

1 IN THE SUPREME COURT OF THE STATE OF ALASKA
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3)
4 In the Matter of the)
5 2021 Redistricting Plan.)
6 (Alaska Redistricting Board))
7) Supreme Court No. S-18332
8)
9 Trial Court Case No. 3AN-21-08869CI (Consolidated)

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11 **ALASKA REDISTRICTING BOARD’S EMERGENCY**
12 **MOTION FOR RECONSIDERATION OF**
13 **ORDER CONVERTING APPEAL TO PETITION**
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15 The Alaska Redistricting Board (“Board”) hereby moves this Court, in
16 accordance with Alaska Rules of Appellate Procedure 503(h) and 504, to reconsider its
17 Order (Convert Appeal to Petition Appellate Rule 216.5) dated February 17, 2022
18 (“Order”). The Order incorrectly concludes that the superior court’s Findings of Fact
19 and Conclusions of Law dated February 15, 2022 (“Findings/Conclusions”) is not a
20 final decision as to the Board. Because the Findings/Conclusions is a final decision as
21 to the Board, Appellate Rule 202(a) and AS 22.05.010(c) entitle the Board to an appeal
22 to the Alaska Supreme Court as a matter of right, particularly with regard to the East
23 Anchorage and Skagway lawsuits for which the Board seeks appellate review.

24 Alaska Statute 22.05.010 governs this Court’s jurisdiction. Subsection (c) of
25 that statute provides: “A decision of the superior court on an appeal from an
26 administrative agency decision may be appealed to the supreme court as a matter of
right.” Alaska Appellate Rule 202(a) confirms that an appeal may be taken to the

1 supreme court from a final judgment entered by the superior court “in the circumstances
2 specified in AS 22.05.010[.]”

3
4 “The test for determining whether a judgment is or is not final ‘is essentially a
5 practical one.’”¹ As this Court stated in *Greater Anchorage Area Borough v. City of*
6 *Anchorage* (hereinafter “GAAB”):

7 The basic thrust of the finality requirement is that the judgment must be
8 one which disposes of the entire case, . . . one which ends the litigation
9 on the merits and leaves nothing for the court to do but execute the
10 judgment. . . . Further, the reviewing court should look to the substance
11 and effect, rather than the form, of the rendering court’s judgment, and
12 focus primarily on the operational or “decretal” language therein.²

13 In *City and Borough of Juneau v. Thibodeau*, the Court clarified that the GAAB holding
14 did not apply to a decision of the superior court, acting as an intermediate appellate
15 court, that reverses the decision of an administrative agency and remands for the agency
16 to perform additional analysis that is required for the superior court to issue a ruling on
17 the merits of an issue.³ In other words, GAAB’s practical test for determining the
18 finality of a superior court’s decision on an administrative appeal does not apply if the
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22 ¹ *Ostman v. State, Commercial Fisheries Entry Commission*, 678 P.2d 1323, 1327
23 (Alaska 1984) (quoting *Matanuska Maid, Inc. v. State*, 620 P.2d 182, 184 (Alaska 1980)
24 in turn quoting *City and Borough of Juneau v. Thibodeau*, 595 P.2d 626, 628 (Alaska
1979)).

25 ² *Ostman*, 678 P.2d at 1327 (internal citations and footnotes omitted).

26 ³ *Thibodeau*, 595 P.2d at 629.

1 superior court has remanded the case to the agency to perform foundational work to
2 allow additional judicial review.⁴

3
4 Here, the Findings/Conclusions disposed of all issues in the East Anchorage and
5 Skagway lawsuits and remanded the matter to the Board to create a new redistricting
6 plan consistent with its rulings. Indeed, under the superior court's decision regarding
7 the Skagway and East Anchorage legal challenges, the Board is required to redraw at
8 least two house districts and at least two senate districts, or otherwise remedy
9 deficiencies identified by the trial court.⁵ In other words, the superior court fully
10 disposed of the dispute between the Board and challengers of the 2021 redistricting
11 plan.
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14 The finality of the superior court's order distinguishes this case from *City of*
15 *North Pole v. Zabek*,⁶ *City and Borough of Juneau v. Thibodeau*,⁷ and *Dougan v.*
16 *Aurora Electric, Inc.*⁸ In those cases, the superior court reversed an agency decision
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21 ⁴ *Id.*

22 ⁵ See superior court's Findings/Conclusions at 148. The superior court's
23 Findings/Conclusions are attached to the Board's Notice of Appeal dated February 17,
2022.

24 ⁶ *City of North Pole v. Zabek*, 934 P.2d 1292 (Alaska 1997).

25 ⁷ *City and Borough of Juneau v. Thibodeau*, 595 P.2d 626 (Alaska 1979).

26 ⁸ *Dougan v. Aurora Electric Inc.*, 50 P.3d 789 (Alaska 2002).

1 and remanded the case for the agency to re-analyze an issue so that the superior court
2 could properly perform additional judicial review.⁹

3
4 The Findings/Conclusions completely disposes of the redistricting challenges.
5 It requires the Board to redraw districts unless the Board determines it would be illegal
6 to do so.¹⁰ The superior court did not retain any jurisdiction or direct the Board to return
7 to it. The superior court's decision is a final decision.

8
9 Requiring the Board to petition this Court for review of the superior court's
10 Findings/Conclusions would lead to bizarre, untenable results. If the Board is not
11 entitled to appeal as a matter of right the superior court's decision that the Board must
12 redraw election districts, this Court could deny review and the Findings/Conclusions
13 could evade review. This would require the Board to redraw election districts and
14 create a new redistricting plan, without ever having the opportunity to show that its
15 original plan was constitutional and should be affirmed on appeal. Then, someone
16 could challenge the new redistricting plan and the Board would have to defend the new
17 election districts of the new redistricting plan in the superior court,¹¹ and hope this
18 Court allowed the Board to raise the legality of the prior redistricting plan on an appeal
19 from the superior court's judgment on the new redistricting plan.
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24 ⁹ *Thibodeau*, 595 P.2d at 627; *Zabek*, 934 P.2d at 1295-96; *Dougan*, 50 P.3d at 792-93.

25 ¹⁰ Superior court's Findings/Conclusions at 148.

26 ¹¹ *See* Alaska Const. art. VI, § 11.

1 Or, if nobody challenged the new redistricting plan drawn by the Board on
2 remand from the superior court, that plan would become the final, operative
3 redistricting plan. The Board would never get to exercise its right to an appeal to this
4 Court. Article VI, § 11, which governs Alaska Court’s jurisdiction over the
5 independent Board, does not contemplate, for example, that the Board could adopt a
6 new plan on remand and then initiate its own legal challenge to that plan:
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9 Any qualified voter may apply to the superior court to compel the
10 Redistricting Board, by mandamus or otherwise, to perform its duties
11 under this article or to correct any error in redistricting. Application to
12 compel the board to perform must be filed not later than thirty days
13 following the expiration of the ninety-day period specified in this article.
14 Application to compel correction of any error in redistricting must be
15 filed within thirty days following the adoption of the final redistricting
16 plan and proclamation by the board. Original jurisdiction in these matters
17 is vested in the superior court. On appeal from the superior court, the
18 cause shall be reviewed by the supreme court on the law and the facts.
19 Notwithstanding section 15 of article IV, all dispositions by the superior
20 court and the supreme court under this section shall be expedited and shall
21 have priority over all other matters pending before the respective court.
22 Upon a final judicial decision that a plan is invalid, the matter shall be
23 returned to the board for correction and development of a new plan. If
24 that new plan is declared invalid, the matter may be referred again to the
25 board.¹²
26

20 The Board respectfully requests this Court reconsider its Order that converted
21 the Board’s appeal as a matter of right under AS 22.05.010(c) and Appellate Rule
22 202(a) into a petition for review.
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26 ¹² Alaska Const. art. VI, § 11.

1 This motion for reconsideration should be expedited. Redistricting litigation is
2 expedited pursuant to the state constitution, Article VI, Section 11. Moreover, because
3 the Court's Order requires the Board to file its petition for review by Tuesday, February
4 22, 2022, and Appellate Rule 503(d) gives opposing parties seven days, or until at least
5 February 25, to file their opposition, this motion could become moot unless decided on
6 an expedited basis. Unless the Court grants emergency review of this motion, the issue
7 will become moot. The Board asks the Court to timely reconsider its Order and re-
8 convert the Board's appeal into an appeal as a matter of right and not a petition for
9 review by 4:30 p.m. on February 21, 2022. Otherwise, this important issue could
10 become moot by the impending deadline of February 22 for the Board to file its petition
11 for review.
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15 DATED at Anchorage, Alaska, this 18th day of February, 2022.

16 SCHWABE, WILLIAMSON & WYATT, P.C.
17 Attorneys for Alaska Redistricting Board

18
19 By: _____



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

10 **DECLARATION OF MATTHEW SINGER**

11 I, Matthew Singer, declare and state as follows:

12 1. I am legal counsel for the Alaska Redistricting Board.

13 2. On February 16, 2022, the superior court, Honorable Judge Matthews,
14 issued his Findings of Fact and Conclusions of Law in the consolidated lawsuit *In re*
15 *2021 Redistricting Plan*, Case No. 3AN-21-08869CI. The trial court’s order disposes
16 completely of the five challenges to the 2021 Redistricting Plan and remands the matter
17 back to the Alaska Redistricting Board (“Board”) to adopt a new plan or otherwise
18 address the deficiencies identified in the order. The Board respectfully disagrees with
19 the remand instructions and wishes to appeal to the Alaska Supreme Court.

20 3. On February 17, 2022, the Board filed its notice of appeal with this Court.
21 Also on February 17, the Court issued an order that converted the Board’s appeal into
22 a petition for review due by Tuesday, February 22. The Board moves for
23 reconsideration of the Court’s order because the superior court’s order is a final and
24 appealable order as to the Board, and the Board should have the ability to seek judicial
25 review of such an order. Given the Appellate Rule 503 seven-day deadline for
26

1 oppositions to motions, the Board has moved for emergency review of its motion for
2 reconsideration, as unless the Court grants the Board's motion in the next few days that
3 motion will become moot on February 22. The Board respectfully requests the Court
4 decide its motion for reconsideration by 4:30 p.m. on February 21.
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6 4. I declare that the above statements are true to the best of my knowledge
7 and belief, and that I understand that they are made for use as evidence in court and are
8 subject to the penalty of perjury.
9

10 Respectfully submitted this 18th day of February, 2022.

11 SCHWABE, WILLIAMSON & WYATT, P.C.
12 Attorneys for Alaska Redistricting Board

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14 By: 
15 Matthew Singer, ABA No. 9911072
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6) Supreme Court No. S-18332

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8 **[PROPOSED] ORDER GRANTING RECONSIDERATION**

9 The Court, upon consideration of the Alaska Redistricting Board’s (“Board’s”))
10 Emergency Motion for Reconsideration of Order Converting Appeal to Petition dated)
11 February 18, 2022 (“Board’s Motion for Reconsideration”), the oppositions to the)
12 Board’s Motion for Reconsideration, and any reply thereto, hereby GRANTS the)
13 Board’s Motion for Reconsideration. The Board’s appeal is an appeal as a matter of)
14 right under AS 22.05.010(c) and Alaska Appellate Rule 202(a). The timeline for)
15 briefing shall be governed by Alaska Appellate Rule 216.5(b), (c), and (f).)
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17 Entered at the direction of an individual justice this _____ day of February, 2022.

18 _____
19 Alaska Supreme Court Justice

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7 **CERTIFICATE OF SERVICE AND TYPEFACE**

8 I hereby certify that on February 18, 2022, a true and correct copy of the Alaska
9 Redistricting Board’s Emergency Motion for Reconsideration of Order Converting
10 Appeal to Petition, Declaration of Matthew Singer, [Proposed] Order Granting
11 Reconsideration and this Certificate of Service and Typeface were served by email
12 upon the following parties:
13

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7 I further certify that pursuant to Appellate Rule 513.5(c)(2), the typeface used in
8 this these pleadings is Garamond, 13-point, proportionally spaced.

9 DATED at Anchorage, Alaska, this 18th day of February, 2022.

10 SCHWABE, WILLIAMSON & WYATT, P.C.
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