

Complying with the Voting Rights Act in Alaska

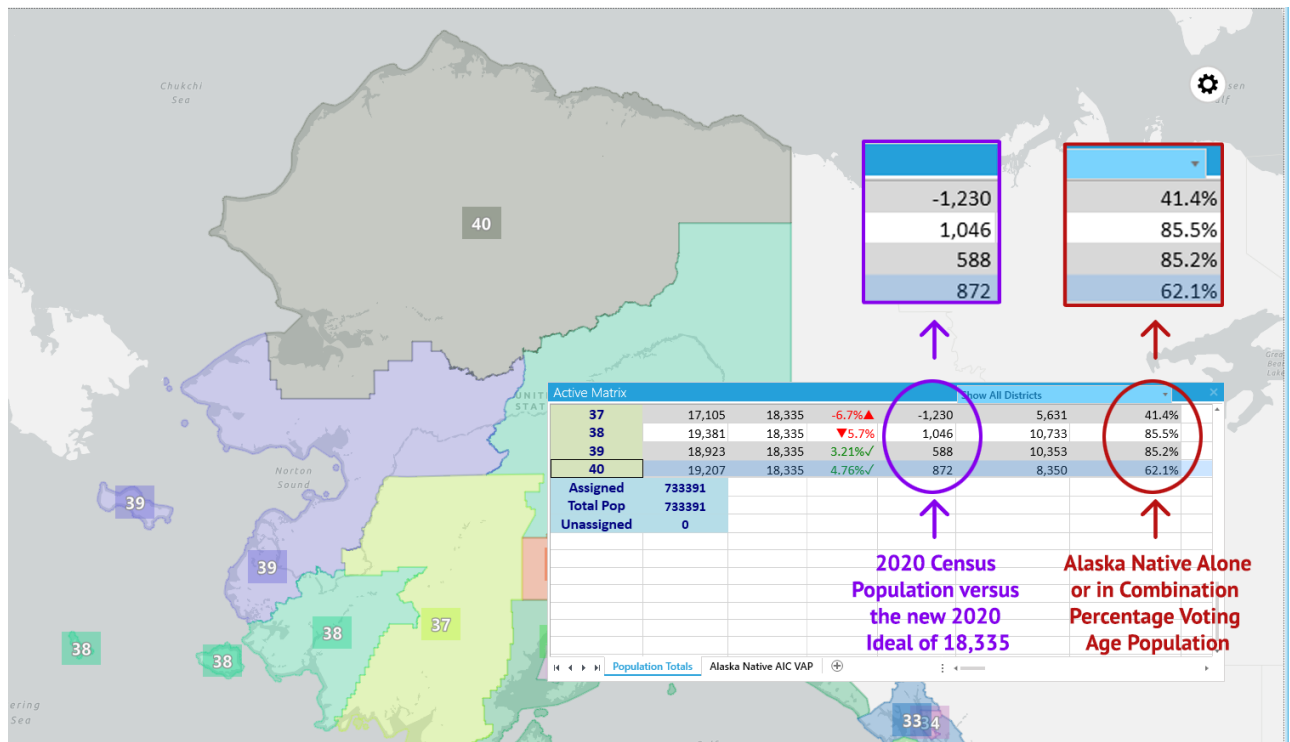
Crafting Legislative Districts from 2020 Census Data

Summary:

The Federal Voting Rights Act of 1965¹, Section 2, applies to redistricting in Alaska. For the past decade, Alaska House Districts 37, 38, 39 and 40 have reliably elected Alaska Native² preferred candidates.

The Alaska Redistricting Board retained Voting Rights Act experts Bruce Adelson and Dr. Jonathan Katz³ to advise and assist the Board in complying with the Voting Rights Act.

The purpose of this report is to explain how the Alaska Redistricting Board's 2021 redistricting map for Districts 37, 38, 39 and 40 complies with the Federal Voting Rights Act by retaining effective Alaska Native voting populations and maintaining established socio-economic and local government relationships among Alaska Native communities. Anchorage Minority Voting Age Populations are discussed in detail in Section 2.



Alaska's four current minority-controlled State House Districts are District 37 (yellow), District 38 (teal), District 39 (purple) and District 40 (gray). Currently these are combined into Senate District S (House 37 & 38) and Senate District T (House 39 & 40). The total 2020 population deviation from the new 2020 ideal population of 18,335 is shown on the overlaid table and is highlighted in purple. Note that three of Alaska's four Alaska Native minority-controlled districts grew faster than the state as a whole. Only a single district, 37, is underpopulated. The Alaska Native alone or in combination Voting Age Population (VAP) as a percentage of all VAP is shown in the right column of the overlaid spreadsheet for each House District and circled in red.

Background:

Alaska has been subject to the Federal Voting Rights Act (VRA) since it was passed by Congress in 1965. In previous redistricting cycles, the Board submitted proposed redistricting plans to the U.S. Department of Justice for preclearance prior to adoption in keeping with Section 5 of the VRA. Once received, this preclearance authorized the Board to proceed with the adoption of the reviewed plan since the Department had concluded that it complied with the VRA.

In 2013, the U.S. Supreme Court struck down Section 4, and by implication the Section 5 preclearance requirements, of the Voting Rights Act.⁴ On April 7, 2021, the U.S. Department of Justice confirmed that they were no longer conducting preclearance activities. (See Appendix *DOJ Letter*)

To assist the board and ensure compliance with Section 2 of the Voting Rights Act, which remains in effect, the Board retained Voting Rights experts Bruce Adelson and Dr. Jonathan Katz to review the Board's proposed redistricting plans and advise the Board on making any necessary adaptations to comply with Section 2 of the Voting Rights Act.

In redistricting, compliance with the Voting Rights Act of 1965 (VRA) is one of the non-negotiable tasks for the Alaska Redistricting Board (ARB). To enable and inform such compliance, the ARB tasked its Voting Rights consultants to analyze Alaska election results to determine if voting in the State is racially polarized.

Dr. Katz conducted a Racially Polarized Voting analysis of Alaska elections between 2014 and 2020 to determine if there is statistical evidence that Alaska elections may be racially polarized in some circumstances – that is when an Alaska Native preferred candidate receives most of the votes from Alaska Native voters, while the opposing candidate receives most of the votes from non-Alaska Native Voters. After extensive statistical work, Dr. Katz concluded that Racially Polarized Voting does occur in some Alaska elections districts. (See Appendix, *Katz RBV Report*)

Mr. Adelson then advised the Board in his executive summary of the Racially Polarized Voting Analysis that, as in previous decades, Alaska Native voters are subject to the protections of Section 2 of the Federal Voting Rights Act (see Appendix, *Adelson Executive Summary*) and recommended that the Board work diligently to maintain effective Alaska Native districts, including two Alaska Native Senate seats.

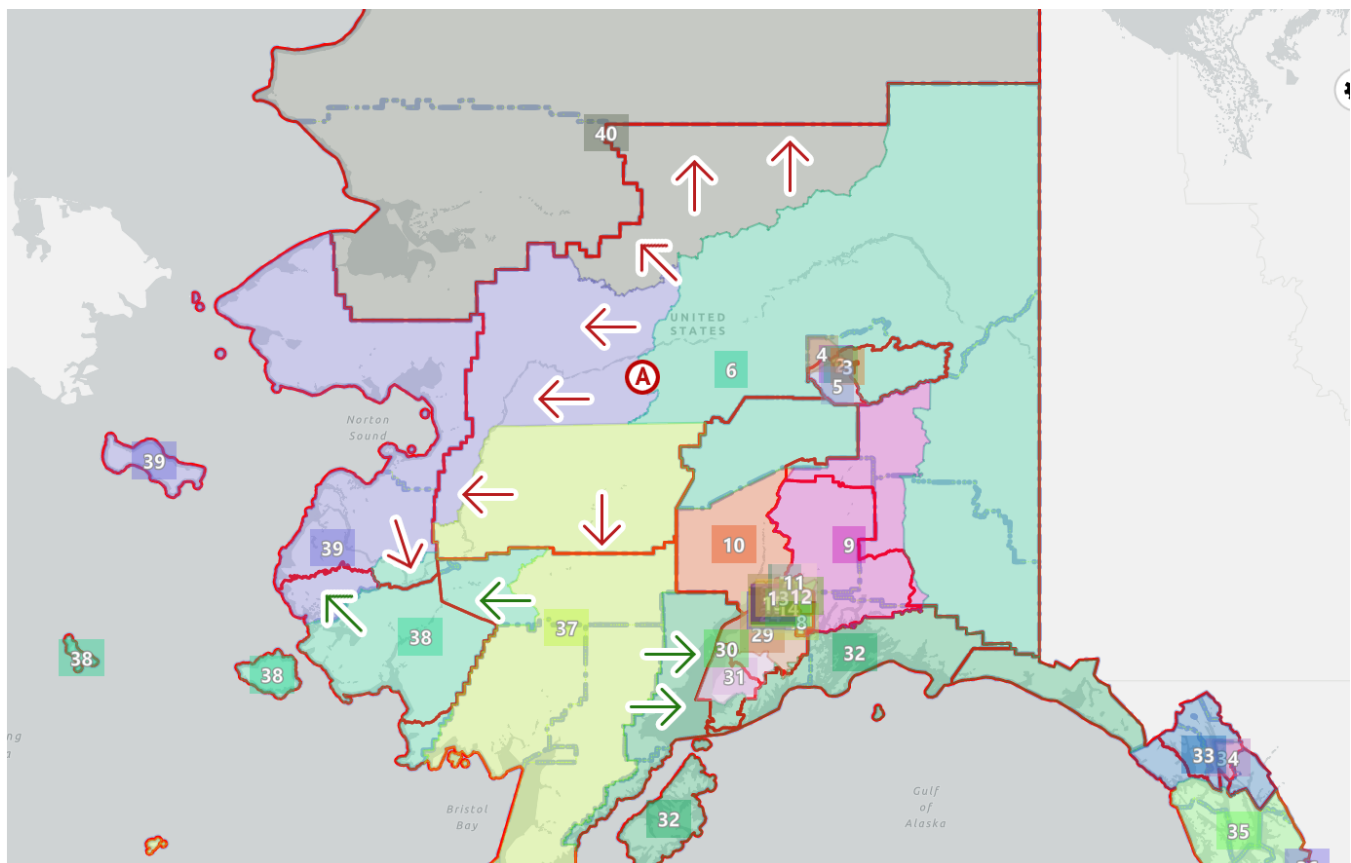
Alaska currently has four Alaska Native controlled legislative districts. These are Districts 37, 38, 39 and 40. Each has reliably elected an Alaska Native preferred candidate to the state legislature for the past decade.

According to the 2020 Census, population growth in Districts 38, 39 and 40 has outpaced statewide growth in the last 10 years. This means that three of the four traditional Alaska Native controlled districts must share population with adjoining districts as their boundaries move inward, while District 37, which did not keep pace with statewide population growth, must have its boundaries modified to incorporate additional population.

Active Matrix				
37	17,105	18,335	-6.7%▲	-1,230
38	19,381	18,335	▼5.7%	1,046
39	18,923	18,335	3.21%✓	588
40	19,207	18,335	4.76%✓	872

This Excel table illustrates that D37 is under populated by 1,230 while D38-D40 are over populated.

In consultation with representatives of Alaska Native organizations, and after extensive public input, the Board adopted a 2021 Redistricting Map on November 5, 2021. The 2021 Map is careful to maintain the core VRA-protected constituency and general shape of the existing four VRA districts while making minor adaptations to re-balance the population in light of 2020 Census enumeration and improve socio-economic integration within districts.

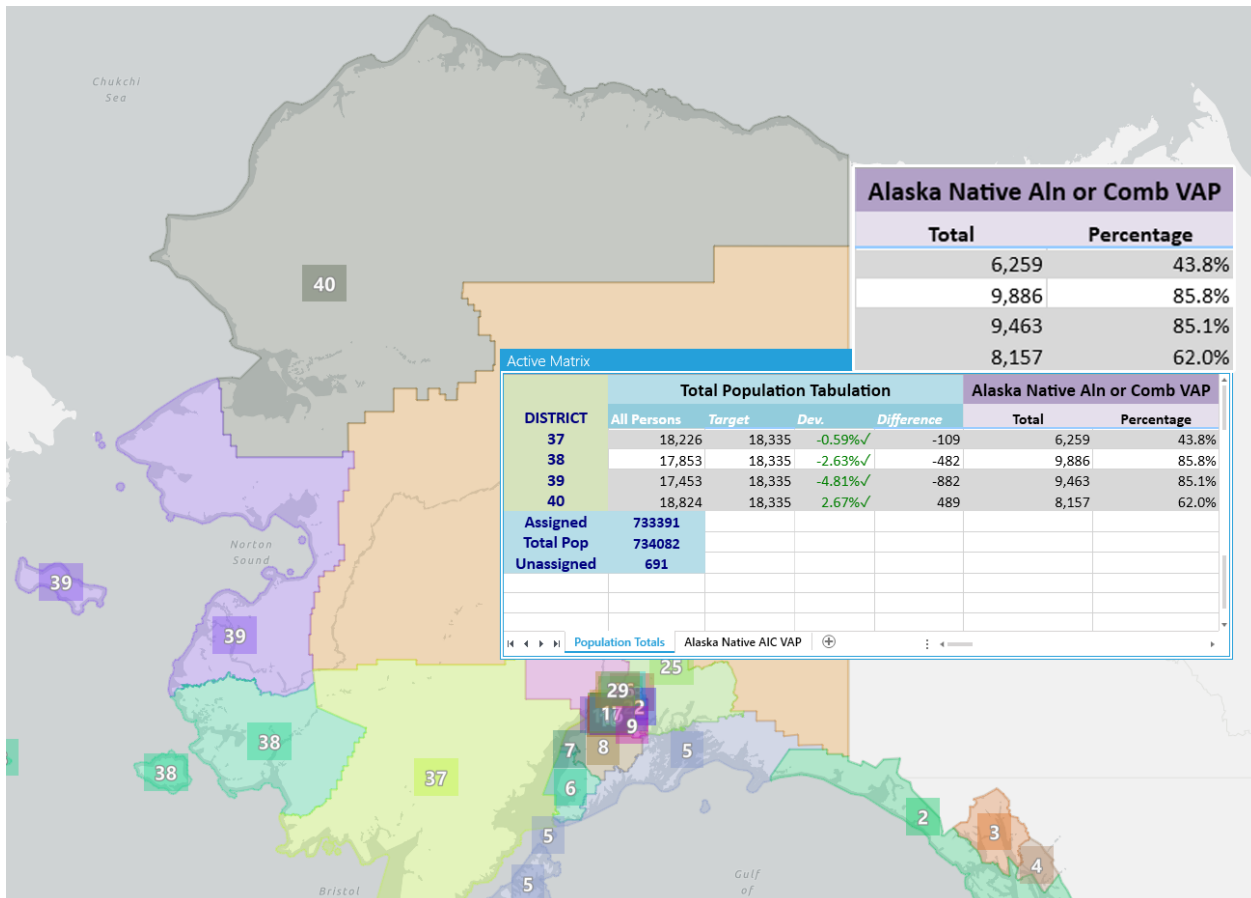


Alaska's four current minority-controlled State House Districts are District 37 (yellow), District 38 (teal), District 39 (purple) and District 40 (gray). The red outline overlay illustrates the Board's 2021 plan. Red arrows highlight how a district boundary was moved inward to reduce over population while green arrows indicate growth of a VRA district to increase population. Notice that Districts 38, 39 and 40, which were overpopulated were modestly reduced in size, while District 37 was widened to the easterly and westerly directions to gain population. The northern boundary of D37 was moved south to yield a large, sparsely populated region to the interior district. The Board felt that this change best respected long-standing Alaska Native social and economic connections in this region and was supported by Alaska Native group representatives.

While these geographic changes represent expansive areas, they occur in thinly populated regions of Alaska's vast interior expanses. For example, the westerly move of District 39's east boundary 170 miles from the center of the state (denoted with a red "A") to near the coastline results in a loss of

over twenty-four thousand square miles – the size of West Virginia – yet yields a population reduction of 935 persons.

Making these modest boundary modifications results in the following district shapes and accompanying Alaska Native Voting Age populations.

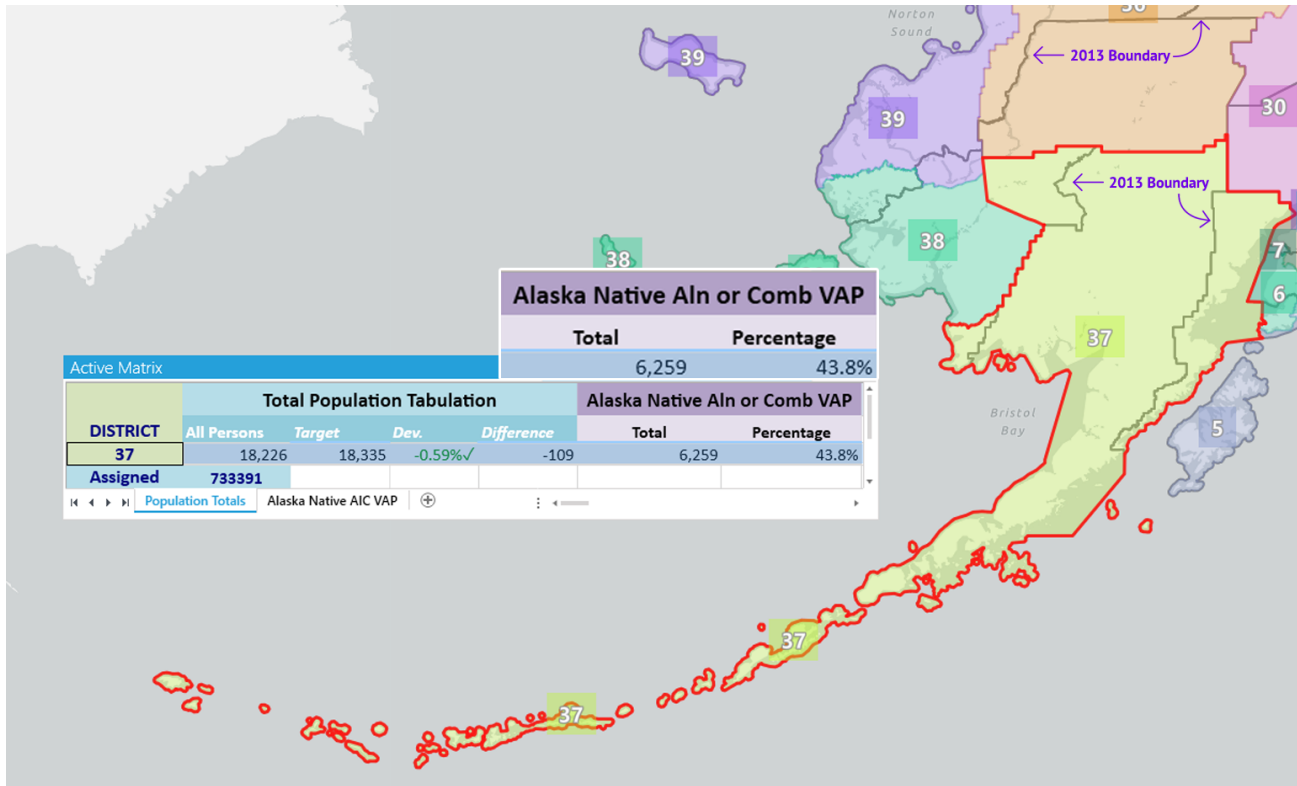


The Board's four minority-controlled State House Districts would be District 37 (yellow), District 38 (teal), District 39 (purple) and District 40 (gray). The Alaska Native Voting Age Population percentages appear in the overlaid Excel table's far right column and are District 37 (43.8%), District 38 (85.8%), District 39 (85.1%) and District 40 (62%).

These revised district boundaries reflect local government boundaries such as boroughs, school districts, traditional linguistic divisions, and integrated socio-economic areas drawn into districts as compact as practicable given Alaska's vast and rugged geography. The following four pages detail district boundary changes.

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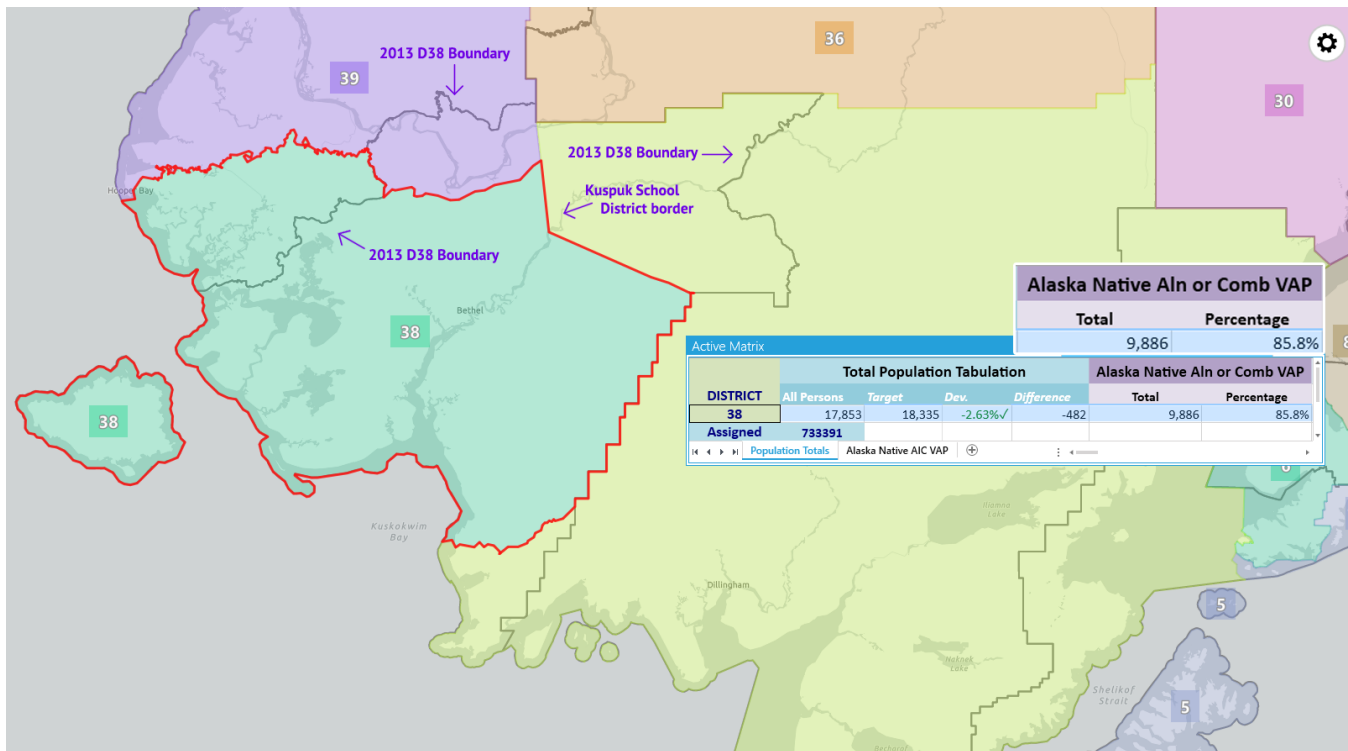
District 37



The Board's adopted District 37 retains nearly 85% of its previous population base and contains a higher percentage of Alaska Native Voting Age Population (43.8%) than the existing 2013 drawn district (41.4%). Throughout the last decade, the current District 37 has reliably elected Alaska Native preferred candidates to office. There is no reason to believe that the revised District 37 proposed by the Board would fail to continue to afford Alaska Native voters the opportunity to elect candidates of choice.

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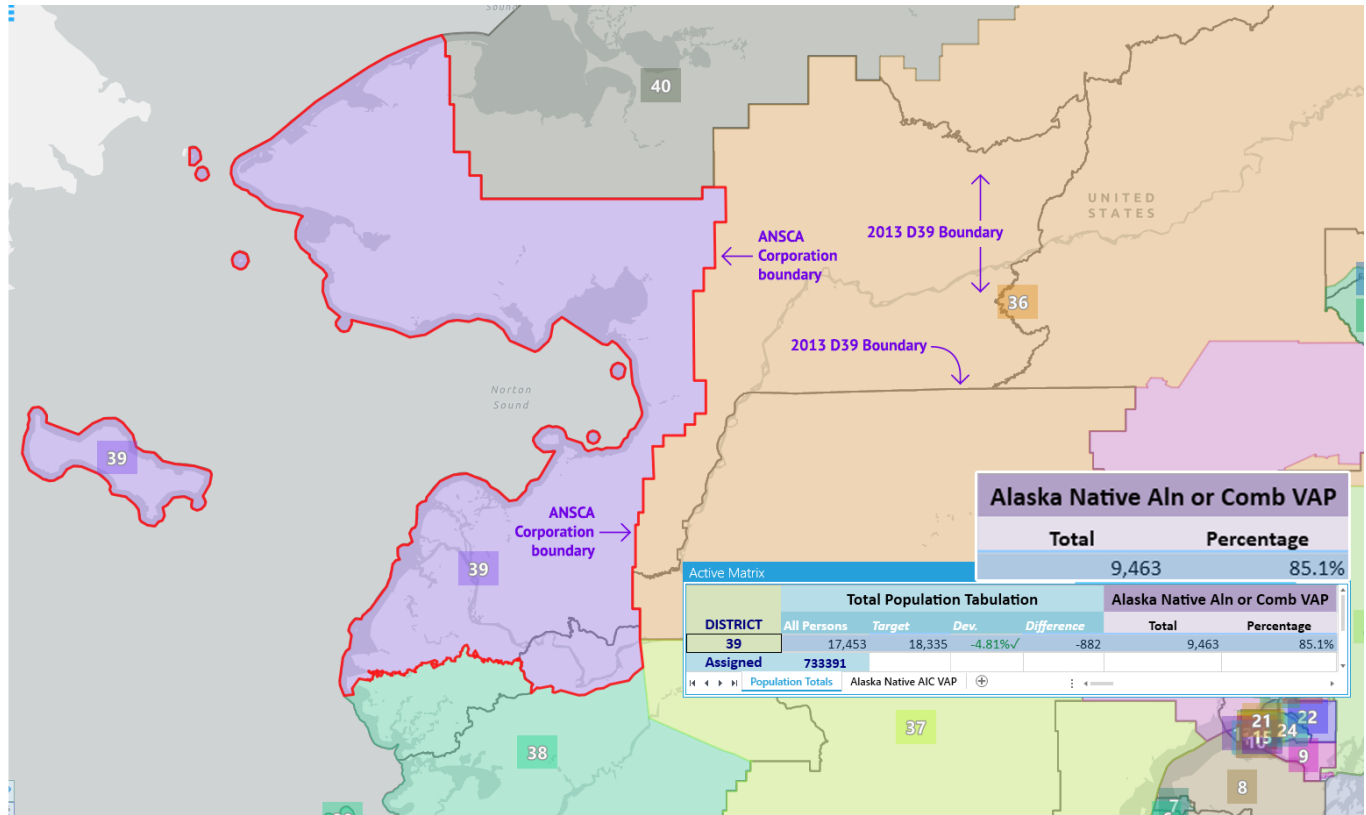
District 38



The Board's adopted District 38 retains over 80% of its existing population base and contains the a slightly higher percentage of Alaska Native Voting Age Population than has existed since the 2013 Proclamation, 85.8% up from 85.5%. Population growth in District 38 made retraction of its existing boundary necessary. The Board chose to use the western boundary of the Kuspuk School District to define District 38's northeastern boundary. The boundary transitions on the northwest side were in response to requests from local Alaska Native representatives for improved socio-economic integration.

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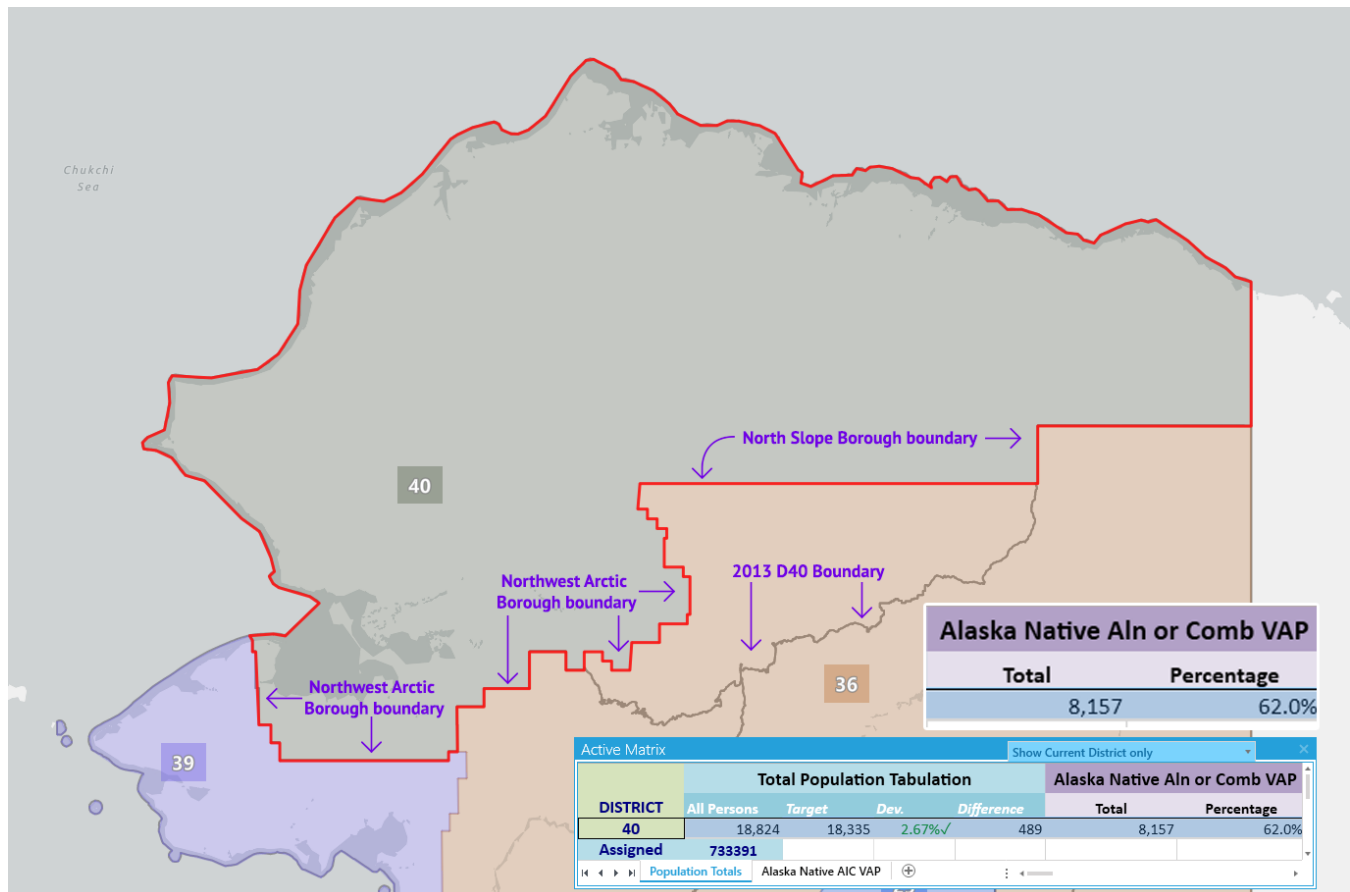
District 39



The Board's adopted District 39 retains over 85% of its existing population base and contains a nearly the same percentage of Alaska Native Voting Age Population (85.1%) than the existing 2013 Proclamation District 39 (85.2%). Population growth from 2010 to 2020 in District 39 made reduction of its geographic area necessary. The Board chose to use boundaries of the Bering Straits and Calista Native Corporations to demarcate the eastern boundary of the new District 39 thus respecting long-standing socio-economic and cultural relationships within the wider region. The boundary transitions on the southern side were in response to requests from local Alaska Native representatives for improved socio-economic integration.

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District 40

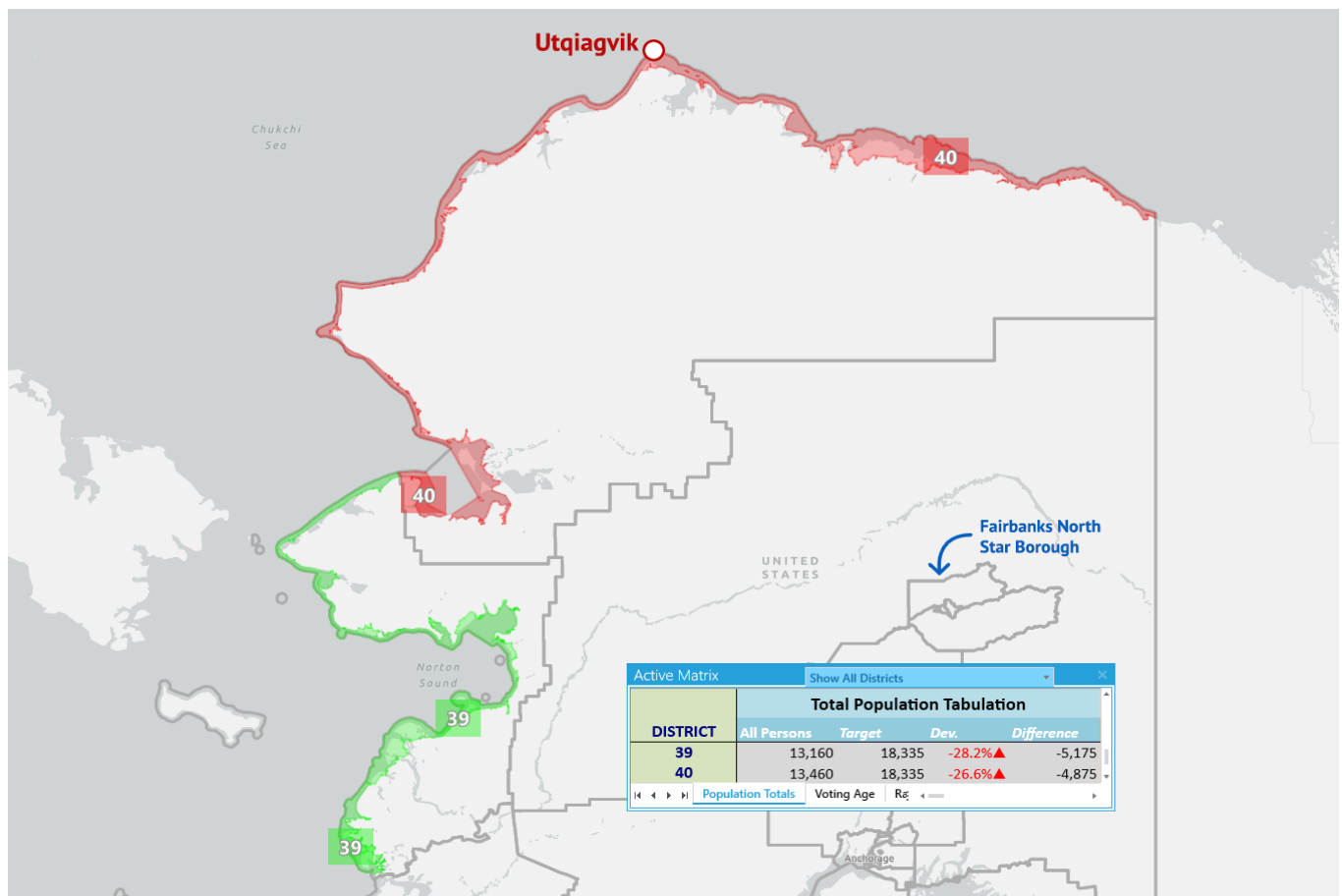


The Board's adopted District 40 retains 98% of its existing population base and contains one-tenth of a percent less Alaska Native Voting Age Population (62%) than the existing 2013 Proclamation District 39 (62.1%). Population growth from 2010 to 2020 in District 40 necessitated modest reductions in population and geographic area. The Board chose to use boundaries of the North Slope and Northwest Arctic Boroughs to demarcate the southern boundary of the new District 40 thus retaining local government and service area socio-economic integration. No other substantive boundary changes were made.

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Voting Age Populations High and Low

Board Adopted Plan Districts 38, 39 and 40 feature concentrations of Alaska Native Voting Age Population necessary for electoral effectiveness. District 38 and 39 each have over 85% Alaska Native Voting Age Population while District 40 features 62.1%. This raises the question: is it possible to share some of District 38, 39 and 40's Alaska Native population with adjoining districts to create a fifth Alaska Native controlled district?



This map depicts the population concentration along Alaska's northern and western shorelines. Over seventy percent (73.1%) of District 39 and 71.5% of District 40's population is tightly bound to the coastline.

The answer is no. Concentrated Alaska Native communities, many having 90%+ Alaska Native populations, are found along a geographically isolated ribbon of coastline. Adjoining non-coastal populations are small and spread across a vast interior wilderness broken only by a few distant, densely populated urban centers with lower concentrations of Alaska Native Voting Age Population.

For example, 500 miles to the south from District 40's hub community of Utqiagvik (pop. 4,927) is the Fairbanks North Star Borough (pop. 95,655) with an Alaska Native Voting Age Population of 12.3%. Utqiagvik is the hub city for the North Slope Borough⁵, which provides public safety, healthcare and education services throughout a Borough larger than 40 U.S. states.

Only by fracturing integrated community concentrations of Alaska Native voters, such as slicing apart the North Slope Borough, and spanning vast geographic distances to unite disparate economies, cultures and climates, could Alaska Native concentrations along the coastline be shared with another district. Doing so would run contrary to public testimony from coastal residents stating that they strongly prefer to stay united with their borough service centers (see Appendix, *Selected Received Testimony*) and neighboring communities which share a common coastal way of life.

At the opposite end of the spectrum is Board District 37 with an Alaska Native Voting Age Population of 43.8%. This is 1.2% below the lower threshold that Dr. Katz determined in his Racial Block Voting Analysis. (See Appendix, *Katz RBV Report*)

District 37 is perhaps the most unique legislative district in the United States encompassing the entirety of the Aleutian Island chain, which arcs island-to-island nearly 1,700 miles from District 37's northeastern most point to the remote tip of Attu Island.*

World class seafood ports are sprinkled along the Aleutian chain. Fisheries and on-shore processing provide employment for thousands of entry-level workers and include a substantial population of short-term or transient laborers. Many of these workers are not registered to vote in Alaska.

For example, the largest seafood port in the United States is Dutch Harbor in Unalaska. Only 53.8% (2,030) of Unalaska's election precinct voting age population (3,768 per the 2020 census) are registered to vote, and of those, 585 (28.9%) voted in the 2018 statewide election for Alaska Governor.⁶ Measuring voter turnout as a fraction of total precinct voting age population shows that 15.5% of Unalaska's enumerated voting age population participated in the 2018 election. The percentage of Alaska Native Voting age population in Unalaska's voting precinct (Aleutians #2) is 5.94%.

Contrast this with Dillingham, District 37's mainland hub community election precinct. Of the 1,691 voting age persons counted by the Census in 2020, 1,760 (104%)⁷ are registered to vote. In the statewide 2018 election, 727 (41.3%) cast votes in the election. Comparing voter turnout to total voting age population shows that 42.9% of Dillingham's population cast votes in the 2018 general election, nearly three times the rate of voter engagement observed in Unalaska. The percentage of Alaska Native Voting age population in Dillingham's voting precinct is 61.56%.

This voter participation disparity is one explanation for District 37's consistent success in electing Alaska Native preferred candidates with a 41.1% Alaska Native voting age. Observed voter engagement patterns of the last decade are expected to continue in the years ahead as the fisheries-based economy in the Aleutians has an established track record of productivity.⁸

** The Alaska Supreme Court has previously opined against splitting the Aleutian chain into separate districts. Given this guidance from the court, the Board kept the Aleutians assigned to one district in its adopted redistricting plan.*

Does the Voting Rights Act Protect Anchorage Minority Voters as a “Coalition”?

Working with experts at the Alaska Department of Labor, Board staff noted the rising percentages of minority populations in Anchorage. This change in Anchorage’s population raises the question: does the Federal Voting Rights Act apply to Minority Voting Age Populations in Alaska’s largest city?

As detailed in a legal memorandum provided to the Board by *Alaskans For Fair Redistricting*, Anchorage attorney Susan Orlansky highlighted the divided opinions and uncertain standing of multi-racial minority “coalitions” in Federal jurisprudence.⁹

In summary, there is no clear guidance from the U.S. Supreme Court whether or not a diverse multi-racial/multi-cultural group of voters is eligible for Section 2 protection under the Federal Voting Rights Act.

The U.S. Supreme Court, in its key decision of *Thornburg v. Gingles*, 478 U.S. 30 (1986), decided that one of the most important factors in a VRA analysis of redistricting plans is “*the extent to which voting in the elections of the state or political subdivision is racially polarized.*”^{10 11}

As Ms. Orlansky notes, the U.S. Supreme Court established a three-prong test by which application of the Voting Rights Act may be determined. The group of voters must demonstrate all three preconditions in order to qualify for protection under Section 2 of the Voting Rights Act. These are:

1. That the racial or language minority group is “sufficiently numerous and geographically compact” as to constitute a majority of the population in a single-member district, and
2. The minority group is “politically cohesive,” meaning its members tend to vote similarly, and
3. The non-minority group votes sufficiently as a bloc to enable it “usually to defeat the minority’s preferred candidate”.^{12, 13}

Without clear U.S. Supreme Court direction on the legal standing of multi-racial minority communities in relation to Section 2 of the Federal Voting Rights Act, the Board engaged with its Voting Rights Act Consultants Bruce Adelson and Dr. Jonathan Katz to explore the *Gingles* criteria in relation to Anchorage’s multi-racial minority voters. For purposes of this exploration, we presume that a mixed minority district satisfies the first *Gingles* factor and so focused our efforts on searching for evidence of the second and third tests: minority political cohesiveness and counter-minority racial bloc voting by whites.

Election results for Northeast Anchorage were analyzed for the possibility of minority coalition bloc voting. In consultation with Mr. Adelson and Dr. Katz, it was determined that court-accepted statistical methods are not capable of detecting political cohesiveness or racial bloc voting among minority groups in Anchorage from available election returns. (See Appendix: *Katz Anchorage Memo*)

Without empirical evidence of Racial Bloc Voting, or Racially Polarized voting, the U.S. Supreme Court has directed that “... a State may not assum[e] from a group of voters’ race that they ‘think alike, share the same political interests, and will prefer the same candidates at the polls.’”^{14 15}

The Hickel Process Constraint

The Alaska Supreme Court has made clear that the Board's first task is to comply with the Alaska Constitution, and that the Board may only consider race when redistricting if necessary to comply with the requirements of the Federal Voting Rights Act.

Reasoning that Federal law trumped Alaska's Constitution, the 2011-2013 Redistricting Board started mapping with the Voting Rights Act provisions in hand.¹⁶ The 2011 Board created a few racially influenced maps first before discharging their Alaska constitutional duty to draw districts which are compact, contiguous, relatively socio-economically integrated, and, as a nearly as practicable, equal to the ideal district population. After years of litigation and millions in sunk cost, the 2011 Board learned that the Alaska Constitution does not smile on districts crafted with a racial yardstick.

In throwing out the entire 40-seat redistricting plan in two separate appeals, the Alaska Supreme Court removed any possible ambiguity clouding the Board map crafting process:¹⁷ The Board must start first by drawing compact, contiguous, socio-economically and equally populated districts. Only after doing so may the Board deviate from its Alaska's constitutional districts and then only as little as necessary in order to comply with the requirements of the Federal Voting Rights Act.¹⁸

If authorized by legislative appropriation, a future Board may study emerging minority coalitions in more detail, but the current Board is explicitly prohibited by statute from expending state funds for redistricting-related population studies.¹⁹ The Board must reach decisions based on currently available evidence, not on theory or speculation.

In the absence of clear evidence that mixed minority groups in Anchorage are politically cohesive and that they face opposing racial bloc voting by white voters, we believe the Alaska Constitution directs the Board to focus on its constitutional mandate to draw Anchorage districts that are compact, contiguous, socio-economically integrated, and roughly equal in population.

Without meeting the *Gingles* test for application of Section 2 of the Voting Rights Act, the Board cannot assert to an Alaska court that the Voting Rights Act "requires" district lines to be adjusted for a racial purpose, regardless of how noble the intent.²⁰ If the Voting Rights Act does not require a departure from the Alaska Constitutional criteria, then the Board should not deviate from its focus on the four constitutional redistricting guidelines.

This approach has the dual benefit of complying with Alaska case law and protecting the Board from an equal protection claim that traditional redistricting principles were "subordinated to race."²¹ Similarly, focusing on constitutionally required redistricting goals protects the Board from the accusation that intentional discrimination motivated Board decisions.

With these legal guardrails in view, the Board's counsel and staff, in coordination with retained VRA experts, recommend that the Board proceed with its established commitment to draw compact, contiguous and socio-economically integrated districts in Anchorage with as near as practicable equal populations and avoid subordination of these criteria to racial balancing goals.

Conclusion

Over the last decade, three of Alaska's four Alaska Native controlled legislative districts experienced population growth which outpaced increases in the overall state population. This strength allowed the Board to draw compact, contiguous districts which retain existing socio-economic integration while retaining core constituencies and modestly adjust boundaries to provide population re-balancing. The Board chose, where possible, to respect local government boundaries and thereby respect established socio-economic relationships among various regions of Alaska's vast rural geography while retaining proven electoral effectiveness to Alaska Native populations protected by the Voting Rights Act.

For the reasons outlined in detail in the preceding pages, and after consultation with retained VRA experts, we believe the Alaska Redistricting Board's proposed Districts 37, 38, 39 and 40 comply with the Voting Rights Act.

While the Board has noted rising percentages of minority voting age populations in Anchorage, available evidence does not suggest that these populations currently meet the second and third prongs of the *Gingles* vote dilution test for application of Section 2 of the Voting Rights Act. Therefore, the Board is cautioned by Alaska case law from departing from the Alaska Constitution's redistricting criteria for a racial purpose while drawing legislative districts in Anchorage.

Footnotes

¹ Information about the Federal Voting Rights Act of 1965 may be found here: <https://www.justice.gov/crt/history-federal-voting-rights-laws>

² In past cycles and currently, the Alaska Redistricting Board inclusively defines “Alaska Native” as anyone who selected Alaska Native alone or in combination with any other race when responding to the U.S. Census. Therefore, the Voting Age Population percentage calculations shown throughout this report are derived using this methodology but applied to the 18+ age group. More specifically, these numbers are a summation of the following US Census data fields published on August 12, 2021:

P0030005+P0030012+P0030016+P0030020+P0030021+P0030022+P0030027+P0030031+P0030032+P0030033+P0030037+P0030038+P0030039+P0030043+P0030044+P0030045+P0030048+P0030049+P0030050+P0030054+P0030055+P0030056+P0030058+P0030059+P0030060+P0030062+P0030064+P0030065+P0030066+P0030068+P0030069+P0030071

The Board has relied on the Alaska Department of Labor’s Research and Analysis section to assist with identifying the correct Census fields and building this calculation. The overlaid Excel sheets in the maps shown in this report are generated by the data and Excel calculations provided the State Demographer.

³ On April 19, 2021 the Board posted a Request for Information for Voting Rights Act Consultant. The full public notice and RFI document may be found here: <http://notice.alaska.gov/202194>

⁴ See: *Shelby County v. Holder*, 133 S. Ct. 2612 (2013) https://www.supremecourt.gov/opinions/12pdf/12-96_6k47.pdf

⁵ In Alaska, “Boroughs” perform the same services and have the same legal relationship with the state as “Counties” do in the continental United States.

⁶ State of Alaska - 2018 General Election Results for House District 37: <https://www.elections.alaska.gov/results/18GENR/data/sovc/hd37.pdf>

⁷ The Alaska Division of Elections can run 4 or more years behind in removing voters who are no longer eligible. <https://www.juneauempire.com/news/alaska-has-more-registered-voters-than-eligible-residents/>

⁸ Dutch Harbor is consistently one of the top performing seafood ports in the United States. https://www.alaskaseafood.org/wp-content/uploads/McDowell-Group_ASMI-Economic-Impacts-Report-JAN-2020.pdf#page=18 (see page 18)

⁹ Ms. Orlansky presently serves as president of the Alaska chapter of the American Civil Liberties Union. The memo and AFFR cover letter are available here: https://www.akredistrict.org/files/1016/3510/4568/Alaska_Redistricting_Board_Testimony_File_2021.10.23.pdf#page=6

¹⁰ *Thornburg v. Gingles*, 478 U.S. 30 (1986) <https://supreme.justia.com/cases/federal/us/478/30/>

¹¹ In *Brnovich v. Democratic National Committee*, 141 S. Ct. 2321, 2337 (2021), the Supreme Court described *Gingles* as “our seminal § 2 vote dilution case” and recognized that “[o]ur many subsequent vote dilution cases have largely followed the path that *Gingles* charted.”

¹² *Ibid*

¹³ *Redistricting Law 2020*, “The Red Book”, National Conference of State Legislatures, 2019, page 54

¹⁴ League of United Latin American Citizens(Lulac) V. Perry, 548 U.S. 399 (2006)
See: <https://supreme.justia.com/cases/federal/us/548/399/>

¹⁵ Shaw V. Reno, 509 U. S. 630, 647 (1993). See: <https://supreme.justia.com/cases/federal/us/509/630/>

¹⁶ *In re 2011 Redistricting Cases*, 274 P.3d 466, 467 (Alaska 2012)

¹⁷ *In re 2011 Redistricting Cases*, 274 P.3d 466, 467, 468 (Alaska 2012) and 294 P.3d 1032, 1037 (Alaska 2012).

¹⁸ *In re 2011 Redistricting*, 274 P.3d 466, 467-68 (Alaska 2012)

¹⁹ Alaska Statute AS 15.10.210, see: <http://www.akleg.gov/basis/statutes.asp#15.10.210>

Expenditures for population surveys or sampling prohibited.

An expenditure of public funds may not be made for a population survey or sampling conducted for purposes of redistricting the legislature without an express appropriation by the legislature for that purpose.

²⁰ *Badillo v City of Stockton*, 956 F.2d 884 (U.S. Court of Appeals, Ninth Circuit, 1992)

²¹ *In re 2011 Redistricting Cases*, 274 P.3d 466, 468 (Alaska 2012)