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

In the Matter of the	)	
	)	
2021 Redistricting Plan.	)	Case No. 3AN-21-08869 CI
	)	(Consolidated Cases)
<hr/>		
Case No. 3VA-21-00080 CI		
Case No. 1JU-21-00944 CI		

**TRIAL BRIEF OF THE MUNICIPALITY OF SKAGWAY BOROUGH**

**January 18, 2022**

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<b>Abbreviation or Acronym</b>	<b>Description</b>
AFFER	Alaska for Fair and Equitable Redistricting
AFFR	Alaskans for Fair Redistricting
AutoBound	Board's redistricting program, AutoBound Edge
Board	Alaska Redistricting Board
Doyon Coalition	Coalition of Doyon, Tanana Chiefs Conference, Fairbanks Native Association, Sealaska, and Ahtna
Final Plan	2021 Final Proclamation
HJR 44	House Joint Resolution 44
OMA	Open Meetings Act
Senate Minority	Alaska Senate Minority Caucus
Valdez	City of Valdez
VRA	Voting Rights Act
VRA Districts	Board created Districts 37-40

**TRIAL BRIEF OF THE  
MUNICIPALITY OF SKAGWAY AND BRAD RYAN**

Plaintiffs, the Municipality of Skagway Borough (“Skagway”) and Brad Ryan, through their attorneys, Brena, Bell & Walker, P.C., file their Pretrial Brief pursuant to the Court’s Order on the record at the pretrial hearing held on January 7, 2022.<sup>1</sup> Plaintiffs maintain that the Alaska Redistricting Board’s (“Board”) redistricting process and Final Proclamation of Redistricting (“Final Plan”) for 2021 violate multiple provisions of the Alaska Constitution, as well as the Open Meetings Act (“OMA”). Plaintiffs thus respectfully request that the Court remand the Final Plan to the Board to correct any errors in redistricting.

**I. INTRODUCTION**

Under the Alaska Constitution, the state legislature is reapportioned every ten years following the official reporting of each decennial census.<sup>2</sup> The constitutional requirements for the composition of the Board are set forth in Article VI, Section 8 of the Constitution, which provides in relevant part:

[The redistricting board] shall consist of five members, all of whom shall be residents of the state or at least one year and none of whom may be public employees or officials at the time of or during the tenure of appointment. Appointments shall be made without regard to political affiliation.<sup>3</sup>

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<sup>1</sup> See log notes for pretrial hearing at 2 (Jan. 7, 2022).

<sup>2</sup> Alaska Const., art. VI, § 3.

<sup>3</sup> *Id.* at § 8(a).

House Joint Resolution 44 (“HJR 44”) introduced the above language into Section 8.<sup>4</sup> The minutes of the House Judiciary meeting on February 6, 1998, regarding HJR 44 state: “MR. SOURANT explained, ‘It’s not designed to be an adversary system. It’s a system of cooperation. The fifth member, who is the chair, is to be as politically neutral and independent as possible.’”<sup>5</sup> Clearly, the Board’s process should be beyond reproach, open, and apolitical.

The constitutional requirements for adopting proposed plans, holding public hearings on those adopted plans, and making a final plan are set forth in Article VI, Section 10 of the Alaska Constitution, which provides:

(a) Within thirty days after the official reporting of the decennial census of the United States or thirty days after being duly appointed, whichever occurs last, the board shall adopt one or more proposed redistricting plans. The board shall hold public hearings on the proposed plan, or, if no single proposed plan is agreed on, on all plans proposed by the board. No later than ninety days 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.

The Board’s redistricting process was practically and constitutional flawed from the beginning. The Board was simply ill-prepared for the task of redistricting Alaska. The Board’s constitutional requirements were simple—adopt proposed plans within 30 days of receiving the census data, hold hearings on the adopted proposed plans, and then issue a

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<sup>4</sup> Alaska Const., art. VI, at § 8 (“1990 Legis. Res. 74 (HJR 44) approved Nov. 3, 1998, eff. Jan. 3, 1999.”).

<sup>5</sup> Minutes from House Judiciary Meeting on HJR 44 at 1:13 PM (Feb. 6, 1998).



final plan within 90 days of receiving the census data. The Board completely failed at meeting the first two simple requirements.

The Board's redistricting process required two preliminary steps before it could map a proposed plan to be adopted. The first preliminary step was to configure the redistricting software to the geography of Alaska. The Board had 19 months to perform this task, but left this task to a few weeks before the Board was constitutionally required to adopt proposed plans. In fact, it was not until early September that the Board figured out that it had to create a map based on census districts—the most fundamental principle of mapping a district. The second preliminary step was to input the census data into the configured software and map forty house districts. The Board did not begin to jointly map districts until September 7, 2021, five short days before the constitutionally mandated end of the 30-day period for adopting proposed plans of September 11, 2021. Even with only five days left to jointly map forty districts in Alaska, the Board only took three of those five days and adopted two plans on September 9, 2021, one of the plans, V.2, was prepared over a one-hour lunch break. Any illusion that the Board actually deliberated or carefully considered the viable options to the proposed plans it adopted is belied by the facts. The Board simply did not properly plan for its duties nor give itself enough time to evaluate or consider viable options to those plans it had hastily thrown together at the last moments before the constitutional deadline for adopting a proposed plan expired.

The two proposed plans adopted by the Board within the 30-day period for adopting proposed plans never saw the light of day or a public hearing, as constitutionally required. Instead, they were replaced with new plans 11 days after they were adopted and nine days

after the 30-day period for adopting proposed plans expired. In addition, the Board adopted five more proposed plans advanced by third-parties outside of the 30-day period for adopting proposed plans, and then immediately rescinded one of the five. Neither the two original proposed plans adopted by the Board within the 30-day period for adopting proposed plans, nor the subsequent proposed plans adopted by the Board outside of the 30-day period for adopting proposed plans, were afforded the full public-comment period anticipated by the constitution. The Board's position seems to be that it may adopt any number of plans at any time throughout the public comment period, constantly moving the target for public comment. While the Board may continue to work toward a final plan, it may not constitutionally adopt varying plans throughout the public comment period.

The constitutional requirements specific to redistricting are set forth in Article VI, Section 6 of the Alaska Constitution which provides:

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.

These standards are the standards that any redistricting effort must satisfy. In this case, the Board failed to properly apply these standards when creating the Final Plan.

The Board's Final Plan places Skagway in District 3, separating it from downtown Juneau and joining it with the western half of the Mendenhall Valley. Skagway seeks to

maintain the district with downtown Juneau, which will then allow the entire Mendenhall Valley community to remain districted together.

Skagway's goal is essentially to continue the same districting as had been in place for the last decade.<sup>6</sup> Downtown Juneau shares Skagway's and Haines' economic interests and challenges, and being districted together has served both communities well. Breaking that established connection and districting Skagway and Haines with the western half of the Mendenhall Valley splits the highly socioeconomically integrated neighborhood in the Mendenhall Valley in half simply to then join Skagway and Haines with the western half of the Mendenhall Valley<sup>7</sup>—separating a neighborhood of people that live, work, and play together simply to add distant communities that have minimal socioeconomic integration with the western half of the Mendenhall Valley. There is no basis for in socioeconomic reality for bisecting the Mendenhall Valley community simply to district Skagway and Haines with half of it.

Population changes do not necessitate any dramatic redesign of these districts, and the vast majority of community members from Skagway and Juneau spoke in favor of continuing Skagway and Haines in the same district with downtown Juneau. Every public official for Skagway—the major, the city manager, and a unanimous borough assembly—supported continuing Skagway and Haines in the same district with downtown Juneau. Similarly, every person from Juneau or the Mendenhall Valley that specifically commented

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<sup>6</sup> Exhibit A, 2013 Proclamation Map for Districts 33 and 34 [ARB001614].

<sup>7</sup> Exhibit B, 2021 Proclamation Map for Districts 3 and 4 [ARB00021].

on the matter, asked that the Mendenhall Valley be districted separately from downtown Juneau with a dividing line between the two districts that kept both the Mendenhall Valley and downtown Juneau whole (often with Fred Meyer being suggested as the point of separation). Stated differently, not a single public comment was received that suggested the Mendenhall Valley should be split in half in order to district Skagway and Haines with the western half of the Mendenhall Valley—as does the Board’s final map.<sup>8</sup>

The population numbers do not permit Skagway and Haines to be districted with the Mendenhall Valley without splitting the Mendenhall Valley in half. If the population of Skagway and Haines are districted with the Mendenhall Valley, then District 3 will be roughly 3,000 people overpopulated and the Mendenhall Valley has to shed 3,000 people by being split in half through a common neighborhood. No commentator supporting districting Skagway and Haines with the Mendenhall Valley seemed aware of this numeric reality. The very few commenters supporting districting Skagway and Haines with the Mendenhall Valley presumed, without comment, that the pairing was with the entire Mendenhall Valley and not with only the western half.<sup>9</sup>

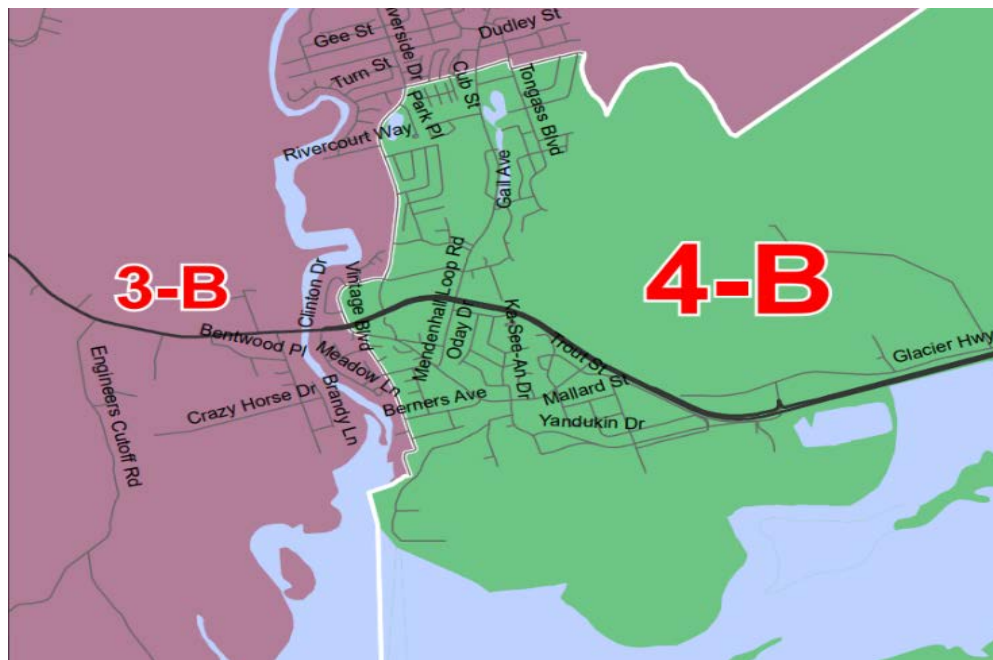
Notwithstanding the overwhelming public comment supporting continuing to district Skagway and Haines with downtown Juneau, the overwhelming socioeconomic evidence suggesting Skagway and Haines are far more integrated with downtown Juneau

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<sup>8</sup> Exhibit C, compiled public comments regarding Districts 3 and 4.

<sup>9</sup> For example, a commenter suggested districting Skagway and Haines with the Mendenhall Valley because of the daily flights among them. There are no daily flights to the half of the Mendenhall Valley included in District 3 under the final plan. The airport is in District 4 with downtown. Exhibit C at 18 [ARB002630].

than the Mendenhall Valley, and having to split the Mendenhall Valley community in half, based almost entirely on the strong personal and unsupported opinion of Board Member Simpson, the Board rejected both the record before them and the will of the people to adopt the new Districts 3 and 4 with an arbitrary line through the middle of the Mendenhall Valley community:



The Board members expressly acknowledge that maintaining Skagway and Haines in the same district with downtown Juneau meets the constitutional standards for a contiguous, compact, and socioeconomically integrated district. Given that, there is no constitutionally valid purpose to be met by splitting the Mendenhall Valley community and separating a neighborhood that lives, works, and plays together simple to join the two distant and non-socioeconomically integrated communities of Skagway and Haines with the remaining half of the Mendenhall Valley neighborhood. The Board's deference to a single member who never understood why Skagway and Haines were districted with

downtown Juneau in the first place should not prevent a far more viable option from being fairly considered based on the proper application of the constitutional principles for redistricting.

## **II. STATEMENT OF THE ISSUES**

The central issues in this case are constitutional issues with respect to the redistricting process the Board used in reaching its Final Plan and whether the Final Plan satisfies the legal criteria for redistricting under Alaska law. There is also an additional issue with respect to the OMA. Specifically, the primary issues for determination by this Court are:

1. Whether the Board violated Article VI, Section 10 of the Alaska Constitution (“Redistricting Plan and Proclamation”) in the underlying process the Board used in reaching its Final Plan;
2. Whether the Board violated the due process requirements set forth Article I, Section 7 of the Alaska Constitution in the underlying process the Board used in reaching its Final Plan;
3. Whether the Board violated the OMA in the underlying process the Board used in reaching its Final Plan;
4. Whether the Board violated the redistricting criteria set forth in Article VI, Section 6 of the Alaska Constitution in its Final Plan; and
5. Whether the Board violated the equal protection requirements set forth in Article I, Section 7 of the Alaska Constitution in its Final Plan.

### **III. THE WORK OF THE BOARD**

The members of the Board were appointed pursuant to Article VI, Section 8 of the Alaska Constitution. The five members were appointed as follows: Governor Mike Dunleavy appointed Budd Simpson of Juneau and Bethany Marcum of Anchorage on July 28, 2020; Senate President Cathy Giessel appointed John Binkley of Fairbanks on July 29, 2020; the Speaker of the House of Representatives, Bryce Edgmon, appointed Nicole Borromeo of Anchorage on July 30, 2020; and Chief Justice Joel Bolger appointed Melanie Bahnke of Nome on August 7, 2020.<sup>10</sup> Executive Director, Peter Torkelson, and Deputy Director, TJ Presley, were retained in December.<sup>11</sup> Significant dates related to the work of the Board and this litigation are set forth below.

#### **August 12, 2021**

The Board received the census data. Article VI, Section 10 (discussed below) requires the Board to adopt one or more proposed plans within 30 days of receiving the census data, making the deadline to adopt any proposed plan on September 11, 2021.

#### **September 7, 2021**

The Board met for a total of six hours and 10 minutes.<sup>12</sup> Of that total time, the Board spent one hour and 48 minutes in executive session.<sup>13</sup> This was followed by board

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<sup>10</sup> Redistricting Process Report at 1 (Nov.10, 2021) (ARB000005).

<sup>11</sup> *Id.*

<sup>12</sup> ARB000159-000162.

<sup>13</sup> ARB000161.

member presentations of draft plans and public testimony.<sup>14</sup> The Board then spent one hour and 37 minutes in the first group map drawing work session.<sup>15</sup> The Board thus spent more time in executive session than in a map drawing work session.

### **September 8, 2021**

The Board met for a total of five hours and 34 minutes.<sup>16</sup> Of that total time, the Board spent five hours and 19 minutes in a map drawing work session and 14 minutes hearing public testimony.<sup>17</sup>

### **September 9, 2021**

The Board met for a total of five hours and 52 minutes.<sup>18</sup> The Board entered into a map drawing work session eight minutes after it convened.<sup>19</sup> Ms. Borrromeo voiced several concerns for purposes of discussion. At the end of the work session, the Board settled two draft plans to present to the public.<sup>20</sup> The Board then heard public testimony and adopted the two draft plans: Board Composite Version 1 (“V.1”) and Board Composite Version 2 (“V.2”).<sup>21</sup>

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<sup>14</sup> ARB000161.

<sup>15</sup> ARB000161.

<sup>16</sup> ARB000162.

<sup>17</sup> ARB000162.

<sup>18</sup> ARB000162-000165.

<sup>19</sup> ARB000162-000163.

<sup>20</sup> ARB000164.

<sup>21</sup> ARB000164-000165.



### **September 11, 2011**

This was the end of the 30-day period within which the Board was required to adopt one or more proposed plans pursuant to Article VI, Section 10 of the Alaska Constitution. The Board did not meet on September 10th or September 11th. Thus, the only two plans developed and adopted within the 30-day period were V.1 and V.2. The Board did not meet again until September 17.

### **September 17, 2021**

The Board met for a total of six hours and 12 minutes.<sup>22</sup> After only two hours of public testimony, the Board moved to replace V.1 and V.2 with Version 3 (“V.3”) and Version 4 (“V.4”).<sup>23</sup> Prior to this time, V.3 and V.4 had never been made available for public review or comment. In addition, V.4 contained radically different districts than those in either V.1 or V.2.<sup>24</sup> The Board then received presentations from five third-party groups that each offered a proposed redistricting plan, and the Board took public testimony related to those plans.<sup>25</sup>

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<sup>22</sup> ARB000166; ARB000174.

<sup>23</sup> Redistricting Process Report at 3 (Nov. 20, 2021) ARB0000007.

<sup>24</sup> See ARB000618-000855 (Board Packet for Sept. 17-19, 2021 Board meetings omitting any mention of revisions to V.1 or V.2 or proposed revisions to Board drawn maps); ARB000856-000943 (Board Packet for Sept. 20, 2021 omitting any proposed revisions to Board drawn maps or revised Board drawn maps).

<sup>25</sup> ARB000170-000173.

### **September 20, 2021**

The Board met for a total six hours and six minutes.<sup>26</sup> This was the last meeting prior to entering the public outreach phase of the redistricting process.<sup>27</sup> The Board adopted V.3 and V.4 after the 30-day period within which the Board was constitutionally required to adopt one or more proposed plans. In doing so, the Board rendered obsolete V.1 and V.2 that the Board properly adopted during the 30-day period. The Board also adopted four of the five third-party plans.<sup>28</sup> Those plans were from Coalition of Doyon, Tanana Chiefs Conference, Fairbanks Native Association, Sealaska, and Ahtna (“Doyon Coalition”); Alaskans for Fair Redistricting (“AFFR”); Alaska for Fair and Equitable Redistricting (“AFFER”); and the Alaska Senate Minority Caucus (“Senate Minority”). The Board adopted and then rescinded the plan proposed by the Alaska Democratic Party, making it the only third-party plan the Board did not adopt at that time.<sup>29</sup>

### **October 19, 2021**

Valdez submitted a resolution, which include Valdez Option 1, to the Board.

### **November 1, 2021**

Valdez submitted extensive comments to the Board regarding the redistricting process, including an alternative map, for the Board’s consideration.<sup>30</sup>

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<sup>26</sup> ARB 000175; ARB000192.

<sup>27</sup> ARB000173.

<sup>28</sup> ARB000190-000192.

<sup>29</sup> ARB000190-000191.

<sup>30</sup> ARB0041-004105.

### **November 2, 2021**

The Board met for a total of six hours and 55 minutes.<sup>31</sup> Of that total time, the Board spent two hours and 23 minutes in executive session.<sup>32</sup> In addition, the Board spent two hours and 48 minutes in a mapping work session.<sup>33</sup>

### **November 3, 2021**

The Board met for a total of seven hours, during which it entered into a mapping work session.<sup>34</sup>

### **November 4, 2021**

The Board met for a total of seven hours, during which it entered a mapping work session.<sup>35</sup>

### **November 5, 2021**

The Board met for a total of ten hours and nine minutes.<sup>36</sup> During that time, the Board met in executive session twice. The first executive session lasted one hour and 35 minutes.<sup>37</sup> This was followed by a mapping work session that lasted one hour and 46 minutes.<sup>38</sup> Following public testimony, the second executive session lasted

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<sup>31</sup> ARB000193; ARB000199.

<sup>32</sup> ARB000196.

<sup>33</sup> ARB000199.

<sup>34</sup> ARB000200.

<sup>35</sup> ARB000200.

<sup>36</sup> ARB00201; ARB000209.

<sup>37</sup> ARB000202.

<sup>38</sup> ARB000202.

55 minutes.<sup>39</sup> The Board thus met in executive session for a total of two and a half hours. The Board adopted V.4, as well as a redistricting map labeled “Board Consensus V.7” that was labeled the “Final Map” as the “final redistricting map with the allowance that staff may make minor changes to facilitate metes and bound, and will return a report with recommended changes to the board for review prior to final proclamation adoption.”<sup>40</sup>

#### **November 10, 2021**

The Board adopted a Final Proclamation of Redistricting, including senate pairings. This is the Board’s Final Plan.<sup>41</sup>

#### **IV. STANDARD OF REVIEW**

Under Article VI, Section 11 of the Alaska Constitution, the superior court has original jurisdiction over lawsuits to “compel correction of any error in redistricting.”<sup>42</sup> The Alaska Supreme Court has established the general standard of review to be applied by the courts when exercising jurisdiction under Article VI, Section 11 of the Alaska Constitution:

We view a plan promulgated under the constitutional authorization of the governor to reapportion the legislature in the same light as we would a regulation adopted under a delegation of authority from the legislature to an administrative agency to formulate policy and promulgate regulations. We have stated that we shall review such regulations first to insure [sic] that the

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<sup>39</sup> ARB000208.

<sup>40</sup> ARB000208.

<sup>41</sup> ARB000002-000115.

<sup>42</sup> *In re 2011 Redistricting Cases*, 294 P.3d at 1037.

agency has not exceeded the power delegated to it, and second to determine whether the regulation is reasonable and not arbitrary.<sup>43</sup>

In determining whether a regulation is reasonable and not arbitrary, “review consists primarily of ensuring that the agency has taken a hard look at the salient problems and has generally engaged in reasoned decision making.”<sup>44</sup> A court must examine not policy but process, and must ask whether the agency, or Board in this case, “has failed to consider an important factor or whether the agency has not really taken a ‘hard look’ at the salient problems and has not generally engaged in reasoned decision making.”<sup>45</sup>

With respect to redistricting cases in particular, the supreme court has further stated that “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.”<sup>46</sup>

## **V. ARGUMENT**

### **A. The Board Violated Article VI, Section 10 in Its Redistricting Process.**

Alaska’s redistricting process is set forth in Article VI, Section 10 of the Alaska Constitution. Section 10 provides in relevant part:

Within thirty days after the official reporting of the decennial census of the United States or thirty days after being duly appointed, whichever occurs last, the board shall adopt one or more proposed redistricting plans. The board shall hold public hearings on the proposed plan, or, if no single proposed plan is agreed on, on all plans proposed by the board. No later than ninety days after the board has been appointed and the official reporting of the decennial

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<sup>43</sup> *Carpenter v. Hammond*, 667 P.2d 1204, 1214 (Alaska 1983). See also *In re 2001 Redistricting Cases*, 2002 WL 34119573 at 19 (citing *Carpenter* 667 P.2d at 1214).

<sup>44</sup> *Interior Alaska Airboat Ass’n, Inc. v. State*, 18 P.3d 686, 690 (Alaska 2001).

<sup>45</sup> *Id.* at 693. See also *In re 2001 Redistricting Cases*, 2002 WL 34119573 at 19 (citing *Interior Alaska Airboat*, 18 P.3d at 693).

<sup>46</sup> *In re 2011 Redistricting Cases*, 294 P.3d at 1037.

census of the United States, the board shall adopt a final redistricting plan and issue a proclamation of redistricting.<sup>47</sup>

In his Memorandum and Order on the 2001 redistricting cases, Judge Rindner held that “Article VI, Section 10 requires that public hearings be held only on the plan or plans adopted by the Board within thirty days of the reporting of the census.”<sup>48</sup> The Alaska Supreme Court affirmed this holding.<sup>49</sup> Thus, in this case, the proposed plans were required to be adopted within 30 days of the Board’s receipt of the census data, which was September 11, 2021, and public hearings on those adopted plans were required to be held before the Board adopted a final plan within 90 days of the Board’s receipt of the census data, which was November 10, 2021.

The legislative history of House Joint Resolution 44 that introduced the above language into Section 10 supports Judge Rindner’s interpretation of Section 10. The minutes of the House Judiciary meeting on February 11, 1998, regarding HJR 44 state: “REPRESENTATIVE PORTER explained that the board is required to come up with a plan in 30 days and then have hearings on the plan or plans that they have developed, and to present a proclamation at the end of 90 days, which would constitute their reapportionment plan.”<sup>50</sup> Public hearings are thus to be held on the plans the Board

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<sup>47</sup> Alaska Const., art. VI, § 10.

<sup>48</sup> *In re 2001 Redistricting Cases*, 2002 WL 34119573 at 24.

<sup>49</sup> *In re 2001 Redistricting Cases*, 44 P.3d at 143 (“Except insofar as they are inconsistent with this order, the orders of the superior court challenged by the petitioners are AFFIRMED.”).

<sup>50</sup> Minutes from House Judiciary Meeting on HJR 44 at 1:10 PM (Feb. 11, 1998).

developed and adopted within the 30-day period, after which there are 60 days for public comment and for the Board to make modifications to those plans and adopt a final redistricting plan. Article VI, Section 10 anticipates that the plan(s) adopted by the Board within the 30-day period will evolve over the next 60 days during the course of public hearings.

In this case, however, the Board failed to satisfy the requirements of Article VI, Section 10 in its redistricting process. The Board's joint drafting efforts within the 30-day period for adopting proposed plans was limited to less than three full days. Joint drafting on V.1 and V.2 began on September 7, 2021, and those plans were subsequently adopted by the Board on September 9, 2021. V.2 was drafted in an hour over lunch by Board Member Borromeo and was considered by even her to be an incomplete exercise.<sup>51</sup> V.1 and V.2 were the only two plans adopted by the Board within the 30-day constitutionally mandated period for adopting proposed plans. Both were subsequently abandoned by the Board a mere 11 days later, on September 20, 2021, without the benefit of any apparent public hearings. The constitutional mandate does not anticipate a three-day mapping period, nor does it anticipate the abandonment of all plans which were adopted during the 30-day adoption period a mere 11 days later.

By developing and adopting V.1 and V.2 over three days (September 7-9) and abandoning both adopted plans a mere 11 days later (September 20), there was no meaningful public comment period for the only two plans adopted by the Board within the

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<sup>51</sup> Nicole Borromeo Depo. Tr. 168, lines 14-20.

constitutionally mandated 30-day adoption period for proposed plans. The constitutional process does not anticipate the Board adopting proposed plans throughout the public comment period. Instead, it anticipates the Board adopting plans within the 30-day period for adopting plans and then permitting the public to comment on the plans it adopted until a final plan is approved.

Likewise, the constitutional process does not anticipate the Board adopting plan after plan outside of the 30-day period for adopting plans throughout the public comment period. Apparently, the Board's position is that it may adopt proposed plans after the constitutionally mandated 30-day period and throughout the public comment period even if it believes those plans are unconstitutional on their face. One can ill imagine a more confusing process for presenting adopted proposed plans to the public than the Board abandoning adopted plans days or minutes after adoption and then adopting new plans throughout the public comment period. Under both sets of circumstances, the public's ability to comment on a stable set of adopted plans by the Board is constitutionally compromised.

After presentation of V.3 and V.4, the Board voted to adopt those proposed plans without receiving public comment on them.<sup>52</sup> V.4, which was created by Ms. Borromeo was not even made available to other Board Members until the end of the September 20 meeting. Ms. Borromeo testified as follows:

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<sup>52</sup> Sept. 20, 2021, Board Meeting Tr. at 147, line 2 – page 196, line 22 (ARB10290-010339).



Q: Ms. Borromeo, you were just referring to Version 4. We were just talking about -- I think one of the things that you just said was if you compare your Version 4 with the final map that was adopted, they're very similar; is that - is that a fair statement? A: Yes.

Q: Okay. Now, the Version 4, you were the creator of Version 4? That's was your -- A: Yes.

Q: Okay. And that was presented to the Board and adopted by the Board on September 20th; is that correct? A: Yes.

Q: Okay. And had you shared it, what members of the Board had you shared your Version 4 with prior to September 20th? A: None.

Q: Okay. And so you had -- you had just created it before and presented it at the September 20th meeting and hadn't shared it with any other member of the Board? A: Yes.<sup>53</sup>

V.3 and V.4 were not made available to the public in advance of the September 20 meeting and no opportunity for public comment was provided prior to adoption of the Board's new proposed plans. The Board also adopted five third-party plans and then promptly rescinded one it had just adopted.<sup>54</sup> By adopting V.3, V.4, and four third-party plans on September 20, nine days after the end of the 30-day period, the Board truncated the 60-day period for public comment on those plans. Not a single redistricting plan was available for public comment for the full 60-day period, as anticipated by Article VI, Section 10.

The Board adopted an interpretation of Article VI, Section 10 that allowed the Board to develop and adopt new redistricting plans at any time after the 30-day period had passed. That interpretation, however, is not supported by the plain language of Article VI,

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<sup>53</sup> Borromeo Depo. Tr. at 50, lines 2-21 (Jan. 10, 2022).

<sup>54</sup> Redistricting Process Report at 3-4 (Nov.10, 2021).

Section 10, it is not supported by the legislative history, and it is not supported by Judge Rindner's Order that the supreme court affirmed on this issue. Moreover, the fact that the Board spent no more than three days to develop and adopt V.1 and V.2 is likely one reason the Board went outside the 30-day period to develop and adopt new maps.

As noted above, Article VI, Section 10 anticipates that the plan(s) adopted by the Board within the 30-day period will evolve over the next 60 days during the course of public hearings. Article VI, Section 10 does not, however, anticipate that the Board will adopt and rescind proposed plans throughout the public comment period. Adoption of a proposed plan is an act of legal significance. Once proposed plans are adopted by the Board within the constitutionally mandated 30-day adoption period, the Board is constitutionally obligated to hold public hearings on those adopted plans. This Board did not. Moreover, there is no constitutional language anticipating the public comment period may be truncated by the adoption of multiple plans throughout the public comment period. The authors have been unable to find a single proposed plan that has been adopted by the Board in prior years outside of the 30-day period for adoption of proposed plans. In this case, there was not a single proposed plan by the Board that was afford the full opportunity for public comment anticipated in Article VI, Section 10.

Further, it is not accurate to suggest this multitude of adopted, rescinded, and replaced proposed plans during the public comment period were somehow an evolutionary process. There were radical changes from adopted proposed plan to plan. Judge Rindner's findings in the 2001 redistricting cases confirm this:

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This [2001] case does not present the problem of the Board adopting an entirely new plan that has never been the subject of public hearings and which was a radical departure from plans that had been the subject comment. While some parts of the Full Representation Plan were unique and considered for the first time, this court finds that the Full Representation Plan was an evolution of various other plans. . . . The elements of the Full Representation Plan had been previously discussed by the Board or made available to the public although the entire Full Representation Plan was not made available to the public until June 6.<sup>55</sup>

The Board is entitled to modify parts of the redistricting plans it adopted in arriving at a final redistricting plan within the 60-day period that follows. The Board is not entitled to replace plans it adopted within the 30-day period or to adopt additional proposed plans outside the 30-day period.

All six of the proposed plans that framed public comment for the redistricting process were adopted after the constitutional deadline for adopting proposed plans. As noted above, V.3 and V.4 were not subject to public comments before their adoption. The agenda for the September 20 Board meeting included an agenda item for “Review of Improvements to Board Proposed Plans v1 and v2.”<sup>56</sup> This agenda item cannot be reasonably interpreted as providing public notice that the Board would adopt an entirely new proposed plan with substantially different districts after the constitutional deadline for adopting proposed plans. The word “improvement,” does nothing to suggest to the public that the Board intended to review and adopt additional plans much less a radically different proposed plan.

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<sup>55</sup> *In re 2001 Redistricting Cases*, 2002 WL 344119573 at 25, n.40.

<sup>56</sup> ARB000856.

If the Board could simply develop and adopt radically new plans outside the 30-day period and thereby avoid the constitutional requirement for public hearings on plans it developed and adopted with the 30-day period, the redistricting process would defeat the public process that the legislature envisioned, that Judge Rindner recognized, and that the supreme court affirmed. There is no authority for the Board's interpretation of Article VI, Section 10, and the Board provides none. The authority is to the contrary.

**B. The Board Denied Plaintiffs Due Process Under Article I, Section 7 of the Alaska Constitution.**

The Board not only failed to satisfy the requirements of Article VI, Section 10—the Board denied Plaintiffs due process as a result of that failure. Article I, Section 7 of the Alaska Constitution provides: “No person shall be deprived of life, liberty, or property, without due process of law. The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed.”<sup>57</sup>

Plaintiffs contend that the following actions of the Board violated due process: (1) adopting two plans over the course of three days within the 30-day period without adequate notice or public testimony; (2) replacing those two plans with two different plans, one of which became the basis for the adopted Final Plan, which was radically different from the previous plan, outside of the 30-day period without adequate notice or public testimony; (3) adopting four third-party plans outside of the 30-day period without adequate notice or public testimony; (4) having substantive discussions and making important decisions behind closed doors with no opportunity for public participation;

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<sup>57</sup> Alaska Const., art. I, § 7; *see also* U.S. Const., amend. XIV, § 1.

(5) making critical decisions with regard to house district boundaries without offering an adequate opportunity for public comment; and (6) adopting a Final Plan that was not one of the plans published by the Board without adequate notice or public testimony.

The concept of due process stems from the idea of fairness.<sup>58</sup> The Alaska Supreme Court has stated that, “[w]hat procedural due process may require under any particular set of circumstances depends on the nature of the governmental function involved and the private [or public] interest affected by the governmental action.”<sup>59</sup> In his discussion of due process in the 2001 redistricting cases, Judge Rindner explained:

While the Board is free to adopt its own procedures, it is not afforded unfettered discretion during the redistricting process. The Board must comply with the Open Meetings Act, the Public Records Act, and Article VI, Section 10 of the Alaska Constitution.<sup>60</sup>

The Board’s redistricting process did not afford Plaintiffs a meaningful opportunity to be heard on the Board’s plans developed and adopted within or after the 30-day period.

On September 9, the Board adopted V.1 and V.2 within the 30-day period as required. As set forth above, the Board was then required to hold public hearings on those plans. The Board did not meet again until September 20, 2021. The vast majority of the September 20th meeting was spent receiving public comment from third-party mappers.

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<sup>58</sup> *In re 2001 Redistricting Cases*, 2002 WL 344119573 at 21.

<sup>59</sup> *In re 2001 Redistricting Cases*, 2002 WL 344119573 at 21.

<sup>60</sup> *Id.* at 22.

But on September 20, nine days after the end of the 30-day period, the Board moved to replace V.1 and V.2 with V.3 and V.4.<sup>61</sup> The radical differences between V.2 and V.4 are apparent in the minutes from the Board meeting held on September 20, 2021.<sup>62</sup> The late introduction and adoption of V.3 and V.4 precluded Plaintiffs from any meaningful opportunity to be heard on those plans. On September 20, 2021, the Board replaced V.1 and V.2 with V.3 and V.4. After September 20, 2021, the Board did not meet again until November 2, 2021. The Board adopted its final plan for House districts on November 5, 2021.

As explained above, the Board not only truncated the period for public comment on V.1 and V.2, the Board also truncated the 60-day period for comment on plans improperly adopted after the 30-day period had passed. While the Board held some public hearings, it failed to provide adequate notice and opportunity for the citizens of Alaska to review and comment upon V.3 and V.4 prior to adoption of those proposed plans. Importantly, during the meetings from November 2-5, 2021, the Board made numerous substantive decisions regarding redistricting without allowing adequate opportunity for public participation. Many of these decisions were made in executive session outside of the public eye. The Board reached consensus on numerous important redistricting decisions outside of the public process.

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<sup>61</sup> ARB000190.

<sup>62</sup> See ARB000186-000192.

Through the course of its actions, the Board denied Plaintiffs their constitutional right to due process under Article I, Section 7 of the Alaska Constitution.

**C. The Board Violated the OMA.**

The OMA, AS 44.62.310(a), provides that “all meetings of a governmental body of a public entity of the state are open to the public except as otherwise provided by this section or another provision of law.”<sup>63</sup> As a governmental body of a public entity of the state, the Redistricting Board is thus subject to the requirements of AS 44.62.310-.312.<sup>64</sup> The OMA also provides that “[r]easonable public notice shall be given for all meetings required to be open under this section.”<sup>65</sup> With regard to meetings in executive session, the OMA provides:

The motion to convene in executive session must clearly and with specificity describe the subject of the proposed executive session without defeating the purpose of addressing the subject in private. Subject may not be considered at the executive session except those mentioned in the motion calling for executive session unless auxiliary to the main question. Action may not be taken at an executive session, except to give direction to an attorney or labor negotiator regarding the handling of a specific legal matter or pending labor negotiations.<sup>66</sup>

The following subjects that may be considered in executive session:

1. matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the public entity;

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<sup>63</sup> AS 44.62.310(a).

<sup>64</sup> *See also Hickel*, 846 P.2d at 57 (“[W]e affirm the trial court’s determination that the Open Meetings Act and Public Records Act apply generally to the activities of the Reapportionment Board.”).

<sup>65</sup> AS 44.62.310(e).

<sup>66</sup> AS 44.62.310(b).

2. subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;

3. matter which by law, municipal charter, or ordinance are required to be confidential; and

4. matters involving consideration of governments records that by law are not subject to public disclosure.<sup>67</sup>

As the Supreme Court has stated:

The privilege should not be applied blindly. It is not enough that the public body be involved in litigation. Rather, the rationale for the confidentiality of the specific communication at issue must be one which the confidentiality doctrine seeks to protect: candid discussion of the facts and litigation strategies.<sup>68</sup>

The supreme court affirmed this ruling.<sup>69</sup> The attorney-client privilege exception to the OMA is limited to “consideration of pending litigation.”<sup>70</sup> In addition, the superior court has previously ruled that “the Board violates the Open Meetings Act by using e-mail to communicate among three or more Board members to discuss Board business.”<sup>71</sup>

Plaintiffs contend that the following actions of the Board violated the OMA:

(1) failing to identify specifically the topic of discussion in executive session clearly and

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<sup>67</sup> AS 44.62.310(c).

<sup>68</sup> *Cool Homes, Inc. v. Fairbanks North Star Borough*, 860 P.2d 1248, 1262 (Alaska 1993).

<sup>69</sup> *In re 2001 Redistricting Cases*, 44 P.3d at 143 (“Except insofar as they are inconsistent with this order, the orders of the superior court challenged by the petitioners are AFFIRMED.”).

<sup>70</sup> *Cool Homes*, 860 P.2d at 1261.

<sup>71</sup> *In re 2001 Redistricting Cases*, 2002 WL 344119573 at 23.



with specificity; (2) entering executive session for the purpose of seeking general legal advice, which is not attorney-client privileged;<sup>72</sup> (3) making substantive redistricting decisions in executive session when such decisions must be made in an open meeting; (4) improperly meeting in executive session multiple times during a three-day period from September 7 through September 9; (5) hastily adopting V.1 and V.2 plans on September 9, 2021 without providing adequate public notice, adequate public access to the proposed plans, or offering an opportunity for meaningful public testimony; (6) replacing V.1 and V.2 with V.3 and V.4 on September 20, 2021, without providing public access to these new proposed plans prior to introducing them at the September 20, 2021 meeting and failing to take public testimony on the proposed plans prior to adopting them; (7) using e-mail or other communications among three or more Board members to discuss Board business; (8) making decision out of the public eye through serial e-mail or other communications; and (9) adopting a Final Plan that was not one of the plans published by the Board without adequate notice or public testimony.

The Board's practice was to enter executive session by merely reciting the statutory language of the OMA. On other occasions the Board entered executive session for the broad purpose of obtaining "legal advice" without providing any description of the subject matter to be discussed in executive session. The Board generally had an inconsistent

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<sup>72</sup> *Cool Homes*, 860 P.2d at 1261-62 (quoting *Minneapolis Star & Tribune Co. v. The Hous. & Redevelopment Auth. Minneapolis*, 246 N.W.2d 448, 454 (Minn. 1976) ("The exception is not appropriate for 'the mere request for general legal advice or opinion by a public body in its capacity as a public agency.'").

process for executive sessions that resulted in OMA violations. The Board's public meetings policy adopted the OMA standards and expressly states that public notice shall be given 72 hours in advance with 24 hours being allowable.<sup>73</sup> The Board failed to properly notice executive sessions on numerous occasions and instead added executive sessions to agendas during meetings or *sua sponte* entered executive session for nebulous reasons. Similarly, the Board failed to properly notice the proposed actions to be taken at public meetings. A salient example of this failure is the agenda for the September 20 meeting, which included an agenda item regarding "improvements to Board proposed plans V.1 and V.2."<sup>74</sup> Under that agenda item the Board presented and adopted V.3 and V.4 to replace V.1 and V.2 without taking public comment. V.4 is radically different than both V.1 and V.2 and cannot be considered a mere "improvement."

The Board paid little regard to the narrow scope of OMA exceptions and engaged in substantive deliberations decision making in executive session thereby shielding what is required to be a public process from scrutiny by the public. Under the OMA, the Board is not permitted to make substantive decisions or engage in deliberations regarding how to draw district boundaries in executive session,<sup>75</sup> yet this is precisely what occurred. It is readily apparent that the scope discussion in executive session exceeded the scope of the

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<sup>73</sup> Board Public Meeting & Notice Requirement Policy (ARB000422-000423).

<sup>74</sup> Sept. 20, 2021, Board Meeting Agenda (ARB001174).

<sup>75</sup> *Hickel v. Se. Conference*, 868 P.2d 919, 929 (Alaska 1994); AS 44.62.310(b) ("Action may not be taken at an executive session, except to give direction to an attorney or labor negotiator regarding the handling of a specific legal matter or pending labor negotiations.").

subjects mentioned in the motion calling for executive session or auxiliary subjects.<sup>76</sup> Indeed, the Board entirely ignored the requirement that “the motion to convene in executive session must clearly and with specificity describe the subject of the proposed executive session without defeating the purpose of addressing the subject in private.”<sup>77</sup> Instead, the Board merely recited the statutory language of the OMA when moving to enter executive session.

The state policy regarding open meetings is set forth in AS 44.62.312, which states that it is the policy of the state that “it is the intent of the law that actions of those [governmental] units [mentioned in AS 44.62.310(a)] be taken openly and that their deliberations be conducted openly.”<sup>78</sup> It is also the policy of the state that “the people’s right to remain informed shall be protected so that they may retain control over the instruments they have created.”<sup>79</sup> In addition, the Alaska Supreme Court has stated:

Open decision-making is regarded as an essential aspect of the democratic process. It is believed that public exposure deters official misconduct, makes government more responsive to its constituency, allow for greater public provision of information to the decision-maker, creates greater public acceptance of government action, and promotes accurate reporting of governmental processes.<sup>80</sup>

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<sup>76</sup> AS 44.62.310(b).

<sup>77</sup> AS 44.62.310(b).

<sup>78</sup> AS 44.62.312(a)(2).

<sup>79</sup> AS 44.62.312(a)(5).

<sup>80</sup> *Alaska Cmty. Colleges’ Fed’n of Teachers, Local No. 2404 v. Univ. of Alaska*, 677 P.2d 886, 891 (Alaska 1984).

While the mandates of the OMA are not constitutional mandates, they nonetheless go to an essential aspect of the democratic process.

The supreme court has held that “a ‘meeting’ includes every step of the deliberative and decision-making process when a governmental body meets to transact public business.”<sup>81</sup> The pertinent question with regard to whether private meetings of a governmental unit violate the OMA “is whether activities of public officials have the effect of circumventing the OMA.”<sup>82</sup> Important decision-making and substantive discussion that takes place outside the public eye constitutes a violation of the OMA.<sup>83</sup>

#### **D. Specific OMA and Due Process Violations.**

There are numerous specific instances of OMA and due process violations committed by the Board.

By deliberating and making substantive decisions behind closed doors the Board violates not only the Alaska Constitution—the Board also violates the OMA. And while Plaintiffs recognize that courts are reluctant to overturn decisions due to violations of the OMA, the same is not true with respect to violations of the Alaska Constitution including the requirement that the Board. The constitutional provisions with respect to redistricting are mandatory, and the Board’s violations of those constitutional provisions cannot be ignored by this Court.

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<sup>81</sup> *Hickel*, 868 P.2d at 929 (quoting *Brookwood Area Homeowners Ass’n, Inc. v. Anchorage*, 702 P.2d 1317, 1323 (Alaska 1985)).

<sup>82</sup> *Id.* at 929 (quoting *Brookwood*, 702 P.2d at 1323, n.6.).

<sup>83</sup> *Id.* at 930.

The September 7-10, 2021, Board meeting agenda did not include executive session as an agenda item and there was otherwise no public notice of executive session yet the Board entered executive session on September 7th.<sup>84</sup>

During the September 7, 2021, meeting the Board added executive session to the agenda during the meeting without providing public notice of their intention to do so,<sup>85</sup> failed to state clearly and with specificity the topic of executive session,<sup>86</sup> changed the time for the executive session from after presentation of Board drawn maps to before presentation of Board drawn maps,<sup>87</sup> entered executive session for the purpose of obtaining general legal advice prior to presenting the Board drawn plans to the public,<sup>88</sup> and counsel for the board provided a summary of the executive session thereby filtering the Board's discussion of its "constitutional mandate," through the Board's counsel.<sup>89</sup>

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<sup>84</sup> Sept. 7-10, 2021, Board Meeting Agenda (ARB000537).

<sup>85</sup> Sept. 7, 2021, Board Meeting Tr. at 3, lines 9-11 ("Mr. Chairman, I move to amend the agenda to add an Executive Session for the purpose of receiving legal advice.").

<sup>86</sup> *Id.* at 29, lines 17-22 ("So, Mr. Chairman, I move the Board enter Executive Session for the purposes of receiving legal advice under Alaska Statute 44.62.310(c)(4) for matters involving consideration of government records set by a [sic] law are not subject to public disclosure.").

<sup>87</sup> *Id.* at 28, line 1 – page 30, line 22 (ARB009557-009559) (Moving executive session initially scheduled for after review of Board drawn maps to before review of Board drawn maps.).

<sup>88</sup> *Id.* at 26, line 6 – page 27, line 5 (ARB009555-009556).

<sup>89</sup> *Id.* at 31, line 1 – page 34, line 2 (ARB009560-009564) (Public discussion of "constitutional mandate" that the Board discussed in executive session); *Id.* at 31, lines 1-5 (ARB009560) ("We had an opportunity in Executive Session to hear from legal counsel regarding a discussion on some of the previous opinions when it comes to the different criteria for the Board to consider in drawing the district boundaries."); *Id.* at lines 10-13)

Concerns regarding executive session were raised early on in the redistricting process<sup>90</sup> but the Board dismissed those concerns without substantive discussion regarding the proper scope of executive session or the process the Board should implement for purposes of entering executive session.<sup>91</sup> The Board did not employ a uniform practice with regard to executive sessions and appears to have been generally unconcerned with limiting executive sessions in a manner that complied with the OMA.

During the September 9, 2021 Board meeting, Ms. Borromeo raised concerns regarding the use of executive session stating:

My second point is about executive session, where I feel as though some board members are allowed to have the benefit of our counsel and others were not. And I'll give an example. Yesterday, we wasted -- maybe not wasted. We ate up a lot of time in executive session talking about procedural issues that maybe didn't need to be done in executive session and eating lunch. I wanted to have the benefit of having discussions with our counsel about our map, and I was told, no, we have to come out of executive session to come back on the record. This is important for public confidence, which I totally agree. And then on the other side, yesterday our lunch was extended

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("So the Board has asked -- has asked me to make a public presentation to explain the Board's thinking with regard to its constitutional mandate.")

<sup>90</sup> See, Native American Rights Fund Letter at 12-13 (ARB000600-000601).

<sup>91</sup> Sept. 8, 2021, Board Meeting Tr. at 8, line 25 – page 9, line 4 (ARB010503-010504) ("And six, the accusation that we are abusing the executive session process. I, again, dispute that. The executive session process is appropriate for receiving advice from our attorney, which we have done, and we will continue to do as a Board."); *Id.* at 11, lines 11-18 (ARB010506) ("And, you know, the – I've represented public entities for over 20 years. This Board's use of executive session doesn't come anywhere close to the line. The -- I think the Board has had 25, 30 hours of public meetings, and maybe two or three of executive session. And so I just don't -- there's just nothing -- there's just -- we're not -- it's not even a concern.")

for 15 minutes because it was late. I wasn't asking for another two hours in executive session. 15 minutes would have been more than sufficient.<sup>92</sup>

Thus, even members of the Board had concerns with the use of executive sessions and opined that procedural topics were discussed in executive session that should have been discussed in public.

Ms. Borromeo also stated that she was concerned about legal counsel for the Board meeting with staff and Chair Binkley outside the presence of other Board members and that "it's the advice and counsel of our attorney and the appearance that there are small group discussions going on I think should be avoided."<sup>93</sup> It is readily apparent that the Board continued to have small group discussions among themselves, with counsel, and with staff. This practice implicates decision making by virtue of serial communications whereby decisions are made by relaying discussions among small groups to other members of the Board outside of the public eye and in violation of the OMA. These small group discussions have largely been withheld from production in the discovery process under the guise of attorney-client privilege.

During the November 2, 2021 meeting the Board entered into executive session for purposes of receiving a presentation from their Voting Rights Act experts. The Board merely recited the statutory language of the OMA for the motion to enter into executive

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<sup>92</sup> Sept. 9, 2021, Board Meeting Tr. at 115, line 12 – page 116, line 4 (ARB009939-009940).

<sup>93</sup> Sept. 9, 2021, Board Meeting Tr. at 120, line 21 – page 121, line 20 (ARB009944-009945).

session.<sup>94</sup> After the executive session, the Board's counsel provided a summary of the discussion that was conducted in executive session, which suggests the discussion that occurred in executive was not subject to an exception to the OMA.<sup>95</sup> Again, the Board's discussion of what appear to be subjects that are not appropriate for executive session was filtered through the Board's counsel for presentation to the public. The public was not provided with any materials presented during the executive session and the Board's VRA experts did not participate in any public discussions or deliberations.

The agenda for the November 2, 2021 meeting identified that executive session would be held at 10:30 a.m. prior to discussion of Voting Rights Act.<sup>96</sup> There was no agenda published for the November 3 – 5 meetings and no public notice was provided regarding the executive sessions that took place during this time period.

On November 3, 2021, the Board began exploring where to place Valdez.<sup>97</sup> In the midst of this discussion the Board decided to enter into executive session despite the fact that no public notice of the executive session was provided.<sup>98</sup> The subject of the executive session appears to be whether to place Valdez in District 36 or whether to place Valdez

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<sup>94</sup> Nov. 2, 2021, Board Meeting Tr. at 68, line 23 – page 69, line 4) (ARB0008998-0008999).

<sup>95</sup> *Id.* at 69, line 21 – page 78, line 3 (ARB008999-009008).

<sup>96</sup> Nov. 2, 2021, Board Meeting Agenda (ARB000944).

<sup>97</sup> Nov. 3, 2021, Board Meeting Tr. at 326, line 13 – page 337, line 20 (ARB007686 - 007697).

<sup>98</sup> *Id.* at 337, line 5 – page 338, line 23 (ARB007697-007698).



with the Mat-Su Borough. The Board described this decision as a “binary choice”<sup>99</sup> and wanted to explore options for Valdez. Counsel for the Board stated that “[i]f folks want to have those kinds of questions, that’s one way to we could finish the day.”<sup>100</sup> After taking a five-minute break, the Board reconvened and entered into executive session.<sup>101</sup> Again, the Board merely recited the OMA statutory language rather than specifically and clearly identifying the topic of executive session.<sup>102</sup> After entering executive session the Board did not reconvene in public session on November 3, 2021.<sup>103</sup> As a result, the duration of the executive session is unclear.

The next day on November 4, 2021, the Board came back on the record in public session. At the outset of the meeting Ms. Borromeo stated that “I do believe that we have reached consensus or close to in a couple of districts and regions, and so it would be appropriate to start putting that final map together.”<sup>104</sup> Ms. Bahnke stated in the opening minutes of the meeting: “In terms of process, I’d like to also ask our counselor if we need to be prepared to have any kind of discussions that would require us to go into executive

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<sup>99</sup> *Id.* at 330, lines 12-17 (ARB007690) (“I mean, it seems like the -- a binary choice here is based on what we do with Valdez. We decided to go this way. We found a map we can use. If we keep it on the Richardson, we have a different version.”).

<sup>100</sup> *Id.* at 337, lines 10-11 (ARB007697).

<sup>101</sup> *Id.* at 337, line 22 – page 338, line 23 (ARB007697-007698).

<sup>102</sup> Nov. 3, 2021, Board Meeting Tr. 377, line 22- page 338, line 23 (ARB007697-0079698).

<sup>103</sup> *Id.* at 338, line 24 – page 339, line 11 (ARB007698-007699).

<sup>104</sup> Nov. 4, 2021, Board Meeting Tr. at 4, line 23 – page 5, line 1 (ARB009174-009175).

session today or not, based on what you observed yesterday, or -- or is it premature?”<sup>105</sup> In response Mr. Singer stated:

It’s premature. If I see a decision on which I would like to share legal advice with you, I’ll suggest that we have an executive session. And if you reach a point for a decision where you’d like some input from counsel, the – as we discussed, there are -- there are VRA implications or analyses that need to be done with regard to districts that -- the districts you have heretofore labeled 37 through 40 and potentially districts in Anchorage. And so if there’s going to be drastic changes from board-adopted or -- six board-adopted plans, if you have a new solution, after the board engages in the Hickel process and comes up with a proposed idea, there’s a second piece, which is a legal analysis with the VRA. And so some of that we can do on the fly in executive session. Some of that will require input from our experts, and they’re standing by. So -- (indiscernible) way of saying ---- it depends.<sup>106</sup>

Mr. Simpson then stated:

Mr. Chair, I mean, I have maybe a little bit different take on that. If -- if we wait for counsel to, you know, throw up a red flag and say I need to talk to you guys, that kind of implies something’s about to go sideways. I would rather that we just sort of have some ordinary scheduled executive sessions where we could talk candidly to counsel without throwing up a red flag, just talk through -- where we’re at, at any given time.<sup>107</sup>

After this colloquy and contrary to his statement that it was premature to schedule an executive session, Mr. Singer suggested that the Board schedule executive session for 11:30 that day for 30 minutes.<sup>108</sup>

This exchange among the Board and counsel exemplifies the Board’s practice of treating executive session in an inconsistent manner and paying little regard for compliance

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<sup>105</sup> *Id.* at 7, lines 4-9 (ARB009177).

<sup>106</sup> Nov. 4, 2021, Board Meeting Tr. at 7, line10 – page 8, line 7 (ARB009177-009178).

<sup>107</sup> *Id.* at 8, line 15 – page 9, line 1 (ARB009178-009179).

<sup>108</sup> *Id.* at 9, lines 2-6 (ARB009178).

with the OMA. The Board anticipated that it may need executive session for some then unknown reason rather than ensuring that the issues to be discussed at 11:30 were properly within the narrow exceptions to the OMA. There was no agenda for the November 4, 2021 meeting and no public notice of executive session was provided.

The Board discussed the creation of a Doyon – Ahtna District that would result in the Fairbanks North Star Borough shedding population to District 36 in order to replace the population of Valdez, which would then be placed in a District with the Mat-Su Borough.<sup>109</sup> Shortly before entering executive session the Board was engaged in substantive discussions regarding what district Valdez should be placed in and had yet to reach consensus.<sup>110</sup> The Board entered executive session without specifically and clearly identifying the topic for discussion or the reason executive session was required at

After reconvening in open session at approximately 1:00 p.m. the Board immediately began discussing areas of consensus. Specifically, the transcript for that meeting reflects the following colloquy:

CHAIR BINKLEY: we're back on the record and out of executive session. It's just a little after 1:00. I think we've been working on Anchorage. Did we wrap up (indiscernible)? Did we wrap up? Kenai? I think we got consensus on that?

MEMBER BORROMEO: We did, Mr. Chairman. Yes, we did.

CHAIR BINKLEY: So really, the only area left is -- and we got the VRA districts. I think we're in consensus there.

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<sup>109</sup> Nov. 4, 2021, Board Meeting Tr. at 72, line 1 – page 74, line 6 (ARB009243-009245).

<sup>110</sup> *Id.* at 80, line 2 – page 82, line 22 (ARB009250-009251).

MEMBER BORROMEO: I think we just have to do formal action on that, but we're in consensus on that, too.

MEMBER BAHNKE: Valdez?

CHAIR BINKLEY: Well, yeah. I mean, all those pieces fit together, really. But maybe the area we really haven't gone into much detail on this morning is Anchorage. So shall we go into Anchorage?

MEMBER BORROMEO: Sure.

CHAIR BINKLEY: (Indiscernible) consensus

MEMBER MARCUM: Yeah.

CHAIR BINKLEY: -- and give it a try.

MEMBER MARCUM: I would like to raise something, if I could.

CHAIR BINKLEY: Okay. Please.

MEMBER MARCUM: It would significantly change the Anchorage action perhaps. It ties to the other discussions we've been having thus far about Valdez, where does it go.

CHAIR BINKLEY: Okay.

MEMBER MARCUM: And it's my understanding that Valdez has been paired with Anchorage in the past. And as I noted, Valdez is not keen on going with the Mat-Su. The current iteration of things we've been looking at would not allow Valdez to be in the horseshoe district, District 36. District 5 is also full. Maybe Anchorage is a consideration, and I would like for us to discuss that possibility.<sup>111</sup>

Thus, it appears that the Board reached consensus that Valdez would not be paired with Richardson Highway communities, which were included in District 36 during the executive session.

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<sup>111</sup> Nov. 4, 2021, Board Meeting Tr. at 102, line 25 – page 104, line 16 (ARB 009272-009274).

During the November 5, 2021 Board meeting, Ms. Marcum recited the process by which the Board foreclosed any possible pairing of Valdez with Richardson Highway communities or Prince William Sound communities. Ms. Marcum stated that:

I have concerns about Valdez and, you know, so I had offered yesterday to -- to try to find another solution to Valdez. They've been really clear about their desire to be with Richardson Highway, and that was taken off the table yesterday. There are other solutions that they proposed for coastal, and that was also not a possibility. It was taken off the table. And so what -- you know, that kind of left them with Anchorage or the Mat-Su. They've testified that they do not want to be with the Mat-Su -official resolutions and such -- the Mat-Su has testified they don't want Valdez with them, so I wanted to -- to look at really the only other opportunity to pair them with another area, and that would be with Anchorage.<sup>112</sup>

This statement combined with the lack of any substantive discussion regarding pairing Valdez with Richardson Highway or Prince William Sound communities after the Board entered executive session on November 4<sup>th</sup> makes clear that the Board reached consensus on this issue during the executive session. After the executive session the Board's deliberations turned on choosing whether to pair Valdez with Anchorage or the Mat-Su Borough.

On November 5, 2021, the Board entered into executive session twice, there was no Agenda for the November 5, 2021 meeting and no public notice of executive session was provided. First, the Board entered executive session at the outset of its meeting to receive VRA Analysis by reciting the statutory language of the OMA without identifying why the executive session was required. Second, the Board entered executive session to receive legal advice without identifying the specific topic for executive session or the reason why

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<sup>112</sup> Nov. 5, 2021, Board Meeting Tr. at 5, lines 2-16 (ARB00156437).

the executive session was required.<sup>113</sup> The Board's discussion regarding the second executive session reveals a general disregard for OMA compliance including limiting the scope of discussion to subjects that properly fall within exception to the OMA. The Board stated:

CHAIRMAN JOHN BINKLEY: Let's just stop this, please. I think you've made a legitimate request, that you want to see us go into Executive Session to – I can't recall exactly why, but you want to get legal advice -- advice from counsel?

BOARD MEMBER MELANIE BAHNKE: Yes. Just like we did yesterday. We've got a whole new map that is now on the table for consideration.

CHAIRMAN JOHN BINKLEY: If you --

BOARD MEMBER MELANIE BAHNKE: I'd like legal advice.

CHAIRMAN JOHN BINKLEY: You can make a motion, if you'd like, to go into Executive Session. I think we can probably get the right language here, if you'd like, and we can...

BOARD MEMBER MELANIE BAHNKE: I think it's prudent for us. It turned out to be prudent yesterday.

BOARD MEMBER NICOLE BORROMEO: If it doesn't have to be the exact language, I'd like to move, Mr. Chairman, that the Board enter Executive Session under Alaska Statute 44.62.310(c), Subsection 3 and 4, respectively involving matters which by law, municipal charter, or ordinance are required to be confidential and matters involving consideration of government records that by law are not subject to public disclosure.

BOARD MEMBER MELANIE BAHNKE: I second that motion.

CHAIRMAN JOHN BINKLEY: There's a motion before us, and seconded to go into Executive Session for items stated in the motion. Is there a

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<sup>113</sup> *Id.* at 184, line 8 – page 185, line 16 (ARB0084041-008042).

discussion on motion? Is there any objection to the motion? Okay. We're going to head into Executive Session.<sup>114</sup>

Immediately after returning to public session, the Board began analyzing two maps that placed Valdez with the Mat-Su Borough.<sup>115</sup> Thus, it appears that further consensus regarding placing Valdez with Mat-Su was achieved in executive session out of the public eye.

The Board's practice of renumbering districts in various redistricting plans on numerous occasions and in the Final Plan undermined the ability of the public to provide meaningful input on proposed plans or other draft plans created by the Board. Mr. Torkelson testified that this practice resulted in "persistent confusion" regarding what districts were being discussed during public meetings. Mr. Torkelson explained the confusion caused by renumbering in his deposition as follows:

Q: Okay. Now, it appeared that through this process that the House districts all got renumbered at least once.

A: Tell me about it.

Q: Yeah. It -- it was -- I'm not even sure that it's clear in my mind enough to ask a question. But would you please explain to me the different renumberings that occurred and why they occurred?

A: Sure. Happy to. To flesh out the conversation a little bit fuller, one of the questions that I brought to Fred of autoBound, the CEO of autoBound, in Salt Lake City in July was, Fred, can we number these districts other than 1 to

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<sup>114</sup> Nov. 5, 2021, Board Meeting Tr. at 184, line 8 – page 185, line 16 (ARB0084041-008042).

<sup>115</sup> *Id.* at 186, line 21 – page 187, line 2 (ARB00156618-00156619) ("Both of them bring Valdez into the Mat-Su, which I know has been a point of, you know, considerable conversation, but they are somewhat different).

40? Could we number them, like, 601 to 640? Could we do something? And he was, like, well, why would you want to do that?

And my response was, because I want viewers to know that the district numbers they're seeing are temporary placeholders. He mulled that over for a while, said, oh, huh, I kind of see your point, but the software doesn't work that way. It needs to be sequential from 1 to 40. *So I foresaw this frustration that you and I both share now, but couldn't figure out a way to overcome it.*

And so district numberings changed – there was some change from v1 to v3, and v2 to v4, there might have been some changes. Every third party then brought their own numbering system. Some of them sort of -- sort of followed our pattern of starting in the south and moving to the north. Others, such as I think the Senate Minority, kind of followed the pattern that existed in the 2013 proclamation, so like their Juneau was 33, for example. Or maybe it was north Juneau was 33, whereas ours was 3.

*So the numbering -- people would ask us on the road show, we'd have the maps all over the wall and they'd be like, what do these numbers mean? I would just say they're temporary placeholders.* We have to have some way to identify a district, but the final numbers will change most likely.

*And so there was persistent confusion. You'd hear someone testify, hey, I don't like the shape of District 33 and a board member would have to clarify, excuse me, which map are you referring to?* Oh, that's AFFR 33. And so there was plenty of confusion to go around on the numbering.

And so to move the conversation into the present then, the board adopted various sections of different maps to make the final composite House map, which I called v7 just because 3 plus 4 equals 7, and we had elements from v3 that were coming over, we had elements from v4 that were coming over, some of those had been modified.

And when we went to import the districts to make this one cohesive map, if previously Mat-Su in a version that had been out had been numbered a certain way, but we already had those numbers used somewhere else in the map, then they would have to be renumbered in the moment so that autoBound, you know, would keep up the part, right?

*So I would say there was multiple minor renumberings as we built a composite House map in the first week of November, and as each -- sections of the map came from different ideas or different authors, and then the board adopted that map on November 5th, Friday, with the*



*numberings that had just been assigned sort of ad hoc as it all came together.*

And so then of course there was -- immediately there was intense pressure, I was getting pinged by lots of people, hey, give us the shapefile, give us the deviation table, we need it now. So we cranked out as many products as quickly as we could on the night -- I think I worked pretty late that night of November 5th to get the Google Maps uploaded right away because lots of people wanted to see them.

So then those numbers lived from November -- the night of November 5th, they lived through the 6th, the 7th, the 8th, and into the 9th, those were the numbers. So when you hear people on the record talking about Senate pairings, I want to pair, you know, 15 with 18 or whatever, they're referring to the numbers that existed from the evening of November 5th until the afternoon of November 9th, I believe. So those -- those numbers were official numbers for the period of time when we had a House plan but we did not yet have a Senate plan.

So then when the board adopted Senate pairings on the 9th, then the map was renumbered again so that the pair -- the pairs, so that 1 and 2 would be A, 3 and 4 would be B, and so forth. So in some areas of the state that didn't require any renumbering. The first ten districts, as I recall, didn't change. But then when we got to Anchorage they had to change, so those got changed. When we got to Mat-Su, within Mat-Su those had to change. So Mat-Su still had the same range, 25 to 30, but they got shuffled so 26 and 25 were one Senate district and so forth. Same in Anchorage.

So Mat-Su had a couple of those changed, a couple changes in Fairbanks, and then Anchorage had most of them changed to Fairbanks to reflect the final Senate pairings. So then the final House numbers as they are today became -- sorry, I'm talking too fast -- became live, so to speak, on -- I guess they were officially adopted then on November 10th, when the final proclamation was voted on.<sup>116</sup>

As a result of the Board's renumbering practices the deviation table for the Final Plan, which was presented on the Board's website under the 2021 Redistricting

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<sup>116</sup> Peter Torkelson Depo. Tr. at 110, line 14 – page 114, line 21 (Jan. 12, 2022) (emphasis added).

Proclamation section, contained erroneous population data for 23 of the 40 districts. These errors were also included in the interactive version of the final plan contained on the Board's website. This error was not corrected until January 13, 2022. Thus, the publicly accessible population data for the 2021 Redistricting Plan was incorrect for over two months after the adoption of the Final Plan. These errors undermined the ability of Plaintiffs to analyze the Board's Final Plan and reflect the confusion caused by repeatedly renumbering districts.

**E. Appropriate Remedies for Plaintiff's Claims Regarding Article VI, Section 10, Due Process, and the OMA.**

Plaintiffs' claims with respect to Article VI, Section 10, due process under Article I, Section 7, and the OMA all relate to the Board's redistricting process in reaching its Final Plan. Plaintiffs maintain that the two constitutional provisions and the OMA work together rather than in isolation, and all three ultimately have to do with public process and the issue of due process in the context of the Board's redistricting process for 2021.

Plaintiffs reiterate that while courts are reluctant to overturn decisions due to violations of the OMA, the same is not true with respect to violations of the Alaska Constitution. The Board's violations of the OMA should not be discounted by this Court. The Board's violations of the Alaska Constitution cannot be discounted by this Court. Even with respect to remedies for violations of the OMA, discussed below, "[i]n the extreme case, where no substantial reconsideration appears possible and only the outright

reversal of the implemented decision ensures de novo examination, the court may order the decision undone.”<sup>117</sup>

With respect to remedies available for violations of the OMA, if a public body’s actions are in violation of the OMA then its actions are voidable.<sup>118</sup> “A court may hold that an action taken at a meeting held in violation of this section is void only if the court finds that, considering all of the circumstances, the public interest in compliance with this section outweighs the harm that would be caused to the public interest and to the public entity by voiding the action.”<sup>119</sup> Subsection (f) of AS 44.62.310 sets forth the factors the court must consider in making this determination.<sup>120</sup>

To determine whether a subsequent remedial effort may validate an otherwise void action, the Alaska Supreme Court has established the following approach.

First, the plaintiff must show by a preponderance of the evidence that a violation occurred.<sup>121</sup> Second, if a violation is shown, the burden shifts to the defendant to show that a “substantial reconsideration” of the issue was made at a subsequent public meeting, i.e., “whether the validation meeting functioned as a true de novo consideration of the defective action.”<sup>122</sup> Third, if the defendant fails to meet this requirement, the court must decide whether invalidation of the governmental action is a proper remedy.<sup>123</sup>

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<sup>117</sup> *Alaska Cmty. Colleges’ Fed’n of Teachers*, 677 P.2d at 891-92.

<sup>118</sup> AS 44.62.310(f).

<sup>119</sup> AS 44.62.310(f).

<sup>120</sup> *Id.*

<sup>121</sup> *Brookwood*, 702 P.2d at 1325 (citing *Alaska Cmty. Colleges’ Fed’n of Teachers*, 677 P.2d at 892).

<sup>122</sup> *Id.* (citing *Alaska Cmty. Colleges’ Fed’n of Teachers*, 677 P.2d at 893).

<sup>123</sup> *Id.*

In order for the court to choose invalidation of the government action, “the court must determine (a) that invalidation is a necessary prerequisite to actual reconsideration of the issue by the government, and (b) that invalidation will serve the public interest.”<sup>124</sup> With respect to the public interest issue, “the court should weigh the ‘remedial benefits to be gained in light of the goals of the OMA against the prejudice likely to accrue to the public.’”<sup>125</sup>

If circumstances suggest the reconsideration was not substantial, the trial court may reject the validation attempt and formulate a remedy what will ensure a more adequate reappraisal.<sup>126</sup> The supreme court has ruled that “[i]n the extreme case, where no substantial reconsideration appears possible and only the outright reversal of the implemented decision ensures de novo examination, the court may order the decision undone.”<sup>127</sup> In the present case the severity of the Board’s violations of Article VI, Section 10, Article I, Section, 7, and the OMA may only be remedied by remanding the Final Plan to the Board for further redistricting efforts conducted in compliance with these requirements with full public participation.

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<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Alaska Cmty. Colleges’ Fed’n of Teachers*, 677 P.2d at 891.

<sup>127</sup> *Id.* at 891-92.

**F. Even If the Board’s Final Plan Does Not Fail as a Result of the Board’s Redistricting Process, the Board Failed to Satisfy the Requirements of Article VI, Section 6 of the Alaska Constitution with Its Final Plan.**

The constitutional requirements regarding district boundaries are set forth in Article VI, Section 6, which provides:

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.<sup>128</sup>

*Hickel* sets forth the redistricting process with respect to Article VI, Section 6.<sup>129</sup> The supreme court has ruled that “[c]ontiguity, compactness and relative socio-economic integration are constitutional *requirements*.”<sup>130</sup>

The supreme court noted that the requirements of contiguity, compactness, and socio-economic interaction were incorporated by the framers of the reapportionment provisions to prevent gerrymandering—which is “dividing of an area into political units in an unnatural way with the purpose of bestowing advantages on some and thus disadvantaging others.”<sup>131</sup> The purpose of the constitutional requirements of contiguity,

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<sup>128</sup> Alaska Const., art. VI, § 6.

<sup>129</sup> *Hickel*, 846 P.2d at 44-47.

<sup>130</sup> *Id.* at 44 (citing *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 160-61 (Alaska 1968)).

<sup>131</sup> *Carpenter*, 667 P.2d at 1220 (Alaska 1983).

compactness, and relative socio-economic integration is to help ensure that election district boundaries fall along natural or logical lines rather than along political or other lines.<sup>132</sup>

The supreme court has also noted that the intent to gerrymander may be very difficult to prove, “especially if the objective was one other than to benefit the political party in power.”<sup>133</sup> The court added:

However, if the compactness and integration requirements are observed, the opportunities to gerrymander are quite limited. It is therefore preferable both on constitutional and practical grounds to insist on the observation of those requirements rather than to require, as Justice Compton would, proof of an intent to gerrymander as a prerequisite to a finding of a constitution violation.<sup>134</sup>

Thus, the constitutional requirements of Article VI, Section 6 *must* be observed in the redistricting process. A district lacking any one these characteristics may not be constitutional under the Alaska Constitution.<sup>135</sup>

#### **G. The Board Violated the *Hickel* Process.**

The Board failed to comply with the *Hickel* Process because it considered VRA compliance from the outset of the redistricting process and VRA considerations resulted in the Board creating Districts 37-40 (“VRA Districts”) first, gaining consensus on those districts early in the process, and declining to consider redistricting options that required modification to those VRA Districts. In the 2011 redistricting cases, the supreme court explained:

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<sup>132</sup> *Hickel*, 846 P.2d at 45.

<sup>133</sup> *Carpenter*, 667 P.2d at 1220.

<sup>134</sup> *Id.* Justice Compton dissented in part from the majority opinion.

<sup>135</sup> *Hickel*, 846 P.2d at 45.

The *Hickel* process provides the Board with defined procedural steps that, when followed, ensure redistricting satisfies federal law without doing unnecessary violence to the Alaska Constitution. The Board must first design a plan focusing on compliance with the article VI, section 6 requirements of contiguity, compactness, and relative socioeconomic [sic] integration; it may consider local government boundaries and should use drainage and geographic features in describing boundaries wherever possible. Once such a plan is drawn, the Board must determine whether it complies with the Voting Rights Act and, to the extent it is noncompliant, make revisions that deviate from the Alaska constitution when deviation is “the only means available to satisfy Voting Rights Act requirements.”<sup>136</sup>

The Board ignored its mandate to abstain from consideration of the VRA prior to drafting a plan pursuant to the constitutional redistricting requirements and instead drafted a plan that focused on protecting VRA districts as first priority.

As of September 8, 2021, the active matrix in Autbound as configured for the Board included racial data.<sup>137</sup> By that time individual Board members had already drawn proposed VRA Districts. The Board gained general consensus on the VRA Districts prior to adopting V.1 and V.2 on September 9, 2021. V.1 and V.2 contained identical VRA Districts. Ms. Bahnke requested that the Board “engage our VRA experts as soon as practicable after we adopt a draft proposed plan.”<sup>138</sup>

Peter Torkelson the Executive Director for the Board, testified that the Board was fully aware of the historic VRA Districts when it began the redistricting process and took steps to avoid retrogression in Districts 37 – 40. Specifically, Me. Torkelson testified:

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<sup>136</sup> *In re 2011 Redistricting Cases*, 294 P.3d at 1035 (citing *In re 211 Redistricting Cases*, 274 P.3d at 467-468 (quoting *Hickel*, 846 P.2d at 51, n.22).

<sup>137</sup> Sept. 8, 2021, Board Meeting Tr. at 9, lines 6-15 (ARB0010504).

<sup>138</sup> Sept. 9, 2021, Board Meeting Tr. at 108, lines 9-16 (ARB009932).

Q: Now, what were the VRA protected districts?

A: So in the 2013 cycle and for the last decade, effectively, Districts 37, 38, 39, and 40 of the 2013 plan, and we retained those numbers in the 2021 plan because we started numbering at the south, so it was natural to end in District 40 in the north. So 37, 38, 39, 40 have successfully elected candidates of the minority's choice for the last election cycles, and my understanding was that those needed to be -- retrogression to those districts would be something we had to look very closely at.

Q: Okay. And there's no -- there's no secret that 37, 38, 39, and 40 are VRA protected districts for the last decade, is there?

A: Oh, no. I mean, it's widely known and, you know, we were all certainly aware from the beginning that those previous districts had been under the protection of the VRA. <sup>139</sup>

The Board improperly considered the VRA when it began drafting its proposed plans in Violation of the *Hickel* process.

The VRA Districts in V.3 and V.4 adopted on September 20, 2021, are identical to the VRA Districts in V.1 and V.2 with the exception that V.4 does not place the portion of the Kodiak Island Borough located on the Alaska Peninsula, which is unpopulated, in District 37. The populations for the VRA Districts in V.1 – V.4 are identical. Thus, the Board reached general consensus on its VRA Districts on September 9, 2021. The Final Plan makes only minor changes to the VRA Districts by appending Port Graham and Nanwalek, which are located on the east side of Cook Inlet, to District 37, extending the boundary of District 37 slightly north to include Platinum and Goodnews Bay, and extending the Northern Boundary of District 38 to include Chevak. Ms. Borromeo stated during the November 2, 2021 Board meeting that the “number one” justification for

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<sup>139</sup> Torkelson Depo. Tr. at 124, line 13 – page 125, line 5.



including Port Graham and Nanwalek was because “it helps with VRA deviations in 37, which was our lowest overall.”<sup>140</sup> Ms. Bahnke, also stated that the addition of Nanwalek and Port Graham was “for VRA purposes”<sup>141</sup> and intended to “strengthen the VRA considerations.”<sup>142</sup>

Ms. Borromeo testified that the Board considered native populations in drafting district 37 – 40 in order to ensure compliance with the VRA. Specifically, Ms. Borromeo testified:

We looked at the VRA members, what it required. We had the benefit of advice from counsel, as well as a VRA expert. Most of those discussions, some of them occurred in Executive Session.<sup>143</sup>

We actually started at the top of the state with District 40, and then we came down the west coast. When we combined the North Slope Borough with the Northwest Arctic Borough, it pretty much reached the target ideal population. There was a slight deviation upwards, but the Board was willing to accept it for the sake of keeping the Northwest Borough entirely intact.

And, again, the definition or the -- the court ruling that a borough meets the definition of socio-economic integration, that was a factor for us as well. Then we started in the Bering Straits region. That is District 39. Came down the coast, wanted to keep the Bering Straits region as intact as possible. And when we got down around the exchange there between the YK Delta and the Bering Straits region, like around Kotlik and whatnot, we had to keep going down south because there wasn't enough population to fulfill the requirements of the 18,335 and 339.

And we also knew that the YK Delta region, Calista boundaries, if you will, that had 26,000 Alaskans in it, which was going to be way too much for just one district. So Calista region was going to have to shed population both to the north and to the south in order to meet the district populations that were

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<sup>140</sup> Nov. 2, 2021, Board Meeting Tr. at 65, lines 11-15 (ARB008762)

<sup>141</sup> Nov. 3, 2021, Board Meeting Tr. at 178, lines 18-20 (ARB007538)

<sup>142</sup> Nov. 5, 2021, Board Meeting Tr. at 205, lines 1-11 (ARB008063).

<sup>143</sup> Borromeo Depo. Tr. at 196, lines 3-13.

required based on the 2020 census data. So we took as little as we could. We also understood, from John's experience living out in the region, and others who had testified, and Melanie and I working and also lived experience, that there are clusters of communities in -- in rural Alaska that should, if possible, be districted together.

So we brought in Hooper Bay, Scammon Bay, Chevak as a cluster of three. That almost got us -- that got us close to the district ideal population for 39, then we came down to 38. We also looked at some school districts around here while we were drafting 39 and 38. 38 is the primary, I guess, Calista or AVCP region, if you will. It's just 100 percent contained within Calista and AVCP service delivery -- service delivery boundaries.

Then we came down to District 37. That was in District -- in the previous cycle, stretched all the way up into the Interior, but because the district numbers were 18.3 compared to 15.1 last time around, we could shrink that area again and not have Athabascans pulled into that district.

And to our great benefit, the census data that was returned from those districts didn't present any real VRA problems because those districts held constant in their populations and/or grew in populations. So they fairly easily rounded out their district's population requirements, and they were compact, and they were contiguous. So that's how we approached it. But ANCSA boundaries did guide us in -- in that decision because that's an unorganized borough area of the state.<sup>144</sup>

VRA analysis was conducted on V.3 and/or V.4 shortly after adoption of those proposed plans on September 20, 2021. Mr. Torkelson testified that by September, 29 he had "handed the baton, so to speak to our VRA consultants and gotten them all the information I think they need to analyze our v3 and v4 and see if there's any concerns" and "I think we had them look at all of -- all of the plans, actually."<sup>145</sup> Thus, it appears the Board knew that Districts 37 -- 40 were VRA compliant in late September. Mr. Torkelson went on to testify that "And so if a VRA protected district had changed in the last week,

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<sup>144</sup> Borromeo Depo. Tr. at 216, line 7 -- page 218, line 13.

<sup>145</sup> Torkelson Depo. Tr. at 122, lines 15-21.

November 2, 3, 4 or 5, then we would have to circle back to our Voting Rights Act team to have them check and be sure that we hadn't made any changes that would have impact – Voting Rights Act implications.

By including the VRA Districts the Board drew and gained consensus on in September in the Final Plan the Board avoided any doubt regarding VRA compliance and eliminated the need for any additional VRA analysis for those Districts. While this may appear like a legitimate course of action, the *Hickel* process precludes the Board from considering the VRA prior to drafting districts that best satisfy the constitutional redistricting criteria. The Board's refusal to entertain redistricting options that required any substantial alteration of Districts 37 – 40, which were drafted with a focus on VRA compliance, unlawfully limited the redistricting options considered.

During the November 2, 2021 Board meeting, counsel for the Board stated that VRA Analysis had been conducted for V.3 and informed that the Board that no modifications were required to Districts 37, 38, 39, and 40 to satisfy the voting rights act.<sup>146</sup> This appears to have reinforced the Board's intransigence with regard to any significant modification of the VRA Districts included in V.3, which were originally adopted on September 9, and V.4, which was adopted on September 20.

The Board's consideration of the VRA from the outset of the redistricting process foreclosed consideration of redistricting options for different configurations of Districts 37-40. By locking in the VRA Districts on September 9, 2021 and only making minor

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<sup>146</sup> Nov. 2, 2021, Board Meeting Tr. at 72, line 20 – page 73, line 9 (ARB009002-009003).

modifications thereafter, the Board virtually ensured that a large horseshoe shaped district would be required to complete the redistricting plan. Alteration of the VRA Districts that the Board adopted at the beginning of the redistricting process was never seriously considered. As a result, the scope of redistricting alternatives considered by the Board were improperly limited.

While the Board was advised that it must draw a redistricting plan pursuant to the constitutional redistricting criteria *before* considering the VRA, the Board did the exact opposite and drew a plan focused on VRA districts first and meeting the constitutional criteria second. The Board's decision to focus on VRA districts from the outset of the process violates the mandate set forth in *Hickel*, and resulted in districts that do not best satisfy the constitutional criteria for redistricting.

**H. The Board's Delay in Beginning to Draw New Districts and Limited Time Drawing New Districts Resulted in an Unconstitutional Final Plan.**

The Board received the 2020 census data on August 12, 2021 and had 30 days from that date to prepare and adopt proposed redistricting plans. However, the Board did not meet for purposes of joint mapping until September 7, 2021, 26 days after the census data was released. This left only five days for the Board to adopt proposed plans, which must be made available for public comment, within the constitutionally mandated time period. Although the delivery of the 2020 census data was delayed by approximately four months, the Board's deadlines begin to run from the date the data is delivered or the date the Board is appointed, whichever is later. Accordingly, the Board's delay in beginning joint mapping exercises is not attributable to the delay in the delivery of the census data.

After receipt of the 2020 census data the Board's staff undertook an effort to verify and upload the data into the Board's redistricting program AutoBound Edge ("AutoBound"). The Board's staff appears to not have taken preliminary steps required to facilitate the redistricting process prior to receiving the census data. For example, the geography for the 2020 census blocks was available well before delivery of the actual census data. Specifically, the Topologically Intergraded Geographic Encoding and Reference system (TIGER) file, which contains the geography for the census blocks was available in February 2020. The Board's staff should have configured AutoBound with the available geography data and incorporated existing district boundaries into AutoBound.

The Board and its staff appear to have been generally unfamiliar with AutoBound. For example, the Executive Director did not realize that AutoBound was restricted to using census blocks, precincts, or census areas for assigning population to a particular district. The Executive Director also did not understand that the census blocks for Alaska's geography were reduced between 2010 and 2020 until he became frustrated over the size and odd shape of some census blocks and reached out to the Department of Labor.<sup>147</sup>

Mr. Specifically, Mr. Torkelson testified:

Yeah. So this was -- the Department of Labor expert was -- he had been deeply involved in the 2011 cycle, and when I was first realizing -- you know, hitting these big, huge blocks that were just district busters, you know, I was expressing frustration, and he mentioned that, yeah, well, they went through a block reduction process and so -- to try and simplify because they used to have a ton of blocks that they didn't think added a lot of value, so now there's fewer larger ones. I was, like, oh, that kind of -- I get that. So he shared some statistics with me to help me understand the scale of that change.

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<sup>147</sup> Torkelson Depo. at 45, line 9-21.

Q: Okay. Now, specifically the census blocks in Alaska went from 45,292 in 2010 to 28,568 in 2020, correct?

A: Yes.<sup>148</sup>

Mr. Torkelson also agreed that one of the key mapping challenges was his learning about the way that these census blocks worked for mapping purposes. At his deposition Mr. Torkelson testified:

Q: Okay. And one of the key mapping challenges was your learning about the way that these census blocks worked for mapping purposes, is that fair?

A: Yeah, that's -- that's fair. And I -- I don't know if you've read all my e-mail or not, but here are certainly -- I had exchanges with -- how do say this? The census block shapes were a severe limitation on our ability to draw districts that were -- appeared compact, that didn't appear to have bizarre protrusions or odd shapes to them. So when we kept hitting these problems, I naturally thought, well, are we bound to census blocks? Like, could we draw another line? And I chased that one down with the Department of Labor, you know, saying, hey, I know autoBound just lets us pick blocks, but you guys have GIS software. You can draw a shapefile any shape you want, right? Yes. You know, could we do that? And the answer was just no.<sup>149</sup>

At the time the census data was received, the Board's Staff was underprepared and failed to understand basic elements of the nature of the redistricting process and the functionality of AutoBound. As a result, the map drawing process was impeded as issues that could have been explored and resolved prior to receiving the census data were instead resolved during the limited time period for mapping.

The Board was also making fundamental decisions regarding the mapping process during the September 7-9 meetings that should have been decided well in advance. For

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<sup>148</sup> Torkelson Depo. Tr. At 45, Line 9-25.

<sup>149</sup> Torkelson Depo. Tr. at 51, line 2-20.

example, by September 9, 2021, the Board had not decided whether the Board should control the mapping efforts or whether staff should take policy direction from the Board and do the mapping.<sup>150</sup> The Board also was debating whether to draw maps jointly or individually. Ms. Borrromeo stated on September 9:

There's also been -- my third point is, you know, several comments disparaging the group process as being tedious or taking too long or not efficient or not effective and a waste of time even, it's been said. If that's the case, Mr. Chairman, there's no need to convene this board. We can just continue to work individually and bring different maps to the process. The benefit of us working together as a board is to have input on where these lines should be, because we have different expertise and different ties to different areas of the state. And I would respectfully ask that comments that the group process is negative anyway be held back from certain members as we move forward. Thank you.<sup>151</sup>

Despite this concern that the mapping process should be an effort by the Board as a whole, V.4, which was largely adopted as the Final Plan, was the result of Ms. Borrromeo's individual mapping efforts and was never shared with any other Board member prior to its introduction and adoption without public comment during the September 20 meeting.

Ms. Borrromeo testified that

Q: Is it fair to say that you spent considerable time with staff and other board members building out maps that were presented to the Board?

A: No. I think it would be fair to say that I spent considerable time with staff, not necessarily with my colleagues on the Board, building out maps.<sup>152</sup>

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<sup>150</sup> Sept. 9, 2021 Board Tr. at 117, line 2-21 (ARB009941).

<sup>151</sup> Sept. 9, Board Tr. at 117, line 2-21 (ARB009941 - 009942).

<sup>152</sup> Borrromeo Depo Tr. at 164, lines 11-16.

While Ms. Borromeo advocated for joint map drawing efforts among all Board members during public meetings, in practice she drafted the redistricting plan that was largely adopted by the Board on her own.

The Board's function is to draw a redistricting plan as a Board. However, most of the mapping that occurred during the 90-day window for adopting a final redistricting plan occurred outside of public meetings by Board members working individually or in small groups.

The Board spent very little time in joint mapping work sessions and proposed plans were drawn and adopted hastily and with little joint participation among the Board members. For example, V.2 was the result of Ms. Borromeo working through lunch to show that "that we didn't have to cherry-pick which boundaries were more important than others."<sup>153</sup> Similarly, FNSB as it appears in the Final Plan was drafted by Chair Binkley the morning of November 4, 2021 before that meeting began and was adopted the next day.<sup>154</sup>

The Board's lack of preparation prior to receipt of the 2020 census data, general unfamiliarity with basic redistricting concepts and the functionality of AutoBound, and the limited time spent jointly preparing redistricting maps unnecessarily constrained the range of options considered by the Board and facilitated the advancement of the priorities

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<sup>153</sup> Borromeo Depo. Tr. at 117, lines 6-11.

<sup>154</sup> Nov. 4, 2021 Board Meeting Tr. 41, lines 7-25 (ARB009211).



The Board is mandated to create a redistricting plan based upon the constitutional criteria for redistricting set forth in Article VI, Section 6 of the Alaska Constitution. However, the Board instead focused on other priorities, which resulted in a Final Plan that fails to satisfy the constitutional criteria. First, the Board focused on ANCSA related priorities including drawing Districts 36-40 in a manner that satisfied the priorities of Ms. Bahnke<sup>155</sup> and Ms. Borromeo.<sup>156</sup> Second, Chair Binkley<sup>157</sup> prioritized maintaining the boundaries of FNSB rather despite the fact that FNSB was over populated and needed to shed excess population into another district to reach reasonable deviations. Third, Mr. Simpson prioritized pairing Mendenhall Valley with Skagway and Haines despite the voluminous amount of public testimony to the contrary and the fact that his proposal splits the Mendenhall Valley community.<sup>158</sup>

Fourth, Mr. Singer<sup>159</sup> who serves as counsel for the Board appears to have supported pairing Valdez with Mat-Su and maintaining Ahtna's ANCSA boundaries. Board

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<sup>155</sup> Ms. Bahnke is President/CEO of Kawerak, Inc., which is a Native non-profit consortium in the Bering Strait Region of Alaska, serves on the Board of Directors for the Alaska Federation of Natives, and is a shareholder of her village corporation.

<sup>156</sup> Ms. Borromeo is Executive Vice President and General Counsel for the Alaska Federation of Natives, the Board Chairman for MTNT, Ltd., the ANCSA village corporation representing four Interior Alaska villages, and a shareholder of Doyon Limited.

<sup>157</sup> Mr. Binkley is a lifelong Alaskan from Fairbanks.

<sup>158</sup> Mr. Simpson lives in Douglas and is an attorney in private practice in Juneau. His practice focuses particularly on Native Corporation and he has served as principal outside counsel for Sealaska since the 1970s.

<sup>159</sup> Mr. Singer serves as Ahtna's Attorney in two cases pending before the Alaska Supreme Court: *James Caswell v. Ahtna, Inc.* (S-18005) and *State of Alaska, Dep't of Transp. & Pub. Facilities, et al. v. Ahtna, Inc.* (S-17526).

members plainly advocated for specific districts based upon their personal priorities rather than focusing on the constitutional redistricting criteria or respecting the wishes of the public as expressed during the public comment period.

**I. The Board's Final Plan Fails to Satisfy Constitutional Redistricting Criteria.**

[W]here people live together and work together and earn their living together, where people do that, they should be logically grouped that way. Accordingly, the delegates define an integrated socio-economic unit as: "an economic unit inhabited by people. In other words, the stress is placed on the canton idea, a group of people living within a geographic unit, socio-economic, following if possible, similar economic pursuits."<sup>160</sup>

The Board's Final Plan places Skagway in District 3, separating it from downtown Juneau and joining it with the western half of the Mendenhall Valley. Skagway's goal is essentially to continue the same districting as had been in place for the last decade.<sup>161</sup> Breaking that established connection and districting Skagway and Haines with the western half of the Mendenhall Valley splits the highly socioeconomically integrated neighborhood in the Mendenhall Valley in half simply to then join Skagway and Haines with the western half of the Mendenhall Valley.<sup>162</sup> There is no basis for in socioeconomic reality for bisecting the Mendenhall Valley community simply to district Skagway and Haines with half of it.

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<sup>160</sup> *Hickel*, 846 P.2d at 46 (citing *Kenai Peninsula Borough*, 743 P.2d at 1360, n.11) (internal citation omitted).

<sup>161</sup> Exhibit A, 2013 Proclamation Map for Districts 33 and 34 [ARB001614].

<sup>162</sup> Exhibit B, 2021 Proclamation Map for Districts 3 and 4 [ARB00021].

Population changes do not necessitate any dramatic redesign of these districts, and the vast majority of community members from Skagway and Juneau spoke in favor of continuing Skagway and Haines in the same district with downtown Juneau. Every public official for Skagway—the mayor, the city manager, and a unanimous borough assembly—supported continuing Skagway and Haines in the same district with downtown Juneau. Similarly, every person from Juneau or the Mendenhall Valley that specifically commented on the matter, asked that the Mendenhall Valley be districted separately from downtown Juneau with a dividing line between the two districts that kept both the Mendenhall Valley and downtown Juneau whole (often with Fred Meyer being suggested as the point of separation). Stated differently, not a single public comment was received that suggested the Mendenhall Valley should be split in half in order to district Skagway and Haines with the western half of the Mendenhall Valley—as does the Board’s final map.<sup>163</sup>

Notwithstanding the overwhelming public comment supporting continuing to district Skagway and Haines with downtown Juneau, the overwhelming socioeconomic evidence suggesting Skagway and Haines are far more integrated with downtown Juneau than the Mendenhall Valley, and having to split the Mendenhall Valley community in half, based almost entirely on the strong personal and unsupported opinion of Board Member Simpson, the Board rejected both the record before them and the will of the people to adopt the new Districts 3 and 4 with an arbitrary line through the middle of the Mendenhall Valley community.

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<sup>163</sup> Exhibit C, compiled public comments regarding Districts 3 and 4.

The Board members expressly acknowledged that maintaining the basics of the contiguous, compact, and socioeconomically integrated status quo was viable, so this unnecessary change violates the constitutional requirement to consider relative socioeconomic integration and harms the people of Skagway in their ability to obtain “‘fair and effective representation’—the right to group effectiveness or an equally powerful vote.”<sup>164</sup>

**1. Board Member Simpson came into the redistricting process with his mind made up about the Juneau districts he wanted to design.**

Board Member Simpson states in his affidavit that he “took the lead for the Board in drawing the new house districts for this region of the state.”<sup>165</sup> As each Board member took charge of their home region,<sup>166</sup> the others deferred to him and adopted the plan he proposed for Southeast Alaska.<sup>167</sup> In his deposition, he repeatedly states he always had the goal of reshaping the Skagway and Juneau districts on the basis of his view of compactness: “I think that issue had been brought up, really, from the beginning, because it had always been my intention to make the district more compact and put Skagway and Haines with the north end.”<sup>168</sup> “I might as well say right here is that my principal concern there was the compactness of that district, that it did not -- it was clearly not compact, and there was a way to draw it so that it was, with -- and still maintain the socioeconomic integration factors

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<sup>164</sup> *Hickel*, 846 P.2d at 47 (quoting *Kenai Peninsula Borough v. State*, 743 P.2d at 1363).

<sup>165</sup> Affidavit of Bud Simpson (January 12, 2022) at paragraph 8.

<sup>166</sup> Simpson Depo. Tr. at 47, lines 11-15.

<sup>167</sup> Simpson Depo. Tr. at 48, lines 2-5.

<sup>168</sup> Simpson Depo. Tr. at 51, line 22 – 52, line 6.

that we were looking for.”<sup>169</sup> Based on his testimony, Board Member Simpson came into the redistricting process with the explicit goal of separating Skagway and Haines from downtown Juneau based on his view of compactness, even though he admitted that they have been joined in a court-approved district since the last redistricting cycle and the status quo was highly defensible:

Now, Mr. Simpson, it’s your opinion that whether Skagway is linked with the Valley or with Downtown Juneau that both are -- meet the constitutional criteria and are highly defensible; isn’t that correct?

A: Yes.

Q: Okay. Now, why? Why is the way it is highly defensible?

A: I’m not disputing that there are socioeconomic connections between those south and -- and northern Lynn Canal, for the reasons that have been discussed today. What -- where I’m coming from is that it creates a much more compact and equally socio -- equally or better socioeconomically integrated district by connecting the north with the north. You cannot look at the two mapped versions next to each other and conclude that the existing sort of fishhook version is a compact district when it is possible to draw a more compact district, and that’s what we were attempting to do.

. . .

Q: Okay. Then it’s your opinion that it’s highly defensible if it were challenged in court today; correct?

A: It exists as it is, I think -- yes, I think it’s highly defensible, as is the other version.<sup>170</sup>

Board Member Simpson acknowledges that the existing map is highly defensible, but nonetheless states his belief that compactness requires redrawing the existing court-

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<sup>169</sup> Simpson Depo. Tr. at 79, lines 15-21.

<sup>170</sup> Simpson Depo. Tr. at 106, line 17 – 107, line 14, and 109, line 5 – 109, line 10.

approved map. Board Member Borromeo, the other Board member with personal knowledge of Southeast Alaska who engaged with its mapping, stated that pairing Haines and Skagway with downtown Juneau was “a viable option, that we should proceed – that we should pursue as a Board and the public should be able to react to.”<sup>171</sup> She further agreed that the current districts satisfy the requirements for compactness and contiguity:

Q: So for the past decade, Skagway and Haines and Downtown Juneau have been in one district; right?

A: Correct.

Q: Okay. So there isn’t any question, is there, that that district meets the constitutional criteria for compactness and continuity because it has for a decade; right?

A: Yes.<sup>172</sup>

Despite such acknowledgement, by deferring to Board Member Simpson the Board seemingly rendered any consideration of alternatives to his preference pointless. Several of the redistricting maps presented by or to the Board kept Skagway and downtown Juneau together, including the Board V.4 map, the Doyon map, and the Senate Minority Caucus map. Based on Board Member Simpson’s testimony, however, he was only interested in his own version of the Southeast map based on his own view of compactness.

**2. Compactness is a relative requirement that must be balanced against the other constitutional requirements, not used as an**

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<sup>171</sup> Deposition of Nicole Borromeo (January 10, 2022) Tr. at 65, lines 12-19.

<sup>172</sup> Borromeo Depo. Tr. at 80, lines 6-13.

**overriding objective with which to dismiss the relative socioeconomic integration of the options before the Board.**

Board Member Simpson testified that he used a visual approach to compactness without any calculation:

Q: And how do you determine compactness?

A: Mostly it's by the look of it. You -- you know, you have to deal with the census blocks as they are given to you. But we, you know, tried to maintain the integrity of rural boundaries. So we, you know, we used those. We tried to use geographic boundaries or natural things, if possible. So, you know, that's why you have districts that maybe include a particular island or, you know, in this case, you know, run up Lynn Canal and so forth. But yeah, we never applied any kind of a formulaic approach to determining compactness based on, you know, measuring the -- the boundary or anything like that.<sup>173</sup>

While quantitative measures of compactness have limited use for Alaska's geography, the visual approach described by Board Member Simpson underscores the subjective nature of the compactness requirement described in *Hickel* as "the relative compactness of proposed and possible districts in determining whether a district is sufficiently compact."<sup>174</sup> Skagway and Juneau are already paired in a court-approved district, thus relative sufficiency of its compactness is established and must be weighed against the relative socioeconomic integration of the options, which is a fact-driven analysis of the areas being districted. Compactness is not some absolute threshold that overrides other constitutional requirements.

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<sup>173</sup> Simpson Depo. Tr. at 111, lines 10-23.

<sup>174</sup> *Hickel*, 846 P.2d at 45 (citing *Carpenter*, 667 P.2d at 1218) (emphasis added).

According to his affidavit, Board Member Simpson merely used Juneau's boundaries and went north as far as population required to draw the line he desired between Districts 3 and 4:

The northern boundary passes through the Mendenhall Valley area of Juneau. I drew the northern line by gathering census blocks moving outward from downtown Juneau, stopping when I had sufficiently populated the district. I worked with Board staff to make the line as straight as possible in light of the population and compactness goals, and the odd shape of available census blocks.<sup>175</sup>

In drawing his new Districts 3 and 4, Board Member Simpson seems to have taken the socioeconomic integration requirement entirely for granted, and ignored both the compelling linkage between Skagway and downtown Juneau as well as the integrity of the Mendenhall Valley community.

**3. The evidence in the record regarding relative socioeconomic integration, as well as the public testimony on the experience and wishes of the residents, was overwhelmingly against the district redesign conceived by Board Member Simpson.**

“In addition to preventing gerrymandering, the requirement that districts be composed of relatively integrated socio-economic areas helps to ensure that a voter is not denied his or her right to an equally powerful vote.”<sup>176</sup>

In evaluating relative socioeconomic integration, the *Hickel* court mentions specific factual characteristics such as transportation links, a common major economic activity, shared fishing, management of state lands, whether there is a predominately Native

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<sup>175</sup> Simpson Affidavit at paragraph 18.

<sup>176</sup> *Hickel*, 846 P.2d at 46.



character of the populace, and geographical similarities and historical links. The requirement for socioeconomic integration requires a look at such factual characteristics with comparison to “other previously existing and proposed districts as well as principal alternative districts to determine whether socio-economic links are sufficient.”<sup>177</sup> In Alaska’s Constitutional Convention, the delegates described “an integrated socio-economic unit” as “a group of people living within a geographic unit, socio-economic, following if possible, similar economic pursuits.”<sup>178</sup>

Before the Mendenhall Valley developed into its current size, the socioeconomic connections between Skagway and downtown Juneau were recognized in the 1974 case

*Groh v. Egan*:

There are close transportation ties between Juneau, Haines and Skagway by daily scheduled air flights and frequent ferry service; a Juneau-Haines highway connection has been planned. The district is quite distinct from the rest of the Southeast region by virtue of the nature of its development and the fact that it is almost entirely composed of portions of the mainland, rather than the islands of the archipelago; historically the three communities have always been closely linked, with Juneau serving as an economic hub for Haines and Skagway.

Since that time, the connection between downtown Juneau and Skagway has increased as Skagway’s economy has become more and more dependent on the cruise ships it shares with downtown Juneau, a common major economic activity fundamental to Skagway’s future and its fair and effective representation.

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<sup>177</sup> *Id.* at 46-47.

<sup>178</sup> *Id.* at 46 (quoting 3 PACC 1873 (Jan. 12, 1956)).

#### 4. Integration via Common Major Economic Activity.

In 1983, Skagway's arrivals included 40,066 via cruise ship; 25,288 via ferry; and 72,384 via highway; by 2019, these numbers had shifted to 983,917 via cruise ship; 9,640 via ferry; and 113,253 via highway.<sup>179</sup> Further demonstrating the importance of the cruise industry in Skagway, Carnival Corporation recently purchased the White Pass & Yukon Route railway, Skagway's largest single employer for \$290 million.<sup>180</sup>

Downtown Juneau and especially Skagway depend upon the cruise ship industry and were harmed by the recent pandemic-caused shutdown of cruises. As shown in the State of Alaska report issued in April 2021 entitled "Impacts to Alaska from 2020/2021 Cruise Ship Season Cancellation,"<sup>181</sup> Juneau lost \$33,706,844 for a single year under a no-sail order, while Skagway lost \$13,233,250, an amount exceeding 100 percent of Skagway's annual operating budget. These impacts demonstrate the common socioeconomic interests of Skagway and downtown Juneau.

With Juneau as Alaska's most-visited port and Skagway the third-most visited port, the two communities also share an interest in receiving funding from the State based on

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<sup>179</sup> Exhibit C to Affidavits of Andrew Cremata, Brad Ryan, John Walsh, and Janice Wrentmore (January 5, 2022) ("Skagway Affidavits"), Skagway Arrivals by Category 1983-2021, available at [https://www.skagway.org/sites/default/files/fileattachments/skagway\\_visitor\\_department/page/311/seasonal\\_visitor\\_stats\\_1983-2021.pdf](https://www.skagway.org/sites/default/files/fileattachments/skagway_visitor_department/page/311/seasonal_visitor_stats_1983-2021.pdf)

<sup>180</sup> Exhibit E to Skagway Affidavits, "Cruise ship giant Carnival buys White Pass & Yukon Route," CBC News (June 7, 2018), available at <https://www.cbc.ca/news/canada/north/white-pass-train-sold-carnival-1.4696188>.

<sup>181</sup> Exhibit D to Skagway Affidavits, "Impacts to Alaska from 2020/2021 Cruise Ship Season Cancellation" (April 2021) at 3, available at <https://gov.alaska.gov/wp-content/uploads/sites/2/04082021-Cruise-Impacts-to-Alaska.pdf>.

the Commercial Passenger Vessel (“CPV”) excise tax that is distributed to the top seven ports of call.<sup>182</sup> At approximately \$5 million annually, this funding is integral to Skagway’s community and further shows its political interest and need in coordinating with downtown Juneau on all levels of government and policy. The CPV funding to Juneau and Skagway reflects the seasonal infrastructure impacts of this common major economic activity, as shown in a 2019 study of cruise ship presence in Skagway:

Skagway’s population temporarily, but dramatically, increases each year as businesses and government agencies gear up to provide services, facilities and products to meet the demands of upwards of 1.5 million visitors. Each year, the expansion of the local labor pool “more than doubles,” perhaps triples, the year-round population of Skagway. Those estimates may actually understate the actual increase; because many of these individuals are accompanied by families, partners and others, not all of whom are counted in official employment data. In any event, while the annual seasonal influx of temporary residents represents an understandable response to a thriving but seasonal visitor industry, the fact remains that the Municipality must be prepared to accommodate a doubling or tripling of the “resident” population for 40- 50% of the year, every year, on its public facilities and services.<sup>183</sup>

The cruise ships bring many shared opportunities and challenges to downtown Juneau and Skagway. A prime example of this cooperation is when Skagway joined

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<sup>182</sup> Exhibit F to Skagway Affidavits, ADOT report entitled “Commercial Passenger Vessel Excise Tax: Community Needs, Priorities, Shared Revenue, and Expenditures” (Feb. 2017) at 2, available at

[https://dot.alaska.gov/stwddes/desbridge/assets/grant/seward/seward\\_visitor\\_07\\_16.pdf](https://dot.alaska.gov/stwddes/desbridge/assets/grant/seward/seward_visitor_07_16.pdf).

<sup>183</sup> Exhibit G to Skagway Affidavits, “A Review: 2019 Cruise Ship Presence, Skagway, Alaska,” Van Altvorst & Associates, (Apr. 8, 2019) at 5, available at

[https://www.skagway.org/sites/default/files/fileattachments/port\\_of\\_skagway/page/277/final\\_2019\\_skg\\_cpv\\_update\\_2019\\_04\\_08\\_1.pdf](https://www.skagway.org/sites/default/files/fileattachments/port_of_skagway/page/277/final_2019_skg_cpv_update_2019_04_08_1.pdf)

Ketchikan in pledging \$100,000 in support of Juneau's litigation against the cruise industry regarding the use of head taxes and passenger fees.<sup>184</sup>

Skagway officials often look to the regulations, taxes, tariffs, and personnel of the Juneau port in determining Skagway's port policies, especially now that Skagway is reassuming control of its port and establishing its own structure that should be consistent and congruent with other Alaska ports.<sup>185</sup> Particular projects and policies that tie Skagway to the Juneau port include port electrification, a possible electrical intertie, a cruise ship excise tax, and cruise ship scheduling.<sup>186</sup> Skagway officials often travel to downtown Juneau to confer with state and local officials on these topics and other matters.<sup>187</sup>

Additionally, other tourism-related businesses operate in both Skagway and downtown Juneau, as shown by the more than 20 businesses with Skagway business licenses that list their principal address in Juneau.<sup>188</sup> It is common for tour operators to offer combination booking of activities in both communities, for example whale watching in Juneau combined with riding the train in Skagway.<sup>189</sup>

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<sup>184</sup> Exhibit H to Skagway Affidavits, Municipality of Skagway Resolution No. 19-07R (Feb. 21, 2019), available at [https://www.skagway.org/sites/default/files/fileattachments/ordinance/38241/res\\_19-07r\\_cbj\\_v\\_clia\\_appeal\\_support.pdf](https://www.skagway.org/sites/default/files/fileattachments/ordinance/38241/res_19-07r_cbj_v_clia_appeal_support.pdf)

<sup>185</sup> Ryan Affidavit at paragraph 23.

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> Exhibit I to Skagway Affidavits, Spreadsheet of Skagway Business Licenses.

<sup>189</sup> Exhibit J to Skagway Affidavits, "Skagway Combo Tours" available at <http://www.skagwayalaskatours.com/skagway-combo-tours>

The COVID-19 pandemic and its devastating impacts on Skagway further joined it with downtown Juneau as both communities sought federal assistance for our communities to mitigate the loss of the cruise ships with Coronavirus Aid, Relief, and Economic Security (“CARES”) and American Rescue Plan Act (“ARPA”) funds. Skagway suffered a 99.68 percent reduction of arrival numbers in 2020 due to the COVID-19 pandemic, with total losses estimated at over \$300 million in taxable revenue spent within the community and \$26.6 in taxes collected.<sup>190</sup> Like downtown Juneau, Skagway received millions of dollars in federal aid as a major cruise industry port of call, but Skagway remains under a declaration of financial emergency due to the devastating economic impacts of the COVID-19 pandemic.<sup>191</sup>

The economic ties between Skagway, Juneau, and the cruise industry were further underscored when Norwegian Cruise Line announced a \$10 million donation to six Alaska port cities including Juneau and Skagway to assist with the loss of tourism.<sup>192</sup> The unprecedented strain and uncertainty of the COVID-19 pandemic has only underscored the

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<sup>190</sup> Exhibit K to Skagway Affidavits, “Economic Impact of COVID-19 on Skagway, Alaska” (Mar. 30, 2021).

<sup>191</sup> Exhibit L to Skagway Affidavits, Municipality of Skagway Resolution No. 21-19R (June 17, 2021), available at [https://www.skagway.org/sites/default/files/fileattachments/ordinance/46830/res\\_21-19r\\_lifting\\_health\\_emergency\\_declaration.pdf](https://www.skagway.org/sites/default/files/fileattachments/ordinance/46830/res_21-19r_lifting_health_emergency_declaration.pdf)

<sup>192</sup> Exhibit M to Skagway Affidavits, “Norwegian Cruise Line donates \$10M to six southeast Alaska communities,” Alaska’s News Source (May 9, 2021), available at <https://www.alaskanewssource.com/2021/05/10/norwegian-cruise-line-donates-10-million-to-six-southeast-alaska-communities/>.

shared interests of Skagway and downtown Juneau as socioeconomic partners through their common major economic activity of attracting cruise ship tourism.

Working to mitigate the impacts of the pandemic has required constant coordination with Skagway's state and federal legislators on cruise ship issues, for example supporting the federal exemption for certain cruise ships sailing to Alaska from the provisions in the Passenger Vessel Services Act.<sup>193</sup> It is vital that Skagway have representatives who understand and appreciate the vital importance of cruise ship sailings for Skagway.

The Mendenhall Valley simply has not faced the same economic impacts from COVID-19 as Skagway has. Just as the presence of a cruise ship port makes downtown Juneau critically relevant to Skagway, the absence of such a port from the other areas of Juneau make them at best essentially irrelevant to Skagway from a socioeconomic standpoint. At worst, such differently interested areas seem more likely to support local efforts to limit cruise activity such as the recent "Cruise Control" initiatives.<sup>194</sup> While Skagway officials are regularly in contact with all levels of government in downtown Juneau, they have no cause to travel to or otherwise confer with the Mendenhall Valley on any substantial policy matters.<sup>195</sup>

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<sup>193</sup> Exhibit N to Skagway Affidavits, Letter from Mayor Cremata to Representative Kiehl and federal delegation (Mar. 8, 2021).

<sup>194</sup> Exhibit B to Skagway Affidavits, "Cruise control on the ballot?", Juneau Empire (Apr. 30, 2021), available at <https://www.juneauempire.com/news/cruise-control-on-the-ballot/>.

<sup>195</sup> Ryan Affidavit at paragraph 30.

When asked about the facts regarding Skagway and Juneau's cruise ship integration in his deposition, Board Member Simpson was unaware of many of them but did not dispute any of them, in fact acknowledging it was primary reason for the testimony he received for maintaining the current district connection:

Q: Okay. So you said: The reason it's been given is that they both have cruise ships going to them. I mean, every place in southeast has cruise ships going to it. So you're dismissing the connection between Skagway and Haines' in Downtown Juneau cruise ship connection, because, I quote, every place in southeast has cruise ships going to it; is that correct?

A: Not dismissing it, but that was the primary reason that we heard over and over again for that connection between Skagway and Downtown Juneau, over and over again, that was the testimony. People did not talk about the hospital or going to visit their representative. They talked about the cruise connection and the -- that that was the business that -- that they were in.

Q: Do you know what percentage of Skagway's economy is the cruise ship connection?

A: I would guess a substantial majority, nearly all.

Q: Do you know who the largest employer in Skagway is?

A: No.

Q: Okay. But -- so -- but you're -- you're saying every place in southeastern has cruise ships going to it. You seem to be suggesting, by that, that that's a reason to discount the reason that's been given; is that your opinion?

A: I'm not trying to discount it. I'm simply saying that it's not unique to those two locations. It is a fact that both of them have cruise ships going to them, but what I give less credence to is the concept that that ties Skagway to downtown more than it ties them to the whole community of Juneau. So, you know, all of Juneau deals with the cruise ships, whether positively or negatively, and it's a unified borough. So I didn't mean to minimize the impact of cruise ships on Skagway. I'm simply saying that it's not unique to those two places.

Q: But we're discussing it within the context of whether Skagway should -- and Haines should be linked to the Mendenhall Valley or to Downtown

Juneau, correct, that's the context of this conversation? A. Right. That's why the concept of cruise ships was brought up.

Q: Okay. So does the fact that there are cruise ships that go into Ketchikan minimize -- is that relevant to the conversation about whether or not there is socioeconomic integration in the cruise ship industry between Skagway, Haines, and Downtown Juneau?

A: Well, yes, it's relevant because the cruise industry is a huge driver and impacter on the private sector in southeast.

Q: Okay.

A: So yeah, it's not -- I'm just saying it's not unique to those two places.

Q: Okay. Do any cruise ships dock in -- in Auke Bay or the Menden -- or the Valley of Juneau?

A: None of the large ones do, but they offload their passengers and send them by bus immediately to all parts of the borough, particularly the Mendenhall Glacier and Auke Bay for sport fishing and whale watching. They go all over.

Q: Okay. So you think the ultimate destination is something to be considered with the cruise ships, and you agree that it's also something to be considered with the ferry system?

A: I did not ever say that the ultimate destination was not something to be considered.

Q: Okay.

A: You asked me where people were going, and I said where they went to shop.

Q: Okay. So it says: Both have cruise ships going to them. There are no major cruise ships that go into north Juneau, are there?

A: The cruise ships go into Juneau. The docks are at the south end of town.

Q: Okay. Now, going down to the next factor -- well, first, let me just stay on this for a minute. You don't know that the largest employer in Skagway is White Pass and Yukon Route?

A: No, I wasn't aware of that. It doesn't surprise me.



Q: You're not aware that the members of the cruise industries own the largest employer in Skagway?

A: I've heard that, yes.

Q: Okay. And you're aware -- you were given specific testimony that when the cruise ships quit going to Skagway that the economy in Skagway collapsed by 95 percent?

A: I -- I don't remember that specific testimony. But during the COVID period, I'm aware that every place that's reliant on the cruise industry suffered significantly.

Q: Do you know that Juneau is the number one destination for the cruise industry in Alaska?

A: I've heard that, yes.

Q: Do you know that Skagway is number three?

A: I didn't know that, but I'm not surprised.

Q: Are you aware of the distribution of -- of funds from -- from the dockings, how they're distributed?

A: No.

Q: Are you aware -- would it surprise you to know, that -- well, are you aware of the -- of -- Mr. Simpson, the goal of districting, right, is to the degree practical is to get people who are socioeconomically integrated in the same district; right?

A: That's one of several goals that we work toward."<sup>196</sup>

Board Member Simpson was either unaware of or overly dismissive of the fundamental importance of cruise ships and tourism to Skagway, which provides a critical socioeconomic integration with downtown Juneau. Board Member Borromeo was also unaware of many of Skagway's socioeconomic facts, but agreed that "the vast majority of

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<sup>196</sup> Simpson Depo. at Tr. at 68, line 6 – page 73, line 10.

commercial economic activity between Skagway and Haines is ... with Downtown Juneau and that district[.]”<sup>197</sup>

Board Member Simpson also seemed to assert that the government presence in downtown Juneau was somehow contrary to socioeconomic integration with Skagway: “Seasonally, cruise ships moor in Downtown Juneau, but the primary economic and employment drivers for the district are government entities.”<sup>198</sup> But in his deposition, Board Member Simpson acknowledged that such government presence only indicates further socioeconomic integration between downtown Juneau and Skagway:

I’m asking about your point in your testimony that the anchor in Downtown Juneau is government. You’re aware that Skagway has to coordinate municipality to municipality with Juneau, to do that they have to go to Downtown Juneau; correct?

A: Yes.

Q: Okay. You’re aware that Skagway has to integrate with the state legislatures, and to do that it goes to Downtown Juneau; correct?

A: Yes.

Q: Okay. You’re aware that Skagway has to integrate with federal agencies and governments, and that they are located predominantly in Downtown Juneau; correct?

A: Correct.

Q: Okay. Now -- so the fact that Downtown Juneau is the seat of government, which Skagway and Haines has to access, is a point in favor of their socioeconomic integration and not against; correct?

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<sup>197</sup> Nicole Borromeo Depo. Tr. at 72, lines 3-7.

<sup>198</sup> Simpson Affidavit at paragraph 19.

A: It -- yes, it has an impact on socioeconomic integration, I would agree with that.

Q: Okay. Now, you're aware that the lobbyists for Skagway indicated that decades that he's been representing Skagway he's never had a meeting in the Mendenhall Valley; right?

A: I -- I don't recall --

Q: Okay.

A: -- him saying that, but it's possible.

Q: Okay. So next, white-collar office workers versus fisherman and cement plant workers, okay, that goes to the similarity of the communities, not to their integration; correct?

A: Yes, throughout the state, though, we've looked at the types of economies that are in communities that we were considering for inclusion in -- in the same district. So the type of industries is -- is relevant to that.

Q: Okay. And you think that cement plant workers trumps tourism as a socioeconomic integrator between Skagway -- let me say this, this way: You think the cement workers between the Valley or part of the Valley that you designated in 3 in Skagway is a greater socioeconomic link than the cruise industry?

A: No. And that's not my intent by that statement. I'm simply saying that the Valley, Mendenhall Valley area and out the road, it was -- it is not a site of the white-collar government workers and neither are Haines and Skagway.<sup>199</sup>

Here, Board Member Simpson appears to confuse the similarity or homogeneity of the communities rather than their actual interaction and integration. To satisfy the constitutional requirement of socio-economic integration, there must be "sufficient evidence of socio-economic integration of the communities linked by the redistricting,

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<sup>199</sup> Simpson Depo. Tr. at 81, line 20 -- page 84, line 1.

proof of actual interaction, and interconnectedness rather than mere homogeneity.”<sup>200</sup> In his concurring opinion in *Carpenter*, Justice Matthews explained that “[i]ntegration connotes interaction and connectedness, while homogeneity refers to similarity or uniformity.”<sup>201</sup> Board Member Borromeo recognized that the government presence in Downtown Juneau furthered its socioeconomic links to Skagway:

Q: Okay. So, yes. So the fact that Downtown Juneau is the seat of government, is a socio-economic factor that suggests linking Skagway and Haines to Downtown Juneau should be done; right?

A: Yes. It’s a factor to consider.

...

Q: Okay. The fact that Downtown Juneau is the seat of government –

A: Yes.

Q: -- suggests greater, not less socio-economic integration with Skagway and Haines; correct?

A: Yes.<sup>202</sup>

Board Member Borromeo also agreed that the presence of blue-collar or white-collar workers goes to similarity or homogeneity, not integration, and that Board Member Simpson’s inclusion of Skagway and Haines in District 3 forces the unnatural division of the Mendenhall Valley:

Q: Assuming that Member Simpson is correct that there’s blue-collar workers in the Valley and white-collar workers in Downtown Juneau and there’s also blue-collar workers in Skagway and Haines, then does that say

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<sup>200</sup> *Hickel*, 846 P.2d at 46 (citing *Kenai Peninsula Borough*, 743 P.2d at 1363).

<sup>201</sup> *Carpenter*, 667 P.2d at 1218.

<sup>202</sup> Borromeo Depo. Tr. at 86, lines 6-10.

anything at all about the socio-economic integration of those communities, or does that go to the similarity of those communities?

A: I would say the latter, similarity.

Q: Okay. Now, if everybody's blue-collar in Haines and Skagway, then where do they need to go for their professional services if not Downtown Juneau; right?

A: Yes.

Q: So with regard to professional services, not just commercial and shopping, but with regard to professional services, to the degree that his observation is correct, then the citizens of Skagway and Haines would have to go to Downtown Juneau in order to get legal, accounting, the technical services that you would expect to find in a white-collar service community; right?

...

THE WITNESS: No. I think it also depends on the type of Alaskan that is traveling from those communities from Juneau. So, for example, if you have a tribal member from Haines and Klukwan that is going to Juneau, they may be going to receive services from Tlingit & Haida Indian Central Council, Tlingit & Haida Indian Tribes which is headquartered in the Valley, and that's primarily why and where they would be traveling to in Juneau.

So it's hard to answer in -- in a way that would give a blanket response for the type of individual from Haines and Skagway that's accessing Juneau.

BY MR. BRENA:

Q: Do you know whether or not the Tlingit & Haida community in the Valley is in District 3 or District 4?

A: They have offices and space in -- in both districts.

Q: Do you know where they're headquartered, in District 3 or District 4?

A: They're headquartered in --

THE WITNESS: Can I actually see the map?

Let me just verify before I give you an answer.

THE WITNESS: Okay. What was your question, Mr. Brena?

BY MR. BRENA:

Q: You mentioned people traveling, perhaps, from the Haines Native community. I assume you meant the Village Corporation of Klukwan, to -- to -- to the Valley because there was -- because there was a Native community headquarters in the Valley, and I asked you: Is that Native community headquarters in District 3 or 4?

...

A: But, yes, on -- on the map, how it's broken down, Tlingit & Haida's headquarters are going to be in District 4. Where we're experiencing a little bit of, I think, confusion, is I generally, and I think several Alaskans, refer to anything kind of past Lemon Creek as the Valley. (emphasis added)

Q: Well, and -- and one of the things that the final map does is not only separate Skagway and Haines from downtown and the airport, but it also splits the Valley in half; right?

A: Yes.<sup>203</sup>

She next agreed that dividing the Valley was necessary in terms of population if Skagway and Haines were to be included in District 3:

Q: If -- if -- if you -- if you want to connect the Valley with Skagway and Haines, you've got to cut the Valley in half. That's the way the numbers work; right?

A: Yes.<sup>204</sup>

While similar characteristics between communities may well indicate integration, the common identity must go to common activities and interaction, as discussed in the following.

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<sup>203</sup> Borromeo Depo. Tr. at 87, lines 7 – page 90, line 21

<sup>204</sup> *Id.* at 92, lines 22-24.

**(a) Integration via Land Management and Historical Links.**

Skagway and downtown Juneau feature small, densely-populated business districts centered around their cruise ports with a socioeconomic culture concentrated on historic tourist attractions, entertainment, and restaurants and the performing arts with small unique storefronts and individually-owned businesses catering to visitors. Along with these obvious common features, the communities share the same public safety concerns regarding terrain and weather events, as well as managing the street crowding that comes with the cruise ships they share.<sup>205</sup>

Unlike downtown Juneau, the Mendenhall Valley is a sprawling suburb area with box stores, strip malls, shopping malls, fast food chains, and trailer parks, and lacks the historical foundation, longstanding businesses, and tourism focus that links downtown Juneau with Skagway.<sup>206</sup>

Every reason for Skagway and downtown Juneau to continue their joint representation is a reason against joining Skagway with the Mendenhall Valley. A representative trying to represent the majority interest of the new District 3 would likely have reason to give Skagway's interests lower priority if they ran counter to the different interests of the Mendenhall Valley.

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<sup>205</sup> See Skagway Affidavits at Cremata paragraphs 42-46, Ryan paragraphs 31-33, Walsh paragraphs 42-46, and Wrentmore paragraphs 4-8.

<sup>206</sup> See Skagway Affidavits at Cremata paragraphs 42-46, Ryan paragraphs 31-33, Walsh paragraphs 42-46, and Wrentmore paragraphs 4-8.

**(b) Integration via Transportation.**

When Skagway residents travel to Juneau, it is primarily to downtown Juneau. The primary shopping and hospitality options are present in what the Board has drawn as District 4, not District 3, and District 4 also contains Bartlett Regional Hospital, which serves as the local hospital for the people of Skagway. The medical director for Skagway's clinic works at Bartlett Regional.

The ferry terminal at Auke Bay is not a meaningful socioeconomic connection between Skagway and the Mendenhall Valley because most of the passengers from Skagway will be heading right out of District 3 toward downtown Juneau in District 4. The ferry system has become increasingly unreliable and will even be completely shut down during the month of January 2022.<sup>207</sup> When comparing the sailing schedule and passenger numbers of the ferry to those of the scheduled cruise ship visits in 2022,<sup>208</sup> the overwhelming importance of the cruise ships to Skagway is readily apparent. Again, since 1983 ferry arrivals have decreased from 25,288 to 9,640 in 2019, a decrease of almost 62 percent, while cruise arrivals have increased from 40,066 to 983,917, an increase of nearly 2,500 percent.

Despite these facts, Board Member Simpson places primary emphasis on the ferry connection between Auke Bay and Skagway: "Of particular importance to me was that

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<sup>207</sup> Exhibit O to Skagway Affidavits, "Skagway left out as DOT scrambles to accommodate ferry-riding lawmakers," KHNS FM (Dec.7, 2021), available at <https://khns.org/skagway-left-out-as-dot-scrambles-to-accommodate-ferry-riding-lawmakers>.

<sup>208</sup> Exhibit C to Skagway Affidavits, *supra*; Exhibit P to Skagway Affidavits, Cruise Line Agencies of Alaska Cruise Ship Calendar for 2022.



District 3 contains the Alaska Marine Highway terminals for all four of these communities, as the ferry system is the primary transportation link between each of the communities in District 3.”<sup>209</sup> However, Board Member Simpson also acknowledged this transportation link is at least as connected to District 4:

Q: Do you agree that the destinations for people coming in the ferry system at Auke Bay, from Skagway and Haines, would predominantly be in District 4?

A: That’s your statement, not mine. I said that I didn’t know where people getting off the ferry were destined for, but your point is taken that if they are coming there to shop, most of the shopping is probably in District 4, so I would concede that.

...

Q: Okay. Now -- and you did agree that anybody coming in the ferry to speak to their legislator would -- or -- had government -- activities associated with government would be in District 4, would you agree that that would be the predominant destination?

A: Typically, yes.

Q: Excuse me for the interruption. Okay. And you’d agree that anybody going to the hospital in Juneau would go to District 4 because the hospital is in District 19; right?

A: That’s correct.

Q: Okay. Now, you mentioned that -- okay. Let me just stop there. Do you consider the ferry system to have been becoming a less reliable link for transportation than it has been in the past?

A: I -- I believe that’s accurate, generally, yes. Over the 45 years or so that I’ve been riding it, it’s gotten more expensive and less frequent.

Q: And would you agree that -- that the number of people arriving from Skagway and Haines, or the number of visitors -- well, let me rephrase,

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<sup>209</sup> Simpson Affidavit at paragraph 17.

please. Do you know whether there's any ferry service in Skagway or Haines today?

A: I don't know if there is today. I know in the winter it's reduced.

Q: Do you know sometimes it's suspended entirely?

A: If -- yeah, if there's not enough equipment available or the weather's horrible it doesn't go.

Q: And do you know whether the number of visitors arriving through the ferry link have gone down or up over the years?

A: I don't know the number. It wouldn't surprise me if it's gone down.

Q: Okay. So I'm -- I'm curious if -- if the ferry system is used as a destination point for locations in District 3 and District 4 why the location of the actual terminal weighs in favor of Skagway being linked to District 3 or District 4?

A: Well, the location of the terminal isn't -- isn't really the key feature. It is the fact that the ferry system, even though it's diminished over the years, is still the major transportation link for the northern panhandle and the Lynn Canal communities. Auke Bay is a Lynn Canal community. Auke Bay, as well as the Mendenhall Valley, are simply part of Juneau. And, you know, all this discussion about, you know, where Fred Meyer is located or whatever, just seems irrelevant to me. People come in to Juneau to shop, but Juneau's a unified borough. It's all one and the same. So the ferry's on the north end, so yeah, it's not about where the terminal is located, it's about the fact that that transportation network ties in all of the Lynn Canal communities.

Q: Well, it ties Skagway and Haines to Downtown Juneau, as well, doesn't it?

A: Yes, that's the transportation link or hub for all the communities.

Q: Okay. And if the majority of the people using that transportation link are destined to District 4, then it is -- the ferry system is a transportation link to District 4, as well, is it not?

A: Yes, it is.

Q: And I'm not sure if we're agreeing or disagreeing. It's my statement, would you agree or disagree, that most of the people visiting from Skagway

and Haines, that enter through the Auke Bay terminal, are headed to locations in District 4; do you agree or disagree with that?

A: I do not know where those people are headed. I'm certain there are many of them coming to visit friends and relatives that live in the residential areas and not just to shop. I do agree with you that a number of the shopping locations, hospital and government offices are located in District 4.<sup>210</sup>

Board Member Borromeo also agreed that ferry service supported connection with

Downtown Juneau:

Q: If the actual socio-economic integration is that the people from Skagway and Haines are predominantly using the ferry system to access Downtown Juneau, then the ferry system is a factor that weighs in favor of integrating Skagway and Haines and Downtown Juneau; correct?

A: Yes.<sup>211</sup>

The factual characteristics of the communities demonstrate Skagway's socioeconomic integration with downtown Juneau and the need to keep them together in the same district for fair representation. No fact-based determination could find the Mendenhall Valley as socioeconomically integrated with Skagway as downtown Juneau. Moreover, Board Member Simpson's districts split the Mendenhall Valley community with an arbitrary line.

### **(c) Division of Integrated Communities Despite Their Testimony.**

While Board Member Borromeo agreed that "if a community explains what they're socio-economically integrated with, [then] the Board should hear their voice,"<sup>212</sup> and

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<sup>210</sup> Simpson Depo. Tr. at 58, line 15 – 62, line 21.

<sup>211</sup> Borromeo Depo. Tr. at 81, lines 5-11.

<sup>212</sup> *Id.* at 82, lines 22-25.

acknowledged that the assembly, mayor, and manager of Skagway had unanimously urged the continued district with Downtown Juneau,<sup>213</sup> Board Member Simpson instead stated his belief that Mendenhall Valley “isn’t a thing” because it is part of the Juneau borough and he simply moved his district line north as far he needed for population:

Q: Okay.· So there’s a -- in this presentations he’s making the point that to make the numbers work to link Skagway and Haines with the Mendenhall that you’d have to shed half the Mendenhall Valley; correct?

A: That’s not his exact language, but the point taken is that you have to split the borough of Juneau somewhere, because there’s not enough population for two house seats within the borough.· So you’ve got to go elsewhere and you have to make a split somewhere.

Q: Okay. So the consequence of linking -- of linking Skagway and Haines to the Valley instead of to Downtown Juneau is that you have to split that -- the Valley in half?

A: Well, the Valley isn’t a thing. It’s a single unified borough. And you don’t have enough population for two seats if it -- even if it had enough for two seats you’d have to split it somewhere. So this is -- I think it’s a comment that they don’t like where the split occurred.

Q: So if we can start at the airport, can you see the map here, there’s the Juneau Douglas airport, just to orient you.

A: Yes.

Q: And so -- so the tradeoff here is -- is -- for adding Skagway in, is to take half the Mendenhall Valley out. There’s a -- would you accept, subject to check, that there’s roughly 1100 people in Skagway?

A: Yes, that was something close to the census figure.

Q: And couple thousand in Haines?

A: That’s right.

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<sup>213</sup> *Id.* at 83, lines 1-15.

Q: And so just looking in Skagway and Haines, only, as a result of -- of your map, they had to take 3,000 people out of the district -- out of District 4 and put them in District 3, and that is the line that makes the numbers work; right?

A: That's just not how I would characterize it. If you're trying to draw a compact house district you go census block by census block until you basically get to a number that approximates 18,335, and then you try to make that as compact and as good of a line as you can given the limitations of the sometimes strangely drawn census blocks.

So, you know, you're looking for -- we started at the south end of Juneau, which was what I preferred to do for compactness, and went north until we got enough people in, and then tried to straighten up the line as -- as best as we could.<sup>214</sup>

Board Member Simpson acknowledged that no one testified in favor of the district line he drew, and the vast majority of people from Skagway and Juneau testified against it, for keeping Skagway and Juneau together and/or keeping the Mendenhall Valley together:

Q: Okay. I'd like to -- was there anybody, that you recall from your notes, that suggested that the Valley and downtown -- that the Valley should be split in half and joined with the downtown?

A: Not that I recall, no.

Q: So there wasn't any public testimony at the -- at the Juneau outreach that specifically supported your division of the Valley in half; correct?

A: The question of splitting the Valley in half wasn't brought up one way or the other. Most people in the downtown area preferred keeping the existing arrangement. They did not talk about where the Valley would be split.

Some people did weigh in that splitting, like around Fred Meyer or something, made sense to them. I recall some of that. But I don't think anybody ever split the Valley in half, only because it just didn't come up in that context.

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<sup>214</sup> Simpson Depo. Tr. at 101, line 3 – 103, line 7.

Q: Okay. If we can go back to 162400 and the last witness, says, wants to keep Valley whole and downtown whole; right? That means don't split the Valley; right?

A: I'll go with what it says, which is, keep the Valley and downtown whole.

Q: Okay. And then in that same page, in the middle of the page, it says: In Juneau keep the downtown Valley divided, okay, that's suggesting downtown and the Valley be separated; right?

A: I take that to mean what said a few minutes ago, that people supported keeping the -- the line like around Fred Meyer or something that wherever the line is now, it was what those people were supporting.

Q: Okay. And where the line is now doesn't split the Valley in half; right?

A: Well, the line that we're proposing does not split the Valley in half, either. So your -- your question misstates the situation.

Q: You got a line right up the middle the Mendenhall Valley community on Riverside Road. You're saying that doesn't split the Valley in half?

A: It does not.

Q: Okay. All right. I'd like you to go to 162437, the Skagway meeting. Do you see that Mayor Cremata spoke for keeping Skagway downtown connected because of the economic link and the historic link?

A: Yes.

Q: Okay. Do you see that Ms. Potter pointed out that 95 percent of the economic ties of the economy of Skagway suffered as a result of the cruise ship interruption; do you see that?

A: Yes.

Q: Okay. Do you see Jaime Bricker suggesting that the tie with downtown is important as well as connected with rural areas; do you see that language?

A: Yes.

Q: Okay. Do you see John Walsh, on the next page, the city manager, favoring -- or the city lobbyist favoring keeping downtown with Skagway; correct?

A: Yes.

Q: And points out, doesn't recall telling needed to interface with the Valley.·  
So the lobbyist for Skagway is pointing out that he's never had -- he's never lobbied -- he's never had a meeting in the Valley; right?

A: Correct.

Q: Okay. You see number five, she echoed that and said, retain the ties, number six said the same thing, both; correct?

A: That's right.

Q: So Tina Cyr, number eight, said keep alignment with downtown; right?

A: That's right.

Q: Ms. Hegen said keep with downtown; right?

A: Yes.

Q: Okay. In fact, the only person that talked about suggesting it was the last person, 162440, and that was Kathy Hosford; did you see that?

A: Yes, I had a note from her, it looks like she started -- earlier got disconnected or something, but -- . . . .

Q: Yes.

A: I think she's the only one in this batch that spoke in favor of the northern connection.

Q: Nobody mentions the northern connection. They're talking about whether Skagway and Haines should be connected with Downtown Juneau or with the Valley; right?

A: Well, she talks about the Lynn Canal transportation corridor, and at the end she says that she believes Skagway and Haines belong with northern Lynn Canal.

Q: Okay.

A: So --

Q: I just want to be sure that we're accurately characterizing what they said --

A. Oh.

Q: -- according to your notes. And -- and according to your notes the majority of them are talking about whether or not Skagway should be linked to downtown or the Valley; right?

A: That's correct.<sup>215</sup>

Board Member Simpson also acknowledged that no current public official spoke in favor of his district line:

Q: So Senator Begich and Senator Kiehl both spoke in favor of maintaining Haines and Skagway with Downtown Juneau; correct?

A: That's what appears here, yes.

Q: Okay. Did any current public official, at any point, speak in favor of joining Skagway and Haines with a portion of the Mendenhall Glacier that you used?

A: Not that I recall.<sup>216</sup>

Board Member Borromeo recalled the same:

Q: Okay. And then you go on to say, "taking the residents of Juneau, that when we heard at public hearing."

And let me ask you: Was there any testimony that you recall of somebody suggesting splitting the Valley in half?

A: No.

Q: Okay. The residents of Juneau, did they not, wanted the Valley separated from downtown; right?

A: Yes.

Q: Okay. All right.

So when you're talking about "talking to the residents of Juneau when we held a public hearing" -- so, now, we just talked about how the numbers worked, that you could either split the Valley in half; in order to separate Skagway, Haines, and downtown, you had to split the Valley in half; correct?

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<sup>215</sup> Simpson Depo. Tr. at 115, line 22 – 120, line 12.

<sup>216</sup> *Id.* at 97, lines 9-17.



A: Yes.

Q: Okay. Nobody suggested splitting the Valley in half; right?

A: I would have to go back and look at the maps and all of the testimony.

Q: Okay. But nobody comes to mind? That wasn't –

A: Nobody comes to mind right now, no.

Q: That wasn't the theme of the testimony in your memory of it; right?

A: No. The testimony around this part of the state centered on whether or not Haines and Skagway should be districted with downtown, and the split that the community of Juneau wanted didn't have to do with the Valley.

Q: Okay. So, I'm sorry, is it fair to say that the majority of -- well, the vast majority of the people who spoke to the issue suggested that the Valley be held whole and separated from Downtown Juneau?

A: Yes.

Q: Okay So people from Downtown Juneau didn't want to split the Valley in half; right?

A: Yes.

Q: People from the Valley didn't want to split the Valley in half; right?

A: Yes.

Q: People from Skagway didn't want you to split the Valley in half; right?

A: I don't know the answer to that, because like I said before, I hadn't had the opportunity to review the Skagway testimony as I would have liked.

Q: Okay.

A: They wanted to be -- I would say they wanted to be districted with downtown. I don't know what they wanted for the Valley.

...

Q: Okay. Now, but even Kathy Hosford, there was no conversation of splitting the Valley in half in order to obtain that. Well, okay, let me -- let me ask the question differently.

You said the sentiment -- you were talking about, "talking with the residents of Juneau when we held the public hearing."

And those are the comments we've talked about; right?

A: Yes.

Q: "And the sentiment that I got from the community was that they really did want to be redistricted with Haines and Skagway downtown"; right?

So this is your comment on what the Juneau residents wanted; right?

A: Yes.

Q: Okay. Skagway requested a special meeting and -- and took the position that they would like to be districted with downtown; right?

A: Yes.

Q: Okay. And so -- and you say, "The weight of the testimony -- starting on line 7 -- "The weight of the testimony, in my mind, weighs in favor of keeping Haines and Skagway, who are currently districted with Downtown Juneau, in the Downtown Juneau district"; right? That was --

A: Yes.

Q: Okay. And then you -- you pointed out that Senator Begich gave several socio-economic examples, that -- that you cited that as a reason for your position; right?

A: Yes.

Q: Trade routes, booming cruise ship industries, and -- and what they share in common; right?

A: Yes.<sup>217</sup>

Board Member Borromeo agreed that the pieces of Mendenhall Valley that District 3 divides are more integrated with each other than with Skagway and Haines:

Q: The people on the left side of Riverside Drive are more socio-economically integrated with the people in the Valley on the right side of

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<sup>217</sup> Borromeo Depo. Tr. at 94, line 1 – 97, line 17.

Riverside Drive than they are with the residents of Skagway and Haines and Gustavus. Would you agree to that?

A: Yes.<sup>218</sup>

She also stated her personal belief:

Q: Did you personally believe that Skagway and Haines have -- have a greater socio-economic integration with Downtown Juneau in District 4 than District -- than-- than the left half of Mendenhall?

A: Yes. I think they had a strong connection to 4, stronger than 3, which is why I presented it that way in draft form for the public to react to. I did not believe, though, that they had no socio-economic connection to 3.<sup>219</sup>

The record shows the vast majority of public testimony in favor of keeping Skagway with Downtown Juneau and/or keeping the Mendenhall Valley whole, with no one expressing actual support for Board Member Simpson's arbitrary district line.<sup>220</sup> Little did all these people know that it did not matter what they might say about their actual experience of socioeconomic integration. By following Board Member Simpson's single-minded lead, the Board has focused on a misbalanced concept of compactness and essentially taken the requirement for relative socioeconomic integration for granted, without due regard to the weight of testimony and facts.

Notably, Board Member Simpson's concept of compactness is completely absent in some instances and inconsistently applied throughout the districts of the final map. For example, Board Member Simpson could not have possibly applied the same concept of

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<sup>218</sup> *Id.* at 101, lines 5-12.

<sup>219</sup> *Id.* at 107, lines 5-12.

<sup>220</sup> Exhibit C.

compactness when he approved the 198,605 square mile District 36—literally combining 35 percent of the entire state into only one of the forty house districts. In fact, District 36 is larger than 48 of the 50 states in our union, Alaska and Texas excepted. For perspective, District 36 is three times larger than the entire state of Washington, and almost five times larger than the entire state of Ohio. In fact, when compared with District 3 and District 4 which he completely redistricts based on his concept of making them more compact, District 36 is 84 times larger than District 4 and 33 times larger than the District 3. Clearly, Board Member Simpson’s concern for compactness is a pretext to ignore socioeconomic integration of Skagway and Haines with downtown Juneau, at best. The guiding law is also clear that compactness must be balanced against the other constitutional criteria, and the mere fact that Juneau is a borough does not mean the Board can ignore the specific facts regarding relative socio-economic integration.

**(d) The Board is not excused from considering the relative socioeconomic integration requirement merely because Juneau is a borough.**

Article VI, section 6 does not require that districts be drawn along municipal boundaries, but “local boundaries are significant in determining whether an area is relatively socio-economically integrated.”<sup>221</sup> In addition, the court in *Hickel* ruled that “relatively” in this context “means that we compare proposed districts to other previously existing and proposed districts as well as principal alternative districts to determine if

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<sup>221</sup> *Hickel*, 846 P.3d at 51.

socio-economic links are sufficient.”<sup>222</sup> The court added that “relatively” does not mean “minimally,” and it does not weaken the constitutional requirement of socio-economic integration.<sup>223</sup> This comparative analysis is inherently fact-based and dependent on the facts before the court. But in the Board’s view of the law no analysis whatsoever is needed, as made plain in Chairman Binkley’s affidavit:

It is my understanding that the Alaska Supreme Court has traditionally instructed that all neighborhoods within a municipality or borough are considered socio-economically integrated with other neighborhoods within the same local government unit. Thus, if Skagway is socio-economically integrated with the City and Borough of Juneau, which nobody seems to seriously question, then it is not the role of the Board to debate which Juneau neighborhood is more socio-economically similar to Skagway, since Juneau is a single unit for purposes of evaluating socio-economic integration. Given this rule, I believe, when combining communities with clear socioeconomic ties, our priority should be on drawing compact, contiguous districts with roughly equal population, and that we accomplished this task with House Districts 3 and 4. The approach that Skagway prefers would require drafting a less-compact District 3.<sup>224</sup>

This legal understanding overstates both the importance of relative compactness in this context and the Alaska Supreme Court’s holdings regarding the integration of a borough both within itself and with outside areas. The proposition the Board now relies upon—to effectively abdicate its duty to consider relative socio-economic integration between alternatives—has its origin in *Kenai Peninsula Borough v. State*,<sup>225</sup> where the Court held that “interaction between the communities comprising House District 7 and

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<sup>222</sup> *Id.* at 47.

<sup>223</sup> *Id. Hickel* at 47.

<sup>224</sup> Affidavit of John Binkley (Jan. 11, 2022) at paragraph 22.

<sup>225</sup> *Kenai Peninsula Borough v. State*, 743 P.2d 1352 (1987).

communities outside the district but within a common region sufficiently demonstrates the requisite interconnectedness and interaction mandated by article VI, section 6.”<sup>226</sup>

Specifically, the Court decided:

The sufficiency of the contacts between the communities involved here can be determined by way of comparison with districts which we have previously upheld. Unlike the district linking Cordova and the Southeast which we invalidated in *Carpenter*, the communities of North Kenai and South Anchorage are relatively close geographically. Like the Juneau District upheld in *Groh*, which included Skagway and Haines, the communities here are connected by daily airline flights (and by highway transportation, whereas the Juneau communities used ferry service); both are linked to the hub of Anchorage, although North Kenai obviously has greater links to Kenai. We think Kenai draws too fine a distinction between the interaction of North Kenai with Anchorage and that of North Kenai with South Anchorage. We find no error in the superior court’s decision to uphold House District 7.<sup>227</sup>

The Board seeks to mechanically apply the logic of *Kenai* and simply slot in Skagway for North Kenai and the Mendenhall Valley for South Anchorage, reasoning that Skagway’s integration with any part of Juneau is sufficient to district it with any other part of Juneau. But this is a gross oversimplification of the precedent, ignoring the context in which the North Kenai linkage to South Anchorage was upheld:

The state argues that no constitutionally permissible alternative to joining North Kenai with South Anchorage existed. Based on its calculation that the Kenai Peninsula Borough alone supports approximately two and three-quarters house seats and the Prince William Sound communities of Cordova, Valdez, and Seward together cannot support a single seat, and that the two areas combined are too populated to support three seats but not sufficiently populated to support four seats, the state asserts that it could not form districts of nearly equal population without linking some portion of the Kenai Peninsula with South Anchorage. Furthermore, the state contends that

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<sup>226</sup> *Id.* at 1363.

<sup>227</sup> *Kenai Peninsula Borough*, 743 P.2d at 1363.

including Nikiski in the Kenai district or in a three-seat regional district would result in overrepresentation of the district by 10.2% and a total (statewide) deviation in excess of the 16.4% maximum deviation permitted under the Federal Constitution. According to the state, the other alternative considered by the Board, a three-member regional district excluding Valdez and Cordova, would have required those communities' inclusion in District 17 and thereby triggered a domino effect, causing strained district configurations throughout rural Alaska. The state contends that the Board could not both maintain a unified Juneau District and establish a three-member district composed of the Kenai Peninsula and Prince William Sound.<sup>228</sup>

The Alaska Supreme Court accepted the socioeconomic integration of North Kenai and South Anchorage as sufficient in the context of the state demonstrating *it had no alternative* due to population constraints. That is far from the case of Skagway and Juneau before this Court now; indeed, the status quo map could be maintained with minimal adjustment for population shifts, and there were several permissible alternatives available to the Board that would better reflect the socioeconomic reality of these communities than the districts it adopted. The Board will likely point to the subsequent decision *In re 2001 Redistricting Cases*<sup>229</sup> for the following quote:

The Luper appellants also argue that the natural and local government boundaries of the Eagle River-Chugiak area should have been “recognized.” But the plain language of the Alaska Constitution indicates that respecting local government boundaries is discretionary. Further, the appellants have not demonstrated that any failure by the board to follow natural boundaries violates article VI, section 6. As Judge Rindner observed, “respect for neighborhood boundaries is an admirable goal,” but “it is not constitutionally required and must give way to other legal requirements.” Therefore, the

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<sup>228</sup> *Id.* at 1362.

<sup>229</sup> 47 P.3d 1089 (2002).

districts containing the Eagle River area are not unconstitutional in any respect.<sup>230</sup>

But this holding also demonstrates the Board’s error in ignoring the socioeconomic realities of Skagway, Downtown Juneau, and the Mendenhall Valley. Although respect for natural and neighborhood boundaries is discretionary, it remains at minimum an admirable goal, and if there are no other legal requirements that must be given way—the many alternatives here are all sufficiently contiguous, compact, and within acceptable population deviations—the Board should not then wield unfettered fiat to draw whatever line it likes without regard to any socioeconomic characteristics. Discretion can be abused, and in this case, it has been because Board Member Simpson has been quite candid that he was going to draw his line his way from the outset no matter what was presented to him.

The holding of *Kenai Peninsula Borough* should not be stretched so far as to permit the dismissal of constitutional considerations in favor of a board member’s personal preconception of how a district should look. The court there thought “Kenai draws too fine a distinction between the interaction of North Kenai with Anchorage and that of North Kenai with South Anchorage.”<sup>231</sup> But here the distinction between Downtown Juneau and the Mendenhall Valley is not fine at all for Skagway. On the contrary, it is a fundamental distinction that goes to the heart of Skagway’s economic activity, as the Board was told over and over again. Board Member Simpson was not interested in such facts, but this Court must look back to the reason for these requirements:

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<sup>230</sup> *Id.* at 1090-91 (citations omitted).

<sup>231</sup> *Kenai Peninsula Borough*, 743 P.2d at 1362.



[W]e should not lose sight of the fundamental principle involved in reapportionment – truly representative government where the interests of the people are reflected in their elected legislators. Inherent in the concept of geographical legislative districts is a recognition that areas of a state differ economically, socially and culturally and that a truly representative government exists only when those areas of the state which share significant common interests are able to elect legislators representing those interests. Thus, the goal of reapportionment should not only be to achieve numerical equality but also to assure representation of those areas of the state having common interests.<sup>232</sup>

The common interests that Skagway shares with Downtown Juneau are too important to be shrugged off by a public Board that is supposed to be working toward maximizing truly representative government for Alaskans.

**(e) The Skagway alternative maps strike an appropriate balance of the constitutional criteria by reflecting the socioeconomic integration of the communities in these districts.**

It is clear Districts 3 and 4 could be redrawn to only change the interior of those two boundaries. As a result, Skagway via its expert has presented two alternative plans for those two districts that can be embedded into the Board's existing plan, should the Court order these changes. Both alternatives would comply with all constitutional standards and be superior alternatives to the Board's existing Districts 3 and 4.

The first alternative, called Alternative A or the "donut hole," is similar to the Board's V.4 map for the area in containing a compact and integrated District 3 within a larger District 4. The second alternative, Alternative B, extends District 3 up the coast of the Lynn Cannel to the Kensington mine.

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<sup>232</sup> *Hickel*, 846 P.2d at 46 (citing *Groh v. Egan*, 526 P.2d 863, 890 (Alaska 1974)).

Alternative A (the donut hole) creates two districts that are as close as possible in population between the two districts.<sup>233</sup> Moving District 3 farther up the coast in Alternative B pulls the population differences between the two districts a little farther apart but nothing to potentially violate acceptable population windows for deviations.<sup>234</sup>

Both alternatives meet the constitutional standards for compactness and contiguity. Both alternatives permit Skagway and Haines to be in the same district as downtown Juneau to which they are most highly socioeconomically integrated. Both alternatives permit downtown Juneau to be separated from the Mendenhall Valley and permit the Mendenhall Valley community to be maintained as a whole community, rather than split in half.

Both alternatives are also consistent with the majority of the public comment to the Board from both the Juneau and Skagway public meetings, the unanimous opinion of the elected representatives of Skagway, the opinions of the former elected legislators, the map proposed by the coalition in which Sealaska (the ANCSA regional corporation for Southeastern Alaska), the Borough Manager of Skagway, and the unanimous resolution of the Borough.

Based on all of the above, either of the Skagway alternative maps present a viable constitutional alternative to the Board's Districts 3 and 4, which were drawn based on one

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<sup>233</sup> Exhibit D attached hereto, Skagway Alternative Map A.

<sup>234</sup> Exhibit E attached hereto, Skagway Alternative Map B.

Board Member's view of compactness without regard to the evidence presented on socioeconomic integration by the people of Skagway and Juneau.

**J. The Board's Final Plan Results in a Violation of Alaska's Equal Protection Clause.**

Article I, Section 1 of the Alaska Constitution provides for equal rights, opportunities, and protections under the law:

This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protections under the law; and that all persons have corresponding obligations to the people and to the State.<sup>235</sup>

With respect to voting rights in redistricting litigation in particular, the Alaska Supreme Court has held:

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 equally powerful vote. The former is quantitative, or purely numerical, in nature; the latter is qualitative.<sup>236</sup>

The first principle, "one person, one vote" has mirrored the federal requirement, but the second principle, "fair and effective representation" has been interpreted more strictly than federal requirement.<sup>237</sup> The Alaska Supreme Court has noted that achieving fair and

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<sup>235</sup> Alaska Const., art. I, § 1; *see also* U.S. Const. amend. XIV, § 1.

<sup>236</sup> *Hickel*, 846 P.2d at 47 (citing *Kenai Peninsula Borough v. State*, 743 P.2d at 1366). Internal citation omitted.

<sup>237</sup> *Id.* at 47.

effective representation for all citizens is concededly the basic aim of legislative apportionment.<sup>238</sup>

### 1. One Person, One Vote.

A state must make an honest and good faith effort to construct districts, in both houses of its legislature, with as nearly equal populations as is practicable.<sup>239</sup> The overriding objective “must be substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the state.”<sup>240</sup>

The principle of “one person, one vote” is set forth in *Kenai Peninsula Borough*, in which the court explained:

Under a ‘one person, one vote’ theory, ‘minor deviations from mathematical equality among state legislative districts are insufficient to make out a prima facie case of invidious discrimination under the Fourteenth Amendment so as to require justification by the State. . . .[A]s a general matter an apportionment plan containing a maximum population deviation under 10% falls within this category of minor deviations. The state must provide justification for any greater deviation.’<sup>241</sup>

The state has the burden of showing that deviations in excess of ten percent are “based on legitimate considerations incident to the effectuation of a rational state policy.”<sup>242</sup>

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<sup>238</sup> *Kenai Peninsula Borough*, 743 P.2d at 1367 (citing *Reynolds v. Sims*, 377 U.S. 533, 577 (1964)).

<sup>239</sup> *Hickel*, 846 P.2d at 47 (citing *Reynolds*, 377 U.S. at 577).

<sup>240</sup> *Id.* (quoting *Reynolds*, 377 U.S. at 579).

<sup>241</sup> *Kenai Peninsula Borough*, 743 P.2d at 1366 (internal citations omitted).

<sup>242</sup> *Groh*, 562 P.2d at 877.

The U.S. Supreme Court had identified state’s desire “to maintain the integrity of various political subdivisions, insofar as possible, and provide for compact districts of contiguous territory in designing a legislative apportionment scheme” is a legitimate justification for such deviations.<sup>243</sup> Thus, election districts with a maximum population deviation of greater than 10 percent may be permitted “*if* such deviations are a result of the creation of contiguous, compact and socio-economically integrated areas.”<sup>244</sup>

Regional corporation boundaries may also provide justification for such deviations, but only if the boundaries were adhered to consistently.<sup>245</sup> For example, the Alaska Supreme Court has held that the utilization of a part of the Calista corporate boundary as a district boundary was not a legitimate justification when the when the Calista region was otherwise broken up by the reapportionment plan.<sup>246</sup>

## **2. Fair and Effective Representation.**

As noted above, the equal protection clause guarantees the right to proportional geographic representation. The Alaska Supreme Court “consider[s] a voter’s right to an equally geographically effective or powerful vote, while not a fundamental right,

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<sup>243</sup> *Kenai Peninsula Borough*, 743 P.2d at 1366, n.23 (citing *Reynolds*, 377 U.S. at 578); *see also Hickel*, 846 P.2d at 47-48 (citing *Kenai Peninsula Borough* at 1366).

<sup>244</sup> *Hickel*, 846 P.2d at 48 (emphasis original) (citing *Groh*, 526 P.2d 743 P.2d at 877).

<sup>245</sup> *Id.* at 48.

<sup>246</sup> *Id.* at 48 (citing *Groh*, 526 P.2d at 877-78).

to represent a significant constitutional interest.”<sup>247</sup> Alaska’s equal protection clause imposes a stricter standard than its federal counterpart.<sup>248</sup>

In the context of reapportionment, the supreme court has held that “upon a showing that the Board acted intentionally to discriminate against the voters of geographic area, the Board must demonstrate that its plan will lead to greater proportionality of representation.”<sup>249</sup> The supreme court does not require a showing of a pattern of discrimination, nor does the court consider any effect of disproportionality de minimis when determining the legitimacy of the Board’s purpose.<sup>250</sup> More specifically:

The legitimacy of this purpose hinges on whether the Board intentionally sought to dilute the voting power of Anchorage voters disproportionately. Thus, if the Board sought to denigrate the voting power of Anchorage voters systematically by reducing their senate representation below their relative strength in the state’s population, then such a purpose would be illegitimate.<sup>251</sup>

Under the principle of fair and effective representation, “certain mathematically palatable apportionment schemes will be overturned because they systematically circumscribe the voting impact of specific population groups.”<sup>252</sup> The question is whether a particular group

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<sup>247</sup> *Kenai Peninsula Borough*, 743 P.2d at 1372.

<sup>248</sup> *Hickel*, 846 P.2d at 49.

<sup>249</sup> *Id.* at 49 (citing *Kenai Peninsula Borough*, 743 P.2d at 1372).

<sup>250</sup> *Id.*

<sup>251</sup> *Kenai Peninsula Borough*, 743 P.2d at 1372.

<sup>252</sup> *Hickel*, 846 P.2d at 49.

has been unconstitutionally denied its chance to effectively influence the political process.<sup>253</sup>

In its Final Plan with respect to Skagway, the Board similarly ignores political subdivision boundaries and communities of interest, which again implicates Alaska's equal protection clause. By combining Skagway with dissimilar communities, the Board violates Alaska's equal protection clause, dilutes the votes of the citizens of Skagway, and thus denies those citizens the right to an equally powerful and geographically effective vote.

## **VI. CONCLUSION**

Plaintiffs maintain that the Board's redistricting process and Final Plan for 2021 violate multiple provisions of the Alaska Constitution, as well as the OMA. Plaintiffs thus respectfully request that the Court remand the Final Plan to the Board to correct any errors in redistricting.

DATED this 19<sup>th</sup> day of January, 2022.

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<sup>253</sup> *Kenai Peninsula Borough*, 743 P.2d at 1368.

**Certificate of Service**

The undersigned hereby certifies that a copy of the foregoing document was e-mailed to the following attorneys/parties of record on January 19, 2022.

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By /s/ Mary G. Hodsdon  
Mary G. Hodsdon



# 2013 Proclamation House Districts

House District 33



Legend

Military

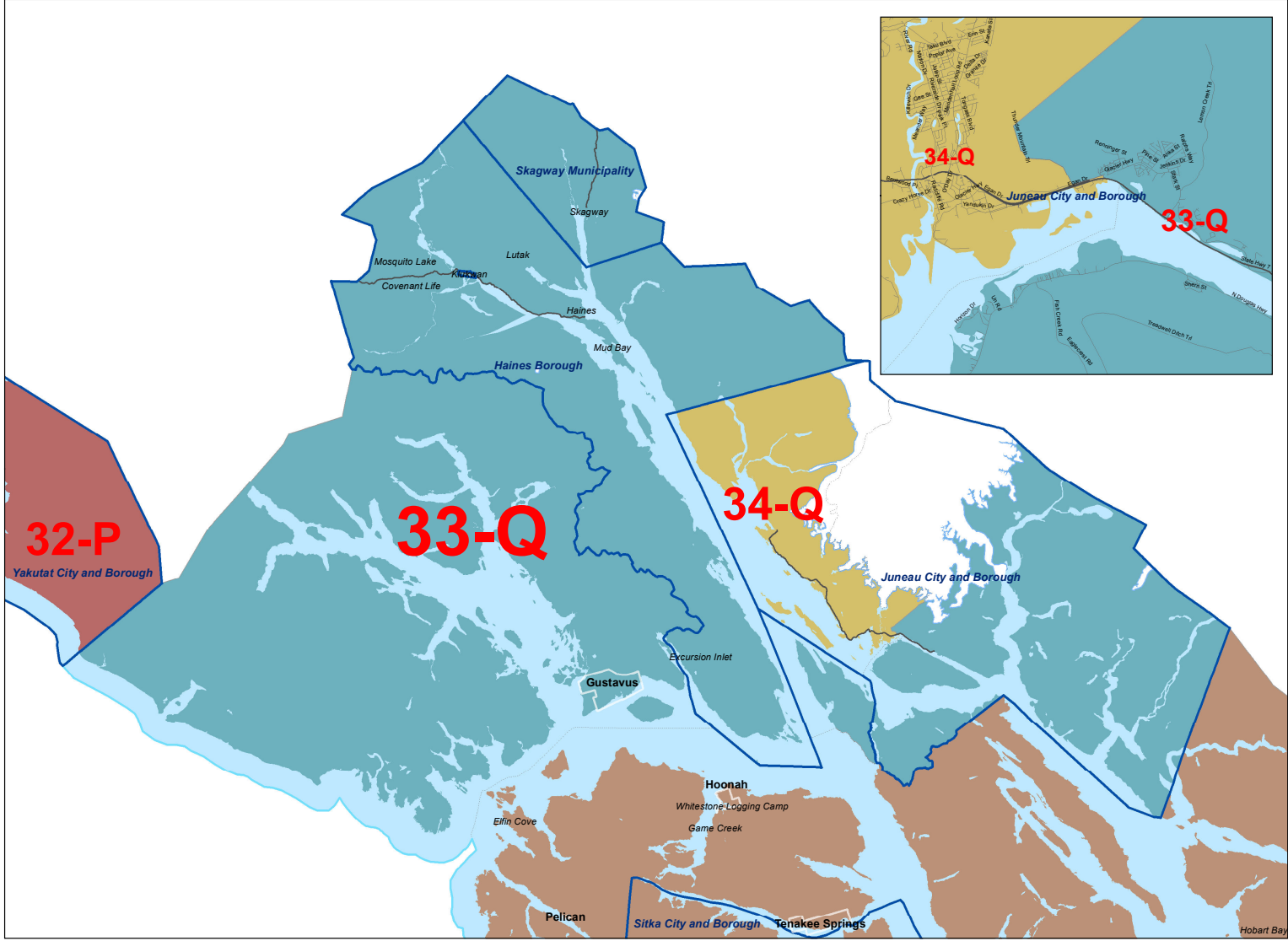
City

Borough

Water Boundary



Prepared by:  
Alaska Redistricting Board

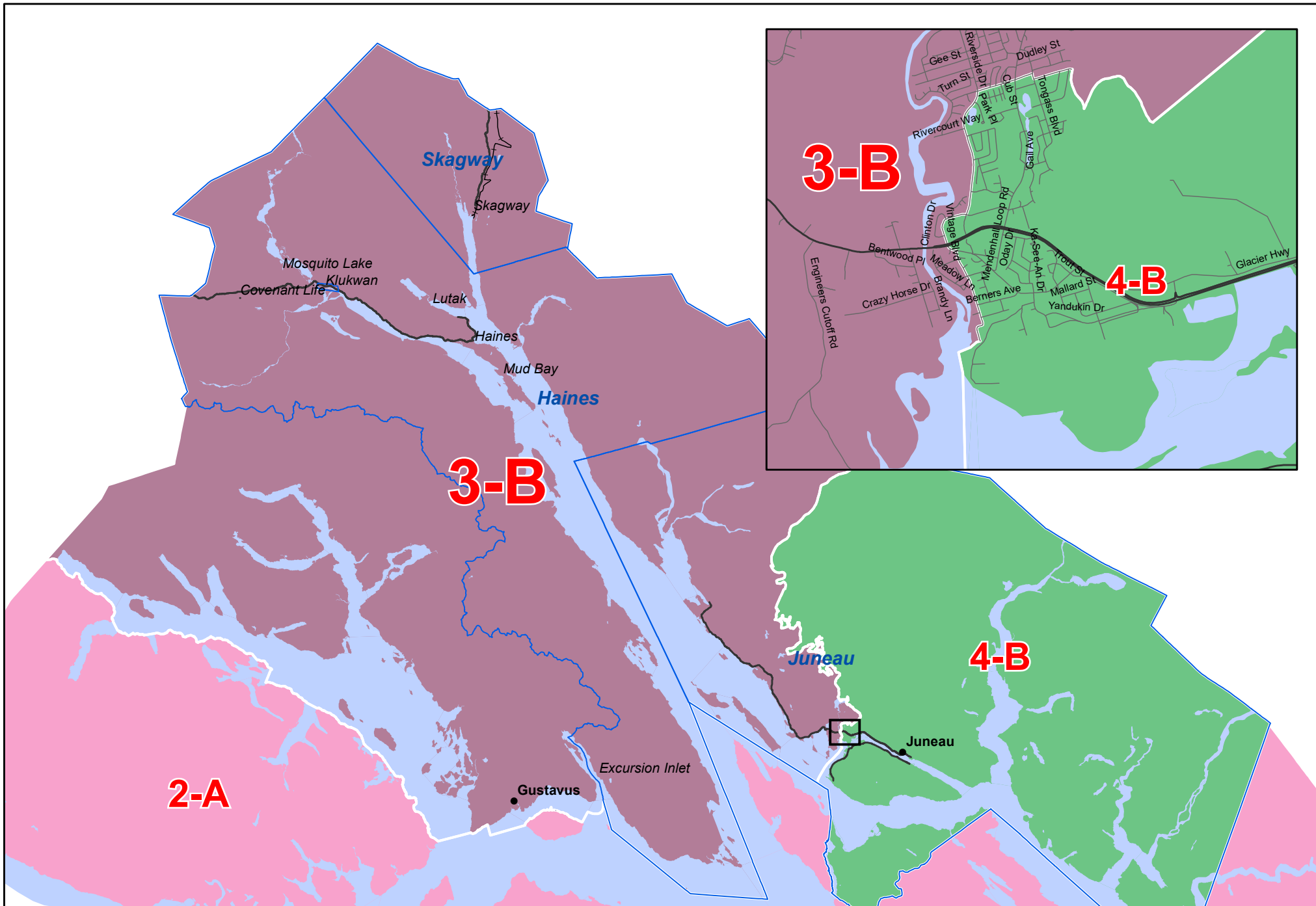


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# 2021 Board Proclamation District 3-B

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



# ALASKA REDISTRICTING BOARD COMMUNITY PUBLIC HEARING VERBAL TESTIMONY SUMMARY

**Juneau 9/27 Verbal Testimony**

Transcription date: October 13, 2021

First Name: **Willie** Last Name: **Anderson**

**Haines and Skagway are a better fit to be combined with Juneau as residents from those two areas go to Juneau for shopping and other services.**

**As you look at the district, there are two high schools in Juneau in the downtown and valley areas. When you divide the valley into sections, this results a high school that has two representatives. The school boundaries should be used as boundaries.**

**There needs to be a level of fairness on map drawing and the issue around Andi Story's district where essentially 3 to 4 houses were placed into that district. This does not make sense.**

**The dividing line of the districts could be at Sunny Point and Fred Meyer.**

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**From:** Frank Bergstrom <frank.b@gci.net>  
**Sent:** Wednesday, October 13, 2021 1:01 PM  
**To:** Testimony  
**Subject:** Redistricting Board Version #3 Comments

To: Alaska Redistricting Board  
From: Frank Bergstrom, 7630 Glacier Highway, Juneau, AK 99801  
Date: October 13, 2021  
Subject: Legislative Redistricting Board Version #3

As a 34-year resident of Juneau it is my pleasure to submit comments on the current legislative redistricting plan. Please accept my wholehearted support for Board version #3, which places Haines and Skagway with “north” Juneau. This district would include my residence and best represents the continuity of physiography, culture, and socio-economic conditions found in the region.

Critical to the design of legislative districts would be geographic integrity. In this regard it is informative to consider the historic ‘districting’ of the physiographic setting encompassing the area from the head of Lynn Canal (and Lutak Inlet) to and including, Taku Inlet. An obvious justification for the geographic integrity of this concept would be the territory historically occupied by native cultures. In this regard, (1) the Chilkoot/Chilkoot Kwaan Tlingit occupied the territory of upper Lynn Canal south to Berner’s Bay, (2) The Aak’w Kwaan Tlingit held sway over the territory extended from Berner’s Bay to roughly Lemon Creek; say, mile 6 Glacier Highway, and (3) the T’aaku Kwaan Tlingit occupied the area from roughly Lemon Creek through a temporary fish camp at Gold Creek (downtown Juneau), Taku Inlet, and extending further south. These boundaries are perfectly reasonable based on distinctions of geography, topology, climate, and food resources. And these boundaries have much in common with Board version #3.

As a Master of Science in Fluvial Geomorphology these demarcations appear obvious and logical. These subdivisions directed human habitation and administration for thousands of years, and they continue to provide a logical classification of those same lands in the form of legislative districts today. The combination of (1) Lynn Canal, (2) Juneau neighborhoods ‘out the road’, (3) Auke Bay, (4) the Mendenhall Valley and (5) Lemon Creek comprises a combination of the Chilkoot/Chilkoot and Aak’w Kwaan lands, and logically comprises one district, which is more rural and residential in nature. Then, logically, a separate district would be comprised of the high-density urban neighborhoods of downtown Juneau and Douglas (along with the high precipitation and wind environment of the Taku Inlet).

Socio-economic differences also support version #3. The Lynn Canal (and northern Chatham Strait) includes both the Kensington and Greens Creek mines, the workforce for which resides mostly in north Juneau, Haines, and Skagway. It is reasonable to say that more of these mine workers live in Palmer and Wasilla (due to camp life) than in downtown Juneau and Douglas. Exploration work at the Palmer Project north of Haines and historic placer mining in that same area provide a further linkage and workforce continuity throughout this proposed district from north to south.

Contrastingly, government and tourism are the dominate industries of the downtown Juneau and Douglas area. While both proposed districts support fisheries, there are distinctions in this regard as well. This has always been the case, and the Taku Inlet and Lynn Canal areas are separate management zones.

In summary, the Haines/Skogway/north Juneau connection is historic, and logical from perspectives of air, land, sea, culture, and lifestyle. It would be my distinct pleasure to reside in such a pleasing legislative district and feel better connected with the residents of that district as depicted in version #3. Board version #3 has my full support, and we hope it will have yours as well.

Frank Bergstrom  
PO Box 22909  
Juneau, AK 99802  
[frank.b@gci.net](mailto:frank.b@gci.net)  
907-321-3637

A website response from the Map Comment form as been received with the following submission details.

Date: September 27, 2021, 5:17 pm

First Name: **Kathy** Last Name: **Blanc**

Email or Phone Contact: [kathyblanc@gmail.com](mailto:kathyblanc@gmail.com)

Your ZIP Code: **99801**

Issue of Concern (Please provide map name if applicable): **Improper division of Mendenhall Valley**

Public Comment: **Alaskans for Fair Redistricting's map is the most representative of Southeast Alaska's distinct communities**

- **The AFFR map reflects the natural downtown Juneau/Mendenhall Valley divide in the Fred Meyer/ Juneau Airport area.**
- **AFFR's Juneau districts best respect Juneau's existing neighborhoods with Auke Bay and Mendenhall Valley in one district and Downtown, Lemon Creek, and Douglas Island in the other. Other maps unnecessarily divide these neighborhoods.**
- **By including Haines, Skagway, and Klukwan in the rural southeast district the AFFR map better reflects the socioeconomic integration of these communities. Additionally this keeps all of the U.S/Canada border crossings in one district.**
- **The AFFR plan keeps Ketchikan, Saxman and Metlakatla in the same district.**

**Talking Points Opposing AFFER - Alaskans for Fair and Equitable Redistricting (Reidrich) Plan**

- **The AFFER plan unnaturally splits the Mendenhall Valley into two different districts**
- **The AFFER map unnecessarily places the communities and neighborhood out the road past Auke bay into a district with Skagway and Haines. These residents are connected to Juneau on the road system and should be included in a Juneau district**
- **The AFFER map blatantly gerrymanders Saxman out of Ketchikan Borough – Randy Reidrich admitted on the record this decision was based on race.**
- **The AFFER map would place the Metlakatla reservation in a separate district from Ketchikan, Metlakatla is not within the Ketchikan Gateway Borough but has strong ties to Ketchikan.**

# **ALASKA REDISTRICTING BOARD COMMUNITY PUBLIC HEARING VERBAL TESTIMONY SUMMARY**

**Skagway 10/27/21 Verbal Testimony**

Summary Date: 11/5/2021

Name: **Jamie Bricker**

**Jamie echoed the testimonies of Mayor Cremata and Assemblymember Deborah Potter. The socio-economic connection between Skagway and Downtown Juneau is strong and important. Jamie would like to see Skagway remain connected to Downtown Juneau and other areas that are similar in size, location, and issues.**

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**From:** Billi Clem <alaskanfairytale@gmail.com>  
**Sent:** Thursday, October 28, 2021 7:31 PM  
**To:** Testimony  
**Subject:** Redistricting proposal

To whom it may concern,

I am not in favor of redistricting Skagway/Juneau area. I believe that this is an unnecessary cost and a waste of resources for all parties involved. Please spend time finding ways to keep Alaska green and clean.

Thank you,  
Billi Clem



# ALASKA REDISTRICTING BOARD

## WEBSITE RESPONSE

Date: October 29, 2021, 10:47 am

Name: **Charles Clement**

Group Affiliation, if applicable: **SouthEast Alaska Regional Health Consortium**

Email or Phone Contact: **907-463-4000** Your ZIP Code: **99801**

Issue of Concern (Please provide map name if applicable): **Support of Doyon Coalition Plan**

Public Comment: **Southeast Alaska Regional Health Consortium**

### Testimony Before the Alaska Redistricting Board

**October 28, 2021**

My name is Charles Clement. I am the President/CEO of the Southeast Alaska Regional Health Consortium (SEARHC). I am honored to provide written testimony to the Alaska Redistricting Board concerning the 2021 Legislative Redistricting process and the proposed maps adopted by the Board for public comment.

Founded in 1975, SEARHC is an Alaska Native controlled non-profit tribal organization and one of the oldest and largest Native-run health organizations in the Nation. We are authorized by resolutions from the governing bodies of 15 federally recognized Alaska Native tribes to compact with the Indian Health Service, pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA), to administer a comprehensive health care delivery system for the benefit of our Alaska Native/American Indian beneficiary and non-beneficiary patients throughout southeast Alaska.

Today, the SEARHC service area stretches over 42,000 square miles of the southeast Alaska panhandle with no roads connecting most of the rural communities we serve. The full scope of health care services we provide includes medical, dental, mental health, physical therapy, radiology, pharmacy, laboratory, nutritional, audiology, optometry, respiratory therapy, labor and delivery and surgical services. We also provide supplemental social services, behavioral health, substance abuse treatment services, health promotion services, emergency medical services, environmental health services and traditional Native healing. We provide these services in 27 southeast Alaska communities and counting through a network of community clinics, the Mt. Edgecumbe Medical Center located in Sitka and the Wrangell Medical Center in Wrangell both of which are critical access hospitals.

Our interest in the health and welfare of our patients and the communities we serve includes ensuring that they are represented in Juneau by legislators that represent House and Senate districts that meet the constitutional requirements of equal representation, contiguity, compactness, and socioeconomic integration. Alaska's residents also deserve to be represented in districts that make sense—the Board must draw maps that respect social and cultural regions, such as ANCSA regions, and Tribal Healthcare Organization service areas, well as natural geographic features such as watersheds and islands.

We also have clinics, hospitals, and other facilities in all four House districts in Southeast Alaska, and therefore a deep interest in the representation of our region. We have therefore closely monitored the development of mapping proposals during this redistricting cycle, and examined the various proposed maps adopted by the Board for public comment. Of these proposed maps, the proposal presented by the coalition of Sealaska, Ahtna, Inc., Fairbanks Native Association, and Doyon, Limited best meets these requirements. We strongly urge the Board to adopt the Coalition's propped map (as amended in their October 2021 updates) as final.

Concerning our region of Southeast Alaska, the Coalition's map presents proposed districts that make sense and align with the natural geographic and sociocultural borders between and within our communities. The Coalition's proposed District 1 of Ketchikan, Metlakatla, Wrangell, and Hyder fits together a compact district of socioeconomically linked communities in the southern part of our region. Proposed District 2 also makes sense, linking together the socioeconomically integrated island communities of Southeast Alaska. These communities share significant commonalities, including maritime economic and recreational bases, common Alaska Native Character, shared economic links through their ANCSA regional corporation, Sealaska, and healthcare services from SEARHC.

The Coalition's proposed Juneau districts also make sense. Juneau is the hub community for residents of Haines, Skagway, and Gustavus, and it makes sense to split Juneau itself along the natural demarcation line between Downtown and Lemon Creek, and Auke Bay and the Mendenhall Valley. This means drawing a border between Districts 3 and 4 at or near the Fred Meyer on Egan Drive in Juneau which is precisely where the coalition has proposed.

In sum, the Coalition's proposed map would best represent the interests of our region and the State of Alaska for the next decade.

Thank you, and we would be happy to answer any questions the Board may have.

Sincerely,

Charles Clement

President/Chief Executive Officer

# ALASKA REDISTRICTING BOARD

## WEBSITE RESPONSE

Date: October 27, 2021, 3:04 pm

First Name: **Marsha**

Last Name: **Columbo**

Email Address: [marshac9@yahoo.com](mailto:marshac9@yahoo.com)

Comments: **It is my opinion if it's not broke why mess with it. I'm not in favor of redistricting our little community of Skagway especially to favor one political faction.**

**It should stay connected with Downtown Juneau to which we have the most in common with.**

**Thanks for your time.**

# **ALASKA REDISTRICTING BOARD COMMUNITY PUBLIC HEARING VERBAL TESTIMONY SUMMARY**

**Skagway 10/27/21 Verbal Testimony**

Summary Date: 11/5/2021

Name: **Andrew Cremata**

Affiliation: **Mayor of Skagway**

The opinion of the Assembly, the Mayor's opinion, and the opinion of the Borough Manager are the same: They believe it is in their best interest to remain in the same district as Downtown Juneau. Andrew's personal preference is the Senate Minority Caucus map. Collectively, Skagway prefers the maps that keep them with Downtown Juneau. Their economies are linked as they both deal with tourism directly through the cruise ships. There are also historical buildings with both communities in the districts that are important to their heritage and culture. The most important reason overall is because of the similarity in the economy.

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**From:** Eleanor F. Davenport <eleanorfaye@hotmail.com>  
**Sent:** Wednesday, October 27, 2021 4:32 PM  
**To:** Testimony  
**Subject:** Support for Board Map #3

I support Board Map Version # 3 in which Haines and Skagway are combined with Juneau's "valley" area.

I have lived in the Juneau "Valley" for over 2 decades , AND then was subsequently a 10 year resident of Skagway. I know these communities intimately. It is my belief that the economic, socio-economic profiles and interests of these communities are aligned and make sense to organize into a Legislative District.

I've been in the retail and visitor industry in Alaska for nearly 40 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.

Eleanor F Davenport  
Registered Voter

Cell 907 321 1726

Sent from [Mail](#) for Windows

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**From:** Dennis DeWitt <automated@akredistrict.org>  
**Sent:** Friday, September 24, 2021 5:07 AM  
**To:** TJ Presley; Jessica Tonseth; Testimony  
**Subject:** ++ Map Comment Response

A website response from the Map Comment form as been received with the following submission details.

Date: September 24, 2021, 5:06 am

First Name: **Dennis**

Last Name: **DeWitt**

Group Affiliation, if applicable:

Email or Phone Contact: **ddewitt@gci.net**

Your ZIP Code: **99801**

Issue of Concern (Please provide map name if applicable): **Board Proposed Plan v.3**

Public Comment: **My name is Dennis DeWitt. I have been a voting resident of the proposed District 4 for over 40 years. I am familiar with both the geography and demographics of northern Southeast Alaska, Juneau and the Lynn Canal areas.**

**I support the Board Proposed Plan v.3 configuration of Districts 3 and 4.**

**District 3 is geographically coherent, compact and within the boundaries of the City and Borough of Juneau. Many of the residents in that district are connected by government employment or jobs connected to government activities.**

**District 4 naturally links with Haines and Skagway. The area out the road is similar to the areas in Haines. We are linked by the ferry system and with the intent to move the ferry terminal to Cascade Point, the connection will be even stronger. Both the Juneau portion of the district and Haines have strong interest in mining, with Haines residents working in the two Juneau mines and the development of the Constantine Mine in Haines.**

**I believe the Board Proposal Plan v.3 will provide a coherent district 4 and will provide a district that will well serve the residents of the proposed district.**

**Thank you for the opportunity to comment on the proposed new legislative districts.**

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**From:** Susi Gregg Fowler <fowler.susig@gmail.com>  
**Sent:** Monday, September 27, 2021 4:33 PM  
**To:** Testimony  
**Subject:** Redistricting Districts 33/34

Thank you for the chance to submit testimony on redistricting proposals.

Redistricting is always tricky, and tinkering with neighborhoods is not unusual in the aftermath of new population numbers. But if the exercise is simply an attempt to squeeze out an incumbent member of one party, I think democracy loses something. It's hard to discern another reason to alter the current valley district with its clear, defined borders. Its boundaries appear to accurately reflect a politically and culturally diverse community of people. That diversity in the district may well be a strength of those neighborhoods. There doesn't seem to be any reason except political to create a less cohesive or coherent district.

I hope the Board will look carefully at alternative maps that preserve the current Valley district along with the so-called Downtown district - (which of course actually isn't just "downtown" since it includes our neighbors including Haines, Skagway, Gustavus and Klukwan).

Thank you.

Susan (Susi) Gregg Fowler  
603 West 12th Street  
Juneau, Alaska. 99801

# **ALASKA REDISTRICTING BOARD COMMUNITY PUBLIC HEARING VERBAL TESTIMONY SUMMARY**

**Skagway 10/27/21 Verbal Testimony**

Summary Date: 11/5/2021

Name: **Janalynn Hager**

**Janalynn expressed concern that Skagway may not be included with other similar communities. Janalynn would like Skagway to remain in a district that is dependent on cruise ships like Skagway's so the decisions made are like-minded.**



# **ALASKA REDISTRICTING BOARD COMMUNITY PUBLIC HEARING VERBAL TESTIMONY SUMMARY**

**Skagway 10/27/21 Verbal Testimony**

Summary Date: 11/5/2021

Name: **Cooper Hayes**

Cooper spoke in favor of Skagway remaining connected to the Downtown Juneau district because their economies are very linked. This link is vital to their success as a tourist community. Cooper spoke in favor of Board Map v.4, the Senate Minority Caucus map, and the Doyon Coalition map. Cooper agrees with Mayor Cremata that the Senate Minority Caucus map is likely the best.

# **ALASKA REDISTRICTING BOARD COMMUNITY PUBLIC HEARING VERBAL TESTIMONY SUMMARY**

**Skagway 10/27/21 Verbal Testimony**

Summary Date: 11/5/2021

Name: **Ian Hays**

Ian urged the board to keep Skagway in the same district as Downtown Juneau. Ian is in favor of the Senate Minority Caucus map. Ian noted that he was raised in Mendenhall Valley from age 1 through 23. The lifestyle and socio-economic needs are not the same as Skagway. Please keep Skagway tied into downtown Juneau; this would be beneficial.

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**From:** Nathan Helmer <automated@akredistrict.org>  
**Sent:** Friday, September 24, 2021 7:19 PM  
**To:** TJ Presley; Jessica Tonseth; Testimony  
**Subject:** ++ Map Comment Response

A website response from the Map Comment form as been received with the following submission details.

Date: September 24, 2021, 7:19 pm

First Name: **Nathan**

Last Name: **Helmer**

Group Affiliation, if applicable:

Email or Phone Contact: **nathandh.9664@gmail.com**

Your ZIP Code: **99588**

Issue of Concern (Please provide map name if applicable): **Proposed Map #3 and Doyon Proposed Map**

Public Comment: **I currently reside in the Copper River Valley and have lived in the Eastern Interior and the Southeast Panhandle. My first concern is with Valdez. It should not be included in the sprawling district that makes a horseshoe around Fairbanks. The culture, the economy the terrain and the climate is so vastly different then the rest of the small communities proposed for that district. Valdez is a coastal town, it needs to be included with places like Cordova, Whittier, Yakutak, Seward or Homer. Even tying it in with Southeast would make more sense. That's the other thing, Skagway and Haines have more in common with the above mentioned areas or Sitka, Wrangell and Petersburg than with North Juneau. Mendenhall, Auke Bay and Lemon Creek always will drown out the 3,500 or so people of the Upper Lynn Canal. My final point will be on the Copper River Valley Region. For goodness sake's, don't split the Copper Valley up again! Glennallen or Tolsona should not be in a separate district than Kenny Lake or Gulkana. It makes it very confusing. We all shop at the same stores, eat at the same restaurants, hunt and fish in the same areas, visit the same clinics, work at the same companies and go to the the same churches. Lake Louise and McCarthy need to be in the same district, Eureka and Chitina need to be in the same district. Kenny Lake and Glennallen need to be in the same district. Copper Center and Nelchina need to be in the same district. Gakona and Men deltna need to be in the same district. In reality the Copper River Basin is one united Socio-economical Region. Splitting the valley in half with the Richardson Highway or the Pipeline makes no sense. Your Coworker or Sister or even your neighbor lives just on the other side..... and they have to vote at a different location for different candidates? It has been that way for the last ten years and this is the year to change that. Thank you for your difficult work on putting together a fair map. Respectfully Submitted, Nathan**

**From:** Kathy Hosford <khosford@aptalaska.net>  
**Sent:** Wednesday, September 8, 2021 12:16 PM  
**To:** Testimony <testimony@akredistrict.org>  
**Subject:** Redistricting Testimony Upper Lynn Canal

Date: September 8, 2021

To: Alaska Redistricting Board

From: Kathy and Fred Hosford

Thank you for taking our testimony. Fred was born in Skagway in 1949. We were married and had our children here. We moved to Skagway (Dyea) in 1999 and are small business owners who have participated in civic affairs for years. We have not looked at any possible redistricting maps yet but wanted to submit our opinions early in the process.

Southeast Alaska has lost population which is why 10 years ago, Haines and Skagway were pulled in to the Juneau Senate district. However, we never understood why the 2010 redistricting board put Haines and Skagway with downtown Juneau. It never made a bit of sense to us and we never felt like we had much of anything in common with that downtown district. For those who are not familiar with the geography of our region, this is what you need to know:

- Lynn Canal communities are basically Haines and Skagway (Upper Lynn Canal) and the populated areas on the eastern mainland of Lynn Canal including the Kensington Mine (where some people from Haines and Skagway work) and continuing down to the "out the road" areas of Juneau - like the Lynn Canal precinct which is in District 34.
- Logically and definitely visually, these areas all belong together.
- The way Haines and Skagway connect with Juneau is not by cruise ship but by small planes from the airport or the ferry terminal and possibly someday from Cascade Point or an east Lynn Canal Highway.
- Haines and Skagway (on the upper Lynn Canal) are now in District 33 which is downtown Juneau which is located on Gastineau Channel.
- We think upper Lynn Canal communities should share a district with the area closest geographically. That would be the "northernmost" area of Juneau not the southernmost

Fred & Kathy Hosford

907-983-3799

[www.chilkoottrailoutpost.com](http://www.chilkoottrailoutpost.com)



# **ALASKA REDISTRICTING BOARD COMMUNITY PUBLIC HEARING VERBAL TESTIMONY SUMMARY**

**Skagway 10/27/21 Verbal Testimony**

Summary Date: 11/5/2021

Name: **Reba Hylton**

Affiliation: **Skagway Assembly**

**The Assembly unanimously support Skagway remaining in the same district as Downtown Juneau due to all reasons that have been stated previously.**

# **ALASKA REDISTRICTING BOARD COMMUNITY PUBLIC HEARING VERBAL TESTIMONY SUMMARY**

**Skagway 10/27/21 Verbal Testimony**

Summary Date: 11/5/2021

Name: **Katelyn Jarrod**

**Katelyn spoke in favor of keeping Skagway with Downtown Juneau.**

**From:** koelschkm@gci.net <koelschkm@gci.net>  
**Sent:** Wednesday, September 8, 2021 6:36 PM  
**To:** Testimony <testimony@akredistrict.org>  
**Subject:** Redistricting testimony

I appreciate the opportunity to provide testimony to the 2020-2021 Alaska Redistricting Board.

My wife and I have been residents of Juneau since 1968. After teaching US History and Government at Juneau Douglas High School for almost 30 years, I served on the Juneau Assembly and was also elected Mayor of Juneau where I had the pleasure of working with the elected officials of Haines and Skagway and frequently visiting the communities. Our daughter lives and works in Skagway but travels to Juneau often for business and to see her Juneau family.

It was not a surprise to me that because of population shifts over the past 20 years, Juneau has not had enough population in its Borough for one entire Senate district and has had to add extra population from Haines and Skagway, our immediate neighbors to the north. 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 leave from downtown Juneau docks. It leave from a ferry terminal on the "north" end of town. There is a good possibility that the ferry terminal could be moved in the future to Cascade Point which is even closer to Haines and Skagway. Catamaran traffic also between Haines, Skagway and Juneau utilizes Auke Bay in the Valley.

Also located on that "north" end of town is the dock where shuttles take Juneau workers to the Kensington Mine. When I was Mayor, several residents of Haines were also employed by the Kensington which one can see on the east (mainland) side side 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.

respectfully,

Ken Koelsch  
1586 Evergreen Avenue Juneau  
907-586-3367

# ALASKA REDISTRICTING BOARD COMMUNITY PUBLIC HEARING VERBAL TESTIMONY SUMMARY

**Juneau 9/27 Verbal Testimony**

Transcription date: October 13, 2021

First Name: **Will** Last Name: **Kronick**

Public Comment: **Regarding interests in Southeast Alaska when people come in from Klukwan, Haines, and Skagway, it's usually to shop and receive services (medical and Central Council of Tlingit and Haida). The Doyon map seems to encapsulate this shared interest in the best way. The maps that combine Petersburg with Downtown Juneau do not have interests that align. It is better partnered with Sitka.**



# **ALASKA REDISTRICTING BOARD COMMUNITY PUBLIC HEARING VERBAL TESTIMONY SUMMARY**

**Skagway 10/27/21 Verbal Testimony**

Summary Date: 11/5/2021

Name: **Elizabeth Lavoy**

Elizabeth spoke in favor of keeping Skagway paired with Downtown Juneau due to economic similarities through their port, historic districts, downtown, walkability, etc. Skagway's business bases mirror what is happening in Downtown Juneau. It does not make sense for Skagway to be paired with the Mendenhall Valley. Elizabeth is in favor of any map that pairs Downtown Juneau with Skagway.

# ALASKA REDISTRICTING BOARD

## WEBSITE RESPONSE

Date: October 31, 2021, 6:34 pm

Name: **Donna Leigh**

Email or Phone Contact: [nda3dragonfly4fish@gmail.com](mailto:nda3dragonfly4fish@gmail.com)

Your ZIP Code: **99801**

Issue of Concern (Please provide map name if applicable): **redistricting**

Public Comment: **I prefer the AFFR plan which puts Auke Bay, Out the road, and the Valley in one district. We have little in common with Haines and Skagway.**

---

**From:** Donna Leigh <nda3dragonfly4fish@gmail.com>

**Sent:** Sunday, October 31, 2021 6:33 PM

**To:** Testimony <testimony@akredistrict.org>

**Subject:** Redistricting

I live in Juneau AK.

I live in the Auke Bay area.

We should be in the same district as Out the Road and the valley.

We have very little in common with Haines and Skagway and outlying areas.

I prefer the AFFR plan.

Donna Leigh

99801

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Donna Leigh



A website response from the Map Comment form as been received with the following submission details.

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**From:** Ann Mackovjak <automated@akredistrict.org>  
**Sent:** Sunday, October 31, 2021 8:07 PM  
**To:** TJ Presley; Jessica Tonseth; Testimony  
**Subject:** ++ Map Comment Response

A website response from the Map Comment form as been received with the following submission details.

Date: October 31, 2021, 8:06 pm

First Name: **Ann**

Last Name: **Mackovjak**

Group Affiliation, if applicable: **Nonpartisan**

Email or Phone Contact: **amackovjak15@gmail.com**

Your ZIP Code: **99826**

Issue of Concern (Please provide map name if applicable): **Redistricting map**

Public Comment: **Dear Redistricting Board Members,**

**Having looked at the proposed maps, I can see choosing the right one is no easy task. I am going to cast my "vote" for the Doyon map as it leaves Gustavus with Haines, Skagway and part of Juneau. As a Gustavus resident for many years, I believe that we are best aligned with these communities.**

---

**From:** Connie McKenzie <automated@akredistrict.org>  
**Sent:** Monday, November 1, 2021 7:51 AM  
**To:** TJ Presley; Jessica Tonseth; Testimony  
**Subject:** ++ Map Comment Response

A website response from the Map Comment form as been received with the following submission details.

Date: November 1, 2021, 7:50 am

First Name: **Connie**

Last Name: **McKenzie**

Group Affiliation, if applicable:

Email or Phone Contact: **Conmac414@gmail.com**

Your ZIP Code: **99801**

Issue of Concern (Please provide map name if applicable): **Board plan v.3**

Public Comment: **I support board plan v.3. By including Haines and Skagway with district 4 the map is contiguous and all of the Southeast districts follow natural formations for border lines.**

---

**From:** Alice McNamara <alimcnamara@aol.com>  
**Sent:** Monday, October 25, 2021 11:30 AM  
**To:** Testimony  
**Subject:** Redistricting

For the record I vote we do not create a new district which would include one half of the Mendenhall Valley to include Haines and Skagway. Our residents need to be concerned with our schools, recreation, shopping, etc., in the area we live. This does not even make sense.

Of all maps you are considering AFFR seems the more reasonable.

Please choose wisely being considerate of the people you represent. Your choices will affect all of us for a very long time.

Thank you for the opportunity to respond.

Alice McNamara  
Mendenhall Valley resident for 50+ years.

# **ALASKA REDISTRICTING BOARD COMMUNITY PUBLIC HEARING VERBAL TESTIMONY SUMMARY**

**Juneau 9/27 Verbal Testimony**

Transcription date: October 13, 2021

First Name: **Luann** Last Name: **McVey**

**Ms. McVey is a Douglas resident and agreed with comments stating that it makes sense to have a line along Sunny Point to Fred Meyer to divide Juneau into two parts. As a retired teacher, the Juneau schools reflect a combination of socio-economics. After teaching Title 9 for several years, Ms. McVey is familiar with schools who receive funding for socio-economic reasons. The recommended dividing line is a natural dividing line between the valley and the town.**

**Haines and Skagway should be grouped with the downtown area for reasons others have mentioned such as shopping and medical services.**

**The Doyon, Alaskans for Fair Redistricting, and the Senate Minority Caucus maps reflect what Ms. McVey values most.**

---

**From:** Kathleen Menke <ci@akmk.com>  
**Sent:** Friday, September 24, 2021 11:36 AM  
**To:** Testimony  
**Subject:** follow-up comments to Board

Dear Alaska Redistricting Board..

This is a follow-up to my previous comments, since I now have an understanding of a map the Board has not readily put forth for public consideration..

I am writing in support of the Senate Minority map which closely reflects my previous comments.

The Senate Minority map puts Yakutat, Glacier Bay and Gustavus in with a Sitka, Petersburg District. The Senate Minority map adds Wrangell to this District which makes sense.

The Senate Minority map also separates the North half of POW and the South half to ensure that Metlakatla, Craig, Ketchikan, and Saxman are kept together.

The Senate Minority map puts Haines, Skagway, Tenakee, Angoon, and part of Juneau together.

The Mendenhall is the second Juneau district, fully contained in the Borough.

The Board has ignored this simple and logical solution. This option must be on the table for public consideration in Southeast Alaska.

Regards,  
Kathleen Menke, Haines

# ALASKA REDISTRICTING BOARD

## WEBSITE RESPONSE

**Date/Time:** Thursday, September 9, 2021 9:13 AM

**Name:** Cathy Muñoz

**Email or Phone:** [cathym@riemunoz.com](mailto:cathym@riemunoz.com)

**Zip Code:** 99801

**Issue of Concern:** recommendation for district 34 configuration

**Public Comment:** Dear members of the board,

Thank you for your service. The work of the Redistricting Board is vitally important and I truly appreciate your contributions of time and energy to this work.

Ten years ago, when the redistricting map for Southeast Alaska was configured, it seemed odd at the time that district 34 did not include the closest communities to the north. The conventional argument then was that Skagway's tourist dominant economy better aligned with downtown Juneau. However, the geographic and transportation links between the northern communities of Haines and Skagway should have been the higher priority and a closer nexus in drawing the 2010 maps.

You now have an opportunity to better align the Mendenhall Valley with the northern communities Haines and Skagway. The geographic proximity makes this a logical configuration, as well as the close transportation connection of the AMHS.

I also support a newly configured 'ice worm district' which would include the smaller rural communities throughout the region and Yakutat to the north.

I had the honor of representing Juneau in the House of Representatives for four terms. In my work, I always placed a high priority on the needs of all of Southeast with the belief that the region is strongest when the smallest communities are healthy and strong.

Thank you for the opportunity to provide these comments, and thank you for your service in this important work.

Sincerely,

Cathy Muñoz



A website response from the Map Comment form as been received with the following submission details.

Date: September 27, 2021, 2:58 pm

First Name: **Ben**

Last Name: **Muse**

Email or Phone Contact: [muse.ben@gmail.com](mailto:muse.ben@gmail.com)

Your ZIP Code: **99801**

Issue of Concern (Please provide map name if applicable): **Doyon Plan**

Public Comment: **Dear Redistricting Board Members,**

**I urge you to adopt the Doyon Coalition District map.**

**I am a resident of Juneau and live in House District 33. My recommendation of the Doyon map is based on my understanding of its impact on the areas near my home.**

**The district maps should, so far as possible, not break up communities and should keep related communities in the same district. I think it would also be desirable to keep existing districts intact, so far as possible, so that relationships between communities which have worked together for common objects in the past can be maintained.**

**I believe the Doyon plan does this best for northern Southeast.**

**The Board's Map 3 and Map 4, and the Alaska's for Fair and Equitable Redistricting maps, all break up the Mendenhall Valley, Auke Bay, and Lynn Canal roadside community complex. These maps break up contiguous and related residential and commercial areas.**

**The Alaskan's for Fair Redistricting map reorients the current House and Senate districts that include the downtown Juneau area from north (currently including Haines and Skagway) to south (which would include Petersburg). This radical change in the communities grouped into a district seems unnecessary given the existence of a reasonable alternative.**

**The Senate Minority proposal meets the criteria I listed above and would be a reasonable alternative to the Doyon proposal.**

**Sincerely,  
Ben Muse**

**Juneau**

**Alaska House District 33**

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**From:** Art Petersen <automated@akredistrict.org>  
**Sent:** Monday, September 27, 2021 1:55 PM  
**To:** TJ Presley; Jessica Tonseth; Testimony  
**Subject:** ++ Map Comment Response

A website response from the Map Comment form as been received with the following submission details.

Date: September 27, 2021, 1:54 pm

First Name: **Art**

Last Name: **Petersen**

Group Affiliation, if applicable: **Juneau resident of 47 years**

Email or Phone Contact: **ampetersen@alaska.edu**

Your ZIP Code: **99801**

Issue of Concern (Please provide map name if applicable): **Irrational mapping**

Public Comment: **I have lived in Juneau since 1975, and from that time at least, there has been and still is Juneau proper and the Juneau Valley, which includes "out the road." Now you want to split a good number of us from the Juneau Valley, "out the road," and Douglas Island and align us with such up-&-down-canal locales as Skagway, Klukwan, and Haines, communities with which we have no social, economic (including taxes & utilities), or geographic connection. Why? Also we "out the road" and in half the Valley are mapped with Douglas Island, which has always been associated with Juneau proper, including West Juneau. Why? Your maps split communities down the middle, even down the middle of a street! Why? All of this is antithetical to forming coherent voting districts. You need to go back to the maps and consider long-recognized connections. You appear to have manufactured population numbers with map lines, ignoring where people with shared interests live side by side. Please take the high road in your work and be thoughtful and apolitical. We count on you to recognize Juneau's and Southeast's historical and current social, economic, and community connections. Redraw the maps to reflect long-standing, sensible communities whose identities and interests are shared. Art Petersen, University of Alaska Prof. of English, Emeritus**

# **ALASKA REDISTRICTING BOARD COMMUNITY PUBLIC HEARING VERBAL TESTIMONY SUMMARY**

**Skagway 10/27/21 Verbal Testimony**

**Summary Date: 11/5/2021**

**Name: Charity Pomerai**

**Cherry echoed the testimonies of all previous testifiers about retaining connections to Downtown Juneau as this is the center that mirrors what the residents are in Skagway.**

# **ALASKA REDISTRICTING BOARD COMMUNITY PUBLIC HEARING VERBAL TESTIMONY SUMMARY**

**Skagway 10/27/21 Verbal Testimony**

Summary Date: 11/5/2021

Name: **Deborah Potter**

Affiliation: **Skagway Assembly**

**Deborah Potter echoed Mayor Cremata's statements. In 2020, Skagway did not have any cruise ships which resulted in a 95% loss of the economy; this is what ties them to the Downtown Juneau district and separates them from Auke Bay and Mendenhall Valley. It is important to be in the same district as Downtown Juneau.**

# **ALASKA REDISTRICTING BOARD COMMUNITY PUBLIC HEARING VERBAL TESTIMONY SUMMARY**

**Juneau 9/27 Verbal Testimony**

Transcription date: October 13, 2021

First Name: **Catherine** Last Name: **Reardon**

**Ms. Reardon strongly agrees on having a dividing line from the Fred Meyer area to Lemon Creek. What does not make sense for socio-economic integration is when there is a dividing line that goes down the highway and treats the waterside and mountainside as separate districts.**

**There are similarities between Skagway and Downtown Juneau as they are both areas for cruise ships. When people come from Skagway, they stay in downtown hotels, shop at Costco, and go to the hospital.**

# ALASKA REDISTRICTING BOARD COMMUNITY PUBLIC HEARING VERBAL TESTIMONY SUMMARY

**Skagway 10/27/21 Verbal Testimony**

Summary Date: 11/5/2021

Name: **Kristin (Tina) Seier**

Tina is a lifelong Alaskan resident who agrees with Skagway being aligned with the Downtown Juneau corridor. It makes it easier for representatives as they both have similar circumstances.

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**From:** Therese Thibodeau <theresethib@gmail.com>  
**Sent:** Wednesday, September 29, 2021 9:16 AM  
**To:** Testimony  
**Subject:** Redistricting maps for SEA

Hello,

My name is Therese Thibodeau and I live in downtown Juneau. The map that looks the most fair to me is the Doyon proposed map. Dividing CBJ along north south lines is what we naturally do in town. The exception is the JDHS and DZ schools have students from the Auke Bay area in the north. I think having Haines, Skagway and Gustavus combined with downtown Juneau/Douglas is also logical.

Thank you for all your work on this difficult project. I appreciate that Alaska has many rules to build non partisan maps and that you are following those rules.

Therese

# **ALASKA REDISTRICTING BOARD COMMUNITY PUBLIC HEARING VERBAL TESTIMONY SUMMARY**

**Skagway 10/27/21 Verbal Testimony**

**Summary Date: 11/5/2021**

**Name: John Walsh**

**John is a resident of Douglas and spoke in favor of Skagway being affiliated with Douglas and Downtown Juneau, and the Angoon, and smaller communities around Juneau. John has been a municipality worker for the last 15 years and cannot recount a time where they have needed to interface with North Juneau. They focus on the general government of the CBJ and the industry that serves both communities. Ketchikan, Juneau, and Skagway have cruise ships in common. The Downtown Business Association is similar to the business community in Downtown Juneau. The larger Upper Land Canal connection is intact more succinctly when Haines, Juneau, and Skagway are linked.**



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**From:** Alex Wertheimer <automated@akredistrict.org>  
**Sent:** Monday, September 27, 2021 8:06 PM  
**To:** TJ Presley; Jessica Tonseth; Testimony  
**Subject:** ++ Map Comment Response

A website response from the Map Comment form as been received with the following submission details.

Date: September 27, 2021, 8:06 pm

First Name: **Alex**

Last Name: **Wertheimer**

Group Affiliation, if applicable:

Email or Phone Contact: **alaskawerts@gmail.com**

Your ZIP Code: **99801**

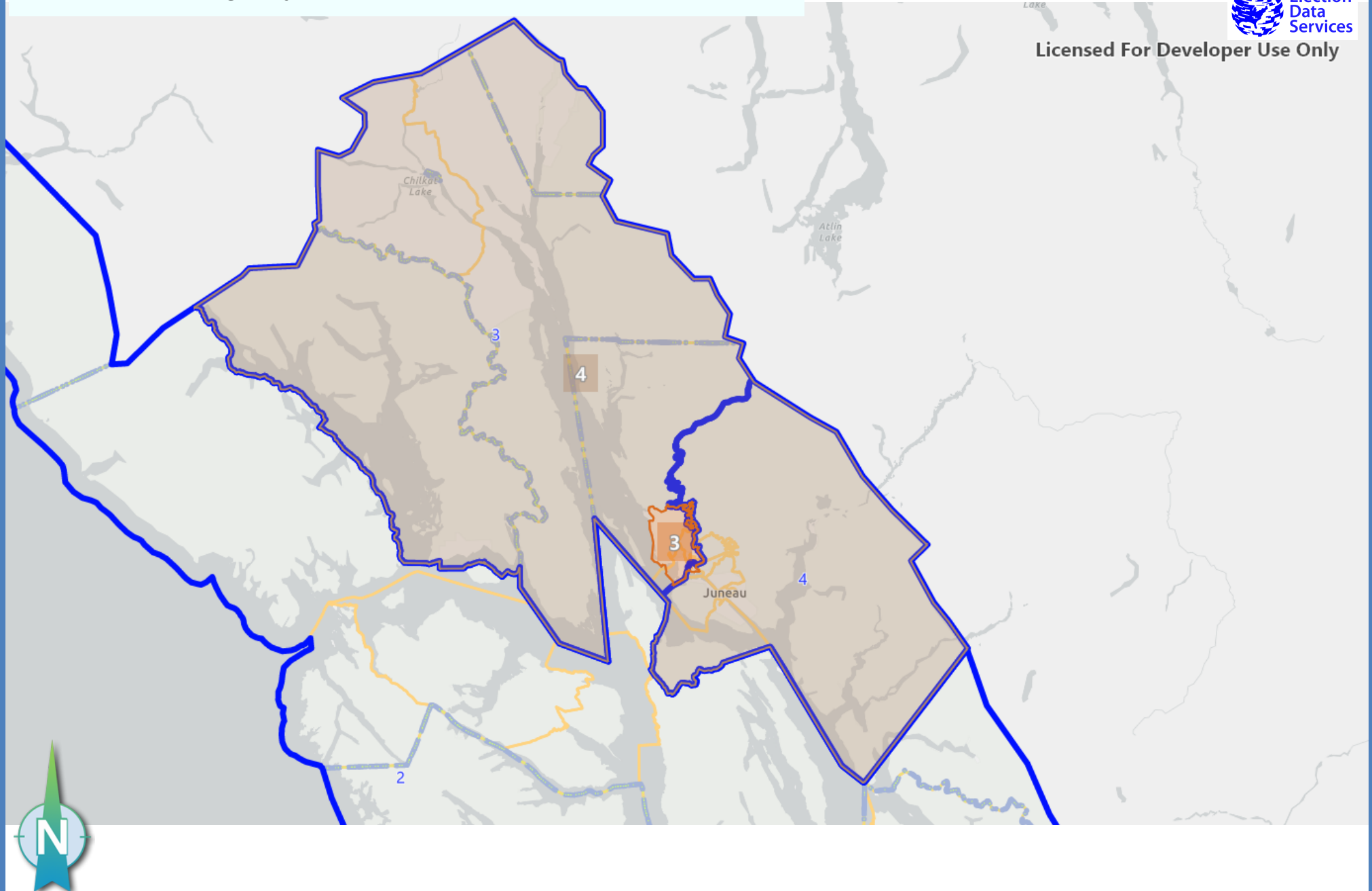
Issue of Concern (Please provide map name if applicable): **Configuration of Juneau Borough Districts**

Public Comment: **I attended the Public Hearing in Juneau tonight (September 27) and have reviewed the maps presented there and on-line. The hearing certainly helped me appreciate the scope and challenges the redistricting committee faces, and I thank you for your efforts. I have been an "out-the-road" resident of Juneau for 40 years. I think that contiguity and compactness in the districts should be maintained to the greatest degree possible. I think the V.3 and V.4 maps proposed by the Redistricting Board and the AFFER map fall considerably short in this regard. At the local level, they result in splitting neighborhoods and they result in poorer socioeconomic integration than do other alternatives. The maps proposed by Doyon, AFFR, and the Senate minority do a much better job of addressing these concerns. For these two districts, the best solution is a north/south divide on the mainland somewhere from Sunny Point to McNugget intersection. Where the line is drawn would depend on how you add outlying communities to the northern or southern Juneau Borough district. Currently Haines and Skagway are part of the Juneau "downtown", or southern district. Both Haines and Skagway are tightly linked to Juneau via ferry, air traffic, and fishing vessel traffic; I think they should be included in a Juneau District. A case can be made for including them in either of these two districts. There is a strong big-ship cruise tourism connection between downtown and Skagway. On the other hand, vessel and aircraft traffic comes into Auke Bay or the airport, so they could be considered contiguous to the northern Juneau Borough District. My own inclination would be to keep them in the Southern Juneau Borough District. Perhaps the best way to decide which district they should be included in is to look at how that decision affects the north/south line, choosing the option that best maintains contiguity and neighborhood cohesiveness on either side of the line.**

# DonutHoleSkagwayAlternativeDist3\_4



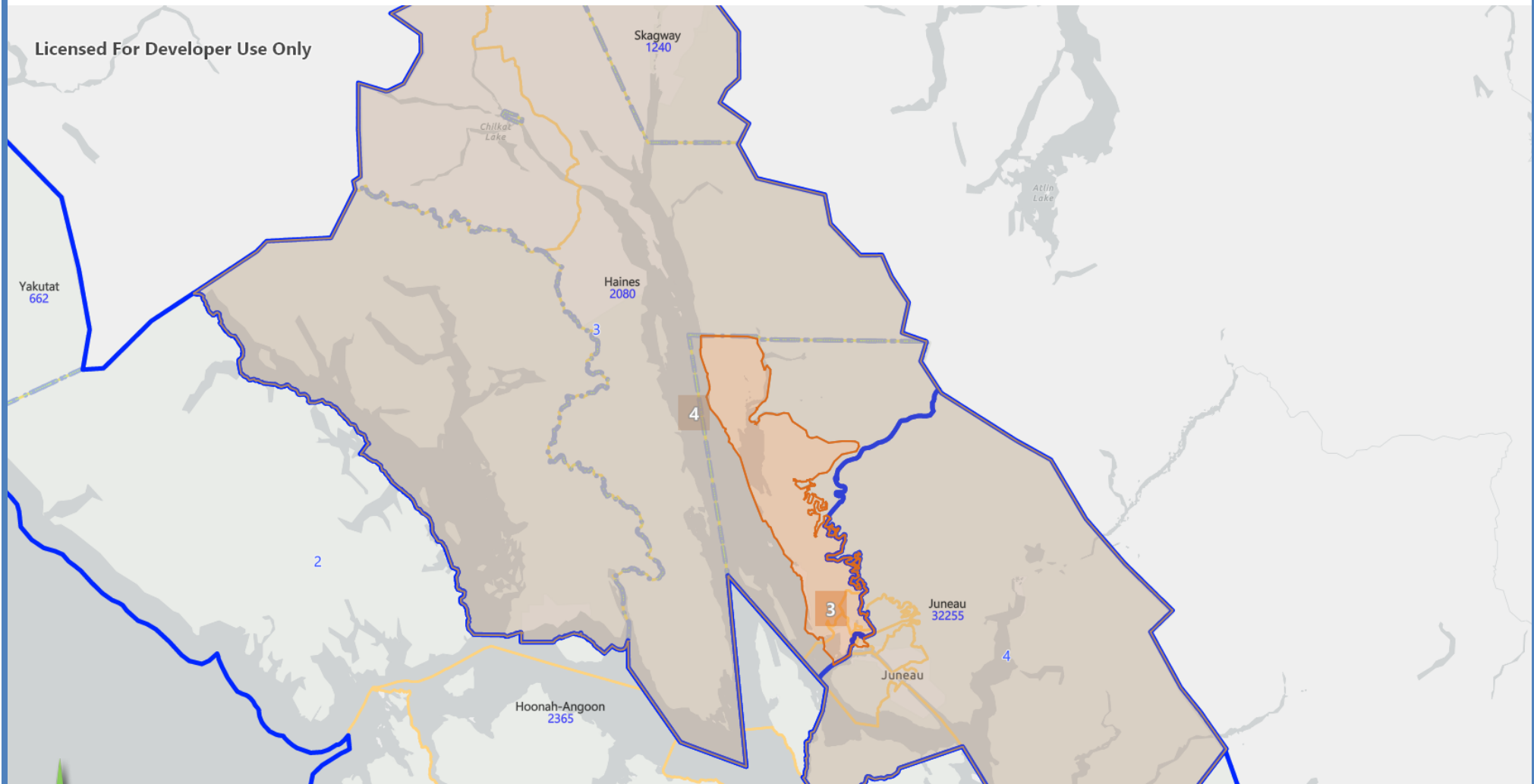
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Scagway Alternative A - Donut Hole, with Adopted Plan Overlay - Based on: 2020 Census Geography, 2020 PL94-171

Map Date: 1/15/2022 10:25:32 PM Last Edit: 1/14/2022 12:01:32 AM

# SkagwayAlternativeDist3\_4



Scagway Alternative B, with Adopted Plan Overlay - Based on: 2020 Census Geography, 2020 PL94-171

Map Date: 1/15/2022 10:59:45 PM Last Edit: 1/14/2022 7:37:32 PM