly as practicable as demonstrated by the Skagway Alternatives.

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WALKER, P.C.**  
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Anchorage, AK 99501  
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<sup>15</sup> Board Meeting Tr. 41:13 – 72:5 (Nov. 4, 2021) [ARB009211-009242] [Exc.SGY-43-74].

<sup>16</sup> Simpson Depo. Tr. 51:22 – 52:6 [Exc.SGY-101-102] (“from the beginning . . . it had always been my intention to make the district more compact and put Skagway and Haines with the north end.”)

RESPECTFULLY SUBMITTED this 4th day of April, 2022.

BRENA, BELL & WALKER, P.C.  
Counsel for Appellant MUNICIPALITY OF  
SKAGWAY BOROUGH and BRAD RYAN

By //s// Robin O. Brena

Robin O. Brena, AK Bar No. 8410089  
Jake W. Staser, AK Bar No. 1111089  
Laura S. Gould, AK Bar No. 0310042  
Jon S. Wakeland, AK Bar No. 0911066  
810 N Street, Suite 100  
Anchorage, Alaska 99501  
Phone: (907) 258-2000  
Fax (907) 258-2001  
Email: [rbrena@brenalaw.com](mailto:rbrena@brenalaw.com)  
[jstaser@brenalaw.com](mailto:jstaser@brenalaw.com)  
[lgould@brenalaw.com](mailto:lgould@brenalaw.com)  
[jwakeland@brenalaw.com](mailto:jwakeland@brenalaw.com)

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**CERTIFICATE OF SERVICE AND TYPEFACE**

I hereby certify that on April 4, 2022, I served by email, upon trial counsel of record listed below, the Municipality of Skagway Borough and Brad Ryan’s Motion for Reconsideration and this Certificate of Service and Typeface:

**Attorneys for Alaska Redistricting Board**

Matt Singer, Esq.  
Lee Baxter, Esq.  
Schwabe, Williamson & Wyatt  
Email: [msinger@schwabe.com](mailto:msinger@schwabe.com)  
[lbaxter@schwabe.com](mailto:lbaxter@schwabe.com)

**Attorneys for Matanuska-Susitna Borough and Michael Brown**

Stacey C. Stone, Esq.  
Gregory Stein, Esq.  
Holmes Weddle & Barcott, P.C.  
Email: [sstone@hwb-law.com](mailto:sstone@hwb-law.com)  
[gstein@hwb-law.com](mailto:gstein@hwb-law.com)

**Attorneys for Felisa Wilson, George Martinez, and Yarrow Silvers**

Holly C. Wells, Esq.  
Mara E. Michaletz, Esq.  
William D. Falsey, Esq.  
Zoe A. Danner, Esq.  
Birch Horton Bittner & Cherot  
Email: [hwells@bhb.com](mailto:hwells@bhb.com)  
[mmichaletz@bhb.com](mailto:mmichaletz@bhb.com)  
[wfalsey@bhb.com](mailto:wfalsey@bhb.com)  
[zdanner@bhb.com](mailto:zdanner@bhb.com)

**BRENA, BELL &  
WALKER, P.C.**  
810 N Street, Suite 100  
Anchorage, AK 99501  
Phone: (907) 258-2000  
Fax: (907) 258-2001  
www.brenalaw.com

**Attorneys for Calista Corporation, William Naneng, and Harley Sundown**

Eva R. Gardner, Esq.  
Michael S. Schechter, Esq.  
Benjamin J. Farkash, Esq.  
Ashburn & Mason, P.C.  
Email: [eva@anchorlaw.com](mailto:eva@anchorlaw.com)  
[mike@anchorlaw.com](mailto:mike@anchorlaw.com)  
[ben@anchorlaw.com](mailto:ben@anchorlaw.com)

**Attorneys for Intervenor Doyon Limited et al.**

Nathaniel Amdur-Clark, Esq.  
Whitney A. Leonard, Esq.  
Sonosky, Chambers, Sachse, Miller & Monkman, LLP  
Email: [nathaniel@sonosky.net](mailto:nathaniel@sonosky.net)  
[whitney@sonosky.net](mailto:whitney@sonosky.net)

**Attorney for the State of Alaska**

Laura Fox, Esq.  
Office of the Attorney General  
State of Alaska Department of Law  
Email: [laura.fox@alaska.gov](mailto:laura.fox@alaska.gov)

I further certify that pursuant to Appellate Rule 513.5(c)(2), the typeface used in these pleadings is Times New Roman, 13-point, proportionally spaced.

DATED this 4th day of April, 2022.

//s// Melody Nardin  
Melody Nardin, Paralegal  
Brena, Bell & Walker, P.C.  
810 N Street, Suite 100  
Anchorage, Alaska 99501  
Phone: (907) 258-2000  
Email: [mnardin@brenalaw.com](mailto:mnardin@brenalaw.com)

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WALKER, P.C.**  
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