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**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE**

In the Matter of the)	Case No. 3AN-21-08869CI
)	3PA-21-02397CI
2021 Redistricting Plan.)	3VA-21-00080CI
_____)	

INTERVENOR-DEFENDANTS’ TRIAL BRIEF AND OPENING STATEMENT

Doyon, Limited; Tanana Chiefs Conference; Fairbanks Native Association; Ahtna, Inc.; Sealaska; Donald Charlie, Sr.; Rhonda Pitka; Cherise Beatus; and Gordon Carlson (collectively, “Intervenor-Defendants”) submit this trial brief to address issues raised by the two cases in which they have intervened: the case filed by the Matanuska-Susitna Borough and Michael Brown, No. 3PA-21-02397CI (“Mat-Su case”) and the case filed by the City of Valdez and Mark Detter, No. 3VA-21-00080CI (“Valdez case”). As the record and evidence at trial will show, there is simply no merit to the attacks mounted by these cases against House District 29 and its surrounding districts.

OPENING STATEMENT

Consistent with its constitutional duties, the Alaska Redistricting Board (“Board”) spent a whirlwind three months considering, drafting, and receiving extensive public testimony on House district maps. Throughout this herculean effort, the Board sought to balance the often-competing constitutional factors of compactness, contiguity, relative socio-economic integration, and equal

population for all 40 districts statewide—much like the Rubik’s Cube that sat atop the desk during the Board’s final mapping sessions, no piece of the map can be considered complete unless the entire map has been assembled in a manner that works across the state. The record of the Board’s proceedings contains extensive evidence demonstrating that the Board properly weighed and applied the requisite constitutional factors in arriving at a final 40-district House Map that integrates the many pieces of this complex puzzle. Additional evidence presented at trial will underscore this point.

In assessing whether constitutional standards have been met with respect to the districts challenged by the Matanuska-Susitna Borough (“Mat-Su”) and Valdez plaintiffs, the questions before the Court are simple. First: **Is House District 29 relatively socio-economically integrated within the meaning of Article VI, section 6?** The record and trial evidence will show that the answer to this question is yes. There are ample socio-economic ties between Valdez and the Mat-Su Borough—indeed, Valdez and the Mat-Su Borough have shared a House District for several election cycles under the current electoral map adopted under the 2013 Proclamation of Redistricting (“2013 Proclamation”) and upheld by the Superior Court during the last round of redistricting litigation. The record also shows that the other possible districts presented to the Board (which Valdez or Mat-Su might have preferred, in isolation) impermissibly sacrifice compliance with constitutional factors elsewhere.

The second key question presented by these cases is equally straightforward: **Did the Board intentionally discriminate against voters in the Mat-Su Borough or Valdez by pairing them together in House District 29?** Here, the answer is a resounding no. The record shows that the districts covering the Mat-Su Borough and Valdez were drawn with careful attention to the constitutional requirements, and they accordingly represent a constitutionally appropriate balance

in which excess population from the Mat-Su Borough was combined with population from outside the Borough in order to maintain districts as near as practicable to the ideal district size. The evidence at trial will bolster that conclusion. Although Mat-Su and Valdez might have preferred that the lines be drawn differently, this preference does not undermine the constitutionality of the districts drawn by the Board.

STANDARD OF REVIEW

Review of the Board’s Map is deferential, in recognition of the authority expressly delegated to the Board under the Alaska Constitution.¹ As the Alaska Supreme Court has explained, the courts “review redistricting plans ‘in the same light as [they] would a regulation adopted under a delegation of authority from the legislature to an administrative agency to formulate policy and promulgate regulations.’”² Thus, the courts “review the plan to ensure that the Board did not exceed its delegated authority and to determine if the plan is ‘reasonable and not arbitrary.’”³ This “review is meant to ensure that the Board’s Proclamation Plan is not unreasonable and is constitutional under article VI, section 6 of the Alaska Constitution.”⁴ Under this deferential standard, “the choice among alternative plans that are otherwise constitutional is for the Board,”⁵ and the courts “may not substitute [their] judgment as to the sagacity of a redistricting plan for that of the Board, as the wisdom of the plan is not a subject for review.”⁶

¹ Alaska Const. art. VI, §§ 8, 10.

² *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)).

³ *Id.* (quoting *Kenai Peninsula Borough*, 743 P.2d at 1357).

⁴ *Id.* (citing *Kenai Peninsula Borough*, 743 P.2d at 1358).

⁵ *In re: 2011 Redistricting Cases*, No. 4FA-11-2209CI, 2013 WL 6074059, at *9 (Alaska Super. Nov. 18, 2013).

⁶ *In re 2011 Redistricting Cases*, 294 P.3d at 1037 (citing *Kenai Peninsula Borough*, 743 P.2d at 1357-58).

LEGAL AND FACTUAL ISSUES REGARDING THE PLAINTIFFS' CLAIMS

I. THE DISPUTED DISTRICTS SATISFY THE CONSTITUTIONAL REDISTRICTING CRITERIA UNDER ARTICLE VI, § 6.

Article VI, § 6 of the Alaska Constitution sets the substantive standards the Board must follow in adopting a House Map. That section provides, in full:

The Redistricting Board shall establish the size and area of house districts, subject to the limitations of this article. Each house district shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area. Each shall contain a population as near as practicable to the quotient obtained by dividing the population of the state by forty. Each senate district shall be composed as near as practicable of two contiguous house districts. Consideration may be given to local government boundaries. Drainage and other geographic features shall be used in describing boundaries wherever possible.^[7]

These are the standards against which the evidence in the case must be judged. The evidence in the record and presented at trial will show that the House Map adopted by the Board satisfies these § 6 standards.

A. House District 29 is a Relatively Integrated Socio-Economic Area.

Valdez is primarily challenging House District 29, focusing almost entirely on the socio-economic integration of that district. The Mat-Su Borough raises essentially the same issue in its own challenge to District 29. The core issue for the Court is whether District 29 comprises “as nearly as practicable a relatively integrated socio-economic area” within the context of the statewide plan.

The socio-economic integration factor is intended to capture the idea of a region in which people share common interests, social ties, and economic pursuits.⁸ “‘Relatively’ means that

⁷ Alaska Const. art. VI, § 6.

⁸ *Hickel v. Se. Conf.*, 846 P.2d 38, 46 (Alaska 1992), *as modified on reh'g* (Mar. 12, 1993).

[courts] compare proposed districts to other previously existing and proposed districts as well as principal alternative districts to determine if socio-economic links are sufficient.”⁹

Looking at “previously existing” districts under the first element of this test, Valdez and Mat-Su run up against an inconvenient fact that no amount of evidence at trial can rebut: with respect to the socio-economic links that the Plaintiffs are attempting to challenge—particularly the connections between Valdez and the Mat-Su Borough—the record contains incontrovertible evidence that District 9 in the 2013 Proclamation already combines Valdez and the Mat-Su Borough, just like District 29 in the 2021 Proclamation does.¹⁰ And that combination was specifically upheld by the Superior Court in the final ruling of the 2011-2013 redistricting litigation cycle.¹¹ The record and evidence presented at trial will show that the vast majority of the residents of current District 9 will be represented by House District 29.¹²

By definition, therefore, District 29 is already “a relatively integrated socio-economic area” within the meaning of Article VI, § 6. Evidence in the record shows that the Board considered and properly relied on this fact, noting that “it’s already been established that Valdez is socioeconomically compatible with the Mat-Su” and “there is preceden[t] for including Valdez in the Mat-Su.”¹³

In addition to being consistent with “previously existing” districts, the evidence makes clear that District 29 is also relatively socio-economically integrated when judged against

⁹ *Id.* at 47.

¹⁰ Compare ARB000047 (District 29 in 2021 Proclamation) with ARB001590 (District 9 in 2013 Proclamation).

¹¹ *In re: 2011 Redistricting Cases*, 2013 WL 6074059, at *12-17.

¹² ARB000116 (House core constituency report); Torkelson Aff. ¶ 52.

¹³ ARB009207 (Nov. 4 Tr. at 37:2-9); see ARB009331 (Nov. 4 Tr. at 162:19-25); Binkley Aff. ¶ 28; Borromeo Aff. ¶ 22.

“proposed districts as well as principal alternative districts,” under the test set out by the Supreme Court.¹⁴ There is extensive record evidence showing that the Board considered several proposed maps that did not combine Valdez with the Mat-Su Borough, but each of these maps impermissibly sacrificed constitutional requirements elsewhere.

The maps themselves are the best evidence of the problems caused by the “proposed” and “principal alternative” district maps that were proposed to or considered by the Board. The Board considered eight principle 40-district maps.¹⁵ Valdez also presented a partial map for the Board’s consideration.¹⁶ Only three of those maps proposed locating Valdez in a district other than with the Mat-Su Borough or with the rural Interior district—and as discussed further below, all of those alternatives had constitutional infirmities.¹⁷ The Board reasonably determined that its mapping of the state as a whole—and in particular the consequences of mapping District 29 as it did—better balanced the constitutional objectives of Article VI, § 6 than any of these alternatives.

¹⁴ *Hickel*, 846 P.2d at 47.

¹⁵ The proposed maps adopted by the board for consideration and public comment included four maps drafted by the Board, “Board Composite v.1,” ARB010708-ARB010765; “Board Composite v.2,” ARB010766-ARB010821; “Board Composite v.3,” ARB001341-ARB001387; and “Board Composite v.4,” ARB001388-ARB001434. They also included four maps presented by outside parties: the Coalition of Doyon, Limited; Tanana Chiefs Conference; Fairbanks Native Association; Ahtna, Inc.; and Sealaska (“Doyon Coalition”), *see* ARB001435-ARB001481; Alaskans for Fair Redistricting (“AFFR”), *see* ARB001294-ARB001340; Alaskans for Fair and Equitable Redistricting/Calista Corporation (“AFFER/Calista”), *see* ARB001232-ARB001293; and the Senate Minority Caucus (“SMC”), *see* ARB001482-ARB001528.

¹⁶ *See* ARB004104-ARB004105 (“Valdez Option 1” map and notes); Valdez First Am. Compl. Ex. E (same).

¹⁷ As discussed in more detail below, *infra* at 10-11, the Board determined that placing Valdez in the rural Interior district was not practicable in light of other constitutional factors, because (among other issues) that option would require significantly overpopulating the districts in the Fairbanks North Star Borough.

Both AFFER/Calista and the SMC proposed mapping Valdez into a coastal Prince William Sound/Kodiak district.¹⁸ This choice had far-reaching consequences on the rest of their maps. Placing Valdez in a district that goes south and west leaves only one option for the placement of Cordova in a contiguous district: the rural Interior district.¹⁹ The problem with that approach is that it is simply not practicable within the confines of § 6. First, Cordova (a rural, coastal, non-road system Prince William Sound community with Anchorage as its “hub” community) shares no socio-economic integration with virtually any of the rural Interior communities or the Interior hub community of Fairbanks. In light of the options before it, the Board reasonably determined that a district combining Cordova with the rural Interior Athabascan villages of the Western Interior (such as Galena, for example) would not have been relatively socio-economically integrated.

In addition, the inclusion of the population of Cordova (approximately 2,600 people) in the rural Interior district would have meant that 2,600 residents of rural Interior villages that would otherwise be in that district would be pushed elsewhere. In the AFFER/Calista map, this meant pushing the villages of Grayling, Anvik, Shageluk, Holy Cross, Takotna, McGrath, Nikolai, and Lake Minchumina into the Nome district. The SMC proposed including those same villages—and also Kaltag, Nulato, and Koyukuk—with Nome. The Board reasonably determined that those options were not viable, as there was extensive public testimony that the rural Interior is socio-economically integrated and that the western Interior villages are *not* socio-economically

¹⁸ See ARB001289 (AFFER/Calista Proposed District 36); ARB001520 (SMC Proposed District 32).

¹⁹ See ARB001258 (AFFER/Calista Proposed District 5); ARB001494 (SMC Proposed District 6). Cordova could, arguably, also 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 determined early in their mapping that doing so would not have been reasonable.

integrated with the other communities in the Nome district.²⁰ Indeed, a previous district that similarly combined Interior Athabascan communities with Iñupiaq communities was struck down by the courts for lack of socio-economic integration, described as a “worst case scenario” and “probably the single worst combination that could be selected if a board were trying to maximize socio-economic integration in Alaska.”²¹ The evidence heard by the Board reinforced that conclusion, and the evidence to be presented at trial will further support that determination.

AFFR presented an alternative that placed Valdez in a proposed district that includes the road system communities of the Richardson Highway corridor (excluding Glennallen), many—but not all—of the rural Interior villages, and significant population from the Fairbanks North Star Borough (“FNSB”) communities of the Harding-Birch Lakes area, Salcha, Moose Creek, and Eielson Air Force Base.²² The downstream effect of this choice was that the only district that could accommodate the rest of the rural Interior villages was the proposed District 39, which would stretch from Gambell, on St. Lawrence Island and fewer than 40 miles from the Russian mainland, to the border of the FNSB in the Interior. Evidence in the record and to be presented at trial amply shows that the Board reasonably determined that this proposal was not practicable.

Valdez also presented a partial map they labeled “Valdez Option 1.”²³ This proposal evidenced no attempt to maximize socio-economic integration in any part of Alaska other than

²⁰ *E.g.*, ARB001793-ARB001794; ARB002086-ARB002087; ARB002257-ARB002260; ARB002261-ARB002268; ARB002269-ARB002270; ARB002330; ARB002331; ARB003650-ARB003652; ARB003998; ARB004041; *see also* Wright Aff. ¶¶ 14-20; Otte Aff. ¶¶ 21-29, 35-37.

²¹ *Hickel*, 846 P.2d at 53-54.

²² *See* ARB001336 (AFFR Proposed District 36).

²³ ARB004104-ARB004105; Valdez First Am. Compl. ¶ 22; *id.* Ex. E.

Valdez and the Richardson Highway corridor,²⁴ or grapple with the ripple effects and difficulties of balancing the constitutional requirements across all 40 districts. More pointedly, it would have done massive damage to the relative socio-economic integration of western and Interior Alaska. For example, Valdez proposed a district stretching from Nunivak Island off the coast of Southwest Alaska all the way to Bettles, in the northern Interior, and presented no explanation whatsoever as to how this proposed district could be considered relatively socio-economically integrated.²⁵ By any measure, Mekoryuk is less socio-economically integrated with the villages of the northern Interior than Valdez is with the Mat-Su Borough. The Board made the reasonable determination that Valdez Option 1 was not a viable alternative.²⁶

The Board, on the other hand, approached the issue of mapping Valdez (along with the rest of the State) in a reasonable, thorough, and constitutional manner. Specifically, evidence already in the record and to be presented at trial shows that the shape of the Board's District 29 is the direct result of balancing constitutional factors across the map. As the Board meeting transcripts and the Board members' testimony will show, the Board spent a significant amount of time working to find the best place for Valdez and attempting to accommodate Valdez's preferences. Perhaps no other area of the map better illustrates the "Rubik's Cube" nature of the redistricting puzzle; as

²⁴ For example, Valdez Option 1 unnecessarily breaks the Fairbanks North Star Borough to both the North and the South.

²⁵ Valdez has now also proffered a new map prepared by its expert, Kimball Brace, purely for purposes of this litigation. *See* Brace Aff. ¶¶ 135-164; *id.* at Ex. DD. The Intervenor-Defendants expressly reserve all evidentiary objections to Mr. Brace's affidavit (and the exhibits thereto), which will be addressed in a separate filing. Nonetheless, evidence at trial will demonstrate the myriad constitutional infirmities with this map. Moreover, as a post-hoc map submitted in litigation and *not* presented to the Board, this map could not possibly have been considered by the Board and is not one of the "principal alternative[s]" against which the Board's own map can be measured. *See Hickel*, 846 P.2d at 47.

²⁶ *See, e.g.*, Bahnke Aff. ¶¶ 23-25 (explaining constitutional problems with Valdez Option 1); Binkley Aff. ¶ 34 (similar); Borromeo Aff. ¶¶ 39-40 (similar).

discussed above, and as evident from lengthy discussions at the public mapping sessions in early November, there simply is no practicable option that does *not* pair Valdez and Mat-Su without creating significant constitutional problems elsewhere. The Board’s final map represents the best resolution of those issues in a way that satisfies the constitutional criteria across the entire 40-district map.

The evidence will show that the decision to include Valdez in a district with the Mat-Su Borough flowed in large part from the ripple effects of ensuring that the FNSB districts were not improperly over-deviated. FNSB has enough population for 5.2 house districts, meaning it could fill five districts and then would have approximately 4,000 “extra” residents left over. In several of the Board’s proposed maps, the five FNSB districts were each over-populated by between 4 and 5% in an effort to accommodate this excess population without breaking the borough boundary.²⁷ But based on public testimony,²⁸ the Board came to believe that these deviations were too high, which necessitated breaking the borough boundary and “pushing” 4,000 people out into the adjacent district, District 36.²⁹ District 36 is a large, sparsely populated district covering much of Interior Alaska, including portions of the Richardson Highway.³⁰ With the excess population from FNSB included in it, District 36 has a population of 18,558, or 1.22% above the ideal district size.³¹ Given that District 36 was therefore a complete district, it simply could not *also* accommodate the

²⁷ ARB001341 (Districts 31-35 in Population tabulation for Board Composite v.3); ARB010749-ARB010753 (Districts 31-35 in Board Composite v.1).

²⁸ *See, e.g.*, ARB002333-ARB002334 (FNSB Resolution opposing over-population of FNSB districts); ARB002269-ARB002270, ARB002306, ARB004297, ARB004304 (public testimony opposing over-population of FNSB districts).

²⁹ ARB009377-ARB009378 (Nov. 4 Tr. at 207:11-208:21); Binkley Aff. ¶¶ 30-33.

³⁰ ARB000054 (District 36 in 2021 Proclamation)

³¹ ARB007234 (Population tabulation for 2021 Proclamation).

4,000 residents of Valdez (to satisfy Valdez’s desire to be paired with the Richardson Highway) without pushing another 4,000 residents of District 36 elsewhere.³² And that option was not viable—the Board heard extensive public testimony that District 36 was socio-economically integrated and that any parts of the district that might conceivably be pushed out, such as the western Interior villages, were *not* socio-economically integrated with the coastal districts they would be pushed into.³³ (Even if Valdez could have been included in District 36 numerically, evidence in the record also points to serious concerns about the socio-economic integration of the resulting district, which would combine coastal Valdez with rural villages in the heart of the Interior like Holy Cross, Allakaket, and McGrath.³⁴)

The record evidence also shows that the Board went out of its way to provide Member Marcum with an opportunity to try combining Valdez in a district with Anchorage once it became clear that other options were not viable, but she was not able to make that combination work without sacrificing constitutional criteria elsewhere.³⁵ Evidence in the record, which will be bolstered by the trial evidence, emphatically shows that the Board carefully considered the portion

³² 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.

³³ *E.g.*, ARB001793-ARB001794; ARB002086-ARB002087; ARB002257-ARB002260; ARB002261-ARB002268; ARB002269-ARB002270; ARB002330; ARB002331; ARB003650-ARB003652; ARB003998; ARB004041.

³⁴ ARB009330 (Nov. 4 Tr. at 160:5-11).

³⁵ ARB009274-ARB009275 (Nov. 4 Tr. at 104:9-105:24), ARB009344 (Nov. 4 Tr. at 174:16-19); ARB00156437 (Nov. 5 Tr. at 5:1-22).

of the map encompassing Valdez and ultimately crafted a district that satisfies constitutional requirements while *also* accommodating those same constitutional mandates statewide.³⁶

The record also contains specific evidence establishing that the Board’s choice to draw the boundary of District 29 following the Trans-Alaska Pipeline to the west of the Richardson Highway, rather than use the highway as the boundary (as the 2013 map did), was reasonable. The Board desired to keep individual communities whole and “alleviate that problem where neighbors were on different sides of the road in two different districts.”³⁷

The Valdez and Mat-Su Plaintiffs will undoubtedly present volumes of evidence relevant to the question of whether Valdez has stronger socio-economic ties to the communities of the Richardson Highway corridor than it does to the Mat-Su Borough. But that argument does not actually address the question before the court, which is simply whether District 29 satisfies the “relatively integrated” standard under Article VI, § 6. Evidence already in the record clearly establishes that District 29 meets that standard.

Additionally, any evidence or argument presented by the Plaintiffs regarding an alleged lack of connection between Valdez and “the suburbs of Palmer and Wasilla” is similarly a red herring.³⁸ As a matter of law, Valdez need only be relatively socio-economically integrated with the Mat-Su Borough in general, not with any particular part of the Borough. “In areas where a common region [here, the Mat-Su Borough] is divided into several districts, significant socio-economic integration between communities within a district outside the region [here, Valdez] and the region *in general* ‘demonstrates the requisite interconnectedness and interaction,’ even though

³⁶ Borromeo Aff. ¶¶ 38-39; Binkley Aff. ¶¶ 25-38.

³⁷ ARB009203 (Nov. 4 Tr. at 34:8-10); *see also* Binkley Aff. ¶ 35.

³⁸ *E.g.*, Scheidt Aff. ¶¶ 27, 32, 33; *see also id.* ¶¶ 16, 18, 21.

there may be little actual interaction between the areas joined in a district.”³⁹ Here, that means evidence of socio-economic connections between Valdez and the Mat-Su Borough is sufficient for constitutional purposes. Evidence in the record and additional evidence to be presented at trial demonstrates that such links are numerous, including that both communities are connected by the road system, both Valdez and the Mat-Su Borough have similar school district structures that are supported by a local tax base, unlike rural communities, and their schools regularly compete against each other in sports competitions.⁴⁰

Finally, Valdez and the Mat-Su Borough are relatively socio-economically integrated for the purposes of Article VI, §6 because, like the communities of North Kenai and South Anchorage at issue in *Kenai Peninsula Borough*,⁴¹ they are both socio-economically integrated with Anchorage. No one can seriously dispute that Valdez and Anchorage are socio-economically integrated for the purposes of redistricting, as the courts have expressly held⁴² (and as discussed above, Member Marcum attempted to draw a map combining Valdez into an Anchorage district, but was unsuccessful). And no one can seriously dispute that the Mat-Su Borough and Anchorage are also socio-economically integrated for the purposes of redistricting. This connection further strengthens the socio-economic integration of Valdez and the Mat-Su Borough.

³⁹ *Hickel*, 846 P.2d at 46 (emphasis added) (citing *Kenai Peninsula Borough*, 743 P.2d at 1363, which “declin[ed] to draw a fine distinction between the interaction of North Kenai with Anchorage and North Kenai with South Anchorage” specifically).

⁴⁰ Binkley Aff. ¶¶ 26-27; Torkelson Aff. ¶ 53.

⁴¹ 743 P.2d at 1363.

⁴² Memorandum and Order at 106-13, *In Re 2001 Redistricting Cases*, No. 3AN-01-8914 CI (Alaska Super. Ct. Feb. 1, 2002).

B. The Disputed Districts are Appropriately Compact.

The Plaintiffs challenge the districts they are dissatisfied with, Districts 25 through 30, in large part by attacking the compactness of the adjacent District 36.⁴³ Plaintiffs' primary complaint is the inclusion of the Ahtna village of Cantwell in District 36 rather than in District 30. But the record and evidence to be presented at trial establish that the Board made the decision to place Cantwell in District 36 by carefully balancing the competing demands of compactness and socio-economic integration, as it is entitled—indeed required—to do. The result is a thoughtfully drawn and constitutionally proper district.

“The compactness inquiry . . . looks to the shape of a district.”⁴⁴ Simply put, “compact” in the redistricting context “means having a small perimeter in relation to the area encompassed.”⁴⁵ Here again, the realities of redistricting play a role in the analysis, such that “[w]hen analyzing compactness, the court should ‘look to the relative compactness of proposed and possible districts in determining whether a district is sufficiently compact.’”⁴⁶ While compact districts generally “should not yield ‘bizarre designs,’”⁴⁷ the courts have recognized that the Article VI, § 6 factors

⁴³ Valdez does not appear to seriously dispute the compactness of District 29, and with good reason—the district is significantly more compact than the similar current district. *Compare* ARB000047 (District 29 in 2021 Proclamation) *with* ARB001590 (District 9 in 2013 Proclamation); *see also* Borrromeo Aff. ¶ 22. It is also more compact than the other options the Board considered that would have placed Valdez with Anchorage. *See, e.g.*, ARB009207 (Nov. 4 Tr. at 37:2-7); ARB009333-ARB009334 (Nov. 4. Tr. at 163:24-164:5).

⁴⁴ *Hickel*, 846 P.2d at 45.

⁴⁵ *Id.*

⁴⁶ *In re: 2011 Redistricting Cases*, 2013 WL 6074059, at *19 (quoting *Hickel*, 846 P.2d at 45).

⁴⁷ *Hickel*, 846 P.2d at 45 (citation omitted).

will often be in tension with each other, and thus some reduction in compactness may be necessary to “further . . . [an]other requirement of article VI, section 6.”⁴⁸

There is ample evidence to show that the Board received public testimony on multiple occasions, from numerous members of the public, testifying that Cantwell is socio-economically integrated with the Ahtna region and should be included in the rural Interior district.⁴⁹ This testimony spoke to the integration of the Ahtna region as a whole, including Cantwell, as well as the integration of that region with the rest of the Interior (primarily the Doyon region). Trial evidence will show the same, emphasizing socio-economic and cultural links such as shared potlatch, art, and subsistence traditions.⁵⁰ The Alaska courts have found such links relevant in determining socio-economic integration.⁵¹ The courts have also acknowledged that ANCSA regions are indicative of socio-economic integration and may be used to guide redistricting decisions and even justify some degree of population deviation.⁵² Here, the evidence will show that 10 of the 12 ANCSA regions were kept largely intact; for the remaining two, Calista and Cook Inlet Region, Inc., maintaining all the respective villages within a single district was not possible because of the large population in those regions (significantly exceeding the size for a single

⁴⁸ *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.

⁴⁹ 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).

⁵⁰ *E.g.*, Anderson Aff. ¶¶ 5, 9-13; Wright Aff. ¶¶ 20-21; Otte Aff. ¶ 27.

⁵¹ *See, e.g., Hickel*, 846 P.2d at 53-54 (discussing the distinct nature of Athabascan and Iñupiaq cultures).

⁵² *E.g., Kenai Peninsula Borough*, 743 P.2d at 1359 n.10 (Alaska 1987) (citing *Groh v. Egan*, 526 P.2d 863, 877 (Alaska 1974)). Indeed, ANCSA regions were drawn with the specific statutory intent that “each region [be] composed as far as practicable of Natives having a common heritage and sharing common interests.” 43 U.S.C.A. § 1606(a).

district).⁵³ And none of the 40-district maps submitted for consideration by the Board split the Calista region into fewer than 3 districts.

With respect to Cantwell, the record and evidence to be presented at trial will show that the Board carefully considered the public testimony regarding the socio-economic integration with District 36 and reasonably balanced the need for socio-economic integration against the compactness requirement.⁵⁴

In addition, evidence in the record shows that placing Cantwell into District 36 also helped reduce the over-population of District 30. Plaintiffs may attempt to argue or introduce evidence to the effect that the reduction in population deviation to District 30 was *de minimus* due to the relatively small population of Cantwell. However, the approximately 200 residents of Cantwell included in District 36 correspond to around 1.1% of a district, and the Plaintiffs argue that the District 30 is already unconstitutionally overpopulated at 1.1% above the ideal population. Including Cantwell in District 30 would double the overpopulation of that District.

II. THE SMALL POPULATION DEVIATIONS IN THE HOUSE MAP ARE THE RESULT OF PERMISSIBLE BALANCING AND DO NOT VIOLATE EQUAL PROTECTION.

A. There Is No Violation of “One Person, One Vote.”

“In the context of voting rights in redistricting and reapportionment litigation, there are two principles of equal protection, namely that of ‘one person, one vote’—the right to an equally weighted vote—and of ‘fair and effective representation’—the right to group effectiveness or an

⁵³ Binkley Aff. ¶ 36.

⁵⁴ ARB009242-ARB009250 (Nov. 4 Tr. at 72:7-80:3); Binkley Aff. ¶¶ 36, 40; Borromeo Aff. ¶ 23.

equally powerful vote.”⁵⁵ “The former is quantitative, or purely numerical, in nature; the latter is qualitative.”⁵⁶

The Mat-Su Plaintiffs allege that the House districts in the Mat-Su Borough are overpopulated, implicating residents’ right to an equally weighted vote. As the evidence will show, the small population deviations in the Final Map—just 2.66% for the largest district the Borough complains of—do not come close to making out a claim for violation of the “one person, one vote” principle.

The goal of “one person, one vote” is “substantial equality of population among the various districts.”⁵⁷ This principle is also reflected in Article VI, § 6, in the requirement that House districts be “as near as practicable to the quotient obtained by dividing the population of the state by forty.”⁵⁸ Under Alaska law, “minor deviations from mathematical equality” do not implicate equal protection.⁵⁹ The Alaska courts evaluate deviations by measuring the maximum deviation across districts (either in a particular region or statewide)—meaning “the sum of the absolute values of the two . . . districts with the greatest positive and negative deviations.”⁶⁰

Although deviations of up to 10% were historically permissible without any justification, the courts have recognized that “newly available technological advances” have made it possible to achieve lower deviations, particularly in urban areas where “population is sufficiently dense and evenly spread” to allow for lower deviations without unduly sacrificing compactness or socio-

⁵⁵ *Kenai Peninsula Borough*, 743 P.2d at 1366 (citations omitted).

⁵⁶ *Hickel*, 846 P.2d at 47 (citing *Kenai Peninsula Borough*, 743 P.2d at 1366-67).

⁵⁷ *Id.* (quoting *Reynolds v. Sims*, 377 U.S. 533, 579 (1964)).

⁵⁸ See *In re 2001 Redistricting Cases*, 44 P.3d at 145-146 (discussing the Article VI, § 6 “as near as practicable” standard).

⁵⁹ *Hickel*, 846 P.2d at 47 (quoting *Kenai Peninsula Borough*, 743 P.2d at 1366).

⁶⁰ *In re 2001 Redistricting Cases*, 44 P.3d at 145.

economic integration.⁶¹ Thus, in the 2001 redistricting cycle, for instance, the Alaska Supreme Court found a 9.5% deviation across districts within Anchorage to be unconstitutional but “upheld deviations of up to 5%” in other regions.⁶² The Redistricting Board in the 2011-2013 cycle focused on achieving extremely small deviations across the state, resulting in a statewide total deviation of just 4.2% in the final map.⁶³ The Superior Court specifically found that those deviations were “very low, lower than necessary to pass constitutional muster”⁶⁴ and noted that the goal of achieving low deviations “must live in harmony with the other constitutional requirements.”⁶⁵

Here, the population deviations challenged by the Mat-Su Plaintiffs fall well within the range of deviations that the courts have accepted as “minor” and requiring no special justification. The evidence in the record is that the highest deviation of the districts challenged by the Mat-Su Plaintiffs—House District 25—is just 2.66%.⁶⁶ Among the Mat-Su Region districts, the difference between the highest-population Mat-Su district (District 25) and the lowest-population Mat-Su district (District 30, at 1.10%) is merely 1.56%.⁶⁷ And when compared to the Anchorage districts that the Mat-Su Plaintiffs point to as evidence of unequal voting power, the evidence in the record shows that the deviation between the highest-population Mat-Su district and the lowest-population

⁶¹ In re: 2011 Redistricting Cases, 2013 WL 6074059, at *5 (citing In re 2001 Redistricting Cases, 44 P.3d at 145-46).

⁶² *Id.* (citing In re 2001 Redistricting Cases, 44 P.3d at 145-46).

⁶³ *Id.*

⁶⁴ *Id.* at *7.

⁶⁵ *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.

⁶⁶ ARB007234 (Population tabulation for 2021 Proclamation).

⁶⁷ *Id.*

Anchorage district (District 24, at -1.65%) is just 4.31%.⁶⁸ No evidence at trial can disprove this simple arithmetic.

The Mat-Su Plaintiffs have also suggested that their equal protection rights are implicated by the fact that the Borough has seen higher rates of population growth than other parts of the state, and thus the Borough's districts may hold additional population by the end of the 10-year redistricting cycle. This argument is wrong as a matter of law. The Board is constitutionally charged with drawing districts "based upon the population within each house and senate district as reported by the official decennial census of the United States."⁶⁹ The Board is not permitted to make adjustments to those numbers.⁷⁰ Any anticipated future population growth—which, of course, may or may not actually occur—is not a proper subject of consideration and thus cannot possibly implicate equal protection issues in the Board's Final Map.

B. The Board Did Not Intentionally Discriminate Against Valdez Residents.

The second component of equal protection, the right to fair and effective representation, "recognizes the danger that racial and political groups will be 'fenced out of the political process and their voting strength invidiously minimized.'"⁷¹ As the record and evidence to be presented at trial show, no such discrimination occurred here.

Claims based on the right to fair and effective representation, often referred to as vote dilution claims, turn on whether "the Board acted intentionally to discriminate against the voters of a geographic area."⁷² Thus, "the elements of a voter dilution claim" that a plaintiff must prove

⁶⁸ *Id.*

⁶⁹ Alaska Const. art. VI, § 3.

⁷⁰ *Id.*; *see also* AS 15.10.200.

⁷¹ *Hickel*, 846 P.2d at 49 (quoting *Gaffney v. Cummings*, 412 U.S. 735, 754 (1973)).

⁷² *Id.* (citing *Kenai Peninsula Borough*, 743 P.2d at 1372).

“includ[e] whether a politically salient class of voters existed and whether the Board intentionally discriminated against that class.”⁷³ “[W]hen a reapportionment plan *unnecessarily* divides a municipality in a way that dilutes the effective strength of municipal voters, the plan’s provisions will raise an inference of intentional discrimination.”⁷⁴ But such an inference “may be negated by a demonstration that the challenged aspects of a plan resulted from legitimate nondiscriminatory policies such as the article VI, section 6 requirements of compactness, contiguity, and socio-economic integration.”⁷⁵ And the courts have specifically recognized that the “need to accommodate excess population would be sufficient justification to depart from the antidilution rule.”⁷⁶

The evidence in the current case will show, first, that the House districts drawn by the Board do not give rise to an inference of intentional discrimination because they do not unnecessarily dilute either Valdez or Mat-Su Borough residents’ votes. And second, even if such an inference were found, it is easily rebutted by ample evidence in the record showing the legitimate, non-discriminatory reasons for the Board’s decisions in drawing the disputed districts.

The thrust of Valdez’s vote dilution claim seems to be that it wanted to be placed with Richardson Highway or Prince William Sound communities, and that its voice within District 29 will be drowned out by voters in the Mat-Su Borough. But no matter what district Valdez is placed in, nothing can change the fact that Valdez has only 4,000 residents; as such, it will be a minority

⁷³ *In re 2011 Redistricting Cases*, 274 P.3d 466, 469 (Alaska 2012).

⁷⁴ *In re 2001 Redistricting Cases*, 44 P.3d at 144 (emphasis added).

⁷⁵ *Id.*

⁷⁶ *Id.* at 144 n.7.

voice in *any* district.⁷⁷ “[G]roups of voters are not constitutionally entitled to proportional representation absent invidious discrimination.”⁷⁸ Here, no evidence presented by Valdez will demonstrate that its representation is disproportionate within its district, let alone that its placement is the result of discrimination.

Indeed, the evidence will show just the opposite: As noted above, extensive evidence in the record demonstrates that the pairing of Valdez with the Mat-Su Borough in District 29 resulted from the need to balance the competing demands of the § 6 factors across interconnected areas of the state.⁷⁹ The ultimate decision to combine Valdez and the eastern Mat-Su Borough was a direct result of these competing needs, not invidious discrimination. As the Board fully recognized, the placement of Valdez has been a perpetual challenge because it is in many ways a community with unique interests, and it is large enough to have significant population impacts on any district it is placed in, yet not large enough to control its own district.⁸⁰ Faced with this challenge, the evidence will show that the Board chose a rational and constitutionally satisfactory option that does not impermissibly dilute Valdez residents’ votes.

C. The Board Did Not Intentionally Discriminate Against Mat-Su Borough Residents.

The Mat-Su Plaintiffs appear to argue that the votes of Borough residents have been unconstitutionally diluted by the slight over-population of the House districts within the Borough.

⁷⁷ See ARB004355 (2020 census population for Valdez No. 1 (1,511), Valdez No. 2 (987), and Valdez No. 3 (1,532)).

⁷⁸ *In re* 2001 Redistricting Cases, 44 P.3d at 146.

⁷⁹ See *supra* at 10-12.

⁸⁰ *Binkley Aff.* ¶¶ 23-24; see also *In re: 2011 Redistricting Cases*, 2013 WL 6074059, at *16 (“The Board admits they struggled with whether to adopt a Valdez-Anchorage-Richardson 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.).

Here again, the evidence will show that these districts are the result of carefully balanced constitutional criteria, not any sort of intentional discrimination.

The Mat-Su Borough does not appear to argue that it has been unconstitutionally split, as is the case in a traditional vote dilution claim. Rather, with respect to overall representation, the Borough appears to have gotten what it asked for. The Borough submitted public testimony stating that it wished to have six House districts⁸¹—despite having population equivalent to only 5.84 districts⁸²—and in the Final Map the Borough indeed controls six districts, four of which are wholly within the Borough and two of which also bring in population from outside the Borough.⁸³ If anything, then, the Borough will be slightly over-represented in the House.

Nonetheless, the Borough will attempt to present evidence that the minor over-population of its six districts was the result of discrimination against the Borough. But there is simply no evidence of such discrimination. As already discussed at length, the slight over-population of the Mat-Su districts results from bringing the 4,000 residents of Valdez into District 29 with the eastern portion of the Mat-Su Borough, which was constitutionally permissible and even constitutionally *required* in light of competing § 6 factors elsewhere.⁸⁴ There is evidence in the record showing that the Board even considered making a change to pair Valdez with Anchorage, which would have flipped the population ratios that the Mat-Su Borough complains about (over-populating the Anchorage districts and under-populating the Mat-Su Borough). The evidence will show that the potential Anchorage pairing was abandoned because it was less compact and was not feasible within constitutional parameters, not because of any intent to discriminate against the Mat-Su

⁸¹ ARB000662-ARB000667.

⁸² *Borromeo Aff.* ¶ 14; *see also* Mat-Su Plaintiffs’ First Amended Compl. ¶ 15.

⁸³ ARB000017 (overview of Mat-Su districts), ARB000043-ARB000048 (Districts 25-30).

⁸⁴ *Supra* at 10-11.

Borough.⁸⁵ The record is simply devoid of any evidence of such discrimination, and evidence at trial will further support the conclusion that the Board acted properly in making these choices.

III. PROCESS-RELATED CLAIMS

The Plaintiffs also raise alleged improprieties in the Board's process, alleging due process violations as well as violations of the Article VI, § 10 public hearings requirements and the Open Meetings Act. Rather than present the Court with duplicative briefing regarding issues on which the Board is in the best position to respond, the Intervenor-Defendants hereby join in the Board's arguments regarding these issues, including the Board's discussion of the appropriate remedy for any violation of the process requirements.

If necessitated by the plaintiffs' presentation of their cases at trial, the Intervenor-Defendants reserve the right to present evidence regarding the Intervenor-Defendants' role in the public process. Such evidence would show that the Intervenor-Defendants, as members of the "Doyon Coalition," submitted a proposed map and presented public testimony regarding their own map and several of the other proposed maps. To extent that the Plaintiffs attempt to suggest improprieties on the part of the Board or the Intervenor-Defendants, the evidence will show that there were none.

CONCLUSION

The thrust of the Valdez Plaintiffs' complaint is that the residents of Valdez were not redistricted out of their current Valdez/Mat-Su district and into a Richardson Highway district of their own design. But Valdez is not entitled to be districted in accordance with its own preferences, or even to be included in a district with the communities with which it shares its tightest socio-

⁸⁵ *E.g.*, ARB009207 (Nov. 4 Tr. at 37:3-7); ARB009333-ARB009334 (Nov. 4. Tr. at 163:24-164:5); ARB00156437 (Nov. 5 Tr. at 5:1-22).

economic ties. Rather, Valdez is entitled to be included in a district that is compact, contiguous, and relatively socio-economically integrated in light of the other constitutionally valid options before the Board, and has as near as practicable equal population to the ideal district size. The Board's Final 2021 Proclamation map plainly satisfies that standard.

The Mat-Su Plaintiffs have essentially the same complaint, but they come from the perspective that the Borough would rather not share population in a district with residents of Valdez. Like Valdez, the Mat-Su plaintiffs are simply not constitutionally entitled to have the entire redistricting map be determined by their preferences as to which community or communities round out the population needed to make up for the fact that there is not enough population in the Mat-Su Borough to fill six full districts. Nor is there any merit whatsoever to the Plaintiffs' claim that the minor population deviations associated with the Mat-Su districts create a constitutional infirmity or that the Board invidiously discriminated against the Borough.

Evidence in the Board's record already provides ample basis for the Court to find that the Final Map adopted by the Board is constitutional. Evidence presented at trial will underscore that conclusion, giving the Court extensive factual and legal grounds on which to affirm the constitutionality of the Final Map.

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

SONOSKY, CHAMBERS, SACHSE
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