

ELECTION LAW — PARTISAN GERRYMANDERING — ALASKA SUPREME COURT HOLDS THAT PARTISAN GERRYMANDER VIOLATES STATE EQUAL PROTECTION CLAUSE BASED ON DISCRIMINATORY INTENT. — *In re 2021 Redistricting Cases*, 528 P.3d 40 (Alaska 2023).

“How much is too much?”¹

Redistricting issues, like many others, pose this difficult question — at what point, or to what degree, is something impermissible? Although the Supreme Court has provided articulable standards for other thorny redistricting issues,² it has consistently failed to do so when asked at what point partisan gerrymandering violates one’s equal right to vote. The Court acknowledged in *Davis v. Bandemer*³ that partisan gerrymandering *could* discriminate against certain political groups and unconstitutionally dilute votes.⁴ However, it was unable to espouse a standard by which to meaningfully evaluate such claims.⁵ After decades of doctrinal confusion,⁶ the Court ultimately found adjudicating questions of partisan effect to present “political, not legal” questions of fair representation, and so foreclosed all such claims as “nonjusticiable” in *Rucho v. Common Cause*.⁷ Instead, the Court left the question for each state to determine.⁸ In doing so, the majority dismissed Justice Kagan’s impassioned argument that the Court should adopt the clear test already articulated by several lower courts.⁹ Litigation on this question at the state level has since proliferated¹⁰ as each state now grapples with the legality of partisan gerrymandering on its own terms.¹¹

¹ *Rucho v. Common Cause*, 139 S. Ct. 2484, 2501 (2019).

² *See, e.g.*, *Johnson v. De Grandy*, 512 U.S. 997, 1000 (1994) (establishing a rough proportionality standard for minority vote dilution); *Gaffney v. Cummings*, 412 U.S. 735, 751 (1973) (creating guidelines for permissible population deviations in redistricting).

³ 478 U.S. 109 (1986).

⁴ *See id.* at 127 (plurality opinion).

⁵ *See id.* at 132–33.

⁶ In the two decades after *Bandemer*, not a single plaintiff won a partisan gerrymandering suit as the lower courts struggled to make sense of the standard set by the Court. James A. Gardner, *A Post-Vieth Strategy for Litigating Partisan Gerrymandering Claims*, 3 *ELECTION L.J.* 643, 644 (2004). The Court took up the question of partisan gerrymandering once more in *Vieth v. Jubelirer*, 541 U.S. 267 (2004), which resulted in a further splintering of the doctrine as Justices wrote separately to offer four different standards to evaluate claims. *See id.* at 281 (plurality opinion); *id.* at 314 (Kennedy, J., concurring in the judgment); *id.* at 321–24 (Stevens, J., dissenting); *id.* at 346–51 (Souter, J., dissenting).

⁷ 139 S. Ct. 2484 (2019); *id.* at 2498.

⁸ *Id.* at 2507.

⁹ *Id.* at 2516–19 (Kagan, J., dissenting) (discussing application of partisan gerrymandering tests in North Carolina and Maryland).

¹⁰ *See* Nicholas O. Stephanopoulos, *Partisan Gerrymandering*, in *OXFORD HANDBOOK OF AMERICAN ELECTION LAW* (forthcoming 2024) (manuscript at 5–6) (on file with the Harvard Law School Library).

¹¹ *See* Yuriy Rudensky, *Status of Partisan Gerrymandering Litigation in State Courts*, ST. CT. REP. (July 31, 2023), <https://statecourtreport.org/our-work/analysis-opinion/status-partisan-gerrymandering-litigation-state-courts> [<https://perma.cc/342E-F8D5>].

Recently, in *In re 2021 Redistricting Cases*,¹² the Alaska Supreme Court held that the state's legislative map was an "unconstitutional partisan gerrymander' violating [the state constitution's] equal protection doctrine."¹³ To reach this conclusion and render the maps illegitimate, the court focused on evidence that the state's purpose was "intended discrimination against a class of voters."¹⁴ The Alaska Supreme Court's focus on partisan intent, rather than effect, to find the maps unconstitutional demonstrates how state courts can condemn attempts to manipulate redistricting processes for partisan advantage, especially as state actors across the country actively test the legality of partisan gerrymandering.

In November 2021, the Alaska Redistricting Board¹⁵ voted to enact a legislative map for the state along partisan lines.¹⁶ In creating the map's Senate districts,¹⁷ the Board disregarded public testimony that advocated for pairing the Eagle River community districts together, which are both safely Republican, and the Muldoon community districts together, which are more diverse and considered "highly competitive."¹⁸ The Board instead split up the Eagle River and Muldoon districts in its Senate pairings to create two safely Republican seats, even as dissenting board members raised concerns that doing so was plainly "partisan gerrymandering."¹⁹

Litigants across Alaska challenged the maps as unconstitutional,²⁰ and the Superior Court of Alaska found that one of those Senate district pairings violated the Alaska Constitution's equal protection clause as a

¹² 528 P.3d 40 (Alaska 2023).

¹³ *Id.* at 100 (quoting Order re Girdwood Challenge to Amended Plan at 52, *In re 2021 Redistricting Plan*, No. 3AN-21-08869CI, 2022 WL 7076058 (Alaska Super. Ct. May 16, 2022)).

¹⁴ *Id.* at 57; *see id.* at 100.

¹⁵ The Alaska Redistricting Board was given the power to enact legislative maps by a set of 1999 constitutional amendments. *See id.* at 55. The five-member Board is appointed by the Governor (who appoints two members), House Speaker, Senate President, and Chief Justice. *See* ALASKA CONST. art. VI, § 8. This cycle, the Board consisted of three Republicans and two non-partisan members. *See Redistricting in Alaska*, BALLOTPEdia, https://ballotpedia.org/Redistricting_in_Alaska [<https://perma.cc/D9L6-RD8V>].

¹⁶ *See 2021 Redistricting Cases*, 528 P.3d at 61; *Redistricting in Alaska*, *supra* note 15. The final maps were passed by a 3–2 vote, with the nonpartisan board members disagreeing. *See Redistricting in Alaska*, *supra* note 15; Yuriy Rudensky, *Alaska Supreme Court Strikes Down Gerrymandered Districts*, ST. CT. REP. (May 1, 2023), <https://statecourtreport.org/our-work/analysis-opinion/alaska-supreme-court-strikes-down-gerrymandered-districts> [<https://perma.cc/9VAY-CEFB>].

¹⁷ In Alaska's redistricting process, the Board draws legislative House districts and then pairs those districts into Senate districts. *See* ALASKA CONST. art. VI, § 4.

¹⁸ *In re 2021 Redistricting Plan*, No. 3AN-21-08869CI, 2022 Alas. Trial Order LEXIS 11, at *102 (Alaska Super. Ct. Feb 15, 2022); *id.* at *23, *101–02. Additionally, experts noted that both communities (Eagle River and Muldoon) functioned as separate communities of interest, a finding that the Alaska Supreme Court later affirmed as a matter of law. *See 2021 Redistricting Cases*, 528 P.3d at 89–90.

¹⁹ *2021 Redistricting Plan*, 2022 Alas. Trial Order LEXIS 11, at *86; *id.* at *89–96.

²⁰ *2021 Redistricting Cases*, 528 P.3d at 51; *see* ALASKA CONST. art. VI, § 11 ("Any qualified voter may apply to the superior court to compel the Redistricting Board . . . to correct any error in redistricting.").

partisan gerrymander due to its purposeful dilution of certain groups' voting power.²¹ The court remanded with orders for the Board to revise its Senate district pairings,²² and the Alaska Supreme Court affirmed in a summary order that the contested Senate district was “an unconstitutional political gerrymander violating equal protection under the Alaska Constitution.”²³ The Board revised the Senate district pairings but still gave Eagle River control of two Senate seats in the new map²⁴ — which the superior court again found to be an unconstitutional partisan gerrymander.²⁵ The court put an interim map in effect for the 2022 general elections and remanded with orders for the Board to adopt a new redistricting plan.²⁶ In another summary order, the Alaska Supreme Court once more affirmed the lower court's finding of partisan gerrymandering and adoption of an interim map.²⁷

Nearly a year later, the Alaska Supreme Court issued a full opinion detailing the legal foundation for both summary orders. Writing for the majority, Chief Justice Winfree relied on extensive legislative history to demonstrate that the Alaska Constitution's approach to redistricting — both its explicit criteria governing legislative maps and its general guidelines for the redistricting process — was motivated by its framers' desire to prevent gerrymandering.²⁸ In addition, the court emphasized that “Alaska's equal protection clause requires a more demanding review than its federal analog,” which results in a stricter standard for “fair and effective representation” in the voting rights context.²⁹ The state supreme court relied on *Kenai Peninsula Borough v. State*³⁰ as the “controlling . . . equal protection analysis in redistricting.”³¹ *Kenai* set out a three-step balancing inquiry for sliding-scale scrutiny that assesses: (1) the nature and weight of the individual's constitutional interest to determine the appropriate level of scrutiny, (2) the importance of the

²¹ *2021 Redistricting Plan*, 2022 Alas. Trial Order LEXIS 11, at *105–06. The Superior Court did not find that other challenges to the map had merit, *see id.* at *241, but did hold that the Board's procedures in creating the Senate districts were constitutionally and statutorily deficient in addition to creating an unconstitutional gerrymander, *see id.* at *60–74, *241.

²² *Id.* at *253–55.

²³ Order at 6, *2021 Redistricting Cases*, 528 P.3d 40 (No. 3AN-21-08869CI), ECF No. S-18332.

²⁴ Order re Girdwood Challenge to Amended Plan, *supra* note 13, at 1.

²⁵ *2021 Redistricting Cases*, 528 P.3d at 52.

²⁶ *Id.* at 54.

²⁷ *See* Order at 7–8, *2021 Redistricting Cases*, 528 P.3d 40 (No. 3AN-21-08869CI), ECF No. S-18419.

²⁸ *2021 Redistricting Cases*, 528 P.3d at 53–54.

²⁹ *Id.* at 57 (citing *Braun v. Denali Borough*, 193 P.3d 719, 731 (Alaska 2008), *abrogated by 2021 Redistricting Cases*, 528 P.3d 40; *Hickel v. Se. Conf.*, 846 P.2d 38, 49 (Alaska 1992)).

³⁰ 743 P.2d 1352 (Alaska 1987).

³¹ *2021 Redistricting Cases*, 528 P.3d at 57 (citing *Kenai*, 743 P.2d at 1371; *Braun*, 193 P.3d at 731). While this is the first time that an Alaska court has unequivocally invalidated a map as an unconstitutional partisan gerrymander, *see, e.g.*, Rudensky, *supra* note 16, the court had previously recognized partisan gerrymandering claims as justiciable in *Kenai*, *see 2021 Redistricting Cases*, 528 P.3d at 92 (citing *Kenai*, 743 P.2d at 1369–70).

state's purpose to "counterbalance the weight given to the individual's interest," and (3) the fit between the state's purpose and means.³² But the state's purpose must be deemed "proper" to engage in this analysis.³³ If the identified state purpose is illegitimate, the state action is an equal protection violation unless the Board can prove that it improves proportional representation.³⁴ And in this case, the court clarified that "intended discrimination against a class of voters" is an illegitimate purpose.³⁵ To determine if the Board had discriminatory intent, the court analyzed *Kenai's* set of neutral factors³⁶ to guide a "totality of the circumstances" inquiry.³⁷

In assessing the equal protection claim,³⁸ Chief Justice Winfree analyzed whether the Board created the challenged Senate district with an illegitimate purpose by assessing the *Kenai* neutral factors.³⁹ The court found the Board's extensive use of private executive sessions and selective consideration of Senate plans as "indicative of secretive procedures,"⁴⁰ noted that the Senate district "pairing's political undertones [were] impossible to ignore" due to regional partisanship,⁴¹ and considered the willful ignorance of overwhelming public opposition to the pairings as strong evidence that "partisanship was at play."⁴² Since the Board split Eagle River in both cases⁴³ "solely 'to provide it with two solidly Republican [S]enate seats,'" it acted with discriminatory purpose.⁴⁴ As the Board failed to provide any justification that this action improved proportional representation, the challenged Senate district was "'an unconstitutional partisan gerrymander' violating [Alaska's] equal protection doctrine."⁴⁵ The state supreme court approved the

³² 2021 *Redistricting Cases*, 528 P.3d at 57 (citing *Kenai*, 743 P.2d at 1371).

³³ *Id.* (citing *Kenai*, 743 P.2d at 1371).

³⁴ *Id.* at 57–58 (citing *Kenai*, 743 P.2d at 1372; *Braun*, 193 P.3d at 731).

³⁵ *Id.* at 57.

³⁶ The neutral factors are derived from those Justice Powell proposed in *Bandemer* to evaluate partisan gerrymandering at the federal level. See *Kenai*, 743 P.2d at 1372 (citing *Davis v. Bandemer*, 478 U.S. 109, 161 (1986) (Powell, J., concurring in part and dissenting in part)). These factors encompass the Board's process and substance, such as exclusion of geographic areas, use of secretive procedures, district boundaries that "selectively ignore political subdivisions and communities of interest," and regional partisanship. *Id.*

³⁷ 2021 *Redistricting Cases*, 528 P.3d at 58 (quoting *Kenai*, 743 P.2d at 1372).

³⁸ While the state supreme court clarified a few points of reasoning from the lower opinion, it affirmed the superior court's ultimate decision to remand. *Id.* at 94. The state supreme court corrected the "hard look" standard applied to the Board's decisions, see *id.* at 69, and clarified what metric proportionality was relevant to in this context, see *id.* at 93, neither of which affected the central equal protection claim and remand on that basis.

³⁹ *Id.* at 90–93.

⁴⁰ *Id.* at 91.

⁴¹ *Id.* at 92.

⁴² *Id.* at 93.

⁴³ The court engaged in largely the same analysis of neutral factors when assessing the gerrymander of Eagle River in the revised map. See *id.* at 97–100.

⁴⁴ *Id.* at 100 (alteration in original) (quoting Order re Girdwood Challenge to Amended Plan, *supra* note 13, at 52).

⁴⁵ *Id.* (quoting Order re Girdwood Challenge to Amended Plan, *supra* note 13, at 52).

decision to implement an interim map and noted that, while it had the authority to mandate a redistricting plan in this situation, it would “re-mand out of respect for the Board’s constitutional role in redistricting.”⁴⁶

In finding the map unconstitutional based on discriminatory intent alone, the Alaska Supreme Court provided an avenue to outlaw partisan gerrymandering well suited to stem the current flood of state actors deliberately testing the legal boundaries of partisanship in redistricting. In comparison, Justice Kagan’s dissent in *Rucho* articulated a more stringent test that required both predominant partisan intent and substantial partisan effect.⁴⁷ This “combined inquiry . . . set[s] the bar high” to limit judicial intervention to only the most egregious gerrymanders⁴⁸ — a response to the *Rucho* majority’s concern that judicial intervention would too often amount to “reallocating power and influence between political parties” in cases that did not merit such an “extraordinary step.”⁴⁹

But the dissent in *Rucho* contemplated a world in which partisan gerrymandering was declared justiciable across the country, and so redistricting officials would not be overtly partisan.⁵⁰ In contrast, when partisan gerrymandering is litigated state by state, as it is now, state actors are still firing off “smoking guns”⁵¹ of partisan intent.⁵² Justice Kagan’s test and its state analogs⁵³ may not find Alaska’s partisan gerrymander to rise to the level of an equal protection violation based on such evidence, but the Alaska Supreme Court’s focus on intent allows for a map to be ruled unconstitutional based solely on the Board’s overtly partisan intent.

⁴⁶ *Id.* at 101.

⁴⁷ *Rucho v. Common Cause*, 139 S. Ct. 2484, 2516 (2019) (Kagan, J., dissenting). Justice Kagan’s test also requires evidence that the partisan intent indeed caused the partisan effect. *See id.*

⁴⁸ *Id.* at 2522.

⁴⁹ *Id.* at 2502 (majority opinion). Justice Kagan’s test successfully identifies only the most extreme gerrymanders, since intent would usually have to be proven through “circumstantial evidence — essentially showing that no other explanation . . . could explain the districting plan’s vote dilutive effects,” which would then require “even more than substantial” partisan effects. *Id.* at 2523 (Kagan, J., dissenting).

⁵⁰ *Id.* at 2523 (Kagan, J., dissenting).

⁵¹ *Id.*

⁵² *See, e.g., In re 2021 Redistricting Plan*, No. 3AN-21-08869CI, 2022 Alas. Trial Order LEXIS 11, at *26, *86–88 (Alaska Super. Ct. Feb. 15, 2022) (quoting transcript of Board meetings, in which a Board member outright calls the maps a gerrymander).

⁵³ Other states have followed along the lines of Justice Kagan’s test in their equal protection jurisprudence. A Maryland circuit court looked to findings of predominant partisan intent and substantial adverse impact on voters of a political party — strong parallels to Justice Kagan’s criteria — to justify applying strict scrutiny and declaring the maps unconstitutional under the state’s equal protection doctrine. *See generally Szeliga v. Lamone*, No. C-02-CV-21-001816, 2022 Md. Cir. Ct. LEXIS 9 (Mar. 25, 2022). And in the later-overturned case of *Harper v. Hall*, 881 S.E.2d 156 (N.C. 2022), *withdrawn and superseded on reh’g*, 886 S.E.2d 393 (N.C. 2023), the North Carolina Supreme Court focused almost exclusively on empirical measures of partisan effect. *See id.* at 175–80. Most recently, the New Mexico Supreme Court explicitly adopted Justice Kagan’s proposed test for partisan gerrymandering under its state equal protection clause. *See Grisham v. Van Soelen*, No. S-1-SC-39481, 2023 WL 6209753, at *13 (N.M. Sept. 22, 2023).

To be clear, the Alaska Supreme Court does not *require* discriminatory intent for an equal protection violation⁵⁴ — this inquiry is a precursor to the individual and state balancing espoused in *Kenai*. In the absence of clearly evinced discriminatory intent, Alaska’s equal protection analysis can still bar partisan gerrymandering when the challenged maps have a proven impact on fair representation and the state is unable to articulate a compelling purpose for doing so.⁵⁵ In fact, the *Kenai* equal protection analysis strongly resembles the scrutiny framework supported by the *Rucho* dissent and applied in other states.⁵⁶ As gerrymandering efforts become more nuanced, rendering a discriminatory intent test ineffective, the *Kenai* balancing test can continue to capture those egregious gerrymanders that Justice Kagan set her sights on. But for now, there are clear indicators of partisan intent — such as a Board member outright admitting that she wanted to give Eagle River “more representation”⁵⁷ — to demonstrate that state actors are subordinating concerns of fair representation to partisan politics.⁵⁸

While other states tend to focus on circumstantial evidence of intent to prove partisan gerrymandering,⁵⁹ the Alaska Supreme Court also assessed instances of demonstrated intent to render the maps an unconstitutional partisan gerrymander.⁶⁰ Circumstantial evidence can be dispositive of both intent and effect; it indicates that the map does not empower voters equally along partisan lines, suggesting that the only reasonable “explanation” for such inequality is that the Board intended to create a partisan gerrymander.⁶¹ Here, the neutral factors of regional partisanship, selective treatment of political subdivisions, and ignorance of communities of interest are all circumstantial evidence of gerrymandering that *suggests* partisan intent. But the Board’s use of secretive procedures, members’ statements on gerrymandering, and willful ignorance of public opposition actively demonstrate partisan intent. Other states’ tests, such as those of Maryland and North Carolina, rely on empirical evidence of impact on voters and undue partisanship to determine the relevant level of scrutiny.⁶² In this case, the circumstantial

⁵⁴ *2021 Redistricting Cases*, 528 P.3d at 58 n.60.

⁵⁵ *See id.* at 57 (citing *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1372 (Alaska 1987)).

⁵⁶ *Compare id.* (discussing equal protection analysis under the Alaska Constitution as “an inquiry into and a balancing of competing voter and state interests” to determine the level of scrutiny), with *Szeliga*, 2022 Md. Cir. Ct. LEXIS 9, at *43–45 (discussing inquiry into burden on right to vote to determine standard of review).

⁵⁷ *2021 Redistricting Cases*, 528 P.3d at 90.

⁵⁸ *See, e.g., Rucho v. Common Cause*, 139 S. Ct., 2484, 2510–11 (2019) (Kagan, J., dissenting) (discussing overtly partisan intent of mapmakers in North Carolina and Maryland).

⁵⁹ *See supra* note 53 and accompanying text.

⁶⁰ *See, e.g., 2021 Redistricting Cases*, 528 P.3d at 90.

⁶¹ *Cf. Rucho*, 139 S. Ct. at 2523 (Kagan, J., dissenting).

⁶² *See, e.g., Harper v. Hall*, 881 S.E.2d 156, 175–80 (N.C. 2022) (discussing statistical measures at length), *withdrawn and superseded on reh’g*, 886 S.E.2d 393 (N.C. 2023); *Szeliga v. Lamone*,

evidence alone may not be enough evidence of effect to merit court intervention under those tests, which follow in the vein of the *Rucho* dissent. As Justice Kagan noted, “even the naked purpose to gain partisan advantage may not rise to the level of constitutional notice” if it is not linked to a significant partisan effect.⁶³ By providing an intent-based application of equal protection analysis, the Alaska Supreme Court met the current moment with a strong antigerrymandering position that does not require finding substantial partisan effect. Rather than waiting to determine whether the gerrymandered map results in significant harm to voters, the court instead condemned the clear attempt to lessen the power of some citizens’ votes.

The Alaska Supreme Court’s approach cuts to the heart of the matter acknowledged in *Bandemer* — that partisan gerrymandering unconstitutionally dilutes the power of one’s vote.⁶⁴ When contending with the question of “[h]ow much” partisan effect is permissible in *Rucho*,⁶⁵ Chief Justice Roberts implicitly assumed that the question of impermissible partisanship was exclusively one of degree, rather than also one of kind. Yes, it is important to determine how much partisan impact is “too much” when partisanship quite often plays *some* role in drafting maps. But focusing on questions of effect risks obscuring intent entirely — the role partisanship actually plays in the process. Focusing only on effect falsely equates a nonpartisan entity using an unbiased statistical model with a state legislature hell-bent on extending its current majority regardless of voters’ preferences. As several scholars have noted, invidious or impermissible intent, such as setting aside legitimate state purposes in the pursuit of partisan advantage, is a separate question from degree.⁶⁶ And as the Alaska Supreme Court demonstrated in this case, it is a necessary precursor to questions of degree. Redirecting the inquiry to first assess the nature of the Board’s intent, rather than jumping straight to evaluating its effect on voters’ rights, reaffirms the state’s constitutional norm of fair and effective representation.⁶⁷

No. C-02-CV-21-001816, 2022 Md. Cir. Ct. LEXIS 9, at *80–86, *123–25 (Mar. 25, 2022) (discussing expert’s statistical and empirical research as proof of substantial adverse impact). *But see Harper*, 881 S.E.2d at 179 (noting that statistical measures are in service of broader constitutional aims, not standards for constitutionality on their own).

⁶³ *Rucho*, 139 S. Ct. at 2517 (Kagan, J., dissenting) (citing *Vieth v. Jubelirer*, 541 U.S. 267, 286 (2004) (plurality opinion)).

⁶⁴ See *Davis v. Bandemer*, 478 U.S. 109, 132 (1986) (plurality opinion). In fact, the *Kenai* test and neutral factors rely heavily on Justice Powell’s opinion in *Bandemer*. See *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1371–72 (Alaska 1987) (citing *Bandemer*, 478 U.S. at 161 (Powell, J., concurring in part and dissenting in part)).

⁶⁵ See *Rucho*, 139 S. Ct. at 2501.

⁶⁶ See Justin Levitt, *Intent Is Enough: Invidious Partisanship in Redistricting*, 59 WM. & MARY L. REV. 1993, 2010 (2018); see also Michael S. Kang, *Gerrymandering and the Constitutional Norm Against Government Partisanship*, 116 MICH. L. REV. 351, 354 (2017).

⁶⁷ See *2021 Redistricting Cases*, 528 P.3d at 57–59; cf. Kang, *supra* note 66, at 354–55.

Alaska's discriminatory-intent standard is still constrained by partisan effect in a pragmatic sense. The Alaska Supreme Court must find an intentional partisan gerrymander unconstitutional unless it increases proportional representation, as the state action is motivated by an illegitimate purpose.⁶⁸ However, the court retains discretion as to whether redrawing the districts is an appropriate remedy and considers the impact on proportional representation in determining the relevant remedy.⁶⁹ The question of effect is still an important one to contend with, but it is the second question to ask.

As Justice Kagan noted, clear instances of demonstrated intent will likely become few and far between in states where partisan gerrymandering is deemed justiciable.⁷⁰ But, as seen in *In re 2021 Redistricting Cases*, finding partisan gerrymandering unconstitutional through discriminatory intent can provide a bridge to the world that Justice Kagan envisioned for her test. Before determining "how much" effect is "too much," it is critical to stake out that partisan intent is an impermissible guiding initiative.⁷¹ By evaluating the Board's discriminatory intent and finding the maps unconstitutional on that basis alone, the Alaska Supreme Court's decision addresses the current state of play with a strong reminder that, regardless of the partisan effect, prioritizing partisan objectives over fair and effective representation unconstitutionally infringes on the equal right to vote.

⁶⁸ *2021 Redistricting Cases*, 528 P.3d at 57–58.

⁶⁹ *See id.* at 58 & n.64.

⁷⁰ *See Rucho*, 139 S. Ct. at 2523 (Kagan, J., dissenting).

⁷¹ *Id.* at 2521.