

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
2 THIRD JUDICIAL DISTRICT AT ANCHORAGE
3

4)
5 In the Matter of the)
6 2021 Redistricting Plan.)
7)

8) Case No. 3AN-21-08869CI
9

10 ALASKA REDISTRICTING BOARD'S
11 PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
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1 The Alaska Redistricting Board proposes that the Court enter the following
2 findings of fact and conclusions of law.

3 **I. FINDINGS OF FACT**

4 **A. History of Reapportionment of the Alaska Legislature**

5 1. As originally written, Alaska’s Constitution had “frozen” senate districts,
6 meaning that senate districts were comprised of set areas of the state and the Governor
7 of Alaska was tasked with redistricting.¹

8 2. In 1964, the U.S. Supreme Court issued its seminal decision in *Reynolds*
9 *v. Sims*,² holding that the Equal Protection Clause of the U.S. Constitution requires that
10 the seats in both houses of a bicameral legislature be apportioned on a population basis.³
11 The *Reynolds* decision rendered Alaska’s frozen senate districts invalid and kick-
12 started legislative redistricting in Alaska.⁴

13 3. From 1966 through the 1990s, the Governor of Alaska conducted
14 redistricting.⁵ Litigation ensued each redistricting cycle.⁶ These gubernatorial
15

16
17 ¹ See *Wade v. Nolan*, 414 P.2d 689, 690 n. 2 (Alaska 1966) (quoting Article XIV, § 2 of
18 the Alaska Constitution as ratified by Alaska voters in 1956 and approved by the U.S. Congress
in the Alaska Statehood Act of 1958). President Eisenhower signed the official proclamation
admitting Alaska as the 49th state on January 3, 1959.

19 ² *Reynolds v. Sims*, 377 U.S. 533 (1964).

20 ³ *Wade v. Nolan*, 414 P.2d at 690.

21 ⁴ *Wade v. Nolan*, 414 P.2d at 690.

22 ⁵ See *Hickel v. Southeast Conference*, 846 P.2d 38, 42 (Alaska 1992) (“Under the Alaska
Constitution, the governor has the power and duty to reapportion the state legislature every ten
years.”).

23 ⁶ See *Wade v. Nolan*, 414 P.2d 689 (Alaska 1966); *Egan v. Hammond*, 502 P.2d 856
24 (Alaska 1972); *Groh v. Egan*, 526 P.2d 863 (Alaska 1974); *Carpenter v. Hammond*, 667 P.2d
25 1204 (Alaska 1983); *Kenai Peninsula Borough v. State*, 743 P.2d 1352 (Alaska 1987); *Hickel*
v. Southeast Conference, 846 P.2d 38 (Alaska 1992); *In re 2001 Redistricting Cases*, 44 P.3d
26 141 (Alaska 2002); *In re 2001 Redistricting Cases*, 47 P.3d 1089 (Alaska 2002); *In re 2011*
Redistricting Cases, 274 P.3d 466 (Alaska 2012); *In re 2011 Redistricting Cases*, 294 P.3d
1032 (Alaska 2012).

1 redistricting plans included the use of “multi-member” election districts, meaning that
2 multiple representatives or senators represented an area at large.⁷

3 4. In 1998, Alaska voters ratified a constitutional amendment to Article VI
4 of the Alaska Constitution that overhauled the redistricting process.⁸ The amendment
5 placed the duty of reapportioning the Alaska Legislature after each U.S. Census with
6 the independent Alaska Redistricting Board.⁹ Section 8(a) of Article VI states that the
7 Board is comprised of “five members, all of whom shall be residents of the state for at
8 least one year and none whom may be public employees or officials at the time of or
9 during the tenure of appointment. Appointments shall be made without regard to
10 political affiliation.”¹⁰ Members of the Board are appointed as follows:

11 The governor shall appoint two members of the board. The presiding
12 officer of the senate, the presiding officer of the house of representatives,
13 and the chief justice of the supreme court shall each appoint one member
14 of the board. The appointments of the board shall be made in the order
listed in this subsection. At least one board member shall be a resident
of each judicial district that existed on January 1, 1999.¹¹

15 **B. The Current Alaska Redistricting Board**

16 5. Governor Dunleavy appointed Budd Simpson of Douglas and Bethany

17
18 ⁷ See *Groh v. Egan*, 526 P.2d at 880 (discussing the permissible use of single-member
19 and multi-member house districts in the Greater Anchorage Area); *Kenai Peninsula Borough*
20 *v. State*, 743 P.2d at 1365-73 n.21 (upholding multi-member Senate District E and reasoning
21 “[i]t is clear that the governor has the power to create either single or multi-member districts .
22 . . .”); *Hickel v. Southeast Conference*, 846 P.2d at 69 (“Under every redistricting plan before
23 this one, Juneau has been included in a two-member (multi-member) house district.”).

24 ⁸ See *In re 2001 Redistricting Cases*, 2002 WL 34119573, *1 n. 1 (Alaska Sup. Ct. Feb.
25 1, 2002) (“An Amendment to Article VI of the Alaska Constitution, effective January 3, 1999
26 (the “1998 Amendment”), changed the composition and responsibilities of the Board.”); see
also Gordon S. Harrison, *The Aftermath of In re 2001 Redistricting Cases: The Need for a New
Constitutional Scheme for Legislative Redistricting in Alaska*, 23 Alaska L. Rev. 51, 60-63
(2006).

⁹ *In re 2011 Redistricting Cases*, 274 P.2d 466 n.2 (Alaska 2012).

¹⁰ Alaska Const. art. VI, sec. 8(a).

¹¹ Alaska Const. art. VI, § 8(b).

1 Marcum of Anchorage to the Alaska Redistricting Board.¹² Senate President Cathy
2 Giessel appointed John Binkley of Fairbanks to the Board.¹³ House Speaker Bryce
3 Edgmon appointed Nicole Borrromeo of Anchorage to the Board.¹⁴ Chief Justice Joel
4 Bolger appointed Melanie Bahnke of Nome to the Board.¹⁵

5 6. Several members of the Board are life-long Alaskans, and the Board
6 brings over 200 collective years of experience in and throughout Alaska.¹⁶

7 7. In August 2020, the Board elected John Binkley as the chair of the
8 Board.¹⁷ Binkley is a third-generation Alaskan and riverboat captain.¹⁸ Born and raised
9 in Fairbanks, Binkley and his wife started a tug and barge business on the Lower Yukon
10 in St. Mary's, Alaska in 1977.¹⁹ Binkley lived in Bethel from 1978 through 1990, and
11 was elected to represent a Bethel-centered house district and then a senate district that
12 covered 225,000 square miles, included 74 different communities and 11 different
13 school districts. Mr. Binkley's senate district stretched from the Canadian Border east
14 of Fort Yukon to Nunavik Island in the Bering Sea.²⁰ In 1990, Binkley moved back to
15 Fairbanks, and has since that time, among other things, served on the board of the
16 Alaska Railroad, ran for governor of Alaska, and started the Alaska Cruise
17

18
19 ¹² ARB000005; Aff. of Budd Simpson ¶ 7, dated Jan. 12, 2022.

20 ¹³ ARB000005.

21 ¹⁴ ARB000005.

22 ¹⁵ ARB000005.

23 ¹⁶ Aff. of John Binkley ¶¶ 3-10, dated Jan. 11, 2022; Simpson Aff. ¶¶ 3-6; Aff. of Melanie
24 Bahnke ¶¶ 2-5, dated Jan. 11, 2022; Aff. of Nicole Borrromeo ¶¶ 2-7, dated Jan. 12, 2022; Aff.
25 of Bethany Marcum ¶¶ 2-6, dated Jan. 12, 2022.

26 ¹⁷ Binkley Aff. ¶ 12.

¹⁸ Binkley Aff. ¶ 3.

¹⁹ Binkley Aff. ¶ 4.

²⁰ Binkley Aff. ¶¶ 4-5.

1 Association.²¹

2 8. Member Melanie Bahnke was born in Nome and raised in Savoonga on
3 St. Lawrence Island.²² She graduated from the University of Alaska Anchorage with a
4 bachelor's degree in Elementary Education and earned a Master of Arts degree from
5 the University of Alaska Fairbanks.²³ She has lived in Nome since 1995, and among
6 other things, is President of Kawerak, Inc., a nonprofit corporation that the Bering
7 Straits Native Association organized after passage of ANCSA to serve the 20 federally
8 recognized tribes of the area.²⁴ St. Lawrence Island Yupik is Bahnke's first language;
9 she is also fluent in English.²⁵

10 9. Member Nicole Borrromeo was born and raised in McGrath.²⁶ Borrromeo
11 graduated from Mt. Edgecumbe High School in Sitka, college at University of Alaska
12 Anchorage, and law school at the University of Washington School of Law.²⁷ After
13 clerking for an Alaska superior court judge, Borrromeo was hired as the General
14 Counsel of the Alaska Federation of Natives and was eventually elevated to Executive
15 Vice President and General Counsel.²⁸ Borrromeo serves, among other things, as the
16 chairman of the board of directors of MTNT, Limited, the ANCSA village corporation
17 for McGrath, Takotna, Nikolai, and Telida.²⁹

20 ²¹ Binkley Aff. ¶¶ 6-8.

21 ²² Bahnke Aff. ¶ 2.

22 ²³ Bahnke Aff. ¶ 2.

23 ²⁴ Bahnke Aff. ¶ 4.

24 ²⁵ Bahnke Aff. ¶ 5.

25 ²⁶ Borrromeo Aff. ¶ 2.

26 ²⁷ Borrromeo Aff. ¶ 2.

27 ²⁸ Borrromeo Aff. ¶¶ 3-4.

28 ²⁹ Borrromeo Aff. ¶ 5.

1 10. Member Bethany Marcum has been an Anchorage resident for 26 years.³⁰
2 She has served in the military for 20 years, and has lived in various neighborhoods
3 throughout the Municipality of Anchorage and has traveled extensively in Alaska for
4 work and military exercises.³¹ Marcum has served in the Air National Guard since
5 2008, originally stationed at Kulis Air National Guard Base and now at Joint Base
6 Elmendorf Richardson.³²

7 11. Member Budd Simpson has lived in the City and Borough of Juneau and
8 practiced law in Alaska since 1977.³³ Through his law practice, Simpson has traveled
9 extensively throughout Southeast Alaska to nearly every community that dots the
10 coastlines of Alaska’s Panhandle.³⁴ Since the late 1970s, Simpson and his wife have
11 owned property in Haines, Alaska, and have traveled to Haines via the Alaska Marine
12 Highway System ferries hundreds of times.³⁵ Simpson served as the City Attorney for
13 the City and Borough of Haines for 15 years.³⁶ As an avid boater, he has traveled
14 extensively through Alaska’s inside passage and other ocean waterways of Alaska’s
15 Southeast archipelago.³⁷

16 12. In December 2020, the Board hired Peter Torkelson as the Board’s
17 Executive Director and TJ Presley as the Deputy Director of the Board.³⁸ Mr. Torkelson
18

19 ³⁰ Marcum Aff. ¶ 2.

20 ³¹ Marcum Aff. ¶ 3.

21 ³² Marcum Aff. ¶ 4.

22 ³³ Simpson Aff. ¶¶ 2-3.

23 ³⁴ Simpson Aff. ¶ 3. The only community with a significant population in Southeast
Simpson has not visited is the Metlakatla Indian Reservation.

24 ³⁵ Simpson Aff. ¶ 5.

25 ³⁶ Simpson Aff. ¶ 3.

26 ³⁷ Simpson Aff. ¶ 4.

³⁸ ARB000005.

1 had been working as a professional assistant to the Senate President’s office since
2 2013.³⁹

3 **C. Board Meetings**

4 13. On September 10, 2020, the Board held a meeting with all members
5 present.⁴⁰ During this meeting, the Board discussed obtaining information technology
6 and cellphone service for Board members.⁴¹ Tim Banaszak, who was the Information
7 Technology Manager for the Legislative Affairs Agency, attended the meeting to
8 assist.⁴² The Board selected vendors for information technology service and internet
9 service.⁴³ The Board also voted to provide cellphone service for each member.⁴⁴ The
10 Board discussed the general staff and legal counsel it would require.⁴⁵

11 14. On December 3, 2020, the Board held a meeting with all members
12 present.⁴⁶ JC Kestel, a procurement officer with the Legislative Affairs Agency, and
13 Tim Banaszak, the Information Technology Manager for the Legislative Affairs
14 Agency, also attended the meeting.⁴⁷ Mr. Banaszak reported that the Board member
15 laptops were configured with Microsoft Office and redistricting software, and that
16 individual email accounts had been created for each member.⁴⁸ Chair Binkley advised
17 all members they were registered for a National Conference of State Legislatures
18

19 ³⁹ Aff. of Peter Torkelson ¶ 7, dated Jan. 12, 2022.

20 ⁴⁰ ARB000118-ARB000120 (Board Meeting Minutes)

21 ⁴¹ ARB000118-ARB000119.

22 ⁴² ARB000119.

23 ⁴³ ARB000119.

24 ⁴⁴ ARB000119.

25 ⁴⁵ ARB000119.

26 ⁴⁶ ARB000121-ARB000123 (Board Meeting Minutes).

⁴⁷ ARB000121.

⁴⁸ ARB000121.

1 (“NCSL”) that was being held virtually in January 2021, and encouraged all members
2 to attend.⁴⁹ The Board entered executive session to discuss the applicants for the
3 Executive Director position.⁵⁰ It exited executive session and adjourned the meeting.⁵¹

4 15. On December 10, 2020, the Board held a meeting with all members
5 present.⁵² The Board entered executive session and interviewed applicants for the
6 Executive Director position.⁵³ The Board exited executive session and adjourned the
7 meeting.⁵⁴

8 16. On December 12, 2020, the Board held a meeting with all members
9 present.⁵⁵ The Board summarized that it spent a full day on December 10 interviewing
10 candidates for the Executive Director position, and unanimously approved the selection
11 of Peter Torkelson for the position.⁵⁶

12 17. On December 19, 2020, the Board held a meeting with all members and
13 Executive Director Torkelson present.⁵⁷ The Board discussed a draft organizational
14 chart, budget, hiring timelines and personnel related matters.⁵⁸

15 18. On December 29, 2020, the Board held a meeting with all members,
16 Executive Director Torkelson, and Deputy Director TJ Presley present.⁵⁹ The Board
17

18 ⁴⁹ ARB000122.

19 ⁵⁰ ARB000122.

20 ⁵¹ ARB000122-ARB000123.

21 ⁵² ARB000124-ARB000125 (Board Meeting Minutes).

22 ⁵³ ARB000124-ARB000125.

23 ⁵⁴ ARB000124-ARB000125.

24 ⁵⁵ ARB000126-ARB000127 (Board Meeting Minutes).

25 ⁵⁶ ARB000126.

26 ⁵⁷ ARB000128-ARB000130 (Board Meeting Minutes).

⁵⁸ ARB000128-ARB000130 (Board Meeting Minutes).

⁵⁹ ARB000131-ARB000133 (Board Meeting Minutes).

1 discussed its status as an independent entity from the legislative and executive branches
2 of the state government and its ability to adopt either the legislative or administrative
3 procurement codes.⁶⁰ Ultimately, the Board unanimously voted to adopt the legislative
4 procurement code, but with changes to the terms that reflected that the Board, not an
5 agency, was using the code and to restrict bid protests to only bidders.⁶¹ The Board
6 then discussed the process to solicit proposals from firms to serve as the Board’s legal
7 counsel, and voted to begin drafting the language for the Board’s request for
8 information (RFI) for legal counsel.⁶²

9 19. On January 8, 2021, the Board held a meeting with all members, the
10 executive director, and deputy director present.⁶³ The Board set a January 29 deadline
11 for firms to respond to its Request for Information (“RFI”) for legal counsel and
12 finalized the wording of the RFI.⁶⁴ The Board also adopted its procurement code that
13 had been derived from the legislative procurement code with some changes.⁶⁵

14 20. On January 26, 2021, the Board held a meeting with all members, the
15 executive director, and deputy director present.⁶⁶ The Board considered and adopted
16 the following policies: (1) Public Meeting and Notice Requirement Policy; (2) Public
17 Records Policy; (3) Board Member Compensation Policy; and (4) Board Member and
18 Staff Per Diem Policy.⁶⁷ Torkelson also reported that the Board’s webpage was
19 scheduled to go live in the next two weeks, and would serve as a single point of access

20
21 ⁶⁰ ARB000131-ARB000132.

22 ⁶¹ ARB000132.

23 ⁶² ARB000132.

24 ⁶³ ARB000134-ARB000135 (Board Meeting Minutes).

25 ⁶⁴ ARB000134-ARB000135.

26 ⁶⁵ ARB000135.

⁶⁶ ARB000136-ARB000138 (Board Meeting Minutes).

⁶⁷ ARB000137, ARB000420-ARB000426.

1 for redistricting maps.⁶⁸

2 21. On February 26, 2021, the Board held a meeting with all members, the
3 executive director and deputy director present.⁶⁹ Torkelson updated the Board on his
4 communications with the U.S. Census Bureau that the 2020 Census results would be
5 provided by September 30, 2021, at the latest.⁷⁰ The Board explored options to
6 proactively solicit redistricting input from interest groups that historically participate
7 in redistricting in Alaska, and decided that, to the extent practicable, meeting requests
8 from interest groups would be routed through staff.⁷¹ Torkelson further advised Board
9 members of online software training available to them.⁷² The Board entered executive
10 session to interview a respondent of the legal services RFI.⁷³ After completing the
11 interview, the Board exited executive session and adjourned the meeting.⁷⁴

12 22. On March 2, 2021, the Board held a meeting with all members, the
13 executive director, and deputy director present.⁷⁵ Torkelson shared informal advice
14 from the legislative attorney that executive session was an appropriate forum to
15 interview potential legal counsel.⁷⁶ The Board entered executive session and
16 interviewed additional legal counsel applicants.⁷⁷ After the interviews, the Board

19 ⁶⁸ ARB000138.

20 ⁶⁹ ARB000139-ARB000142 (Board Meeting Minutes).

21 ⁷⁰ ARB000139.

22 ⁷¹ ARB000141.

23 ⁷² ARB000141.

24 ⁷³ ARB000141.

25 ⁷⁴ ARB000142.

26 ⁷⁵ ARB000143-ARB000144 (Board Meeting Minutes).

⁷⁶ ARB000143.

⁷⁷ ARB000144.

1 exited executive session and adjourned the meeting.⁷⁸

2 23. On March 6, 2021, the Board held a meeting with all members, the
3 executive director, and deputy director present.⁷⁹ Torkelson summarized the Board’s
4 RFI, interview, and selection process for legal counsel.⁸⁰ Torkelson advised that the
5 Board had selected two respondents to interview and had completed both interviews.⁸¹
6 The Board entered executive session to discuss the selection of one of the firms, and
7 upon exiting executive session unanimously voted to select Schwabe, Williamson &
8 Wyatt.⁸²

9 24. On April 16, 2021, the Board held a meeting with all members except
10 member Bahnke present.⁸³ The executive director, deputy director, and Matt Singer of
11 Schwabe, Williamson & Wyatt were also present.⁸⁴ Torkelson reported that counsel
12 had advised the Board to secure a Voting Rights Act (“VRA”) consultant as soon as
13 possible, and a draft RFI was presented and approved by the Board with some
14 modifications.⁸⁵

15 25. On May 26, 2021, the Board held a meeting with all members, the
16 executive director, deputy director, and legal counsel present.⁸⁶ The Board took public
17 testimony from former state senator Cathy Giessel, who thanked the Board for
18

19 _____
20 ⁷⁸ ARB000144.

21 ⁷⁹ ARB000145-ARB000147 (Board Meeting Minutes).

22 ⁸⁰ ARB000145-ARB000146.

23 ⁸¹ ARB000146.

24 ⁸² ARB000146.

25 ⁸³ ARB000148-ARB000149 (Board Meeting Minutes).

26 ⁸⁴ ARB000148.

⁸⁵ ARB000149.

⁸⁶ ARB000150-ARB000151 (Board Meeting Minutes).

1 proactively seeking a VRA consultant.⁸⁷ The Board entered executive session to
2 discuss the responses to its RFI for a VRA consultant.⁸⁸ After exiting the executive
3 session, the Board unanimously moved to enter into a contract with Bruce Adelson as
4 the Board’s VRA consultant.⁸⁹

5 26. On June 28-30, 2021, the Board held a meeting with all members, the
6 executive director, deputy director, and legal counsel present.⁹⁰ The Board
7 immediately entered a three-day work session to receive in-person training on the
8 Autobound Edge redistricting software with Fred Hejazi, the CEO of Autobound.⁹¹

9 27. In July, the Board attended the National Conference of State Legislatures
10 “Ready to Redistrict” conference in Salt Lake City and received training on legal and
11 procedural topics related to redistricting.⁹²

12 28. On August 12, 2021, the United States Bureau of the Census reported the
13 results of the census to the State of Alaska.⁹³ The Census reported Alaska’s population
14 to be 733,391.⁹⁴

15 29. On August 23-24, 2021, the Board held a meeting with all members, the
16 executive director, deputy director, and legal counsel present.⁹⁵ The Board revised its
17 travel and per diem policy, and then took public testimony on the redistricting process.⁹⁶

19 ⁸⁷ ARB000151.

20 ⁸⁸ ARB000151.

21 ⁸⁹ ARB000151.

22 ⁹⁰ ARB000152.

23 ⁹¹ ARB000152.

24 ⁹² ARB000121-ARB000152 (Board Meeting Minutes).

25 ⁹³ ARB000002.

26 ⁹⁴ ARB004350-ARB004351.

⁹⁵ ARB000153-ARB000158 (Board Meeting Minutes).

⁹⁶ ARB000154.

1 Among other testimony, Yarrow Silvers of Anchorage testified against the current
2 senate districts in East Anchorage that she felt improperly bisected East Anchorage,
3 William Naneng of Hooper Bay advocated for Hooper Bay to be part of the Bethel
4 house district, Doyon Limited President Aaron Schutt advocated for a unified interior
5 district, and Senate Minority Leader Tom Begich urged the Board not to use Valdez to
6 fill the under-population of the Matanuska-Susitna Borough.⁹⁷ The Board entered
7 executive session to discuss legal issues, and upon re-entering public session, Torkelson
8 noted that the Board was required to create at least one forty-district plan within 30
9 days of the release of the 2020 U.S. Census results on August 12, which would be no
10 later than September 11, 2021.⁹⁸ The Board announced that third parties could submit
11 their proposed redistricting plans by September 17, for the purpose of receiving public
12 comment during the upcoming state-wide “road show,” and the Board would provide
13 them 30 minutes to present their proposals.⁹⁹ The Board then discussed how best to
14 complete a proposed plan by September 11, and the Board recessed until the next
15 morning.¹⁰⁰ The next day, the Board went over general principles of law regarding
16 redistricting in public session and then began mapping Southeast Alaska together.¹⁰¹

17 30. On September 7-9, 2021, the Board held a meeting with all members, the
18 executive director, deputy director, and legal counsel present.¹⁰² The Board received
19 public testimony at the outset of the meeting.¹⁰³ The Board and staff then discussed the

21 ⁹⁷ ARB000154-ARB000155.

22 ⁹⁸ ARB000155-ARB000156.

23 ⁹⁹ ARB000156.

24 ¹⁰⁰ ARB000157.

25 ¹⁰¹ ARB000158.

26 ¹⁰² ARB000159-ARB000165 (Board Meeting Minutes).

¹⁰³ ARB000160.

1 challenges they encountered when mapping after the last Board meeting, and entered
2 executive session to receive legal advice from counsel.¹⁰⁴ Upon exiting executive
3 session, legal counsel provided a summary of general redistricting law, including that
4 the Alaska Supreme Court had indicated that areas within incorporated boroughs were,
5 by definition, socio-economically integrated.¹⁰⁵ The Board presented the draft maps
6 they had been working on, and, upon request, took additional public testimony in the
7 afternoon, including from Yarrow Silvers, who voiced concern that the Board had
8 drawn a district that included a portion of East Anchorage with Eagle River.¹⁰⁶ The
9 Board entered a work session for all of September 8 to draw maps, and on September
10 9, adopted Board Composite v.1 and Board Composite v.2, which were both forty-
11 district redistricting plans.¹⁰⁷ The Board received written testimony submissions
12 regarding v.1 and v.2 from September 9 forward.¹⁰⁸

13 31. On September 17, 2021, the Board held a meeting with all members, the
14 executive director, deputy director, and legal counsel present.¹⁰⁹ The Board received
15 public testimony on v.1 and v.2 redistricting plans adopted at its prior meeting.¹¹⁰ The
16 following third-party groups then presented their maps: (1) Doyon Coalition,¹¹¹ (2)
17 Alaska Democratic Party, (3) Alaskan for Fair and Equitable Redistricting (“AFFER”),
18

19 ¹⁰⁴ ARB000160-ARB000161.

20 ¹⁰⁵ ARB000161.

21 ¹⁰⁶ ARB000161.

22 ¹⁰⁷ ARB000164.

23 ¹⁰⁸ Torkelson Aff. ¶ 20; ARB001714-ARB004347 (public testimony, including
September 9 submissions).

24 ¹⁰⁹ ARB000166-ARB000174 (Board Meeting Minutes).

25 ¹¹⁰ ARB000167-ARB000170.

26 ¹¹¹ The Doyon Coalition was a partnership of Doyon, Ltd.; Tanana Chiefs Conference;
Sealaska Corporation; Ahtna, Incorporated; and Fairbanks Native Association. *See*
ARB000170.

1 (4) Alaskans for Fair Redistricting (“AFFR”), and (5) the Senate Minority Caucus.¹¹²
2 The Board took additional public testimony and advised the public that its next meeting
3 would be on September 20, and after that meeting the public outreach phase of its work
4 would begin.¹¹³

5 32. On September 20, 2021, the Board held a meeting with all members, the
6 executive director, deputy director, and legal counsel present.¹¹⁴ The Board opened the
7 meeting by taking public testimony.¹¹⁵ It is customary for the Alaska Redistricting
8 Board to adopt third-party plans as proposed maps for the purposes of the public
9 outreach tour.¹¹⁶ Following this tradition, the Board then discussed the five (5) third-
10 party plans, with the proponents of those plans providing information and answering
11 questions.¹¹⁷ Torkelson then presented improvements the Board had made to v.1 and
12 v.2 of its maps, and proposed that versions 3 and 4 be adopted in lieu of v.1 and v.2,
13 respectively.¹¹⁸ The Board then voted to replace v.1 and v.2 with versions 3 and 4,
14 respectively, and to adopt the plans submitted by the Senate Minority Caucus, the
15 Doyon Coalition, AFFER, and AFFR as proposed plans to take on its outreach tour.¹¹⁹
16 Each of these four plans included proposed senate pairings.¹²⁰ The AFFER proposed

18 ¹¹² ARB000170-ARB000173.

19 ¹¹³ ARB000173-ARB000174.

20 ¹¹⁴ ARB000175-ARB000192.

21 ¹¹⁵ ARB000176.

22 ¹¹⁶ Jan. 31, 2022 Trial Tr. 1416:13-20 (Ruedrich Cross).

23 ¹¹⁷ ARB000176-ARB000186.

24 ¹¹⁸ ARB000186-ARB000190.

25 ¹¹⁹ ARB000190-ARB000192, ARB010360 at 217:19-24 (September 20, 2021 board
26 meeting, adopting four third-party plans to take on the road for public comment).

¹²⁰ ARB001233-ARB001293 (AFFER); ARB001295-ARB001340 (AFFR); ARB001436-
ARB001481 (Doyon Coalition); ARB001483-ARB001528 (Senate Minority); ARB001189-
ARB001191 (minutes of September 20, 2021 ARB meeting).

1 plan adopted by the Board on September 20, 2021 included a senate pairing of Muldoon
2 with Eagle River in proposed senate district J.¹²¹ The Board voted against adopting the
3 Alaska Democratic Party’s plan.¹²² The Board took additional public testimony¹²³ and
4 then advised it would be on its public outreach tour until the end of October. An email
5 address was provided for anyone desiring the Board to come to their community to
6 submit such a request.¹²⁴

7 33. After adoption of all six proposed plans, and between September 27 and
8 November 1, 2021, the Board held public hearings throughout Alaska.¹²⁵ On
9 September 30, the Board held a hearing in Valdez, one of its earliest stops,¹²⁶ during
10 which large printouts of all the adopted proposed maps were hung on the walls and
11 citizens were permitted to share their thoughts with the Board.¹²⁷ Numerous residents

12
13 ¹²¹ ARB001236-ARB001237.

14 ¹²² ARB000191.

15 ¹²³ ARB010361-ARB010369 at 218:15-225:17 (public testimony at September 20, 2021
board meeting after adoption of third-party plans).

16 ¹²⁴ ARB000192.

17 ¹²⁵ ARB004415-ARB004417 (Board website showing list of all public hearings);
18 ARB001699-ARB001704 (Torkelson presentation summarizing public hearing itinerary and
19 showing representative photographs of various meetings); Jan. 25, 2022 Trial Tr. 475:12-16
20 (Duval cross, Q: “And there were six different plans that were presented in Valdez at that
21 meeting on September 30th; is that right?” A: “I don’t recall the exact number but six sounds
22 correct, yes.”); 475:23-476:11 (Duval cross, admitting Board proposed v.4 map that paired
23 Valdez with Mat-Su was on the wall at the September 30 Valdez hearing, along with the other
24 proposed maps); Jan. 25, 2022 Trial Tr. 485:17-21 (Duval redirect: Q: “You’ve been asked
several questions about the maps on the wall. Is it your understanding that the maps on the
wall that were posted on Valdez were 3 and 4 and four third-party maps?” A: “Yes.”); Jan.
27, 2022 Trial Tr. 1055:15-25 (Torkelson cross: Q: “In proposed version v4, Valdez is in –
placed with the same communities that it was in the final map and with the eastern Mat-Su; is
that right?” A: “Yes. From recollection, board-adopted v4 contains a Valdez/Mat-Su district
that’s very similar to the final adopted plan.” Q: “And the board adopted v4 for public
comment on September 20th; is that correct?” A: “Yes, sir, that’s correct.” Q: “V4 was on
the wall at the Valdez tour stop?” A: “Yes. It was on the wall at every stop.”).

25 ¹²⁶ Jan. 26, 2022 Trial Tr. 796:8-14 (Borromeo cross); Jan. 27, 2022 Trial Tr. 1047:2-4
(Torkelson cross: “For example, I think it’s been noted that Member Borromeo really wanted
to get to Valdez early and hear from them.”).

26 ¹²⁷ Jan. 25, 2022 Trial Tr. 476:12-478:15 (Duval cross describing September 30 meetings,

1 of Valdez, including Nathan Duval and Sheri Pierce, attended the meeting, reviewed
2 the maps, and shared their views with the Board.¹²⁸ The Board also held hearings in
3 Palmer, Wasilla, Anchorage, and Bethel, among many other locations, and it held a
4 Skagway public hearing using the Zoom internet platform.¹²⁹ In addition to the in-
5 person hearings in communities across the state, the Board also held two additional
6 telephonic public hearings for statewide participants on October 20 and October 30.¹³⁰
7 The Board held public hearings on all six proposed plans that it adopted.¹³¹ Public
8 testimony during these hearings included testimony regarding senate district
9 pairings.¹³²

10
11 viewable maps, and his participation); 518:6-10, 519:7-19 (Pierce confirming Board proposed
12 v.4 was on display at September 30 hearing in Valdez and on her conversations with each
13 member of the Board one-on-one).

14 ¹²⁸ Jan. 25, 2022 Trial Tr. 476:12-478:15 (Duval cross); 518:6-10, 519:7-19 (Pierce cross).

15 ¹²⁹ ARB004377, ARB004416-ARB004417.

16 ¹³⁰ ARB004415-ARB004417.

17 ¹³¹ Jan. 25, 2022 Trial Tr. 485:17-21 (Duval redirect: Q: “You’ve been asked several
18 questions about the maps on the wall. Is it your understanding that the maps on the wall that
19 were posted on Valdez were 3 and 4 and four third-party maps?” A: “Yes.”); Jan. 27, 2022
20 Trial Tr. 977:14-17 (Bahnke cross Q: “And at that meeting in Nome, the board’s version 3 and
21 4 and the other third-party proposed maps, those were on the wall, right?” A: “Yes.”); Jan.
22 27, 2022 Trial Tr. 979:20-25 (Bahnke cross: A: “I believe the format that we were following
23 was we’d give kind of a presentation, explain the process of redistricting, what it is, share
24 information about what was on the walls, and then we would go into a process where we kind
25 of mingled with people.”); Jan. 27, 2022 Trial Tr. 1032-12-1033:11 (Simpson cross, Q: “[I]f
26 I’m understanding you correctly, that’s board version 3 and 4 and various third-party maps, is
it correct that the board adopted them for the purposes of getting public comment on those
maps?” A: “Yes, that’s exactly why we adopted several versions, yes.” Q: “So does it matter
whether the board received public comment on those maps before it adopted them for the
purposes of public comment?” A: “No. The purpose of adopting them was to encourage a
variety of public comment and to provide a number of options that people could look at and
sort of pick and choose their way through what they liked or didn’t like about any of them.”
Q: Did the board get public comment on those maps?” A: “Absolutely. At the public meetings
around the state, the typical process was that either – either board members or staff working
together would physically pin the maps up to the walls of the various meeting venues, and
people could come into the room and walk around the perimeter looking at different maps.
And the maps were labeled as to their source, so there was a board version 3 and 4, there was
AFFR, AFFER, Doyon, and so forth.”).

¹³² ARB006500-ARB006600.

1 34. On November 2-4, 2021, the Board held a meeting with all members, the
2 executive director, deputy director and legal counsel present.¹³³ The Board took public
3 testimony and entered executive session to receive legal advice about VRA
4 compliance.¹³⁴ Torkelson provided a summary of the public hearing tour and reported
5 that public hearings had been held in the following communities: Juneau, Haines, Sitka,
6 Valdez, Anchorage (2 hearings), Kotzebue, Ketchikan, Petersburg, Wrangell, Nome,
7 Seward, Homer, Kenai, Kodiak, Delta Junction, Fairbanks, Bethel, Dillingham, Palmer,
8 Wasilla, Cordova, and Utqiagvik.¹³⁵ The Board took additional public testimony and
9 then entered a work session beginning on the afternoon of November 2 to continue its
10 work on a final redistricting plan.¹³⁶

11 35. On November 5, 2021, the Board held a meeting with all members, the
12 executive director, deputy director and legal counsel present.¹³⁷ The Board started with
13 a work session, and then took extensive public testimony from individuals, including
14 Yarrow Silvers and Felisa Wilson.¹³⁸ Member Bahnke moved the Board to adopt the
15 redistricting map labeled “Board Consensus v.7” as the Board’s Final Map of the forty
16 (40) house districts.¹³⁹ The Board voted 4-1, with Member Marcum voting no, to adopt
17 Board Consensus v.7 as the Final House Redistricting Plan.¹⁴⁰

18 36. On November 8-10, 2021, the Board held a meeting with all members,
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21 ¹³³ ARB000193-ARB000200 (Board Meeting Minutes).

22 ¹³⁴ ARB000194-ARB000196.

23 ¹³⁵ ARB000198.

24 ¹³⁶ ARB000199.

25 ¹³⁷ ARB000201-ARB000209 (Board Meeting Minutes).

26 ¹³⁸ ARB000202-ARB000208.

¹³⁹ ARB000208.

¹⁴⁰ ARB000208-ARB000209.

1 the executive director, deputy director, and legal counsel present.¹⁴¹ These meetings
2 were for the purpose of adopting senate pairings and finalization of the Board’s
3 proclamation of redistricting.¹⁴² The Board took public testimony from individuals and
4 groups,¹⁴³ including Yarrow Silvers and Felisa Wilson, who advocated against pairing
5 any house districts in the Municipality of Anchorage with Eagle River house
6 districts.¹⁴⁴ On November 8, 2021, Member Marcum proposed options for senate
7 pairings in public session, including her reasoning for various combinations of
8 pairings.¹⁴⁵ The Board engaged in public discussion regarding the pairing of the senate
9 districts presented by Marcum.¹⁴⁶

10 37. On November 9, 2021, Member Marcum moved the Board to accept her
11 proposed senate pairings for the house districts within the Municipality of Anchorage,
12 and the Board adopted those pairings by a 3-2 vote.¹⁴⁷ The Board voted to pair House
13 Districts 21 and 22 to create Senate District K, and voted to pair House Districts 23 and
14 24 to create Senate District L.¹⁴⁸ Both of these senate districts were consistent with
15 proposals Member Marcum had made the prior day on the record.¹⁴⁹ Board staff then
16 presented a report showing the percentage change of constituents for senate districts,
17

18 ¹⁴¹ ARB000210-ARB000222 (Board Meeting Minutes).

19 ¹⁴² ARB000210.

20 ¹⁴³ ARB006504-ARB006600.

21 ¹⁴⁴ ARB000210-ARB000213.

22 ¹⁴⁵ Marcum Aff. ¶ 17; *see also* ARB000212 (November 8 Meeting Minutes of Public
23 Testimony: “Alaskans for Fair and Equitable Redistricting representative, Randy Ruedrich,
recommended the following Senate pairings . . . Districts 21 and 22, and Districts 23 and 24.”).

24 ¹⁴⁶ Marcum Aff. ¶ 17.

25 ¹⁴⁷ ARB000215.

26 ¹⁴⁸ ARB0007035-ARB007036.

¹⁴⁹ ARB006687 at 191:9-17; ARB006660-ARB006702 (discussing Anchorage senate
pairing options).

1 so that the Board could decide which senate terms required truncation because the
2 districts had substantially changed and thus must stand for election in 2022, regardless
3 of when the seat had previously stood for election.¹⁵⁰

4 38. On November 10, 2022, the Board issued its Final Plan and Proclamation
5 of Redistricting.¹⁵¹

6 **D. Public Access**

7 39. The Board undertook the redistricting process in the midst of the COVID-
8 19 pandemic.¹⁵² Despite the difficulties posed by the pandemic, the Board employed
9 numerous measures to ensure public access and public input into its work, and provided
10 public access never before provided by previous Redistricting Board.¹⁵³

11 40. In addition to its public outreach tour across Alaska from September 27
12 through November 1, 2021, in which the Board took sixty (60) plus hours of public
13 testimony on the Board’s six proposed maps versions and four senate pairings tables,¹⁵⁴
14 the Board also received thousands of pages of written testimony through the Board’s
15 dedicated public testimony email account: testimony@akredistrict.org¹⁵⁵ and the
16 Board’s web-based public comment submission form.¹⁵⁶

18 ¹⁵⁰ ARB000216.

19 ¹⁵¹ ARB000219-ARB000222.

20 ¹⁵² Torkelson Aff. ¶ 51; ARB003925 (Diana Sparacino of Fairbanks submission: “Thank
21 you to the Board and staff for all their work, and further transparency in the process, and to
22 Juli Lucky for her informative, concise e-notifications. As a 40 year resident[,] I don’t
remember having this much information during the redistricting process.”).

23 ¹⁵³ Torkelson Aff. ¶ 42.

24 ¹⁵⁴ ARB004415-ARB004417 (Alaska Redistricting Board website capture of Public
Hearing Tour, listing dates, locations, and linking State Public Notice system for formal notice
of hearings); ARB004377 (Board Meeting Information including links to public notices for
meetings); ARB004391(Doyon Coalition senate pairings).

25 ¹⁵⁵ Torkelson Aff. ¶¶ 41, 45; *see* ARB004415 (list of public hearing sessions).

26 ¹⁵⁶ Torkelson Aff. ¶ 44.

1 41. To further engage the public, the Board launched a first-ever in Alaska
2 web-based platform to allow any member of the public to draw their own legislative
3 districts and submit them online to the Board.¹⁵⁷ This web-based tool, which allowed
4 users to overlay political boundaries such as school districts and local government
5 boundaries onto the map of Alaska, was located on the Board’s website at:
6 www.akredistrict.org/create.¹⁵⁸ The City of Valdez, for example, used this tool to craft
7 and submit its proposed “Valdez Option 1.”¹⁵⁹

8 42. The Board also used an email list service to issue updates and notices to
9 anyone who subscribed.¹⁶⁰ Over the course of the redistricting process, the Board sent
10 55 email updates via the service, and by the end of the process had 575 subscribers.¹⁶¹

11 43. The Board’s meetings were streamed over the internet via the Alaska
12 Legislative web stream broadcast system or via the Zoom internet platform.¹⁶² When
13 practical, the Board screen-shared the Autobound Edge software window so that
14 viewers could observe the Board’s map-drawing work.¹⁶³ To allow the public to
15 remotely view work sessions where members moved about the room discussing maps,

16
17 ¹⁵⁷ Torkelson Aff. ¶ 42.

18 ¹⁵⁸ Torkelson Aff. ¶ 42; ARB003586 (Sally Rue submission: “Thank you for the
19 tremendous time and effort you are putting into gathering public comment on the redistricting
20 process and map alternatives. I appreciate the difficulties and complexities you are faced with
21 in meeting the needs of all regions of the state, and trying to meet the criteria of compactness,
contiguity, socioeconomic integration, and minimum deviation from population count. I also
commend the Board and staff for providing such good online tools to allow many Alaskans
(those who have access to technology and good broadband) to study and compare the
alternatives.”).

22 ¹⁵⁹ Torkelson Aff. ¶ 43.

23 ¹⁶⁰ Torkelson Aff. ¶ 46.

24 ¹⁶¹ Torkelson Aff. ¶ 46.

25 ¹⁶² ARB004375-ARB0004380; ARB002611 (Anastasia Hoffman submission: “Thank
you for your service and commitment to ensuring this redistricting effort is accomplished with
integrity and transparency.”).

26 ¹⁶³ Torkelson Aff. ¶ 49.

1 the Board acquired and deployed a 360-degree teleconference camera system.¹⁶⁴

2 **E. Map Drawing**

3 44. Board Members explained in their testimony how each area challenged
4 in this litigation was drawn.

5 **1. Southeast Alaska and House District 3**

6 45. Board Member Budd Simpson of Juneau took the lead in drafting the
7 Southeast Alaska house districts. To start the process, Member Simpson first decided
8 how far north Southeast Alaska house districts would extend.¹⁶⁵ Member Simpson
9 determined that Southeast house districts should include but not extend past the
10 northern boundary of the City and Borough of Yakutat (“Yakutat”).¹⁶⁶ Member
11 Simpson chose this as the northern boundary because of his experience that the
12 residents of Yakutat consider themselves to be part of Southeast Alaska. Furthermore,
13 he observed the mathematical reality that each of the Southeast house districts would
14 be significantly overpopulated (contain in excess of 1/40th of the state’s population) if
15 Southeast districts extended further north to include the City of Cordova.¹⁶⁷

16 46. By stopping at the northern boundary of Yakutat, the entire Southeast
17 area had a population of 72,286, which is 1,054 people less than four ideally populated
18 house districts of 18,335 persons.¹⁶⁸ If the Southeast house districts extended north of
19

20
21 ¹⁶⁴ Torkelson Aff. ¶¶ 47-48; Jan. 27, 2022 Trial Tr. 1053:10-1055:7 (Torkelson cross
regarding video system).

22 ¹⁶⁵ Simpson Aff. ¶ 11.

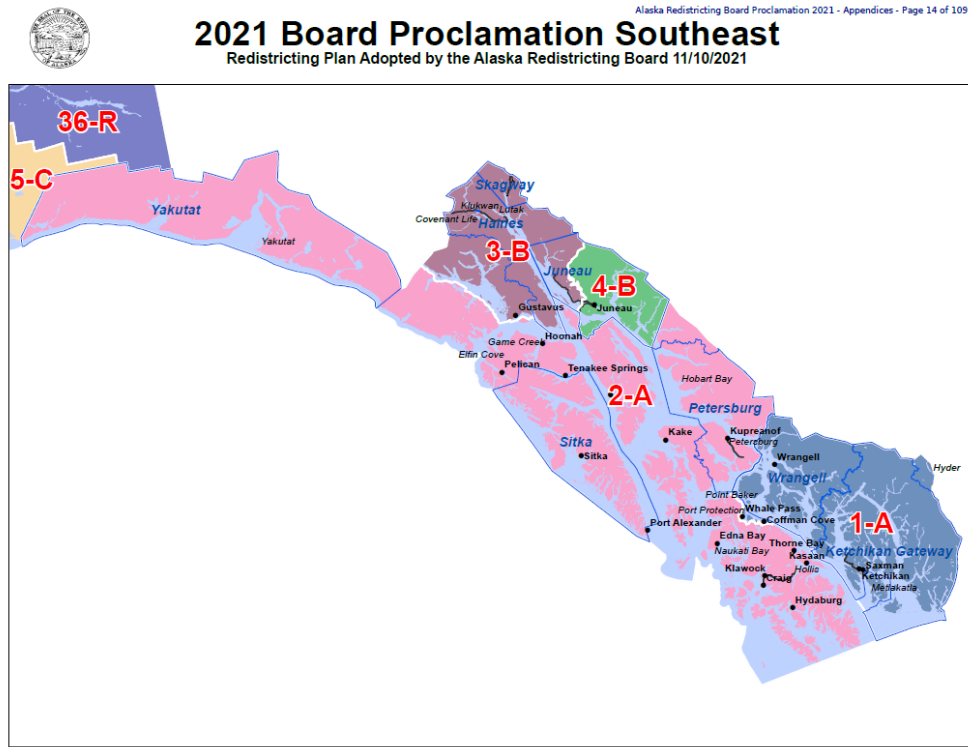
23 ¹⁶⁶ Simpson Aff. ¶ 11; *see also Groh v. Egan*, 526 P.2d 863, 879 (Alaska 1974) (“Yakutat,
24 the northwestern-most settlement in Southeast Alaska, which is itself separated by great
distance from the other communities in the region, is 225 air miles from the nearest population
center in the Southcentral region, Cordova. There are valid considerations both historically
and geographically for not endeavoring to span that gap.”).

25 ¹⁶⁷ Simpson Aff. ¶¶ 11-12.

26 ¹⁶⁸ Simpson Aff. ¶ 12.

1 Yakutat, thereby including the City of Cordova, the total population would have risen
2 to 74,895, or 1,555 people more than four ideal house districts.¹⁶⁹

3 47. Below is all four Southeast house districts, House Districts 1-4 of the
4 Board's Final Plan.¹⁷⁰



Based on 2020 Census Geography and 2020 PL94-171 Data; Map Gallery link: www.akredistrict.org/maps ARB000018

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18 48. Skagway is included in House District 3, along with Haines, Gustavus
19 and a northern portion of the City and Borough of Juneau (“CBJ”), as shown below:¹⁷¹

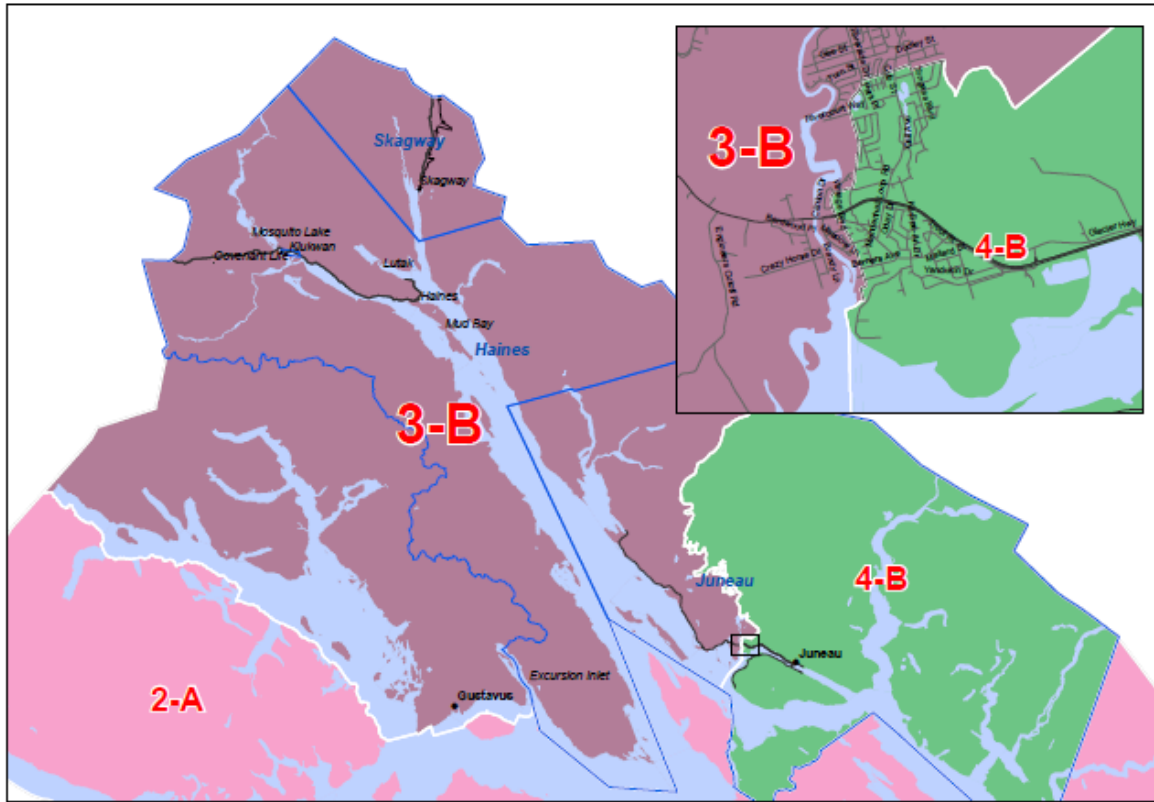
20 49. Member Simpson explained how he drew House Districts 3 and 4. He
21 explained that the southern, eastern and western borders of House District 4 coincide

24
25 169 Simpson Aff. ¶ 12.
26 170 ARB000018.
171 ARB000021.



2021 Board Proclamation District 3-B

Redistricting Plan Adopted by the Alaska Redistricting Board 11/10/2021



Based on 2020 Census Geography and 2020 PLS4-171 Data; Map Gallery link: www.akredistrict.org/maps

ARB000021

with the boundaries of the CBJ itself.¹⁷² House District 4 is entirely within the boundaries of the City and Borough of Juneau.¹⁷³ House District 3 is comprised of the northern portion of the CBJ, the Skagway Borough, the Haines Borough, and the community of Gustavus.¹⁷⁴ Simpson drew House District 4 starting at the southern portion of the CBJ and moved north.¹⁷⁵ By starting at the southern boundary of the CBJ, Simpson maximized the number of CBJ residents in the house district that

¹⁷² Simpson Aff. ¶ 18; Feb 3, 2022 Trial Tr. 1851:22-1852:10.

¹⁷³ Simpson Aff. ¶ 18.

¹⁷⁴ Simpson Aff. ¶ 17; ARB000021.

¹⁷⁵ Simpson Aff. ¶ 18.

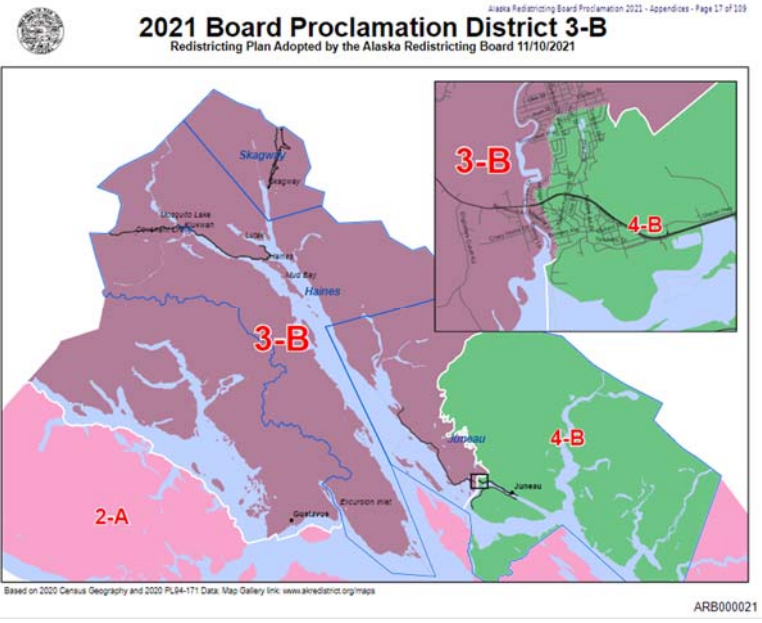
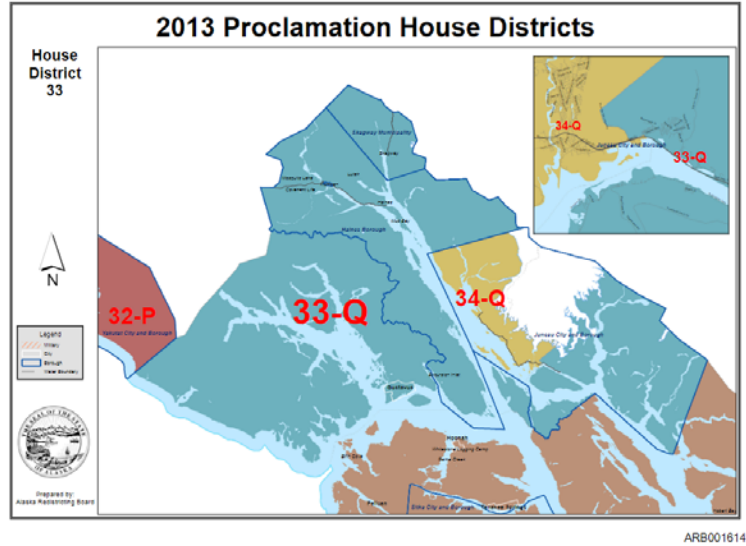
1 included the downtown portion of the CBJ.¹⁷⁶ Because the CBJ has too much
2 population to be placed in a single house district, House District 4 ends within the
3 Mendenhall Valley portion of the City and Borough of Juneau.¹⁷⁷ House District 3
4 includes the remainder of the Mendenhall Valley portion, Auke Bay, and Lynn Canal
5 portions of the CBJ. Simpson’s reasoning for including Skagway with the northern
6 portion of the CBJ was that Skagway was socioeconomically integrated with the CBJ
7 and the northern portion of the CBJ is geographically closer to Skagway than the
8 downtown portion of the CBJ is with Skagway.¹⁷⁸ This significantly increased the
9 compactness of Skagway’s house district, as shown below in a comparison of the 2013
10 Proclamation Plan with the newly proposed House District 3:
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20 ¹⁷⁶ Feb 3, 2022 Trial Tr. 1798:1-6.

21 ¹⁷⁷ Feb 3, 2022 Trial Tr. 1852:3-10 (Q: “So the – the line on the northwest side of District
22 4, it would be the only line that you drew if the others are just borough boundary lines?” A:
23 “That’s right. And you had to – you know, you had to split the borough somewhere, because
it didn’t have enough population for – well, it had more than enough population for a single
district, and so you had to make a split somewhere.”); Simpson Aff. ¶ 18.

24 ¹⁷⁸ Feb 3, 2022 Trial Tr. 1864:20-1865:6 (Q: “And is it – is it subjective or objective that,
25 as you drew the plan, Skagway and Haines are joined with Juneau residents who live closer to
26 Skagway and Haines?” A: “That’s – that’s very objective. They either are or they aren’t
closer. It’s – in that sense it’s sort of like the contiguity issue, you can generally look at a
district and say that’s contiguous or not. In this case, the way the board finally landed on those
districts, I feel they are much better in terms of compactness.”); Simpson Aff. ¶ 23.

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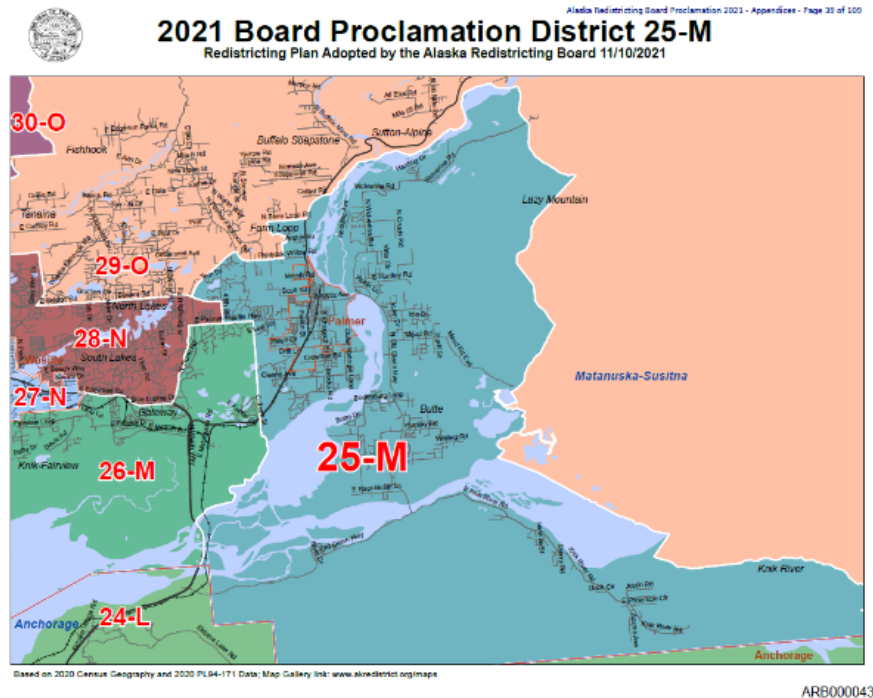
50. Also important to Simpson was the fact that the ferry terminals for the Alaska Marine Highway System—which is a primary transportation link between the City and Borough of Juneau, Skagway, Haines and Gustavus—are all located in House

1 District 3.¹⁷⁹ The CBJ ferry terminal is located in Auke Bay in House District 3.¹⁸⁰

2 **2. Mat-Su/Valdez and House District 36**

3 51. Member Borrromeo took the lead in drafting House Districts 25-30, which
4 encompassed the following incorporated areas: Matanuska-Susitna Borough, the
5 Denali Borough, and the City of Valdez.¹⁸¹

6 52. House District 25 has the City of Palmer as its core.¹⁸² It is contained
7 entirely within the Mat-Su Borough.¹⁸³ House District 25 has 18,822 residents that
8 reside within it.¹⁸⁴ It also includes the areas of Lazy Mountain, Butte, and Knik.¹⁸⁵



179 Simpson Aff. ¶ 23.

180 Simpson Aff. ¶ 23.

181 Borrromeo Aff. ¶ 13.

182 ARB000043.

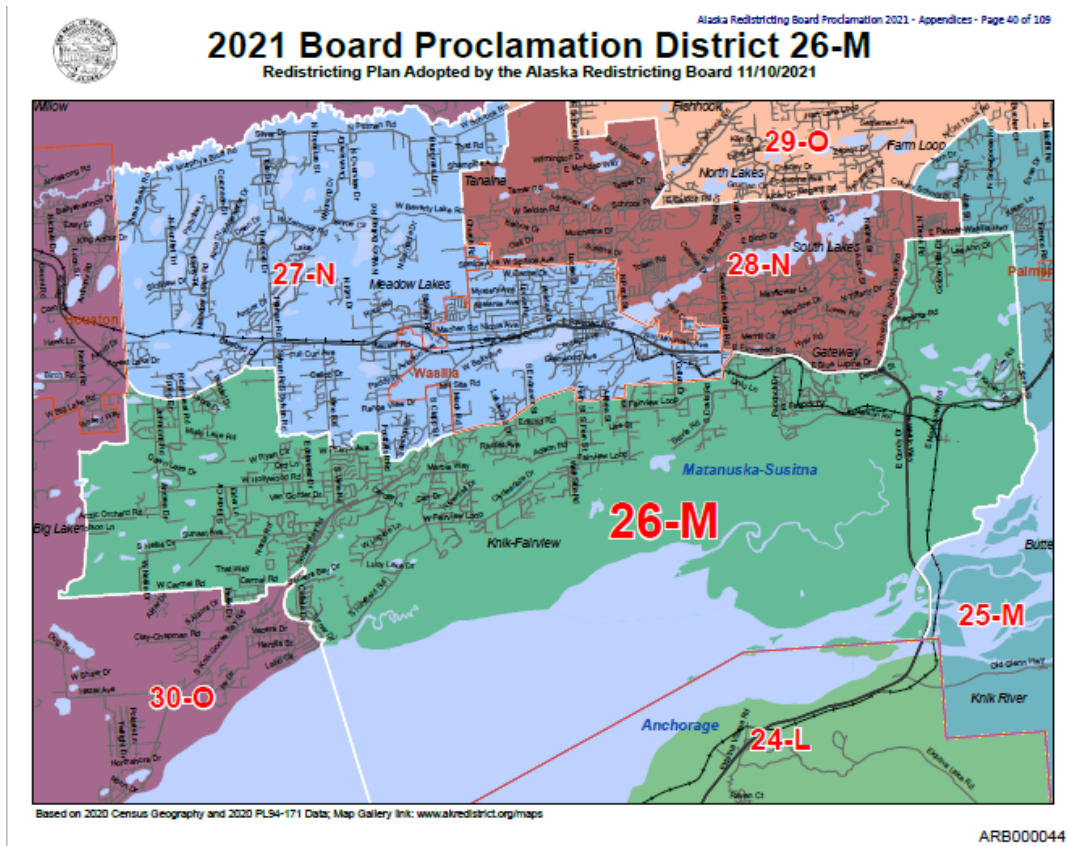
183 Jan. 24, 2022 Trial Tr. 377:20-22 (Colligan cross).

184 Borrromeo Aff. ¶ 27.

185 Borrromeo Aff. ¶ 17; ARB000043.

1 These areas are connected to Palmer by the Old Glenn Highway and their rural
2 nature.¹⁸⁶

3 53. House District 26 is comprised of the area immediately south of the City
4 of Wasilla.¹⁸⁷ It is contained entirely within the Mat-Su Borough.¹⁸⁸ It is a mostly
5 residential area that encompasses the Knik-Fairview area.¹⁸⁹ House District 26 has a
6 population of 18,807 residents within it:¹⁹⁰



186 Borromeo Aff. ¶ 17.

187 ARB000044.

188 Jan. 24, 2022 Trial Tr. 377:20-22 (Colligan cross).

189 Borromeo Aff. ¶ 18.

190 Borromeo Aff. ¶ 27.

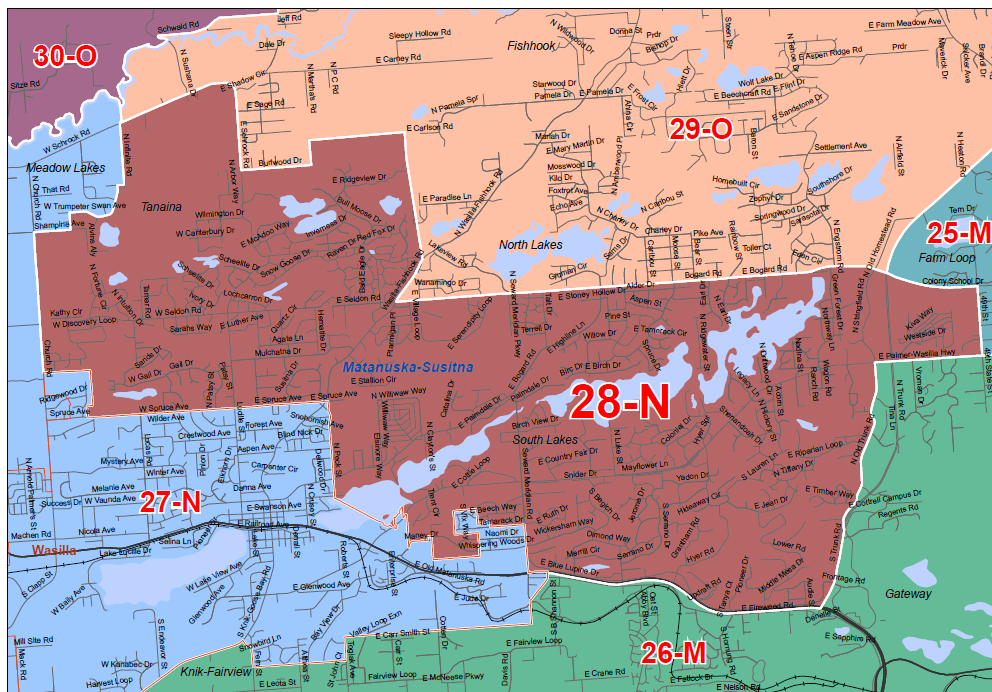
1 54. House District 27, shown above, has the City of Wasilla as its core.¹⁹¹ It
 2 is contained entirely within the Mat-Su Borough.¹⁹² House District 27 has a population
 3 of 18,799 residents within it.¹⁹³ Borromeo added census blocks to the north of the city
 4 limits to pick up necessary population for House District 27.¹⁹⁴

5 55. House District 28 covers the areas between the incorporated cities of
 6 Palmer and Wasilla.¹⁹⁵ It is contained entirely within the Mat-Su Borough.¹⁹⁶ House
 7 District 28 has a population of 18,793 residents within it:¹⁹⁷



2021 Board Proclamation District 28-N
 Redistricting Plan Adopted by the Alaska Redistricting Board 11/10/2021

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Based on 2020 Census Geography and 2020 PL94-171 Data; Map Gallery link: www.akredistrict.org/maps

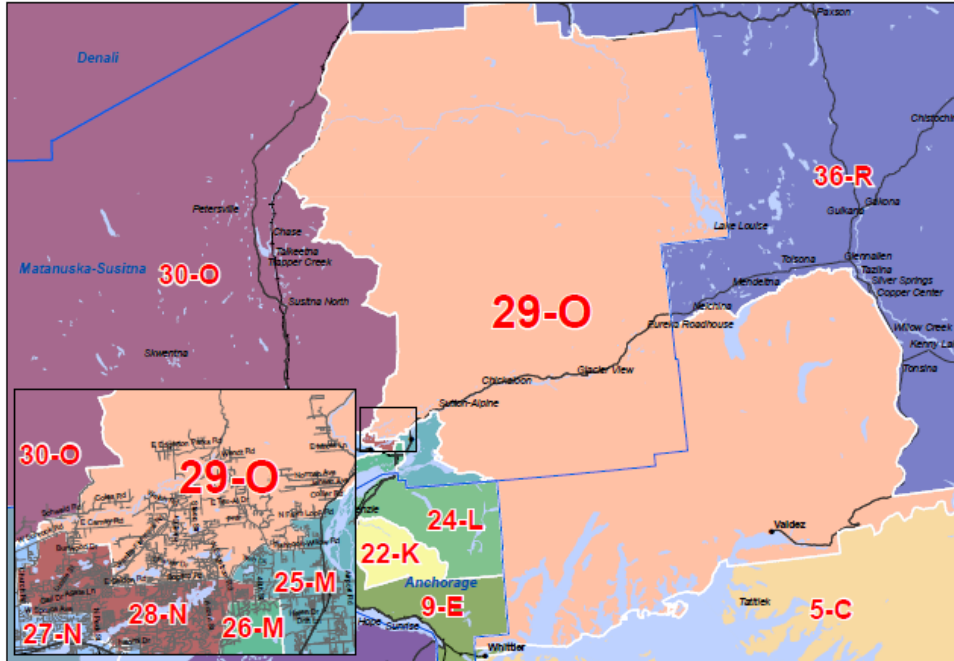
ARB000046

- 191 ARB000044-ARB000045.
- 192 Jan. 24, 2022 Trial Tr. 377:20-22 (Colligan cross).
- 193 Borromeo Aff. ¶ 27.
- 194 Borromeo Aff. ¶ 19.
- 195 ARB000046.
- 196 Jan. 24, 2022 Trial Tr. 377:20-24 (Colligan cross).
- 197 Borromeo Aff. ¶ 27.

1 56. House District 29 covers the eastern side of the Mat-Su Borough and
2 Valdez.¹⁹⁸ House District 29 has a population of 18,773 people within it:¹⁹⁹



3 **2021 Board Proclamation District 29-O**
4 Redistricting Plan Adopted by the Alaska Redistricting Board 11/10/2021



Based on 2020 Census Geography and 2020 PL94-171 Data; Map Gallery link: www.alakredistrict.org/maps

ARB000047

5 15 57. House District 30 is a district with the incorporated City of Houston as
6 its core, and extends north to take in the northern Mat-Su Borough and a portion of the
7 Denali Borough.²⁰⁰ House District 30 has a population of 18,536 people within it:²⁰¹

198 ARB000047.

199 Borromeo Aff. ¶ 27.

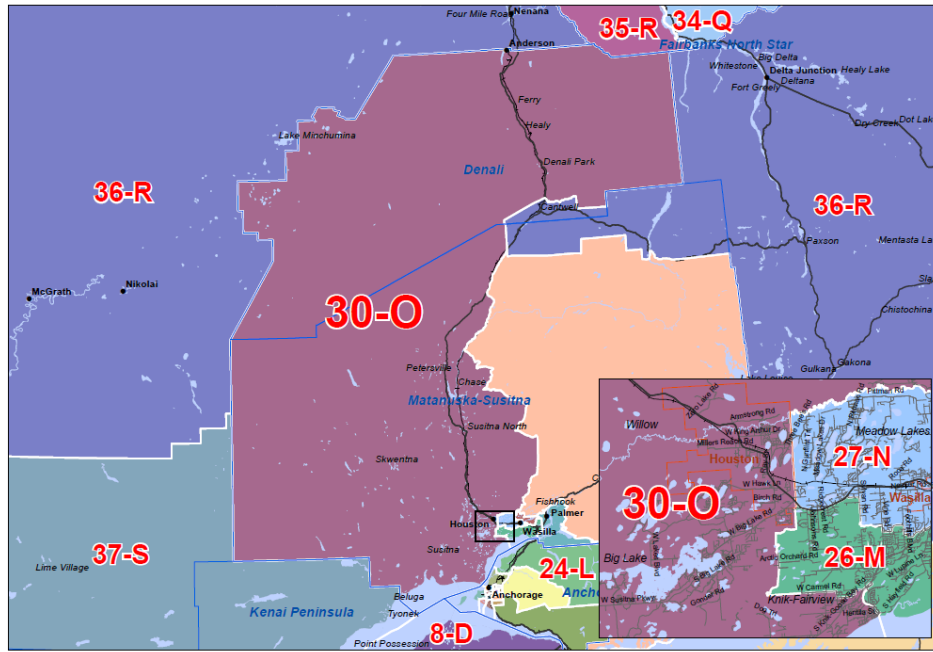
200 ARB000048.

201 Borromeo Aff. ¶ 27.



2021 Board Proclamation District 30-O

Redistricting Plan Adopted by the Alaska Redistricting Board 11/10/2021



Based on 2020 Census Geography and 2020 PL94-171 Data; Map Gallery link: www.akredistrict.org/maps

ARB000048

58. The Board did not include the Cantwell area in House District 30, thereby breaking the Mat-Su Borough and Denali Borough boundaries.²⁰² This was done because the Board received public testimony that Cantwell (which is in the Denali Borough) was more closely socio-economically connected to the Ahtna region of Alaska than the Mat-Su Borough.²⁰³ The Cantwell area not included in House District

²⁰² Borrromeo Aff. ¶ 23; Binkley Aff. ¶¶ 40-41; Torkelson Aff. ¶¶ 56-58.

²⁰³ *Id.*; see also ARB000639, ARB001793-ARB001794, ARB001795-ARB001796, ARB001822, ARB002873, ARB003089, ARB003418, ARB003998, ARB004220 (public testimony); ARB009242 (Nov. 4 Tr. at 72:7-22) (Board discussion of the public testimony); ARB003089 (Lucille Lincoln submission: "...It is important that the Ahtna villages remain in the same district because they are all socio-economically integrated; the same goes for Cantwell. They all have the same language, customs, traditions, and they hunt, fish, and do berry picking together. There are also relatives in Cantwell. Their village and Cantwell is very integrated in different ways. It is important for the villages to stay in one area. The other proposed maps exclude Cantwell from their village and this is wrong because Cantwell is apart of the village and they feel disconnected and abandoned. Please ensure that the Ahtna villages and Cantwell stay in the interior districts."); ARB002873 (summary: "Mr. Jackson spoke in favor of the Doyon map that is inclusive of all villages. Currently, Cantwell is not in the district and Mr. Jackson would like to be sure Cantwell is included in the district as there are familial

1 30 contains just over 200 people.²⁰⁴

2 59. Valdez is included in House District 29.²⁰⁵ Valdez was a difficult area to
3 redistrict in the 2021 redistricting cycle, as it has been in past redistricting cycles.²⁰⁶ At
4 least four of the proposed maps adopted by the Board had Valdez paired in different
5 ways.²⁰⁷ Given the 2020 census population numbers, there were a limited number of
6 possible configurations for the major communities in southcentral Alaska, including
7 Valdez.²⁰⁸ For example, due to the constitutional requirement of mapping house
8 districts to be as near as practical to 18,335 people, it was not possible to place Valdez,
9 Cordova, and Kodiak into a single district.²⁰⁹ Each of these configurations had wide-

10 _____
11 and recreational ties to Cantwell.”); ARB001795 (Michelle Anderson submission: “The
12 Cantwell people share many family connections with the other Ahtna villages. These
13 connections stretch back to time immemorial. The Ahtna people have historically been
14 nomadic, hunting along the Denali Highway corridor and into the Cantwell area. To this day,
15 the people of Cantwell and the people in the other Ahtna villages share a common language,
16 history, heritage, and way of life, including cultural and traditional values and practices such
17 as hunting, fishing, berry picking, potlatch, dance, and storytelling.”); ARB004220 (Angela
18 Vermillion submission: “It is very important that the Ahtna villages stay together in one
19 district. Our concern is the other proposed maps do not achieve this goal. For example, every
20 other proposed map excludes Cantwell in the Interior district. All the Ahtna villages, including
21 Cantwell are socioeconomically related.”).

17 ²⁰⁴ ARB004354 (Board website showing Cantwell population of 196 in 2020 census).

18 ²⁰⁵ ARB000047.

19 ²⁰⁶ Borrromeo Aff. ¶ 38; Binkley Aff. ¶¶ 24, 29-33 (discussing attempt to place Valdez
20 with Richardson Highway communities resulted in overpopulation of the Fairbanks North Star
21 Borough by 4.5%); Jan. 24, 2022 Trial Tr. 305:1-5 (Scheidt cross discussing Valdez Option 1
22 breaking Fairbanks North Star Borough boundary twice and overpopulating Fairbanks districts
23 by over 4.5%); Jan. 24, 2022 Trial Tr. 396:6-12 (Colligan cross admitting difficulty of placing
24 Valdez).

25 ²⁰⁷ Jan. 26, 2022 Trial Tr. 795:6-20 (Borrromeo cross); ARB001383 (Board Proposed v.3,
26 placing Valdez with Interior); ARB001336 (AFFR map placing Valdez with eastern Interior);
ARB001289 (AFFER horseshoe-shaped coastal district); ARB001468 (Doyon Prince William
Sound district); ARB001520 (Senate Minority map placing Valdez with Kodiak Island).

27 ²⁰⁸ Among other things, “it was not mathematically possible to couple Valdez, Cordova,
28 and the Kodiak Borough” into a single district based on the population numbers, Jan. 26 Trial
29 Tr. 799:7-25 (Borrromeo cross); and the Mat-Su Borough needed additional population to fill
30 its sixth district, *id.* at 812:8-23 (Borrromeo cross).

31 ²⁰⁹ Jan. 26, 2022 Trial Tr. 799:7-13 (Borrromeo cross).

1 reaching effects on the placement of other communities across the rest of the state.²¹⁰

2 60. The placement of Valdez is also interrelated with the question of how to
3 handle the excess population in the Fairbanks North Star Borough (FNSB) and the
4 under-population of the Mat-Su Borough (which did not have enough population for a
5 sixth full House district).²¹¹

6 61. After considering various options for Valdez, the Board ultimately
7 concluded that the entire statewide map would best satisfy the constitutional
8 requirements if Valdez was included with the Matanuska-Susitna Borough in District
9 29.²¹² The final decision on District 29 followed extensive discussion about possible
10 placements for Valdez, including the coastal, Interior, and Mat-Su placements that had
11 been proposed in the maps previously adopted by the Board, as well as a possible
12 pairing with Anchorage.²¹³ The new District 29 contains 75% of the same population

13
14 ²¹⁰ Borromeo Aff. ¶¶ 38-39.

15 ²¹¹ ARB007639-ARB007646 (Nov. 3 Meeting Tr. 279:20 – 286:1) (discussing interplay
16 of FNSB population and Richardson Highway/Valdez); Binkley Aff. ¶ 33 (discussing interplay
17 of FNSB population and Valdez placement); Jan. 26 Trial Tr. 812:8-23 (Borromeo cross)
18 (discussing under-population of Mat-Su Borough).

19 ²¹² Jan. 27, 2022 Trial Tr. 1056:12-20 (Torkelson cross discussing various Valdez
20 variations explored by Board members).

21 ²¹³ *E.g.*, ARB008766 (Nov. 2 Meeting Tr. 69:10-25) (discussing options for placement of
22 Valdez, and population challenges with the various combinations of Prince William Sound/
23 Gulf communities); ARB007473 (Nov. 3 Meeting Tr. 113:9-16) (discussing possible
24 placement of Valdez in Interior district and the limitations it imposed on other districts);
25 ARB007599-ARB007601 (Nov. 3 Meeting Tr. 239:22-241:22) (discussing interplay between
26 FNSB population and Valdez, and Valdez’s stated preferences); ARB007620-ARB007621
(Nov. 3 Meeting Tr. 260:13-261:21) (similar); ARB007639-ARB007646 (Nov. 3 Meeting Tr.
279:20-286:1) (extensive discussion of population dynamics of FNSB, Richardson Highway,
and Valdez); ARB007667-ARB007668 (Nov. 3 Meeting Tr. 307:24-308:6) (discussion of
potential Mat-Su option without Valdez); ARB007690-ARB007691 (Nov. 3 Meeting Tr.
330:12-331:18) (discussion of “binary choice” between options for mapping the Mat-Su
Borough “based on what we do with Valdez”); ARB007694-ARB007696 (Nov. 3 Meeting Tr.
334:13-336:20) (considering options that would place Valdez with Prince William Sound and
the Gulf); ARB009180-ARB009181 (Nov. 4 Meeting Tr. 10:15-11:2) (stating that the western
Alaska districts will not be finalized “until we solve that problem on the Fairbanks North Star
Borough [and] Valdez”); ARB009202– ARB009209 (Nov. 4 Meeting Tr. 32:4-39:12
(discussing various options for including Mat-Su with Valdez, but holding off on final decision

1 that were assigned to 2013 Proclamation Plan District 9,²¹⁴ which similarly combined
2 Valdez with the eastern Mat-Su Borough.²¹⁵ Valdez and the Mat-Su Borough also
3 shared a district in the 2002 Proclamation Plan.²¹⁶

4 62. House District 36 is the rural Interior district in the Board’s Final Plan.²¹⁷
5 There are 18,558 people in District 36.²¹⁸ District 36 covers an area that is sparsely
6 populated, necessitating a geographically large district in order to reach as nearly as
7 practicable the ideal district population.²¹⁹ It spans much of the Interior, including rural
8 communities from Chitina in the southeastern portion of Interior Alaska to Arctic
9 Village in the north to Holy Cross in the southwest.²²⁰ District 36 also includes
10 approximately 4,000 residents of a relatively rural portion of the Fairbanks North Star
11 Borough.²²¹

12 63. District 36 broadly encompasses (but does not exactly match) the Doyon
13 and Ahtna ANCSA regions, which also correspond with the Tanana Chiefs Conference
14

15 until related issues were addressed); ARB009210-ARB009224 (Nov. 4 Meeting Tr. 40:2-
16 54:17) (discussing breaking FNSB boundary, including implications for Valdez and other
17 districts); ARB009274-ARB009283 (Nov. 4 Meeting Tr. 104:4-113:3) (exploring the
18 possibility of combining Valdez with Anchorage); ARB009343-ARB009346 (Nov. 4 Meeting
19 Tr. 173:12-176:9) (similar); ARB007862 (Nov. 5 Meeting Tr. 5:2-22) (discussing challenge
of mapping Valdez with Anchorage in a manner consistent with other constitutional
parameters); ARB008043- ARB008053 (Nov. 5 Meeting Tr. 186:21-196:13) (discussion and
decisions on Mat-Su districts including Valdez).

20 ²¹⁴ Torkelson Aff. ¶ 52 (“But the Board-adopted District 29 contains 75% of the base
population of the 2013 House District 9, which also includes Valdez.”).

21 ²¹⁵ ARB001590 (District 9 in 2013 Proclamation).

22 ²¹⁶ See Scheidt Aff. Ex. C at 2 (District 12 in 2002 Proclamation).

23 ²¹⁷ ARB000054 (District 36 map).

24 ²¹⁸ ARB007234.

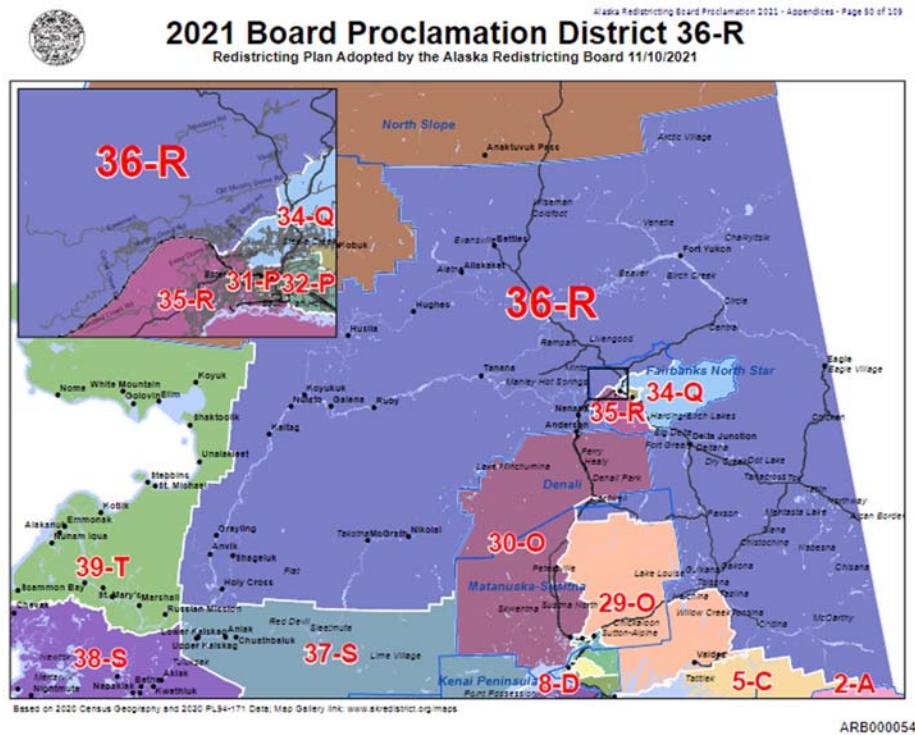
25 ²¹⁹ ARB007953 (Nov. 5 Meeting Tr. 96:11-13) (stating that the large size of District 36 is
“a result of the geography and the population” in that region).

26 ²²⁰ ARB000054 (District 36 map).

²²¹ Binkley Aff. ¶ 33.

1 and Copper River Native Association regions. District 36 includes the Cantwell area
 2 because Cantwell is socio-economically integrated with the Ahtna region,²²² and
 3 placing Cantwell in District 36 reduces the over-population of District 30 by
 4 approximately 200 people.²²³

5 64. Board Maps v.3 and v.4 both included a rural Interior district covering
 6 approximately the same geography as District 36 in the Final Plan (though v.3 included
 7 Valdez in this district and v.4 did not).²²⁴ House District 36 is very similar in shape
 8 and geography to the Interior district in the 2002 Proclamation Plan, District 6.²²⁵



222 See, e.g., ARB009242 (Nov. 4 Meeting Tr. 72:7-22) (discussing public testimony of
 223 Cantwell’s socio-economic integration with District 36).

224 ARB004354 (Board website showing Cantwell population).

225 ARB001383 (District 36 in v.3); ARB001430 (District 36 in v.4).

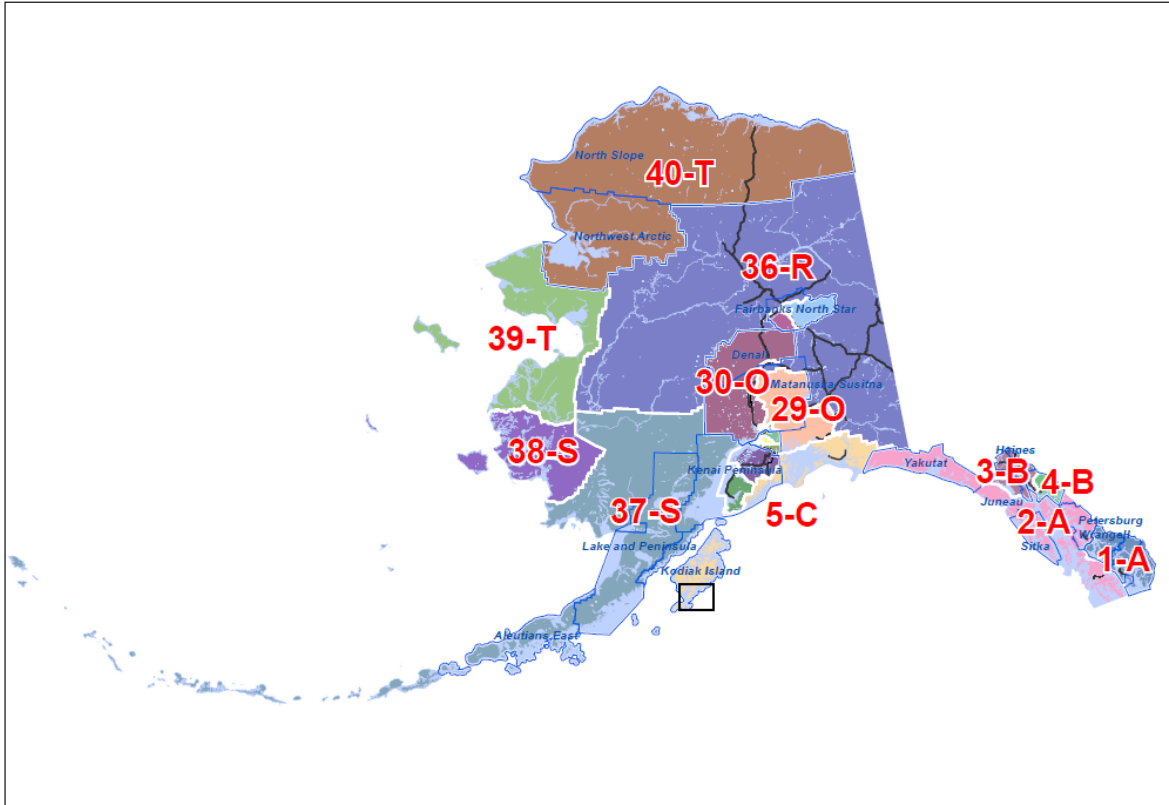
226 ARB010414 (2002 Proclamation map); see Jan. 26 Trial Tr. 895:11-12 (Otte cross)
 (testimony by Chair of 2001-2002 Redistricting Board that with respect to the Interior district,
 “[i]t’s a similar map to what I believe we produced in 2002”).

3. Northern and Western Alaska – House Districts 37-40.

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2021 Board Proclamation Statewide
Redistricting Plan Adopted by the Alaska Redistricting Board 11/10/2021

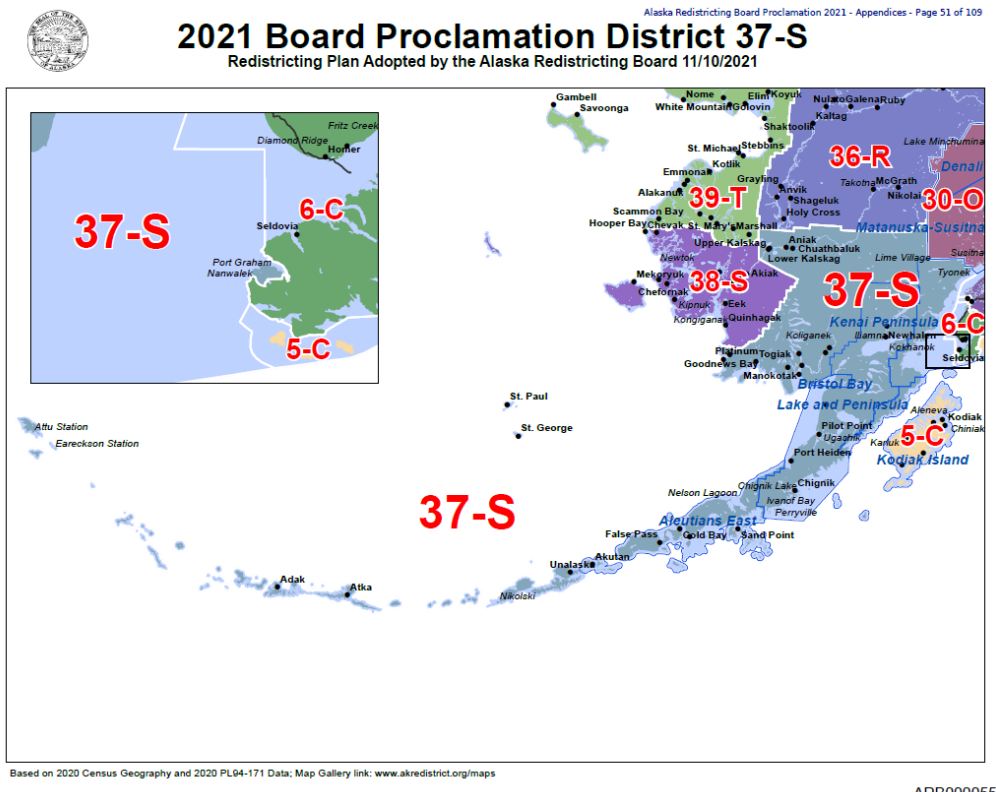


Based on 2020 Census Geography and 2020 PL04-171 Data; Map Gallery link: www.akredistrict.org/maps

ARB000012

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65. Member Bahnke of Nome took the lead in drawing House Districts 37-40.²²⁶ House District 37 includes the Aleutian Islands (including the entire Aleutians East Borough), the Alaska Peninsula (including the entire Lake and Peninsula and Bristol Bay Boroughs), Tyonek, the Dillingham area, and extends north to upper Kuskokwim River communities of Upper Kalskag, Lower Kalskag, Aniak, and Chuathbaluk.²²⁷



Based on 2020 Census Geography and 2020 PL94-171 Data. Map Gallery link: www.akredistrict.org/maps ARB000055

²²⁶ Bahnke Aff. ¶ 10.
²²⁷ ARB000055.

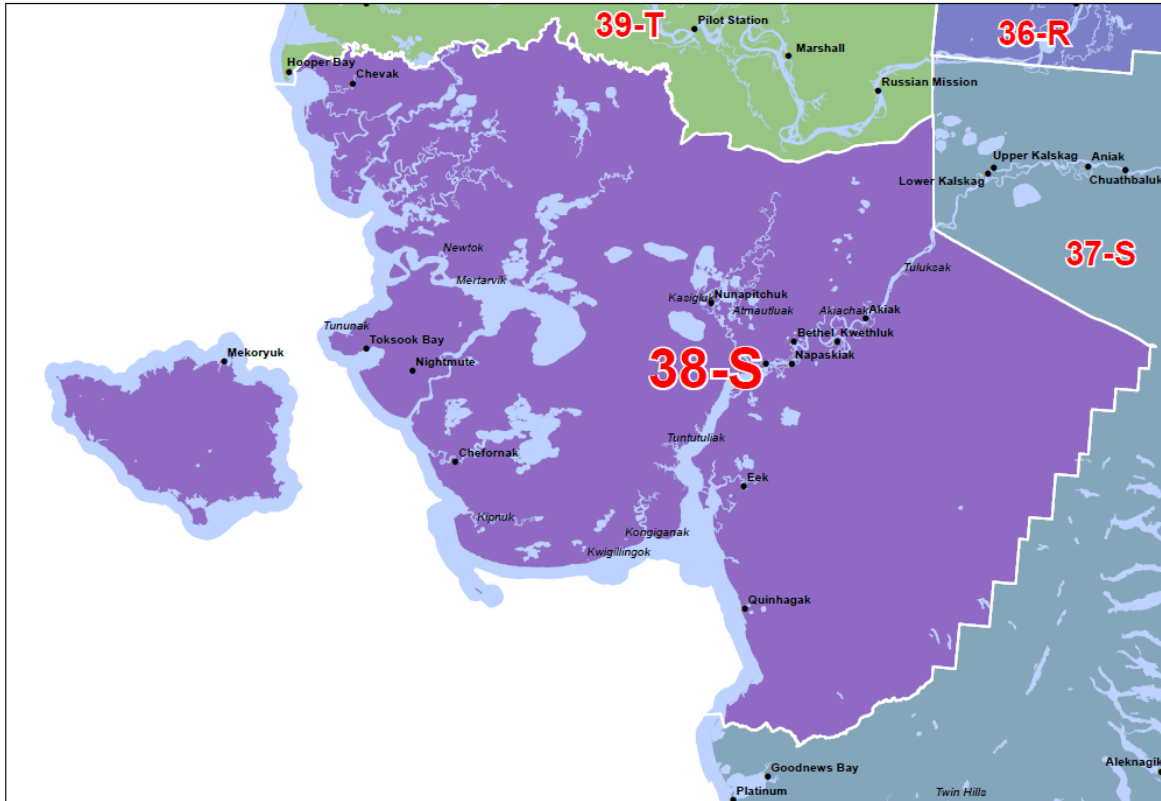
1 66. House District 38 is the Yukon-Kuskokwim Delta area with Bethel being
2 the core community of the district.²²⁸



2021 Board Proclamation District 38-S

Redistricting Plan Adopted by the Alaska Redistricting Board 11/10/2021

Alaska Redistricting Board Proclamation 2021 - Appendices - Page 52 of 109



Based on 2020 Census Geography and 2020 PL94-171 Data; Map Gallery link: www.akredistrict.org/maps

ARB000056

18 67. House District 39 spans from the Seward Peninsula down to the northern
19 portion of the Yukon-Kuskokwim Delta.²²⁹ “The communities within House District
20 39 share common subsistence activities (walrus and salmon, for example), customs and
21 traditions, language, and rural development and environmental protection interests.”²³⁰
22 The Board chose not to extend the district boundary inland to avoid pairing the coastal
23

24 228 ARB000056.

25 229 ARB000057.

26 230 Bahnke Aff. ¶ 13.

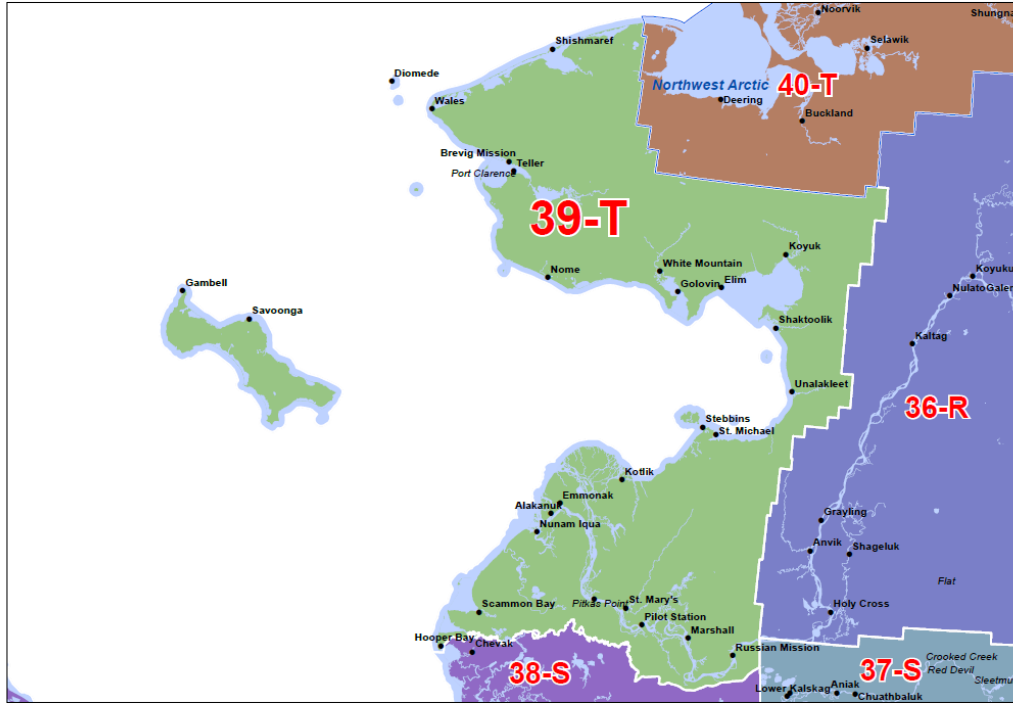
1 Inupiat and Yupik communities with the interior Athabaskan communities, with whom
2 they do not share significant socio-economic interests.²³¹



2021 Board Proclamation District 39-T

Redistricting Plan Adopted by the Alaska Redistricting Board 11/10/2021

Alaska Redistricting Board Proclamation 2021 - Appendices - Page 53 of 109



Based on 2020 Census Geography and 2020 PL94-171 Data; Map Gallery link: www.akredistrict.org/maps

ARB000057

68. House District 40 is comprised of the North Slope Borough and the Northwest Arctic Borough.²³² The population of the two boroughs were sufficient to create a single house district without breaking either borough boundary to shed population, or incorporating population from outside of the two boroughs.²³³ “The communities of the North Slope Borough and Northwest Arctic Borough share

231 Bahnke Aff. ¶ 13.

232 Bahnke Aff. ¶ 12; ARB000058, ARB000077.

233 Bahnke Aff. ¶ 12.

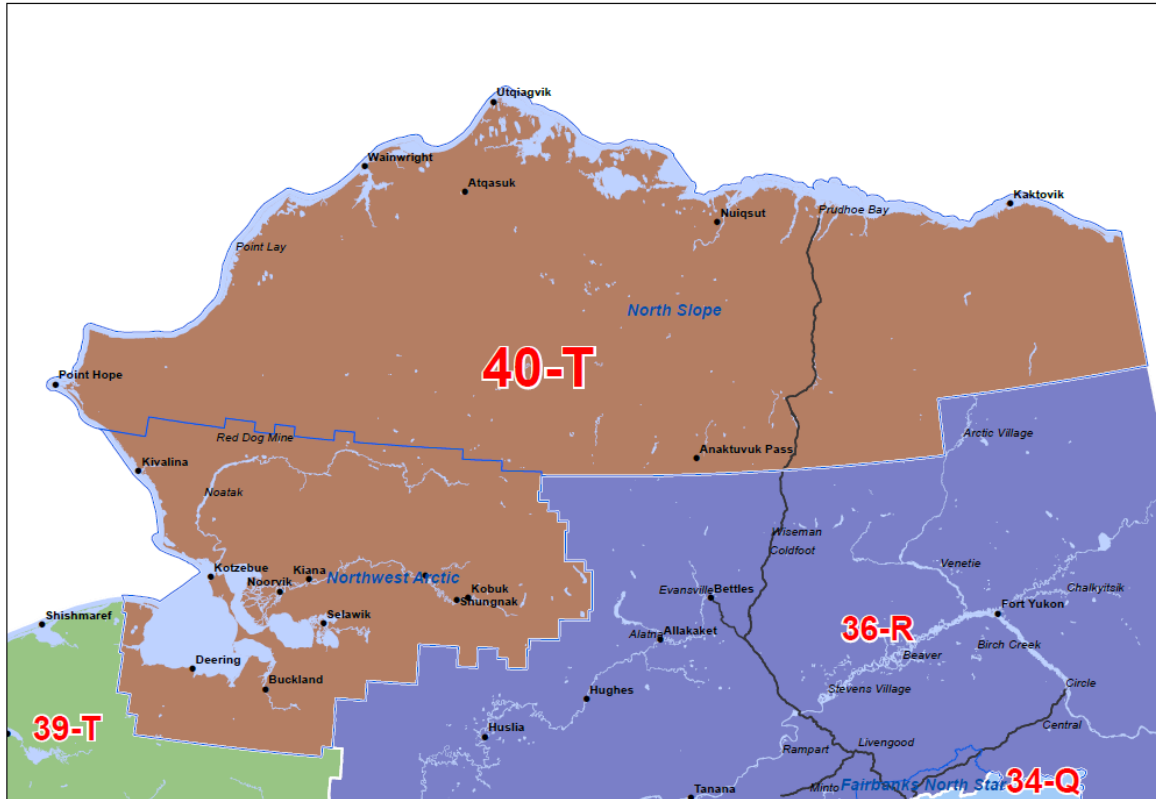
1 subsistence, natural resource development, and rural development interests.”²³⁴

2 **4. Senate District K**



3 **2021 Board Proclamation District 40-T**
4 Redistricting Plan Adopted by the Alaska Redistricting Board 11/10/2021

Alaska Redistricting Board Proclamation 2021 - Appendices - Page 54 of 109



Based on 2020 Census Geography and 2020 PL94-171 Data; Map Gallery link: www.akredistrict.org/maps

ARB000058

18 69. On November 8, 2021, the Board began its meeting by receiving public
19 testimony from 29 residents concerning senate pairings.²³⁵ East Anchorage Plaintiffs
20 Yarrow Silvers and Felisa Wilson testified at the meeting personally.²³⁶ David
21 Dunsmore, who filed an affidavit in support of the East Anchorage Plaintiffs, also
22 testified at the November 8, 2021 meeting.²³⁷

23
24 ²³⁴ Bahnke Aff. ¶ 12.

25 ²³⁵ ARB006504-ARB006600.

26 ²³⁶ ARB006594, ARB006529.

²³⁷ ARB006513.

1 70. At the conclusion of the public testimony at the November 8, 2021
2 meeting, the Board engaged in substantial public discussion of Anchorage senate
3 pairings.²³⁸ Member Marcum proposed pairing North Eagle River with Joint Base
4 Elmendorf Richardson (“JBER”), “Eagle River is a bedroom community for many
5 people on JBER.”²³⁹ Member Marcum went on to explain at length:

6
7 It’s my real life world experience. I’ve lived in East Anchorage, I’ve lived
8 in Eagle River, I have been working on base for over 20 years. And it’s
9 my real world experience that there are direct connections between Eagle
10 River, East Anchorage, and JBER. And so I strongly feel that those
11 connections have not been considered with part of this process, and this
12 is a way of considering that. . . we’ve heard repeatedly that many times
people in Eagle River don’t even come into Anchorage necessarily. They
go directly to JBER. So I feel like it’s one of those situations that we
definitely should consider as part of our map-drawing process[.]²⁴⁰

13 71. During that same public meeting, Member Marcum proposed three
14 contiguous House District options for pairing with Eagle River House District 22 (then
15 numbered House District 24) to create Senate District K, including an option with the
16 South Muldoon House District 21 (then numbered House District 18).²⁴¹ Member
17 Marcum went on to elaborate:

18
19 I want us to consider everything and make sure we’ve got everything on
20 the table. So as I mentioned, I’ve got situation scenarios here where I put
District 16 with 24, a scenario where I put District 23 with 24. The one

21
22 ²³⁸ ARB006660-ARB006702 (discussing senate pairings in Anchorage, including former
House District 18 (final House District 21) and House District 24 (final House District 22)).

23 ²³⁹ ARB006670 at 174:19-20.

24 ²⁴⁰ ARB006677-ARB006678 at 181:19-182:13.

25 ²⁴¹ ARB006683 at 187:19-25 (“Board Member Marcum: So I looked at the districts that
26 are contiguous to District 24, and there are three districts that are contiguous to District 24 that
I took into consideration: District 16, the Abbott Loop area; District 18 with [sic] Anchorage;
...”).

1 that I think I like best, though, is the one where *District 18 is paired with*
2 *District 24*, for many of the reasons that I just mentioned.²⁴²

3 72. The Board then continued publicly discussing pairing House District 21
4 (then numbered House District 18) and House District 22 (then numbered House
5 District 24) to create Senate District K, when Chair Binkley posed “So if you do put –
6 linked – if we did link 24 with 18, then what would that do with 23 (current House
7 District 20).”²⁴³ And Chair Binkley also discussed publicly with the Board that “it’s
8 interesting that [House District] 23 and 18 (now South Muldoon House District 21)
9 seem to be the ones that go in a lot of different directions.”²⁴⁴ The Board continued to
10 discuss the numerous proposals for the northeast corner of Anchorage during the public
11 meeting on November 8, 2021.²⁴⁵

12 73. Members Bahnke²⁴⁶ and Borromeo²⁴⁷ offered their perspectives.
13 Member Marcum also spoke at length regarding her senate pairings and even read
14 portions of submitted public testimony:

15 “It is not widely known, but the Chugiak, Eagle River, and Muldoon area
16 is home to more military, both active duty and retired, than anywhere else
17 in the state. Residents mingle as they shop at the PX, Fred Meyer, or
18 Carrs, exercise at Buckner Fieldhouse, play golf at Moose Run. This
19 creates a cohesion that is important to us.” [Member Marcum concludes
20 reading the testimony] There’s more, and I can keep reading it. It’s
actually a whole nother [sic] page. But I think – and one of the things that
– one of the points that’s made is that there’s some historical precedent

21 ²⁴² ARB006687 at 191:9-17 (emphasis added).

22 ²⁴³ ARB006687 at 191:21-23.

23 ²⁴⁴ ARB006689 at 193:9-11.

24 ²⁴⁵ ARB006683-ARB6702.

25 ²⁴⁶ ARB006661 at 165:3-17, 165:25; ARB006663 at 167:10-21; ARB006684 at 188:13-
16, ARB006686 at 190:5-13,

26 ²⁴⁷ ARB006662 at 166:2; ARB006664-ARB006667 at 168:17-171:10; ARB006685 at
189:15-22.

1 for Eagle River and parts of Northeast Anchorage to be blended
2 together.²⁴⁸

3 Chair Binkley posed questions and comments,²⁴⁹ as did Member Simpson.²⁵⁰

4 74. Board members accurately recalled that proposed Senate District K,
5 comprised of House Districts 21 and 22, was presented and discussed in open session
6 at length by the Board at the November 8, 2021 meeting.²⁵¹ Member Simpson’s direct
7 testimony confirmed that Member Marcum had proposed the challenged senate
8 pairings during that public meeting on November 8: “Member Marcum explained her
9 reasons for suggesting a pairing of Eagle River and JBER in light of the strong military
10 connections between the two, and also proposed pairing South Muldoon with Eagle
11 River and explained her reasons for that district as well.”²⁵² Member Marcum further
12 articulated, “Senate District K came together with a combination of House Districts 21
13 and 22. Pairing these two house districts allows commuters in Eagle River to share a
14 senate district with a Muldoon neighborhood where they frequently stop for gas, have
15 dinner, and where some attend church. This senate district also shares a portion of the
16 Chugach State Park, a major public recreation amenity for these district residents.”²⁵³

17 75. After Member Marcum’s proposal of senate districts in open session, the
18 Board entered executive session on November 8 at 5:01 p.m. to discuss likely litigation
19
20

21 ²⁴⁸ ARB006695-ARB006696 at 199:18-200:5.

22 ²⁴⁹ ARB006687-ARB006692 at 191:21-23,192:14-15, 193:6-18, 193:21-24, 195:18-25,
196:2-4. ARB006698 at 202:5-9, 202:17-19. ARB006700 at 204:18-24 (Nov. 8 Meeting Tr.).

23 ²⁵⁰ ARB006668 at 172:5-7; ARB006678 at 182:16-21; ARB006687 at 191:19;
24 ARB006697 at 201:4-18 (Nov. 8 Meeting Tr.).

25 ²⁵¹ *Infra* nn. 252-254.

25 ²⁵² Simpson Aff ¶ 34.

26 ²⁵³ Marcum Aff. ¶ 12.

1 that could arise from the Board’s senate pairings.²⁵⁴ The Board exited executive session
2 at 6:25 p.m. on November 8, and Chair Binkley advised the public that the Board
3 needed some additional time in executive session and wanted to give the public a “time
4 certain” the next morning when the Board would re-enter public session: “And so we’re
5 going to meet, continue in executive session at 9:00 tomorrow morning. But we don’t
6 want to have to have the public waiting for us all that time, so we’re going to set a time
7 certain. And even if we come out of public session - - public - - excuse me, executive
8 session prior to that, we will wait to go back into public session and on the record again
9 until 10:30.”²⁵⁵

10 76. The next morning, on November 9, the Board met at 9:00 a.m. in
11 executive session and completed its discussion with legal counsel.²⁵⁶ After completing
12 that discussion, the Board waited until 10:30, as it had advised the public the day before,
13 to reconvene in public session.²⁵⁷

14 77. When the Board re-entered public session on the morning of November
15 9, Member Marcum moved to propose senate pairings for Anchorage, including her
16 prior proposal to pair South Muldoon (then House District 18) with Eagle River (then
17 House District 24):

18
19 I move we accept Senate pairings for Anchorage as follows: 9 - - District
20 9 with District 10. District 11 with District 12. District 13 with District
21 14. District 15 with District 16. District 19 with District 20. Districts 23
22 with District 17. **Districts 18 with District 24.** And District 21 with

23 ²⁵⁴ ARB006711-ARB006713 (Nov. 8 Meeting Tr.).

24 ²⁵⁵ ARB006713 at 217:17-24 (Transcript of November 8 Board Meeting).

25 ²⁵⁶ ARB00215 (Board Meeting Minutes November 9, 2021); *see also* ARB007032 (Nov.
9 Meeting Tr.).

26 ²⁵⁷ ARB00215 (Board Meeting Minutes November 9, 2021).

1 District 22.²⁵⁸

2 Member Simpson seconded the motion.²⁵⁹ Member Marcum’s motion was approved
3 by the Board by a vote of 3-2.²⁶⁰ The two dissenting members of the Board voted
4 against the motion because they thought that South Muldoon (then House District 18)
5 should be paired with North Muldoon (then House District 23) to form a senate
6 district.²⁶¹

7 78. There is no evidence that the Board formulated or decided Anchorage
8 senate pairings in executive session. As Chair Binkley’s testimony established:

9
10 Member Marcum offered a motion for Anchorage Senate Districts. As
11 reflected in the recording and transcript, I asked if there was any
12 discussion, and no member had anything further to state. Because we had
13 already had a lengthy discussion on November 8 about just about every
14 possible option for Anchorage, it appeared to me that each member had
15 said his or her piece, and so we proceeded to vote. Both of the East
16 Anchorage senate districts that are challenged in this litigation were
17 described and explained by Ms. Marcum in our public meeting on
18 November 8.²⁶²

19 79. Member Simpson likewise testified:

20 After the public discussion on November 8, the Board entered executive
21 session to obtain legal advice about the potential pairings that had been
22 discussed. There were significant legal issues to discuss regarding the

23 ²⁵⁸ ARB007034-ARB007035 at 2:22-3:3 (Nov. 9 Meeting Tr.) (emphasis added).

24 ²⁵⁹ ARB007035 at 3:6-7.

25 ²⁶⁰ ARB0007035-ARB007036.

26 ²⁶¹ ARB007040-ARB007043 (Nov. 9 Meeting Tr. – Member Borromeo’s statement of
opposition to pairing South Muldoon with Eagle River); *see also* ARB007046-ARB007047
(Nov. 9 Meeting Tr. – Member Bahnke’s statement of opposition to pairing South Muldoon
with Eagle River).

²⁶² Binkley Aff. ¶ 55; Simpson Aff. ¶ 32 (“The chair called the question after asking if
there was any discussion and hearing that there was none. The entire Board had engaged in
discussion of numerous senate pairing options the day prior in a lengthy public session about
Anchorage senate districts.”).

1 proposed senate pairings and the executive session lasted until the end of
2 the day. The Board adjourned for the evening, and advised the public
3 that executive session would continue the next morning (November 9)
4 until 10:30 am. Based on legal advice we received during executive
5 session, I was not willing to support some of the senate pairings that were
6 proposed during public session.

7 After the litigation discussion was complete, the Board exited executive
8 session on the morning of November 9. Member Marcum made some
9 modifications to her proposed senate pairings, and moved the Board to
10 adopt Anchorage senate pairings that did not pose the legal problems that
11 were discussed in executive session. I voted to adopt member Marcum’s
12 proposed senate pairings, including Senate District K.²⁶³

13 80. The direct testimony of Executive Director Torkelson corroborated Chair
14 Binkley’s and Member Simpson’s testimony that Board members did not decide Senate
15 District K in executive session.²⁶⁴ Executive Director Torkelson testified that
16 allegations “that the pairing [of South Muldoon with an Eagle River house district] was
17 pre-arranged in executive session are inconsistent with [his] personal knowledge
18 and observations of the Board’s work.”²⁶⁵ The testimony of Member Marcum further
19 refuted that senate pairings were fixed or discussed outside of the public sessions: “We
20 had a spirited discussion as a board on November 8 in public session about how to pair
21 senate districts in East Anchorage. We then held an executive session and received
22 specific advice regarding potential litigation and litigation strategy. After that advice
23 and in light of all the debate the prior day, I felt that the senate districts had been

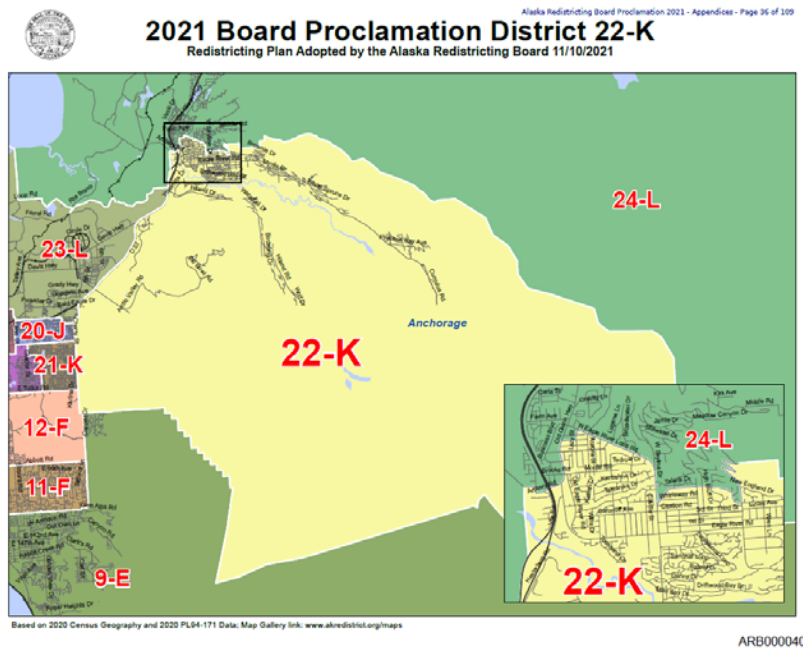
24 ²⁶³ Simpson Aff. ¶¶ 35-36.

25 ²⁶⁴ Binkley Aff. ¶ 56 (“I disagree that the Board deliberated senate pairings in executive
26 session or agreed on senate districts prior to our public session. We took testimony about
senate districts on November 8, and then had a work session and formal session to discuss and
deliberate. After considering, discussing and debating numerous senate pairings in those public
meetings, Ms. Marcum presented her motion to us in open session on November 9. The motion
was approved by a majority.”).

²⁶⁵ Torkelson Aff. ¶ 66.

1 discussed and debated fully and so offered a motion when we resumed public session
2 on November 9.”²⁶⁶

3 81. The pairing of House Districts 21 and 22, to create a senate district, was
4 introduced and debated during the public meeting on November 8, 2021.²⁶⁷ An
5 executive session followed to discuss potential litigation surrounding proposed
6 pairings.²⁶⁸ At the November 9, 2021 Board meeting, after exiting the executive session
7 that had continued from the previous day, a motion was made in public session by
8 Member Marcum to adopt proposed pairings that had been discussed during the public
9 meeting on November 8, 2021.²⁶⁹ The Motion passed with a majority of the Board
10 voting in favor of adopting Member Marcum’s pairings.²⁷⁰



22 ²⁶⁶ Marcum Aff. ¶ 17 (“I did not reach any agreement with the board prior to my motion
23 and did not know how members would vote on my motion until the vote was tallied that
morning.”).

24 ²⁶⁷ ARB006687 at 191:9-17.

25 ²⁶⁸ Simpson Aff. ¶¶ 35-36.

26 ²⁶⁹ ARB007034-ARB007035 (Nov. 9 Meeting Tr.) (emphasis added).

²⁷⁰ ARB0007035-ARB007036.

1 82. House Districts 21 and 22 are wholly within the Municipality of
2 Anchorage.²⁷¹ House District 21 has a population of 18,414, and House District 22 has
3 a population of 18,205.²⁷²

4 **F. Legal Challenges and Evidence Regarding those Challenges**

5 83. Five plaintiff groups sued the Board within the Article VI, Section 11
6 30-day deadline to challenge the Board’s redistricting plan.

7 **1. East Anchorage Plaintiffs – Senate District K**

8 84. On December 09, 2021, within 30 days of the Board’s Passage of its
9 Final Proclamation, Felisa Wilson, George Martinez, and Yarrow Silvers (collectively,
10 the “East Anchorage Plaintiffs”) filed an Application to Compel the Alaska
11 Redistricting Board to Correct its Senate District Pairings in Anchorage.²⁷³ The East
12 Anchorage Plaintiffs filed an Amended Application to Compel the Alaska Redistricting
13 Board to Correct its Senate District Pairings in Anchorage, which contained allegations
14 of violations of (1) the Open Meetings Act at the November 8 and November 9 Board
15 Meetings, (2) Article VI, Section 10 of the Alaska Constitution, (3) the Due Process
16 Clause of the Alaska Constitution, (4) Article VI, Section 6 of the Alaska Constitution,
17 and (5) the Equal Protection Clause within the Alaska Constitution.²⁷⁴

18 85. David Dunsmore testified in support of the East Anchorage Plaintiffs.²⁷⁵
19 Mr. Dunsmore is currently a staffer for Democratic Senator Bill Wielechowski, just as
20

21 ²⁷¹ Binkley Aff. ¶ 56; Marcum Aff. ¶ 17; ARB006660-ARB006702 (discussing senate
22 pairings in Anchorage, including former House District 18 (final House District 21) and House
23 District 24 (final House District 22); ARB000039-ARB000040 (final proclamation maps).

24 ²⁷² ARB007234 (Population Deviation Table).

25 ²⁷³ See Wilson et al., Appl. to Compel Alaska Redistricting Board to Correct its Senate
26 District Pairings in Anchorage, dated Dec. 09, 2021.

²⁷⁴ See Wilson et al., Unopposed Mot. Am. Appl., dated Dec. 15, 2021.

²⁷⁵ See Aff. of David Dunsmore, dated Jan. 4, 2022.

1 he was immediately prior to working for Alaskans for Fair Redistricting (AFFR).²⁷⁶
2 AFFR was supported by Union partners.²⁷⁷

3 86. Plaintiff George Martinez served as a Democratic Party District Leader
4 for Brooklyn, New York from 2002 to 2003.²⁷⁸ He was a candidate for Mayor in the
5 2021 Anchorage Municipal Election.²⁷⁹ Mr. Martinez was registered as a Democrat
6 from 1992 to 2012 and ran as a Democrat for U.S. Congress in the 7th Judicial District
7 of New York in the June 26, 2012 election.²⁸⁰ Mr. Martinez has registered as “non-
8 partisan” in Alaska.²⁸¹

9 87. Plaintiff Felisa Wilson testified in support of her challenge.²⁸² She is the
10 Treasurer of the Alaska Democratic Party, and a registered Democrat.²⁸³ Ms. Wilson
11 is satisfied that the Board properly discharged its duties with regard to the final adopted
12 House plan, and does not challenge the house maps in this litigation but challenges
13 Senate District K.²⁸⁴

14 88. Plaintiff Yarrow Silvers also testified in support of her case.²⁸⁵ As did
15 Sean Murphy, a resident of Eagle River.²⁸⁶

17 ²⁷⁶ Jan. 21, 2022 Trial Tr. 28:12-19.

18 ²⁷⁷ Jan. 21, 2022 Trial Tr. 28:20-29:6.

19 ²⁷⁸ ARB Trial Ex. 1011, p. 9 (Response to Interrogatory No. 1).

20 ²⁷⁹ ARB Trial Ex. 1011, p. 10 (Response to Interrogatory No. 3).

21 ²⁸⁰ ARB Trial Ex. 1011, p. 10 (Response to Interrogatory No. 3).

22 ²⁸¹ ARB Trial Ex. 1011, p. 13 (Response to Interrogatory No. 5).

23 ²⁸² *See* Aff. of Felisa Wilson, dated Jan. 4, 2022.

24 ²⁸³ Jan. 21, 2022 Trial Tr. 31:12-15; ARB Trial Ex. 1011, p. 10 (“Felisa Wilson was
appointed Treasurer of the Alaska Democratic Party on May 15, 2021, and is currently serving
in that volunteer role.”); ARB Trial Ex. 1011, p. 13 (Response to Interrogatory No. 5).

25 ²⁸⁴ Jan. 21, 2022 Trial Tr. 31:1-3, 31:8-11.

26 ²⁸⁵ *See* Aff. of Yarrow Silvers, dated Jan. 4, 2022.

²⁸⁶ *See* Aff. of Sean Murphy, dated Jan. 4, 2022.

1 89. Kevin McGee is the President of the NAACP Anchorage, Alaska Branch
2 #1000; Mr. McGee also provided testimony in support of the East Anchorage
3 Plaintiffs.²⁸⁷ McGee participated in the public testimony of the Board’s work and
4 praised the Board’s adoption of house districts. On November 8, he wrote: “I want to
5 express my profound gratitude to the Board for carefully considering public comments
6 on draft plans, civil rights considerations including the impact of minority voters in
7 East Anchorage, and ultimately choosing the most Constitutional House districts for
8 Anchorage. This is the most transparent, non-partisan redistricting process in Alaska
9 history, and your work honors the letter and spirit of the law that Alaska voters
10 established by Constitutional amendment.”²⁸⁸

11 90. The East Anchorage Plaintiffs’ expert witness Dr. Chase Hensel is a
12 litigation consultant.²⁸⁹ This was the first redistricting matter he has offered expert
13 testimony in as an anthropologist by education.²⁹⁰ Dr. Hensel is not qualified to conduct
14 a racial bloc voting analysis.²⁹¹ Dr. Hensel was recruited as an expert witness by
15 Anchorage Democratic legislator Matt Claman on behalf of the East Anchorage
16 Plaintiffs.²⁹² Dr. Hensel focused his analysis on the concept of “community of interest”
17 and “sense of place.”²⁹³

18 91. Dr. Hensel testified that he was unwilling to assume that minority voters
19 in East Anchorage vote differently than white voters.²⁹⁴ “South Muldoon tends to be a

20
21 ²⁸⁷ See Aff. of Kevin McGee, ¶ 1, dated Jan. 4, 2022.

22 ²⁸⁸ ARB001068.

23 ²⁸⁹ Jan. 21, 2022 Trial Tr. 40:19-21.

24 ²⁹⁰ Jan. 21, 2022 Trial Tr. 39:16-18, 41:14-16.

25 ²⁹¹ Jan. 21, 2022 Trial Tr. 41:25-42:5.

26 ²⁹² Jan. 21, 2022 Trial Tr. 44:15-20.

²⁹³ Jan. 21, 2022 Trial Tr. 46:24-47:15.

²⁹⁴ Jan. 21, 2022 Trial Tr. 59:7-11.

1 swing district, which perhaps indicates that they are deciding things on a more place-
2 by-place [sic] basis and not necessarily voting as a block.”²⁹⁵ “[House District 21]
3 voted for Democratic – a majority for Democratic candidates about a third of the
4 time[.]”²⁹⁶ That is, the South Muldoon District most often voted consistently with the
5 Eagle River House District it is paired with to create Senate District K.²⁹⁷ Dr. Hensel
6 further conceded that the district was a highly competitive district.²⁹⁸

7 92. In the 2013 Proclamation Plan, South Muldoon (then House District 27)
8 was paired with the Upper Hillside of South Anchorage and Girdwood (then House
9 District 28) to form Senate District N.²⁹⁹ Dr. Hensel acknowledged that in the 2013
10 Proclamation Plan and in the new plan, the South Muldoon districts are nearly
11 identical.³⁰⁰

12 93. The AFFER proposed plan adopted by the Board on September 20, 2021,
13 included a senate pairing portions of Muldoon with Eagle River in Senate District J.³⁰¹
14 Pairing of Eagle River/Chugiak with JBER was also proposed in the AFFER proposed
15 plan.³⁰² By adopting the AFFER plan on September 20, 2021, the Board gave notice
16 that a senate district encompassing South Muldoon and Eagle River was on the table
17 and allowed the public to provide public testimony on this proposed Senate District J
18

19
20 ²⁹⁵ Jan. 21, 2022 Trial Tr. 59:19-23, 86:18-20 (“a swing district, seems to vote
Republican, sometimes Democratic.”).

21 ²⁹⁶ Jan. 21, 2022 Trial Tr. 87:21-23.

22 ²⁹⁷ Jan. 21, 2022 Trial Tr. 86:20-21 (“the Eagle River district, 22, votes soundly
Republican.”).

23 ²⁹⁸ Jan. 21, 2022 Trial Tr. 89:2-4.

24 ²⁹⁹ Jan. 21, 2022 Trial Tr. 91:17-92:20.

25 ³⁰⁰ Jan. 21, 2022 Trial Tr. 90:24-91:9 (Hensel cross-examination).

26 ³⁰¹ ARB001236-ARB001237.

³⁰² Torkelson Aff. ¶ 70.

1 since September 20, 2021.³⁰³

2 94. At trial, the East Anchorage Plaintiffs did not elicit any evidence to
3 contradict the transcript of the November 8 Board Meeting where Marcum proposed,
4 in open session, pairing the South Muldoon with Eagle River house districts to create a
5 senate district or the Board Members' consistent recollection that Marcum had
6 proposed these in open session before the Board entered executive session.

7 95. Residents from both house districts use the same airport, hospitals, and
8 stores: "[P]eople from all over Anchorage use the same international airport, go to the
9 same hospitals, and shop in the same centralized commercial districts,"³⁰⁴ and share a
10 single school district.³⁰⁵ Senators across the Anchorage Bowl have common interests
11 when it comes to a number of state funding or legislative matters, including school
12 funding, road construction and maintenance, debt service and reimbursement,
13 transportation infrastructure (air, port, rail), and criminal justice reform because each
14 directly affects residents throughout Alaska's most populous city.³⁰⁶

15 96. None of the largest employers in the Municipality of Anchorage are
16 located in House Districts 21 or 22.³⁰⁷ Many residents of those house districts
17 necessarily travel outside of their house district for work.³⁰⁸ The residents also share
18 use of the Glenn Highway,³⁰⁹ the Ted Stevens International Airport,³¹⁰ and many
19

20
21 ³⁰³ Simpson Aff. ¶ 33.

22 ³⁰⁴ Binkley Aff. ¶ 53.

23 ³⁰⁵ Jan. 21, 2022 Trial Tr. 69:1-19 (Hensel cross-examination).

24 ³⁰⁶ Marcum Aff. ¶ 16.

25 ³⁰⁷ Jan. 21, 2022 Trial Tr. 64:20-65:17.

26 ³⁰⁸ Jan. 21, 2022 Trial Tr. 64:20-65:17.

³⁰⁹ Jan. 21, 2022 Trial Tr. 68:16-20.

³¹⁰ Jan. 21, 2022 Trial Tr. 68:7-11.

1 recreation areas across the Municipality of Anchorage.³¹¹

2 97. Under the Final Proclamation the constituents along Muldoon Road—
3 Districts J, K, and L—have three senators that answer to them.³¹² Eagle River residents
4 have the opportunity to influence two senate seats.³¹³

5 **2. Matanuska-Susitna Borough and Valdez Plaintiffs’ – House Districts**
6 **25-30 and 36.**

7 98. On December 2, 2021, within 30 days of the Board’s Passage of its Final
8 Proclamation, the Matanuska-Susitna Borough and Michael Brown (collectively, the
9 “Mat-Su Plaintiffs”) filed a Complaint in the Nature of an Expedited Application to
10 Compel Correction of Error in Redistricting Plan.³¹⁴ On December 10, 2021, Doyon,
11 Limited; Tanana Chiefs Conference; Fairbanks Native Association; Ahtna, Inc.;
12 Sealaska; Donald Charlie, Sr.; Rhonda Pitka; Cherise Beatus; and Gordon Carlson
13 (collectively, “Intervenors”) moved to intervene in this action as defendants in support
14 of the House district map adopted by the Alaska Redistricting Board in its November
15 10, 2021 Proclamation of Redistricting.³¹⁵ Then on December 15, 2021, the Mat-Su
16 Plaintiffs filed an Amended Complaint in the Nature of an Expedited Application to
17 Compel Correction of Error in Redistricting, which contained allegations of violations
18 of (1) Article VI, Section 6 of the Alaska Constitution; (2) the Equal Protection Clause
19 of the Alaska Constitution; (3) Article VI, Section 10 of the Alaska Constitution; and
20 (4) the Due Process Clause of the Alaska Constitution.³¹⁶

21 _____
22 ³¹¹ Jan. 21, 2022 Trial Tr. 66:7-67:16.

23 ³¹² Marcum Aff. ¶ 14.

24 ³¹³ Marcum Aff. ¶ 14.

25 ³¹⁴ See Mat-Su Pls.’ Compl. in the Nature of an Expedited Appl. to Compel Correction of
Error in Redistricting Plan, dated Dec. 02, 2021.

26 ³¹⁵ See Mot. Intervene, Dec. 10, 2021.

³¹⁶ Although not alleged in its pleading or explored through testimony at trial, the Mat-Su

1 99. Edna DeVries, the Mayor of the Matanuska-Susitna Borough, provided
2 an affidavit in support of the Mat-Su Plaintiffs.³¹⁷ Ms. DeVries served as the Senator
3 of a district in the 1980s that included the Mat-Su Borough and Valdez.³¹⁸ The
4 Matanuska-Susitna Borough Manager Michael Brown also provided an affidavit in
5 support of the Mat-Su Plaintiffs.³¹⁹

6 100. The Mat-Su Plaintiffs retained Steve Colligan to serve as an expert on
7 their behalf in this matter. Mr. Colligan, through his company, Alaskans for Fair and
8 Equitable Redistricting (AFFER), draws and advocates for redistricting maps that
9 benefit his clients.³²⁰ AFFER prepared maps that were proposed to and eventually
10 adopted by the Board as proposed maps for the 2021 public outreach tour.³²¹ Those
11 maps were created based on what his clients, the Matanuska-Susitna Borough and
12 Calista, desired.³²² Mr. Colligan recognized that House Districts 25, 26, 27, 28, and 30
13 in the Board’s Final Map, which are all within the Mat-Su Borough, are all socio-
14 economically integrated.³²³

15 101. On December 10, 2021, the City of Valdez and Mark Detter (the “Valdez
16

17 _____
18 Plaintiffs included a *Hickel* violation argument in their trial brief.

19 ³¹⁷ See Aff. of Edna DeVries, dated Jan. 5, 2022.

20 ³¹⁸ Jan. 24, 2022 Trial Tr. 177:10-19 (DeVries Cross).

21 ³¹⁹ See Aff. of Michael Brown, dated Jan. 5, 2022.

22 ³²⁰ Jan. 24, 2022 Trial Tr. 367:23-368:23 (Colligan cross).

23 ³²¹ Jan. 24, 2022 Trial Tr. 376:16-23 (Colligan cross).

24 ³²² Jan. 24, 2022 Trial Tr. 369:25-370:6, 373:6-10 (Colligan cross).

25 ³²³ Jan. 24, 2022 Trial Tr. 377:16-378:2 (Colligan cross) (Q: “What’s – you would agree
26 that every area within the Mat-Su is socioeconomically integrated for purposes of
redistricting?” A: “That’s correct.” Q: “So House Districts 25, 26, 27 all wholly within the
Mat-Su District, Mat-Su Borough?” A: “That’s correct.” Q: “And House District 28?” A:
“Correct.”); Jan. 24, 2022 Trial Tr. 380:22-381:2. (Colligan cross) (Q: “Mr. Colligan, is
Healey [sic] socioeconomically integrated with Houston?” A: “I – I believe, to some extent,
it is, yes.” Q: “Is it adequately integrated for redistricting purposes?” A: “I would consider
it, yes.”).

1 Plaintiffs”) filed a Complaint in the Nature of an Application to Correct Errors in
2 Redistricting within the 30 days permitted under the Constitution.³²⁴ On December 17,
3 2021, Doyon, Limited; Tanana Chiefs Conference; Fairbanks Native Association;
4 Ahtna, Inc.; Sealaska; Donald Charlie, Sr.; Rhonda Pitka; Cherise Beatus; and Gordon
5 Carlson moved to intervene in Valdez and Detter’s case. On December 29, 2021, the
6 Valdez Plaintiffs filed an Amended Complaint that included allegations of violation of
7 (1) the Open Meetings Act; (2) Article VI, Section 6; (3) Article VI, Section 10; (4) the
8 Equal Protection Clause of the Alaska Constitution, and (5) the Due Process Clause of
9 the Alaska Constitution.

10 102. Sharon Scheidt, Mayor of the City of Valdez, offered an affidavit in
11 support of Valdez.³²⁵ Ms. Scheidt admitted that she had not attended or viewed a single
12 meeting held by the Board.³²⁶ Nathan Duval, Director of Capital Facilities and Building
13 Maintenance for the City of Valdez, and Assistant City Manager;³²⁷ and Sheri Pierce,
14 City Clerk for the City of Valdez,³²⁸ also provided affidavits in support of Valdez.

15 103. Valdez offered the testimony of Mr. Kimball Brace as an expert in this
16 matter. Mr. Brace provided proposed maps for purposes of this litigation, but such
17 maps were not created until after the Board had adopted its final 2021 Proclamation of
18 Redistricting.³²⁹ Brace is the president of Election Data Services, Inc., a Manassas,
19 Virginia-based consulting firm that focuses on, among other things,

22 ³²⁴ See *Valdez et al.* Compl., dated Dec. 10, 2021.
23 ³²⁵ Aff. of Sharon Scheidt, dated Jan. 5, 2022.
24 ³²⁶ Jan. 24, 2022 Trial Tr. 276:16-24 (Scheidt cross).
25 ³²⁷ Aff. of Nathan Duval, dated Jan. 5, 2022.
26 ³²⁸ Aff. of Sheri Pierce, dated Jan. 5, 2022.
³²⁹ Jan. 24, 2022 Trial Tr. 280:24-281:9 (Scheidt cross).

1 reapportionment.³³⁰ Brace has been involved in redistricting for forty-five years.³³¹
2 Brace submitted a full forty-district map in this litigation on behalf of Valdez and
3 Skagway on January 16, 2022.³³²

4 104. Brace has a personalized license plate that reads “GMANDR,”³³³ and has
5 been called by Comedy Central’s Daily Show with Jon Stewart the “Picasso of
6 Gerrymandering.”³³⁴ Brace was hired by the state of Illinois to redistrict the state before
7 Barack Obama became U.S. President, and Brace was tasked with taking “that young
8 state senator [Barack Obama] out of [U.S. Representative] Bobby Rush’s district. And
9 because of that, that state senator ran for the U.S. Senate and then the presidency.”³³⁵
10 In the 1990s, Brace drew Illinois’ famous 4th Congressional District that formed a
11 horseshoe with a narrow pathway connecting a predominantly Puerto Rican community
12 on the north side of Chicago with a predominantly Mexican community on the south
13 side.³³⁶ This redistricting cycle Brace worked for Rhode Island to redraw its state
14 legislative lines, and redrew the election districts to ensure that all 75 incumbents were
15 not paired in districts together and did not have to run against each other.³³⁷

16 105. On cross-examination, Brace admitted to several factual errors in his
17 affidavit of direct testimony. Brace incorrectly stated in his affidavit that the Board did
18 not begin mapping until September 7, 2021, whereas the Board actually began mapping
19

20
21 ³³⁰ Aff. of K. Brace (Corrected), ¶ 1, dated Jan. 15, 2022.

22 ³³¹ Jan. 25, 2022 Trial Tr. 587:19-24 (Brace cross-examination).

23 ³³² Brace Aff. at Exhibit DD.

24 ³³³ Jan. 25, 2022 Trial Tr. 636:25-637:4 (Brace cross-examination).

25 ³³⁴ Jan. 25, 2022 Trial Tr. 637:15-23.

26 ³³⁵ Jan. 25, 2022 Trial Tr. 638:3-17.

³³⁶ Jan. 25, 2022 Trial Tr. 638:22-641:10; *See* ARB Trial Exhibit 1012.

³³⁷ Jan. 25, 2022 Trial Tr. 642:3-25.

1 on August 24, 2021.³³⁸ Brace conceded that the Board’s software files showed that
2 several Board members mapped between the August 24 and September 7 Board
3 meetings, and that he did not actually know what individual Board members were
4 mapping between those dates.³³⁹ Brace admitted that his affidavit, in multiple places,
5 spliced Board member Borrromeo’s deposition answers to different questions up to 145
6 pages apart into a single block quote.³⁴⁰ As to why he had not heeded the Alaska
7 Supreme Court’s statement in *Hickel v. Southeast Conference*, that excess population
8 from a borough should not be bifurcated into two districts unless it was not possible to
9 put it in a single district, Brace explained that he split the excess population of the
10 Fairbanks North Star Borough into two districts because he was just trying to
11 accommodate Valdez’s preferred district.³⁴¹

12 106. Brace did not know basic geography of Alaska. Brace did not know that
13 McGrath and Holy Cross were not in an incorporated borough.³⁴² Brace did not know
14 if Tanana was the name of a person or community in Alaska.³⁴³ Brace did not know
15 that Cordova was not connected to the Richardson Highway by road,³⁴⁴ and he appeared
16 to believe that Valdez and Cordova are located in an incorporated borough together
17 called the “Chugach” borough.³⁴⁵

18 107. Brace further admitted that despite accusing the Board of packing Alaska

19
20 ³³⁸ Jan. 25, 2022 Trial Tr. 644:15-649:11.

21 ³³⁹ Jan. 25, 2022 Trial Tr. 649:12-654:24. Brace explained his inaccurate claim that the
22 Board only began mapping on September 7 was based on his review of paper transcripts of
23 Board meetings only. Jan. 25, 2022 Trial Tr. 654:10-24.

24 ³⁴⁰ Jan. 25, 2022 Trial Tr. 655:2-661:20.

25 ³⁴¹ Jan. 25, 2022 Trial Tr. 661:23-664:18.

26 ³⁴² Jan. 26, 2022 Trial Tr. 731:6-15.

³⁴³ Jan. 26, 2022 Trial Tr. 732:10-22.

³⁴⁴ Jan. 26, 2022 Trial Tr. 736:12-737:13.

³⁴⁵ Jan. 25, 2022 Trial Tr. 701:8-9; Jan. 26, 2022 Trial Tr. 737:9-738:20.

1 Natives into House Districts 37-40, his House District 40 was exactly the same as the
2 Board's.³⁴⁶ The voting age population of Brace's proposed House District 39 was 82.8
3 percent Alaska Native to the Board's 85.1 percent.³⁴⁷ The voting age population of
4 Brace's proposed House District 38 was 86 percent Alaska Native to the Board's 85.8
5 percent, an increase Brace said was alright because he was trying to accommodate
6 Calista Corporation's desires for the district.³⁴⁸ As to District 37, Brace's proposed
7 district was 1.5 percent more Alaska Native voting age population than the Board's
8 House District 37.³⁴⁹ Brace tried to argue that this 1.5 percent increase was important
9 to prevent voting retrogression for the Alaska Native population of House District 37,
10 but had to concede that he had not reviewed the election return data from that area that
11 showed very low turnout presumably attributable to the transient fishing and fish-
12 processing jobs in Unalaska and Bristol Bay.³⁵⁰ Brace also acknowledged that the
13 Board's District 37 *increased* Alaska Native population as compared to the prior 2013
14 Proclamation Plan.³⁵¹

15 108. Brace further admitted to having no knowledge of Alaska Native groups
16 in Alaska.³⁵² Brace did not know the differences in subsistence needs between coastal
17 and interior communities of Alaska Natives.³⁵³ Brace did not know how law
18 enforcement worked in Alaska Native villages or anything about the history or effect
19

20 ³⁴⁶ Jan. 25, 2022 Trial Tr. 669:7-670:17.

21 ³⁴⁷ Jan. 25, 2022 Trial Tr. 670:18-671:10.

22 ³⁴⁸ Jan. 25, 2022 Trial Tr. 671:11-17 (“Yep. Trying to respect as much as we can the
various things Bethel-wise.”).

23 ³⁴⁹ Jan. 25, 2022 Trial Tr. 671:18-24.

24 ³⁵⁰ Jan. 25, 2022 Trial Tr. 671:18-679:15.

25 ³⁵¹ Jan. 25, 2022 Trial Tr. 674:9-17.

26 ³⁵² Jan. 25, 2022 Trial Tr. 682:11-683:14.

³⁵³ Jan. 25, 2022 Trial Tr. 683:15-23.

1 of the Alaska Native Claims Settlement Act.³⁵⁴ Brace did not know which villages on
2 his proposed maps were predominantly Inupiaq.³⁵⁵ Brace dismissed concerns with
3 pairing the different communities of interior Alaska that are predominantly Athabascan
4 with communities of the west coast of Alaska, which are predominately Inupiaq and
5 Yupik, as alright because “the one main thing is that indeed they’re all recognizing
6 Alaska Native population.”³⁵⁶ Nor did Mr. Brace appreciate the limited resources in
7 much of Bush Alaska when he made comments based on the inaccurate stereotype that
8 hockey must be an important pastime in small villages in Bush Alaska.³⁵⁷

9 109. Michelle Anderson, Vicki Ann Otte, and Miranda Wright provided
10 affidavits in support of the Intervenor-Defendants.³⁵⁸ Ms. Anderson is the President of
11 Ahtna, Inc. and a member of the Udzisyu (Caribou) clan of the Ahtna Athabascan
12 people and a tribal member of the Native Village of Gulkana.³⁵⁹ Ms. Otte serves on the
13 Native Corporation Board for the McGrath area and is an original Doyon, Limited
14 (Doyon) Shareholder, as well as an original MTNT, Limited Shareholder.³⁶⁰ Ms. Otte
15 served as the Chair of the Alaska Redistricting Board for the 2000 redistricting cycle.³⁶¹
16 Ms. Wright is Koyukon Athabascan, and an enrolled Tribal member of the Native
17 Village of Nulato, a federally recognized Indian Tribe located on the Yukon River in
18

19
20 ³⁵⁴ Jan. 25, 2022 Trial Tr. 683:24-684:21.

21 ³⁵⁵ Jan. 25, 2022 Trial Tr. 688:22-25.

22 ³⁵⁶ Jan. 25, 2022 Trial Tr. 692:11-17.

23 ³⁵⁷ Jan. 28, 2022 Trial Tr. 1320:22-1321:4 (Brace cross-examination).

24 ³⁵⁸ Aff. of Michelle Anderson, dated Jan. 12, 2022; Aff. of Vicki Ann Otte, dated Jan. 12,
2022; Aff. of Miranda Wright, dated Jan. 12, 2022.

25 ³⁵⁹ Anderson Aff. ¶ 1.

26 ³⁶⁰ Otte Aff. ¶¶ 1, 5.

³⁶¹ Otte Aff. ¶ 18.

1 the Interior region of Alaska.³⁶² From 2003 to 2014, Ms. Wright served as the
2 Academic Program Head, Department of Alaska Native and Rural Development for the
3 University of Alaska Fairbanks, and she has published numerous articles on the
4 ethnohistory of the Interior region of Alaska.³⁶³

5 110. The 2020 U.S. Census reported the Mat-Su Borough's population to be
6 107,081, which was equivalent to 5.84 ideally populated house districts of 18,335
7 people.³⁶⁴ Therefore, population from outside of the Mat-Su Borough had to be added
8 to the Borough to create six house districts.³⁶⁵ That population could not come from
9 the Municipality of Anchorage because it was likewise underpopulated.³⁶⁶

10 111. The Mat-Su Borough requested that it not be districted in a house district
11 with the Municipality of Anchorage.³⁶⁷ It also desired six house districts: an eastern
12 Borough district, a Goose Bay/Big Lake district, a Houston/NW district with the Denali
13 Borough, a Wasilla district, a Palmer district, and a southern district in the area between
14 Palmer and Wasilla.³⁶⁸

15 112. The six house districts within the Matanuska-Susitna Borough are House
16 Districts 25-30. Each of the six districts has a population over the ideal 18,335
17
18
19

20 ³⁶² Wright Aff. ¶ 1.

21 ³⁶³ Wright Aff. ¶¶ 9, 11.

22 ³⁶⁴ Borromeo Aff. ¶ 14.

23 ³⁶⁵ Borromeo Aff. ¶ 14.

24 ³⁶⁶ Borromeo Aff. ¶ 15. Borromeo explains the cascading effect that results to the
25 Municipality of Anchorage and Kenai Peninsula Borough if population was pulled from the
26 Municipality of Anchorage to provide excess population to populate house districts within the
Mat-Su Borough. *See also* Jan. 26 Trial Tr. at 812:8–815:5 (Borromeo cross) (similar).

³⁶⁷ ARB000662-ARB000667.

³⁶⁸ ARB000662-ARB000667.

1 people.³⁶⁹ The smallest deviation is in House District 30 at 1.10%.³⁷⁰ The largest is in
2 House District 25 with a deviation of 2.66%.³⁷¹ The inclusion of Cantwell in District
3 36, as opposed to District 30, reduced the population deviation in that Mat-Su House
4 District.³⁷² Yet, Valdez’s expert opined that “Generally, if you’re within five percent,
5 you’re in an okay range.”³⁷³

6 113. House Districts 25-28 maintain local municipal boundaries.³⁷⁴ Both the
7 experts for Valdez and the Mat-Su agreed that everything within a borough is
8 socioeconomically integrated.³⁷⁵

9 114. House District 29 of the Final Plan is a district that covers the eastern side
10 of the Mat-Su Borough. The eastern side of the Mat-Su Borough is sparsely populated,
11 and additional population from outside of the Borough was needed to bring the district
12

13
14 ³⁶⁹ Borromeo Aff. ¶ 27 (“House Districts 25-30 have more people than the 18,335 ideal
15 target population, but that is because the Mat-Su Borough was underpopulated by almost
16 twenty percent for six districts and I had to include areas outside of the Borough to get it closer
to a population for six house districts.”); ARB007234 (ARB Website Total Population
Tabulation Page).

17 ³⁷⁰ Borromeo Aff. ¶ 27; ARB007234 (ARB Website Total Population Tabulation page).

18 ³⁷¹ Borromeo Aff. ¶ 27; ARB007234 (ARB Website Total Population Tabulation page).

19 ³⁷² Binkley Aff. ¶ 40 (“To the degree that Mat-Su is concerned about overpopulation,
20 combining Cantwell with District 36 had the effect of reducing the overpopulation of Mat-Su
21 District 30” by removing approximately 200 residents.).

22 ³⁷³ Jan. 26, 2022 Trial Tr. 748:5-11 (Brace cross: “Generally, if you’re within five percent,
23 you’re in an okay range. Sometimes you’d like to get it closer, but geography and population
24 may prevent that. So you – you’re—as long as you get within the five percent above or five
25 percent below then presumably you’re in an okay range.”).

26 ³⁷⁴ Jan. 24, 2022 Trial Tr. 220:20-23 (Brown cross); 416:2-420:8 (Colligan cross admitting
no broken borough or city boundaries in the Mat-Su); ARB000043-ARB000048 (Final
Proclamation maps).

³⁷⁵ Jan. 26, 2022 Trial Tr. 738:5-10 (Brace cross conceding populations within a borough
are socio-economically integrated); Jan. 24, 2022 Trial Tr. 377:1-6 (Colligan cross, Q: “. . .
Alaska Supreme Court in the *Hickel* case said that all areas within an incorporated area are, by
definition, socioeconomically integrated?” A: “Correct.” Q: “You’re aware of that?”
A: “Yes.”).

1 close to the ideal population.³⁷⁶ Valdez had sufficient population to complete the
2 district.³⁷⁷

3 115. The majority of the public comments from Valdez and Mat-Su Borough
4 residents opposed pairing the two communities.³⁷⁸ But testimony from Mat-Su’s
5 Borough Manager confirmed that the Mat-Su Borough does believe it has socio-
6 economic integration with Richardson Highway communities along the TAPS
7 corridor.³⁷⁹ The Mat-Su Borough’s expert also testified that the Matanuska-Susitna
8 Borough shared socioeconomic integration with Richardson Highway community
9 Tonsina.³⁸⁰ The record also supports that Valdez is socio-economically integrated with
10 the Richardson Highway communities.³⁸¹

11 116. Valdez school sports teams compete against and routinely travel to sports
12 competitions in the Mat-Su Borough.³⁸² Valdez and the communities of the eastern
13 Mat-Su Borough with which it is paired are connected via the state highway system,
14 such that they can drive from one community to the other.³⁸³ Although the Chugach
15 Mountains and the ice fields lay between the eastern Mat-Su Valley and Valdez as the

16
17 ³⁷⁶ Borromeo Aff. ¶ 21.

18 ³⁷⁷ Borromeo Aff. ¶ 21.

19 ³⁷⁸ Jan. 24, 2022 Trial Tr. 197:16-22 (Brown cross).

20 ³⁷⁹ Jan. 24, 2022 Trial Tr. 225:2-226:14 (Brown cross discussing shopping, fishing,
recreation ties between Richardson Highway communities, such as Tonsina and Gakona, and
Mat-Su Borough communities).

21 ³⁸⁰ Jan. 24, 2022 Trial Tr. 389:18-23, 391:7-14 (Colligan cross admitting integration
between various areas of the Mat-Su Borough with Richardson Highway communities).

22 ³⁸¹ Jan. 24, 2022 Trial Tr. 247:9-14 (Scheidt cross).

23 ³⁸² Torkelson Aff. ¶ 53; Jan. 24, 2022 Trial Tr. 260:15-20, 261:12-262:14 (Scheidt cross).

24 ³⁸³ Binkley Aff. ¶ 26; Jan. 24, 2022 Trial Tr. 215:2-8 (Brown cross Q: “[T]here’s a road
that connects Eastern Mat-Su to Valdez, correct?” A: “Yes, sir.”); ARB002552 (Tracy
Harmon submission: “I believe Valdez should identify with coastal communities and
Palmer/Wasilla. I know that the majority of the Valdez community use the Glenn Hyway [sic]
more so than the Richardson Hyway[sic]. This can be confirmed by the Anchorage/Valley
Transport page on Facebook.”).

1 crow flies, neither are obstacles to their connectivity and interactions.³⁸⁴ All share an
2 interest in maintenance and development of the state highway system.³⁸⁵ The residents
3 of both the Mat-Su Borough and Valdez often work in the oil industry and on the
4 pipeline.³⁸⁶ The Trans-Alaska Pipeline terminus is in Valdez, and the oil industry is an
5 important focus and employer in Valdez.³⁸⁷ Both the Mat-Su Borough and Valdez
6 “share a concern about the viability of the North Slope oil fields and its transportation
7 of oil down through TAPS.”³⁸⁸ All the communities in District 29 are also served by
8 school districts that are a part of home rule or first-class municipalities or boroughs,
9 meaning their funding is in part obtained from a local tax base.³⁸⁹ The home rule
10 communities in District 29 also have similar interest in debt reimbursement from the
11 legislature as they have the ability to take on debt.³⁹⁰

12 117. The Mat-Su Borough has significant connections to Anchorage.³⁹¹ About
13 a third of the residents of the Mat-Su Borough commute to work in Anchorage.³⁹² The
14 residents of the Mat-Su Borough also use professional services from Anchorage, shop
15

16 ³⁸⁴ Jan. 24, 2022 Trial Tr. 215:12-19 (Brown cross Q: “So the Chugach Mountains don’t
17 pose an obstacle to going from Eastern Mat-Su to Valdez, do they?” A: “No, sir.” Q: And
18 the ice fields do not pose an obstacle for people to travel from Eastern Mat-Su to Valdez, do
19 they?” A: “No, sir.”).

18 ³⁸⁵ Binkley Aff. ¶ 26; Jan. 24, 2022 Trial Tr. 182:10-14 (DeVries cross); 283:6-9
19 (Scheidt cross).

20 ³⁸⁶ Jan. 24, 2022 Trial Tr. 178:7-13 (DeVries cross); 218:9-19 (Brown cross).

21 ³⁸⁷ Jan. 24, 2022 Trial Tr. 178:14-16 (DeVries cross), 207:15-17 (Brown cross); 255:11-
22 24 (Scheidt cross).

22 ³⁸⁸ Jan. 24 Trial Tr. 218:14-19 (Brown cross).

23 ³⁸⁹ Binkley Aff. ¶ 27; Jan. 24, 2022 Trial Tr. 182:15-24 (DeVries cross discussing Mat-Su
24 Borough home rule school district); 258:6-10 (Scheidt cross).

24 ³⁹⁰ Binkley Aff. ¶ 27.

25 ³⁹¹ Jan. 24, 2022 Trial Tr. 178:23-179:1 (DeVries cross); 224:3-225:1 (Brown cross
26 discussing ties between Mat-Su and Anchorage to include: air travel, restaurants, concerts and
entertainment, commuting to work, shopping, the Alaska Railroad, and the Glenn Highway).

³⁹² Jan. 24, 2022 Trial Tr. 179:2-9 (DeVries cross).

1 in Anchorage, attend concerts in Anchorage, eat at restaurants in Anchorage, take
2 commercial flights out of Anchorage.³⁹³ Valdez also shares significant ties to
3 Anchorage for shopping, commercial flights, professional services.³⁹⁴ Valdez's
4 witnesses testified from their counsel's office in Anchorage throughout the litigation,³⁹⁵
5 emphasizing that Valdez received professional services from Anchorage. The only
6 commercial flights out of Valdez are to Anchorage.³⁹⁶

7 118. Recreation and tourism are important industries in the Mat-Su
8 Borough.³⁹⁷ Activities such as helicopter-skiing, snow machining, skiing, camping,
9 hiking, fishing, riding ATVs, rock and ice climbing are all common recreations of the
10 Mat-Su Borough and Valdez residents.³⁹⁸ Residents of both the Mat-Su Borough and
11 Valdez enjoy recreating in neighboring communities, including at Lake Louise.³⁹⁹
12 Residents of both Mat-Su and Valdez also caribou hunt within the Mat-Su Borough
13 near Eureka.⁴⁰⁰ Mat-Su residents also fish in Valdez and some rent boat slips in
14 Valdez.⁴⁰¹

16
17 ³⁹³ Jan. 24, 2022 Trial Tr. 224:3-225:1 (Brown cross discussing ties between Mat-Su and
18 Anchorage to include: air travel, restaurants, concerts and entertainment, commuting to work,
19 shopping, the Alaska Railroad, and the Glenn Highway).

20 ³⁹⁴ Jan. 24, 2022 Trial Tr. 255:4-10 (Scheidt cross).

21 ³⁹⁵ Jan. 24, 2022 Trial Tr. 253:20-254:7 (Scheidt cross).

22 ³⁹⁶ Jan. 24, 2022 Trial Tr. 266:22-24 (Scheidt cross).

23 ³⁹⁷ Jan. 24, 2022 Trial Tr. 179:19-21, 184:25-185:2 (DeVries cross).

24 ³⁹⁸ Jan. 24, 2022 Trial Tr. 179:22-180:15 (DeVries cross); 263:14-17 (Scheidt cross);
25 283:10-12 (Scheidt cross discussing helicopter skiing).

26 ³⁹⁹ Jan. 24, 2022 Trial Tr. 180:16-20 (DeVries cross); 219:5-7 (Brown cross), 262:16-
263:13 (Scheidt cross discussing Valdez residents recreating at Lake Louise and Tazlina and
Klutina Lakes); Jan. 25, 2022 Trial Tr. 481:17-20 (Duval recreating at Klutina Lake).

⁴⁰⁰ Jan. 24 2022 Trial Tr. 219:11-13 (Brown cross); Jan. 25, 2022 Trial Tr. 481:5-12
(Duval cross).

⁴⁰¹ Jan. 24, 2022 Trial Tr. 218:24-219:4 (Brown cross); Jan. 25, 2022 Trial Tr. 483:8-12
(Duval cross, identifying Mat-Su use of Valdez harbor).

1 119. The nearest large store, hospital, and automobile dealership to Valdez are
2 all located in the Mat-Su Borough.⁴⁰² Communities on the Richardson Highway,
3 including Valdez, would pass through the Mat-Su Borough if traveling to Anchorage.⁴⁰³

4 120. Valdez submitted an incomplete 11-district map, referred to as Valdez
5 Option 1.⁴⁰⁴ The district containing Valdez in that partial map stretched from coastal
6 Valdez all the way to Eielson Air Force Base.⁴⁰⁵ Valdez Option 1 also broke the excess
7 population of the Fairbanks North Star Borough into two rural districts,⁴⁰⁶ whereas none
8 of the six proposed maps adopted by the Board divided the excess population of the
9 Fairbanks North Star Borough into two separate rural districts.⁴⁰⁷ There was significant
10 public testimony from Fairbanks residents that the Fairbanks economy depends on the
11 surrounding military base.⁴⁰⁸ The rural communities that Valdez paired itself with in
12 Valdez Option 1 are not home-rule cities that are concerned with debt reimbursement
13 from the legislature, nor do they share the same school funding system as Valdez.⁴⁰⁹
14 Additionally, one of Valdez’s proposed interior districts combines Bettles and
15 Allakaket, just south of the Brooks Range, with Nunavik Island in the Bering Sea,

16
17 ⁴⁰² Jan. 24, 2022 Trial Tr. 183:5-18 (DeVries cross discussing Palmer amenities as the
18 closest to Valdez); ARB003590 (submission of D. Rumbo: “Unlike the AFFER Plan, Map
19 # 73975 continues to include the City of Valdez with the Mat-Su because Valdez is a developed
20 community with a substantial tax base on the road system near the Mat-Su. The closest Wal-
21 Mart to Valdez is in the Mat-Su. It should not be paired with other communities that are not
22 on the road system, like it is in the AFFER Plan.”).

20 ⁴⁰³ Jan. 24, 2022 Trial Tr. 184:12-18 (DeVries cross).

21 ⁴⁰⁴ Jan. 24, 2022 Trial Tr. 268:5-8 (Scheidt cross).

22 ⁴⁰⁵ Torkelson Aff. ¶ 54 (graphic comparing Valdez Option 1 with Board adopted District
23 29); Jan. 24, 2022 Trial Tr. 269:21-270:1 (Scheidt cross).

23 ⁴⁰⁶ Torkelson Aff. ¶ 55; Binkley Aff. ¶ 34 (discussing appendage created by Valdez
24 Option 1 reaching up to grab Eielson Air Force Base and resulting loss of compactness, as well
25 as the multiple breaks in the Fairbanks North Star Borough).

25 ⁴⁰⁷ Jan. 24, 2022 Trial Tr. 271:13-272:12 (Scheidt cross).

26 ⁴⁰⁸ Bahnke Aff. ¶ 24.

⁴⁰⁹ Binkley Aff. ¶ 27.

1 combining Athabascan villages with distant Yupik villages.⁴¹⁰ The communities of the
2 Yukon-Kuskokwim Delta, such as Bethel, do not share work, resource, subsistence or
3 other interests with Brooks Range communities such as Bettles and Allakaket.⁴¹¹

4 121. The map presented in this litigation by Valdez’s expert, known as
5 “Valdez Alternative 3,”⁴¹² is based on the same Valdez district as the Valdez Option 1
6 map.⁴¹³ It therefore breaks the Fairbanks North Star Borough boundary twice, just as
7 Valdez Option 1 does.⁴¹⁴ Valdez Alternative 3 also divides the rural Interior into
8 several districts and combines the western Interior with Nome and the coastal Bering
9 Strait/ Norton Sound region.⁴¹⁵

10 122. House District 29 is largely similar to the most recent house district that
11 Valdez has shared with the Mat-Su Borough for the past decade under the 2013
12 Proclamation Plan.⁴¹⁶ The Mat-Su offered testimony that their current house
13 representative shared with Valdez has represented them effectively.⁴¹⁷ House District
14 29 has consistently elected candidates from the same political party.⁴¹⁸ Testimony
15 established that Valdez and the Mat-Su Borough do not have contrary political views.⁴¹⁹
16 Valdez and the Mat-Su Borough were also in the same house district under the 2002

17
18 ⁴¹⁰ Binkley Aff. ¶ 38 (discussion of lack of integration between pairings).

19 ⁴¹¹ Bahnke Aff. ¶ 25; Jan. 25, 2022 Trial Tr. 526:15-24 (Pierce: “I – I have no clear
20 knowledge of whether or not there are socioeconomical [sic] similarities between those
21 communities.”).

22 ⁴¹² Brace Aff. ¶¶ 135-164; *id.* at Ex. DD.

23 ⁴¹³ Brace Aff. Ex. DD at 36 (District 36 in Valdez Alternative 3).

24 ⁴¹⁴ *Id.* at 31-36 (showing FNSB population included in the rural Districts 34 and 36, as
25 well as the 4 districts contained entirely within the FNSB, Districts 31, 32, 33, and 35).

26 ⁴¹⁵ *Id.* at 39 (District 39 in Valdez Alternative 3).

⁴¹⁶ Binkley Aff. ¶ 28; Jan. 24, 2022 Trial Tr. 177:20-24.

⁴¹⁷ Jan. 24, 2022 Trial Tr. 220:8-15.

⁴¹⁸ Jan. 24, 2022 Trial Tr. 222:2-15 (Brown cross).

⁴¹⁹ Jan. 24, 2022 Trial Tr. 223:16-22 (Brown cross).

1 Proclamation Plan.⁴²⁰

2 123. House District 30 includes the City of Houston, and extends north to
3 capture the remaining communities in the Mat-Su and the Denali Borough communities
4 along the Parks Highway.⁴²¹ Cantwell was not included in this district.⁴²²

5 124. The AFFER proposed map had lower deviations in the Mat-Su than the
6 Board's Final Map did.⁴²³ However, the focus on achieving low deviations in the Mat-
7 Su led to odd outcomes elsewhere. For instance, AFFER's proposed district 16 splits
8 the Richardson Highway communities depending upon which side of the street they
9 reside on.⁴²⁴ It also divides the Ahtna region into three separate house districts with
10 Glennallen in district 16, Chitina in district 5, and Cantwell in district 11.⁴²⁵ AFFER's
11 proposed district 5 placed Cordova with interior Alaska villages up to Arctic Village
12 and as far west as Kaltag, in order to reduce the population deviations in the Mat-Su
13 below the Board's deviations.⁴²⁶

14 125. The Interior region of Alaska has been—historically and to the present
15

16 ⁴²⁰ Scheidt Aff. Ex. C at 2 (District 12 in 2002 Proclamation).

17 ⁴²¹ Borromeo Aff. ¶ 23.

18 ⁴²² Borromeo Aff. ¶ 23; ARB000048 (Final Proclamation map).

19 ⁴²³ Binkley Aff. ¶ 39.

20 ⁴²⁴ Borromeo Aff. ¶ 29; ARB001269 (AFFER proposed district 16 map).

21 ⁴²⁵ Borromeo Aff. ¶ 29; ARB001258, ARB001264, ARB001269 (AFFER proposed
22 district 5, 11, 16 maps).

23 ⁴²⁶ Borromeo Aff. ¶ 30; ARB001258 (AFFER proposed district 5 map); Binkley Aff. ¶ 35
24 (“AFFER also placed Cordova into a large Interior district reaching all the way north to Arctic
25 Village and northwest to Kaltag, which is less than 100 miles from the Bering Sea. This made
26 less socio-economic sense to me than our House District 29, because the communities in our
District 29 are connected via road, whereas Cordova has zero direct connection or economic
tie to the small Interior Athabascan villages north and west of Fairbanks.”); Binkley Aff. ¶ 39
 (“That map proposed low population deviations in the Mat-Su, but it had odd pairings of
communities. As discussed above, it combined Cordova and Arctic Village in a single house
district. I do not believe a low population deviation is ‘practicable’ if it requires combining
communities that lack meaningful social or economic connections or similarities.”).

1 day—home to Athabascan peoples who share a common culture and language.⁴²⁷
2 These Athabascan communities stretch from Chitina and Chisana in the Southeast, up
3 to Venetie and Arctic Village, across through Allakaket and Huslia, and down through
4 Nulato and Kaltag to reach Grayling, Holy Cross, Takotna, and McGrath.⁴²⁸ These
5 rural communities generally lie along the many rivers of Alaska’s Interior.⁴²⁹

6 126. Today the Interior region is largely served by the Tanana Chiefs
7 Conference (TCC), which is the non-profit organization serving the Doyon ANCSA
8 region, and the Copper River Native Association (CRNA), which is the non-profit
9 serving the Ahtna region. The communities served by these organizations share many
10 similarities, including that both Native and non-Native rural residents receive their
11 healthcare and other social services from TCC and CRNA.⁴³⁰ Rural Interior
12 communities share other interests as well, including concerns about access to utilities
13 and the quality of rural schools.⁴³¹

14 127. In the western Interior, Grayling, Anvik, Shageluk, and Holy Cross are
15 all part of the Iditarod Area School District, along with McGrath, Nikolai, and Takotna;
16 the villages also share strong familial and linguistic ties.⁴³² These villages share cultural
17 similarities and “kinship structure” with the Yukon River villages of Kaltag, Nulato,

18
19 ⁴²⁷ *E.g.*, Jan. 26 Trial Tr. 914:25-915:9 (Wright cross); *id.* at 887:21-888:21 (Otte cross)
20 (“We’re Athabascans, they are all interior villages, we share the same cultures, we hunt and
21 eat the same subsistence [foods].”).

22 ⁴²⁸ *Ex. CAL-5002* (map of Native language families, with brown, orange, and red hues
23 showing related Athabascan languages).

24 ⁴²⁹ *See* ARB000054 (District 36 map); ARB003998 (testimony from Tanana Chiefs
25 Conference chairman that “his people live on the river and must be represented on the river”).

26 ⁴³⁰ Jan. 26 Trial Tr. 888:22-24, 906:14-23, 908:10-23 (Otte cross); *id.* at 952:10-25
(Anderson cross).

⁴³¹ Jan. 26 Trial Tr. 888:16-889:6 (Otte cross).

⁴³² Wright Aff. ¶ 17 (“In addition to the family ties with GYL villages, the GASH
communities are strongly connected to the MTNT area (McGrath, Takotna, Nikolai, and
Telida) through family ties as well as linguistic and historical trade links.”).

1 Galena, and Ruby, which are part of the Yukon-Koyukuk School District.⁴³³

2 128. Communities across the TCC/Doyon and Ahtna regions subsist on
3 similar diets of freshwater-caught fish, moose, and caribou.⁴³⁴ They also share similar
4 art, potlatch traditions, and Interior cultures.⁴³⁵ Many non-Native people within these
5 regions also depend heavily on subsistence resources.⁴³⁶

6 129. “The Ahtna region borders Mentasta to the north, Chitina to the south,
7 and stretches into Wrangell-St. Elias National Park & Preserve to the east and the
8 Denali National Park and Preserve to the west.”⁴³⁷ The villages and towns within the
9 Ahtna region share common rural interior interests.⁴³⁸ Glennallen serves at the sub-
10 regional hub for the small Ahtna communities, such as Cantwell, Mentasta, Willow
11 Creek, Tonsina, Chitina, Tolsona, Tazlina, and Kluti-Kaah (Copper Center).⁴³⁹ All of
12 these communities are rural interior communities that face common difficulties of rural

13
14 ⁴³³ Jan. 26 Trial Tr. at 914:19-915:16 (Wright cross) (describing connections between
15 these groups of villages by noting that “we are Athabascan people and we have an overarching
16 kinship structure that unites us.”); Jan. 28 Trial Tr. at 1320:4-10 (Brace cross regarding Yukon-
17 Koyukuk School District); *see also* Calista Trial Exhibit 5002 (Calista Trial Map with School
18 Districts).

17 ⁴³⁴ Jan. 26 Trial Tr. 886:11-14, 888:6-21 (Otte cross); *id.* at 916:10-20 (Wright cross); *id.*
18 at 943:19-944:3 (Anderson cross) (all discussing moose and caribou as important subsistence
19 foods).

19 ⁴³⁵ Otte Aff. ¶ 27; Wright Aff. ¶ 14 (“The Athabascan people recognize shared social and
20 cultural protocols that value language, kinship/family, ceremony, potlatch and homeland.
21 These values form the basis of the cultural and spiritual connections unifying these villages.”);
22 ARB001795 (Michelle Anderson submission: “The Cantwell people share many family
23 connections with the other Ahtna villages. These connections stretch back to time immemorial.
24 The Ahtna people have historically been nomadic, hunting along the Denali Highway corridor
25 and into the Cantwell area. To this day, the people of Cantwell and the people in the other
26 Ahtna villages share a common language, history, heritage, and way of life, including cultural
and traditional values and practices such as hunting, fishing, berry picking, potlatch, dance,
and storytelling.”).

24 ⁴³⁶ Jan. 26 Trial Tr. 888:16-21.

25 ⁴³⁷ Anderson Aff. ¶ 4.

26 ⁴³⁸ Anderson Aff. ¶ 5.

⁴³⁹ Anderson Aff. ¶ 5.

1 interior living, such as: extreme temperatures, food scarcity, preservation, and storage,
2 hunting and river fishing, rural employment and education, access to healthcare and
3 road maintenance.⁴⁴⁰ The Ahtna communities are not coastal communities.

4 130. Testimony established that the Ahtna region, including Cantwell shares
5 familial connection, as well as traditional Athabascan culture, language, hunting
6 practices, trapping, funerary and potlatch practices, berry picking, dance, burial
7 protocol, and trail systems.⁴⁴¹ The shared Athabascan culture and familial ties extend
8 to the people in Tanacross, Dot Lake, Tetlin, and Northway of the upper Tanana
9 communities.⁴⁴² There are eight villages within the Ahtna region, including Cantwell,
10 Cheesh'na (Chistochina), Chitina, Kluti-Kaah (Copper Center), Gakona, Gulkana,
11 Mentasta, and Tazlina.⁴⁴³

12 131. Residents of Cantwell also use the Ahtna region health clinic that is
13 headquartered in Glennallen, and share common interests with the rest of the Ahtna
14 region as to corporate profitability; responsible land ownership, management, and use;
15 trespass control; and resource development.⁴⁴⁴

16 132. Cantwell is one of the only communities in the Denali Borough that
17 shares cultural heritage with the Copper River and Copper Valley area.⁴⁴⁵

18 133. There are stark cultural, linguistic, and socio-economic differences
19 between the Interior region and communities along the west coast of Alaska. Among
20 other things, the Interior region communities speak a different language and do not
21

22 ⁴⁴⁰ Anderson Aff. ¶¶ 5, 20.

23 ⁴⁴¹ Anderson Aff. ¶¶ 5, 10, 12, 13.

24 ⁴⁴² Anderson Aff. ¶ 10.

25 ⁴⁴³ Anderson Aff. ¶ 8.

26 ⁴⁴⁴ Anderson Aff. ¶¶ 14-16.

⁴⁴⁵ Anderson Aff. ¶ 17.

1 subsist on marine mammals like seal, sea otter and whale, as is common of the
2 southwest and western Alaska communities.⁴⁴⁶ During the public comment period, the
3 Board received numerous public comments stating that the Interior region is not socio-
4 economically integrated with the Coast.⁴⁴⁷

5 134. The rural Interior communities were districted together in the 2002
6 Proclamation Map, and are drawn in a similar configuration as District 36 in the 2021
7 Final Proclamation.⁴⁴⁸

8 **3. Calista Plaintiffs – House Districts 37-39**

9 135. On December 10, 2021, within 30 days of the Board’s Passage of its Final
10 Proclamation, Calista Corporation, William Naneng, and Harley Sundown
11 (collectively, the “Calista Plaintiffs”) filed a Complaint and Expedited Application to
12 Compel Correction of Errors in Redistricting.⁴⁴⁹ The Calista Plaintiffs filed a First
13 Amended Complaint and Expedited Application to Compel Correction of Errors in
14

15 ⁴⁴⁶ Otte Aff. ¶ 27; Wright Aff. ¶ 18 (“The economic conditions and subsistence livelihoods
16 within these Western Interior villages differs significantly from the areas on the coast and
17 lower Yukon (such as St. Mary’s and Mountain Village, as well as Emmonak, Nunam Iqua,
and Kotlik.”). As noted in the testimony at trial, “walrus don’t make their way into McGrath.”
Jan. 26 Trial Tr. 917:6-8.

18 ⁴⁴⁷ *E.g.*, ARB008988 (Nov. 2 Meeting Tr. 58:7-17) (Member Bahnke discussing public
19 comment provided at the Nome public hearing, “which was [that] it makes no sense to pair
20 rural Doyon Athabascan communities with Inupiaq and Yupik coastal communities that rely
21 on primarily the . . . sea and live subsistence lifestyles in that area”); ARB003346 (testimony
22 from McGrath resident that “I support the redistricting board map 4 because it gets us away
23 from the coastal villages that have different priorities than the interior villages. It makes sense
24 to group the interior villages together.”); ARB003998 (testimony from Tanana Chiefs
25 Conference chairman that “his people live on the river and must be represented on the river
26 separate from the coast”); ARB003354 (testimony from Nulato Tribal Council stating that “it
is not fair to lump all Alaska Natives together”).

⁴⁴⁸ *Compare* ARB000054 (District 36 in 2021 Proclamation); *with* ARB010414 (2002
Proclamation map); *see* Jan. 26 Trial Tr. 895:11-12 (Otte cross) (testimony by Chair of 2001-
2002 Redistricting Board that with respect to the Interior district, “[i]t’s a similar map to what
I believe we produced in 2002 [which] kept the interior villages intact”).

⁴⁴⁹ *See* Calista Corp. et al., Comp. and Expedited Appl. to Compel Correction of Errors
in Redistricting, dated Dec. 10, 2021.

1 Redistricting, which contained allegations of violations of (1) Article VI, Section 6 of
2 the Alaska Constitution, and (2) the One Person, One Vote principle of the Equal
3 Protection Clause within the Alaska Constitution.⁴⁵⁰

4 136. Andrew Guy, CEO of Calista Corporation, provided an affidavit in
5 support of the Calista Plaintiffs.⁴⁵¹ Harley Sundown, resident of Scammon Bay; Myron
6 Naneng, resident of Bethel; Thom Leonard, Calista Corporation Director of Corporate
7 Communications and Shareholder Services; and William Naneng, resident of Hooper
8 Bay, each also provided direct testimony in support of the Calista Plaintiffs.⁴⁵²

9 137. Calista also offered the expert testimony of Randy Ruedrich. Mr.
10 Ruedrich worked for Alaskans for Fair and Equitable Redistricting (AFFER) and is a
11 past chair of the Republican Party.⁴⁵³ Calista hired Alaskans for Fair and Equitable
12 Redistricting to draw and advocate during the redistricting process for Calista's
13 preferred house and senate districts.⁴⁵⁴ Mr. Ruedrich drafted proposed maps for Calista.
14 The Board adopted as one of its proposed plans, the map submitted by AFFER.⁴⁵⁵ In
15 that AFFER proposed plan created with Calista, Calista's region was split into three
16 house districts—Districts 37, 38 and 39.⁴⁵⁶ The Calista region villages of St. Mary's,
17 Pilot Station, Marshall, Upper Kalskag, Lower Kalskag, and Aniak were placed within

18
19 ⁴⁵⁰ See Calista Corp. et al., First Amended Comp. and Expedited Appl. to Compel
20 Correction of Errors in Redistricting, dated Dec. 17, 2021; Calista Pls. Trial Brief, p. 4 (“This
21 reflects the principle of ‘one person, one vote,’ which is the basis for the Calista Plaintiffs’
22 equal protection claim.”).

23 ⁴⁵¹ See Prefiled Direct Test. of Andrew Guy, dated Jan. 5, 2022.

24 ⁴⁵² See Prefiled Direct Test. of Harley Sundown, dated Jan. 5, 2022; Prefiled Direct Test.
25 of Myron Naneng, dated Jan. 5, 2022; Prefiled Direct Test. of Thom Leonard, dated Jan. 5,
26 2022; Prefiled Direct Test. of William Naneng, dated Jan. 5, 2022.

⁴⁵³ Jan. 31, 2022 Trial Tr. 1411:13-1412:2 (Ruedrich cross).

⁴⁵⁴ Jan. 28, 2022 Trial Tr. 1357:22-1358:7 (Guy cross).

⁴⁵⁵ ARB001233, ARB001290-ARB001292.

⁴⁵⁶ ARB001290-ARB001292; Jan. 31, 2022 Trial Tr. 1418:13-25 (Ruedrich cross).

1 proposed House District 39 in the AFFER map.⁴⁵⁷ The Calista region villages of
2 Scammon Bay, Hooper Bay, and Chevak were placed into proposed House District 38
3 in the AFFER map.⁴⁵⁸ Then, the Calista region villages of Kwigillingok, Kongiganak,
4 and Quinhagak, in the Lower Kuskokwim Delta, were placed in proposed
5 Aleutian/Dillingham House District 37 in the AFFER plan.⁴⁵⁹ In the Final
6 Proclamation adopted by the Board, the Calista region is also split between House
7 Districts 37, 38, and 39.⁴⁶⁰ Both the AFFER proposed map and the Final Proclamation
8 place Calista villages into three house districts and two senate districts.⁴⁶¹ Calista
9 conceded that while ideal to have its region’s population in just two house districts,
10 there is no way to build those two districts of adjacent populations, as required by the
11 Alaska Constitution, with the constraints of Alaska’s geography.⁴⁶² Thus, Calista’s
12 requested reorganization does not result in the consolidation of its villages into fewer
13 house districts.⁴⁶³

14 138. The Board included Hooper Bay and Scammon Bay in House District
15 39⁴⁶⁴ Including Hooper Bay with Bethel, as desired by Calista, would force the split of
16 numerous small communities away from their hub community of Bethel, even though
17 they are closer.⁴⁶⁵ Hooper Bay is 150 miles from Bethel, while Quinhagak was drawn

19 ⁴⁵⁷ ARB001291-ARB001292; Jan. 31, 2022 Trial Tr. 1418:18-21 (Ruedrich cross).

20 ⁴⁵⁸ ARB001291-ARB001292.

21 ⁴⁵⁹ ARB001290-ARB001292; Jan. 31, 2022 Trial Tr. 1418:13-17 (Ruedrich cross).

22 ⁴⁶⁰ Jan. 31, 2022 Trial Tr. 1419:22-1420:1 (Ruedrich cross) (Q: “So can we agree that
under both the Calista plan presented by AFFER and the board plan, that Calista villages are
found in three different House districts, 37, 38, and 39?” A: “That is true.”).

23 ⁴⁶¹ Jan. 31, 2022 Trial Tr. 1450:16-24.

24 ⁴⁶² Jan. 31, 2022 Trial Tr. 1466:22-1467:3.

25 ⁴⁶³ Borromeo Aff. ¶ 36.

26 ⁴⁶⁴ Jan. 31, 2022 Trial Tr. 1420:24-1421:3, 1421:24-1422:4 (Ruedrich cross).

⁴⁶⁵ Torkelson Aff. ¶ 65.

1 out of Calista’s (AFFER) preferred District 38 though only 75 miles from Bethel.⁴⁶⁶
2 Scammon Bay and Hooper Bay have a combined population of roughly 2,000
3 residents.⁴⁶⁷ In order to compensate for the loss of population in AFFER’s proposed
4 district 39 from moving Hooper Bay and Scammon Bay to District 38, AFFER’s
5 solution in its proposed district 39 is to go “significantly further into the Interior, past
6 McGrath and Nikolai to the boundary with the Denali Borough.”⁴⁶⁸ Thus, AFFER’s
7 proposed map sought to include interior, non-coastal⁴⁶⁹ “villages of Takotna, McGrath,
8 and Nikolai with the coastal communities of the Bering Straits,” and the Athabaskan
9 Doyon communities of “Grayling, Anvik, Holy Cross, and Shageluk.”⁴⁷⁰ Calista’s
10 proposed district 39 also breaks the boundaries of the Northwest Arctic Borough,
11 splitting the population of the Northwest Arctic Borough unnecessarily in an attempt
12 to gain Calista a political voting advantage in a senate seat—not for permissible Article
13 VI, Section 6 criteria.⁴⁷¹

14 139. At Calista’s request, the Board moved Chevak into House District 38, but
15 to reduce population deviation, the Board then had to move Goodnews Bay and
16 Platinum into District 37.⁴⁷² One hundred percent of the communities in District 38 are
17 Calista villages and nobody disputes that District 38, as drawn by the Board, is compact,
18

19 ⁴⁶⁶ Torkelson Aff. ¶ 65.

20 ⁴⁶⁷ Jan. 31, 2022 Trial Tr. 1422:5-7 (Ruedrich cross).

21 ⁴⁶⁸ Jan. 31, 2022 Trial Tr. 1423:15-20 (Ruedrich cross).

22 ⁴⁶⁹ Jan. 31, 2022 Trial Tr. 1424:25-1425:2 (Ruedrich cross) (Q: “And can we agree that
Takotna, McGrath, and Nikolai are not coastal communities?” A: “Yes.”).

23 ⁴⁷⁰ Jan. 31, 2022 Trial Tr. 1424:4-15 (Ruedrich cross); Borromeo Aff. ¶ 37 (AFFER’s
24 proposed House District 39 juts into Interior Alaska, pairing Athabaskan villages (McGrath,
Nikolai, and Takotna) with coastal Yup’ik (Emmonak, Nunam Iqua, and Alakanuk) and
Inupiat (Unalakleet and Nome) communities.”).

25 ⁴⁷¹ Bahnke Aff. ¶ 19.

26 ⁴⁷² Jan. 28, 2022 Trial Tr. 1365:17-20.

1 contiguous and socio-economically integrated.⁴⁷³

2 140. Tyonek is a roadless, coastal, principally Alaska Native village.⁴⁷⁴
3 Instead of including it within District 37, Calista contends it should be with the coastal
4 communities of southcentral Alaska. The Kenai Peninsula Borough, however, is
5 overpopulated and must shed its overpopulation into an underpopulated district, such
6 as District 37.⁴⁷⁵ House District 37 had the second to largest population deviation from
7 the 18,335 person ideal of any of the districts before addition of Tyonek, Beluga,
8 Nanwalek and Port Graham.⁴⁷⁶ After those additions, the district's population deviation
9 was only a *de minimis* -0.59%.⁴⁷⁷ House District 37 is also a majority-minority district
10 under the Voting Rights Act, and Member Borromeo testified that adding Tyonek to
11 District 37 ensured that the district did not retrogress to Alaska Native voters having
12 diminished voting power in that district.⁴⁷⁸

13 141. In order to accommodate the ripple effect of moving Hooper Bay and
14 Scammon Bay into District 38, AFFER creates a district that pairs the coastal fishing
15 village of Cordova with remote Interior communities like Arctic Village.⁴⁷⁹

16 142. The Calista region is an unorganized area of the state in that it does not
17 have a central regional government and is not organized into a borough.⁴⁸⁰ The

18
19 ⁴⁷³ Jan. 31, 2022 Trial Tr. 1437:14-17 (Ruedrich cross).

20 ⁴⁷⁴ Jan. 31, 2022 Trial Tr. 1441:3-11 (Ruedrich cross).

21 ⁴⁷⁵ Borromeo Aff. ¶¶ 24-25; Jan. 31, 2022 Trial Tr. 1442:5-12 (Ruedrich cross)
(discussing overpopulation of coastal communities of southcentral Alaska).

22 ⁴⁷⁶ Borromeo Aff. ¶ 25.

23 ⁴⁷⁷ Borromeo Aff. ¶ 25.

24 ⁴⁷⁸ Borromeo Aff. ¶ 25.

25 ⁴⁷⁹ Jan. 31, 2022 Trial Tr. 1444:3-1445:12 (Ruedrich cross) (discussing distinctions
between coastal Cordova and Gwich'in communities that rely on caribou above the Arctic
Circle).

26 ⁴⁸⁰ Jan. 28, 2022 Trial Tr. 1374:10-13; Prefiled Testimony of Myron Naneng, p. 7 (“There
is no borough—we are an unincorporated region.”).

1 communities that fall within the Calista region have too many residents to fit into a
2 single house district.⁴⁸¹ Calista’s region has a population of 27,304.⁴⁸² Despite
3 Calista’s desire that its villages be with Bethel, it would overpopulate a district to
4 include all of Calista’s villages in a district with Bethel.⁴⁸³

5 143. The Calista Plaintiffs want three of Calista’s northern villages, Hooper
6 Bay, Chevak, and Scammon Bay, moved into House District 38.⁴⁸⁴ But also want to
7 move three of its southern villages that are currently within District 38 out into District
8 37. Essentially, to swap specific Calista villages within District 38.⁴⁸⁵ It is undisputed
9 that the villages of Kwigillingok, Kongiganak, and Quinhagak are located substantially
10 closer to Bethel than are Hooper Bay, Chevak, and Scammon Bay.⁴⁸⁶ Calista seeks this
11 swap not to enhance Section 6 requirements, but rather to increase its ability to control
12 a senate seat.

13 144. Kwigillingok, Kongiganak, and Quinhagak share a school district with
14 Bethel, speak the same language as is spoken in Bethel,⁴⁸⁷ use the same healthcare
15 facility as Bethel,⁴⁸⁸ and share the same bay and river system as Bethel.⁴⁸⁹ “[T]he
16 villages in the Lower Kuskokwim delta are all directly tied to Bethel by the same river,
17 _____

18 ⁴⁸¹ Jan. 28, 2022 Trial Tr. 1341:21-25.

19 ⁴⁸² Prefiled Direct Test. of Andrew Guy, p.3 (“The Calista Region’s total population in the
Bethel and Kuskilvak Census Areas is 27,034.”)

20 ⁴⁸³ Jan. 28, 2022 Trial Tr. 1342:1-12.

21 ⁴⁸⁴ Jan. 28, 2022 Trial Tr. 1348:3-7; Jan. 31, 2022 Trial Tr. 1435:20-1436:2 (Ruedrich
cross) (Q: “And then the other thing you asked was for the board to try to get Hooper Bay,
22 Scammon Bay, and Chevak into District 38, and . . . If it couldn’t get two villages in, it should
get at least one of those villages in to make some progress.” A: “I believe that is correct.”).

23 ⁴⁸⁵ Jan. 28, 2022 Trial Tr. 1348:8-20.

24 ⁴⁸⁶ Jan. 28, 2022 Trial Tr. 1348:24-1349:1.

25 ⁴⁸⁷ Jan. 28, 2022 Trial Tr. 1349:3-16.

26 ⁴⁸⁸ Jan. 28, 2022 Trial Tr. 1350:16-21.

⁴⁸⁹ Jan. 28, 2022 Trial Tr. 1351:11-19.

1 which is the major transportation link for the region.”⁴⁹⁰ No testimony provides that
2 Scammon Bay, Hooper Bay, and Chevak are more closely integrated or have greater
3 socio-economic integration with Bethel than do Kwigillingok, Kongiganak, and
4 Quinhagak.⁴⁹¹

5 145. Scammon Bay and Hooper Bay and other communities in House District
6 39 share the Lower Yukon School District, which is based out of another Calista region
7 village within House District 39, Mountain Village.⁴⁹² Scammon Bay and Hooper Bay
8 share the same language history as Stebbins and St. Michael.⁴⁹³ Hooper and Scammon
9 Bays share common traditions and ceremonies with coastal villages to the north.⁴⁹⁴ In
10 fact, the Calista region villages in the Lower Yukon School District within District 39
11 are all Central Yup’ik speaking communities.⁴⁹⁵ Scammon Bay students play
12 basketball against other District 39 villages, such as Pilot Station.⁴⁹⁶ The residents of
13 Hooper Bay, Chevak, and Scammon Bay all travel between each other frequently for
14 sporting events.⁴⁹⁷ All of the communities in the Calista regions, which span House
15

16 ⁴⁹⁰ Binkley Aff. ¶ 44.

17 ⁴⁹¹ Jan. 28, 2022 Trial Tr. 1352:16-25 (A: “And they’re all dependent on Bethel because
18 Bethel is our hub. So I don’t know if you can say closer, but – because they’re all dependent
19 on Bethel.”); Jan. 31, 2022 Trial Tr. 1439:2-4 (Ruedrich cross) (Q: “They are every bit as
20 socioeconomically integrated with Bethel as Hooper Bay, correct?” A: “As a – sure.”); Jan.
21 31, 2022 Trial Tr. 1469:3-14 (Leonard Cross) (Q: “Yeah. Can we agree that [Kwigillingok,
22 Quinhagak, and Kongiganak] are all closely tied to Bethel?” A: “Yes.”).

⁴⁹² Jan. 28, 2022 Trial Tr. 1356:5-16; Jan. 31, 2022 Trial Tr. 1398:23-1399:4 (“Yes, the
21 school district is based in Mountain Village.”); Jan. 31, 2022 Trial Tr. 1399:10-1400:12
22 (establishing House District 39 contains Scammon Bay, Mountain Village, and all villages in
the Lower Yukon School District).

⁴⁹³ Jan. 28, 2022 Trial Tr. 1357:14-17.

⁴⁹⁴ Bahnke Aff. ¶ 22.

⁴⁹⁵ Jan. 31, 2022 Trial Tr. 1400:13-17 (Sundown cross); 1407:13-17 (Myron Naneng
24 cross).

⁴⁹⁶ Jan. 31, 2022 Trial Tr. 1400:24-1401:1.

⁴⁹⁷ Jan. 31, 2022 Trial Tr. 1401:12-19.

1 Districts 37, 38, and 39, share close connections with Bethel.⁴⁹⁸

2 146. There is a local government boundary that divides the Northwest Arctic
3 Borough, which includes Deering and Buckland, from the Bering Straits region.⁴⁹⁹ The
4 Calista-preferred AFFER map broke this boundary in its proposed district 39 by
5 severing the communities of Deering and Buckland from the remaining borough
6 communities.⁵⁰⁰

7 147. Before learning that Hooper Bay was lobbying the Calista Corporation
8 Board to be included in a house district with Bethel, Calista CEO Andrew Guy
9 originally believed Hooper Bay, Chevak, and Scammon Bay should be in House
10 District 39.⁵⁰¹ Mr. Guy also recognized that “maps with Hooper Bay and Bethel
11 together already show detrimental impact to other Kusko [sic] villages close to
12 Bethel.”⁵⁰²

13 148. No resident of Kwigillingok, Kongiganak, and Quinhagak testified that
14 they desired to be moved out of the Bethel district and into the Dillingham district.⁵⁰³
15 Kwigillingok, Kongiganak, and Quinhagak have “direct family, social, and economic
16 connections with Bethel.”⁵⁰⁴

18 ⁴⁹⁸ Jan. 31, 2022 Trial Tr. 1408:19-20 (Myron Naneng cross) (“I believe all the villages
19 within Calista region share close connections with Bethel.”); Jan. 31, 2022 Trial Tr. 1407:13-
20 20; ARB000055-ARB000057.

21 ⁴⁹⁹ Jan. 31, 2022 Trial Tr. 1430:1-11 (Ruedrich cross).

22 ⁵⁰⁰ Borrromeo Aff. ¶ 37.

23 ⁵⁰¹ Jan. 28, 2022 Trial Tr. 1358:24-1359:17.

24 ⁵⁰² Jan. 28, 2022 Trial Tr. 1362:21-23; 1364:12-16 (Q: “Was that partly because of what
25 you saw happen to the other Kuskokwim River Villages, that someone would have to be
26 excluded in order to include Scammon and Hooper into the 38? A: Right. . .”).

⁵⁰³ Jan. 28, 2022 Trial Tr. 1364:25-1365:3 (Guy cross); Jan. 31, 2022 Trial Tr. 1469:15-
20 (Leonard cross) (Q: [D]id the board hear from anyone in the Lower Kuskokwim villages
25 who wanted to have those – who lives in those villages who wanted the board to district those
26 villages with Dillingham and the Aleutians?” A: “Not that I recall.”).

⁵⁰⁴ Jan. 31, 2022 Trial Tr. 1438:24-1439:1 (Q: “They have direct family, social, and

1 149. Hooper Bay has never previously been districted in the same house
2 district as Bethel.⁵⁰⁵ House District 37 and House District 38 are both comprised of
3 rural communities.⁵⁰⁶

4 150. Calista Corporation, a private corporation, believes it has a right to
5 control senate seats in its region.⁵⁰⁷ “The preference is to have the villages in two House
6 seats that are part of one Senate seat rather than having them in a Senate – in a House
7 district that shares a second House seat.”⁵⁰⁸ Moving the villages in the Lower
8 Kuskokwim into District 37, as Calista requests, increases the shareholders of the
9 Calista Corporation’s control of a senate seat.⁵⁰⁹

10 151. Senator Lyman Hoffman is a Calista shareholder and one of the most
11 powerful state senators in Alaska.⁵¹⁰ He is the State Senator for District S, which
12 includes the Aleutian/Dillingham District 37 and Bethel District 38.⁵¹¹ Senator
13 Hoffman won his last three elections by at least 90% of the vote of the two house
14 districts that comprise his senate district.⁵¹² To garner 90% of the votes, the majority
15 of constituents in both House Districts 37 and 38 must support his candidacy.

16 **4. Skagway Plaintiffs – House District 3**

17 152. On December 10, 2021, the Municipality of Skagway Borough and Brad
18

19 _____
20 economic connections with Bethel, correct?” A: “Yes.”).

21 ⁵⁰⁵ Jan. 31, 2022 Trial Tr. 1408:2-4.

22 ⁵⁰⁶ Borromeo Aff. ¶ 34.

23 ⁵⁰⁷ Jan. 28, 2022 Trial Tr. 1365:11-16.

24 ⁵⁰⁸ Jan. 31, 2022 Trial Tr. 1439:18-21 (Ruedrich cross).

25 ⁵⁰⁹ Calista Am. Compl. ¶¶ 19-21.

26 ⁵¹⁰ Jan. 28, 2022 Trial Tr. 1344:15-17, 1345:7-10.

⁵¹¹ Jan. 31, 2022 Trial Tr. 1452:19-24, 1453:11-16; Prefiled Testimony of Myron Naneng,
p. 6 (“Bethel is in Senate District S, represented by Senator Lyman Hoffman.”).

⁵¹² Jan. 28, 2022 Trial Tr. 1346:2-5.

1 Ryan (collectively “Skagway”) filed its complaint.⁵¹³ On December 29, 2021, Skagway
2 filed an amended complaint.⁵¹⁴ Skagway raises five legal claims in its amended
3 complaint: (1) violation of Article VI, § 10, (2) violation of Article I, § 7 of the Alaska
4 Constitution (due process), (3) violation of the Open Meetings Act, (4) violation of
5 Article VI, § 6, and (5) violation of Article I, § 1 of the Alaska Constitution (equal
6 protection).

7 153. Skagway submitted direct testimony of the following lay witnesses:
8 Skagway Mayor Andrew Cremata,⁵¹⁵ Skagway Lobbyist John Walsh,⁵¹⁶ Skagway
9 resident and business owner Janice Wrentmore,⁵¹⁷ and Skagway Borough Manager
10 Brad Ryan.⁵¹⁸

11 154. Andrew Cremata, the Mayor of Skagway since 2019, testified in favor of
12 keeping Skagway in a house district with the downtown portion of the City and
13 Borough of Juneau, as it was in the 2013 Proclamation Plan.⁵¹⁹ Mayor Cremata pointed
14 out the commonalities between Skagway and the downtown portion of the CBJ:
15 Skagway is the third-most visited port in Alaska, with Juneau being the most-visited,
16 that the same cruise ships that dock in the downtown portion of the CBJ visit Skagway,
17 and that Skagway residents travel to the CBJ to predominantly visit the downtown
18 portion of the CBJ.⁵²⁰ Mayor Cremata also acknowledged that the CBJ as a whole

19
20 ⁵¹³ Skagway Complaint in the Nature of an Application to Correct Errors in Redistricting
(Dec. 10, 2021).

21 ⁵¹⁴ Skagway First Amended Complaint in the Nature of an Application to Correct Errors
in Redistricting (Dec. 29, 2021).

22 ⁵¹⁵ Aff. of Andrew Cremata (Jan. 5, 2022).

23 ⁵¹⁶ Aff. of John Walsh (Jan. 5, 2022).

24 ⁵¹⁷ Aff. of Janice Wrentmore (Jan. 5, 2022).

25 ⁵¹⁸ Aff. of Brad Ryan (Jan. 5, 2022).

26 ⁵¹⁹ Cremata Aff. ¶ 13.

⁵²⁰ Cremata Aff. ¶ 27.

1 shares common interests with Skagway because both receive funding from the
2 Commercial Passenger Vessel (“CPV”) excise tax.⁵²¹ Mayor Cremata stated that when
3 he travels to the CBJ it is to go downtown to meet with lawmakers or other white-
4 collared professionals. Mayor Cremata worries that placing Skagway into a house
5 district with the northern portions of the CBJ will “disenfranchise the people of
6 Skagway in the Alaska Legislature.”⁵²²

7 155. Brad Ryan, the Manager of Skagway, echoed the same points as Mayor
8 Cremata. Ryan testified that Skagway has close socio-economic ties to the downtown
9 portion of the CBJ,⁵²³ that the northern portion of the CBJ that Skagway is placed with
10 in House District 3 lacks those same interests,⁵²⁴ and that for work he often traveled to
11 “downtown Juneau to confer with state and local officials on these topics and other
12 matters.”⁵²⁵

13 156. Janice Wrentmore is a resident of Skagway and a small business
14 owner.⁵²⁶ Like Mayor Cremata, Wrentmore discussed the significant cruise ship traffic
15 between the CBJ and Skagway,⁵²⁷ the economic importance of those cruise ships to
16 Skagway,⁵²⁸ the common tourism businesses located in Skagway and the downtown
17 portion of the CBJ,⁵²⁹ and her belief that the northern portions of the CBJ did not have
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19
20 ⁵²¹ Cremata Aff. ¶ 27.

21 ⁵²² Cremata Aff. ¶ 64.

22 ⁵²³ Ryan Aff. ¶ 10.

23 ⁵²⁴ Ryan Aff. ¶¶ 11-12.

24 ⁵²⁵ Ryan Aff. ¶ 23.

25 ⁵²⁶ Wrentmore Aff. ¶ 37.

26 ⁵²⁷ Wrentmore Aff. ¶¶ 26-44.

⁵²⁸ Wrentmore Aff. ¶¶ 27-28.

⁵²⁹ Wrentmore Aff. ¶¶ 36-37.

1 the same interests regarding cruise ships than the downtown portions of the CBJ.⁵³⁰

2 157. John Walsh is a professional lobbyist who has represented Skagway since
3 2002.⁵³¹ Walsh agreed with the other Skagway witnesses that Skagway was
4 socioeconomically connected with the downtown portion of the City and Borough of
5 Juneau,⁵³² and as Skagway’s lobbyist had consistently met with government officials
6 in the downtown portion of the CBJ and not the northern portions of the CBJ.⁵³³

7 158. Skagway also offered the expert testimony of the same Kimball Brace
8 who testified on behalf of Valdez’s challenges.⁵³⁴ Brace agreed that all portions of the
9 CBJ are socioeconomically integrated, and that the Alaska Supreme Court in previous
10 cases had refused to second guess which part of an incorporated area another
11 community could be paired with so long as the other community was
12 socioeconomically integrated with some portion of the incorporated area.⁵³⁵ Brace
13 admitted that his proposed redistricting maps were created in the “last two weeks” at
14 the behest of Skagway’s litigation team and that Skagway had not submitted them to
15 the Board to consider during the redistricting process.⁵³⁶

16 159. House District 3 is comprised of most of the Mendenhall Valley area of
17 the City and Borough of Juneau, Skagway, Haines, and Gustavus. Skagway, Haines,
18 and Gustavus did not have enough population to complete a house district.⁵³⁷ The
19 Mendenhall Valley area of the City and Borough of Juneau was added to bring the

20
21 ⁵³⁰ Wrentmore Aff. ¶ 63.

22 ⁵³¹ Walsh Aff. ¶ 1.

23 ⁵³² Walsh Aff. ¶ 5.

24 ⁵³³ Walsh Aff. ¶ 40.

25 ⁵³⁴ Brace Aff. (Corrected).

26 ⁵³⁵ Feb. 4, 2022 Trial Tr. 1963:12-1965:6 (Brace cross).

⁵³⁶ Feb. 4, 2022 Trial Tr. 1955:6-22 (Brace cross).

⁵³⁷ Simpson Aff. ¶ 17.

1 district closer to the ideal house district population.⁵³⁸ House District 3 contains the
2 Alaska Marine Highway terminals for all four communities.⁵³⁹ The ferry system is the
3 primary transportation link between these communities.⁵⁴⁰ State, federal, or local
4 government are not dominate industries within these communities.⁵⁴¹

5 160. House District 4 contains downtown Juneau, Douglas Island, the airport
6 and Lemon Creek portions of the City and Borough of Juneau.⁵⁴² The southeastern,
7 southwestern and northeastern boundaries of House District 4 are the boundaries of the
8 City and Borough of Juneau.⁵⁴³

9 161. Member Simpson testified in support of House Districts 3 and 4. Member
10 Simpson took the lead in drawing all four Southeast Alaska house districts that the
11 Board unanimously adopted.⁵⁴⁴

12 162. Skagway challenges only House Districts 3 and 4 of the Southeast house
13 districts.⁵⁴⁵ House District 3 and 4 are shown below:
14
15
16
17
18
19

20 ⁵³⁸ Simpson Aff. ¶ 17.

21 ⁵³⁹ Simpson Aff. ¶ 17.

22 ⁵⁴⁰ Simpson Aff. ¶ 17.

23 ⁵⁴¹ Simpson Aff. ¶ 17.

24 ⁵⁴² Simpson Aff. ¶ 18.

25 ⁵⁴³ Simpson Aff. ¶ 18.

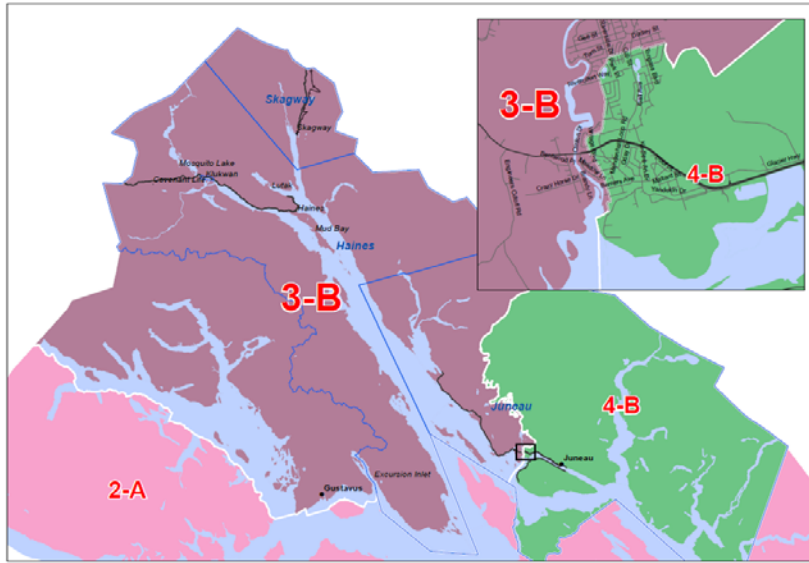
26 ⁵⁴⁴ Simpson Aff. ¶ 8; Feb. 3, 2022 Trial Tr. 1865:7-19 (Simpson cross).

⁵⁴⁵ Feb. 4, 2022 Trial Tr. 1956:17-19 (Brace cross) (“Q: And so the only changes that you proposed are with regard to Districts 3 and 4, correct? A: That’s correct.”).



2021 Board Proclamation District 3-B
Redistricting Plan Adopted by the Alaska Redistricting Board 11/10/2021

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Based on 2020 Census Geography and 2020 PL94-171 Data. Map Gallery link: www.akredistrict.org/maps

ARB000021

163. At trial, Skagway’s witnesses agreed that all of the Alaska Marine Highway System ferry terminals for Gustavus, Haines, Skagway and the CBJ are located in House District 3,⁵⁴⁶ that the ferry system is integral to Skagway,⁵⁴⁷ that the northern portion of the CBJ is geographically closer to Skagway than the downtown portion of the CBJ,⁵⁴⁸ or that House District 3 from the 2021 redistricting cycle was more compact than House District 33 from the 2013 redistricting cycle.⁵⁴⁹ Skagway’s witnesses instead argued that its strong socioeconomic ties to the downtown portion of

⁵⁴⁶ Feb. 2, 2022 Trial Tr. 1583:17-23 (Cremata cross).

⁵⁴⁷ Feb. 2, 2022 Trial Tr. 1586: 16-17 (Cremata cross) (classifying the ferry as the “primary means of travel” for Skagway residents).

⁵⁴⁸ Feb. 2, 2022 Trial Tr. 1584:21-23 (Cremata cross).

⁵⁴⁹ Feb. 4, 2022 Trial Tr. 1960:9-17 (Brace cross) (“Q: Let’s talk about compactness, though. I want to ask you about compactness. You don’t have any dispute that Mr. Simpson’s approach results in compact districts; correct? A: Well, compactness is, as even other testimony has shown, is partly in the eyes of the beholder. If you’re going to divide a neighborhood, is that truly compact? That’s a good question. I don’t know if that’s the case.”). Indeed, not a single Skagway witness challenged the Board’s assertion that House District 3 was more compact than House District 33 from the 2013 Proclamation Plan.

1 the CBJ meant that it should be in a house district with that neighborhood.⁵⁵⁰

2 164. Skagway’s witnesses admitted that during the 2001 redistricting cycle,
3 Skagway was placed in a house district that did not include any portion of the CBJ.⁵⁵¹

4 165. There was significant trial testimony elicited about a non-existent road
5 between Skagway and the CBJ. Skagway Mayor Cremata,⁵⁵² Manager Ryan,⁵⁵³
6 Wrentmore,⁵⁵⁴ and Walsh all testified about Skagway’s opposition to any road being
7 built between the CBJ and Skagway because of how it could change the nature of
8 Skagway. Skagway is already connected to the road system into Canada and over to
9 Haines.⁵⁵⁵ Skagway showed the voting totals for different precincts in the CBJ and
10 Skagway, which demonstrated back in the early 2000s, voters in the Mendenhall Valley
11 portion of the CBJ supported a road between the two areas slightly more than did voters
12 in the downtown portion of the CBJ.⁵⁵⁶

13 166. Budd Simpson testified that he did not draw House District 3 or 4 the way
14 they were because of a non-existent road between Skagway and the CBJ.⁵⁵⁷ There was
15 no contrary evidence elicited at trial to suggest Simpson drew House Districts 3 and 4
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17 ⁵⁵⁰ Feb. 2, 2022 Trial Tr. 1603-1604, 1617-1618 (Cremata redirect); Feb. 2, 2022 Trial Tr.
18 1637:3-1638-13 (Ryan redirect); Feb. 2, 2022 Trial Tr. 1664:6-1665:20 (Walsh redirect).

19 ⁵⁵¹ Feb. 2, 2022 Trial Tr. 1654:9-1655:18 (Walsh cross); Valdez Exhibit 3005, p. 4 (Alaska
20 Redistricting Board 2002 Map).

21 ⁵⁵² Feb. 3, 2022 Trial Tr. 1878:22-1879:19 (Cremata rebuttal direct).

22 ⁵⁵³ Feb. 3, 2022 Trial Tr. 1883:6-20 (Ryan rebuttal direct).

23 ⁵⁵⁴ Feb. 3, 2022 Trial Tr. 1909:25-1911:2 (Wrentmore rebuttal direct).

24 ⁵⁵⁵ Feb. 3, 2022 Trial Tr. 1754: 14-22 (Simpson cross).

25 ⁵⁵⁶ See Skagway Trial Exhibit 2013; see also Feb. 3, 2022 Trial Tr. 1761:11-16, 18-24;
26 1762:5-21; 1763:10-22; 1764-1765 (Simpson cross).

⁵⁵⁷ Feb. 3, 2022 Trial Tr. 1840 10-19 (Simpson redirect) (“Q: You heard a lot of questions
this morning about proposed road out of Juneau; do you recall some of that discussion? A: I
do. Q: And did road that’s not been built influence how you drew House Districts 3 and 4?
A: No. Even if that road were to proceed, it would be a project that would [t]ake many years
to – to realize. It just doesn’t enter into what we’re doing here.”).

1 with a non-existent road in mind or that he had not attended and heard the public
2 testimony from CBJ and Skagway residents.

3 167. Simpson’s handwritten notes of public hearings in the CBJ and Skagway
4 confirmed that he attended those public hearings and heard from the bulk of Skagway
5 residents that they preferred to be in a house district with downtown CBJ and that
6 several CBJ residents wanted the Mendenhall Valley to be in its own separate district
7 from downtown CBJ.⁵⁵⁸ There was also public testimony to the contrary that supported
8 placing Skagway in a house district with the portion of the CBJ closest to it: the northern
9 portion.⁵⁵⁹

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11 ⁵⁵⁸ Skagway Trial Exhibit 2001 at 1-7; *see also* Feb. 3, 2022 Trial Tr. 1781-1784 (Simpson
12 cross).

13 ⁵⁵⁹ ARB001924-ARB001925 (Frank Bergstrom submission: “As a 34-year resident of
14 Juneau it is my pleasure to submit comments on the current legislative redistricting plan. Please
15 accept my wholehearted support for Board version #3, which places Haines and Skagway with
16 ‘north’ Juneau. This district would include my residence and best represents the continuity of
17 physiography, culture, and socio-economic conditions found in the region.... Socio-economic
18 differences also support version #3. The Lynn Canal (and northern Chatham Strait) includes
19 ... the Kensington ... mine[], the workforce for which resides mostly in north Juneau, Haines,
20 and Skagway.”); ARB002206 (Eleanor F. Davenport submission: “I support Board Map
21 Version # 3 in which Haines and Skagway are combined with Juneau’s ‘valley’ area. I have
22 lived in the Juneau ‘Valley’ for over 2 decades , AND then was subsequently a 10 year resident
23 of Skagway. I know these communities intimately. It is my belief that the economic, socio-
24 economic profiles and interests of these communities are aligned and make sense to organize
25 into a Legislative District. I’ve been in the retail and visitor industry in Alaska for nearly 40
26 years, and have followed local and statewide legislative issues closely. I can see far more
cohesion and support among these ‘neighborhoods’ than trying to create strange doughnut
districts that correspond to population alone. Thank you for this opportunity to comment. I
support Board Version 3 of the SE Alaska Redistricting Maps especially as it groups North
Juneau and Skagway and Haines.”); ARB003577 (Tyler Rose submission: “I am writing to
you in support of the Redistricting Boards’ proposed plan to place Haines and Skagway with
North Juneau. My comments are limited to the Northern Lynn Canal aspect of this discussion,
where as a long time resident I see a natural alignment with North Juneau given the closer
geographical, commercial, and regional transportation linkages for Skagway and Haines, as
opposed to that of the downtown Juneau. I believe the Board’s Map Version #3 seems to best
reflect this reality.”); ARB02998 (Former Juneau Mayor Ken Koelsch submission: “What was
a big surprise to me is how the map was drawn in the last redistricting. It never looked right
and I never understood the rationale for looping Haines and Skagway into downtown Juneau
for House representation. Haines and Skagway are located at the head of Lynn Canal, closer
geographically by far to Juneau District 34’s Lynn Canal precinct and other Valley precincts
than they are to downtown Juneau. When the ferry sails for Haines and Skagway, it does not

1 **II. CONCLUSIONS OF LAW**

2 **A. Jurisdiction and Venue**

3 168. Under Article VI, § 11 of the Alaska Constitution, the superior court has
4 original jurisdiction over lawsuits to “compel correction of any error in redistricting.”⁵⁶⁰

5 169. Venue is appropriate under Civil Rules 3 and 90.8(f).

6 **B. Standard of Review**

7 170. Review of the Board’s Map is deferential, in recognition of the authority
8 delegated to the Board under the Alaska Constitution.⁵⁶¹

9 171. The courts “review redistricting plans ‘in the same light as [they] would
10 a regulation adopted under a delegation of authority from the legislature to an
11 administrative agency to formulate policy and promulgate regulations.”⁵⁶² This means
12 courts “review the plan to ensure that the Board did not exceed its delegated authority
13 and to determine if the plan is ‘reasonable and not arbitrary.’”⁵⁶³ The examination of a
14 reviewing court is to assess whether the Board has “engaged in reasoned decision
15 making.”⁵⁶⁴

16 _____
17 leave from downtown Juneau docks. It leave[s] from a ferry terminal on the ‘north’ end of
18 town. There is a good possibility that the ferry terminal could be moved in the future to
19 Cascade Point which is even closer to Haines and Skagway. Catamaran traffic also between
20 Haines, Skagway, and Juneau utilizes Auke Bay in the Valley. Also located on that ‘north’
21 end of town is the dock where shuttles take Juneau workers to the Kensington Mine. When I
22 was Mayor, several residents of Haines were also employed by the Kensington which one can
see on the east (mainland) side side [sic] when sailing Lynn Canal for Haines or Skagway.
The majority of employees that work in either the Greens Creek or Kensington mines that live
in Alaska reside in the Valley area of Juneau or Haines or Skagway. Please consider drawing
a map that makes geographic sense and recognizes the Haines and Skagway and the more rural
‘northern’ Juneau Valley precinct connections.”).

23 ⁵⁶⁰ Alaska Const. art. VI, § 11.

24 ⁵⁶¹ Alaska Const. art. VI, §§ 8, 10.

25 ⁵⁶² *In re 2011 Redistricting Cases*, 294 P.3d 1032, 1037 (Alaska 2012) (quoting *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1357 (Alaska 1987)).

26 ⁵⁶³ *Id.* (quoting *Kenai Peninsula Borough*, 743 P.2d at 1357).

⁵⁶⁴ *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 18 (Alaska Super. Feb. 1, 2002)

1 172. This Court “may not substitute its judgment as to the sagacity of a
2 [redistricting plan] for that of the [Board; the] wisdom of [the plan] is not a subject for
3 review.”⁵⁶⁵ “The court cannot pick a plan it likes, nor can it impose a plan it prefers.
4 Rather, the court’s role is to measure the plan against constitutional standards; the
5 choice among alternative plans that are otherwise constitutional is for the Board, not
6 the Court.”⁵⁶⁶

7 173. “Another factor that must be considered by this court, especially when
8 analyzing claims concerning the process by which the Board conducted its business and
9 formulated its Final Plan is the limited time in which the Board was required to conduct
10 its business. . . . The [] constitutional requirements placed extraordinary time
11 constraints upon the Board’s ability to work and required extraordinary personal and
12 professional sacrifices from the Board members, and any review of the process by
13 which the Board conducted its business can fairly be considered only in that context.”⁵⁶⁷

14 **C. *Hickel* Process**

15 174. In *Hickel v. Southeast Conference*,⁵⁶⁸ the Alaska Supreme Court held that
16 the Governor’s Reapportionment Board (now the Alaska Redistricting Board) was
17 required to conduct its redistricting process in the following order: (1) first, complete a
18 redistricting plan by applying the requirements of Article VI, Section 6 of the Alaska
19 Constitution, and (2) then, ensure the redistricting plan does not violate the Voting

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21 _____
22 (citing *Interior Alaska Airboat Assoc., Inc. v. State*, 18 P.3d 686, 690 (Alaska 2001)).

23 ⁵⁶⁵ *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 17 (citing *Carpenter v. Hammond*, 667 P.2d 1204, 1214 (Alaska 1983)).

24 ⁵⁶⁶ *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 18 (citing *Gaffney v. Cummings*, 412 U.S. 735, 750-51 (1973)).

25 ⁵⁶⁷ *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 18.

26 ⁵⁶⁸ *Hickel v. Southeast Conference*, 846 P.2d 38, 51 (Alaska 1992).

1 Rights Act’s provisions.⁵⁶⁹ Specifically, the *Hickel* Court held:

2 The Board must first design a reapportionment plan based on the
3 requirements of the Alaska Constitution. That plan then must be tested
4 against the Voting Rights Act. A reapportionment plan may
5 minimize article VI, section 6 requirements when minimization is the
only means available to satisfy Voting Rights Act requirements.⁵⁷⁰

6 The Alaska Supreme Court has ruled that the Alaska Redistricting Board—created by
7 constitutional amendment after the *Hickel* case was issued—must follow the *Hickel*
8 Process.⁵⁷¹ “The Board is not required to specifically [make findings] that each district
9 in its *Hickel* plan complies with the Alaska Constitution.”⁵⁷²

10 175. The Board drew its forty-district redistricting plan without knowing the
11 racial makeup of its election districts. On September 8, 2021, the Board discussed and
12 rejected a third-party’s suggestion that the Board must consider racial data from the
13 U.S. Census results in formulating a proposed redistricting plan or plans.⁵⁷³ The
14 Board’s legal counsel addressed the request and counseled the Board not to adopt the
15 suggestion to consider racial data from the U.S. Census when drawing Alaska’s forty
16 house districts. Specifically, the following conversation took place:

17 Mr. Singer: Mr. Chair, and members of the Board, I’ve reviewed the
18 letter provided by the Native American Rights Fund, and I respectfully
19 disagree with several points in the letter. And I think that while -- while
20 well intentioned, that letter is inviting the Board to make legal errors, and
I’d urge your caution. So the United States Supreme Court has directed
21 that we may not racial gerrymander –

22 ⁵⁶⁹ *Hickel*, 846 P.2d at 51 n.22.

23 ⁵⁷⁰ *Hickel*, 846 P.2d at 51 n.22.

24 ⁵⁷¹ *In re 2011 Redistricting Cases*, 274 P.3d 466, 467 (Alaska 2012).

25 ⁵⁷² *In re 2011 Redistricting Cases*, 294 P.3d 1032, 1038 (Alaska 2012).

26 ⁵⁷³ ARB003301-ARB003305; ARB010499-ARB010505 at 4:20-10:13 (Sept. 8, 2021 Bd.
Meeting Tr.).

1
2 Member Bahnke: Uh-huh

3 Mr. Singer: -- and the Equal Protection Clause, the United States
4 Constitution prohibits using race to draw -- draw district boundaries. I
5 -- I think it's a mistake to consider race at this stage.

6 The Board's obligation is to draw 40 house districts that are compact,
7 contiguous, and socioeconomically integrated. The -- the -- the value
8 that the five of you bring to Alaskans is your deep knowledge and
9 history in this state, and what matters is your consideration of how
10 communities are inner -- interact and are socioeconomically
11 integrate[d].

12 One aspect of that may be that there -- that -- that there are villages that
13 are Alaska Native, but that's not a numeric[al] analysis.

14 That's an analysis about how people live; about how people work;
15 about how people engage in subsistence; about how people seek
16 medical care; about where they work; about how they live their lives.
17 And -- and I think that the Board is already appropriately considering
18 those aspects when it talks about small island communities that are
19 interlinked in Southeast or upriver communities from Bethel.

20 So I would con- -- I would encourage the Board to continue on the path
21 that you're on. You're having the right discussion.

22 You are considering the right factors, and that would be a mistake at
23 this stage to use population numbers broken down by race as a tool in
24 drawing the 40 district boundaries.

25 There will be a voting rights analysis. The Board has engaged an
26 expert to conduct that analysis to make sure that after you first comply
with the Alaska Constitution, that we are also complying with the
Voting Rights Act and -- and our obligations to protect the minority
vote. That's a different stage, and -- and I -- I just strongly encourage
you not to [combine] those stages.

And I -- and I respectfully disagree with the NARF [Native American
Rights Fund] letter for omitting any discussion of our obligations
under the United States Constitution and the whole body of law that

1 the U.S. Supreme Court has established with regard to racial gender --
2 gerrymandering.⁵⁷⁴

3 The Board agreed with counsel’s advice, and rejected the invitation to consider racial
4 data.⁵⁷⁵ The Board proceeded to adopt draft maps based solely on the requirements of
5 the Alaska Constitution.⁵⁷⁶

6 176. The Board’s process, where only the Board’s legal counsel and staff
7 reviewed Alaska Native population statistics and interacted with the Board’s Voting
8 Rights Act consultant, meant the Board drew redistricting plans without regard to the
9 racial makeup of the populations within those districts.⁵⁷⁷

10 177. Valdez’s, Skagway’s and Mat-Su’s allegation that House Districts 37-40
11 were improperly drawn in violation of the *Hickel* Process because they have majority
12 Alaska Native ignores longstanding demographic realities of Alaska in general and the
13 areas encompassed in House Districts 37-40 specifically. House District 40 is
14 comprised entirely of two boroughs: the North Slope Borough and the Northwest Arctic
15 Borough. House District 39 is the Bering Strait region and the Lower Yukon School
16 District area of the Calista region. House District 38 is comprised of the Calista region.

18 ⁵⁷⁴ ARB010500-ARB010502.

19 ⁵⁷⁵ ARB010499-ARB010505 at 4:20-10:13 (Tr. Sept. 8, 2021 ARB Meeting).

20 ⁵⁷⁶ ARB010001-ARB010002 at 177:22-178:10 (Tr. of Sept. 9, 2021 ARB Meeting.);
infra n.⁵⁷⁷.

21 ⁵⁷⁷ Supp. Aff. of Nicole Borrromeo, ¶ 6, dated Jan. 19, 2022 (“In Paragraph 55, Mr. Brace
22 incorrectly opines that the Board considered VRA information at the outset of its map drawing
23 efforts. The opposite is true: the Board avoided VRA information until its house map was
24 nearly final. The Board followed the *Hickel* process by mapping all 40 house districts without
25 consideration racial data for any of the areas of Alaska.”); Supp. Aff. of Melanie Bahnke, ¶ 8,
26 dated Jan. 19, 2022 (“The Board drew forty house districts by focusing on the Alaska
Constitution’s requirement to adopt compact, contiguous, and relatively socio-economically
integrated districts. We adopted our draft maps without considering data about race.”); Supp.
Aff. of Peter Torkelson, ¶¶ 21-23, dated Jan. 20, 2022 (discussing Board beginning mapping
in Southeast Alaska and that “The results of the Racial Block Voting and Voting Rights Act
compliance analysis were not shared with Board members until November 2, 2021.”).

1 House District 37 is comprised of the Bristol Bay region, including the Bristol Bay
2 Borough and the Lake & Peninsula Borough, as well as the Alaska Peninsula and the
3 Aleutian Chain. These areas are majority-minority districts not because of the shape of
4 House Districts 37-40, but because those areas are the location of many traditional
5 Alaska Native villages, and Alaska Natives continue to live in high concentrations near
6 these traditional communities.⁵⁷⁸ The Board drew House Districts 37-40 without regard
7 to the racial makeup of those districts.⁵⁷⁹

8 178. Valdez, Skagway and Mat-Su also argue that the Board violated the
9 *Hickel* Process by starting with and “locking in” House Districts 37-40 before other
10 house districts were drawn. The transcription of Board proceedings and evidence
11 presented at trial shows these arguments to be factually incorrect. At trial, Valdez and
12 Skagway’s expert witness had to concede that when he made that allegation in this pre-
13 filed affidavit he had not reviewed all of the video of the Board’s early meetings and
14 had missed the portion where the Board started drawing districts in Southeast Alaska⁵⁸⁰
15 and that it had started that mapping on August 24, not September 7.⁵⁸¹ The Board

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17 ⁵⁷⁸ Bahnke Supp. Aff. ¶¶ 8-9; Borromeo Supp. Aff. ¶ 7; Jan. 27 Trial Tr. 986:25-987:6
18 (Bahnke cross) (“The maps are the result of where people live, where populations are centered,
19 and you can’t change the fact that 75 percent of the people in the Bering Strait region are
20 Alaska Native, somehow alter the maps to try to spread the voting power in a way that would
21 still maintain compactness, contiguity, and socioeconomic integration.”).

22 ⁵⁷⁹ *Id.*

23 ⁵⁸⁰ Jan. 25, 2022 Trial Tr. 649:2-9 (Brace cross) (After playing a clip of the Board on
24 August 24 drawing districts in Southeast Alaska: “Q: Did you – did you watch the entire
25 meeting of the 24th? Did you see that they, after this discussion then began drawing the four
26 districts in Southeast? A: I watched a whole bunch of it, so if indeed they were drawing
individual districts within, then okay. So they were starting the map drawing then later on that
day.”).

27 ⁵⁸¹ Jan. 25, 2022 Trial Tr. 647-649, and 654 (Brace Cross) (“Q: I think the answer to my
28 question, which was you don’t know when they started mapping, I think the answer to that is
29 a no; is that correct? A: I don’t know where individual members were in terms of line
30 drawing on that side. But that’s true. As a collective body, I was not seeing that in the paper
transcripts. In looking at the video transcripts, I could see a little bit more than I could on the
paper ones. But my original statement was based upon review of the paper transcripts.”),

1 started its map drawing in Southeast Alaska, and did not start its map drawing in
2 northern or western Alaska where House Districts 37-40 are located.

3 179. Nor did the Board “lock in” House Districts 37-40 early on in the
4 redistricting process. House District 40 is two complete boroughs that every third-party
5 group except one (AFFER), including Valdez and Skagway, mapped exactly the same
6 as the Board. The Board was moving communities in and out of House Districts 37,
7 38, and 39, until the very last day of mapping house districts. On November 5, 2021,
8 the last day of the Board’s deliberation of house maps, the Board granted Calista’s
9 request that the Board move Chevak from House District 39 into House District 38.⁵⁸²
10 This population increase to House District 38 (Chevak has a population of 900) required
11 the Board to move Goodnews Bay and Platinum from House District 38 into House
12 District 37.⁵⁸³ Far from having House Districts 37-39 locked in early on in the process,
13 the Board changed these house districts as it crossed the finish line of its deliberations
14 on a forty-district house map. The Board followed the *Hickel* Process in completing its
15 Final Plan.

16 **D. Relevant Legal Authority and Conclusions of Law**

17 **1. Article VI, Section 6**

18 **i. Section 6 Rules**

19 180. Article VI, § 6 of the Alaska Constitution sets the substantive standards
20 for the House and Senate Districts drawn by the Board. Section 6 provides, in full:

21 The Redistricting Board shall establish the size and area of house
22 districts, subject to the limitations of this article. Each house district shall
23 be formed of contiguous and compact territory containing as nearly as

24 ⁵⁸² ARB008018-ARB008019 (Dialogue between Chair Binkley and Randy Ruedrich),
25 ARB008057-008062.

26 ⁵⁸³ ARB008062-ARB008075 (Board moving communities from House District 38 to
House District 37).

1 practicable a relatively integrated socio-economic area. Each shall
2 contain a population as near as practicable to the quotient obtained by
3 dividing the population of the state by forty. Each senate district shall be
4 composed as near as practicable of two contiguous house districts.
5 Consideration may be given to local government boundaries. Drainage
6 and other geographic features shall be used in describing boundaries
7 wherever possible.⁵⁸⁴

6 Given the challenges posed by Alaska’s vast size and unique geography, the
7 Alaska courts have recognized the need to apply these factors in a manner that
8 “preserve[s] flexibility in the redistricting process so that all constitutional
9 requirements may be satisfied as nearly as practicable.”⁵⁸⁵

10 **a. Contiguity**

11 181. “Contiguous territory is territory which is bordering or touching.”⁵⁸⁶
12 Thus, “[a] district may be defined as contiguous if every part of the district is reachable
13 from every other part without crossing the district boundary (i.e., the district is not
14 divided into two or more discrete pieces).”⁵⁸⁷ It is a visual concept.⁵⁸⁸

15 182. Given Alaska’s “numerous archipelagos,” “a contiguous district may
16 contain some amount of open sea,” within the limits imposed by the compactness and
17 socio-economic integration requirements.⁵⁸⁹

18 183. By the same principle, a district that comprises a single land mass on a
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21 ⁵⁸⁴ Alaska Const. art. VI, § 6.

22 ⁵⁸⁵ *Hickel v. Southeast Conference*, 846 P.2d 38, 50 (Alaska 1992), *as modified on reh’g*
23 (Mar. 12, 1993) (citing *Egan v. Hammond*, 502 P.2d 856, 865–66 (Alaska 1972); *Groh v.*
Egan, 526 P.2d 863, 875 (Alaska 1974); and *Kenai Peninsula Borough v. State*, 743 P.2d 1352,
1359 (Alaska 1987)).

24 ⁵⁸⁶ *Hickel*, 846 P.2d at 45.

25 ⁵⁸⁷ *Id.* (citation omitted).

26 ⁵⁸⁸ *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 36 (Alaska Super. Feb. 1, 2002).

⁵⁸⁹ *Id.*

1 map is contiguous for constitutional purposes, even if transportation barriers such as
2 mountains or waterways preclude travel between some parts of the district. “Contiguity
3 is not dependent on the vagaries of existing transportation systems,”⁵⁹⁰ and indeed in
4 Alaska it will often be the case that convenient transportation connections are
5 necessarily absent.

6 **b. Compactness**

7 184. “The compactness inquiry . . . looks to the shape of a district.”⁵⁹¹
8 “Compact” in the redistricting context “means having a small perimeter in relation to
9 the area encompassed.”⁵⁹²

10 185. Compact districts generally “should not yield ‘bizarre designs.’”⁵⁹³
11 However, the courts have recognized that the Article VI, § 6 factors will often be in
12 tension with each other, and thus some reduction in compactness may be justified to
13 “further . . . [an]other requirement of article VI, section 6.”⁵⁹⁴

14 186. Recognizing the realities of Alaska’s geography, “[w]hen analyzing
15 compactness, the court should ‘look to the relative compactness of proposed and
16 possible districts in determining whether a district is sufficiently compact.’”⁵⁹⁵

17 187. By the same token, given that parts of Alaska include large, sparsely
18 populated areas and vast roadless regions, “neither size nor lack of direct road access

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20 ⁵⁹⁰ *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 59, *aff’d in relevant part*, 44
21 P.3d 141, 143 (Alaska 2002) (“Except insofar as they are inconsistent with this order, the
orders of the superior court challenged by the petitioners are AFFIRMED.”).

22 ⁵⁹¹ *Hickel*, 846 P.2d at 45.

23 ⁵⁹² *Id.*

24 ⁵⁹³ *Id.* (citation omitted).

25 ⁵⁹⁴ *In re 2001 Redistricting Cases*, 44 P.3d 141, 143 (Alaska 2002). In that case, the
Supreme Court struck down a district that contained a bizarre shape because it was *unnecessary*
to further any of the other § 6 requirements.

26 ⁵⁹⁵ *In re: 2011 Redistricting Cases*, 2013 WL 6074059, at *19 (quoting *Hickel*, 846 P.2d
at 45).

1 makes a district unconstitutionally non-compact.”⁵⁹⁶ Indeed, “[d]istricts within Alaska
2 have often been the size of several States in the Lower 48,” and their size alone does
3 not make them noncompact.⁵⁹⁷

4 188. That is not to say, however, that the size of a district is entirely irrelevant
5 to compactness. Because the concept of compactness under Alaska law roughly
6 compares the length of the perimeter of a district to its geographic area,⁵⁹⁸ a jog in the
7 district line or an appendage may have a much greater impact on the compactness of a
8 relatively small, densely populated district than it would on a larger, sparsely populated
9 district.⁵⁹⁹

10 189. The relative compactness of proposed and possible districts may be
11 considered in “determining whether a district is sufficiently compact.”⁶⁰⁰

12 **c. Relative Socio-Economic Integration**

13 190. Article VI, § 6 requires each district to contain “as nearly as practicable
14 a relatively integrated socio-economic area.”⁶⁰¹

15 191. Socio-Economic integration is “[w]here people live together and work
16 together and earn their living together, where people do that, they should be logically
17 grouped that way.”⁶⁰²

18 192. This principle must be applied within the realities of Alaska’s geography,
19 both physical and demographic. The word “relatively” preceding the words “socio-
20

21 ⁵⁹⁶ *In re 2001 Redistricting Cases*, 47 P.3d 1089, 1092 (Alaska 2002).

22 ⁵⁹⁷ *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 60-61 (Alaska Super. Feb. 01,
2002).

23 ⁵⁹⁸ *Hickel v. Southeast Conference*, 846 P.2d 38, 45 (Alaska 1992).

24 ⁵⁹⁹ See Jan. 24 Trial Tr. 405:14-406:15 (Colligan cross).

25 ⁶⁰⁰ *Hickel*, 846 P.2d at 45).

26 ⁶⁰¹ Alaska Const. art. VI, § 6.

⁶⁰² *Hickel*, 846 P.2d at 46.

1 economic integration,” “means that we compare proposed districts to other previously
2 existing and proposed districts as well as principal alternative districts to determine if
3 socio-economic links are sufficient.”⁶⁰³

4 193. To determine whether communities within a district are adequately linked
5 for constitutional purposes, the Alaska courts have looked at a variety of factors,
6 including: “service by the state ferry system, daily local air taxi service, a common
7 major economic activity, shared fishing areas, a common interest in the management
8 of state lands, the predominately Native character of the populace, and historical links,”
9 as well as geographic proximity, linkage “by daily airline flights,” and dependence on
10 common hub or city “for transportation, entertainment, news and professional
11 services.”⁶⁰⁴

12 194. Alaska courts have also recognized that regional boundaries as defined
13 under the Alaska Native Claims Settlement Act (“ANCSA”) are indicative of socio-
14 economic integration and may be used to guide redistricting decisions, and may justify
15 some degree of population deviation.⁶⁰⁵

16 195. The degree and manner of socio-economic integration may, by necessity,
17 differ in different regions of the state. Thus, “[s]ocio-economic integration can be
18 demonstrated both by direct face to face and repeated interaction among neighbors and
19 by evidence that a district is bound together by systems of common culture, common
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22 ⁶⁰³ *Hickel*, 846 P.2d at 47.

23 ⁶⁰⁴ *Hickel*, 846 P.2d at 46-47; *see also In re 2001 Redistricting Cases*, 2002 WL 34119573,
at 19 (Alaska Super. Feb. 01, 2002) (citing *Hickel*, 846 P.2d at 46).

24 ⁶⁰⁵ *E.g., Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1359 n.10 (Alaska 1987)
25 (citing *Groh v. Egan*, 526 P.2d 863, 877 (Alaska 1974)); *see also Hickel*, 846 P.2d at 48
26 (“[A]dherence to Native corporation boundaries might also provide justification [for
population deviations], as long as the boundaries were adhered to consistently.” (citing *Groh*,
526 P.2d at 877–78)).

1 values, common economic needs, that unite people within an area.”⁶⁰⁶

2 196. Particularly when it comes to drawing districts covering the more rural
3 regions of the state, “there is nothing in the Alaska Constitution that requires that every
4 community within a district have actual interaction with every other community within
5 a district.”⁶⁰⁷ Looking at prior districts, it is evident “that a requirement that every
6 community within a district directly interact with every other community within that
7 district would be virtually impossible to achieve.”⁶⁰⁸ The Alaska Constitution does not
8 require the Board to achieve the impossible. “Rather, the requirement in Article VI,
9 Section 6 of the Alaska Constitution may, by its very terms, be satisfied if the ‘area’
10 comprising the district is relatively socio-economically integrated without regard to
11 whether each community within the ‘area’ directly and repeatedly interacts with every
12 other community in the area.”⁶⁰⁹

13 197. Unsurprisingly, all communities within a given borough are socio-
14 economically integrated as a matter of law, because “[b]y statute, a borough must have
15 a population which ‘is interrelated and integrated as to its social, cultural, and economic
16 activities.’”⁶¹⁰ Thus, house districts comprised of populous from within a single
17 borough are, by definition, socio-economically integrated.⁶¹¹

18 198. Finally socioeconomic integration “is given some flexibility by the
19 constitution . . . the flexibility that this clause provides should be used only to maximize

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21 ⁶⁰⁶ *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 60.

22 ⁶⁰⁷ *In re 2001 Redistricting Cases*, WL 34119573, at 60 (citing *Kenai Peninsula Borough*, 743
P.2d at 1362-63).

23 ⁶⁰⁸ *Id.*

24 ⁶⁰⁹ *Id.* at 61.

25 ⁶¹⁰ *Hickel v. Southeast Conference*, 846 P.2d 38, 51 (Alaska 1992) (quoting AS
29.05.031).

26 ⁶¹¹ *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 42 (Alaska Super. Feb. 1, 2002)
(citing *Hickel*, 846 P.2d at 51-52).

1 the other constitutional requirements of contiguity and compactness.”⁶¹² However,
2 attempts to increase socioeconomic integration within a borough at the expense of
3 population equality is unjustified and does not comport with Section 6.⁶¹³ Thus,
4 compactness and contiguity will not yield to increase or improve the “flexible” socio-
5 economic integration where socioeconomic integration exists, but is not maximized.

6 **d. Population “as Near as Practicable” to 1/40th of State**
7 **Population**

8 199. Section 6 requires house districts to “contain a population as near as
9 practicable to the quotient obtained by dividing the population of the state by forty.”⁶¹⁴
10 This requirement protects the right to “one person, one vote.” The Alaska Supreme
11 Court has stated that Article VI, Section 6 “will in many cases be stricter than the
12 federal threshold [of 10% deviation acceptability]” due to the requirement that the
13 population be “as near as practicable” to 1/40 of the state’s population.⁶¹⁵ However,
14 the Court has also recognized that population deviations above or below 1/40 of the
15 state’s population may be necessary to accommodate the other requirements of Article
16 VI.⁶¹⁶ But the Court has never set a specific deviation percentage from the ideal

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19 ⁶¹² *Hickel*, 846 P.2d at 45 n.10.

20 ⁶¹³ *In re 2001 Redistricting Cases*, 44 P.3d 141, 146 (Alaska 2002) (“The board considered
21 and rejected Anchorage plans with significantly lower maximum deviations, apparently
22 because these plans did not respect the board’s conception of neighborhood boundaries. But
23 as we held in *Groh v. Egan*, Anchorage neighborhood patterns cannot justify ‘substantial
24 disparities’ in population equality across Anchorage districts. Anchorage is by definition
25 socio-economically integrated, and its population is sufficiently dense and evenly spread to
26 allow multiple combinations of compact, contiguous districts with minimal population
27 deviations. Accordingly, the Anchorage deviations are unconstitutional, and require the board
28 on remand to make a good faith effort to further reduce the deviations.”).

29 ⁶¹⁴ Alaska Const. art. VI, § 6.

30 ⁶¹⁵ *In re 2001 Redistricting Cases*, 44 P.3d 141, 145-46 (Alaska 2002).

31 ⁶¹⁶ *Hickel v. Southeast Conference*, 846 P.2d 38, 48 (Alaska 1992).

1 quotient that would amount to a Section 6 violation as a matter of law.⁶¹⁷

2 200. In *Hickel*, the Governor’s commission set a policy of not allowing
3 maximum deviation of “no more than two percent” for its redistricting plan, meaning
4 the sum of the percentage difference between the most populated and least populated
5 house districts could not be more than two percent total.⁶¹⁸ This goal of minimizing
6 population deviations led the Governor’s commission to create districts that ignore
7 local government boundaries.⁶¹⁹ The superior court held that this “needlessly nullified
8 Alaska constitutional requirements” in an attempt to “reach its various policy goals,
9 including the creation of districts with no more than two percent population deviation
10 from the ideal district size.”⁶²⁰ The Alaska Supreme Court affirmed the superior court,
11 meaning that the Board may not overemphasize minimizing population deviations to
12 the harm of contiguity, compactness, and socio-economic integration.⁶²¹

13 201. In *In re 2001 Redistricting Cases*, the Board created house districts within
14 the Municipality of Anchorage that resulted in the maximum population deviation (the
15 sum the two districts with the greatest positive and negative deviations) of 9.5%.⁶²² The
16 Board believed it had no obligation to even attempt to reduce the deviations because
17 prior to the 1998 amendment to article VI the Alaska Supreme Court had ruled that
18 “maximum deviations below ten percent were insufficient, without more, to make out

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20 ⁶¹⁷ *In re 2001 Redistricting Cases*, 44 P.3d at 145-46.

21 ⁶¹⁸ *Hickel*, 846 P.2d at 42 (“In March [the Board] adopted the following policies to guide
22 the development of redistricting plans. . . . One person, one vote: equal protection for all
individuals will be realized by equal population among districts, with the least populated and
most populated districts separated by a variance of no more than two percent.”).

23 ⁶¹⁹ *Hickel*, 846 P.2d at 61 (“The districts do not contain, as nearly as practicable, relatively
24 integrated socio-economic areas, identified with due consideration given to existing local
government boundaries.”).

25 ⁶²⁰ *Hickel*, 846 P.2d at 43.

26 ⁶²¹ *Hickel*, 846 P.2d at 43-44, and 61.

⁶²² *In re 2001 Redistricting Cases*, 44 P.3d 141, 145-46 (Alaska 2002).

1 a prima facie case that a plan or part thereof was unconstitutional.”⁶²³ But, after the
2 1998 amendments, which imposed the requirement that districts be “as near as
3 practicable” to the ideal quotient, the Board has the obligation to attempt to “achieve
4 deviations substantially below the ten percent federal threshold, particularly in urban
5 areas.”⁶²⁴

6 **e. Senate Districts**

7 202. The Alaska Constitution provides that “[e]ach senate district shall be
8 composed as near as practicable of two contiguous house districts.”⁶²⁵ “By its terms,
9 all the requirements of Article VI, section 6 do not apply to senate districts.”⁶²⁶ As the
10 Alaska Supreme Court and Judge Rindner previously recognized, “the provisions of
11 article VI, section 6 which set forth socio-economic integration, compactness, and
12 contiguity requirements are inapplicable to redistricting and reapportionment of senate
13 districts.”⁶²⁷ Under the 1998 Amendment, Article VI, Section 6 now mandates that
14 “[e]ach senate district shall be composed as near as practicable of two contiguous house
15 districts.”⁶²⁸ “The other Article VI, Section 6 requirements of compactness and socio-
16 economic integration were not added, nor made applicable to Senate districts by the
17 1998 Amendment. Thus, these requirements do not apply to Senate districts.”⁶²⁹

18 203. Contiguous territory “is territory which is bordering or touching. ... As
19 one commentator has noted, ‘[a] district may be defined as contiguous if every part of

20 ⁶²³ *Id.* at 145.

21 ⁶²⁴ *Id.* at 146.

22 ⁶²⁵ Alaska Const. art. VI, § 6.

23 ⁶²⁶ *In re 2001 Redistricting Cases*, 2002 WL 34119573, *15 (Alaska Sup. Ct. Feb. 1, 2002).

24 ⁶²⁷ *In re 2001 Redistricting Cases*, 2002 WL 34119573, *15; *see also Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1365 (Alaska 1987).

25 ⁶²⁸ *In re 2001 Redistricting Cases*, 2002 WL 34119573, *15.

26 ⁶²⁹ *In re 2001 Redistricting Cases*, 2002 WL 34119573, *15.

1 the district is reachable from every other part without crossing the district boundary
2 (i.e., the district is not divided into two or more discrete pieces).”⁶³⁰

3 204. In the 2001 redistricting cycle, Valdez and the Fairbanks North Star
4 Borough unsuccessfully urged the superior court to adopt “a definition of contiguity
5 such that a district could be found not to be contiguous if existing transportation
6 systems required residents of the district to cross other districts in order to transverse
7 the district in question.”⁶³¹ Judge Rindner rejected that argument: “There is no support
8 under Alaska law for such a definition of contiguity and this court rejects this approach.
9 Contiguity is not dependent on the vagaries of existing transportation systems. Rather,
10 the concept is a visual one designed to assure that no district contains two or more
11 discrete or unconnected parts.”⁶³²

12 205. The Alaska Supreme Court has held that equal protection prohibits the
13 Board from intentionally discriminating against a “politically salient class of voters”—
14 for example, voters residing within a borough or city—to dilute their voting power.⁶³³

15 206. The only equal protection claim based on redistricting to prevail in the
16 Alaska Supreme Court in the history of the state’s redistricting occurred in the 1987
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18

19 ⁶³⁰ *Hickel v. Southeast Conference*, 846 P.2d 28, 45 (Alaska 1992).

20 ⁶³¹ *In re 2001 Redistricting Cases*, 2002 WL 34119573, *36-37.

21 ⁶³² *In re 2001 Redistricting Cases*, 2002 WL 34119573, *36-37 (Alaska Sup. Ct. Feb. 1,
22 2002).

23 ⁶³³ *In 2011 Redistricting Cases*, 274 P.3d 466, 469 (Alaska 2012) (holding that the
24 superior court erred in dismissing claim that Board diluted power of voters within the City of
25 Fairbanks, which had population equivalent to 89 percent of a senate district, by not creating
26 a senate district for those voters, and remanding for the superior court to “make findings on
the elements of a voter dilution claim, including whether a politically salient class of voters
existed and whether the Board intentionally discriminated against that class.”). On remand,
the Board changed the senate districts in Fairbanks to give the voters of the City of Fairbanks
a senate district—Senate District A in the 2013 Proclamation Plan, *see* ARB001577—thereby
negating the dilution claim discussed above.

1 *Kenai Peninsula Borough* case.⁶³⁴ In that case, the Court held that Senate District E,
2 which was a two-member senate district composed of three house districts, that the
3 governor purposefully adopted “to prevent another Anchorage senate seat in the state
4 legislature,” violated the equal protection clause of the Alaska Constitution.⁶³⁵
5 Anchorage’s population entitled it to 8.51 senate seats, and the composition of Senate
6 District E meant Anchorage only received 8 senate seats.⁶³⁶ Nevertheless, the Court
7 refused to grant any relief beyond a declaration that the action had been unconstitutional
8 and refused to invalidate Senate District E because the constitutional violation was “de
9 minimus”— proportionality wise, Anchorage’s population made it *just barely* entitled
10 to a chance at a ninth senate seat (it was entitled to 8.51 senate seats).⁶³⁷

11 207. Caselaw prior to the *In re 2001 Redistricting Cases* regarding senate
12 districts is of limited utility now that Article VI has been amended to abolish multi-
13 member senate districts. As Judge Rindner explained:

14 When *Kenai Peninsula Borough* was decided there were few constraints
15 on the redistricting of senate districts other than the analysis inherent in
16 equal protection analysis. The *Kenai Peninsula Borough* court held that
17 the provisions of Article VI, Section 6 of the Alaska Constitution which
18 set forth socio-economic integration, compactness and contiguity
19 requirements were inapplicable to redistricting and reapportionment of
20 senate districts. Today, in contrast, senate districts must be composed as
21 near as practicable of two contiguous house districts. Likewise, at the
22 time *Kenai Peninsula Borough* was decided, multi- senate districts were
23 constitutionally permissible. Today, they are not. See Article VI, Section
24 4. Thus at the time *Kenai Peninsula Borough* was decided there were

22 ⁶³⁴ *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1363 (Alaska 1987).

23 ⁶³⁵ *Kenai Peninsula Borough*, 743 P.2d at 1370-1373.

24 ⁶³⁶ *Kenai Peninsula Borough*, 743 P.2d at 1372-73 (“Put another way, strict
25 proportionality would give Anchorage voters 8.51 senate seats, and a redistricting toward
26 proportionality would allow them the potential to win a ninth senate seat.”).

⁶³⁷ *Kenai Peninsula Borough*, 743 P.2d at 1373 (“Here the effect of the Board’s
discriminatory intent is de minimus.”).

1 few constraints on the manner by which the senate districts could be
2 drawn and, as a result, the opportunity to gerrymander such districts was
3 high. The equal protection analysis used in *Kenai Peninsula Borough*
4 appears to be an effort by the Alaska Supreme Court to restrict the then
5 nearly unfettered ability to draw senate districts. This problem has been
6 reduced by the 1998 Amendment to the Alaska Constitution.⁶³⁸

7 208. The Alaska Supreme Court has recognized that all areas within a borough
8 are by definition socio-economically integrated: “. . .[A] borough is by definition socio-
9 economically integrated. It is axiomatic that a district is comprised wholly of land
10 belonging to a single borough is adequately integrated.”⁶³⁹

11 209. No case in Alaska recognizes the viability of a geographic equal
12 protection claim based on the composition of house districts or senate districts wholly
13 within the same borough. In other words, no court has analyzed, let alone held, that
14 one portion of a borough is being discriminated against because it has been placed in a
15 house district or paired in a senate district with a geographically different portion of the
16 same borough.

17 210. Senate districts are not invalid merely because they “are drawn with a
18 political agenda or with an awareness of the likely political consequences.”⁶⁴⁰

19 **ii. Conclusions of Law – Section 6 Challenges to House Districts 3,
20 25-30, 36-39, and Senate District K**

21 211. The court evaluates each of the challenged districts in the context of the
22 statewide map adopted by the Board. This standard necessarily flows from the Board’s

23 ⁶³⁸ *In re 2001 Redistricting Cases*, 2002 WL 34119573, *31 (Alaska Sup. Ct. Feb. 1,
24 2002).

25 ⁶³⁹ *Hickel v. Southeast Conference*, 846 P.2d 38, 52 (Alaska 1992).

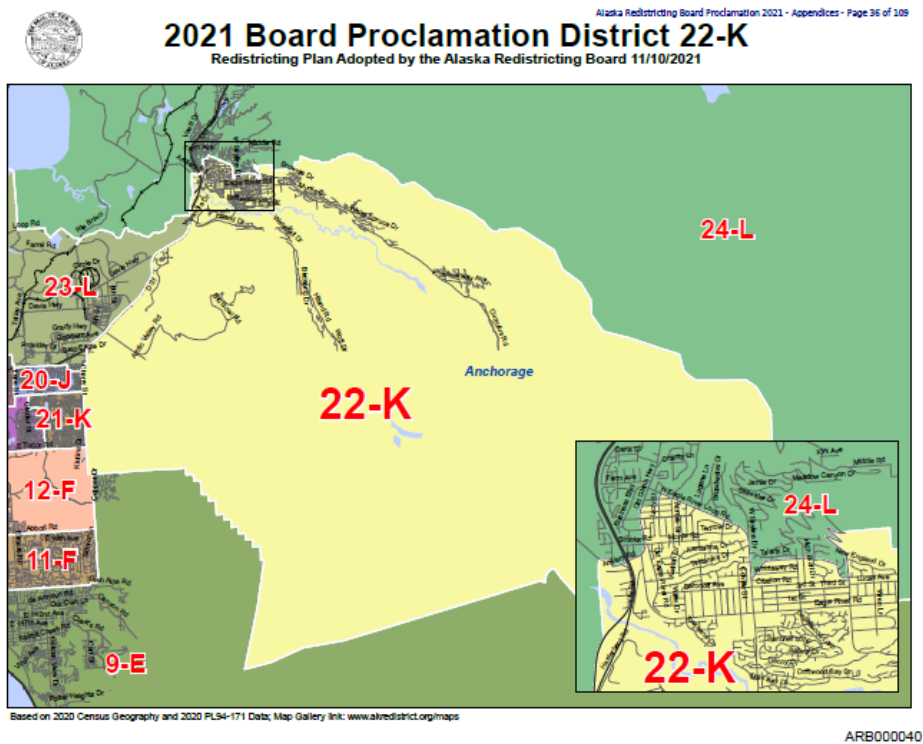
26 ⁶⁴⁰ *In re 2001 Redistricting Cases*, 2002 WL 34119573, *32 (Alaska Sup. Ct. Feb. 1, 2002)
(citing *Gaffney v. Cummings*, 412 U.S. 735, 752-54 (1973)).

1 constitutional duty to adopt a 40-district House map and a 20-district Senate map⁶⁴¹ and
2 from the realities of redistricting, in which every district impacts at least one other
3 district—often in significant ways.⁶⁴²

4 **a. East Anchorage Challenge to Senate District K**

6 212. East Anchorage challenges the Board’s Senate District K as violating
7 Alaska’s equal protection clause and Section 6’s contiguity criteria for senate districts.

8 213. Senate District K is comprised of House Districts 21 and 22 as shown
9 below:



24 ⁶⁴¹ Alaska Const. art. VI, § 4.

25 ⁶⁴² Redistricting has been likened to “squeezing a balloon - you push one side and the other
26 pops out,” and to the “butterfly effect . . . in which a small change at one place . . . may cause
large differences in a later state.” *In re: 2011 Redistricting Cases*, 2013 WL 6074059, at *20
n.75.

1
2 House Districts 21 and 22 are wholly within the boundaries of the Municipality of
3 Anchorage.

4 214. Senate District K is comprised of two contiguous house districts. House
5 Districts 21 and 22 share a common border. There is no need to determine, in
6 accordance with Section 6, whether it was practicable to make Senate District K out of
7 contiguous house districts because it is, in fact, comprised out of contiguous house
8 districts.

9 215. The undisputed fact that House Districts 21 and 22 share a border is fatal
10 to East Anchorage’s claim that Senate District K violates Section 6. As Judge Rindner
11 held in the 2001 redistricting cycle in rejecting Valdez’s and the Fairbanks North Star
12 Borough’s arguments that a district where all parts are touching could nonetheless be
13 found not to be contiguous “if existing transportation systems required residents of the
14 district to cross other districts in order to transverse the district in question[:] Contiguity
15 is not dependent on the vagaries of existing transportation systems. Rather the concept
16 is a visual one designed to assure that no district contains two or more discrete or
17 unconnected parts.”⁶⁴³

18 216. Nor does pairing House District 21 (South Muldoon) with House District
19 22 (Eagle River) constitute a violation of Alaska’s equal protection clause. Pairing
20 house districts within the same incorporated area cannot constitute geographic
21 discrimination. All districts within the Municipality of Anchorage—including South
22 Muldoon House District 21 and Eagle River House District 22—are socio-
23 economically integrated as a matter of law.⁶⁴⁴ Increasing socio-economic ties is not
24

25 ⁶⁴³ *In re 2001 Redistricting Cases*, 2002 WL 34119573, *36-37 (Alaska Sup. Ct. Feb. 1,
2002).

26 ⁶⁴⁴ *Hickel v. Southeast Conference*, 846 P.2d 38, 52 (Alaska 1992); *In re 2001*

1 sufficient to compromise compactness, contiguity, or to deviate substantially from
2 population equality.⁶⁴⁵ “Anchorage is by definition socio-economically integrated, and
3 its population is sufficiently dense and evenly spread to allow *multiple combinations* of
4 compact, contiguous districts with minimal population deviations.”⁶⁴⁶

5 217. East Anchorage Plaintiffs have suggested that the Court adopt
6 “communities of interest” and “sense of place” as factors for consideration in forming
7 senate districts. It would not be appropriate for this Court to effectively amend the
8 constitution by judicial decree to insert new requirements not found in Article VI, and
9 so the Court declines to consider these undefined concepts.

10 **b. Mat-Su Borough and City of Valdez Challenges to House**
11 **Districts 25-30 and 36**

12 218. Mat-Su and Valdez collectively challenge seven house districts as not
13 complying with Section 6’s requirement that house districts be contiguous, compact,
14 and relatively socio-economically integrated with populations as close to 18,335 as
15 practicable. The Court deals first with House District 29 that was the most contested
16 at trial.

17 **1) District 29 Complies with Section 6**

18 219. District 29 is adequately compact. Neither Valdez nor the Mat-Su
19 Plaintiffs have presented evidence challenging the compactness of District 29. Indeed,
20 the district is significantly more compact than the district in which Valdez found itself
21 under the 2013 Proclamation (District 9).⁶⁴⁷ Valdez has challenged the compactness of
22 _____

23 *Redistricting Cases*, 2002 WL 34119573, at 42 (citing *Hickel*, 846 P.2d at 51-52).

24 ⁶⁴⁵ *Hickel v. Southeast Conference*, 846 P.2d 38, 45 n.10 (Alaska 1992).

25 ⁶⁴⁶ *In re 2001 Redistricting Cases*, 44 P.3d 141, 146 (Alaska 2002).

26 ⁶⁴⁷ Compare ARB000047 (District 29 in 2021 Proclamation) with ARB001590 (District 9
in 2013 Proclamation); see also *Borromeo Aff.* ¶ 22. It is also more compact than the other
options the Board considered that would have placed Valdez with Anchorage. See, e.g.,

1 the neighboring District 36, including the portion of District 36 that takes in several
2 communities along the Glenn Highway which might otherwise have been placed in
3 District 29—namely Nelchina, Mendeltna, and Tolsona.⁶⁴⁸ But this small appendage
4 does not defeat the constitutional compactness of either district.

5 220. The small appendage between Districts 29 and 36 along the Glenn
6 Highway is justified by other Section 6 factors, primarily population and socio-
7 economic integration. All of the Glenn Highway communities within the Mat-Su
8 Borough are included in District 29, whereas Nelchina, Mendeltna, and Tolsona are not
9 within the Mat-Su Borough and are socio-economically integrated with District 36.⁶⁴⁹
10 It is also self-evident that including additional Glenn Highway communities in District
11 29 would increase the over-population of District 29, which both Valdez and the Mat-
12 Su Borough have challenged as unconstitutional, and the Board was therefore justified
13 in placing the unincorporated portion of the Glenn Highway into District 36 rather than
14 District 29.⁶⁵⁰

15 221. District 29 is contiguous as a matter of law. It is undisputed that District
16 29 is a single land mass in which all portions of the district are “bordering or touching”
17 another portion, and “the district is not divided into two or more discrete pieces.”⁶⁵¹
18 The Borough and Valdez’s suggestion that there must be “transportation contiguity”
19 within a district⁶⁵² is not supported in Alaska law, and indeed the Alaska courts have

20
21 ARB009207 (Nov. 4 Meeting Tr. 37:2-7); ARB009333-ARB009334 (Nov. 4. Meeting Tr.
163:24-164:5).

22 ⁶⁴⁸ ARB000047, ARB000054 (Districts 29 and 36 in 2021 Proclamation).

23 ⁶⁴⁹ *Id.*

24 ⁶⁵⁰ *See In re 2001 Redistricting Cases*, 47 P.3d 1089, 1092 (Alaska 2002) (rejecting
compactness challenge where the proposed remedy “would substantially increase the
population deviations between the[] districts”).

25 ⁶⁵¹ *Hickel v. Southeast Conference*, 846 P.2d 38, 45 (Alaska 1992) (citation omitted).

26 ⁶⁵² *See, e.g.*, Jan. 24 Trial Tr. 381:23-388:21.

1 specifically rejected this approach when Valdez raised it in the past. As the Superior
2 Court explained in the 2001 redistricting litigation,

3 Both the Valdez plaintiffs and the Fairbanks North Star Borough urge
4 this court to adopt a definition of contiguity such that a district could be
5 found not to be contiguous if existing transportation systems required
6 residents of the district to cross other districts in order to transverse the
7 district in question. There is no support under Alaska law for such a
8 definition of contiguity and this court rejects this approach. Contiguity is
9 not dependent on the vagaries of existing transportation systems. Rather,
10 the concept is a visual one designed to assure that no district contains two
11 or more discrete or unconnected parts.⁶⁵³

12 222. The Court declines to adopt a new rule to the contrary. Under clearly
13 established Alaska law, District 29 is contiguous.

14 223. District 29 is relatively socio-economically integrated for constitutional
15 purposes. The Mat-Su and Valdez Plaintiffs’ challenge to the socio-economic
16 integration of District 29 has been a major focus of both of their arguments, and they
17 elicited significant testimony that Valdez may be *more* socio-economically integrated
18 with the Richardson Highway corridor or with the other communities of Prince William
19 Sound than with the Mat-Su Borough. Neither the Board nor the Intervenor-Defendants
20 challenge the basic premise that Valdez is socio-economically integrated with both the
21 Richardson Highway and Prince William Sound. However, Alaska law is abundantly
22 clear that no community is entitled to be districted with the communities it is *most*
23 closely linked to: the Alaska Constitution requires the Board to create districts that are
24 “relatively” socio-economically integrated in light of the other constitutional factors
25 and balancing the needs of the whole state.⁶⁵⁴ Specifically, courts will find a district

26 ⁶⁵³ *In re 2001 Redistricting Cases*, No. 3AN-01-8914CI, 2002 WL 34119573, at 59
(Alaska Super. Feb. 01, 2002), *aff’d in relevant part*, 44 P.3d 141, 143 (Alaska 2002).

⁶⁵⁴ *In re: 2011 Redistricting Cases*, No. 4FA-11-2209CI, 2013 WL 6074059, at *27
(Alaska Super. Nov. 18, 2013) (“[J]ust because [certain communities] . . . could be more socio-

1 unconstitutionally lacking in relative socio-economic integration if “[t]he record is
2 simply devoid of significant social and economic interaction among the communities
3 within an election district.”⁶⁵⁵

4 224. Mat-Su and Valdez argue that Valdez does not share any socio-economic
5 ties to the Mat-Su Borough, but that argument is not borne out by the evidence. The
6 record, as well as testimony elicited by the Board and the Intervenor-Defendants,
7 contains substantial evidence of socio-economic links between Valdez and the Mat-Su.
8 These include shared ties to the oil industry,⁶⁵⁶ geographic proximity and connection
9 via the road system,⁶⁵⁷ shared interests in the outdoor recreation industry,⁶⁵⁸ and
10 common hunting and fishing areas in the region around Lake Louise, Klutina Lake, and
11 Eureka.⁶⁵⁹ It is significant that the nearest large store, hospital, and automobile
12 dealership to Valdez are all located in the Mat-Su Borough.⁶⁶⁰ The evidence also
13 demonstrates that Valdez school sports teams compete against sports teams in the Mat-
14 Su Borough,⁶⁶¹ that Valdez and Mat-Su share an interest in maintenance and

15 _____
16 economically integrated, does not mean that they are not socio-economically integrated
enough where they are for constitutional purposes.”).

17 ⁶⁵⁵ *Hickel*, 846 P.2d at 46 (quoting *Carpenter v. Hammond*, 667 P.2d 1204, 1215 (Alaska
18 1983) (cleaned up)).

19 ⁶⁵⁶ Jan. 24, 2022 Trial Tr. 178:7-13 (DeVries cross); Jan. 24, 2022 Trial Tr. 218:9-19
(Brown cross).

20 ⁶⁵⁷ Binkley Aff. ¶ 26; Jan. 24, 2022 Trial Tr. 215:2-8 (Brown cross Q: “[T]here’s a road
that connects Eastern Mat-Su to Valdez, correct?” A: “Yes, sir.”).

21 ⁶⁵⁸ Jan. 24, 2022 Trial Tr. 179:19-180:15, 184:25-185:2 (DeVries cross); 263:14-17
(Scheidt cross); 283:10-12 (Scheidt cross discussing helicopter skiing).

22 ⁶⁵⁹ Jan. 24, 2022 Trial Tr. 180:16-20 (DeVries cross); 219:5-13 (Brown cross), 262:16-
263:13 (Scheidt cross discussing Valdez residents recreating at Lake Louise and Tazlina and
23 Klutina Lakes); Jan. 25, 2022 Trial Tr. 481:5-20 (Duval hunting in Eureka and recreating at
24 Klutina Lake). Mat-Su residents also fish in Valdez. Jan. 24, 2022 Trial Tr. 218:24-219:4
(Brown cross).

25 ⁶⁶⁰ Jan. 24, 2022 Trial Tr. 183:5-18 (DeVries cross discussing Palmer amenities as the
closest to Valdez).

26 ⁶⁶¹ Torkelson Aff. ¶ 53; Jan. 24, 2022 Trial Tr. 260:15-20, 261:12-262:14 (Scheidt cross).

1 development of the state highway system,⁶⁶² that all the communities in District 29 are
2 served by school districts that are a part of home rule or first-class municipalities or
3 boroughs, meaning their funding is obtained in part from a local tax base,⁶⁶³ and these
4 home rule communities also have a shared interest in debt reimbursement from the
5 legislature.⁶⁶⁴ Together these links are constitutionally sufficient to establish relative
6 socio-economic integration. Although there is evidence that Valdez and the Mat-Su
7 Borough may have divergent interests on certain issues,⁶⁶⁵ those interests do not negate
8 the ties that *do* exist between the communities.

9 225. It also bears noting that “[a]t issue here . . . is the validity of the districts
10 which the Board actually created,” not theoretical districts that some parties might have
11 preferred.⁶⁶⁶ Given that the Court “may not substitute [its] judgment as to the sagacity
12 of a redistricting plan for that of the Board,”⁶⁶⁷ the Court must uphold a district if it
13 satisfies the constitutional standards. Such is the case here.

14 226. Looking at “previously existing” districts as a guide to relative socio-
15 economic integration, as instructed by the Supreme Court,⁶⁶⁸ the record evidence
16 demonstrates substantial similarities between District 29 in the 2021 Proclamation and
17 both District 9 in the 2013 Proclamation and District 12 in the 2002 Proclamation.⁶⁶⁹

18
19 ⁶⁶² Binkley Aff. ¶ 26; Jan. 24, 2022 Trial Tr. 182:10-14 (DeVries cross); 283:6-9 (Scheidt
20 cross).

21 ⁶⁶³ Binkley Aff. ¶ 27; Jan. 24, 2022 Trial Tr. 182:15-24 (DeVries cross discussing Mat-Su
22 Borough home rule school district); 258:6-10 (Scheidt cross).

23 ⁶⁶⁴ Binkley Aff. ¶ 27.

24 ⁶⁶⁵ Jan. 24 Trial Tr. 345:23 – 345:7 (Colligan cross); Jan. 28 Trial Tr. 1276:13-19 (Pierce
25 direct on rebuttal).

26 ⁶⁶⁶ *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1363 n.18 (Alaska 1987).

⁶⁶⁷ *In re 2011 Redistricting Cases*, 294 P.3d 1032, 1037 (Alaska 2012) (citing *Kenai
Peninsula Borough*, 743 P.2d at 1357-58).

⁶⁶⁸ *Hickel v. Southeast Conference*, 846 P.2d 38, 47 (Alaska 1992).

⁶⁶⁹ Compare ARB000047 (2021 Proclamation, District 29) with ARB001590 (2013

1 In short, Valdez and the Mat-Su Borough have been districted together in the past two
2 redistricting cycles, and the courts have upheld those districts.⁶⁷⁰ The Valdez district
3 was specifically challenged in the 2011-2013 litigation, and the courts found the district
4 constitutional.⁶⁷¹

5 227. And although Valdez has presented evidence of *some* differences
6 between the 2013 District 9 and the 2021 District 29, on the whole the evidence
7 demonstrates that the two districts are substantially similar. Uncontested evidence
8 shows that the vast majority of the residents of District 9 under the 2013 Proclamation
9 will be represented by District 29 under the 2021 Proclamation.⁶⁷² Valdez has
10 emphasized that District 29 removed several Richardson Highway communities such
11 that it is not possible to drive from Valdez to the other parts of District 29 without
12 leaving the district. But transportation connectivity is not a constitutional requirement,
13 as discussed above. Moreover, the Mayor of Valdez testified—and a review of the
14 maps confirms—that both the 2013 and 2002 districts *also* omitted a portion of the road
15 connection so that it was not possible to drive from one end to the other without leaving
16 the district.⁶⁷³

17
18 Proclamation, District 9) *and with* Scheidt Aff. Ex. C at 2 (2002 Proclamation, District 12).

19 ⁶⁷⁰ *In re: 2011 Redistricting Cases*, 2013 WL 6074059, at *12-17 (Alaska Super. Nov. 18, 2013); *In re 2001 Redistricting Cases*, 47 P.3d 1089 (Alaska 2002).

20 ⁶⁷¹ *In re: 2011 Redistricting Cases*, 2013 WL 6074059, at *12-17, *pet. for review denied*,
21 No. S-15422 (Jan. 23, 2014). While this challenge was primarily focused on compactness
22 rather than socio-economic integration, *see id.*, it nonetheless provides strong evidence that the
23 current district is constitutional if it is substantially similar to the district previously upheld by
24 the court. In the 2001 cycle, the Supreme Court even directed the Board to consider combining
the Mat-Su Borough with communities to the north, south, or east in order to accommodate
excess population. *In re 2001 Redistricting Cases*, 44 P.3d 141, 144 n.7 (Alaska 2002). The
Board ultimately combined the Mat-Su with communities to the east, resulting in the district
that combined the Mat-Su and Valdez. *See* Scheidt Aff. Ex. C at 2 (2002 Proclamation, District
12).

25 ⁶⁷² ARB000116 (House core constituency report); Torkelson Aff. ¶ 52.

26 ⁶⁷³ Jan. 24 Trial Tr. 294:9-23 (Scheidt Cross); *see* Scheidt Aff. Ex. C, at 2, 6 (Valdez
district in 2002 and 2013 Proclamations); *see also* ARB001590 (District 9 in 2013

1 228. Importantly, the Board also heard extensive testimony, early in its
2 process, to the effect that the communities of the northern Richardson Highway area
3 (such as Delta Junction) preferred to be included with a Fairbanks-hub district, rather
4 than with the Mat-Su Borough.⁶⁷⁴ The Board’s inclusion of these areas within District
5 36, rather than with District 29 (which would not have been numerically feasible in any
6 case, given the extensive population growth in the Mat-Su Borough over the last
7 decade) was responsive to this testimony.

8 229. Valdez’s own expert testified that if two places have been districted
9 together in the past, it creates a presumption that they are socio-economically integrated
10 and may be districted together again.⁶⁷⁵ Valdez has not pointed to any significant
11 change in circumstances that would suggest that Valdez and the Mat-Su Borough are
12 any less integrated than they were in the past.⁶⁷⁶ The pairing of Valdez and the Mat-Su
13 Borough in prior districts therefore provides strong evidence that they are “relatively
14 integrated” for present constitutional purposes.

15 230. The Board considered and properly relied on this fact in making the
16 difficult decision to retain the configuration of Valdez and portions of the Mat-Su
17 Borough in a district together, noting that “it’s already been established that Valdez is
18 socioeconomically compatible with the Mat-Su” and “there is preceden[t] for including
19 Valdez in the Mat-Su.”⁶⁷⁷

20 _____
21 Proclamation).

22 ⁶⁷⁴ ARB Tr. Ex. 1021 (Aug. 24 meeting Tr. at 53:2-14).

23 ⁶⁷⁵ Jan. 26 Trial Tr. 741:4-12 (Brace cross).

24 ⁶⁷⁶ To be sure, Valdez takes issue with the fact that a greater percentage of the population
25 in the district is now based in the Palmer and Wasilla suburbs than was the case in prior
26 districts. But this argument pertains to Valdez’s vote dilution claims, not to the issue of socio-
economic integration.

⁶⁷⁷ ARB009207 (Nov. 4 Tr. at 37:2-9); *see* ARB009331 (Nov. 4 Tr. at 161:19-25); Binkley
Aff. ¶ 28; Borromeo Aff. ¶ 22.

1 231. Valdez and the Mat-Su Borough are also relatively socio-economically
2 integrated for the purposes of Article VI, § 6 because both communities are socio-
3 economically integrated with Anchorage.⁶⁷⁸ The courts have expressly held that Valdez
4 and Anchorage are socio-economically integrated for purposes of redistricting,⁶⁷⁹ and
5 the testimony at trial confirms this link.⁶⁸⁰ No one can seriously dispute that the Mat-
6 Su Borough and Anchorage are also socio-economically integrated, and again the
7 testimony amply confirms that connection.⁶⁸¹ These shared ties to Anchorage further
8 strengthen the socio-economic integration of Valdez and the Mat-Su Borough.

9 232. In the 2001 redistricting litigation, the Alaska Supreme Court expressly
10 held that the Matanuska-Susitna Borough and Anchorage could be treated as one and
11 the same for purposes of socio-economic integration, and that there existed sufficient
12 socio-economic integration to the north, south, and east of the Mat-Su-Anchorage area.
13 Valdez is directly east of Mat-Su and Anchorage, and so the 2001 decision effectively
14 acknowledged Valdez’s sufficient social and economic ties to the urban populations of
15 Southcentral Alaska.

16 233. Although Valdez argues that the socio-economic links between Valdez
17 and the Mat-Su were not discussed on the record at a Board meeting, multiple Board
18 members and staff credibly testified that the Board members did discuss these factors
19 and connections.⁶⁸² Those conversations are part of the Board’s deliberative process;

21 ⁶⁷⁸ See *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1363 (Alaska 1987).

22 ⁶⁷⁹ *In Re 2001 Redistricting Cases*, No. 2002 WL 34119573 at 103-13 (Alaska Super.
Feb. 1, 2002).

23 ⁶⁸⁰ Jan. 24, 2022 Trial Tr. 255:4-10 (Scheidt cross) (discussing Valdez’s ties to Anchorage
for shopping, commercial flights, and professional services). The only commercial flights out
24 of Valdez are to Anchorage. Jan. 24, 2022 Trial Tr. 266:22-24 (Scheidt cross).

25 ⁶⁸¹ Jan. 24, 2022 Trial Tr. 178:23-179: 9 (DeVries cross); 224:3-225:1 (Brown cross
discussing ties between Mat-Su and Anchorage to include: air travel, restaurants, concerts and
entertainment, commuting to work, shopping, the Alaska Railroad, and the Glenn Highway).

26 ⁶⁸² Jan. 26 Trial Tr. 840:14 (Borromeo cross) (“[w]e had those discussions as a board.”);

1 the reality of a complex redistricting process is that not every conversation between
2 two Board members will be reflected in the record. The Supreme Court has been clear
3 that the Board is not required to make specific findings regarding each district, let alone
4 regarding each constitutional factor for each district.⁶⁸³ Given the ample evidence of
5 socio-economic links between Valdez and the Mat-Su Borough, the relative sparseness
6 of discussion on the record does not undermine those connections.

7 234. Finally, the Board reasonably determined that placement of Valdez with
8 the Mat-Su Borough was the best of the available options in the context of the entire
9 40-district map. By the very nature of the term “relatively,” whether a district is
10 “relatively integrated” must be analyzed in the context of the map overall, in balancing
11 the “constitutional troika of compactness, contiguity, and socio-economic
12 integration.”⁶⁸⁴ When viewed in that light, it is evident that the Board made a
13 reasonable choice in creating a Valdez/Mat-Su district that is sufficiently integrated to
14 satisfy § 6 and also allows the Board to meet constitutional standards elsewhere.

15 235. Every Board member testified to the challenges of drawing a map that
16 harmonizes the § 6 requirements to the maximum extent practicable across all 40
17 districts statewide. The Alaska Supreme Court has recognized as much, repeatedly
18 noting that “[r]edistricting in Alaska is a task of ‘Herculean proportions.’”⁶⁸⁵ It has
19

20 Jan. 27 Trial Tr. 1019:5-17 (Marcum cross) (“We discussed many socioeconomic factors of
21 Valdez and the Interior and with the Mat-Su. . . . I don’t recall which of these discussions
22 necessarily happened when we were sitting at the board table versus when we were, you know,
23 sitting in work sessions versus when we were sitting in a public testimony hearing.”); Jan. 27
24 Trial Tr. at 1138:10-1140:1 (Binkley redirect) (describing links he considered); Torkelson
25 Depo Tr. at 135:2-10 (discussing hearing Board members discuss Valdez).

26 ⁶⁸³ *In re 2011 Redistricting Cases*, 294 P.3d 1032, 1038 (Alaska 2012).

⁶⁸⁴ *In re: 2011 Redistricting Cases*, No. 4FA-11-2209CI, 2013 WL 6074059, at *7 (Alaska Super. Nov. 18, 2013).

⁶⁸⁵ *In re 2001 Redistricting Cases*, 44 P.3d 141, 147 (Alaska 2002) (quoting *Egan v. Hammond*, 502 P.2d 856, 865-66 (Alaska 1972); *Hickel v. Southeast Conference*, 846 P.2d 28, 50 (Alaska 1992); *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1359 (Alaska 1987);

1 similarly recognized “the challenge of creating a statewide plan that balances multiple
2 and conflicting constitutional requirements,” a task that “is made even more difficult
3 by the very short time-frame mandated by article VI, section 10 of the Alaska
4 Constitution.”⁶⁸⁶

5 236. There is substantial evidence supporting the conclusion that the Board,
6 faced with these challenges, carefully considered the available options and acted
7 reasonably in placing Valdez in a district with a portion of the Mat-Su Borough. As
8 stated above, the socio-economic ties between Valdez and the Mat-Su Borough meet
9 the constitutional threshold. And none of the other options available to the Board
10 created greater socio-economic integration for the district that includes Valdez without
11 sacrificing constitutional compliance elsewhere.

12 237. The primary options considered by the Board are represented by the six
13 proposed maps the Board took on its public hearing “road show.” These maps were
14 “Board Composite v.3,”⁶⁸⁷ “Board Composite v.4,”⁶⁸⁸ and the third-party maps
15 prepared by Alaskans for Fair Redistricting (“AFFR”),⁶⁸⁹ Alaskans for Fair and
16 Equitable Redistricting/Calista Corporation (“AFFER/Calista”),⁶⁹⁰ the Senate Minority
17 Caucus (“SMC”),⁶⁹¹ and the Coalition of Doyon, Limited; Tanana Chiefs Conference;
18 Fairbanks Native Association; Ahtna, Inc.; and Sealaska (“Doyon Coalition”).⁶⁹²
19 Earlier proposed maps adopted by the Board, “Board Composite v.1” and “Board

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21 *Groh v. Egan*, 526 P.2d 863, 875 (Alaska 1974)).

22 ⁶⁸⁶ *Id.*

23 ⁶⁸⁷ ARB001341-ARB001387.

24 ⁶⁸⁸ ARB001388-ARB001434.

25 ⁶⁸⁹ ARB001294-ARB001340.

26 ⁶⁹⁰ ARB001232-ARB001293.

⁶⁹¹ ARB001482-ARB001528.

⁶⁹² ARB001435-ARB001481.

1 Composite v.2,” were identical to Board Composite v.3 with respect to the placement
2 of Valdez.⁶⁹³

3 238. Valdez also submitted a partial map for the Board’s consideration on
4 October 19th, known as “Valdez Option 1.”⁶⁹⁴ This map shows only 11 districts, and
5 the evidence makes clear that Valdez focused on drawing the boundaries of its own
6 district to its liking, rather than on developing a comprehensive statewide map.
7 Because Valdez Option 1 does not necessarily attempt to harmonize the constitutional
8 factors statewide, it does not provide a full picture of “proposed” or “principal
9 alternative districts” against which to measure the Board’s final plan.⁶⁹⁵ Nonetheless,
10 because Valdez Option 1 was submitted to and considered by the Board, the Court will
11 analyze it to the extent that it sheds light on the constitutional options available to the
12 Board.

13 239. Valdez has also relied heavily on a new map prepared specifically for this
14 litigation by its expert, Kimball Brace, referred to as “Valdez Alternative 3.”⁶⁹⁶
15 Because it was not prepared or submitted until well after the Board completed its
16 process, this map could not possibly have been considered by the Board and is not one
17 of the “principal alternative[s]” against which the Board’s own map can be measured.⁶⁹⁷
18 Moreover, the evidence at trial demonstrated that Mr. Brace lacks foundational
19 knowledge regarding socio-economic integration, geography, and local government

21 ⁶⁹³ ARB010754 (District 36 in v.1 map); ARB010762 (better showing Valdez in District
22 36 in v.1 map); ARB010810 (District 36 in v.2 map); ARB010773 (better showing Valdez in
23 District 36 in v.2 map); ARB001383 (District 36 in v.3 map); *see* Jan. 25 Trial Tr. 535:10-18
(Pierce cross-examination).

24 ⁶⁹⁴ *See* ARB004104-ARB004105 (“Valdez Option 1” map and notes); Valdez First Am.
25 Compl. Ex. E (same).

26 ⁶⁹⁵ *Hickel v. Southeast Conference*, 846 P.2d 38, 47 (Alaska 1992).

⁶⁹⁶ Brace Aff. ¶¶ 135-164; *id.* at Ex. DD.

⁶⁹⁷ *See Hickel*, 846 P.2d at 47.

1 boundaries within Alaska, which are integral features of any proposed redistricting
2 map.⁶⁹⁸ The Court therefore gives little weight to Mr. Brace’s proposed map and his
3 testimony regarding it. But here again, the Court will consider the map to the extent
4 that it demonstrates the limited options available to the Board with respect to Valdez’s
5 placement.

6 240. Given the 2020 census numbers, the Board understood at the outset that
7 it is “not mathematically possible to couple Valdez, Cordova, and the Kodiak Borough”
8 into a single district.⁶⁹⁹ The Board also understood that the Fairbanks North Star
9 Borough (“FNSB”) had enough population for 5.2 House districts, and thus its districts
10 would either need to be significantly over-populated or the Borough would need to shed
11 approximately 4,000 people into an adjacent district.⁷⁰⁰ These two realities had
12 significant implications for all of the maps considered by the Board. It is also worth
13 noting that Valdez’s remote location and the realities of geography, including an ocean
14 border to its south, further constrain the available options. The proposed maps
15 considered by the Board showed essentially all of the available permutations for dealing
16 with these two challenges. The Court thus rejects the notion that the Board waited until
17 the last minute, boxed itself in, and failed to consider available options. The record

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19 ⁶⁹⁸ *E.g.*, Jan. 26 Trial Tr. at 731:6-15 (misunderstanding of whether many rural
20 communities are in incorporated boroughs), 732:10-22 (lack of familiarity with basic place
21 names in Alaska), 736:12-737:13 (lack of knowledge as to whether Cordova is on the road
22 system), 737:14-738:20 (misunderstanding of whether Valdez and Cordova are in an
23 incorporated borough).

24 ⁶⁹⁹ Jan. 26 Trial Tr. at 799:7-25 (“Q: [I]s it mathematically possible, with the ideal
25 population of 18,335, to put Valdez, Cordova, and Kodiak into the same district? A:
26 Absolutely not. . . . [Kodiak’s population] . . . made it difficult to populate the Gulf District
and to figure out where all of the other communities were going to go. So it was not
mathematically possible to couple Valdez, Cordova, and the Kodiak Borough.”); *see also*
ARB008409 (Sept. 17 Meeting Tr. at 107:18-24) (Doyon Coalition testimony that Valdez,
Cordova, and the Prince William Sound communities “have too much population to form a
district with Kodiak”).

⁷⁰⁰ Jan. 27 Trial Tr. at 1131:24-1132:11 (Binkley redirect).

1 instead shows that the Board acted reasonably in choosing among the available options.

2 241. The first option is to combine Valdez and Kodiak. Both AFFER/Calista
3 and the SMC proposed this option, placing Valdez in a coastal district with part of
4 Prince William Sound and with Kodiak.⁷⁰¹ This choice leaves only one option for the
5 placement of Cordova in a contiguous district: the rural Interior district.⁷⁰² The problem
6 with that approach is that it is not practicable within the confines of § 6. First, Cordova
7 (a rural, coastal, non-road system Prince William Sound community with Anchorage
8 as its “hub” community) shares no socio-economic integration with virtually any of the
9 rural Interior communities or the Interior hub community of Fairbanks. In light of the
10 options before it, the Board reasonably determined that a district combining Cordova
11 with the rural Interior Athabascan villages of the Western Interior and the southern
12 Brooks Range would not have been relatively socio-economically integrated. When
13 faced with the option of combining Cordova with Arctic Village or Valdez with the
14 Mat-Su Borough, the Board acted reasonably in concluding that the Mat-Su/Valdez
15 pairing provided better socio-economic integration than the alternatives.⁷⁰³

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17 ⁷⁰¹ See ARB001289 (AFFER/Calista Proposed District 36); ARB001520 (SMC Proposed District 32).

18 ⁷⁰² See ARB001258 (AFFER/Calista Proposed District 5); ARB001494 (SMC Proposed District 6). Cordova could also, arguably, be combined with a Southeast Alaska district, but doing so would require significantly overpopulating Southeast. The Board received no testimony throughout the process advocating for that approach, and it determined early in the mapping process that doing so would not have been reasonable. Early Alaska redistricting cases found Cordova not to be socioeconomically integrated with Southeast, *Groh v. Egan*, 526 P.2d 863, 879 (Alaska 1974); *Carpenter v. Hammond*, 667 P.2d 1204, 1215 (Alaska 1983), but later cases found it necessary to include Cordova with Southeast to avoid unconstitutionally high population deviations, *In re 2001 Redistricting Cases*, 44 P.3d 141, 143 (Alaska 2002). Because including Cordova with Southeast would have *increased* (rather than decreased) deviation in this redistricting cycle, it was not a feasible option under this line of precedent.

24 ⁷⁰³ Jan. 26 Trial Tr. at 801:24-802:2 (Borromeo cross) (“Q: . . . what do you think is more socioeconomically integrated, Valdez and the Mat-Su or Cordova and Arctic Village? A: Valdez and the Mat-Su.”); see also Jan. 24 Trial Tr. at 395:11-396:1 (Colligan cross) (discussing district combining Cordova, Arctic Village, and Kaltag, describing Kaltag and Cordova as “very different”).

1 242. In addition, the inclusion of the population of Cordova (approximately
2 2,600 people) in the rural Interior district would have meant that 2,600 residents of rural
3 Interior villages that would otherwise be in the Interior district would be pushed
4 elsewhere. In the AFFER/Calista map, this meant pushing the villages of Grayling,
5 Anvik, Shageluk, Holy Cross, Takotna, McGrath, Nikolai, and Lake Minchumina into
6 the Nome district. The SMC map proposed including those same villages—and also
7 Kaltag, Nulato, and Koyukuk—with Nome. The Board reasonably determined that
8 those options were not preferable, as there was extensive public testimony that the rural
9 Interior is socio-economically integrated and that the western Interior villages are *not*
10 socio-economically integrated with the other communities in the Nome district.⁷⁰⁴ The
11 evidence demonstrates significant differences in language, cultural traditions, and
12 subsistence foods.⁷⁰⁵ Indeed, a previous district that similarly combined Interior
13 Athabaskan communities with Iñupiaq communities was struck down by the courts for
14 lack of socio-economic integration, described as a “worst case scenario” and “probably
15 the single worst combination that could be selected if a board were trying to maximize
16 socio-economic integration in Alaska.”⁷⁰⁶ The evidence heard by the Board reinforced
17

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19 ⁷⁰⁴ *E.g.*, ARB001793-ARB001794; ARB002086-ARB002087; ARB002257-
20 ARB002260; ARB002261-ARB002268; ARB002269-ARB002270; ARB002330;
21 ARB002331; ARB003650-ARB003652; ARB003998; ARB004041; *see* ARB008988 (Nov. 2
22 Meeting Tr. at 58:7-17) (Member Bahnke discussing public comment provided at the Nome
23 public hearing, “which was [that] it makes no sense to pair rural Doyon Athabaskan
24 communities with Inupiaq and Yupik coastal communities that rely on primarily the . . . sea
25 and live subsistence lifestyles in that area.”).

26 ⁷⁰⁵ *E.g.* Jan. 26 Trial Tr. at 914:25-915: 9 (Wright cross) (“We still have a lot of cultural
connections you know, we’re all Athabaskan speaking people, and . . . we have an overarching
kinship structure that unites us.”); *id.* at 916:10-917:8 (discussing “the reliance on the marine
mammals along the coast” whereas “our interior villages don’t have that same . . . diet”); Otte
Aff. ¶ 27 (“For example, the Doyon/TCC and Ahtna communities subsist on similar diets of
freshwater-caught fish, moose and caribou. Southwest and western Alaska subsists on a diet
of seal, fish, sea otter and whale.”).

⁷⁰⁶ *Hickel v. Southeast Conference*, 846 P.2d 38, 53-54 (Alaska 1992).

1 that conclusion, as did the evidence at trial.⁷⁰⁷

2 243. This is not to say that the Board improperly “locked in” the coastal
3 districts in Western Alaska, as Valdez argues. Rather, the Board made rational
4 decisions about where to draw the boundary between the Interior district and the coastal
5 districts, and the evidence demonstrates that the Board members considered all district
6 boundaries to be in play until the entire map was finalized.⁷⁰⁸ Nonetheless, it was
7 reasonable for the Board to determine that a unified Interior district better satisfied the
8 constitutional factors than a district connecting Cordova with the Interior region and
9 Arctic Village, Allakaket, and Galena.

10 244. The second option is combining Cordova and Valdez, leaving out
11 Kodiak. Valdez’s “Option 1” and “Alternative 3” maps presented this option.⁷⁰⁹ Valdez
12 has acknowledged that its “Option 1” proposal focused primarily on creating a district
13 that worked for Valdez⁷¹⁰—indeed, it is not a 40-district map attempting to harmonize
14 the constitutional criteria across the full state—and the evidence at trial demonstrated
15 that it creates significant constitutional issues in several regions. In this map, the
16 Valdez-Cordova district runs up the Richardson Highway and into the southern portion
17 of the FNSB. Board members credibly testified that this creates several constitutional
18 problems. First, due to the number of people that live in Valdez, Cordova, and the
19

20 ⁷⁰⁷ Wright Aff. ¶ 18 (“The economic conditions and subsistence livelihoods within these
21 Western Interior villages differs significantly from the areas on the coast and lower Yukon.”);
22 Otte Aff. ¶ 27 (“[t]he art, food, and other cultural traditions of the Doyon/TCC region and
Ahtna regions are very similar. They are very different, on the other hand, from those of the
coastal regions of the State.”).

23 ⁷⁰⁸ *E.g.*, Jan. 27 Trial Tr. at 1018:13-16 (Marcum cross) (“I don’t think anything’s final
24 until it’s final.”).

25 ⁷⁰⁹ ARB004104-ARB004105 (Valdez Option 1 map); Valdez First Am. Compl. Ex. E;
Brace Aff. Ex. DD (Valdez Alternative 3 map).

26 ⁷¹⁰ Jan. 25 Trial Tr. at 533:24-534:1 (“our hope was that the redistricting board would take
a look at this conceptual map and how we had drawn the lines from Valdez”).

1 Richardson Highway corridor, this district only has “room” to include approximately
2 half of the FNSB’s excess population. In order to avoid excessively overpopulating the
3 rest of the FNSB districts, Valdez Option 1 puts the rest of the FNSB’s excess
4 population into a second Interior district. This runs afoul of the Alaska Supreme
5 Court’s instruction in *Hickel* that “where possible, all of a municipality’s [or borough’s]
6 excess population should go to one other district.”⁷¹¹ The Board considered—and
7 indeed ultimately chose—an option that split the FNSB only once and put all of its
8 excess population into a single district as instructed by *Hickel*, so it was reasonable for
9 the Board to determine that Valdez Option 1 was not a viable option in this respect.

10 245. Valdez Option 1 also creates significant problems for the socio-economic
11 integration of several districts. As an initial matter, it places Cordova (a coastal city
12 that is not on the road system) with Fairbanks (a road system community in the heart
13 of the Interior), and there is no evidence of socio-economic integration between those
14 communities—in fact, Cordova residents had testified that they “did not want to be
15 districted with the Fairbanks North Star Borough. They thought the suggestion was
16 just unfathomable and off the table.”⁷¹² Valdez Option 1 also included a district
17 stretching from Nunivak Island off the coast of Southwest Alaska all the way to Bettles,
18 in the northern Interior.⁷¹³ At trial, Valdez was not able to present any evidence that
19 this proposed district is relatively socio-economically integrated.⁷¹⁴ By any measure,
20 Mekoryuk is less socio-economically integrated with the villages of the northern

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22 ⁷¹¹ *Hickel*, 846 P.2d at 52.

23 ⁷¹² Jan. 26 Trial Tr. at 809:12-16 (Borromeo cross) (summarizing public comment from
24 the Cordova hearing); *see also, e.g.*, ARB001937 (Cordova resident testifying that being
25 districted with the Interior had been “nightmare-ish” for Cordova, “as there were no socio-
26 economic ties with the Delta Junction and Tok.”); ARB003003 (Cordova Mayor testifying that
Cordova is best placed in a coastal district with Kodiak).

⁷¹³ *See* ARB004104.

⁷¹⁴ Jan. 25 Trial Tr. at 534:10-19 (Pierce cross).

1 Interior than Valdez is with the Mat-Su Borough. Board members also credibly
2 testified at trial that this proposed district would not have been relatively socio-
3 economically integrated.⁷¹⁵ The Board made the reasonable determination that Valdez
4 Option 1 was not a viable or preferable alternative.⁷¹⁶

5 246. The Board clearly understood that Valdez wanted to be placed in a district
6 with the Richardson Highway communities, as proposed in Valdez Option 1. But as
7 Member Borromeo testified, Valdez “couldn’t tell us how they would populate their
8 own district, let alone the other 39, in a way that was better than the option that the
9 board ultimately adopted.”⁷¹⁷

10 247. The map prepared for trial by Valdez’s expert, “Valdez Alternative 3,”
11 shares some of the same constitutional issues because is built on the same core Valdez
12 district used in Valdez Option 1 (though it differs elsewhere).⁷¹⁸ Like Valdez Option
13 1, Valdez Alternative 3 combines Valdez and Cordova with the Richardson Highway
14 and a portion of the FNSB. It therefore presents several of the same problems as Valdez
15 Option 1—including a lack of socio-economic integration between Cordova and
16 Fairbanks, and necessitating breaking the FNSB boundary twice to deal with excess
17 population.

18 248. Evidence at trial demonstrated that Valdez Alternative 3 suffered from
19 constitutional infirmities related to other regions and proposed districts as well, and it
20 is evident that the map was constructed with limited understanding of socio-economic
21 patterns of life in Alaska. Among other things, Valdez’s expert testified that he did not
22

23 ⁷¹⁵ *E.g.*, Jan. 26 Trial Tr. at 869:25-870:16 (Borromeo cross); Bahnke Aff. ¶¶ 23-25.

24 ⁷¹⁶ *See, e.g.*, Bahnke Aff. ¶¶ 23-25 (explaining constitutional problems with Valdez
25 Option 1); Binkley Aff. ¶ 34 (similar); Borromeo Aff. ¶¶ 39-40 (similar).

26 ⁷¹⁷ Jan. 26 Trial Tr. 873:5-8.

⁷¹⁸ *See* Brace Aff. Ex. DD; Trial Ex. VDZ-3021 (statewide view of Valdez Alternative 3).

1 understand the concept of a hub community,⁷¹⁹ that he believed Valdez and Cordova to
2 be in a borough together,⁷²⁰ that he did not know whether Cordova is on the road
3 system,⁷²¹ that he has little knowledge as to the complexities of ANCSA corporations,
4 Native villages, or Native cultures,⁷²² and that he did not know whether school districts
5 constitute defined local government boundaries in Alaska or might be evidence of
6 socio-economic integration in rural regions.⁷²³ The result is a map that combines
7 Interior communities as far east as the FNSB border with Nome and coastal
8 communities through the Bering Straits region, stretching all the way to St. Lawrence
9 Island in the Bering Sea, fewer than 40 miles from the Russian mainland.⁷²⁴ It also
10 splits the Calista region in illogical ways, including by splitting Quinhagak from its
11 sister villages of Kwigillingok and Kongiganak.⁷²⁵

12 249. Aside from conclusory assertions that Valdez’s map is constitutional,
13 there is little evidence demonstrating that the districts in Valdez Alternative 3 are socio-
14 economically integrated. The Court therefore concludes that, even if Valdez
15 Alternative 3 had been available at the time of the Board’s consideration, it was not a
16 viable, constitutionally permissible alternative to the map drawn by the Board.

17 250. The final option for the Valdez-Cordova-Kodiak triangle is to combine
18 Cordova and Kodiak, which in turn would mean that Valdez is districted either with the
19

20 ⁷¹⁹ Jan. 25 Trial Tr. 697:13-25 (Q: Mr. Brace, do you understand the concept of a hub
21 community in understanding rural Alaska? A: I’ve heard that term, but it was never explained
22 to me . . .”).

23 ⁷²⁰ Jan. 25 Trial Tr. 701:8-9; Jan. 26 Trial Tr. 737:9 - 738:20.

24 ⁷²¹ Jan. 26 Trial Tr. 736:12-737:13.

25 ⁷²² Jan. 25 Trial Tr. 682:11-683:14.

26 ⁷²³ Jan. 28 Trial Tr. 1317:4-1320:10.

⁷²⁴ Brace Aff. Ex. DD at 39 (District 39).

⁷²⁵ Brace Aff. Ex. DD at 38 (District 38); *see* Jan. 25 Trial Tr. 695:14–697:10.

1 Richardson Highway and the Interior or with the Mat-Su Borough. The Board
2 considered maps that used both of these approaches, and ultimately it reasonably
3 determined that the Valdez/Mat-Su combination was the best available option.

4 251. The AFFR map placed Valdez in a proposed district that includes the road
5 system communities of the Richardson Highway corridor (excluding Glennallen),
6 many of the rural Interior villages (but not all), and significant population from the
7 FNSB communities of the Harding-Birch Lakes area, Salcha, Moose Creek, and
8 Eielson Air Force Base.⁷²⁶ That district also stretches all the way to the southern Brooks
9 Range, putting Valdez in a district with Arctic Village. Faced with the question whether
10 Valdez was more socio-economically integrated with the Mat-Su Borough or with
11 Arctic Village and other communities deep in the Interior, the Board reasonably chose
12 to place Valdez and Mat-Su together.

13 252. AFFR's Valdez-to-Arctic Village district created ripple effects elsewhere
14 as well. The only district that could accommodate the rest of the rural Interior villages
15 was the proposed District 39, which would stretch from St. Lawrence Island to the
16 border of the FNSB in the Interior (much like the similar district in Valdez Alternative
17 3). As already discussed, the Board heard ample evidence that the western coast is not
18 socio-economically integrated with the Interior, making this district a poor
19 alternative.⁷²⁷ The Board reasonably determined that this proposal was not the most
20 practicable available option.⁷²⁸

21 _____
22 ⁷²⁶ See ARB001336 (AFFR Proposed District 36).

23 ⁷²⁷ E.g., ARB008988-8989 (Nov. 2 Meeting Tr. at 58:7-17, 59:17-24) (Members Bahnke
24 and Borromeo discussing public comment at the Nome public hearing, reflecting that the
25 communities on the coast were not integrated with the Interior).

26 ⁷²⁸ In order to round out the population for its Cordova-Kodiak district, the AFFR map
also splits the City and Borough of Yakutat and creates odd splits and combinations of
boroughs in the Kenai Peninsula and Alaska Peninsula regions. For this reason, too, it was
reasonable for the Board to choose *not* to follow this approach.

1 253. The Doyon Coalition map combined Valdez and Cordova in a Prince
2 William Sound district that also took in a portion of the Mat-Su Borough.⁷²⁹ But in
3 order to make the population math work, the Doyon Coalition’s map added several
4 additional breaks in borough boundaries in Southcentral Alaska (breaking both the
5 Anchorage/Mat-Su and Anchorage/Kenai Peninsula Borough boundaries, as well as
6 adding an additional break in the southern portion of the Kenai Peninsula Borough).
7 The Board reasonably determined that this option was not an improvement over the
8 other alternatives before it.

9 254. The final two options for placing Valdez in a non-coastal district are
10 represented by Board Composite v.3 and Board Composite v.4. It is undisputed that
11 Board Composite v.3 significantly over-populates the FNSB in order to place Valdez
12 with the Interior, while Board Composite v.4 solves the over-population issue by
13 placing Valdez with the Mat-Su Borough. Having considered the many permutations
14 of this puzzle and the statewide implications of each, the Board had eventually ruled
15 out the other options for the reasons discussed above. Thus, the options represented by
16 the v.3 and v.4 maps were the two options that the Board was realistically choosing
17 between when it drew the final map.⁷³⁰

18 255. As between these two options, the Board reasonably determined that the
19 option represented by v.4—pairing Valdez and the Mat-Su Borough—best satisfied the
20 § 6 criteria. FNSB has enough population for 5.2 House districts, meaning it could fill
21

22 ⁷²⁹ ARB001468 (District 27 in Doyon Coalition map).

23 ⁷³⁰ One final option might have been to combine Valdez with Anchorage, another
24 combination that has been upheld by the courts in the past. The evidence shows that Member
25 Marcum spent hours attempting to draw a map that placed Valdez in a district with Anchorage,
26 but she was not able to make that combination work without sacrificing constitutional criteria
elsewhere. *See* Jan. 27 Trial Tr. at 1023:20-1024:6 (Marcum redirect); *see also* ARB009274-
ARB009274-ARB009275 (Nov. 4 Tr. at 104:9-105:24), ARB009344 (Nov. 4 Tr. at 174:16-
19); ARB007862 (Nov. 5 Tr. at 5:1-22).

1 five districts and then would have approximately 4,000 “extra” residents left over. In
2 the v.3 map, the five FNSB districts were each over-populated by between 4 and 5% in
3 an effort to accommodate this excess population without breaking the borough
4 boundary.⁷³¹ But based on public testimony,⁷³² the Board ultimately believed that these
5 deviations were too high, which necessitated breaking the borough boundary.
6 Consistent with the Supreme Court’s instruction that such excess population should be
7 shed to a single district, this meant pushing 4,000 FNSB residents out into the adjacent
8 district, District 36.⁷³³

9 256. With the excess population from FNSB included in it, District 36 has a
10 population of 18,558, or 1.22% above the ideal district size.⁷³⁴ Given that District 36
11 is therefore a complete district, it simply cannot *also* accommodate the 4,000 residents
12 of Valdez. Doing so would mean pushing another 4,000 residents of District 36
13 elsewhere—likely by pushing Interior villages into a coastal district.⁷³⁵ As noted above,
14 the Board had considered options that divided the Interior in this way, and it reasonably
15 determined that this option was not viable based on extensive public testimony that the
16 western Interior villages were *not* socio-economically integrated with the coastal
17 districts they would be pushed into.⁷³⁶ Pushing 4,000 Interior residents into a coastal

19 ⁷³¹ ARB001341 (Districts 31-35 in Population tabulation for Board Composite v.3);
20 ARB010749-ARB010753 (Districts 31-35 in Board Composite v.1).

21 ⁷³² *See, e.g.*, ARB002333-ARB002334 (FNSB Resolution opposing over-population of
22 FNSB districts); ARB002269-ARB002270, ARB002306, ARB004296, ARB004297,
23 ARB004304 (public testimony opposing over-population of FNSB districts).

24 ⁷³³ ARB009377-ARB009378 (Nov. 4 Tr. at 207:11-208:21); Binkley Aff. ¶¶ 30-33.

25 ⁷³⁴ ARB007234 (Population tabulation for 2021 Proclamation).

26 ⁷³⁵ ARB009180-ARB009182 (Nov. 4 Tr. at 10:15-12:1); ARB009207- ARB009211 (Nov.
4 Tr. at 37:16-41:12); ARB009333-ARB009334 (Nov. 4 Tr. at 163:16-164:10); *see also*
Binkley Aff. ¶ 33. As one member of the 2011 Redistricting Board described it, “drawing
districts is like squeezing a balloon – you push one side and the other pops out.” *In re: 2011*
Redistricting Cases, 2013 WL 6074059, at *20 (Alaska Super. Nov. 18, 2013).

⁷³⁶ *E.g.*, ARB003346 (testimony from McGrath resident that “I support the redistricting

1 district also would have meant breaking school district boundaries that serve as the only
2 local government boundaries in large portions of Western Alaska.⁷³⁷ The Board elicited
3 testimony demonstrating that the border between Districts 36 and 39 follows school
4 district boundaries along the entire length of the border,⁷³⁸ and that school districts are
5 not only local government units but also significant markers of socio-economic
6 integration.⁷³⁹ Again, it was reasonable for the Board to conclude that pairing Valdez
7 with Mat-Su was a better choice than breaking these boundaries in western Alaska.
8 Finally, even if Valdez could have been included in District 36 numerically, some
9 members of the Board also had serious concerns about the socio-economic integration
10 of the resulting district, which would combine coastal Valdez with rural villages in the
11 heart of the Interior like Holy Cross, Allakaket, and McGrath.⁷⁴⁰

12 257. The evidence clearly demonstrates that, in making the decisions that went
13 into the final map, the Board carefully considered and weighed the available options.
14 It did not take lightly the decision about whether to maintain the pairing of Valdez with
15 the Mat-Su. It understood the interplay between the decisions it was making, and it
16

17 board map 4 because it gets us away from the coastal villages that have different priorities than
18 the interior villages. It makes sense to group the interior villages together.”); ARB003998
19 (testimony from Tanana Chiefs Conference chairman that “his people live on the river and
20 must be represented on the river separate from the coast”); ARB003354 (testimony from
21 Nulato Tribal Council stating that “it is not fair to lump all Alaska Natives together” and urging
22 the Board to adopt a map that “give[s] deference to ANCSA regions, river systems, and local
23 government boundaries while maintaining our cultural and familial connections”); *see also*,
24 *e.g.*, ARB001793-ARB001794; ARB002086-ARB002087; ARB002257-ARB002260;
25 ARB002261-ARB002268; ARB002269-ARB002270; ARB002330; ARB002331;
26 ARB003650-ARB003652; ARB004041 (additional public testimony discussing the
integration of the Interior as distinct from the coast).

⁷³⁷ Jan. 28 Trial Tr. 1315:23-1316:13 (Brace cross on rebuttal); *see also id.* at 1356:2-16 (Guy cross).

⁷³⁸ Jan. 28 Trial Tr. 1318:2-1320:16 (Brace cross on rebuttal).

⁷³⁹ Jan. 28 Trial Tr. 1320:17-1321:25 (Brace cross on rebuttal).

⁷⁴⁰ ARB009330 (Nov. 4 Tr. at 160:5-11).

1 made conscious, reasoned decisions in an effort to harmonize the constitutional criteria
2 across the entire map. Several Board members testified that none of the other maps
3 offered were constitutionally better than the map drawn by the Board, and the evidence
4 bears out this conclusion.

5 258. Even Valdez does not argue that the Board should have chosen v.3 over
6 v.4, as it acknowledges that “the FNSB was over populated and needed to shed excess
7 population into another district to reach reasonable deviations.”⁷⁴¹ Instead Valdez takes
8 issue with the process and timing of the Board’s decision, arguing that the Board left
9 Valdez until the end, by which time it had boxed itself into a corner. But this argument
10 is not borne out by the record. If anything, it appears the Board left the determination
11 of the Valdez question open because they were trying *not* to constrain themselves and
12 make sure they had explored all options and “tr[ie]d different variations”⁷⁴² and
13 “explore[d] all of the Valdez possibilities”⁷⁴³ before reaching a final decision.⁷⁴⁴ Chair
14 Binkley testified that “as we were putting our various maps together, we were
15 continually working with where Valdez was going to go in each of those different
16 scenarios.”⁷⁴⁵ The meeting transcript confirms this testimony; during the four days of
17 meetings in which the Board deliberated and created its final map, the placement of
18 Valdez was discussed numerous times, and the Board repeatedly discussed and
19 deliberated on the implications of other decisions for Valdez, as well as the implications
20 of Valdez’s placement on other districts.⁷⁴⁶ Board members also testified that,

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22 ⁷⁴¹ Valdez Trial Br. at 61.

23 ⁷⁴² ARB007631 (Nov. 3 Meeting Tr. at 271:9-24).

24 ⁷⁴³ ARB009275 (Nov. 4 Meeting Tr. at 105:19-20).

25 ⁷⁴⁴ Jan. 27 Trial Tr. 1172:6-22 (Binkley response to question from the Court).

26 ⁷⁴⁵ Jan. 27 Trial Tr. 1172:7-10 (Binkley response to question from the Court).

⁷⁴⁶ *E.g.*, ARB008766 (Nov. 2 Meeting Tr. at 69:10-25) (discussing options for placement of Valdez, and population challenges with the various combinations of Prince William Sound/

1 throughout this process, no district was finalized until the entire map was completed,⁷⁴⁷
2 and the meeting transcripts reflect that same understanding.⁷⁴⁸

3 259. Moreover, the evidence establishes that the Board was fully aware of the
4 general options before it during the full course of the public comment and Board
5 mapping period, and once the decision was confirmed regarding the need to break the
6 FNSB boundary in order to avoid unreasonably overpopulating the FNSB districts, the
7 Board understood that Valdez would likely need to be combined with a major
8 population center (either the Mat-Su Borough, or the Municipality of Anchorage).⁷⁴⁹
9 This numerical fact was true whether the FNSB decision was the first or last decision

10
11 Gulf communities); ARB007473 (Nov. 3 Meeting Tr. at 113:9-16) (discussing possible
12 placement of Valdez in Interior district and the limitations it imposed on other districts);
13 ARB007599-ARB007601 (Nov. 3 Meeting Tr. at 239:22-241:22) (discussing interplay
14 between FNSB population and Valdez, and Valdez's stated preferences); ARB007620-
15 ARB007621 (Nov. 3 Meeting Tr. at 260:13 – 261:21 (similar); ARB007639-ARB007646
16 (Nov. 3 Meeting Tr. at 279:20 – 286:1) (extensive discussion of population dynamics of FNSB,
17 Richardson Highway, and Valdez); ARB007667-ARB007668 (Nov. 3 Meeting Tr. at 307:24
18 – 308:6 (discussion of potential Mat-Su option without Valdez); ARB007690-ARB007691
19 (Nov. 3 Meeting Tr. at 330:12 – 331:18) (discussion of “binary choice” between options for
20 mapping the Mat-Su Borough “based on what we do with Valdez”); ARB007694-ARB007696
21 (Nov. 3 Meeting Tr. at 334:13-336:20) (considering options that would place Valdez with
22 Prince William Sound and the Gulf); ARB009180-ARB009181 (Nov. 4 Meeting Tr. at 10:15-
11:2) (stating that the western Alaska districts will not be finalized “until we solve that problem
on the Fairbanks North Star Borough [and] Valdez”); ARB009202-ARB009209 (Nov. 4
Meeting Tr. at 32:4 -39:12) (discussing various options for including Mat-Su with Valdez, but
holding off on final decision until related issues were addressed); ARB009210-ARB009224
(Nov. 4 Meeting Tr. at 40:2-54:17) (discussing breaking FNSB boundary, including
implications for Valdez and other districts); ARB009274-ARB009283 (Nov. 4 Meeting Tr. at
104:4-113:3) (exploring the possibility of combining Valdez with Anchorage); ARB009343-
ARB009346 (Nov. 4 Meeting Tr. at 173:12-176:9) (similar); ARB007862 (Nov. 5 meeting Tr.
at 5:2-22) (discussing challenge of mapping Valdez with Anchorage in a manner consistent
with other constitutional parameters); ARB008043-ARB008053 (Nov. 5 meeting Tr. at
186:21-196:13) (discussion and decisions on Mat-Su districts including Valdez).

⁷⁴⁷ Jan. 27 Trial Tr. at 1018:13-17 (Marcum cross) (“I don’t think anything’s final until
it’s final. . . . I knew there was still a possibility of me convincing them otherwise, which is
why I volunteered to try to do other maps.”).

⁷⁴⁸ *E.g.*, ARB009347 (Nov. 4 Meeting Tr. at 177:12-18) (“nothing is locked in . . . until
this board votes . . . [a]nd there’s three votes to say this is the final proclamation”).

⁷⁴⁹ *E.g.*, ARB009347 (Nov. 4 Meeting Tr. at 177:12-18) (“nothing is locked in . . . until
this board votes . . . [a]nd there’s three votes to say this is the final proclamation”).

1 made by the Board. (Nonetheless, the evidence demonstrates that the Board discussed
2 this issue repeatedly throughout the process and then addressed the decision when it
3 was about halfway through its November deliberations on the final map.) Member
4 Marcum then worked extensively to determine whether a pairing with Anchorage
5 would be possible for Valdez, and she determined that it was not.⁷⁵⁰ This left
6 maintaining the Valdez/Mat-Su pairing as the only constitutional option before the
7 Board.

8 260. Past case law shows that the Board was not grappling with unknown or
9 new problems. In his decision twenty years ago, Judge Rindner described Valdez as
10 potentially the most difficult decision the Board had to make. The Supreme Court in
11 2001 acknowledged the potential that Anchorage and Mat-Su would have to add
12 population from the north, east or south to round out districts. Valdez’s proximity to
13 the major population center of Alaska renders it a near certainty that the Board will
14 have to consider combining Valdez with either Mat-Su or Anchorage to sufficiently
15 populate a district while maintaining the other Section 6 requirements.

16 261. As to Valdez’s other arguments, the evidence demonstrates that Chair
17 Binkley’s desire to maintain the FNSB boundaries intact did not preclude the Board
18 from duly considering the options before it. Of the primary maps that the Board
19 considered, the six “road show” maps, *all* broke the FNSB boundary except for Board
20 Composite v.3.⁷⁵¹ Similarly, Board members credibly testified that Chair Binkley’s
21 initial idea of keeping the FNSB intact, reflected in Board Composite v.3, did not
22 prevent other Board members from considering options that broke the FNSB
23

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25 ⁷⁵⁰ ARB009343-ARB009346 (Nov. 4 Meeting Tr. at 173:12 – 176:9); ARB007862 (Nov.
5 meeting Tr. at 5:2-22)

26 ⁷⁵¹ Jan. 27 Trial Tr. 1133:23-1134:5.

1 boundary.⁷⁵² Chair Binkley himself testified that other Board members considered
2 options that broke the boundary, and that Board members could “count to three”—
3 meaning they knew there were enough votes to adopt a map that broke the FNSB
4 boundary even if Chair Binkley did not change his mind on that issue.⁷⁵³ The Court
5 therefore concludes that the Board considered options that both broke and retained the
6 FNSB boundary notwithstanding Chair Binkley’s own position on the issue.

7 262. Nor can the Court conclude that there were any improprieties relating to
8 the FNSB Assembly resolution in favor of breaking the FNSB boundary, which played
9 a role in changing Chair Binkley’s mind. As an initial matter, while it is clear the
10 resolution contributed to Chair Binkley’s change of opinion, it is just one of “a number
11 of things” that influenced Chair Binkley and the Board.⁷⁵⁴ The Board also received
12 extensive testimony from FNSB residents that they did not want the FNSB to be over-
13 populated and believed the Board should break the FNSB boundary to shed excess
14 population into an adjacent district.⁷⁵⁵ Even Valdez itself acknowledges that failure to
15 break the FNSB boundary would lead to unreasonably over-populating the FNSB
16 districts.⁷⁵⁶ It is not clear why Valdez takes issue with the resolution at all.

17 263. With regard to Valdez’s allegation that a representative of the Doyon
18 Coalition improperly influenced the FNSB Assembly’s decision, the evidence does not
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20 ⁷⁵² Jan. 26 Trial Tr. 868:6-23 (Borromeo redirect); Jan. 27 Trial Tr. at 1133:10-23 (Binkley
21 cross).

22 ⁷⁵³ Jan. 27 Trial Tr. 1133:14-17, 1135:5-17 (Binkley cross) (“Q: [A]nd did your thoughts
23 about that issue preclude anyone else on the board from considering those options? A: No, not
24 at all. Not at all. Q: And you also considered those options; is that correct? A: Most definitely,
25 yeah.”).

26 ⁷⁵⁴ Jan. 27 Trial Tr. 1134:19-1135:12 (Binkley cross).

⁷⁵⁵ *E.g.*, ARB002269-ARB002270, ARB002306, ARB004296, ARB004297,
ARB004304 (public testimony opposing over-population of FNSB districts).

⁷⁵⁶ Valdez Trial Br. at 61.

1 support that conclusion. Rather, the evidence unequivocally demonstrates that the
2 representative in question, Marna Sanford, abstained from the vote on the resolution.⁷⁵⁷
3 A single text message stating that “we got it”—presumably meaning that “we,” the
4 Assembly, passed the resolution despite her abstention—cannot support the inference
5 that Valdez had attempted to attach to it. And as discussed in more detail below,
6 “[t]here is nothing improper” about a member of the public contacting an individual
7 Board member directly.⁷⁵⁸

8 264. At the end of the day, Valdez’s arguments make clear that Valdez wishes
9 it could be placed elsewhere. But they do not indicate that the district in which it *was*
10 placed violates the constitution. For all of these reasons, the Court concludes that
11 District 29 is sufficiently compact, contiguous, and relatively socio-economically
12 integrated to satisfy Article VI, § 6 of the Alaska Constitution.

13 **2) House Districts 25, 26, 27, 28 and 30 Comply with**
14 **Section 6.**

15 265. The plaintiffs do not appear to challenge the contiguity of the Mat-Su
16 districts (other than 29, as discussed above), and a simple review of the map
17 demonstrates that each of these districts is contiguous unto itself.

18 266. Each of the Mat-Su districts is also sufficiently compact to satisfy § 6.
19 Board members credibly testified that the large size and odd shapes of many census
20 blocks within the Mat-Su Borough made it a challenge to draw perfectly compact
21 districts in that region. Because census blocks cannot be broken in the redistricting
22 process, the Board was forced to work with the shapes and populations of the existing
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25 ⁷⁵⁷ ARB002333-ARB002334; Jan. 27 Trial Tr. 1136:20-23 (Binkley cross).

26 ⁷⁵⁸ *In re 2001 Redistricting Cases*, No. 3AN-01-8914CI, 2002 WL 34119573, at 41
(Alaska Super. Feb. 01, 2002), *aff’d in relevant part*, 44 P.3d 141, 143 (Alaska 2002).

1 census blocks. The Mat-Su Borough has introduced evidence that Mat-Su Borough
2 officials engaged with the Census Bureau in the process of refining and redrawing some
3 census blocks within the Borough.⁷⁵⁹ But regardless of who was involved in drawing
4 the census blocks or whether the Borough likes them the way they are, the fact is that
5 the Board was tasked with drawing districts made up of these census blocks. There is
6 substantial evidence in the record that the shape and size of many census blocks limited
7 the possible compactness of the districts in the Mat-Su Borough.⁷⁶⁰

8 267. The Borough, through the testimony of its expert, Steve Colligan, has
9 also pointed to several minor places where compactness might have been slightly
10 improved by making different choices about where to draw district boundaries. One
11 such example is along Trunk Road near where Districts 25, 26, 28, and 29 come
12 together.⁷⁶¹ But these relatively small jogs in the district boundary do not render the
13 districts unconstitutionally noncompact. Moreover, without additional evidence as to
14 the underlying census blocks or the population impacts of the changes suggested by
15 Mr. Colligan, the Court cannot conclude that the Board improperly applied the
16 constitutional requirements in creating these districts. Moreover, each of districts 25-
17 30 appears visually compact.

18 268. Mat-Su also challenges the socio-economic integration of each of
19 Districts 25-28. These arguments fail as a matter of law. “By statute, a borough must
20 have a population which ‘is interrelated and integrated as to its social, cultural, and
21

22 _____
23 ⁷⁵⁹ Jan. 24 Trial Tr. at 429:18-23 (Colligan redirect).

24 ⁷⁶⁰ Jan. 26 Trial Tr. at 866:2-21 (Borromeo redirect); ARB008053 (Nov. 5 Meeting Tr. at
25 196:3-11) (explaining that mapping the Mat-Su districts was time-consuming because “the
26 census blocks in the Knik and Fairview area were very hard to smooth out and to comply with
what the borough had requested.”).

⁷⁶¹ Jan. 24 Trial Tr. at 433:17-434:8 (Colligan redirect).

1 economic activities,”⁷⁶² and thus “a borough is by definition socio-economically
2 integrated.”⁷⁶³ It is therefore “axiomatic that a district composed wholly of land
3 belonging to a single borough is adequately integrated.”⁷⁶⁴ Districts 25, 26, 27, and 28
4 all fall entirely within the Mat-Su Borough.⁷⁶⁵ They are each socio-economically
5 integrated as a matter of law, and the Mat-Su’s expert testified that House Districts 25,
6 26, 27, 28, and 30 are all socio-economically integrated.⁷⁶⁶

7 269. The evidence also demonstrates that the Board satisfied the Mat-Su
8 Borough’s request that the map respect the boundaries of the three incorporated cities
9 in the Borough—Palmer, Wasilla, and Houston—and that each city be placed in its own
10 district.⁷⁶⁷ Mat-Su quibbles with certain decisions regarding land outside the city
11 boundaries, such as the Board’s decision to place a hospital with a Palmer zip code in
12 a district predominantly inhabited by Wasilla residents. But, this choice ultimately has
13 no constitutional significance because both Wasilla and Palmer (and their surrounding
14 communities) are located within the same borough and are therefore socio-
15 economically integrated as a matter of law. The Court is simply not permitted to
16 second-guess the wisdom of the Board’s choices in the way Mat-Su urges.⁷⁶⁸

17
18 ⁷⁶² *Hickel v. Southeast Conference*, 846 P.2d 38, 51 (Alaska 1992) (quoting AS
29.05.031).

19 ⁷⁶³ *Hickel*, 846 P.2d at 52.

20 ⁷⁶⁴ *Hickel*, 846 P.2d at 52; *see also In re 2001 Redistricting Cases* No. 3AN-01-8914CI,
2002 WL 34119573, at 71 (Alaska Super. Feb. 01, 2002) (citing *Hickel*, 846 P.2d at 51-52).

21 ⁷⁶⁵ ARB000043-ARB000046.

22 ⁷⁶⁶ Jan. 24, 2022 Trial Tr. 377:16 – 380:3 (Colligan cross); *see also* Jan. 24, 2022 Trial Tr.
185:3-11 (DeVries cross) (“Q: And then, as I understand your testimony from your affidavit,
23 you believe all of the Mat-Su Borough is socioeconomically integrated?” A: “Yes.”).

24 ⁷⁶⁷ ARB000043 (District 25, containing the City of Palmer); ARB000045 (District 27,
containing the City of Wasilla); ARB000048 (District 30, containing the City of Houston);
25 Jan. 24 Trial Tr. at 416:25 – 417:3. (Colligan cross); *see* Jan. 24 Trial Tr. at 196:8-21 (Brown
cross) (describing Mat-Su Borough’s request for six House districts that would “honor[] the
26 corporate boundaries”).

⁷⁶⁸ *See In re 2011 Redistricting Cases*, 294 P.3d 1032, 1037 (Alaska 2012) (“[T]he

1 270. District 30, which combines the Mat-Su and Denali Boroughs, is also
2 socio-economically integrated. Evidence amply supports the conclusion that the Mat-
3 Su and Denali Boroughs are integrated by such ties as the Parks Highway, the Alaska
4 Railroad, and a shared tourism economy.⁷⁶⁹ The Mat-Su Borough specifically
5 requested that it be paired with the Denali Borough to fill out a portion of the population
6 necessary to reach a sixth House district, and it does not argue with that pairing now.
7 The Court accordingly concludes that District 30 is adequately integrated.

8 271. Finally, the population deviations in Districts 25-30, ranging from 1.1%
9 to 2.66%, do not violate the requirement that each district be “as near as practicable” to
10 the ideal district size. Because of the overlap between the § 6 population requirement
11 and the one-person, one-vote element of equal protection, the Mat-Su Borough’s claims
12 regarding over-population of these districts are discussed as part of in the equal
13 protection analysis below.

14 **3) District 36 Complies with Section 6**

15 272. No party has specifically challenged the contiguity of District 36, and a
16 review of the map demonstrates that the district is contiguous.⁷⁷⁰

17 273. District 36 is also appropriately compact. Valdez and Mat-Su have
18 argued that District 36 is non-compact for several reasons, none of which rises to the
19 level of a constitutional violation.

20 274. Valdez first suggests that District 36 is non-compact because of its sheer
21 size, which Valdez argued would make it “the third largest state in our union.”⁷⁷¹ But
22

23 wisdom of the plan is not a subject for review.” (citing *Kenai Peninsula Borough v. State*, 743
24 P.2d 1352, 1357-58 (Alaska 1987)).

25 ⁷⁶⁹ Jan. 24 Trial Tr. 189:16-190:5 (Brown cross).

26 ⁷⁷⁰ ARB000054.

⁷⁷¹ Jan. 24 Trial Tr. at 354:25-355:3 (Colligan cross).

1 this argument only shows the dangers of trying to apply an Outside framework to
2 Alaska. Alaska courts “look[] to the *shape* of a district,” not its size.⁷⁷² Given Alaska’s
3 unique geography and relatively low population, which is spread unevenly across a
4 state that is larger than most countries in the world, “neither size nor lack of direct road
5 access makes a district unconstitutionally non-compact.”⁷⁷³ Valdez’s exhibit showing
6 the State of West Virginia inside District 36 accordingly has no relevance to the
7 analysis.⁷⁷⁴

8 275. Indeed, Alaska courts have specifically noted that “[d]istricts within
9 Alaska have often been the size of several States in the Lower 48. Often the
10 communities within such large districts are geographically isolated and small in
11 population.”⁷⁷⁵ That is precisely the case with District 36. The evidence in the record
12 clearly shows that the size of District 36 is “a result of the geography and the
13 population” in that region,⁷⁷⁶ as it covers a sparsely populated area in which a map-
14 drawer may sometimes need to go “hundreds of miles” to find the next block of
15 population to assemble enough population for a full district.⁷⁷⁷ Such expanses are
16 inherent in Alaska redistricting, and they do not make a district unconstitutional.

17 276. Valdez also challenges the shape of District 36, arguing that its
18 “horseshoe” shape is non-compact. But the evidence shows that the overall shape of
19 District 36 is very similar to the rural Interior district in the 2002 Proclamation that was

20
21 ⁷⁷² *Hickel v. Southeast Conference*, 846 P.2d 38, 45 (Alaska 1992) (emphasis added). In
22 other words, the inquiry looks at the district’s “perimeter *in relation to* the area encompassed.”
Id. (emphasis added). The area itself is not useful as a stand-alone metric.

23 ⁷⁷³ *In re 2001 Redistricting Cases*, 47 P.3d 1089, 1092 (Alaska 2002).

24 ⁷⁷⁴ See Trial Ex. 3016.

25 ⁷⁷⁵ *In re 2001 Redistricting Cases*, No. 3AN-01-8914CI, 2002 WL 34119573, at 61
(Alaska Super. Feb. 01, 2002).

26 ⁷⁷⁶ ARB007953 (Nov. 5 Meeting Tr. at 96:12-13).

⁷⁷⁷ Jan. 26 Trial Tr. 730:12-18 (Brace cross).

1 approved by the courts.⁷⁷⁸ District 36 is also roughly similar in shape to District 6 under
2 the 2013 Proclamation. Moreover, the evidence demonstrates that the shape of District
3 36 was influenced by the need to achieve a relatively socio-economically integrated
4 district. This was a permissible consideration, as the Board may accept some reduction
5 in compactness to “further . . . [an]other requirement of article VI, section 6.”⁷⁷⁹

6 277. None of the other maps considered by the Board presented a more
7 compact way of drawing Interior Alaska without significantly sacrificing socio-
8 economic integration. Thus, “look[ing] to the relative compactness of proposed and
9 possible districts,” District 36 “is sufficiently compact.”⁷⁸⁰

10 278. The inclusion of Cantwell in District 36, which comes at the cost of
11 slightly reduced compactness, is justified for the same reason. The record shows that
12 the Board received public testimony on multiple occasions, from multiple members of
13 the public, testifying that Cantwell is socio-economically integrated with the Ahtna
14 region (the rest of which was placed with District 36) and should be included in the
15 rural Interior district.⁷⁸¹ This included testimony, for instance, that Cantwell and the

17 ⁷⁷⁸ Compare ARB000054 (District 36 in 2021 Proclamation); with ARB010414 (2002
18 Proclamation map); see Jan. 26 Trial Tr. at 895:11-12 (Otte cross) (testimony by Chair of
19 2001-2002 Redistricting Board that with respect to the Interior district, “[i]t’s a similar map to
20 what I believe we produced in 2002”).

21 ⁷⁷⁹ *In re 2001 Redistricting Cases*, 44 P.3d 141, 143 (Alaska 2002). In that case, the
22 Supreme Court struck down a district that contained a bizarre shape because it was unnecessary
23 to further any of the other § 6 requirements.

24 ⁷⁸⁰ *In re: 2011 Redistricting Cases*, 2013 WL 6074059, at *19 (Alaska Super. Nov. 18,
25 2013) (quoting *Hickel*, 846 P.2d at 45).

26 ⁷⁸¹ ARB001793-ARB001794 (testimony of Michelle Anderson that “villages within [the]
Ahtna region have strong and extensive family ties, customary and traditional Ahtna practices
and thousands of years of familial, cultural & traditional, land use, and economic connection”);
ARB002873 (testimony supporting inclusion of Cantwell in Interior district, as done in the
Doyon Coalition map); ARB003418 (testimony that the Ahtna villages share all the customary
and traditional values, are related to the Cantwell residents, share the same values, and speak
the same language”), ARB003998, ARB004220 (testimony that “Cantwell is a part of the
Ahtna region and should be represented as such. Cantwell is compacted with 5 other Ahtna
Villages to comprise the Copper River Native Association”); see ARB009242 (Nov. 4 Tr. at

1 other Ahtna villages “all have the same language, customs, traditions, and they hunt,
2 fish, and do berry picking together”⁷⁸² and that in addition to being part of the Ahtna
3 region, Cantwell is one of the villages comprising the Copper River Native Association
4 based in Copper Center.⁷⁸³ This testimony spoke to the integration of the Ahtna region
5 as a whole, as well as the integration of that region with the rest of the Interior (primarily
6 the Doyon region). Trial evidence demonstrated the same, highlighting socio-
7 economic and cultural links such as shared potlatch, art, and subsistence traditions.⁷⁸⁴
8 This evidence is un rebutted. The Alaska courts have found such links relevant in
9 determining socio-economic integration,⁷⁸⁵ and the present case is no exception.

10 279. While Valdez now points to evidence that the majority of Cantwell
11 residents are non-Native, that bare fact does not negate the testimony that Cantwell is
12 socio-economically integrated with District 36. The Board heard ample testimony to
13 that effect. And a simplified population table, or even the number of Ahtna
14 shareholders in Cantwell, may not capture the realities of the community ties between
15 Cantwell and the Ahtna region: Ahtna’s president testified that families or households
16 are often made up of a combination of shareholders and non-shareholders, yet they
17 retain ties to the Ahtna culture and the Ahtna region all the same.⁷⁸⁶ Ahtna’s president

18 _____
19 72:7-22) (Board discussion of the public testimony); *see also* ARB000639, ARB001795-
20 ARB001796, ARB001822 (additional public testimony supporting inclusion of Cantwell in
rural Interior district).

21 ⁷⁸² ARB003089.

22 ⁷⁸³ ARB004220.

23 ⁷⁸⁴ Jan. 26 Trial Tr. 887:21–888:8 (Otte cross) (Native peoples in Doyon and Ahtna
24 regions “share the same cultures, we hunt and eat the same subsistence [foods] in the areas”);
Jan. 26 Trial Tr. at 919:7 – 920:23 (Wright cross) (describing historical and current family ties
between Doyon and Ahtna regions); Anderson Aff. ¶¶ 5, 9-13; Wright Aff. ¶¶ 20-21; Otte Aff.
¶ 27.

25 ⁷⁸⁵ *See, e.g., Hickel v. Southeast Conference*, 846 P.2d 38, 53-54 (Alaska 1992)
(discussing the distinct nature of Athabascan and Iñupiaq cultures).

26 ⁷⁸⁶ Jan. 26 Trial Tr. 955:18-956:7 (Anderson redirect).

1 also testified that Alaska Native Corporations are concerned with the interests of their
2 region as a whole, not just their shareholders' interests.⁷⁸⁷

3 280. While the road connection between Cantwell and the rest of District 36,
4 the Denali Highway, is not open year-round,⁷⁸⁸ the mere lack of a winter road
5 connection does not destroy socio-economic integration.⁷⁸⁹ And neither Valdez nor
6 Mat-Su have pointed to any evidence that the residents of Cantwell disagreed with the
7 testimony before the Board with respect to the socio-economic integration of Cantwell
8 with the rural Interior district. In fact, the clear testimony before the Board that
9 Cantwell was more socio-economically integrated with the communities of District 36
10 than the communities in District 30 was entirely un rebutted. This un rebutted evidence
11 is sufficient justification for the Board's decision to include small portions of the Denali
12 Borough and Mat-Su Borough within District 36.

13 281. To be clear, nothing in the Constitution requires that the Board retain
14 Borough boundaries reflexively: the Constitution provides that local government
15 boundaries "may" be considered,⁷⁹⁰ and they are often used by the courts as an indicator
16 of socio-economic integration.⁷⁹¹ But where public testimony indicates that socio-
17 economic integration will actually be *improved* by breaking a borough boundary, there
18 is no reason to hold the borough boundaries sacrosanct.

19 282. The record demonstrates that the Board carefully considered the public
20 testimony regarding Cantwell's socio-economic integration with District 36 and
21

22 ⁷⁸⁷ Jan. 26 Trial Tr. 953:10-954:8 (Anderson cross).

23 ⁷⁸⁸ Jan. 26 Trial Tr. 948:18-23 (Anderson cross).

24 ⁷⁸⁹ *In re 2001 Redistricting Cases*, No. 3AN-01-8914CI, 2002 WL 34119573, at 61
(Alaska Super. Feb. 01, 2002).

25 ⁷⁹⁰ Alaska Const. art. VI, § 6.

26 ⁷⁹¹ *E.g., Hickel*, 846 P.2d at 51-52.

1 reasonably balanced the need for socio-economic integration against the compactness
2 requirement.⁷⁹²

3 283. In addition, the evidence shows that placing Cantwell into District 36
4 also helped reduce the over-population of District 30. The approximately 200 residents
5 of Cantwell correspond to around 1.1% of a district.⁷⁹³ Mat-Su argues that District 30
6 is already unconstitutionally overpopulated at 1.1% above the ideal population; moving
7 Cantwell into District 30 would double the overpopulation of that District, which
8 weighs against Mat-Su’s claims.

9 284. It is evident from the record and the trial evidence that the decision to
10 include Cantwell in District 36 was the Board members’ own decision, not made at the
11 urging of counsel. The transcript of the Board meeting where this issue was discussed,
12 on November 5, shows that in response to a question from Member Marcum, the
13 Board’s counsel stated it was a “coin toss” as to whether the reduction in compactness
14 from including Cantwell in District 36 would be outweighed by the increase in socio-
15 economic integration.⁷⁹⁴ Valdez would read volumes into this statement. But the
16 record is clear that counsel simply instructed the Board that this decision involved
17 “balancing constitutional concerns” and that it was “within [the Board’s] discretion” to
18 decide how best to do so. It is hard to imagine advice from counsel that could be any
19 *less* directive in suggesting which option the Board should choose. And Chair Binkley
20 testified emphatically that the Board did not rely on its counsel for direction as to where
21 to draw district lines—“no way”—emphasizing that the Board made clear “from the
22 very beginning . . . that the five of us were going to be the ones doing the mapping. . . .

23 _____
24 ⁷⁹² ARB009242-ARB009250 (Nov. 4 Tr. at 72:7-80:3); Binkley Aff. ¶¶ 36, 40; Borromeo
25 Aff. ¶ 23.

26 ⁷⁹³ ARB004354 (Board website showing Cantwell population of 196 in 2020 census).

⁷⁹⁴ ARB008110 (Nov. 5 Meeting Tr. at 253:8-19).

1 It was going to be our decisions.”⁷⁹⁵ Chair Binkley also specifically testified that the
2 Cantwell “decision was not based on [Counsel’s] advice.”⁷⁹⁶ All of this evidence
3 supports the conclusion that the Board reasonably chose to include Cantwell in District
4 36 based on its own judgment that the improvement in socio-economic integration was
5 worth the minor reduction in compactness.

6 285. More broadly, Valdez’s allegations regarding a possible conflict of
7 interest on the part of the Board’s counsel are similarly unfounded. The record
8 demonstrates that counsel properly notified the Board of several possible conflicts of
9 interest and ongoing representations of various parties in unrelated matters,⁷⁹⁷ and any
10 potential conflicts were properly cleared during the Board’s process of interviewing
11 and contracting with counsel.⁷⁹⁸ Notwithstanding the fact that an individual Board
12 member did not recall all the details of these discussions nearly a year later,⁷⁹⁹ the

13
14 ⁷⁹⁵ Jan. 27 Trial Tr. 1168:10-16 (Binkley redirect).

15 ⁷⁹⁶ Jan. 27 Trial Tr. 1163:10-11 (Binkley cross); *see also* Jan. 27 Trial Tr. 1167:24–1168:7
(Binkley redirect).

16 ⁷⁹⁷ Feb. 3, 2022 Trial Tr. 1836:9-25, 1837:1-3 (Simpson explaining that he and Member
17 Borromeo, the two members of the Board’s subcommittee to vet legal counsel responses to the
18 Board’s RFI, were aware of Schwabe, Williamson & Wyatt’s representation of Ahtna, Inc.,
19 and were unconcerned because there was no conflict between the Board and Ahtna); *see also*
20 Feb. 3, 2022 Trial Tr. 1832:17-25, 1833:1-8; *see also* Feb. 3, 2022 Trial Tr. 1829:4-15 (“I
21 believe we learned about it prior to this interview, with the firm’s submission and response to
22 the RFP. And I don’t remember exactly what document it was, but I think they listed some
23 representative clients and that sort of thing, and that would have been among those or maybe
24 had examples of case that they worked o, that sort of thing.”).

22 ⁷⁹⁸ The record demonstrates that Counsel expressly informed the Board of his
23 representation of Ahtna, including stating that the land dispute in which Mr. Singer had
24 represented Ahtna was “still pending in the Supreme Court.” Ex. 1022, at 20. The record does
25 not document all of the subsequent conversations during the process of hiring counsel and
26 clearing conflicts, it is evident that such conversations occurred to the Board’s satisfaction,
and the record does not indicate any impropriety. *See, e.g.*, Ex. VDZ-3030 (discussing
negotiations between Counsel and the Board over contract terms for addressing conflicts of
interest).

26 ⁷⁹⁹ Jan. 27 Trial Tr. 1168:17–1169:7 (Binkley Redirect).

1 evidence simply does not support the allegations of impropriety.

2 286. Valdez’s allegation that other communities got more favorable treatment
3 than Valdez is ultimately unavailing, and the Cantwell decision is a good example of
4 why Valdez’s argument is a red herring. If the Court were to order that Cantwell be
5 placed in District 30 instead of District 36, that trade would do nothing to solve
6 Valdez’s concerns, and would only further add to the population of a Mat-Su district.

7 287. Finally, the evidence amply supports the conclusion that District 36 as a
8 whole is relatively socio-economically integrated. The record contains extensive
9 evidence of the social, economic, and cultural ties across the district, and the Board
10 properly relied on those links in drawing the district.

11 288. District 36 is made up of Interior towns and villages, largely small
12 communities in rural regions. At the outset, then, the evidence shows that these
13 communities share many characteristics of rural life. There are also specific historic
14 and present cultural ties across District 36, as it broadly spans the region inhabited by
15 Interior Athabascan peoples. As noted above, there was extensive testimony, both in
16 the public comment period and at trial, of the significant cultural similarities across
17 Athabascan peoples.⁸⁰⁰ This testimony established numerous socio-economic links
18 across the region, including (but not limited to) common language and culture across
19 “all Athabascan speaking people,”⁸⁰¹ a dependence on similar subsistence foods,
20 including moose and caribou,⁸⁰² reliance on shared rural healthcare and social services

22 ⁸⁰⁰ *E.g.*, ARB001793-ARB001794; ARB002086-ARB002087; ARB002257-
23 ARB002260; ARB002261-ARB002268; ARB002269-ARB002270; ARB002330;
24 ARB002331; ARB003346; ARB003650-ARB003652; ARB003354; ARB003998;
25 ARB004041 (public testimony discussing the integration of the Interior); Otte Aff. ¶¶ 23-27;
26 Wright Aff. ¶¶ 14-21; Anderson Aff. ¶¶ 6-17; Jan. 26 Trial Tr. 885:3–890:4 (Otte cross); *id.* at 910:24-922:13 (Wright cross); *id.* at 933:17-20 (Wright redirect).

⁸⁰¹ *E.g.*, Jan. 26 Trial Tr. 914:25-915:9 (Wright cross).

⁸⁰² Jan. 26 Trial Tr. 886:11-14, 888:6-21 (Otte cross); *id.* at 916:10-20 (Wright cross); *id.*

1 systems,⁸⁰³ and shared concerns about the quality of rural schools.⁸⁰⁴

2 289. District 36 generally (though not perfectly) encompasses the Doyon and
3 Ahtna ANCSA regions. The courts have acknowledged that ANCSA regions are
4 indicative of socio-economic integration and may be used to guide redistricting
5 decisions, and they may even justify some degree of population deviation.⁸⁰⁵

6 290. While Valdez argues that the ANCSA boundaries were applied
7 inconsistently, in fact 10 of the 12 ANCSA regions were kept largely intact. For the
8 remaining two, Calista and Cook Inlet Region, Inc., maintaining all the respective
9 villages within a single district was not possible because of the large population in those
10 regions (significantly exceeding the size for a single district).⁸⁰⁶ And none of the 40-
11 district maps submitted for consideration by the Board split the Calista region into
12 fewer than three districts—even Calista’s own map submitted by AFFER splits the
13 region into three districts.⁸⁰⁷

14 291. Valdez also argues that it is inappropriate to use ANCSA boundaries to
15 guide the drawing of districts that are not predominantly Alaska Native. This argument
16 is unpersuasive for several reasons. The primary border that Valdez takes issue with—

17 _____
18 at 943:19–944:3 (Anderson cross).

19 ⁸⁰³ Jan. 26 Trial Tr. at 906:14-23 (Otte cross); *id.* at 952:10-25 (Anderson cross).

20 ⁸⁰⁴ Jan. 26 Trial Tr. at 888:16-889:6 (Otte cross).

21 ⁸⁰⁵ *E.g., Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1359 n.10 (Alaska 1987)
22 (citing *Groh v. Egan*, 526 P.2d 863, 877 (Alaska 1974)); *see also Hickel*, 846 P.2d at 48.
23 Indeed, ANCSA regions were drawn with the specific statutory intent that “each region [be]
24 composed as far as practicable of Natives having a common heritage and sharing common
25 interests.” 43 U.S.C. § 1606(a); *see also* Jan. 26 Trial Tr. 941:10-14 (Anderson cross)
26 (testifying that ANCSA “boundaries were drawn based on the characteristics and similarities
between peoples . . . for instance, culture, language, connection to the land, traditional foods,
to name a few things”).

⁸⁰⁶ Binkley Aff. ¶ 36. Fairbanks is also within the Doyon ANCSA region, so the region is
actually spread across six districts, but the northern, western, and southwestern borders of
District 36 generally align with the borders of the Doyon region.

⁸⁰⁷ ARB001290-ARB001292 (proposed Districts 37, 38, and 39 in AFFER/Calista map).

1 the boundary between District 36 and the coastal District 39 (which coincides with the
2 boundary between Doyon and the Bering Strait region)—*is* in an area where the
3 communities are predominantly Alaska Native.⁸⁰⁸ Thus, even accepting *arguendo* the
4 premise of Valdez’s argument, it is both logical and reasonable to use an ANCSA
5 boundary to guide the drawing of district lines in this area of the state.

6 292. Moreover, there is evidence that ANCSA boundaries are significant for
7 non-Native residents too, particularly in rural areas. ANCSA regions coincide with the
8 regions served by non-profit “sister organizations,” which in many rural communities
9 provide healthcare for Native and non-Native residents alike.⁸⁰⁹ Finally, the evidence
10 clearly shows that the western border of District 36 is also a boundary between school
11 districts, and that school districts are the primary form of local government in that
12 region of the state.⁸¹⁰ Given the constitution’s explicit provision that local government
13 boundaries may be taken into consideration, there is certainly no reason the Board
14 should disregard such a boundary just because it happens to coincide with an ANCSA
15 boundary.⁸¹¹

16 293. Valdez also argues that District 36 lacks socio-economic integration
17 because the residents of every community do not necessarily “live, work, and play”
18 with the residents of every other community within the district. Although it may be
19 true that the residents of Glennallen do not frequently find themselves working or
20 recreating with residents of Holy Cross, as Valdez repeatedly emphasized at trial,⁸¹²

22 ⁸⁰⁸ Jan. 26 Trial Tr. at 921:1-922:13 (Wright cross) (affirming that the residents of Nulato,
23 Galena, Ruby, Kaltag, Grayling, Anvik, Shageluk, and Holy Cross are all “predominantly
Alaska Native”).

24 ⁸⁰⁹ Jan. 26 Trial Tr. 952:7-953:23 (Anderson cross); *id.* at 956:8-25 (Anderson redirect).

25 ⁸¹⁰ Jan. 28 Trial Tr. 1318:2–1321:25 (Brace cross on rebuttal).

26 ⁸¹¹ Alaska Const. art. VI, § 6; *see* Jan. 28 Trial Tr. 1320:11-16 (Brace cross on rebuttal).

⁸¹² *E.g.*, Jan. 26 Trial Tr. 835:1–839:4 (Borromeo cross).

1 this fact does not defeat the socio-economic integration of the district as a whole. As
2 the courts have aptly noted:

3 Often the communities within such large districts are geographically isolated
4 and small in population. They are not interconnected by road systems or by other
5 convenient means of transportation. Such communities are not integrated as a
6 result of repeated and systematic face to face interaction. Rather they are linked
7 by common culture, values, and needs. The constitutional requirement of socio-
8 economic integration does not depend on repeated and systematic interaction
9 among each and every community within a district. Rather, the requirement in
10 Article VI, Section 6 of the Alaska Constitution may, by its very terms, be
11 satisfied if the “area” comprising the district is relatively socio-economically
12 integrated without regard to whether each community within the “area” directly
13 and repeatedly interacts with every other community in the area.⁸¹³

14 Such is the case with District 36, as the Board reasonably determined.⁸¹⁴

15 294. Finally, contrary to Valdez’s suggestion, there is no evidence that District
16 36 was created with any inappropriate favoritism toward Doyon and Ahtna. Nor can
17 the Court conclude that any communications from the Coalition improperly influenced
18 the Board’s decisions. Plaintiffs made similar accusations during the 2001 redistricting
19 cycle, alleging that representatives of AFFR had improper communications with
20 individual Board members near the end of the redistricting process (and the 2001 board
21 did, in fact, adopt a map nearly identical to AFFR’s). In addressing those allegations,
22 the Superior Court explained:

23 There is nothing improper with individual Board members discussing the
24 redistricting plans with members of the public, because the concept of *ex*
25 *parte* communications does not apply to the Board. This concept is
26 discussed in *Sierra Club v. Costle*, 657 F.2d 298, 400 n.501 (D.C. Cir.

23 ⁸¹³ *In re 2001 Redistricting Cases*, No. 3AN-01-8914CI, 2002 WL 34119573, at 61
(Alaska Super. Feb. 01, 2002).

24 ⁸¹⁴ *See, e.g.*, Jan. 26 Trial Tr. at 838:16-24 (Borromeo cross) (testifying that the “rural
25 interior villages . . . don’t also have enough numbers, in and of themselves, to be in their own
26 district. So they need to be coupled with other communities that are as close to
socioeconomically integrated as possible, and because these are all rural interior villages the
board thought it was best to group them together into one district.”).

1 1981):

2 In ordinary rulemaking proceedings the parties are not identified in
3 advance. Neither are conflicting interests established in advance
4 among those subject to the proposed regulations. . . . In such a
5 situation the very concept of ex parte communications is strikingly
6 out of place; there are no parties to begin with, and it is not known
7 what parties will develop and what their conflicting interests will
8 be.

9 Virtually every Board member met individually with members of the
10 public. Indeed the Board considered this a useful process to gather
11 information and receive public input. The Open Meetings Act is not
12 violated by such individual lobbying of Board members and there is
13 nothing improper about this.⁸¹⁵

14 295. In light of this precedent, it is not improper for individual members of the
15 public—even representatives of an organization that is advocating to the Board for a
16 particular outcome—to have contact with individual Board members. This may include
17 any type of communications, including spoken conversations, emails, and text
18 messages. Mr. Brace’s testimony to the contrary is not credible because it lacks an
19 understanding of prior accepted practices in Alaska’s redistricting system—indeed, his
20 testimony indicated that his opinion was based on his experience in Michigan and
21 Rhode Island, not Alaska.⁸¹⁶

22 296. Regarding the specific evidence that Valdez has pointed to, the fact that
23 one of Ahtna’s multiple public comment letters states that it was submitted “at the
24 request of Nicole Borromeo” indicates nothing improper whatsoever.⁸¹⁷ Indeed,
25

26 ⁸¹⁵ *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 41-42, *aff’d in relevant part*,
44 P.3d 141, 143 (Alaska 2002) (citing *Brookwood Area Homeowner’s Ass’n v.*
Anchorage, 702 P.2d 1317, 1323 n.7. (Alaska 1985)).

⁸¹⁶ Jan. 28 Trial Tr. 1299:4–1300:19 (Brace direct on rebuttal).

⁸¹⁷ ARB001795-ARB001796 (Nov. 3 public testimony from Michelle Anderson, Ahtna, Inc.); *see also* ARB001793-ARB001794, ARB001822 (Sept. 17 and Oct. 27 public testimony

1 Valdez’s own witness testified that Member Borrromeo also specifically asked *her* to
2 submit written testimony.⁸¹⁸ Asking members of the public to clarify and memorialize
3 their oral testimony through written submissions to the Board was standard practice for
4 the Board members. And a single text message stating a lack of support for certain
5 proposed Senate pairings, however crudely worded, does not indicate any sort of *quid*
6 *pro quo*.⁸¹⁹

7 297. In sum, the evidence supports the conclusion that District 36 was created
8 with a legitimate goal of achieving socio-economic integration across a large, sparsely
9 populated district, and the Board achieved that goal. District 36 is constitutional in all
10 respects.

11 **c. Calista Plaintiffs’ Section 6 Challenges to House Districts 37-
12 39**

13 298. Calista alleges that “the Board failed to follow the requirements of the
14 Alaska Constitution, article VI, section 6 when it excluded Hooper Bay and Scammon
15 Bay from District 38 and included Tyonek in District 37,”⁸²⁰ and posed the following
16 question to the court: “did the Board’s House Districts 37, 38, and 39, and Senate
17 Districts S and T . . . improperly diminish the region’s voting power?”⁸²¹

18 299. The Calista region is an unorganized area of the state in that it does not
19 have a central regional government and is not organized into a borough.⁸²² The Calista

20 _____
21 from Michelle Anderson, Ahtna, Inc.).

22 ⁸¹⁸ Jan. 28 Trial Tr. 1234:17-21 (Pierce direct on rebuttal) (“Ms. Borrromeo – she asked
me to submit my comments in writing. . . . So she encouraged me to do that.”).

23 ⁸¹⁹ Jan. 28 Trial Tr. 1302:1-22 (Brace direct on rebuttal). The timing of the text message,
24 three days after the House map had been finalized, clearly suggests that Ms. Sanford was
simply expressing that the Doyon Coalition might not be comfortable providing support for
certain Senate pairings, which is what ultimately occurred.

25 ⁸²⁰ Calista Trial Br., p. 2.

26 ⁸²¹ Calista Trial Br., pp. 6-7.

⁸²² Jan. 28, 2022 Trial Tr. 1374:10-13; Prefiled Testimony of Myron Naneng, p. 7 (“There

1 region has a population too large to fit into a single house district. As conceded by its
2 expert witness, Calista’s geography prevents placing the region’s excess population
3 into a second single contiguous and socio-economically integrated house district.⁸²³
4 Calista, through its consultant AFFER, submitted a proposed plans that was adopted by
5 the Board as one of its proposed maps that was taken around the state for public
6 comment. That AFFER map split the Calista region into three house districts and two
7 senate districts. Calista does not challenge that the communities within District 38 lack
8 socio-economic integration.⁸²⁴ Calista challenges that its population should have been
9 divided amongst the necessary three districts in a specific way purely to increase its
10 senate voting strength, without increasing the Section 6 requirements of compactness,
11 contiguity, or socio-economic integration. Such a contention is not supported in the
12 law.

13 300. AFFER’s proposed map placed the coastal villages of Kwigillingok,
14 Kongiganak, and Quinhagak into the Dillingham/Aleutian Island District, instead of
15 placing them with their hub city of Bethel that is less than 80 miles away and shares
16 the same school district. AFFER’s map moved these communities in order to include
17 Hooper Bay and Scammon Bay into District 38 with Bethel. Scammon Bay and Hooper
18 Bay are further away from Bethel than the Kwigillingok, Kongiganak and Quinhagak
19 communities. AFFER’s proposed district is no more compact than the one adopted by
20 the Board.

21 301. The Board made a reasoned decision in favoring placing Kwigillingok,
22 Kongiganak and Quinhagak into District 38 with its hub community because the record

23 _____
24 is no borough—we are an unincorporated region.”).

25 ⁸²³ Jan. 31, 2022 Trial Tr. 1466:22-1467:3 (Ruedrich cross).

26 ⁸²⁴ Jan. 31, 2022 Trial Tr. 1437:25-1438:2 (Ruedrich cross, Q: “And – so we can agree that District 38 is socioeconomically integrated, correct?” A: “Yes.”);

1 demonstrates that the three villages’ socio-economic integration with District 38 is not
2 contested by Calista. The communities within the Board’s District 38, including
3 Kwigillingok, Kongiganak and Quinhagak, all share a school district, speak the same
4 language, and compete against each other in sports. Additionally, to accommodate
5 moving Hooper Bay and Scammon Bay out of District 39 and into District 38, as
6 desired by Calista, District 39’s boundary would be forced significantly into the
7 interior, such that it would reach to the Denali Borough. This addition to District 39,
8 desired by Calista, would have placed the interior, non-coastal⁸²⁵ “villages of Takotna,
9 McGrath, and Nikolai with the coastal communities of the Bering Straits,” and the
10 Athabaskan Doyon communities of “Grayling, Anvik, Holy Cross, and Shageluk.”⁸²⁶
11 The changes proposed to both Districts 38 and 39 by Calista did not result in more
12 compact or socio-economically integrated communities. Thus, the Board made a
13 reasonable decision to place Scammon Bay and Hooper Bay in District 39 where they
14 share a school district with the other District 39 communities, and which would not
15 force the pairing of groups that lack socio-economic integration.

16 302. Calista also challenges the placement of Tyonek in the final plan. Tyonek
17 is a roadless, coastal community and principally an Alaska Native village.⁸²⁷ Tyonek
18 is socio-economically integrated with coastal villages in House District 37.⁸²⁸ Despite
19 its socio-economic ties, Calista contends Tyonek should be with the coastal
20

21 ⁸²⁵ Jan. 31, 2022 Trial Tr. 1424:25-1425:2 (Ruedrich Cross) (Q: “And can we agree that
22 Takotna, McGrath, and Nikolai are not coastal communities?” A: “Yes.”).

23 ⁸²⁶ Jan. 31, 2022 Trial Tr. 1424:3-15 (Ruedrich Cross); Borromeo Aff. ¶ 37 (AFFER’s
24 proposed House District 39 juts into Interior Alaska, pairing Athabaskan villages (McGrath,
25 Nikolai, and Takotna) with coastal Yup’ik (Emmonak, Nunam Iqua, and Alakanuk) and
26 Inupiat (Unalakleet and Nome) communities.”).

⁸²⁷ Jan. 31, 2022 Trial Tr. 1441:4-11 (Ruedrich cross).

⁸²⁸ Jan. 31, 2022 Trial Tr. 1441:4-11 (discussing similarities with Tyonek and other
District 37 communities).

1 communities of southcentral Alaska. The Kenai Peninsula Borough, however, is
2 overpopulated and must shed its overpopulation into an underpopulated district, such
3 as District 37.⁸²⁹ House District 37 had the second to largest population deviation from
4 the 18,335 person ideal of any of the districts before the addition of Tyonek, Beluga,
5 Nanwalek, and Port Graham.⁸³⁰ After those additions, the district's population
6 deviation was only a *de minimis* -0.59%.⁸³¹

7 303. The Kenai Peninsula Borough boundary was broken to include Tyonek
8 within District 37 because the Kenai Peninsula Borough has excess population and
9 District 37 was underpopulated. Tyonek also shares greater socio-economic ties with
10 the coastal villages of District 37 than Cordova does with the remote Interior villages
11 it would have to be paired with as a ripple effect of AFFER's proposal. Because it is
12 permissible to break a borough boundary to accomplish greater population equality,
13 District 37 satisfies the requirements of Article 6, and the inclusion of Tyonek was a
14 reasonable decision of the Board amongst the other available alternatives.

15 304. Calista's proposed district 39 also breaks the boundaries of the Northwest
16 Arctic Borough, splitting the population of the Northwest Arctic Borough
17 unnecessarily in an attempt to gain Calista a political voting advantage in a senate seat.
18 This is not a permissible Article VI, Section 6 criteria.⁸³²

19 305. Calista requested that communities with significant socio-economic ties
20 to Bethel and which were located near Bethel, be moved out of the Bethel House
21 District 38 and into the Aleutian/ Dillingham District not to increase contiguity or
22

23 ⁸²⁹ Jan. 31, 2022 Trial Tr. 1442:5-12 (Ruedrich cross) (discussing overpopulation of
24 coastal communities of southcentral Alaska).

⁸³⁰ Borromeo Aff. ¶ 25.

⁸³¹ Borromeo Aff. ¶ 25.

⁸³² Bahnke Aff. ¶ 19.

1 compactness, but to increase Calista’s voting strength.⁸³³ There is no basis in law for
2 the approach proposed by the Calista Plaintiffs. Permitting political gerrymandering at
3 the expense of the constitutional requirements clearly runs afoul of the Alaska
4 Constitution.

5 **d. Skagway Section 6 Challenges – House District 3**

6 306. House District 3 is compact and contiguous. It is compact as it does not
7 include any bizarre appendages, and its perimeter is proportional to the area inside the
8 perimeter. House District 3 is also more compact than House District 33 from the 2013
9 Proclamation Plan that placed Skagway with the downtown portion of the City and
10 Borough of Juneau. It is contiguous because, visually, all portions of House District 3
11 are reachable within the district.

12 307. House District 3’s population is as “near as practicable” to 18,335. The
13 population of all of Southeast Alaska—from Metlakatla to the northern border of the
14 City and Borough of Yakutat—is 72,286 or 1,054 people less than four ideal house
15 districts of 73,340 (18,335 times four).⁸³⁴ House District 3 has the population of
16 18,195, or 140 people less than the ideal population of 18,335 or .76%
17 underpopulated.⁸³⁵ Out of the four Southeast house districts, it is the closest to the ideal
18 population number for a house district.⁸³⁶

19 308. House District 3 is socio-economically integrated. Since 1974, the
20 Alaska Supreme Court has recognized the close ties between the City and Borough of
21 _____

22 ⁸³³ Prefiled Direct Test. of Andrew Guy, p. 4 (“This would allow Scammon Bay and
23 Hooper Bay to be in a district with their socio-economically integrated hub community of
24 Bethel and sister city of Chevak, and would increase Calista’s representation in Senate District
S.”).

25 ⁸³⁴ Simpson Aff. ¶ 12.

26 ⁸³⁵ ARB0007234.

⁸³⁶ ARB0007234.

1 Juneau⁸³⁷ and Skagway: “There are close transportation ties between Juneau, Haines
2 and Skagway by daily scheduled air flights and frequent ferry service; a Juneau-Haines
3 highway connection has been planned. The district is quite distinct from the rest of the
4 Southeast region by virtue of the nature of its development and the fact that it is almost
5 entirely composed of portions of the mainland, rather than the islands of the
6 archipelago; historically these three communities have always been closely linked, with
7 Juneau serving as an economic hub for Haines and Skagway.”⁸³⁸ Skagway is socio-
8 economically integrated with the City and Borough of Juneau.

9 309. Skagway’s argument that it should be paired with the portion of the CBJ
10 with which it is *most* socio-economically integrated—the downtown portion of the
11 CBJ—misses the mark. Skagway’s argument improperly asks this Court to do what
12 the Alaska Supreme Court has admonished Alaska courts will not do: “substitute [its]
13 judgment as to the sagacity of the redistricting plan for that of the Board, as the wisdom
14 of the plan is not a subject for review.”⁸³⁹ Just because a community could be placed
15 in a house district that is “*more* socio-economically integrated, does not mean that [the
16 community is] not socio-economically enough where [it is] for constitutional
17 purposes.”⁸⁴⁰ Section 6 requires house districts to be relatively socio-economically
18 integrated, not comprised of areas that are *most* socio-economically integrated, at the
19

20 ⁸³⁷ The City and Borough of Juneau was incorporated as a unified City and Borough on
21 July 1, 1970. See *City and Borough of Juneau: An Outline of History of Juneau Municipal*
Government (available at: <https://juneau.org/community-development/history-of-juneau>).

22 ⁸³⁸ *Groh v. Egan*, 526 P.2d 863, 879 (Alaska 1974); see also *Kenai Peninsula Borough*
23 *v. State*, 743 P.2d 1352, 1359 (Alaska 1987) (noting that in *Groh* the Court had noted the
24 close transportation ties between Juneau and Skagway and their commonality in
“development and composition, being comprised almost entirely of portions of the mainland
rather than islands of archipelago.”).

25 ⁸³⁹ *In re 2011 Redistricting Cases*, 294 P.2d at 1034.

26 ⁸⁴⁰ *In re 2011 Redistricting Cases*, 2013 WL 6074059, *27 (Alaska Super. Ct. Nov. 18,
2013).

1 expense of compactness and contiguity.

2 310. Alaska Supreme Court precedent forecloses Skagway’s argument that it
3 is only sufficiently socio-economically integrated with a *portion* of the City and
4 Borough of Juneau and therefore it can only be placed in a house district with that
5 portion of the borough. In *Kenai Peninsula Borough v. State*, the Court rejected the
6 borough’s argument that northern portions of the Kenai Peninsula Borough (Nikiski)
7 could not be included in a house district with South Anchorage because Nikiski
8 residents had minimal interactions with South Anchorage residents and instead
9 interacted with the commercial and entertainment areas of Anchorage.⁸⁴¹ The Court
10 agreed with the borough: “Our review of the evidence reveals that actual interaction
11 between the two areas is minimal.”⁸⁴² Nevertheless, the Court rejected the Borough’s
12 argument and agreed with the State that “South Anchorage and Anchorage should be
13 considered an indivisible area for the purpose of determining whether North Kenai’s
14 socio-economic ties with South Anchorage satisfy the constitutional mandate.”⁸⁴³
15 Specifically, the Court reasoned: “We think Kenai draws too fine a distinction between
16 the interaction of North Kenai with Anchorage and that of North Kenai with South
17 Anchorage.”⁸⁴⁴ Because areas within a borough are socio-economically integrated, a
18 community outside the borough’s socio-economical connections to a portion of that
19 borough are sufficient to place it with any portion of the borough: “Likewise, any
20 distinctions between Anchorage and South Anchorage are too insignificant to constitute
21 a basis for invalidating the state’s plan as unreasonable or arbitrary.”⁸⁴⁵

22 _____
23 ⁸⁴¹ *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1362 (Alaska 1987).

24 ⁸⁴² *Kenai Peninsula Borough v. State*, 743 P.2d at 1362.

25 ⁸⁴³ *Kenai Peninsula Borough*, 743 P.2d at 1362.

26 ⁸⁴⁴ *Kenai Peninsula Borough*, 743 P.2d at 1363.

⁸⁴⁵ *Kenai Peninsula Borough*, 743 P.2d at 1363 n.17.

1 311. Skagway argues that it lacks socio-economic ties with the north side of
2 CBJ because of an advisory vote on a road more than 20 years ago. But socio-economic
3 integration does not hinge on how people vote. The transportation and economic
4 connections between Skagway and CBJ are sufficient despite any historical
5 disagreements on an advisory vote.

6 312. House District 3 complies with the Section 6 requirements.

7 **2. Alaska’s Equal Protection Clause**

8 **i. Equal Protection Clause Rules**

9 313. “In the context of voting rights in redistricting and reapportionment
10 litigation, there are two principles of equal protection, namely that of ‘one person, one
11 vote’—the right to an equally weighted vote—and of ‘fair and effective
12 representation’—the right to group effectiveness or an equally powerful vote.”⁸⁴⁶ “The
13 former is quantitative, or purely numerical, in nature; the latter is qualitative.”⁸⁴⁷

14 **a. One Person, One Vote**

15 314. The “one person, one vote” principle is encompassed in the Equal
16 Protection Clause of the Alaska Constitution.⁸⁴⁸ The same concept is also reflected in
17 the redistricting standards of Article VI, § 6, which requires that house districts be “as
18 near as practicable to the quotient obtained by dividing the population of the state by
19 forty.”⁸⁴⁹

20 315. Under Alaska law, “minor deviations from mathematical equality” do not
21

22
23 ⁸⁴⁶ *Kenai Peninsula Borough*, 743 P.2d at 1366 (citations omitted).

24 ⁸⁴⁷ *Hickel v. Southeast Conference*, 846 P.2d 38, 47 (Alaska 1992) (citing *Kenai Peninsula
Borough*, 743 P.2d at 1366-67).

25 ⁸⁴⁸ Alaska Const. art. I, § 1.

26 ⁸⁴⁹ *See In re 2001 Redistricting Cases*, 44 P.3d 141, 145-46 (Alaska 2002) (discussing the
Article VI, § 6 “as near as practicable” standard).

1 implicate equal protection.⁸⁵⁰ The Alaska courts evaluate deviations by measuring the
2 maximum deviation across districts (either in a particular region or statewide)—
3 meaning “the sum of the absolute values of the two . . . districts with the greatest
4 positive and negative deviations.”⁸⁵¹

5 316. Although deviations of up to 10% were historically permissible without
6 any justification, the courts have recognized after the constitutional amendment to add
7 “as near as practicable,” that “newly available technological advances” have made it
8 possible to achieve lower deviations, particularly in urban areas where “population is
9 sufficiently dense and evenly spread” to allow for lower deviations without unduly
10 sacrificing compactness or socio-economic integration.⁸⁵²

11 317. Conversely, populations in excess of (or below) the ideal may be justified
12 if they result from preservation of ANCSA boundaries. Thus, a redistricting board’s
13 decision to follow an ANCSA boundary may be appropriate even if it results in a slight
14 deviation from the ideally proportioned house district population.⁸⁵³

15 318. Under Article VI, Section 6, the ideal quotient for the forty house districts
16 in the 2021 redistricting cycle is 18,335.

18
19 ⁸⁵⁰ *Hickel*, 846 P.2d at 47 (quoting *Kenai Peninsula Borough*, 743 P.2d at 1366).

20 ⁸⁵¹ *In re 2001 Redistricting Cases*, 44 P.3d at 145.

21 ⁸⁵² *In re: 2011 Redistricting Cases*, 2013 WL 6074059, at *5 (Alaska Super. Nov. 18,
2013) (citing *In re 2001 Redistricting Cases*, 44 P.3d at 145-46).

22 ⁸⁵³ *See Groh v. Egan*, 526 P.2d 863, 877 (Alaska 1974); Binkley Aff. ¶ 36 (“We heard
23 compelling testimony from Alaskans about the important connections among communities
24 within ANCSA regions, and there was wide support on our board for honoring ANCSA
25 boundaries to the best of our abilities in light of our constitutional mandate. Sealaska, Ahtna,
26 Doyon, Arctic Slope Regional Corporation, NANA, Bering Strait, Chugach, Bristol Bay,
Koniag, and Aleut are all either intact or largely intact within single house districts wrapping
around much of the state. Only Calista and CIRI are substantially divided up, and this is
because the large populations in those regions preclude the creation of house districts that unify
Calista and CIRI regions without placing some of the population of their regions in other
districts or including population from other regions in their districts.”).

1 **b. Fair and Effective Representation**

2 319. The second component of equal protection, the right to fair and effective
3 representation, addresses whether “the Board acted intentionally to discriminate against
4 the voters of a geographic area.”⁸⁵⁴ The right to fair and effective representation may
5 be implicated if members of a particular group are “fenced out of the political process
6 and their voting strength invidiously minimized.”⁸⁵⁵

7 320. Claims based on the right to fair and effective representation are often
8 referred to as vote-dilution claims. In regard to vote-dilution claims, the Alaska
9 Supreme Court has held that the Board “cannot intentionally discriminate against a
10 borough or any other ‘politically salient class’ of voters by invidiously minimizing that
11 class’s right to an equally effective vote.”⁸⁵⁶ Voters within an incorporated area like a
12 borough are a “politically salient class” of voters.⁸⁵⁷ It is a violation of Alaska’s Equal
13 Protection Clause for the Board to give unequal weight to voters because they reside
14 within an incorporated area.⁸⁵⁸ No Alaska court case recognizes a geographic equal
15 protection claim based on the pairing of two house districts within the same
16 incorporated area.

17 321. “[W]hen a reapportionment plan unnecessarily divides a municipality in
18 a way that dilutes the effective strength of municipal voters, the plan’s provisions will
19

20 _____
21 ⁸⁵⁴ *In re: 2011 Redistricting Cases*, 2013 WL 6074059, at *11 (citing *Kenai Peninsula*
Borough, 743 P.2d at 1372).

22 ⁸⁵⁵ *Hickel*, 846 P.2d at 49 (quoting *Gaffney v. Cummings*, 412 U.S. 735, 754 (1973)).

23 ⁸⁵⁶ *In re 2001 Redistricting Cases*, 44 P.3d 141, 144 (Alaska 2002).

24 ⁸⁵⁷ *See Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1370-73 (Alaska 1987) (holding
25 that the Board may not intentionally dilute the voting power of Anchorage voters to retain the
current balance between regional and Anchorage senate representation).

26 ⁸⁵⁸ *See id.*; *see also In re 2001 Redistricting Cases*, 2002 WL 34119573, *29 (Alaska
Super. Feb. 1, 2002).

1 raise an inference of intentional discrimination.”⁸⁵⁹ But such an inference “may be
2 negated by a demonstration that the challenged aspects of a plan resulted from
3 legitimate nondiscriminatory policies such as the article VI, section 6 requirements of
4 compactness, contiguity, and socio-economic integration.”⁸⁶⁰

5 322. Where a municipality has excess population that does not fill a complete
6 additional house district, the Alaska Supreme Court has directed in its anti-dilution rule
7 that, where possible, that excess population must all be placed into a single other
8 district.⁸⁶¹

9 323. In the *In re 2001 Redistricting Cases*, the Alaska Supreme Court
10 suggested a couple options to address the issue of excess Anchorage and Mat-Su
11 Borough populations.⁸⁶² One potential option offered by the Court was to overpopulate
12 each of the house districts by about 2%.⁸⁶³ The Court’s other proffered solution was to
13 pair the excess population with another socio-economically integrated neighbor, and
14 “that any neighboring areas north, east, [such as Valdez] or south of the combined
15 [Anchorage and Mat-Su] municipalities would meet the constitutional requirement of
16 relative socio-economic integration.”⁸⁶⁴ In offering these options, the Court concluded
17 that “this need to accommodate excess population would be sufficient justification to
18 depart from the antidilution rule.”⁸⁶⁵

19 324. “Where unconstitutional vote dilution is alleged in the form of statewide
20

21 ⁸⁵⁹ *In re 2001 Redistricting Cases*, 44 P.3d at 144 (emphasis added).

22 ⁸⁶⁰ *Id.*

23 ⁸⁶¹ *See in re 2001 Redistricting Cases*, 44 P.3d 141, 144 n.7 (Alaska 2002) (citing *Hickel*,
846 P.2d at 52).

24 ⁸⁶² *See id.*

25 ⁸⁶³ *See id.*

26 ⁸⁶⁴ *See id.*

⁸⁶⁵ *See id.*

1 political gerrymandering, the mere lack of proportional representation will not be
2 sufficient to prove unconstitutional discrimination.”⁸⁶⁶ The challenger must show that
3 the Board intentionally discriminated.⁸⁶⁷

4 325. A ruling of “unconstitutionality must be supported by evidence of
5 continued frustration of the will of a majority of the voters or effective denial to a
6 minority of voters of a fair chance to influence the political process.”⁸⁶⁸ “If there is not
7 evidence of any real impact on the political process then a claim that discriminatory
8 intent may be inferred from a particular action carries little weight.”⁸⁶⁹

9 326. Only after there is a showing that the Board acted intentionally to
10 discriminate against a geographic region or minority, must the Board “demonstrate that
11 its plan will lead to greater proportionality of representation.”⁸⁷⁰

12 327. The equal protection requirements of redistricting were built in to the
13 requirements for House Districts through the 1998 Constitutional Amendment.⁸⁷¹ As

14 _____
15 ⁸⁶⁶ *Kenai Peninsula Borough*, 743 P.2d at 1368.

16 ⁸⁶⁷ *Kenai Peninsula Borough*, 743 P.2d at 1372.

17 ⁸⁶⁸ *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 15 (Alaska Super. Feb. 1, 2002)
(quoting *Kenai Peninsula Borough*, 743 P.2d at 1368).

18 ⁸⁶⁹ *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 32 (“Most significant to the
19 court again is the fact that the evidence indicates that where Republican incumbents were
20 removed from a district to create an open seat, the Republicans still are considered likely to
21 win that seat. The best evidence of a discriminatory intent is the impact that the Board’s action
22 likely will have. If there is not evidence of any real impact on the political process then a claim
23 that discriminatory intent may be inferred from a particular action carries little weight.”).

24 ⁸⁷⁰ *Hickel*, 846 P.2d at 49.

25 ⁸⁷¹ *In re 2001 Redistricting Cases*, No. 3AN-01-8914CI, 2002 WL 34119573 (Alaska
26 Super. Feb. 01, 2002) (“At the outset, this court notes that the *Kenai Peninsula Borough* case
appears to be the only case in which the concept of geographical equal protection was applied.
When *Kenai Peninsula Borough* was decided there were few constraints on the redistricting
of senate districts other than the analysis inherent in equal protection analysis. The *Kenai
Peninsula Borough* court held that the provisions of Article VI, Section 6 of the Alaska
Constitution which set forth socio-economic integration, compactness and contiguity
requirements were inapplicable to redistricting and reapportionment of senate districts. Today,
in contrast, senate districts must be composed as near as practicable of two contiguous house
districts. Likewise, at the time *Kenai Peninsula Borough* was decided, multi-senate districts

1 concerning the Equal Protection Clause of the Alaska Constitution, case law predating
2 the 1998 Amendment, such as *Kenai Peninsula Borough v. State*,⁸⁷² should be analyzed
3 carefully because it concerns challenges to multi-member districts that lacked the added
4 senate district contiguity requirement of the 1998 Amendment.⁸⁷³

5 **ii. Conclusions of Law – Equal Protection Challenges**

6 328. There are two basic principles of equal protection in the context of voting
7 rights in redistricting: (1) “one person, one vote,” which is the right to an equally
8 weighted vote; and (2) “fair and effective representation,” which is the right to group
9 effectiveness or an equally powerful vote.⁸⁷⁴

10 **a. East Anchorage – Senate District K**

11 328. East Anchorage has not introduced any evidence that the populations of
12 House Districts 21 and 22 are such that anyone is being denied the right to “one person,
13

14 _____
15 were constitutionally permissible. Today, they are not. *See* Article VI, Section 4. Thus at the
16 time *Kenai Peninsula Borough* was decided there were few constraints on the manner by
17 which the senate districts could be drawn and, as a result, the opportunity to gerrymander such
18 districts was high. The equal protection analysis used in *Kenai Peninsula Borough* appears to
be an effort by the Alaska Supreme Court to restrict the then nearly unfettered ability to draw
senate districts. This problem has been reduced by the 1998 Amendment to the Alaska
Constitution.

19 The *Kenai Peninsula Borough* court favorably cited a portion of Justice Powell's dissent
20 in *Davis v. Bandemer*, 478 U.S. 109 (1986), in which Justice Powell suggested that the
21 constitutionality of an apportionment plan be tested according to a number of neutral criteria.
22 Several of these neutral factors are already embodied in the requirements for the drawing of
23 House Districts under Article VI, Section 6, and the fair and open procedures under which the
Redistricting Board must operate including the requirements of Article VI, Section 10, the
Open Meetings Act and the Public Records Act. That such neutral factors are already required
for House Districts further suggest that the *Kenai Peninsula Borough* court may have been
concerned primarily with the then unfettered ability of the Redistricting Board to create multi-
member Senate Districts without any constraint whatsoever.”).

24 ⁸⁷² 743 P.2d 1352 (Alaska 1987).

25 ⁸⁷³ *See supra* n. 870.

26 ⁸⁷⁴ *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 14 (Alaska Super. Feb. 1, 2002)
(quoting in part *Kenai Peninsula Borough*, 743 P.2d at 1366).

1 one vote.” Indeed, House District 21 (South Muldoon) has 18,414 people in it and
2 House District 22 (Eagle River) has 18,204 people in it, meaning House District 21
3 enjoys a 209 person advantage over House District 22.⁸⁷⁵

4 329. Nor has East Anchorage made any showing that Senate District K will
5 deny anyone the right to fair representation. Indeed, at the trial, East Anchorage’s
6 expert witness conceded that House District 21 is a swing district that votes for
7 Republican Party candidates in two-thirds of elections and votes for Democratic Party
8 candidates in one-third of elections.

9 330. There is no geographic discrimination as a matter of law because House
10 Districts 21 and 22 are wholly within the same geographic and incorporated area: the
11 Municipality of Anchorage. For purposes of equal protection analysis, voters within
12 the Municipality of Anchorage, whether in Muldoon or Eagle River, are geographically
13 the same: urban voters residing within an incorporated local government boundary.

14 331. There is *no* evidence that the Board intended to discriminate against
15 anyone—residents of South Muldoon, Eagle River or elsewhere—in creating Senate
16 District K. Senate District K results in three senators who have Muldoon constituents,
17 and only two senators with Eagle River constituents.

18 332. The Board’s Senate District K does not violate Alaska’s Equal Protection
19 Clause.
20

21 **b. Mat-Su and Valdez – House Districts 25-30**

22 333. The Mat-Su Plaintiffs allege that House Districts 25-30 in the Mat-Su
23 Borough are over-populated, implicating residents’ right to an equally weighted vote.
24 But the small population deviations in the Final Map—just 2.66% for the most
25

26 ⁸⁷⁵ ARB007243 (Population Deviation Table).

1 populous district the Borough complains of—do not come close to making out a claim
2 for violation of the “one person, one vote” principle. No court decision in Alaska has
3 ever struck down a district with a deviation of 2.66% or smaller, and there does not
4 appear to be any reason to depart from past precedent here.

5 334. The goal of “one person, one vote” is “substantial equality of population
6 among the various districts.”⁸⁷⁶ This principle is also reflected in Article VI, § 6, in the
7 requirement that House districts be “as near as practicable to the quotient obtained by
8 dividing the population of the state by forty.”⁸⁷⁷ Under Alaska law, “minor deviations
9 from mathematical equality” do not implicate equal protection.⁸⁷⁸ The Alaska courts
10 evaluate deviations by measuring the maximum deviation across districts (either in a
11 particular region or statewide)—meaning “the sum of the absolute values of the two
12 . . . districts with the greatest positive and negative deviations.”⁸⁷⁹

13 335. Although deviations of up to 10% were historically permissible without
14 any justification, “newly available technological advances” have made it possible to
15 achieve lower deviations, particularly in urban areas where “population is sufficiently
16 dense and evenly spread” to allow for lower deviations without unduly sacrificing
17 compactness or socio-economic integration.⁸⁸⁰ Thus, in the 2001 redistricting cycle,
18 for instance, the Alaska Supreme Court found a 9.5% deviation across districts within
19 Anchorage to be unconstitutional but “upheld deviations of up to 5%” in other
20

21 ⁸⁷⁶ *Id.* (quoting *Reynolds v. Sims*, 377 U.S. 533, 579 (1964)).

22 ⁸⁷⁷ *See In re 2001 Redistricting Cases*, 44 P.3d 141, 145-46 (Alaska 2002) (discussing the
23 Article VI, § 6 “as near as practicable” standard).

24 ⁸⁷⁸ *Hickel v. Southeast Conference*, 846 P.2d 38, 47 (Alaska 1992) (quoting *Kenai
Peninsula Borough*, 743 P.2d at 1366).

25 ⁸⁷⁹ *In re 2001 Redistricting Cases*, 44 P.3d at 145.

26 ⁸⁸⁰ *In re: 2011 Redistricting Cases*, 2013 WL 6074059, at *5 (Alaska Super. Nov. 18,
2013) (citing *In re 2001 Redistricting Cases*, 44 P.3d at 145-46).

1 regions.⁸⁸¹ The Redistricting Board in the 2011-2013 cycle focused on achieving
2 extremely small deviations across the state, resulting in a statewide total deviation of
3 just 4.2% in the final map.⁸⁸² The Superior Court specifically found that those
4 deviations were “very low, lower than necessary to pass constitutional muster”⁸⁸³ and
5 noted that the goal of achieving low deviations “must live in harmony with the other
6 constitutional requirements.”⁸⁸⁴

7 336. Here, the population deviations challenged by the Mat-Su Plaintiffs fall
8 well within the range of deviations that the courts have accepted as “minor” and
9 requiring no special justification. The highest deviation of the districts challenged by
10 the Mat-Su Plaintiffs—House District 25—is just 2.66%.⁸⁸⁵ Among the Mat-Su Region
11 districts, the difference between the highest-population Mat-Su district (District 25) and
12 the lowest-population Mat-Su district (District 30, at 1.10%) is merely 1.56%.⁸⁸⁶ And
13 when compared to the Anchorage districts that the Mat-Su Plaintiffs point to as
14 evidence of unequal voting power, the evidence in the record shows that the deviation
15 between the highest-population Mat-Su district and the lowest-population Anchorage
16 district (District 24, at -1.65%) is just 4.31%.⁸⁸⁷ As a measure of total deviation across
17 different regions, this is well within the range of constitutional permissibility.

18 337. The Mat-Su Plaintiffs have also suggested that their equal protection
19

20
21 ⁸⁸¹ *Id.* (citing *In re 2001 Redistricting Cases*, 44 P.3d at 145-46).

22 ⁸⁸² *Id.*

23 ⁸⁸³ *Id.* at *7.

24 ⁸⁸⁴ *Id.* at *6. Even a quick eyeballing of the 2013 and 2021 maps shows that the low
deviations in the 2013 map often came at the expense of compactness.

25 ⁸⁸⁵ ARB007234 (Population tabulation for 2021 Proclamation).

26 ⁸⁸⁶ *Id.*

⁸⁸⁷ *Id.*

1 rights are implicated by the fact that the Borough has seen higher rates of population
2 growth than other parts of the state, and thus the Borough’s districts may hold additional
3 population by the end of the 10-year redistricting cycle. This argument is wrong as a
4 matter of law. The Board is constitutionally charged with drawing districts “based upon
5 the population within each house and senate district as reported by the official decennial
6 census of the United States.”⁸⁸⁸ The Board is not permitted to make adjustments to
7 those numbers.⁸⁸⁹ Any anticipated future population growth—which may or may not
8 actually occur—is not a proper subject of consideration and thus cannot implicate equal
9 protection issues in the Board’s Final Map.

10 338. The second component of equal protection, the right to fair and effective
11 representation, “recognizes the danger that racial and political groups will be ‘fenced
12 out of the political process and their voting strength invidiously minimized.’”⁸⁹⁰ No
13 such discrimination occurred here.

14 339. The House districts drawn by the Board do not give rise to an inference
15 of intentional discrimination because they do not unnecessarily dilute either Valdez or
16 Mat-Su Borough residents’ votes. And even if such an inference could be drawn, it is
17 amply rebutted by evidence in the record showing the legitimate, non-discriminatory
18 reasons for the Board’s decisions in drawing the disputed districts.

19 340. The Mat-Su Plaintiffs suggest that the votes of borough residents have
20 been unconstitutionally diluted by the slight over-population of the House districts
21 within the borough. But here again, the evidence supports the conclusion that that these
22 districts are the result of carefully balanced constitutional criteria, not any sort of
23

24 ⁸⁸⁸ Alaska Const. art. VI, § 3.

25 ⁸⁸⁹ *Id.*; see also AS 15.10.200.

26 ⁸⁹⁰ *Hickel*, 846 P.2d at 49 (quoting *Gaffney v. Cummings*, 412 U.S. 735, 754 (1973)).

1 intentional discrimination.

2 341. The Mat-Su Borough has not argued that it has been unconstitutionally
3 split, as is the case in a traditional vote dilution claim. Rather, with respect to overall
4 representation, the Mat-Su Borough appears to have gotten what it asked for. The Mat-
5 Su Borough submitted public testimony stating that it wished to have six House
6 districts⁸⁹¹—despite having population equivalent to only 5.84 districts⁸⁹²—and in the
7 Final Map the Mat-Su Borough indeed controls six districts, four of which are wholly
8 within the Mat-Su Borough and two of which also bring in population from outside the
9 Borough.⁸⁹³ If anything, then, the Mat-Su Borough will be slightly over-represented in
10 the House.

11 342. Nonetheless, the Mat-Su Borough has argued that the minor over-
12 population of its six districts was the result of discrimination against the Borough. But
13 there is simply no evidence of such discrimination. The evidence demonstrates that the
14 slight over-population of the Mat-Su districts results from bringing the 4,000 residents
15 of Valdez into District 29 with the eastern portion of the Mat-Su Borough, which was
16 constitutionally permissible and even constitutionally *required* in light of competing
17 § 6 factors elsewhere.⁸⁹⁴ There is evidence in the record showing that the Board even
18 considered making a change to pair Valdez with Anchorage, which would have flipped
19 the population ratios that the Mat-Su Borough complains about (over-populating the
20 Anchorage districts and under-populating the Mat-Su Borough). The record
21

22
23 ⁸⁹¹ ARB000662-ARB000667.

24 ⁸⁹² *Borromeo Aff.* ¶ 14; *see also* Mat-Su Plaintiffs’ First Amended Compl. ¶ 15.

25 ⁸⁹³ ARB000017 (overview of Mat-Su districts), ARB000043-ARB000048 (Districts 25-
30).

26 ⁸⁹⁴ *See, e.g.*, ARB009210-ARB009224 (Nov. 4 Meeting Tr. at 40:2–54:17) (discussing
breaking FNSB boundary, including implications for Valdez and Mat-Su districts).

1 demonstrates that the potential Anchorage pairing was abandoned because it was less
2 compact and was not feasible within other constitutional parameters, not because of
3 any intent to discriminate against the Mat-Su Borough.⁸⁹⁵ The record is simply devoid
4 of any evidence of such discrimination, and the Court concludes that the Board acted
5 properly in making these choices.

6 343. Valdez’s equal protection claim is that its voters will be drowned out by
7 voters in the Mat-Su Borough. But no matter what district Valdez is placed in, nothing
8 can change the fact that Valdez has only 4,000 residents; as such, it will be a minority
9 voice in *any* district.⁸⁹⁶ Valdez’s City Clerk acknowledged as much at trial, testifying
10 that Valdez’s population of “[a] little under 4,000” is “not enough people” to make a
11 house district; Valdez must necessarily be paired with approximately 14,335 other
12 people.⁸⁹⁷ “[G]roups of voters are not constitutionally entitled to proportional
13 representation absent invidious discrimination.”⁸⁹⁸ Here, there is no evidence
14 demonstrating that Valdez’s representation is disproportionate within its district. Nor,
15 in the absence of disproportionality, is there any evidence that Valdez’s placement is
16 the result of discrimination.

17 344. Indeed, the evidence supports precisely the opposite conclusion. As
18 noted above, the record demonstrates that the pairing of Valdez with the Mat-Su
19 Borough in District 29 resulted from the need to balance the competing demands of the
20 § 6 factors across interconnected areas of the state. The ultimate decision to maintain
21

22
23 ⁸⁹⁵ *E.g.*, ARB009207 (Nov. 4 Tr. at 37:3-7); ARB009333-ARB009334 (Nov. 4. Tr. at
163:24-164:5); ARB007862 (Nov. 5 Tr. at 5:1-22).

24 ⁸⁹⁶ *See* ARB004355 (2020 census population for Valdez No. 1 (1,511), Valdez No. 2
(987), and Valdez No. 3 (1,532)).

25 ⁸⁹⁷ Jan. 28 Trial Tr. 1249:15–1250:2.

26 ⁸⁹⁸ *In re 2001 Redistricting Cases*, 44 P.3d at 146.

1 the configuration of Valdez and the eastern Mat-Su Borough together in the same
2 district was a direct result of these competing needs, not invidious discrimination. As
3 the Board fully recognized, the placement of Valdez has been a perpetual challenge
4 because it is in many ways a community with unique interests, and it is large enough to
5 have significant population impacts on any district it is placed in, yet not large enough
6 to control its own district.⁸⁹⁹ The Mayor of Valdez specifically testified that Valdez is
7 “very unique” and somewhat geographically isolated, “a distance from everyone.”⁹⁰⁰
8 Faced with this challenge, the Board chose a rational and constitutionally satisfactory
9 option that does not impermissibly dilute Valdez residents’ votes.

10 345. To the extent that Valdez asserts a vote dilution claim with respect to
11 Senate District O, that claim must fail for the same reasons.

12 346. The Court accordingly concludes that House Districts 25-30 do not
13 violate Alaska’s Equal Protection Clause.

14 **c. Calista – House Districts 37-39**

15 347. There is no evidence that House Districts 37-39 (where all of the Calista
16 region villages are located) are overpopulated so as to reduce the weight of the Calista
17 region’s vote. If anything, the Calista region house districts are slightly underpopulated.
18 Calista has not shown that the Board’s Final Plan violates its right to “one person, one
19 vote.”
20

21 348. Nor is there any evidence that Calista is being denied the right to fair and
22 effective representation because of the composition of House Districts 37-39. Calista

23
24 ⁸⁹⁹ Binkley Aff. ¶¶ 23-24; *see also In re: 2011 Redistricting Cases*, 2013 WL 6074059, at
25 *16 (“The Board admits they struggled with whether to adopt a Valdez-Anchorage-Richardson
26 Highway District or to split the Mat-Su Borough twice” to create a Valdez-Mat-Su district, the
eventual District 9 in the 2013 Proclamation.).

⁹⁰⁰ Jan. 24 Trial Tr. 275:19 (Scheidt Cross).

1 did not elicit any testimony or submit any evidence at trial that the Board intentionally
2 discriminated against any of the Calista villages in drawing House Districts 37-39.
3 Indeed, to the contrary, Calista’s preferred house districts placed Calista region villages
4 in the same three house districts that the Board placed all Calista region villages.

5 349. It is settled law that populations within an organized borough should be
6 kept together to the extent possible to form house districts comprised of the borough
7 populace, essentially that the borough boundaries should not be broken if the borough’s
8 population can fit into a single or multiple districts without significant under or
9 overpopulation. It is also settled law that ANCSA boundaries may be considered in
10 mapping boundaries, but ANCSA boundaries are not local government boundaries and
11 the precedent discouraging the breaking of borough boundaries is not applicable to
12 ANCSA boundaries.

13 350. Calista requested that communities with significant socio-economic ties
14 to Bethel and which were located near Bethel, be moved out of the Bethel House
15 District 38 and into the Aleutian/Dillingham District not to increase contiguity or
16 compactness, but to increase Calista’s voting strength in the resulting senate districts.
17 There is no basis in law for the approach proposed by the Calista Plaintiffs. Permitting
18 political gerrymandering at the expense of the constitutional requirements clearly runs
19 afoul of the Alaska Constitution.

20 351. The Board did not geographically discriminate and dilute the voting
21 power of rural voters by pairing House District 37 and House District 38 to create
22 Senate District S because both of those districts are comprised of rural communities.
23 There is not a geographic dilution of a rural or urban vote.

24 **d. Skagway – House District 3**

25 352. Skagway makes similar equal protection arguments to those of Valdez.
26 Specifically, Skagway argues that its placement in House District 3 with the northern

1 portion of the City and Borough of Juneau (CBJ) will drown out its voice, including its
2 strong support for cruise ship traffic, its opposition to the non-existent road between
3 the CBJ and Skagway, and its support of tourism.

4 353. Skagway has not made a one person, one vote case. Its roughly 1,000
5 voters will have the same weight regardless of the house district in which Skagway is
6 placed.

7 354. Skagway’s fair representation claim flounders on the basis that Skagway
8 is socio-economically integrated with the entirety of the City and Borough of Juneau.
9 As such, it cannot be a violation of equal protection to place Skagway in a house district
10 with any portion of the CBJ. Moreover, Skagway adduced no evidence at trial that the
11 Board discriminated against Skagway by placing it in a house district with the portion
12 of the CBJ closest to Skagway.

13 355. At trial, Skagway elicited testimony from its witnesses about opposition
14 to a non-existent road between the City and Borough of Juneau and Skagway,⁹⁰¹ and
15 cross-examined Member Simpson who took the lead in drawing House District 3 about
16 his and his wife’s opinions about the non-existent road.⁹⁰² Skagway presented voting
17 results from an advisory vote in the early 2000s that showed, generally, that 20 years
18 ago residents of Skagway opposed a road being built between the CBJ and Skagway,
19 that voters in the CBJ slightly favored not building such a road, and that some precincts
20 in the northern portion of the CBJ slightly favored such a road.⁹⁰³

21 356. But Skagway’s attempt to show that the issue of a non-existent road does
22

23 ⁹⁰¹ Feb. 3, 2022 Trial Tr. 1878:22-25, 1879:1-19 (Cremata rebuttal direct); Feb. 3, 2022
24 Trial Tr. 1883:6-20 (Ryan rebuttal direct); Feb. 3, 2022 Trial Tr. 1890:9-24 (Wrentmore
rebuttal direct).

25 ⁹⁰² Feb. 3, 2022 Trial Tr. 1754:14-22 (Simpson cross-examination).

26 ⁹⁰³ See Skagway Trial Exhibit 2013; see also Feb. 3 2022 Trial Tr. 1761:11-16, 18-25,
1762:5-21;1763:10-22; 1764-1765 (Simpson cross-examination).

1 not prove that its placement in House District 3 will result in its voters being denied
2 fair and effective representation. Simpson testified, and there is no evidence to the
3 contrary, that he drew House District 3 without regard to a non-existent road between
4 the CBJ and Skagway.⁹⁰⁴ Member Simpson’s personal opinions, his wife’s personal
5 opinions, and the results of an advisory vote from 20 years ago are not proof that House
6 District 3 was drawn in a way that discriminates against Skagway.

7 357. House District 3 is comprised of areas that are socio-economically
8 integrated with each other, and it is not a violation of equal protection for them to be in
9 a house district with other Alaskans who have different opinions on current political
10 issues, let alone opinions from 20 years ago.

11 **3. Article VI, Section 10**

12 **i. Section 10 – Rules**

13 358. The Mat-Su, Valdez, and Skagway Plaintiffs assert that the Board
14 violated Section 10 in various ways.

15 359. Section 10 reads in, relevant part:

16 Redistricting Plan and Proclamation. (a) Within thirty days after the
17 official reporting of the decennial census of the United States or thirty
18 days after being duly appointed, whichever occurs last, the board shall
19 adopt one or more proposed redistricting plans. The board shall hold
20 public hearings on the proposed plan, or, if no single proposed plan is
21 agreed on, on all plans proposed by the board. No later than ninety days
22 after the board has been appointed and the official reporting of the
decennial census of the United States, the board shall adopt a final
redistricting plan and issue a proclamation of redistricting. . . .⁹⁰⁵

23 ⁹⁰⁴ Feb. 3, 2022 Trial Tr. 1840:10-19 (Simpson redirect) (“Q: You heard a lot of questions
24 this morning about proposed road out of Juneau; do you recall some of that discussion? A: I
25 do. Q: And did road that’s not built influence how you drew House Districts 3 and 4? A: No.
Even if that road were to proceed, it would be a project that would [t]ake many years to – to
realize. It just doesn’t enter into what we’re doing here.”).

26 ⁹⁰⁵ Alaska Const. art. VI, § 10.

1
2 360. The U.S. Census Bureau’s release of results triggered the Board’s
3 obligation to adopt a proposed plan or plans within 30 days of August 12, 2021.

4
5 361. The Alaska Constitution gives the Board 90 days from the release of the
6 U.S. Census data to adopt a final redistricting plan.⁹⁰⁶

7 **ii. Section 10 – Conclusions of Law**

8 362. The Board’s adoption of proposed plans v.1 and v.2 on September 9,
9 2021, satisfied the time limitations for adopting a proposed plan set out in Article VI,
10 Section 10 of the Alaska Constitution.

11 363. The Board’s adoption of its final map and issuance of the 2021
12 Proclamation of Redistricting on November 10, 2021 complied with the time
13 limitations set out in Section 10 of Article VI of the Alaska Constitution.

14 364. The Board’s public hearings on September 17 and September 20, 2021
15 satisfied the requirements of Article VI, Section 10 that the Board hold public hearings
16 on its proposed plans adopted within 30 days of receipt of the census data.⁹⁰⁷

17 365. Even though not required by Section 10, the Board held numerous public
18 hearings on six proposed plans and four sets of proposed senate pairings, including
19 those adopted after the initial 30-days.
20

21 366. Article VI, Section 10 of the Alaska Constitution does not require the
22

23 ⁹⁰⁶ Alaska Const. art. VI, § 10(a).

24 ⁹⁰⁷ *In re 2001 Redistricting Cases*, 2002 WL 34119573, at p. 22 (Alaska Sup. Ct. Feb. 1,
25 2002) (“Defendants contend, and this court agrees, that Article VI, Section 10 requires that
26 public hearings be held only on the plan or plans adopted by the Board within thirty days of
the reporting of the census.”); Jan. 27, 2022 Trial Tr. 1055:15-25 (Torkelson cross discussing
Board proposed map v.4 being on the wall at every public roadshow stop).

1 Board to hold a public hearing on the final plan as adopted.

2 367. The East Anchorage Plaintiffs acknowledge that the Board complied with
3 Section 10 regarding house districts, but assert the Board failed to comply with Section
4 10 in regard to senate pairings because it did not sufficiently deliberate the proposed
5 Senate District K in public session.⁹⁰⁸

6 368. East Anchorage’s claim fails because nothing in Section 10 requires the
7 Board to take public comment on its final proposed house districts or senate pairings.
8 Rather, Section 10 only requires the Board hold public hearings on its proposed plans,
9 which East Anchorage does not dispute occurred during the Board’s September 9, 17,
10 and 20 meetings, and on its public outreach tour across the state between September 27
11 and November 1, 2021.

12 369. Moreover, as of September 20, 2021, the East Anchorage Plaintiffs and
13 all members of the public were on notice that the Board was considering pairing house
14 districts in Eagle River and Muldoon. On September 20, the Board adopted the AFFER
15 plan, which included a senate pairing of South Muldoon with Eagle River in proposed
16 Senate District J.⁹⁰⁹

17 370. East Anchorage’s claim that the Board did not discuss Senate District K
18 in public session before its adoption is not borne out in the evidence. To the contrary,
19 Board Member Marcum raised that pairing when House District 21 (South Muldoon)
20 was numbered 18 and House District 22 (Eagle River) as numbered 24. The proposed
21 pairing of House Districts 21 and 22, as well as House Districts 23 and 24, were made
22

23
24 ⁹⁰⁸ East Anchorage’s Pretrial Brief/Opening Statement, at 12 (“While the Board plan
25 complied with this provision with regard to house districts, no proposed plan including the
26 East Anchorage/Eagle River Senate Pairings was properly and timely presented to the public
before its adoption, which resulted in a violation of this constitutional provision.”).

⁹⁰⁹ ARB001232; ARB001236.

1 in open session at the November 8, 2021 meeting by Member Marcum.⁹¹⁰ Section 10
2 does not require the final pairings adopted be subject to public hearing. Even if it did,
3 the public was on notice of the proposed pairing since September 20, 2021, and had the
4 ability to comment on the pairings at every meeting the Board held since that date,
5 including the November 8, 2021 meeting. Multiple East Anchorage Plaintiffs and their
6 supporters took that opportunity and offered testimony at the November 8, 2021
7 meeting. There was no Section 10 violation.

8 371. The Mat-Su, Valdez, and Skagway Plaintiffs claim that the Board
9 violated Section 10 of Article VI of the Alaska Constitution because the Board adopted
10 v.1 and v.2 within Section 10’s 30-day limit but then adopted additional plans.

11 372. Plaintiffs admit that the Board adopted two proposed plans within 30 days
12 of receiving the U.S. Census results: Board Composite v.1 and Board Composite v.
13 2.⁹¹¹ The undisputed evidence established that the Board held two public hearings on
14 those plans on September 17, 2021⁹¹² and September 20, 2021.⁹¹³ The Board adopted
15 a final plan within 90 days of receiving the U.S. Census results, or by November 10,
16

17
18 ⁹¹⁰ ARB006660-ARB006702 (discussing senate pairings in Anchorage, including former
19 House District 18 (final House District 21) and House District 24 (final House District 22));
ARB006687 at 191:9-17.

20 ⁹¹¹ Trial Brief of Municipality of Skagway Borough, at 17 (Jan. 18, 2022); Trial Br. Mat-
21 Su, at 2 (“At the end of the September 9, 2021 work session, the Board adopted two proposed
22 maps, which the Board identified as V.1 and V.2. These are the only two maps adopted by the
Board within the 30-day constitutional requirement.”); Trial Br. of Valdez, at 3 (“Even with
only five days left to jointly map forty districts in Alaska, the Board took only three of those
five days and adopted two plans on September 9, 2021 . . .”).

23 ⁹¹² ARB000166-ARB000174 (Board Meeting Minutes September 17, 2021). There was
24 public testimony at the outset of the September 17 meeting about Board Composite v.1 and
Board Composite v.2, *see* ARB000167-ARB000170, and at the end of the meeting, *see*
ARB000173.

25 ⁹¹³ ARB000175-ARB000192 (Board Meeting Minutes September 20, 2021). There was
26 public testimony at the outset of the September 20 meeting, *see* ARB000175-ARB000176, and
at the close of the meeting, *see* ARB000192.

1 2021.⁹¹⁴

2 373. “Article VI, Section 10 requires that public hearings be held only on the
3 plan or plans adopted by the Board within thirty days of the reporting of the census.”⁹¹⁵
4 The Board complied with this requirement by adopting Board Composite v.1 and v.2
5 on September 9, which was within 30 days of receiving the U.S. Census results on
6 August 12, 2021. The Board further complied with this provision by holding two public
7 hearings—on September 17 and September 20—where the public could comment on
8 Board Composite v.1 and v.2. The Board also adopted a final redistricting plan within
9 90 days of receiving the U.S. Census data by adopting its final plan on November 10.
10 The Board adopted proposed plans within 30 days of receiving the U.S. Census results,
11 held public hearings on those proposed plans, and adopted a final plan within 90 days
12 of receiving the U.S. Census results. The Board did not violate Section 10. If anything,
13 the Board engaged in a more robust process than required by the constitution when it
14 continued to amend its plans and shared those in an extensive public road show. The
15 Court rejects Valdez’s invitation to read Section 10 in a manner that harms public
16 engagement or discourages an iterative discussion between the Board and the public.

17 **4. Alaska’s Open Meetings Act**

18 **i. Open Meetings Act – Rules**

19 374. The Alaska Redistricting Board is born out of the Constitution and its
20 authority is not a delegation of authority from one of the other branches of state
21 government.

22 _____
23 ⁹¹⁴ ARB000210-ARB000222 (Board Meeting Minutes September 8-10, 2022). On
24 November 10, 2021, three members of the Board signed adopting the Final Plan and
25 Proclamation of Redistricting. *See* ARB000218-ARB000222; *see also* ARB000002-
ARB0000115 (Alaska Redistricting Board Final Plan and Proclamation of Redistricting dated
November 10, 2021).

26 ⁹¹⁵ *In re 2001 Redistricting Cases*, 2002 WL 34119573 (Alaska Sup. Ct. Feb. 1, 2002).

1 375. This Court has ruled that the Board is subject to the Open Meetings
2 Act.⁹¹⁶ The Board adopted a policy to follow the Open Meetings Act’s notice
3 requirements and conducted itself as if the Act applied to it.⁹¹⁷

4 376. The Act requires “[a]ll meetings of a governmental body of a public entity
5 of the state are open to the public except as otherwise provided by this section or another
6 provision of law”⁹¹⁸ A “meeting” is defined as “a gathering of members of a
7 governmental body when . . . more than three members or a majority of the members,
8 whichever is less, are present.”⁹¹⁹ The Open Meetings Act is not violated by individual
9 lobbying of Board members and there is nothing improper about this.⁹²⁰

10 377. The Act provides that certain matters may be considered in private,
11 executive session, including “matters which by law, municipal charter, or ordinance are
12 required to be confidential.”⁹²¹ This exception applies to attorney-client
13 communications regarding litigation risks.⁹²² Litigation over the final plan adopted by
14 the Board can certainly be anticipated during the redistricting process.

15 378. Contacts between members of the public and individual Board members
16 are not improper; indeed, one-on-one contact with the public has been a part of the
17 Board’s process during past cycles.⁹²³ “There is nothing improper with individual
18

19
20 ⁹¹⁶ See Order re Motion for Rule of Law –Attorney Client Privilege, at 10-12, dated Jan.
18, 2022.

21 ⁹¹⁷ ARB000137, ARB000420-ARB000423.

22 ⁹¹⁸ AS 44.62.310(a).

23 ⁹¹⁹ AS 44.62.310(h)(2)(A).

24 ⁹²⁰ *In re 2001 Redistricting Cases*, 2002 WL 34119573 (citing *Brookwood Area
Homeowner’s Ass’n v. Anchorage*, 702 P.2d 1317, 1323 n.7 (Alaska 1985)).

25 ⁹²¹ AS 44.62.310(c)(3).

26 ⁹²² *Cool Homes, Inc. v. Fairbanks North Star Borough*, 860 P.2d 1248, 1261 (Alaska
1993).

⁹²³ *In re 2001 Redistricting Cases*, No. 3AN-01-8914CI, 2002 WL 34119573, at 42

1 Board members discussing the redistricting plans with members of the public, because
2 the concept of *ex parte* communications does not apply to the Board.”⁹²⁴ Thus, even if
3 Board members “met individually with members of the public . . . [t]he Open Meetings
4 Act is not violated by such individual lobbying of Board members.”⁹²⁵ This rule applies
5 equally to any communications with Board members, including communications via
6 email, text message, or through other means.

7 379. Violations of the Act do not automatically void an action taken by the
8 body.⁹²⁶ Rather, before a court may void a government body’s action because of a
9 violation of the Act, it must consider the factors enumerated in the Act to determine if
10 voiding the action is in the public interest.⁹²⁷

11 **ii. Open Meetings Act – Conclusions of Law**

12 380. Skagway and Valdez assert that the Board violated the Open Meetings
13 Act and that those violations should render its final plan invalid. Specifically, Skagway
14 and Valdez claims that the Board: (1) failed to identify with sufficient specificity why
15 the Board was entering executive session, (2) used executive session for improper
16 purposes, (3) made substantive redistricting decision in executive session, (4)
17 improperly met in executive session multiple times during the September 7-9 Board
18 meetings, (5) “hastily” adopted Board Composite v.1 and v.2, (6) replaced v.1 and v.2
19 with v.3 and v.4 without public comment, (7) used email communications among a
20

21 _____
22 (Alaska Super. Feb. 01, 2002) (“Virtually every Board member met individually with members
23 of the public. Indeed the Board considered this a useful process to gather information and
24 receive public input.”).

23 ⁹²⁴ *Id.* at 41.

24 ⁹²⁵ *Id.* at 42.

25 ⁹²⁶ *See In re 2001 Redistricting Cases*, 2002 WL 34119573, at 21 (citing *Hickel*, 846 P.2d
26 at 56-57).

26 ⁹²⁷ AS 44.62.310(f).

1 quorum of Board members to conduct Board business, (8) made Board decisions
2 outside of the public eye, and (9) adopted a Final Plan that was not one of the Board's
3 proposed plans and without adequate public testimony.

4 381. Skagway and Valdez do not explain how claims (5), (6), and (9) pertain
5 to the Open Meetings Act at all. Those claims appear to be recycled arguments from
6 Skagway's § 10 claims. Nothing in the Open Meetings Act prohibited the Board from
7 adopting Board Composite v.1 and v.2 on September 9 (claim (5)); replacing v.3 and
8 v.4 after receiving public comment on September 17 and 20 (claim (6)); or from
9 adopting a Final Plan not subject to public hearings (claim (9)). Skagway has not
10 shown how these claims amount to violations of the Act, or put forward evidence to
11 support its claim that the Board violated the Act in these ways.

12 382. Skagway and Valdez have not shown that the Board violated the Act by
13 conducting its business through email communications with a quorum of Board
14 members (claim (7)) or that it made decisions outside of the public eye (claim (8)).
15 These claims have no evidentiary support.

16 383. The Board did not violate the Open Meetings Act through its use of
17 executive sessions (claims (1)-(4)). Skagway and Valdez did not provide any evidence
18 that any redistricting decision was made in executive session. The Board's records
19 show that the proposed plans were debated and adopted in public session of the Board's
20 meetings on September 9, 17, and 20, 2021, the final plan was debated and adopted in
21 open session of the Board's meetings on November 2-5, 2021, and that the senate
22 pairings were debated and adopted in open sessions of the Board's meetings on
23 November 8 and 9, 2021.

24 384. The Board provided adequate advance public notice of all of its
25
26

1 meetings.⁹²⁸

2 385. There is no evidence that the Board improperly conducted votes.

3 386. There is no evidence that the Board conducted secret deliberations.

4 387. There is no evidence the Board conducted serial meetings.

5 388. There is no evidence the Board improperly withheld documents used in
6 formulating the redistricting plan from the public.

7
8 389. East Anchorage's has not shown that the Board violated the Open
9 Meetings Act in adopting Senate District K or any other senate districts. The Board
10 entered executive session on November 8 and November 9, 2021 for permissible advice
11 of counsel on potential litigation risks of senate pairings proposed first in open
12 session.⁹²⁹ The Board moved in open session, provided the subject of the executive
13 session, and received candid legal advice about the near-certain litigation over the final
14 proposed plan.⁹³⁰ The testimony overwhelmingly supports that the Board did not debate
15 pairings during the executive session or propose pairings that were not proposed in
16 open session before entering executive session.⁹³¹ There is no evidence that the Board
17

18 ⁹²⁸ ARB004415-ARB004417 (Alaska Redistricting Board website capture of Public
19 Hearing Tour, listing dates, locations, and linking State Public Notice system for formal notice
20 of hearings); ARB004377 (Board Meeting Information including links to public notices for
21 meetings); ARB004391(Doyon Coalition Senate Pairings Chart); Jan. 31, 2022 Trial Tr.
22 1434:20-24 (Ruedrich cross); Jan. 27, 2022 Trial Tr. 1050:21-1051:12 (Torkelson cross: "For
23 formal public hearings, or public board meetings, which I think was your root question, we
24 would blast to our e-mail list, which had about 575-ish subscribers. So we would blast that
25 list, we would post it to the State of Alaska's public notice system, notice.alaska.gov. We
26 would post it to the legislative public notice system at akleg.gov. And we would usually try
and post that five to six days before the board was going to meet.").

⁹²⁹ ARB0006711-ARB0006713 (Transcript of November 8 Board Meeting).

⁹³⁰ ARB0006711-ARB0006713 (Transcript of November 8 Board Meeting).

⁹³¹ ARB006660-ARB006702 (discussing senate pairings in Anchorage, including former
House District 18 (final House District 21) and House District 24 (final House District 22));
Simpson Aff ¶ 34; Marcum Aff. ¶ 12; Binkley Aff. ¶ 55; Simpson Aff. ¶ 32 ("The chair called
the question after asking if there was any discussion and hearing that there was none. The

1 discussed or proposed pairings in executive session.

2 390. There is no evidence that the Board failed to provide a sufficient
3 statement of the subject matter of the executive session without divulging protected
4 information.

5 391. There has been no violation of the Open Meetings Act by the Board at
6 the November 8 or November 9, 2021 meetings.

7
8 392. Even had a violation occurred, this Court agrees with all of those before
9 it that when balancing the nine factors set out in Alaska Statute 44.62.310(f), the public
10 interest would not be served by voiding the constitutional redistricting plan because of
11 a procedural violation that was not willful, did not impact the constitutionality of the
12 Final Proclamation of Redistricting, would impact the Division of Elections, was not
13 one of numerous flagrant violations of the Act, and would be costly to the people of
14 Alaska to require the process be restarted, particularly with candidate filing deadlines
15 fast approaching.

16 **5. Alaska Constitution Due Process Challenges**

17 **i. Due Process – Rules**

18 393. With regard to redistricting, due process requires a meaningful
19 opportunity to participate in the redistricting process or to be heard.⁹³² This
20 participation is not unlimited.⁹³³

21 394. Nothing in Alaska law requires unlimited public comment or serial
22

23 _____
24 entire Board had engaged in discussion of numerous senate pairing options the day prior in a
25 lengthy public session about Anchorage senate districts.”).

26 ⁹³² *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 19 (“In addition, [t]he crux of
due process is opportunity to be heard and the right to adequately represent one’s interests.”)
(internal citations and quotations omitted).

⁹³³ *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 30.

1 hearings after the Board makes a final decision.

2 395. If this Court were to accept the Plaintiffs’ invitation to create new
3 standards not previously endorsed by the courts or stated expressly in the Alaska
4 Constitution, it would mean holding the Board to standards that did not exist at the time
5 of the Board’s proceedings. The Court declines to move the goalposts after-the-fact in
6 this manner.

7 **ii. Due Process – Conclusions of Law**

8 **a. East Anchorage Plaintiffs’ Noncognizable Substantive Due**
9 **Process Claim⁹³⁴**

10 396. No Alaska court has recognized a substantive due process right in the
11 redistricting process. Even absent such authority, the evidence demonstrates that the
12 Board complied with Article VI, Section 6, which sets out the constitutional
13 requirements for creating house and senate districts. Substantive due process does not
14 add to the requirements for creating and pairing districts under Article VI, Section 6.
15 Thus, because the Board complied with Article VI, Section 6, they necessarily had
16 rational reasons for making their decisions. There has been no substantive due process
17 violation.⁹³⁵

18 **b. Mat-Su, Valdez, and Skagway’s Unsupported Due Process**
19 **Claims**

20 397. Plaintiffs claim that the Board violated their due process rights by: (1)
21 adopting two proposed plans without adequate notice or public testimony;⁹³⁶ (2)

22
23 ⁹³⁴ East Anchorage Plaintiffs’ Pretrial Brief, p. 7-8 (“The Board’s record and the evidence
24 admitted at trial will demonstrate that the Board’s actions in pairing Eagle River house districts
with East Anchorage house districts was violative of the public’s substantive due process
rights.”).

25 ⁹³⁵ By this holding, the Court does not hold that a substantive due process claim exists or
is appropriate in redistricting.

26 ⁹³⁶ Mat-Su only asserts this ground for due process violations. This claim is

1 adopting six other proposed plans outside of Section 10’s 30-day window; (3) having
2 substantive discussions and making important decisions behind closed doors with no
3 opportunity for public participation; (4) making decisions about house districts without
4 offering adequate opportunity for public comment; and (5) adopting a Final Plan that
5 was not one of the Board’s proposed plans.⁹³⁷

6 398. As to the first contention, Skagway is incorrect that Section 10 requires
7 the Board to hold public hearings on yet-to-be adopted proposed plans. Nothing in
8 Section 10 requires public hearings on plans before they are adopted as the Board’s
9 proposed plans. As Alaska Superior Court Judge Rindner reasoned, “Article VI,
10 Section 10 requires that public hearings be held only on the plan or plans adopted by
11 the Board within thirty days of the reporting of the census.”⁹³⁸ Moreover, Plaintiffs are
12 factually incorrect that the Board did not hold public hearings prior to adoption of Board
13 Composite v.1 and v.2. The Board took public testimony during its meetings on August
14 23, and September 7, 8, and 9.⁹³⁹

15 399. The Board’s adoption of six additional proposed plans after 30 days of
16 receiving the U.S. Census is not a violation of Section 10 or due process. As Judge
17 Rindner reasoned, the Board is free to adopt as many additional plans outside of the 30-
18 day window as it deems necessary or helpful.⁹⁴⁰ The Board has no obligation to take
19 public testimony on plans adopted outside of the 30-day window.⁹⁴¹ Nor is the Board
20

21 noncognizable under Alaska law.

22 ⁹³⁷ Trial Brief of Municipality of Skagway Borough at 23.

23 ⁹³⁸ *In re 2001 Redistricting Cases*, 2002 WL 34119573 (Alaska Sup. Ct. Feb. 1, 2002).

24 ⁹³⁹ ARB000154-ARB000155 (public testimony on August 23); ARB000160-ARB000161
(public testimony on September 7); ARB000162-ARB000163 (public testimony on September
25 8); ARB000164 (public testimony on September 9).

26 ⁹⁴⁰ *In re 2001 Redistricting Cases*, 2002 WL 34119573 (Alaska Sup. Ct. Feb. 1, 2002).

⁹⁴¹ *Id.*

1 prohibited from taking public testimony on plans adopted outside of the 30-day
2 window.⁹⁴² There is no violation of due process because the Board adopted additional
3 redistricting plans outside of the 30-day window and subjected those plans to public
4 hearings across the state.

5 400. Plaintiffs put forward no evidence to establish the Board violated due
6 process by making any decisions regarding redistricting behind closed doors. The
7 Board’s proposed plans were adopted in a public meeting on September 9,⁹⁴³ the Board
8 adopted six additional plans on September 20 during a public meeting,⁹⁴⁴ its final house
9 plan was adopted during a public meeting on November 5,⁹⁴⁵ and its senate pairings
10 were adopted during a public meeting on November 9, 2021.⁹⁴⁶ Therefore, because the
11 Board adopted proposed plans by September 9 and complied with Section 10 of Article
12 VI, it did not violate Skagway’s (or Valdez’ or Mat-Su’s) due process rights.

13 401. Skagway’s argument that all Board map drawing needs to take place
14 collectively as a Board during a public meeting is not supported by the Alaska
15 Constitution or logic. The Board is put under “extraordinary time constraints” by
16 Article VI, Section 10.⁹⁴⁷ Nothing in Section 10 states that the Board must conduct all
17 mapping together as a Board. Section 10 merely requires the Board to “adopt” a
18

19
20 _____
21 ⁹⁴² *Id.*

22 ⁹⁴³ ARB000164-ARB000165 (“In accordance with Alaska Constitution Article VI,
23 Section 10 of the Alaska Constitution, Ms. Marcum moved that the board adopt the following
24 proposed redistricting plans: Board Composite Version 1 as presented on September 9, 2021
25 and Board Composite Version 2 as presented on September 9, 2021. Mr. Simpson seconded
26 the motion. The motion passed unanimously.”).

⁹⁴⁴ ARB000190-ARB000192 (Board’s adoption of plans to take on public outreach tour).

⁹⁴⁵ ARB000208-ARB000209 (Board’s adoption of final house district map).

⁹⁴⁶ ARB000215 (Board’s adoption of senate pairings).

⁹⁴⁷ *In re 2001 Redistricting Cases*, 2002 WL 34119573 (Alaska Sup. Ct. Feb. 1, 2002).

1 proposed plan within 30 days and to “adopt” a final redistricting plan within 90 days.⁹⁴⁸
2 Nothing in Section 10 requires the Board members to jointly map the proposed plan or
3 final plan of the Board. It is not a violation for the Board to follow the procedural
4 requirements of Section 10 and not do additional things not required by Section 10.

5 402. Skagway’s preference that it be in a house district with the downtown
6 portion of the City and Borough of Juneau was presented to the Board through public
7 testimony and known to the Board when it adopted its final house districts on
8 November 5. Indeed, at trial, Member Simpson walked through his handwritten notes
9 of the public testimony that supported Skagway’s preference⁹⁴⁹ and discussed Member
10 Borromeo’s statements during the November 4 Board meeting that explicitly
11 recognized this testimony.⁹⁵⁰ The Board was well aware of Skagway’s preference and
12 discussed that preference in public meetings. The Board made its decision with regard
13 to Skagway’s placement in a house district with Skagway’s preference well known and
14 after discussion of that preference.

15 403. Similarly, Valdez’s preference that it be in a district with the Richardson
16 Highway communities or the Fairbanks North Star Borough was presented to and
17 understood by the Board.⁹⁵¹ Valdez’s placement in a house district has rippling impacts
18 across much of the state map. The Board considered and tried many alternative
19 placements to find the map that best satisfied all constitutional requirements. The
20 residents of Valdez had ample opportunity to be heard, and more access to the Board
21 and transparency of process than any prior redistricting cycle.⁹⁵² On September 30, the
22

23 ⁹⁴⁸ Alaska Const. art. VI, § 10(a).

24 ⁹⁴⁹ SGY Trial Exhibit 2011 (ARB00162400-ARB00162530).

25 ⁹⁵⁰ See November 4, 2021 Board Meeting Tr. 18:14-19:20 (ARB009188-ARB009189).

26 ⁹⁵¹ Jan. 26, 2022 Trial Tr. 797:2-798:16 (Borromeo cross discussing Valdez’s desires).

⁹⁵² Jan. 25, 2022 Trial Tr. 475:12-16 (Duval cross, Q: “And there were six different plans

1 Board held a hearing in Valdez, one of its first stops,⁹⁵³ wherein large printouts of all
2 the adopted proposed maps were hung on the walls and citizens were permitted to share
3 their thoughts with the Board.⁹⁵⁴ Numerous residents of Valdez, including Nathan
4 Duval and Sheri Pierce, attended the meeting, reviewed the maps, and shared their
5 views with the Board.⁹⁵⁵ Plaintiffs were afforded an opportunity to be heard and to
6 participate. The Board complied with Section 10 of the Constitution and afforded all
7 the process that was due.

8 404. Plaintiffs' complaint that the Board violated its due process because its
9 Final Plan was not one of its proposed plans misunderstands the redistricting process
10 under Article VI of the Alaska Constitution. Nothing in Article VI requires the Board
11 to have public hearings on its final plan:

12 Defendants [Alaska Redistricting Board] contend, and this court agrees,
13 that Article VI, Section 10 requires that public hearings be held only on

14
15 that were presented in Valdez at that meeting on September 30th; is that right?" A: "I don't
16 recall the exact number but six sounds correct, yes."); 475:23-476:11 (Duval cross, admitting
17 Board proposed v.4 map that paired Valdez with Mat-Su was on the wall at the September 30
18 Valdez hearing, along with the other proposed maps); 485:17-21 (Duval redirect: Q: "You've
19 been asked several questions about the maps on the wall. Is it your understanding that the
20 maps on the wall that were posted on Valdez were 3 and 4 and four third-party maps?" A:
21 "Yes."); Jan. 27, 2022 Trial Tr. 1055:15-25 (Torkelson cross: Q: "In proposed version v4,
22 Valdez is in – placed with the same communities that it was in the final map and with the
23 eastern Mat-Su; is that right? A: "Yes. From recollection, board-adopted v4 contains a
24 Valdez/Mat-Su district that's very similar to the final adopted plan." Q: "And the board
25 adopted v4 for public comment on September 20th; is that correct?" A: "Yes, sir, that's
26 correct." Q: "V4 was on the wall at the Valdez tour stop?" A: "Yes. It was on the wall at
every stop.").

⁹⁵³ Jan. 26, 2022 Trial Tr. 796:8-14 (Borromeo cross); Jan. 27, 2022 Trial Tr. 1047:2-4
(Torkelson cross: "For example, I think it's been noted that Member Borromeo really wanted
to get to Valdez early and hear from them.").

⁹⁵⁴ Jan. 25, 2022 Trial Tr. 476:12-478:15 (Duval cross describing September 30 meetings,
viewable maps, and his participation); 518:6-10, 519:7-19 (Pierce confirming Board proposed
v.4 was on display at September 30 hearing in Valdez and on her conversations with each
member of the Board one-on-one).

⁹⁵⁵ Jan. 25, 2022 Trial Tr. 476:12-478:15 (Duval cross); 518:6-10, 519:7-19 (Pierce
cross).

1 the plan or plans adopted by the Board within thirty days of the reporting
2 of the census. Indeed, given the extraordinary time constraints imposed
3 by Article VI, Section 10 on the work of the Board, any other requirement
4 would likely discourage the Board's consideration of plans submitted
5 after the initial thirty day time period. Likewise, if the Board were
6 required to hold additional public hearings on any significant or
7 substantial modifications made after public comment was received on the
8 original proposed plans, the Board might be discouraged because of lack
9 of time to hold hearings, from making such modifications based on public
10 input. The evidence indicates that many of the Board members were
11 trying to modify parts of the various plans virtually until a final vote was
12 taken. The Board's work would also likely be hindered by the uncertainty
13 of whether a modification to a plan was significant enough to warrant
14 additional public hearings.⁹⁵⁶

15 As Section 10 does not require additional public hearings, there is no due process
16 violation because the Board did not hold those additional public hearings.

17 **III. CONCLUSION**

18 405. For the foregoing reasons, judgment is entered in favor of the Board.

19 DATED at Anchorage, Alaska, this ____ day of _____, 2022.

20 _____
21 Thomas A. Matthews
22 Superior Court Judge

23 _____
24
25 ⁹⁵⁶ *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 22 (Alaska Sup. Ct. Feb. 1,
26 2002).