

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT FAIRBANKS

In Re 2011 Redistricting Cases.

) **CONSOLIDATED CASE NO.:**
) **4FA-11-2209-CI**
) 4FA-11-2213 CI
) 1JU-11-782 CI

**THE ALASKA REDISTRICTING BOARD'S
CROSS-MOTION FOR SUMMARY JUDGMENT
ON PETERSBURG PLAINTIFFS' COMPACTNESS CLAIM**

COMES NOW Defendant the Alaska Redistricting Board ("the Board"), by and through counsel Patton Boggs LLP, and pursuant to Alaska R. Civ. P. 56(c) hereby moves this Court for an order granting summary judgment in favor of the Board and dismissing the Petersburg Plaintiffs' claim that Proclamation House District 32 fails meet the compactness requirement of Article VI, § 6 of the Alaska Constitution and therefore is unconstitutional. This motion is made on the grounds that there is no genuine issue of material fact and the Board is entitled to judgment as matter of law because (a) House District 32 in the Proclamation Plan is relatively compact and therefore constitutional; and/or (b) to the extent the Board can be said to have deviated from strict adherence to the constitutional compactness requirements of Article VI, § 6 of the Alaska Constitution, such deviation was justified by the Board's need to comply with Section 5 of the federal Voting Rights Act and avoid retrogression of Alaska Native voting strength.

This Motion is supported by the attached Memorandum of Points and Authorities

In Opposition to Petersburg Plaintiffs' Motion for Partial Summary Judgment on the Issue of Compactness and in Support of the Alaska Redistricting Board's Cross-Motion for Summary Judgment, the affidavits and exhibits thereto and all other matters in the record.

DATED at Anchorage, Alaska this 4th day of November 2011.

PATTON BOGGS LLP
Counsel for Defendant
Alaska Redistricting Board

By: 

Michael D. White
Alaska Bar No. 8611144
Nicole A. Corr
Alaska Bar No. 0805022

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of November 2011 at 2:45 ~~am~~/pm, a true and correct copy of the foregoing document was served on the following via:

☒ **Electronic Mail on:**

Michael J. Walleri; walleri@gci.net
2518 Riverview Drive
Fairbanks, AK 99709

Thomas F. Klinkner; tklinkner@BHB.com
Birch, Horton, Bittner & Cherot
1127 W. 7th Avenue
Anchorage AK 99501

By: 

Anita R. Tardugno, PLS
Legal Secretary
PATTON BOGGS LLP

PATTON BOGGS LLP
601 West Fifth Avenue
Suite 700
Anchorage, AK 99501
Phone: (907) 263-6300
Fax: (907) 263-6345

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**MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO
PETERSBURG PLAINTIFFS' MOTION FOR PARTIAL
SUMMARY JUDGMENT ON THE ISSUE OF COMPACTNESS
AND IN SUPPORT OF THE ALASKA REDISTRICTING BOARD'S
CROSS-MOTION FOR SUMMARY JUDGMENT**

**I.
INTRODUCTION**

Redistricting in Alaska is a task of Herculean proportions. *E.g., In re 2001 Redistricting Cases*, 44 P.3d 141, 147 (Alaska 2002). Those burdened with this monstrous task face the daunting challenge of creating a statewide plan that balances multiple and conflicting constitutional requirements while attempting to ensure each Alaskan voter has an equally effective vote. The Alaska Supreme Court recognizes the difficulty in drawing districts in Alaska and has emphasized the need for flexibility so that all the constitutional requirements may be satisfied as nearly as practicable. *Id.* at 148 (Carpeneti, J., dissenting). As a result, the correct legal standard for compactness is whether the district is “relatively compact,” not whether it is the most compact as the Petersburg Plaintiffs would have this court believe.

As established below, Proclamation House District 32 meets this standard. This Court should therefore deny the Petersburg Plaintiffs' request for summary judgment and in turn, grant the Board's cross-motion for summary judgment because

Proclamation House District 32 is a relatively compact district and therefore meets the requirements of Article VI, § 6 of the Alaska Constitution. To the extent, if any, Proclamation House District 32 departs from strict adherence to the compactness standards of Article VI, § 6, such departure is justified by the Board's need to avoid retrogression and obtain preclearance from the Department of Justice under Section 5 of the federal Voting Rights Act.

II. FACTUAL BACKGROUND

Population in Alaska shifted dramatically over the past decade. According to the 2010 Census data, urban areas showed a high rate of growth, while rural and predominantly Alaska Native areas experienced either a slow or negative growth rate. [See ARB00006024-ARB00006025.] These demographic changes created challenges the Board was required to solve, and made it extraordinarily difficult to comply with all the various, and sometimes conflicting, legal requirements. [ARB00006024.]

The Board's first priority was to draw a map that complied with the federal constitutional requirements, such as one person one vote; second, the federal Voting Rights Act; and third, the Alaska constitutional requirements. [ARB00006029-ARB00006030.] Compliance with the federal requirements, mainly the Voting Rights Act, had ripple effects across the state. [ARB00006024.] It heavily dictated the configuration of the House districts, and in some cases, limited the number of options in forming Senate districts. [ARB00006024-ARB00006025.]

The census data showed a total statewide population of 710,231, making the ideal House district size 17,755. [ARB00006020.] This meant that in Southeast Alaska, there was enough population for four ideal House districts and two Senate districts. [ARB00006025.] This was one House district and half a Senate district less than it had during the 2000 redistricting cycle. [*Id.*] Additionally, the Board's Voting Rights Act expert, Dr. Lisa Handley, advised that the Voting Rights Act required an Alaska Native "influence" district in Southeast. [ARB00013329-ARB00013369.]

The Board thus drew Proclamation House District 34, which has a total Alaska Native population of 36.96% and an Alaska Native Voting Age Population ("VAP") of 32.85%. [ARB00013486.] Although several of the alternative plans had a Southeast Alaska Native House district with a slightly higher (0.5 to 2.5%) total Alaska Native and Alaska Native VAP, the Board determined that it was more important to keep the incumbent Alaska Native legislator, Representative Bill Thomas, from the Benchmark Alaska Native House district in the Proclamation Alaska Native House district and avoid pairing him with a non-Alaska Native incumbent. [*Id.*; Affidavit of John C. Torgerson, at ¶ 7 (herein after "Torgerson Aff."); Affidavit of Marie N. Greene at ¶ 6 (hereinafter "Green Aff."); Affidavit of Taylor R. Bickford at ¶ 6 (hereinafter "Bickford Aff.")]

The Board chose to protect the Alaska Native incumbent for a number of reasons, including the public testimony it received from the Alaska Native community.

[ARB00012253, ARB00012264-ARB00012266, ARB00012279-ARB00012282;

Torgerson Aff. ¶ 9; Greene Aff. ¶¶ 7, 8.] The Board knew taking into consideration the concerns of the Alaskan Natives and avoiding pairing Alaska Native incumbents were both of particular concern for the Department of Justice when reviewing submissions for preclearance under Section 5 of the Voting Rights Act. 28 C.F.R. § 51.57-51.59 (2010); Torgerson Aff. at ¶¶ 7, 9; Greene Aff. at ¶¶ 6-7.]

In fact, when Board representatives met with the Department of Justice to explain and defend the Proclamation Plan prior to preclearance¹, the only substantive questions the Department of Justice asked were related to the treatment of Alaska Native incumbents. [Torgerson Aff. at ¶ 4; Greene Aff. at ¶ 3; Bickford Aff. at ¶ 4.] In response to DOJ's inquiries, the Board representatives explained that the Proclamation Plan in fact kept every current Alaska Native incumbent or Alaska Native preferred candidate in an Alaska Native district and did not pair any Alaska Native incumbents with one unavoidable exception. [Torgerson Aff. at ¶ 5; Greene Aff. at ¶ 4; Bickford Aff. at ¶ 5.]

The Board explained that due to the significant population loss in Southeast Alaska, which resulted in the loss of one House district and half a Senate district, it was impossible to recreate Benchmark Senate District C which is currently represented by

¹ On Wednesday, September 14, 2011, Board Chair John Torgerson, Board Member Marie Greene, Board Executive Director Taylor Bickford, Board Counsel Michael White, and the Board's Voting Rights Act expert, Dr. Lisa Handley, met with representatives from the Voting Section of the Civil Rights Division of the United States Department of Justice ("DOJ") at their offices in Washington D.C. The purpose of this meeting was to discuss the Board's Preclearance Submission under Section 5 of the federal Voting Rights Act ("VRA") and to answer any DOJ's questions. [Torgerson Aff. at ¶ 2; Greene Aff. at ¶ 2; Bickford Aff. at ¶ 3.]

Alaska Native Senator Kookesh. [Torgerson Aff. at ¶ 6; Greene Aff. at ¶ 5; Bickford Aff. at ¶ 5.] Nor was it possible to create an Alaska Native effective or influence Senate district in Southeast Alaska. [*Id.*] As a result of these various demographic changes and legal requirements, pairing Senator Kookesh with the incumbent Senator from Sitka was unfortunately unavoidable. [*Id.*] The Board's conclusion was born out by the fact that no viable third party plan presented to the Board was able to avoid pairing Senator Kookesh. [*Id.*]

The Board was, however, able to protect the other Alaska Native incumbent in Southeast, Representative Bill Thomas of Haines. [Torgerson Aff. at ¶ 7; Greene Aff. at ¶ 6; Bickford Aff. at ¶ 6.] The Board kept Representative Thomas, a member of the House leadership and one of the most influential and powerful members of the House,² in the Southeast Alaska Native "influence" district and avoided pairing him with a non-Alaska Native incumbent. [*Id.*] Every other viable alternative plan presented to the Board either paired Representative Thomas with a non-Alaska Native incumbent from the same party, drew him out of the Alaska Native district, or did both. [*Id.*]

In drawing its Southeast districts, the Board was cognizant of the fact that when reviewing a redistricting plan for preclearance under Section 5 of the VRA, the DOJ

² Representative Thomas currently serves as the Co-Chair of the House Finance Committee. The Co-Chair of Finance is considered one of the five leadership positions among the organization that controls the House. The House Finance Committee is one of, if not the most powerful and influential house committee due to its control of the budgeting process. As a result, a legislator who serves as co-chair of the House Finance Committee is one of the most influential and powerful members of the House in the Alaska Legislature. [Torgerson Aff. at ¶ 8.]

considers both the extent to which the Board afforded members of the affected racial and language minority group the opportunity to participate in the redistricting process, and the extent to which the Board took the concerns of members of the affected racial and language minority groups into account in drafting its redistricting plan as well as how the plan treats minority incumbents. [Torgerson Aff. at ¶ 9; Greene Aff. at ¶ 7.] As a result, the Board actively sought input from the Alaska Native community throughout the redistricting process and took their concerns into account when drafting election districts. [*Id.*]

The Alaska Native community in general, and the Southeast Alaska Native community in particular, consistently testified before the Board that one of their major concerns was the importance of avoiding pairing Alaska Native incumbents so as not to reduce the Alaska Native influence in the legislature. [Torgerson Aff. at ¶ 9; Green Aff. at ¶ 8; ARB00012253, ARB00012264-ARB00012266, ARB00012279-ARB00012282.] It was important to keep Representative Thomas in the Alaska Native “influence” district for this same reason.

The Board felt, in light of these concerns and the importance of preserving the Alaska Native voice, that keeping the powerful Alaska Native incumbent, Representative Thomas, in the influence district and not pairing him with a non-Alaska Native incumbent provided the best opportunity for obtaining preclearance under Section 5 of the Voting Rights Act. The Department of Justice obviously agreed with

the choices made by the Board as it precleared the Proclamation Plan on October 11, 2011. [ARB00013493.]

In order accomplish its goals, the Board had to include Haines, where Representative Thomas resides, in Proclamation HD-34. The configuration of Proclamation HD-34, in turn, affected the configuration of the other House districts in Southeast, including Proclamation HD-32. [ARB00006033.] The configuration of Proclamation HD-32 was therefore the direct result of the Board's efforts to avoid retrogression and obtain preclearance under Section 5 of the VRA, while also complying as nearly as practicable with the federal constitution's equal protection requirements of one-person/one vote as well as the requirements of Article VI, § 6 of the Alaska Constitution. Proclamation HD-32 is relatively compact, relatively socio-economically integrated, and contains 17,801 people, a deviation of only 0.26% from the ideal district size of 17,755. [ARB00006034, ARB00006057.]

II.

LEGAL STANDARDS

A. Summary Judgment Standards

Rule 56 of the Alaska Rules of Civil Procedure provides that summary judgment should be granted if there is no genuine dispute as to material facts, and if the moving party is entitled to judgment as a matter of law. Alaska R. Civ. P. 56; *e.g.*, *Reeves v. Alyeska Pipeline Serv. Co.*, 926 P.2d 1130, 1134 (Alaska 1996); *Zeman v. Lufthansa*, 699 P.2d 1274, 1280 (Alaska 1985). The moving party has the burden of showing that there is no genuine issues of material fact. *Id.*

Once the moving party has met this burden, the non-movant “is required, in order to prevent the entry of summary judgment, to set forth specific facts showing that [he] could produce admissible evidence reasonably tending to dispute or contradict the movant’s evidence, and thus demonstrate that a material issue of fact exists.” *Still v. Cunningham*, 94 P.3d 1104, 1108 (Alaska 2004)(internal quotation omitted). Any allegations of fact by the non-movant must be based on competent, admissible evidence. Alaska R. Civ. P. 56(c), (e); *Still*, 94 P.3d at 1104, 1108, 1110. The non-movant may not rest upon mere allegations or denials, but must show that there is sufficient evidence supporting the claimed factual dispute to require a fact-finder to resolve the parties’ differing versions of the truth at trial. *Christensen v. NCH Corp.*, 956 P.2d 468, 474 (Alaska 1998) (citing to *Shade v. Anglo Alaska*, 901 P.2d 434, 437 (Alaska 1995)).

Here, the Petersburg Plaintiffs have completely failed to meet their burden. Their own moving papers establish that they are not entitled to judgment as a matter of law. Conversely, the Board, as established below, is able to show there is no genuine issue of material fact that Proclamation HD-32 meets the constitutional standard of “relative compactness” and is therefore entitled to summary judgment as a matter of law. To the extent there is any question as to whether Proclamation HD-32 is “relatively” compact, the Board’s departure from strict adherence to that requirement is justified by its need to draw a redistricting plan that avoids retrogression and therefore complies with Section 5 of the Voting Rights Act. In any event, the Board is entitled to summary judgment.

B. Standard of Review For Redistricting Plans

This Court's review of a redistricting plan "is meant to ensure that the reapportionment plan is not unreasonable and is constitutional under Article VI, § 6 of Alaska's constitution." *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1358 (Alaska 1987). "Review of reapportionment plans is limited in scope." *E.g., Braun v. Borough*, 193 P.3d 719, 726 (Alaska 2008). The Board has discretion in choosing its plan, and "the court will not lightly interfere with the reapportionment process." *In re 2001 Redistricting Cases*, 44 P.3d at 149 (Carpeneti, J., dissenting); *Braun v. Borough*, 193 P.3d at 726.

Here, the Board acted well within its discretion and was not unreasonable in its configuration of Proclamation HD-32. Despite the various and often conflicting legal standards with which the Board had to comply, as well as the enormous demographic changes that occurred in the last decade in Southeast Alaska, the Board was still able to ensure that Proclamation HD-32 was relatively compact while at the same time meeting its obligation to obtain preclearance under Section 5 of the VRA. Because the Boards' actions were reasonable and Proclamation HD-32 meets the compactness requirements of Article VI, § 6 of the Alaska Constitution, the Board's decision on the configuration of Proclamation HD-32 is entitled to deference and must be upheld.

III.

ANALYSIS

A. **The Petersburg Plaintiffs' Motion for Summary Judgment Must be Denied and the Board's Cross-Motion for Summary Judgment Granted Because House District 32 Complies With The Compactness Standard of Article VI, § 6 of the Alaska Constitution.**

1. *Introduction*

According to the Petersburg Plaintiffs, “Proclamation Plan House District 32 violates the compactness requirement of article IV (sic), § 6 of the Alaska Constitution.” [Petersburg Mem. at 1.] They base this assertion on the fact that they were able to draw an alternative redistricting plan for Southeast Alaska, which they claim demonstrates “greater compactness” than the Proclamation Plan for Southeast Alaska. [*Id.*] The Petersburg Plaintiffs further attack the compactness of Proclamation HD-32 with claims that no deviation from the compactness standard is required in order to comply with the VRA. [*Id.* at 4.] Their arguments are fatally flawed in numerous respects.

First, the Petersburg Plaintiffs use the wrong legal standard for compactness. The standard is “relative” compactness, not the “most” or “ideal” compactness as they would have this court believe. Moreover, their attempts to use mathematical formulas to measure compactness is inappropriate. Under the proper legal compactness standard and measurement, Proclamation HD-32 is constitutional. Second, the Petersburg Plaintiffs’ argument is purposefully based on an invalid premise: they ask this Court to compare the compactness of the entire Southeast Alaska region in their hypothetical “alternative plan” to the entire Southeast Alaska region in the Proclamation Plan,

despite the fact that the only district being challenged is Proclamation HD-32. This “apples to oranges” analysis proves nothing. Third, even if this Court considers the Petersburg Plaintiffs’ mathematical compactness analysis, the sole evidence presented in support of their motion is incomplete and flawed. Their own witness admits that other mathematical compactness tests establish Proclamation HD-32 is actually more compact than comparable districts in the “alternative plan.” Finally, the Petersburg Plaintiffs’ assertion that the VRA has “no bearing” on redistricting in Southeast Alaska is simply incorrect. In order to avoid retrogression and obtain preclearance under Section 5 of the VRA, the Board was required to create an Alaska Native “influence district” in Southeast Alaska, and avoid where possible the pairing of Alaska Native incumbents.

In short, the deficiencies in the Petersburg Plaintiffs’ arguments establish that their summary judgment motion is not well taken and that the Board is entitled to summary judgment instead.

2. *The Compactness Standard of Article VI, § 6 is “Relative Compactness” and Properly Measured Using the “Visual Test,” Not Mathematical Compactness Formulas.*

Article VI, § 6 of the Alaska Constitution requires that “[e]ach house district shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area.” The purpose behind these requirements is to prevent gerrymandering, or intentional vote dilution. *Hickel v. Southeast Conference*, 846 P.2d 38, 45 (Alaska 1992). Compactness looks at the shape of a district. *Id.*

“‘Compact’ districting should not yield ‘bizarre designs’.” *Id.* (quoting *Davenport v. Apportionment Comm’n of New Jersey*, 302 A.2d 736, 743 (N.J. Super.Ct.App.Div. 1973)). Due to Alaska’s irregular geography and uneven population distribution, the Alaska Supreme Court has made clear that the Alaska Constitution requires only *relative* compactness. *E.g.*, *Kenai Peninsula Borough*, 743 P.2d at 1361 n. 13; *Carpenter v. Hammond*, 667 P.2d 1240, 1218 (Alaska 1983)(Matthews, J., concurring); *In re 2001 Redistricting Cases*, 44 P.3d at 148 (Carpeneti, J., dissenting). “Absolute” or “ideal” compactness is not required. *Carpenter*, 667 P.2d at 1218 (Matthews, J., concurring.) This standard takes into consideration the impossibility of drawing conventionally compact districts that neatly approximate regular shapes like squares and circles. *Id.* Moreover, departure from strict compactness in a given district is also allowable in order to accommodate all of the various constitutional and legal criteria for all of the districts in the state. *Id.*; *see also Hickel*, 846 P.2d at 2 n. 22.

The Petersburg Plaintiffs gloss over the relative compactness standard, which is the proper legal standard in Alaska. Instead, they attempt to convince this Court that because they presented “at least one alternative plan” which they claim contains more mathematically compact “Southeast Alaska House Districts,”³ Proclamation HD-32 is unconstitutional. Setting aside, for the moment, the fact that the Petersburg Plaintiffs’ comparison is improper, the sole support for the Petersburg Plaintiffs’ compactness claim is the affidavit testimony of Leonard Lawson. Mr. Lawson, the Political Director

³ The Board disputes this claim as discussed in section III. A. 4, 5 below.

for the Alaska Democratic Party, admits that his entire compactness “analysis” is based on one computerized mathematical compactness test. [Lawson Dep. 23:5-9; 80:12-19; 81:2-6; 81:13-17; 105:9-106:1.]⁴ By solely relying on this qualification, the Petersburg Plaintiffs are claiming the proper method for analyzing compactness in Alaska is by mathematical formula. That claim is simply incorrect.

As noted by Judge Rindner in an Order in the 2001 Redistricting Cases, the “standards by which one may determine whether any district is unconstitutional due to lack of compactness or compact enough to satisfy the constitutional mandate presently is ill defined in Alaska.” [Order at 6 (footnote omitted).]⁵ In reviewing cross-motions for summary judgment in that case, Judge Rindner pointed out that there “appear to be two methods by which courts have analyzed compactness or commentators have suggested they do so.” [*Id.* at 4.] They are 1) “different mathematical measures of compactness, each focusing on different variables”; and (2) the “visual” test. [*Id.* at 4-6.] In rejecting the use of mathematical formulas, Judge Rindner insightfully opined:

A problem with such mathematical tests is that the commentators are unable to agree on an appropriate measure of compactness. Indeed the supporters of one compactness measure tend to be

⁴ The transcript of Mr. Lawson’s October 27, 2011, deposition is attached hereto as Exhibit A. [Affidavit of Counsel at ¶ 2.] Citations to Mr. Lawson’s testimony refer to the transcript page and line number. Thus, a reference to “23:5-9” references transcript page 23, lines 5-9.

⁵ Attached as Exhibit B is a true and correct copy of Judge Rindner’s “Order Granting Ruedrich Plaintiffs Motion For Summary Judgment Re: Compactness of House District 16.” [Aff. of Counsel at ¶ 3.] In that Order, Judge Rindner stated he “hoped the Alaska Supreme Court will remedy this problem in its anticipated review of this ruling.” [Exhibit B at. pp. 6-7, n. 4.] Unfortunately, the Alaska Supreme Court provided no such guidance in its last redistricting opinion. *See In re 2001 Redistricting Cases*, 44 P.3d 141 (Alaska 2002).

quite critical of other measures. Moreover, even where there [is] agreement upon a mathematical formula that should be used to judge compactness, the geographical, climatical, ethnic, cultural and socio-economic differences that make reapportionment a “Herculean task” in Alaska would seem to make any mathematical definition of compactness difficult to apply on a statewide basis. Indeed, the Alaska Supreme Court, in another context has already recognized the impossibility of achieving the mathematical precision of equal proportions that is feasible in other states.

[*Id.* at 4-5 (citations omitted; emphasis added).]⁶

The “visual test”, according to Judge Rindner, was how the Alaska Supreme Court appears to suggest that “compactness be judged in Alaska.” [*Id.* at 5.] He did note, however, that this approach was not without its own problems. Mainly, this “approach is by its very nature arbitrary” and “one judge may believe a district is sufficiently compact while another may not.” [*Id.*]⁷ Judge Rindner went on to note that “[t]his arbitrariness is further compounded by the recognition that virtually any district

⁶ See also, *Matter of Legislative Redistricting*, 805 A.2d 292, 333 (Md. 2002) (“recognizing there is no single practical measure of compactness, in geometric terms, that is generally accepted by social scientists as definitive.”)

⁷ To emphasis his point, Judge Rindner quoted the following from “one commentator:”

Individual judges do not confront enough redistricting cases to be likely to develop sufficiently informed intuitions about the broader pattern of district shapes. If left to their untutored qualitative assessments, judges are likely to render inconsistent and unpredictable decision, as had occurred with previous efforts to enforce compactness standards. Yet the cost of uncertainty in this area are particularly high. Redistricting forces on all dies will struggle to exploit any uncertainties for political gain. Fomenting yet more litigation and further delaying the time at which plans become effective create additional costs.

[Exhibit B at 5 (citation omitted).]

can be made more compact. At some point a district must be deemed ‘compact enough’ to satisfy the requirements of the Alaska Constitution.” [*Id.*]

Based on his analysis, Judge Rindner proposed the following as the test “by which the compactness of a district may be judged without the need to resort to mathematical formula:”

First, courts should give particular scrutiny to districts that are in “odd” or “bizarre” shapes. “Appendages” attached to otherwise compact areas may be suspect. Likewise, “corridors” of land that extend to include a populated area but not the less populated area around it, may run afoul of the compactness requirement. However, if the odd shape of a district is the natural result of Alaska’s irregular geometry then the district may be constitutional. Likewise, if the shape is necessitated by the need to create districts of equal population, then the district may be constitutional. Finally, absolute or “ideal” compactness is not required for each district. The constitution calls only for “relative” compactness.

[*Id.* at 6 (citations omitted).]

The Board suggests that the “Rindner Visual Test” is the most proper standard for analyzing compactness claims in Alaska, not mathematical formulas. Given the extraordinary geographical, climatical, ethnic, cultural and socio-economic differences that exist in Alaska, this test allows the Board the discretion it requires to properly complete its “Herculean task” while simultaneously providing the Court with the ability to prevent gerrymandering, or intentional vote dilution, the main purpose of the compactness requirement, when such circumstances exist. Applying this standard to Proclamation HD-32 establishes that the district is “compact enough” to meet the

requirements of the Alaska Constitution, especially in light of the requirement to ensure that the Board's Proclamation Plan received preclearance under Section 5 of the VRA.

3. *Proclamation HD-32 is "Relatively Compact" under the "Rindner Visual Test" and Therefore "Compact Enough" To Meet Alaska Constitutional Standards.*

Proclamation HD-32 is "relatively compact" and therefore constitutional when the principles of the "Rindner Visual Test" are applied. A visual review of Proclamation HD-32 shows its shape is not the type that is considered "odd" or "bizarre," thereby requiring "particular scrutiny."⁸ The configuration of Proclamation HD-32 was largely driven by the Board's need to create an Alaska Native influence district in Southeast Alaska that included Representative Thomas of Haines within its boundaries and did not pair him with another incumbent,⁹ as well as to reach as near as practicable an equal population.

Proclamation HD-32 also does not contain any strange "appendages" to an otherwise compact area, or "corridors" of land that extend to populated areas but do not include the less populated areas around it. Contrary to the Petersburg Plaintiffs' assertion, the inclusion of the communities of Gustavus and Tenakee Springs are not "odd appendages." [Petersburg Mem. at 4.] Given the geography of Southeast Alaska

⁸ A map of Proclamation HD-32 can be found at ARB00006057. A regional map for the Proclamation House Districts in Southeast Alaska is attached hereto as Exhibit C. Maps of "odd" and "bizarrely" shaped districts found to be non-compact in other jurisdictions are attached hereto as Exhibit D. The maps on the left side were the offending maps found non-compact; those on the right the eventual non-offending configurations that were upheld.

⁹ See Section B, *infra*.

with its numerous islands, every House district in that region is by necessity contiguous only by water.¹⁰ The Alaska Supreme Court has made clear that given the geographic make up of Alaska, contiguity by water is unavoidable. *Hickel*, 846 P.2d at 45. In fact, every district in the Petersburg Plaintiffs' demonstrative plan, referred to as the "Modified Rights Coalition Plan" ("MRC Plan"), in Southeast are only contiguous by water. [Exhibit E.]

The Board included Tenakee Springs and Gustavus in Proclamation HD-32 for equal population purposes. Without these two communities, Proclamation HD-32 only had a total population of 17,309. This would have resulted in a deviation of -2.98% below the ideal district. Thus, the Board added these two communities to Proclamation HD-32 to reach as near as practicable the ideal district size of 17,755. As constituted, Proclamation HD-32 contains a population of 17,801, a deviation of only 0.26% from the ideal district. [ARB00006034.] Moreover, these two communities are not attached

¹⁰ See Exhibit C; Attachment 2 to Affidavit of L. Lawson and Exhibit E. Exhibit E is a larger and clearly map of the Southeast Districts of the MRC Plan.

to Proclamation HD-32 by a suspicious “slim corridor.” The unpopulated areas surrounding these communities were also included in Proclamation HD-32.¹¹

Finally, the Petersburg Plaintiffs do not even suggest that the configuration of Proclamation HD-32 was due to political gerrymandering or intentional vote dilution, the redistricting ills the compactness requirement is designed to prevent.¹² *Hickel*, 846 P.2d at 45. Their entire argument is based exclusively on “mathematical compactness,” a standard ill-suited to Alaska. [Exhibit B at 4-5.]

In sum, while Proclamation HD-32 may not be “ideally” or “absolutely” compact, such compactness is not required. The Alaska Constitution requires only “relative” compactness. *E.g.*, *Carpenter*, 667 P.2d at 1218 (Matthews, J., concurring.) Under the geographical and legal constraints faced by the Board, Proclamation HD-32 is “relatively compact” and that is “compact enough” to satisfy the requirements of

¹¹ The Petersburg Plaintiffs only challenge Proclamation HD-32. The comparable district in their MRC Plan is HD-2. Thus, the only relevant compactness analysis is of these two districts. The Petersburg Plaintiffs, however, consistently attempt to compare the entire Southeast Region. Without shifting focus from the real argument, the Board would like to point out that HD-4 in the MRC Plan contains both a “corridor” and bizarre “appendage” that is neither explained nor justified. Specifically, MRC Plan HD-4 takes a chunk out of MRC Plan HD-2 along the Sitka Borough boundary to include Elfin Cove and Pelican in MRC HD-4. From there, it has a very slim corridor of land that goes down to grab Tenakee Springs. MRC Plan HD-4 does not include any of the less populated areas surrounding that corridor. [See Exhibit E.]

¹² Political gerrymandering was suggested by the Ruedrich Plaintiffs in their summary judgment motion. As noted by Judge Rindner, “Plaintiffs have suggested that District 16 was drawn as it was to place two incumbents Republican legislators in the same district.” [Exhibit B at 4, n. 3.] While Judge Rindner indicated his “decision was based solely on the geography of the District,” the geography in that case was that the “shape of District 16 [was] ‘odd’ and contains an appendage extending into Eagle River at its southernmost boundary.” [*Id.* at 4, n. 3, 7.] This appendage was what caused the pairing of the two Republican incumbents.

Article VI, § 6 of the Alaska Constitution. Accordingly, the Petersburg Plaintiffs' Motion for Partial Summary Judgment must be denied and the Board's Cross-Motion granted.

4. *The Petersburg Plaintiffs' Compactness Analysis Is Improper Because They Purposefully Compare the Compactness of All the Southeast Alaska House Districts Rather Than Just the District Actually Challenged.*

In the Petersburg Plaintiffs' Amended Complaint, they allege that Proclamation HD-32 fails to meet the constitutional criteria for House districts in Art. VI, §6 of the Alaska Constitution because it is not compact. [Petersburg Am. Comp. at ¶ 13.] In their Memorandum, however, the Petersburg Plaintiffs attack the compactness of the entire Southeast region, not just Proclamation HD-32. [Petersburg Mem. at 2-7.] In fact, throughout their entire motion the Petersburg Plaintiffs interchange Proclamation HD-32 and the entire Southeast region, as though they are one in the same.¹³ Not once do they even attempt to compare Proclamation HD-32 to the MRC Plan's HD-2, the

¹³ For example, the Petersburg Plaintiffs' Memorandum states (1) "the Board committed an error in redistricting by deviating from the compactness standard in Alaska Const. art. VI, §6 *in its redistricting of Southeast Alaska*" [Petersburg Mem. at 2 (emphasis added)]; (2) "the *Southeast Alaska house districts* in...the Modified RIGHTS Coalition Plan are significantly more compact than Proclamation Plan House District 32" [*Id.* at 3 (emphasis added)]; (3) "based on *comparison to the Southeast Alaska house districts* in the Modified RIGHTS Coalition Plan, Proclamation Plan House District 32 is not sufficiently compact" [*Id.* at 6-7 (emphasis added).]

district which contains the City Petersburg and therefore, the only relevant comparison for purposes of a compactness analysis.¹⁴

The reason why the Petersburg Plaintiffs attempt to focus the Court on the wrong comparison is easily explained – because their counsel knew that comparing only Proclamation HD-32 and MRC Plan HD-2 was fatal to their compactness challenge. On October 4, 2011, prior to Mr. Lawson having performed his mathematical compactness analysis, counsel for the Petersburg Plaintiffs asked him in an email:

. . . I was wondering if a compactness test can be ran on the entire Southeast area under the Board's Plan and then under the RIGHTS Plan as **I suspect that the compactness of districts 1-4 in the RIGHTS plan as compared to districts 31-35 is more compact than simply the compactness of District 2 in the RIGHTS plan when compared to District 32 in the Board's Plan.**

[Exhibit F (emphasis added).]¹⁵ In other words, Petersburg Plaintiffs' own legal counsel, relying solely on a "visual" analysis of the maps of the two plans,¹⁶ recognized

¹⁴ Mr. Lawson also admitted during his deposition that his compactness analysis related only to the Southeast districts as a whole and that he did not do any individual district comparisons. [Lawson Dep. 112:23-114:2; 116:9-117:9, 16-18; *See also*, Aff. of L. Lawson at ¶ 10 ("the Southeast Districts as a group are more compact under the Modified RIGHTS Plan").]

¹⁵ Exhibit F is an email produced by the Petersburg Plaintiffs in response to a request from Board counsel at Mr. Lawson's deposition for all communications with Mr. Lawson. [Lawson Dep. at 83:19-21.]

¹⁶ The Board concludes the statement of Petersburg Plaintiffs' counsel for the Petersburg Plaintiffs had to be based only on a visual observation because Mr. Lawson did not actually provide the Petersburg Plaintiffs with his mathematical compactness analysis until October 5 at 4:40 p.m. [Exhibit H ("Sorry for the delay, I just run [sic] some in-depth numbers today.")]

that the proper district to district comparison establishes that Proclamation HD-32 is relatively compact and therefore constitutional.

Despite this knowledge, the Petersburg Plaintiffs attempt to hoodwink the Court into believing that it is proper to do a regional comparison of the compactness of Southeast as a whole, including districts that are not even being challenged.¹⁷ Not surprisingly, the Petersburg Plaintiffs offer no authority for their unique argument.

The proper compactness comparison according to the Alaska Supreme Court is between the proposed district that is being challenged and alternative configurations for that specific district. *E.g.*, *Hickel*, 846 P.2d at 45; *Carpenter*, 667 P.2d at 1218 (Matthews, J., concurring). Yet the Petersburg Plaintiffs do not even attempt to make such a comparison. [Lawson Dep. at 112:23-114:2; 116:9-117:11, 16-18.] Instead, they intentionally avoid a district to district comparison because they knew if they did, their challenge stood no chance of success. [Exhibit F.] The court should not be fooled by the Petersburg Plaintiffs' tactics.

Using a proper district to district comparison between Proclamation HD-32 and MRC Plan HD-2, the only alternative configuration of a Petersburg district offered by the Petersburg Plaintiffs, the compactness of Proclamation HD-32 fails to rise to the level of a constitutional violation. Instead, as counsel for the Petersburg Plaintiffs

¹⁷ In fact, the Petersburg Plaintiffs go to great lengths to ignore the proper comparison, even comparing the Alaska Native VAP in MRC Plan HD-2 to Proclamation HD-34, and placing MRC Plan HD-2 directly under Proclamation HD-34 in their table. [Petersburg Mem. at 5-6.]

“suspected,” that comparison establishes that Proclamation HD-32 is relatively compact and therefore “compact enough” to satisfy the requirements of the Alaska Constitution.

5. *Even If This Court Were To Consider the Petersburg Plaintiffs’ Mathematical Compactness Analysis Their Motion Still Fails Because That Analysis is Both Incomplete and Flawed.*

As established above, mathematical compactness tests are inherently ill-suited for use in Alaska and thus not a proper standard by which this Court should measure compactness. [Exhibit B at 4-6.] Because the Petersburg Plaintiffs’ rely exclusively on a mathematical valuation of compactness in support of their motion, their motion is completely unsupported by any competent evidence and thus must be denied. [Petersburg Mem. at 2-7; Lawson Aff. at ¶¶ 7-10; Lawson Dep. at 23:5-9; 80:12-19; 81:2-6; 81:13-17; 105:9-106:1.]¹⁸ Even assuming *arguendo* that this Court should consider mathematical compactness valuations, the Petersburg Plaintiffs’ motion must still be denied because the Petersburg Plaintiffs’ mathematical analysis is both incomplete and misleading.

In an attempt to quantify and justify their argument that Proclamation HD-32 is not compact, the Petersburg Plaintiffs rely entirely on a single mathematical formula called the “Roeck Test.” [Petersburg Mem. at 2-7.] They purposefully limited their

¹⁸ For example, at his deposition, Mr. Lawson testified:

Q: This mathematical formula that is the Roeck Test is the sole basis for your testimony concerning compactness?

A: Yes.

[Lawson Dep. at 81:13-17.]

analysis to this single test because they knew that other mathematical compactness tests indicate Proclamation HD-32 is actually more compact than MRC Plan HD-2. [Lawson Dep. at 11:7-22; 44:7-25; 124:23-125:15.]

Mr. Lawson, whose affidavit is the only evidence relied upon by the Petersburg Plaintiffs, is also named as a witness in the Riley/Dearborn Challenge in which he has submitted a report.¹⁹ As part of that report, Mr. Lawson generated eight different computerized mathematical tests, all of which are included in the Maptitude redistricting software which he uses, for all 40 of the districts in the “Demonstrative Plan” that he drafted. [Exhibit G.]²⁰ The Southeast Alaska districts in the MRC Plan are exactly the same as those in the Demonstrative Plan. [Exhibit H PE000081; Lawson Dep. at 84:24-85:4.]²¹

The “Measures of Compactness Reports” created by Mr. Lawson were completed a week before he signed his affidavit in this case, October 4 for the Demonstrative Plan and October 5 for the Proclamation Plan. [Exhibit G; Lawson Aff.

¹⁹ The Riley/Dearborn Plaintiffs have listed Mr. Lawson as an “expert witness” on compactness. The Petersburg Plaintiffs do not present Mr. Lawson as an expert witness in this case and his affidavit testimony is not “expert testimony,” and rightfully so. Mr. Lawson is not qualified to be an “expert” on compactness and the Board will be filing a motion to strike his “expert report” and to preclude him from testifying as an expert in the Fairbanks case.

²⁰ Exhibit G are the “Measure of Compactness” Reports generated by Mr. Lawson for the Proclamation Plan and the Demonstrative Plan, and the explanatory material provided regarding the different compactness tests.

²¹ Exhibit H is an email from Thomas Klinkner, legal counsel for the Petersburg Plaintiffs, to Board counsel confirming the Southeast districts in the MRC Plan are exactly the same as those in the Demonstration Plan and an email between Thomas Klinkner and Leonard Lawson confirming the same.

at ¶ 4.] Mr. Lawson admits that he uses these Reports for his analysis in this case and that he did not do a separate analysis for just the Southeast Districts. [Lawson Dep. at 44:7-25; 100:20-101:9.] Despite having run eight different mathematical compactness tests for the Southeast Districts, Mr. Lawson relies on only one, the Roeck Test, for his “compactness analysis” in support of Petersburg’s motion. [Lawson Aff. at ¶ 7-10; Lawson Dep. at 23:5-9; 80:12-19; 81:2-6; 81:13-17; 105:9-106:1; Petersburg Mem. at 2-7.] Mr. Lawson claims this decision was solely his. [Lawson Dep. at 124:23-125:15.]

Review of Mr. Lawson’s “Measure of Compactness Reports” reveals the obvious reason for this decision: a number of the mathematical compactness tests establish that Proclamation HD-32 is actually more compact than MRC Plan HD-2. In other words, they were more favorable to the Board, a fact of which Mr. Lawson and the Petersburg Plaintiffs are well aware. [Lawson Dep. at 11:7-22; 44:7-25; 124:23-125:15.] As illustrated below, of the eight mathematical compactness tests generated by Mr. Lawson for Proclamation HD-32 and MRC Plan HD-2, Proclamation HD-32 is mathematically more compact in three of those tests: the “Perimeter Test,” the Population Polygon Test, and the Population Circle Test.

Compactness Test	Proc. HD-32	MRC Plan HD-2
Perimeter (smallest perimeter most compact)	1,096.12	1,461.21
Population Polygon (closest to 1 most compact)	0.45	0.26
Population Circle (closest to 1 most compact)	0.36	0.25

[Exhibit G.] There are also similar conflicting results when comparing other Southeast Alaska districts in an “apple to apple,” district to district comparison.²²

Obviously, the Petersburg Plaintiffs selectively rely only on the Roeck Test because that test most favors their position, while other mathematical compactness tests actually favor the Board. Mr. Lawson basically admitted as much in his deposition. [Lawson Dep. at 11:7-22; 44:7-25; 124:23-125:15.] The Court should not be fooled by the Petersburg Plaintiffs’ disingenuous argument.

The Petersburg Plaintiffs do not claim the Roeck Test is the “definitive” mathematical compactness test, nor can they. For “[t]here is no single practical measure of compactness, in geometric terms, that is generally accepted by social scientists as definitive.” *Matter of Legislative Redistricting*, 805 A.2d at 333. In fact, “supporters of one compactness measure tend to be quite critical of other measures.” [Exhibit B at 4-5.] Moreover, different mathematical compactness tests often reach different and conflicting results, as proven by the mathematical tests generated by Mr. Lawson. It is for these reasons that most courts tend to ignore these mathematical tests. This Court should do the same.

²² For example, in the Ketchikan/Wrangell Southeast District in both plans, Proclamation HD-31 and MRC Plan HD-1, Proclamation HD-31 is mathematically more compact under 5 of the 8 tests. [Exhibit G.] Likewise, in the two Juneau Districts drawn completely within the boundaries of the City and Borough of Juneau, Proclamation HD-31 and MRC Plan HD-3, each district is mathematically the most compact in 4 of the 8 tests. [*Id.*]

In short, the Petersburg Plaintiffs have completely failed to establish that they are entitled to summary judgment. At best, the only evidence presented in support of their motion does nothing more than raise genuine issues of material facts regarding whether Proclamation HD-32 is “mathematically compact.” Mathematical compactness, however, is neither the proper analysis nor the constitutional standard of compactness in Alaska. The constitutional standard is “relative” compactness. The Board has proven that Proclamation HD-32 is relatively compact and therefore constitutional. At some point, a district must be deemed compact enough. House District 32 is at that point.

B. The Board’s Configuration of Proclamation HD-32 Was Necessary Because of the Board’s Obligation to Draft a Redistricting Plan That Avoided Retrogression and Provided the Best Opportunity to Obtain Preclearance Under Section 5 of the Federal Voting Rights Act.

1. Introduction

The Petersburg Plaintiffs admit “the Voting Rights Act precedes the compactness requirement in the hierarchy of legal standards for reviewing a redistricting plan” and that “a redistricting plan may deviate from the compactness requirement” of the Alaska Constitution “to the extent that the deviation is required for the redistricting plan to comply with the Voting Rights Act.” [Petersburg Mem. at 7-8.] Despite these admissions, they contend that the VRA (a) does not require the creation of Proclamation HD-34 as an “influence district,” nor (b) require the protection of Native incumbent legislators. [*Id.* at 10-12.] Neither of the Petersburg Plaintiffs’ arguments have merit.

As the Board has established, Proclamation HD-32 is relatively compact and therefore meets the compactness requirements of the Alaska Constitution. However, to

the extent it is not the “most” or “ideally” compact, the Board was justified in deviating from strict compliance with the constitutional compactness requirements in order to avoid retrogression and maximize its chances of obtaining Section 5 preclearance.

Because Alaska is a Section 5 “covered” jurisdiction, the Board knew it had to obtain preclearance of its plan from the DOJ and was appropriately concerned with the need to adopt a plan that was likely to be precleared. As a result, the Board was required in certain instances to depart from strict adherence to the requirements of Article VI, § 6 of the Alaska Constitution when configuring certain election districts. [ARB00006033.] These deviations had ripple effects across the state. [ARB00006024.] Compliance with the VRA heavily influenced the configuration of the House districts, including Proclamation HD-34. [ARB0006024-ARB00006025.] This in turn, directly affected the boundaries of Proclamation HD-32.

As established below, the Board did not give undue weight to the VRA, nor compromise Alaska constitutional redistricting principals when drawing its plan, except to the extent it believed it was necessary in order to avoid retrogression and obtain preclearance under Section 5 of the VRA. The Board’s assessment of what was necessary to meet these requirements was reasonable and therefore should be upheld. In order to understand how the Board came to its conclusions, a brief review of the pertinent legal requirements is instructive.

(a) Requirements of Section 5 of the Voting Rights Act

Section 5 of the VRA requires certain “covered” jurisdictions to submit any changes in “any voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting” to either the DOJ or the US District Court for the District of Columbia for preclearance before such change may go into effect. 42 U.S.C. § 1973c (2006). Alaska is such a state. 28 C.F.R. Part 51, Appendix.

The DOJ reviews the proposed election changes, which includes a redistricting plan, to ensure it “neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color.” 42 U.S.C. § 1973c (2006), *as amended by* Pub. L. No. 109-246, sec. 5, 120 Stat. 577, 580 (2006). A redistricting plan satisfies the effect prong if the electoral change does not lead to retrogression in minority voting strength. *Beer v. United States*, 425 U.S. 130, 141 (1976). The purpose is “to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.” *Id.*

The Department of Justice measures retrogression by comparing minority voting strength under the new plan in its entirety with minority voting strength under the immediately preceding or “benchmark” plan. *Beer v. United States*, 425 US at 141; Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act; Notice,

76 Fed. Reg. 7470-7471 (Feb. 9, 2011)(hereinafter “DOJ Section 5 Guidance”).²³

Under Section 5, the covered jurisdiction has the burden of establishing that a proposed redistricting plan is not retrogressive. DOJ Section 5 Guidance at 7470. [See also ARB00013330.]

(b) Preclearance by the Department of Justice

The DOJ has, over time, promulgated regulations to assist covered jurisdictions in navigating the preclearance process. The U.S. Supreme Court has given these administrative regulations promulgated by the DOJ strong persuasive effect in judicial preclearance proceedings. *E.g.*, *Bossier Parish I*, 520 US at 483. Such regulations include a list of factors that may be considered when determining whether the submitted electoral change satisfies the intent and effect prongs. 28 C.F.R. §§ 51.57-51.61 (2008).²⁴ The list of factors is not, however, exhaustive. *Id.*

In his decision in the 2001 Redistricting Cases, Judge Rindner succinctly summarized the analysis DOJ undertakes to determine whether or not a redistricting plan has a retrogressive effect on minority voting strength:

[t]he United States Department of Justice first considers whether the number of effective minority districts had declined between

²³ The retrogression standard is not, however, to be confused with the vote dilution test under Section 2 of the VRA. *Reno v. Bossier Parish Sch. Bd. (Bossier Parish I)*, 520 US 471, 480 (1997). Section 2 and Section 5 “combat different evils and, accordingly,...impose very different duties upon the States.” *Id.*; *Georgia v. Ashcroft*, 539 US 461, 478 (2003).

²⁴ Included among these factors is “the extent to which the jurisdiction afforded members of racial and language minority groups an opportunity to participate in the decision to make the change; [and] the extent to which the jurisdiction took the concerns of members of racial and language minority groups into account in making the change.” 28 C.F.R. §§ 51.59 (2011).

the benchmark plan and the proposed new plan. In addition, the Department of Justice considers other factors that are relevant to whether the plan will have a retrogressive effect on minority voting strength, *including whether minority incumbents were paired against each other or paired against non-Native incumbents*, whether the percentage of minority voters in an effective Native District has declined significantly, whether minorities favor or disapprove of the plan, and whether minorities had inadequate opportunity to participate in development and comment on the plan. *Hickel*, 846 P.2d at 97 (Appended Opinion of Judge Weeks) (*citing Thornburg v. Jingles*, 478 US 30, 60-62 (1986)).

[Exhibit I at 65-66 (emphasis added).]²⁵

The Board followed these standards when attempting to meet its burden to establish its Proclamation Plan was not retrogressive. The Board's assessment of what DOJ would require for preclearance was obviously "spot-on" as DOJ precleared its plan on October 11, 2011. [ARB00013493.]

2. The Board Was Required to Draw Proclamation HD-34 as an "Influence" District in order to Avoid Retrogression and Obtain Preclearance from the Department of Justice.

In order to help obtain preclearance, the Board retained Voting Rights Act expert, Dr. Lisa Handley. Dr. Handley provided consultation services and advice regarding the DOJ's Section 5 preclearance requirements and compliance therewith. Dr. Handley advised the Board they needed a district in Southeast that contained enough Alaska Native population to create an "influence" district in order to comply with the federal Voting Rights Act. [ARB000013329-ARB000013369.] Dr. Handley advised

²⁵ Exhibit I is a true and correct copy of Judge Rindner's February 1, 2002 Memorandum and Order from the *In re 2001 Redistricting Cases*.

the board that an “influence” district needed at least 30% Alaska Native Voting Age Population (“VAP”). [ARB00003896-ARB00003899.]

This advice was based on the Benchmark Plan, which the DOJ uses to determine whether a new plan is retrogressive. DOJ Section 5 Guidance at 7470.²⁶ The Benchmark Plan had five “effective” House districts, one “influence” House District, and three “effective” Senate districts. [ARB000013349-ARB000013350.] Thus, any new plan the Board drew had to have the same number of Alaska Native districts – nine – in order to receive preclearance from the Department of Justice. [*Id.*]

Although difficult, the Board was able to construct a non-retrogressive plan. They drew five “effective” Alaska Native House districts, 36, 37, 38, 39, and 40, one “influence” House District in Southeast, House District 34, and three effective Senate districts, Senate Districts R, S & T. [ARB00006023; ARB000013329-ARB000013369; ARB000013493.] At the same time, the Board created a plan with the lowest overall deviation (the difference between the least and most populated districts) in Alaska history – 8.47% for the House and 7.54% for the Senate. [ARB00006023, ARB00006034.]

The Petersburg Plaintiffs’ contention that “the Voting Rights Act has no bearing on the districting of Southeast Alaska” [Petersburg Mem. at 9] is simply wrong. Dr. Handley advised the Board that in order to meet the benchmark, an “influence district”

²⁶ “An analysis of whether the jurisdiction has met its burden of establishing that the proposed plan would not result in a discriminatory or ‘retrogressive’ effect, starts with a basis comparison of the benchmark and the proposed plans at issue, using updated census data in each.” DOJ Restricting Guidance at 7471.

with at least 30% Native VAP had to be created in Southeast Alaska. [ARB0013358-00013359; ARB00003896-ARB00003899.] Obviously, it was reasonable for the Board to rely upon the advice of their Voting Rights Act expert.

Moreover, every plan submitted to the Board, including the six different RIGHTS Coalition Plans, the last of which is effectively the MRC Plan submitted by the Petersburg Plaintiffs here, included an Alaska Native “Influence District in Southeast Alaska.” [Bickford Aff. at ¶ 8.] Indeed, Mr. Lawson, who drew the MRC Plan relied upon by the Petersburg Plaintiffs here, admitted at this deposition that when drawing districts in Southeast Alaska you had to take the requirements of the Voting Rights Act into account, which he in fact did when drawing the MRC Plan. [Lawson Dep. at 113:15-114:2.] Simply put, the Petersburg Plaintiffs’ argument is defeated by the testimony of its own witness.

Likewise, the Petersburg Plaintiffs’ claim that “the creation of Proclamation House District 34 is not required for there to be an ‘influence district’ in Southeast” [Petersburg Mem. at 12-13], while technically correct, completely misses the point. While there are a number of different possible configurations for an “influence district” in Southeast, as the various plans submitted to the Board can attest, the Petersburg Plaintiffs themselves admit that only the Board’s Proclamation Plan met the requirements of Section 5 of the VRA and thus was the only plan that was not retrogressive.

In its responses to the Board's Requests for Admission, the Petersburg Plaintiffs admitted that the Board's Proclamation Plan (1) complies with Section 5 of the Voting Rights Act; [Exhibit J at 2, (Request for Admission No. 2)]; (2) is not retrogressive [*Id.* at 3, (Response to Request for Admission No. 7)]; and (3) is free from discriminatory purpose with respect to Alaska Natives' exercise of the electoral franchise [*Id.*, (Response to Request for Admission No. 8).]²⁷ They also admit that

no redistricting plan provided to the Board by any third party met the requirements of Section 5 of the federal Voting Rights Act of 1965, as amended.

[*Id.*, (Request for Admission No. 6) (emphasis added).]

In other words, the Petersburg Plaintiffs admit that their own alternative MRC Plan does not meet the requirements of Section 5 of the VRA because that plan "is identical to the redistricting plan presented to the Board by the RIGHTS Coalition . . . except for the removal of the City and Borough of Yakutat . . . from House District 4 proposed in the RIGHTS Coalition Plan." [Petersburg Mem. at 1, n. 1 (emphasis added).]²⁸ This admission is fatal to the Petersburg Plaintiffs' argument that MRC Plan HD-2 is a viable option for an "influence" district in Southeast. It establishes as

²⁷ These admissions also further demonstrate the weakness of the Petersburg Plaintiffs' claim that the VRA had no bearing on districting in Southeast. It flies in the face of reason to argue the VRA did not require an "influence" district in Southeast, and then unabashedly admit the Board complied with the VRA by drawing such a district.

²⁸ The removal of Yakutat from the MRC Plan does not affect this analysis because as the Petersburg Plaintiffs also admit, its removal "does not substantially change the demographics of" MRC Plan HD-4 "which is precisely coextensive with the districting of Southeast Alaska in the Proclamation Plan and thus does not affect any Proclamation house districts outside Southeast Alaska." [Petersburg Mem. at 1, n. 1.]

undisputed fact that Proclamation HD-34 is in fact the *only* viable option the Board had in order to create a plan in Southeast Alaska that would comply with Section 5 of the VRA. As addressed in further detail below, it was the configuration of Proclamation HD-34 that drove the configuration of Proclamation HD-32.

3. *In Ascertaining Whether a Redistricting Plan Will Have a Retrogressive Effect On Alaska Native Voting Strength, The Department Of Justice Considers Whether Alaska Native Incumbents Are Paired With Non-Alaska Native Incumbents.*

The Petersburg Plaintiffs' contention that the VRA is unconcerned with the effect of the Board's redistricting plan on Alaska Native incumbents is also misplaced. Among the factors that are relevant to the DOJ's preclearance analysis is whether minority incumbents were paired against each other or paired against non-Native incumbents. *Hickel*, 846 P.2d at 97 (Appended Opinion of Judge Weeks) (*citing Thornburg v. Jingles*, 478 US 30, 60-62 (1986)). [Exhibit I at 65.] Thus, contrary to the Petersburg Plaintiffs' assertions, it was proper for the Board to deviate from the compactness requirements of the Alaska Constitution where it felt it was necessary in order to enhance its chances for preclearance. This is exactly what the Board did.

Unlike the Petersburg Plaintiffs,²⁹ the Board felt it was necessary to take into consideration the effect different "influence district" configurations would have on

²⁹ Mr Lawson admitted at his deposition that he did not take the pairing of Alaska Native incumbents into account when drafting the MRC Plan. [Lawson Dep. at 127:17-128:17.] He did, however, admit that if the Board was required to take into account the pairing of Alaska Native incumbents that would affect how election districts could be drawn. [*Id.* at 129:2-10.]

Alaska Native incumbents.³⁰ This decision was reasonable under the circumstances faced by the Board.

The Board was aware that the effect on Alaska Native incumbents of any plan it adopted was of particular concern for the DOJ when reviewing submissions for preclearance under Section 5 of the VRA. [Torgerson Aff. at ¶ 9; Greene Aff. at ¶ 7.] In fact, when the Board met with the DOJ to explain and defend its plan prior to preclearance, the only substantive question the DOJ asked the Board was how the Proclamation Plan affected Alaska Native incumbents. [Torgerson Aff. at ¶ 4; Greene Aff. at ¶ 3; Bickford Aff. at ¶ 4.]

The Board also knew the DOJ would pay particular attention to the public comments the Board received from Alaska Natives, whether they approved or disapproved of the plan, and whether or not the Board took Alaska Native concerns into consideration when drawing the plan. 28 C.F.R. § 51.57-51.59. [See also Exhibit I at 65.] As a result, the Board actively sought input from the Alaska Native community throughout the redistricting process and took their concerns into account when drafting election districts. [Torgerson Aff. at ¶ 9; Greene Aff. at ¶ 7.]

The Alaska Native community in general, and the Southeast Alaska community in particular, consistently informed the Board that one of their major concerns was the

³⁰ The MRC plan (1) pairs Senator Kookesh and Senator Stedman in MRC Plan Senate District A; (2) draws Representative Thomas out of the Southeast Alaska Native influence district (MRC Plan HD-2) and places him in MRC Plan HD-4, thereby pairing him with non-Native incumbent Representative Cathy Muñoz of Juneau. [Bickford Aff. at ¶ 7; Lawson Dep. at 129:11-130:17.]

importance of protecting Alaska Native incumbents and to avoid pairing them so as not to reduce the Alaska Native influence in the legislature. [*Id.*; ARB00012253, ARB00012264-ARB00012266, ARB00012279-ARB00012282.] The Alaska Natives in Southeast Alaska were particularly concerned with protecting Representative Thomas, one of the most influential and powerful House members, and keeping him in the “influence district.” [*Id.*]

In light of these concerns, and under the “totality of the circumstances”, the Board felt it was necessary to include Representative Thomas in the “influence district” in Southeast and avoid pairing him with a non-Alaska Native incumbent. [ARB00013486-ARB00013487.] This was particularly true given that (1) Proclamation HD-34 had a slightly lower Alaska Native VAP than some other proposed plans; and (2) the demographic changes in Southeast made the pairing of Alaska Native incumbent Senator Kookesh unavoidable.

The Board’s choice to avoid pairing two Alaska Native incumbents with non-Alaska Native incumbents in Southeast Alaska by protecting Representative Thomas was both extremely reasonable and necessary to provide its Proclamation Plan the best opportunity for preclearance. The DOJ considers not only “whether the number of effective minority districts [has] declined between the benchmark plan and the proposed new plan,” but also “whether minority incumbents were paired against . . . non-Native incumbents....” [Exhibit I at 65.] Thus, the Board’s assessment of what was required

in order to avoid retrogression and obtain preclearance under Section 5 of the VRA was reasonable and therefore entitled to deference.

Despite the Petersburg Plaintiffs' arguments to the contrary, the two federal district court opinions upon which they rely, *Georgia v. Ashcroft*, 195 F. Supp. 2d 25 (D.D.C. 2002) and *Colleton County Council v. McConnell*, 201 F. Supp. 2d 618, 643 (D.S.C. 2002), have no bearing on whether or not the DOJ considers the effect a redistricting plan has on Alaska Native incumbents. In fact, the quotes from both cases are taken completely out of context.

First, the quotation from *Ashcroft* is nothing more than the Court explaining that the dissent was wrong to rely on the testimony of a minority Senator as to whether she could win reelection when determining what percentage of minority voters were needed to ensure continued success in electing their candidate of choice. 195 F. Supp. 2d at 101-102. The case does not stand for the proposition that the pairing of minority incumbents is irrelevant to the DOJ's preclearance analysis.

Second, the same is true for the quote from *Colleton County*. The cited quote involves the legal analysis under Section 2 of the VRA, not Section 5. *Colleton County*, 201 F. Supp. 2d at 643. The legal standards for Section 2 and Section 5 are completely different and are not to be used interchangeably. *Bossier Parish I*, 520 US at 480; *Ashcroft*, 539 US at 478. Accordingly, these cases do not support the Petersburg Plaintiffs' claims.

The Petersburg Plaintiffs are simply wrong in their assessments of what is relevant to the DOJ preclearance analysis. Section 5 did require the Board to draw an “influence” district in Southeast. It also required the Board to protect Representative Thomas, an Alaska Native incumbent, in order to enhance the Board’s chances of obtaining preclearance for the Proclamation Plan. The Board correctly understood what Section 5 of the VRA required of it when drawing its Proclamation Plan. The Department of Justice agreed. The Petersburg Plaintiff’s arguments to the contrary are without merit.

4. *The Configuration of Proclamation HD-32 Was the Result Of Drawing Proclamation HD-34 to Comply With The Voting Rights Act.*

The Board drew Proclamation HD-32 after having drawn Proclamation HD-34 to accomplish its goal of obtaining preclearance of its Proclamation Plan. This required placing Haines, the home of Representative Thomas, in the Southeast Alaska Native “influence district,” Proclamation HD-34. The other communities in Proclamation HD-34 were selected in part for their higher Alaska Native populations.

The configuration of Proclamation HD-34, in turn, affected the configuration of the other House districts in Southeast, including Proclamation HD-32. [ARB 00006033.] The configuration of Proclamation HD-32 was therefore the direct result of the Board’s efforts to avoid retrogression and obtain preclearance under Section 5 of the VRA, while also complying as nearly as practicable with the federal constitution’s equal protection requirements of one-person/one vote as well as the requirements of Article VI, § 6 of the Alaska Constitution.

Despite the challenges created by compliance with the VRA, Proclamation HD-32 complies with *all* the state constitutional standards, just as it is required to do. The Board found Skagway, Petersburg, and downtown Juneau had the requisite socio-economic ties. Additionally, by adding Gustavus and Tenakee Springs, the Board achieved a nearly ideal district size.³¹ While it may be true, Proclamation HD-32 could be more compact, as virtually any district could be, it can only be done by ignoring the requirements of Section 5 of the VRA as done by the Petersburg Plaintiffs. This is the very reason the Alaska Supreme Court has recognized that the proper standard is relative compactness. *E.g., Carpenter*, 667 P.2d at 1218 (Matthews, J., concurring.)

Proclamation HD-32 is relatively compact, which is “compact enough” to satisfy the requirements of the Alaska Constitution. To the extent is not the “most” or “ideally” compact, the Board was justified in deviating from strict adherence to the constitutional compactness requirements in order to avoid retrogression and enhance the opportunity for preclearance. In either case, the Board is entitled to summary judgment.

IV. CONCLUSION

The Petersburg Plaintiffs fail to prove that Proclamation HD-32 is not relatively compact. Each and every one of the Petersburg Plaintiffs’ arguments are without merit

³¹ Proclamation HD-32 has a deviation of only 0.26% from the ideal district size of 17,755. [ARB00006034, ARB00006057.] Moreover, it should be noted that the MRC Plan increases the overall deviation in Southeast by 1.52%. The MRC Plan has an overall deviation range of 8.14%. [See Petersburg Mem., Exhibit B.] The Proclamation Plan, on the other hand, has an overall deviation of 6.62%. As the one-person/one-vote legal standard is the highest and most important legal standard in the redistricting legal hierarchy, this difference is not *de minimus*.

and unsupported by reliable evidence. Thus, they are not entitled to summary judgment. Conversely, as the Board has clearly shown, Proclamation HD-32 is relatively compact and therefore constitutional. The Board acted reasonably in complying with the Voting Rights Act when drawing Proclamation HD-34, whose configuration dictated the boundaries of Proclamation HD-32. Even so, Proclamation HD-32 consists of a “relatively” compact area. The Board is therefore entitled to summary judgment as a matter of law.

DATED at Anchorage, Alaska this 4th day of November 2011.

PATTON BOGGS LLP
Counsel for Defendant
Alaska Redistricting Board

By: 

Michael D. White
Alaska Bar No. 8611144
Nicole A. Corr
Alaska Bar No. 0805022

PATTON BOGGS LLP
601 West Fifth Avenue
Suite 700
Anchorage, AK 99501
Phone: (907) 263-6300
Fax: (907) 263-6345

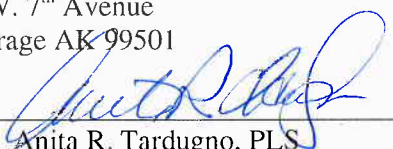
CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of November 2011 at 2:45 am/pm, a true and correct copy of the foregoing document was served on the following via:

☒ Electronic Mail on:

Michael J. Walleri; walleri@gci.net
2518 Riverview Drive
Fairbanks, AK 99709

Thomas F. Klinkner; tklinkner@BHB.com
Birch, Horton, Bittner & Cherot
1127 W. 7th Avenue
Anchorage AK 99501

By: 
Anita R. Tardugno, PLS
Legal Secretary
PATTON BOGGS LLP

029810.0101\72531

PATTON BOGGS LLP
601 West Fifth Avenue
Suite 700
Anchorage, AK 99501
Phone: (907) 263-6300
Fax: (907) 263-6345

In Re: 2011 Redistricting Cases
Consolidated Case No.: 4FA-11-2209 CI

INDEX OF EXHIBITS

Exhibit A	Deposition Transcript of Leonard Lawson, October 27, 2011
Exhibit B	Order Granting Ruedrich Plaintiffs' Motion for Summary Judgment Regarding Compactness of House District 16, Judge Rindner, [DATE]
Exhibit C	Map of Proclamation House Districts, Southeast Region
Exhibit D	Examples of "Odd", "Bizarrely Shaped" Districts Found Not Compact
Exhibit E	Map of Modified RIGHTS Plan House Districts, Southeast Region
Exhibit F	PE000058-PE000061, Email from Holly Wells to Leonard Lawson, October 4, 2011, at 4:41PM; Email from Leonard Lawson to Holly Wells, October 5, 2011, at 4:40PM
Exhibit G	Measures of Compactness Reports; Measures of Compactness, Test VRA strengthen, October 4, 2011, at 3:47:21PM; Measures of Compactness, Proclamation Plan, October 5, 2011, at 11:13:27AM
Exhibit H	Email from Thomas Klinkner to Michael White, October 19, 2011, at 11:49AM; email exchange between Leonard Lawson and Thomas Klinkner, October 19, 2011, at 10:56AM.
Exhibit I	Memorandum and Order, Judge Rindner, February 1, 2002
Exhibit J	Petersburg Plaintiff's Responses to Alaska Redistricting Board's First Discovery Requests, As Modified by Agreement on November 1, 2011

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 FOURTH JUDICIAL DISTRICT AT FAIRBANKS

3
4 IN RE 2011 REDISTRICTING
5 CASES.

6
7 Consolidated Case No. 4FA-11-2209 CI
8 4FA-11-2213 CI
9 1JU-11-782 CI

10 DEPOSITION OF LEONARD LAWSON

11
12 Pages 1 - 141
13 Thursday, October 27, 2011
14 12:56 P.M.

15 Taken by Counsel for Defendant Alaska Redistricting Board
16 at
17 Birch Horton Bittner and Cherot
18 1127 West Seventh Avenue
19 Anchorage, Alaska
20
21
22
23
24
25

Page 2	Page 4
<p>1 A-P-P-E-A-R-A-N-C-E-S</p> <p>2 For Fairbanks North Star Borough:</p> <p>3 Michael J. Walleri</p> <p>4 2518 River View Drive</p> <p>5 Fairbanks, Alaska 99707</p> <p>6 907/456-3319</p> <p>7 Jill S. Dolan (appearing telephonically)</p> <p>8 Assistant Borough Attorney</p> <p>9 FAIRBANKS NORTH STAR BOROUGH</p> <p>10 809 Pioneer Road</p> <p>11 PO Box 71267</p> <p>12 Fairbanks, Alaska 99707</p> <p>13 907/543-1234</p> <p>14 For City of Petersburg:</p> <p>15 Thomas F. Klinkner</p> <p>16 BIRCH HORTON BITTNER and CHEROT</p> <p>17 1127 West Seventh Avenue</p> <p>18 Anchorage, Alaska 99501</p> <p>19 907/276-1550</p> <p>20 For Alaska Redistricting Board:</p> <p>21 Michael D. White</p> <p>22 PATTON BOGGS, LLP</p> <p>23 601 West Fifth Avenue, Suite 700</p> <p>24 Anchorage, Alaska 99501</p> <p>25 907/277-4900</p> <p>26 Court Reporter:</p> <p>27 Lisa L. Shaffer</p> <p>28 PACIFIC RIM REPORTING</p> <p>29 711 M Street, Suite 4</p> <p>30 Anchorage, Alaska 99501</p>	<p>1 EXHIBITS (cont'd)</p> <p>2 PAGE</p> <p>3 K Affidavit of Leonard S. Lawson (8 pgs.) 81</p> <p>4 L Amended Final Redistricting Plan, House 118</p> <p>5 District 5 (1 pg color map)</p> <p>6 M Memorandum in Support of Motion by Petersburg, 123</p> <p>7 Plaintiffs for Partial Summary Judgment on</p> <p>8 the Issue of Compactness (16 pgs.)</p> <p>9 N Demonstrative Plan (1 pg. color map) 130</p>
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<p>1 I-N-D-E-X</p> <p>2 EXAMINATION BY</p> <p>3 Mr. White</p> <p>4 PAGE 5</p> <p>5 EXHIBITS</p> <p>6 A Resume (1 pg.) 14</p> <p>7 B Printouts Alaska Democratic Party Web site 30</p> <p>8 (3 pgs.)</p> <p>9 C Excerpt from 3/16/11 Alaska Redistricting 32</p> <p>10 Board Meeting Transcript (12 pgs.)</p> <p>11 D 3/18/11 E-mail to Taylor Bickford from 41</p> <p>12 Leonard Lawson re Redistricting Testimony</p> <p>13 (2 pgs.)</p> <p>14 E Excerpt from Transcript of 3/31/11 Alaska 43</p> <p>15 Redistricting Board Public Hearing (6 pgs.)</p> <p>16 F Excerpt from Transcript of 4/18/11 Alaska 51</p> <p>17 Redistricting Board Public Hearing (1 pg.)</p> <p>18 G Excerpt from 5/24/11 Alaska Redistricting 60</p> <p>19 Board Meeting Transcript (20 pgs.)</p> <p>20 H The RIGHTS Plan (5 pgs.) 60</p> <p>21 I Report on Compactness of Alaska Proclamation 65</p> <p>22 Plan and Demonstration Plan of Attorney</p> <p>23 Michael Walleri (5 pgs.)</p> <p>24 J SOA Certificate of Involuntary 70</p> <p>25 Dissolution/Revocation (1 pg.)</p>	<p>1 ANCHORAGE, ALASKA; THURSDAY, OCTOBER 27, 2011</p> <p>2 12:56 P.M.</p> <p>3 -o0o-</p> <p>4 LEONARD LAWSON,</p> <p>5 deponent herein, being sworn on oath,</p> <p>6 was examined and testified as follows:</p> <p>7 EXAMINATION</p> <p>8 BY MR. WHITE:</p> <p>9 Q Good afternoon, Leonard. Would you please</p> <p>10 state your full name and spell the last name.</p> <p>11 MR. WALLERI: Do you want to do the</p> <p>12 stipulation first on the record?</p> <p>13 MR. WHITE: The stipulation. What</p> <p>14 stipulation, Mike?</p> <p>15 MR. WALLERI: Oh, about the scope of the</p> <p>16 deposition.</p> <p>17 MR. WHITE: I will certainly get to that. I</p> <p>18 was going to get to that after we got the witness</p> <p>19 sworn in and got his name for the record.</p> <p>20 MR. WALLERI: Okay.</p> <p>21 BY MR. WHITE:</p> <p>22 Q Go ahead and state your full name and spell</p> <p>23 your last name for the record, if you would, please.</p> <p>24 A Yes.</p> <p>25 Leonard Steven Lawson, L-A-W-S-O-N.</p>

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1 Q And, Mr. Lawson, you are here to testify in
2 the Alaska Redistricting case, and you are here today
3 to testify only regarding the affidavit and testimony
4 that you've given in the Petersburg case. And the
5 parties have stipulated that we will limit this
6 deposition to that, and we are not going to get into
7 anything that you've done as -- you kind of have two
8 hats in this litigation, don't you? You're testifying
9 on behalf of Petersburg and on behalf of the Fairbanks
10 plaintiffs, Mr. Walleri's clients?

11 A Yes.

12 Q All right. I'm not going to ask you any
13 questions about that.

14 MR. WHITE: Mr. Walleri, is that sufficient
15 for your stipulation?

16 MR. WALLERI: Yeah.

17 BY MR. WHITE:

18 Q There may be some crossover, but it's
19 background and stuff like that. I'm not here to go
20 into the report that you gave in the Fairbanks case,
21 although we may refer to certain documents about that,
22 because it affects your testimony in the Petersburg
23 case. All right?

24 A Okay.

25 Q Can you tell me, sir, how you're currently

Page 7

1 employed?

2 A I work for the Alaska Democratic Party
3 full-time as a day job.

4 Q Do you have a night job too?

5 A Well, doing some work on redistricting here.

6 Q Okay. Why don't you tell me what you're
7 doing.

8 A Running compactness reports on the board's
9 proclamation plan and on a demonstration plan.

10 Q And you're doing that for whom?

11 A Both for Petersburg and for Attorney Mike
12 Walleri.

13 Q Before we get into all of that, is it all
14 right if I just call you Leonard, or do you want me to
15 call you Mr. Lawson? Whatever you prefer.

16 A Leonard works.

17 Q Leonard, have you ever been deposed before?

18 A No.

19 Q So let me just give you a little bit about
20 how things are going to go, and if you've got any
21 questions after that, let me know.

22 You're obviously here under oath to testify
23 to the best of your ability. I'm going to ask you
24 questions about various different things, including
25 some of your background, expertise, experience, that

Page 8

1 kind of stuff.

2 If you don't understand a question, please
3 let me know. I'm not here to try to trick you based
4 upon my questions.

5 Sometimes, and as Lisa knows, I can get going
6 a little fast.

7 And, Lisa, the same stipulation applies.

8 Just throw something at me if I start going too fast.

9 COURT REPORTER: Thank you.

10 BY MR. WHITE:

11 Q Please respond orally to my questions. You
12 and I can communicate either through nods or eye
13 contact or something like that. We're making a
14 verbatim transcript here, so you're going to need to
15 give an actual verbal response to the questions that I
16 ask. Do you understand that?

17 A Yes.

18 Q First of all, can you tell me, did you review
19 any documents in preparation for your testimony here
20 today?

21 A Yes. I looked at my affidavit. I also
22 looked at my report.

23 Q Anything else?

24 A Not that I can recall.

25 Q And by the affidavit, you mean the affidavit

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1 that you submitted in support of Petersburg's motion
2 for summary judgment?

3 A Yes.

4 Q And the report is the report you provided to
5 Mr. Walleri, who has named you as an expert in the
6 area of compactness for Fairbanks, his clients?

7 A Yes.

8 Q Anything else that you can think of that you
9 reviewed in order to prepare for this deposition here
10 today?

11 A No. Not that I can recall at this time.

12 Q Now, I just want to understand exactly what's
13 going on. Are you personally represented here today
14 by either Mr. Klinkner or Mr. Walleri?

15 A No.

16 Q You have no attorney-client relationship with
17 Mr. Klinkner?

18 A No.

19 Q Did you meet with Mr. Klinkner before today's
20 deposition?

21 A Yes.

22 Q And tell me what you talked about.

23 A We talked about what was going to happen
24 here, kind of what happens with a deposition.

25 Q I'm sorry. I don't mean to interrupt you.

Page 10

1 Anything else?

2 **A That's pretty much it, what I could expect**

3 **from today.**

4 Q Did you review any documents with

5 Mr. Klinkner?

6 **A Yes. The affidavit.**

7 Q Tell me what you and he talked about when you

8 reviewed the affidavit.

9 **A He told me that I should probably look over**

10 **it again, to make sure I was well prepared for**

11 **deposition.**

12 Q Anything more specific than that?

13 **A There were a couple of questions asked about**

14 **the compactness measures.**

15 Q What were those questions?

16 **A One of them dealt with, did I rely -- some of**

17 **the compactness tests were more favorable, and some of**

18 **the compactness tests were less favorable.**

19 Q And what was your answer?

20 **A Yes.**

21 Q So just to make sure I understand your test,

22 in your affidavit -- and we'll get there later in more

23 detail later -- you testified only regarding the Reock

24 Test. I think I pronounced that correctly? Do you

25 have a different pronunciation? When I say the Reock

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1 Test, you know what I'm talking about?

2 **A Yes, I know what you're talking about.**

3 Q In your affidavit, the only compactness

4 analysis you run and testify to in your affidavit was

5 concerning the Reock Test?

6 **A Yes.**

7 Q All right. And Mr. Klinkner asked you

8 whether you were aware that there were other tests out

9 there for compactness that can be run under the

10 software which you used, the Maptitude software. Is

11 that a fair statement?

12 **A No, not whether or not there were other**

13 **tests. Whether or not I realized that I had run all**

14 **of the tests, and whether or not I realized that there**

15 **were tests that were more and less favorable.**

16 Q By that, you mean some of those compactness

17 tests would say that the proclamation House

18 District 32 is more compact than the demonstration

19 plan, and some would say that the demonstration plan

20 districts are more compact than the proclamation plan.

21 Is that a fair statement?

22 **A Yes.**

23 Q Okay. Anything else that he asked of you?

24 You said a couple of questions. That's one.

25 **A There were clarifications on that.**

Page 12

1 Q What kind of clarifications?

2 **A Specifically on the names of the tests.**

3 Q Okay.

4 **A So it was the tests regarding populations.**

5 Q The tests regarding populations. What do you

6 mean?

7 **A Yes. Of the several tests that were**

8 **conducted, some test actual area, some tests are more**

9 **focused on where the populations of the districts are.**

10 Q Okay. And you explained that to him, what

11 your understanding of that was?

12 **A Yes.**

13 Q And to the best of your ability, what did you

14 tell him?

15 **A That some tests were more appropriate for**

16 **urban areas, such as the Population Test.**

17 Q Just so we're clear, Leonard: Your testimony

18 here today, you are not testifying as an expert

19 witness. You understand that, right?

20 **A I think those are very much legal terms, so I**

21 **wouldn't know the difference.**

22 Q You wouldn't know the difference between an

23 expert witness and a lay witness?

24 **A And how that effects legally? I'm not a**

25 **lawyer.**

Page 13

1 Q You understand that you have not been named

2 as an expert witness by the Petersburg plaintiffs,

3 don't you?

4 **A Yes.**

5 Q But you don't understand what the legal

6 difference is between testifying as an expert and

7 testifying as a lay witness?

8 **A No. I'm not understanding all of those.**

9 Q Did anybody ever explain that to you?

10 **A Not in any depth.**

11 Q So you don't have any understanding as we sit

12 here today what that difference might be?

13 **A As I say, I'm not a lawyer.**

14 Q Let's talk, then, a little bit about your

15 experience.

16 You were involved in the redistricting

17 process since the beginning, is that a fair statement,

18 in Alaska, this go-around?

19 **A Yes. I was involved very close to the**

20 **beginning of the process.**

21 Q Let's talk a little bit about what experience

22 you have and what you brought to the table when you

23 came into this redistricting litigation.

24 **MR. WHITE:** Let's have this marked as

25 Exhibit A.

<p style="text-align: right;">Page 14</p> <p>1 (Exhibit A marked.)</p> <p>2 BY MR. WHITE:</p> <p>3 Q Leonard, this is the resume that you provided</p> <p>4 in response as part of your expert report in the</p> <p>5 Fairbanks case, is it not?</p> <p>6 A Yes.</p> <p>7 Q And you prepared this. Is that true?</p> <p>8 A Yes.</p> <p>9 Q Now let's talk a little bit.</p> <p>10 It says here "Experience." You graduated</p> <p>11 from college in May 2007, right?</p> <p>12 A Yes.</p> <p>13 Q And you have a degree in science and</p> <p>14 mathematics?</p> <p>15 A Yes.</p> <p>16 Q And it says a physics concentration. What</p> <p>17 does that mean?</p> <p>18 A Basically a minor. Different colleges and</p> <p>19 universities call that differently.</p> <p>20 Q And then it looks like since your college --</p> <p>21 well, let me ask you this, before I get started: How</p> <p>22 old are you, Leonard?</p> <p>23 A I'm 26.</p> <p>24 Q And you graduated from college in May of</p> <p>25 2007, so that would have been about four years ago?</p>	<p style="text-align: right;">Page 16</p> <p>1 Q Where was that at?</p> <p>2 A Greensboro, North Carolina.</p> <p>3 Q So during that six-month time frame that</p> <p>4 we're referencing here, you just worked for your</p> <p>5 parents. Is that what you're telling me?</p> <p>6 A Yes.</p> <p>7 Q Did you do any other volunteer-type work?</p> <p>8 A Helping tutor people.</p> <p>9 Q You didn't engage in any political activities</p> <p>10 during that time?</p> <p>11 A Yes.</p> <p>12 Q And what were those?</p> <p>13 A I volunteered for different campaigns.</p> <p>14 Q What campaigns, if you can recall?</p> <p>15 A During this period of time, a lot of it was</p> <p>16 local campaigns.</p> <p>17 Q For?</p> <p>18 A County register of deeds. There was an</p> <p>19 assembly race, doing door knockers. And could you</p> <p>20 please reference the time frame again?</p> <p>21 Q Sure, Leonard. We're talking about this gap</p> <p>22 that's between basically January of 2008 and June 2008</p> <p>23 when you came to Alaska and went to work for the</p> <p>24 Alaska Democratic Party.</p> <p>25 A Okay. So just in between --</p>
<p style="text-align: right;">Page 15</p> <p>1 A Yes.</p> <p>2 Q And since that time, you list on your resume,</p> <p>3 it looks like, four different work experiences, and I</p> <p>4 want to talk a little bit about that.</p> <p>5 It says from September 2005 to December 2007</p> <p>6 you were a substitute teacher.</p> <p>7 A Yes.</p> <p>8 Q And so that was, while you were in school,</p> <p>9 you were actually earning some cash by being a</p> <p>10 substitute teacher.</p> <p>11 A Yes.</p> <p>12 Q Was that in all subjects, or just in math?</p> <p>13 A Typically math.</p> <p>14 Q There's a lot of call for math teachers, as I</p> <p>15 recall what I know about that. Is that a fair</p> <p>16 statement?</p> <p>17 A Yes.</p> <p>18 Q So then it says, after December 7th, the next</p> <p>19 thing you have on your resume isn't until June 8th of</p> <p>20 2008, which is about a six-month gap. What did you do</p> <p>21 during that six-month time period between January of</p> <p>22 2008 and June of 2008?</p> <p>23 A Well, even through the ten months which I was</p> <p>24 a substitute teacher, I also worked for -- my parents</p> <p>25 have a realty. They do rental houses.</p>	<p style="text-align: right;">Page 17</p> <p>1 Q Yeah, that first time frame there.</p> <p>2 A Between January of 2008 and June 2008. Okay,</p> <p>3 I can be more specific on that one.</p> <p>4 That particular time period, I also worked</p> <p>5 for the Hillary Clinton campaign.</p> <p>6 Q So the Hillary Clinton presidential campaign?</p> <p>7 A Yes.</p> <p>8 Q And what did you do?</p> <p>9 A I was basically an office manager for their</p> <p>10 Greensboro operation.</p> <p>11 Q Was that a paid position?</p> <p>12 A Yes.</p> <p>13 Q For how long did do you that?</p> <p>14 A Approximately a month and a half.</p> <p>15 Q During the first part of that time, the last</p> <p>16 part of that time?</p> <p>17 A It would have started around April of that</p> <p>18 year, and gone through the primary, which is in May of</p> <p>19 that year.</p> <p>20 Q Through the primary in North Carolina?</p> <p>21 A Yes.</p> <p>22 Q Okay. So once that was over, then that job</p> <p>23 was no longer there and so you moved on?</p> <p>24 A Yes.</p> <p>25 Q And during this six-month time period, did</p>

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1 you do any other of those political races, or was that
2 at a different time period?
3 **A No. I'm sorry. I misunderstood your**
4 **reference. I thought it was referencing the entire**
5 **early part of my career.**
6 Q So this first time frame that we're talking
7 about in the first half of 2008, the Hillary Clinton
8 campaign, was a paid position that you had as an
9 office manager in Greensboro, North Carolina?
10 **A Yes.**
11 Q But you didn't put that on your resume?
12 **A No.**
13 Q And then it says you went to work in June of
14 2008 for the Alaska Democratic Party. Is that right?
15 **A Yes.**
16 Q And it says you were the assistant database
17 administrator. What is that?
18 **A We use databases in political work to keep**
19 **track of supporters, keep track of donors.**
20 Q So you were working, doing exactly what?
21 **A I helped other campaigns get access to our**
22 **database when they needed to pull lists.**
23 Q So other campaigns for Democrats, right? You
24 didn't help Republicans out?
25 **A That would be accurate. We are the**

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1 **Democratic Party of Alaska.**
2 Q And one of the two main missions of the
3 Democratic Party of Alaska, according to your
4 Web site, is to get Democratic candidates elected to
5 office, right?
6 **A Yes.**
7 Q It's kind of funny, because on your Web site
8 it says you were the deputy vote file manager. Is
9 that different than an assistant database
10 administrator?
11 **A Not everyone understands what a voter file**
12 **is, and so it's easier to talk about it in terms of**
13 **what actually happens.**
14 Q Okay. But on your Web site you agree that it
15 says that you were hired as the deputy vote file
16 manager?
17 **A Yes.**
18 Q And you worked for them for six months, it
19 looks like, again, the last half of 2008, and then
20 there's another six-month gap?
21 **A Yes.**
22 Q What did you do during that six-month gap?
23 **A I returned home to Greensboro, North**
24 **Carolina, at that point.**
25 Q And what did you do?

Page 20

1 **A A good amount of family time.**
2 Q Any paid jobs during that time period?
3 **A No. It was when my father was diagnosed with**
4 **cancer, so it was family time.**
5 Q Sorry to hear that, Leonard. You have my
6 condolences. My father passed away recently, so I
7 know what it's like to lose a father.
8 **A He actually has had a little bit of a medical**
9 **miracle.**
10 Q He's still alive.
11 **A Yes.**
12 Q Fantastic. I'm happy for you.
13 **A When I went back, they were saying only about**
14 **six months, and he's been alive two and a half years**
15 **now.**
16 Q That's great.
17 So you were just basically doing family time.
18 Did you do any volunteer political work during that
19 time?
20 **A No. I took classes to further my education**
21 **and background in technology.**
22 Q What kind of classes did you take?
23 **A I took a class on, one was technology in**
24 **general, of using operating systems and installing**
25 **them, and another class dealt with Web site design and**

Page 21

1 **creation.**
2 Q Okay. Computer-type classes.
3 **A Yes.**
4 Q And where did you take those at?
5 **A Guilford Technical Community College.**
6 Q And then it says you started in June and went
7 to work for the Democratic Party in Vermont?
8 **A Yes.**
9 Q And what did you do there?
10 **A That is where I was a voter file manager. It**
11 **also could be called a database administrator.**
12 Q So you're doing computer stuff, helping put
13 files together and all that kind of stuff?
14 **A Yes.**
15 Q How was it that you happened to go to
16 Vermont, or how did you get to Vermont?
17 **A It was basically an interesting time period.**
18 **I had a discussion with my father. We looked at how**
19 **the family was operating at the time, and I then**
20 **decided to go back and work in the political field.**
21 Q And that's been an interest of yours for a
22 pretty long time, hasn't it?
23 **A Yes.**
24 Q As I understand it, you were volunteering as
25 far back as the Gore run in 2000?

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1 A Yes.
2 Q So you had to actually have been pretty young
3 when you were doing that.
4 A Yes.
5 Q And you've volunteered over the course of
6 your -- as you grew into an adult, for the last, is it
7 fair to say, ten or 15 years?
8 A Yes.
9 Q Always for Democrats? You're a Democrat,
10 right?
11 A There have been nonpartisans there. But yes,
12 I'm listed as a Democrat.
13 Q You left there in February of 2010. Why did
14 you leave employment with the Vermont Democratic
15 Party?
16 A There was an opportunity to come back to
17 Alaska. It's been one of the places I really enjoyed
18 working. It's kind of hard not to fall in love with
19 the place.
20 Q Okay. And that's what brought you up the
21 first time? Just, it's Alaska, and like so many
22 people, you thought it would be a great place to live
23 and work?
24 A Yes.
25 Q So the opportunity came up and you went to

Page 23

1 back in work in February of 2010, and you list on your
2 experience there that you're the database
3 administrator and information technology director?
4 A Yes.
5 Q But you're also the political director of the
6 Alaska Democratic Party, aren't you?
7 A Yes.
8 Q But you didn't put that on your resume?
9 A No.
10 Q Why not?
11 A I think it was better to define what I did
12 for the majority of my time here. Political director
13 is a not very well-defined term. They have many
14 different job opportunities, depending on which state
15 you're in, which organization. I think it was much
16 more accurate to describe what I do in terms of the
17 technical part of my job.
18 Q Why didn't you put that -- why isn't that on
19 the Web site? Why doesn't the Web site list you as
20 the technical and political director?
21 A I can't recall now, at the time, what exactly
22 was the conversation that went through in listing
23 that.
24 Q Do you currently have any other work, other
25 than working for the Alaska Democratic Party and what

Page 24

1 you're doing for redistricting?
2 A No, not currently.
3 Q First as to Mr. Klinkner, I think your
4 affidavit says that you were employed by the City of
5 Petersburg. Do you recall seeing that in your
6 affidavit?
7 A Yes.
8 Q Okay. How much are they paying you?
9 A That hadn't been directly decided yet.
10 Q What does that mean?
11 A It means that this payment hasn't been
12 discussed yet.
13 Q Okay. So they have not offered to pay you
14 any money for your testimony, or they haven't employed
15 you; you're volunteering. Is that what I'm hearing?
16 A I am working with Mr. Walleri, and in part of
17 that, I have contacted and worked for Mr. Klinkner.
18 Q So you contacted Mr. Klinkner and offered to
19 assist him?
20 A I'm just trying to remember at the moment
21 exactly who contacted who.
22 Q Take your time.
23 A I really cannot recall at the moment whether
24 or not Mr. Walleri spoke with Mr. Klinkner first.
25 Q Okay. So it might have been, as far as you

Page 25

1 recollect, that Mr. Walleri and Mr. Klinkner had a
2 conversation, and Mr. Walleri suggested that
3 Mr. Klinkner actually contact you. It might have
4 happened that way?
5 A I don't believe Mr. Walleri asked
6 Mr. Klinkner to contact me. I don't know. I don't
7 know if that was a conversation between them. I do
8 remember coming to this office and asking them what
9 they knew about the RIGHTS plan and what they knew
10 about prior work I had done.
11 Q And you asked that of whom? Mr. Klinkner?
12 A Mr. Klinkner and of an assistant to
13 Mr. Klinkner, Holly Wells.
14 Q Mr. Klinkner's associate?
15 A Yeah.
16 Q So you've had conversations with her as well?
17 A Yes.
18 Q When was it that these contacts started, when
19 you first had your contact with either Mr. Klinkner or
20 Ms. Wells regarding the potential of you being,
21 quote/unquote, employed by them?
22 A At this moment I can't give you a definitive
23 date.
24 Q Six months ago, three months ago, two weeks
25 ago?

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1 A It was after learning that Petersburg was
2 going to be involved in the lawsuit.
3 It's been very, very hectic through this last
4 period of time. I think six months would be
5 overshooting the amount of time. It definitely would
6 have been less than six months.

7 Q Petersburg filed suit on July 13th, I
8 believe.

9 If I've misstated that, Counsel, please
10 correct me. I think that was that lawsuits were due.
11 You might have filed a day earlier.

12 So I'm assuming it was after July that this
13 contact started?

14 A Yes.

15 Q So was it in August, September? Any way you
16 can narrow it down?

17 A At this point, no. Very, very busy, a lot of
18 these days and weeks run together.

19 Q You've been very, very busy doing what?

20 A Things on a personal side, I was looking to
21 buy a house. On the work side, it was also pretty
22 busy.

23 Q And by work, that would be your work as the
24 technical and political director of the Alaska
25 Democratic Party?

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1 on a certain scheduled time. As you can imagine, work
2 flow increases and decreases on a cycle. So during
3 periods of time in which that cycle is not close to
4 elections, the amount of time that's spent on Party
5 work decreases.

6 Q You're not a lawyer, but you don't get paid
7 overtime. You're an exempt employee for the Alaska
8 Democratic Party?

9 A Yes.

10 Q They pay you only a salary?

11 A Yes.

12 Q And you have drawn a salary from the Alaska
13 Democratic Party from February 10th, 2010, all the way
14 until we sit here today?

15 A Yes.

16 Q You're sitting here today in this deposition,
17 and the Alaska Democratic Party is not requiring you
18 to take leave, is it?

19 A Yes. That would be true.

20 Q And they're not deducting from your pay in
21 any manner. That's true too, isn't it?

22 A Yes.

23 Q In fact, they're encouraging you in your
24 participation as a witness in this lawsuit, aren't
25 they?

Page 27

1 A Yes.

2 Q And you've also -- and I'm not going to ask
3 you substantively. But you have been retained by
4 Mr. Walleri. Do you remember when that was?

5 A When what, exactly? Sorry.

6 Q When you were retained by Mr. Walleri to
7 serve as an expert witness in his case.

8 A I cannot recall the exact date, no.

9 Q Was it before or after he filed suit on
10 July 13th?

11 A It was after.

12 Q So can you help me understand, then? Well,
13 before I move on: How much is Mr. Walleri paying you
14 for your expert testimony?

15 A We are keeping a time sheet of hours, and on
16 that time sheet is also time that I've spent doing
17 things for Klinkner.

18 Q All right. You're doing a time sheet of
19 hours, but what's the hourly rate he's paying you?

20 A I've put it at \$50 an hour.

21 Q And this is work you're doing after hours
22 from your job as the technical and political director
23 of the Alaska Democratic Party?

24 A A lot of work has been done after hours. We
25 don't keep a -- work done for the Party is not always

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1 A What do you mean by "encouragement"?

2 Q They know you're doing it, first of all,
3 don't they?

4 A Yes.

5 Q And you've talked to other people in -- let
6 me ask you: Who's your boss?

7 A My boss at this moment would be Kay Brown.

8 Q Okay. She's the executive director of the
9 Alaska Democratic Party?

10 A Yes.

11 Q And she took over from Deborah Williams?

12 A Yes.

13 Q So when you were first hired in February of
14 2010, Deborah Williams was your boss?

15 A Yes.

16 Q So Kay Brown knows that you're testifying as
17 a witness both for Mr. Walleri and Mr. Klinkner?

18 A Yes.

19 Q And they have encouraged you to do that,
20 haven't they?

21 A What do you mean by "encouragement"?

22 Q They're assisting you in your efforts?

23 A I would not use the phrase "encouragement."
24 They know that I am here doing this work. It was
25 never asked that I do this work by them.

<p style="text-align: right;">Page 30</p> <p>1 Q And so they're aware of it, and they're not 2 deducting your pay and they're not requiring you to 3 take any leave in order to do this work on the 4 redistricting case. That's a fair statement, isn't 5 it? 6 A Yes. 7 (Exhibit B marked.) 8 BY MR. WHITE: 9 Q Leonard, I've handed you what has been marked 10 as the Redistricting Board's Exhibit B, which is pages 11 from the Web site of the Alaska Democratic Party. 12 Page 1 lists Party staff, and you're listed on the Web 13 site of the Alaska Democratic Party, Leonard Lawson, 14 technological and political director? 15 A Yes. 16 Q And it indicates here that your first 17 political campaign was a volunteer knocking on doors 18 for Gore in 2000? 19 A Yes. 20 Q And you've worked in three states and for 21 campaigns at every level, from county register of 22 deeds, which you told us about, to Hillary Clinton's 23 presidential campaign. Is that right? 24 A Yes. 25 Q And then it says: At the beginning of 2010,</p>	<p style="text-align: right;">Page 32</p> <p>1 A Yes. 2 Q What is the Alaska Alliance for Reproductive 3 Justice? 4 A As nonprofit group dealing with reproductive 5 issues. 6 Q It's a group of which you are a member? 7 A No. 8 Q Were you ever employed by them? 9 A No. 10 Q You've never been an officer or director of 11 that group either, have you? 12 A No. 13 Q In fact, as we sit here today, that group 14 doesn't exist, does it? They have been involuntarily 15 dissolved as a corporation? 16 A I wouldn't know anything about that. 17 MR. WHITE: Let's go ahead and mark the next 18 exhibit. 19 (Exhibit C marked.) 20 BY MR. WHITE: 21 Q Leonard, I've handed you some excerpts from 22 the Alaska Redistricting Board transcripts, which are 23 part of the board record. And for the record, they 24 would be found in the board record at 36 -- I guess I 25 should do the full thing -- ARB0003625 through 3636.</p>
<p style="text-align: right;">Page 31</p> <p>1 Leonard returned to Alaska as the party's full-time 2 voter file manager, et cetera, et cetera. 3 You see that there, right? 4 A Yes. 5 Q And that's what the Alaska Democratic Party 6 represents on its Web site to people who want to find 7 out about the Alaska Democratic Party. They go to 8 this page, that's what it says? 9 A Yes. 10 Q Now, you, over the course of, at least I 11 know, March, I think the first time I met you was in 12 March, you were involved in the redistricting process 13 fairly extensively. Is that a fair statement? 14 A Yes. 15 Q You testified before the board a number of 16 times? 17 A Yes. 18 Q You actually drew a number of different plans 19 that were presented to the board? 20 A Yes. 21 Q When you first came to the board, I'm a 22 little confused, because you said, when you first 23 came -- I think it was on March 16th -- that you were 24 representing the Alaska Alliance for Reproductive 25 Justice, didn't you?</p>	<p style="text-align: right;">Page 33</p> <p>1 And I'd ask you to turn to, it would be page 2 46 at the top, it would have a board record number of 3 3632. 4 Are we on the same page? 5 A Page 46 at the top? 6 Q Yep. 7 And if you look down on line 25, it says 8 "Mr. Lawson"? 9 A Yes. 10 Q It says: "My name is Leonard Lawson, and I'm 11 here representing the Alliance for Reproductive 12 Justice." 13 You see that there, right? 14 A Yes. 15 Q Okay. And in what way were you representing 16 the Alliance for Reproductive Justice on March 16th, 17 2011? 18 A We had discussed earlier, in about December 19 of 2010, about the Alliance for Reproductive Justice's 20 interest in how redistricting was going to play out. 21 I was there originally to help the executive director 22 for the Alliance for Reproductive Justice, Geran Tarr, 23 in the testimony. Unfortunately, she couldn't be 24 there. 25 Q And on March 16th of 2011 you were employed</p>

<p style="text-align: right;">Page 34</p> <p>1 by the Alaska Democratic Party in your current 2 position? 3 A Yes. 4 Q So how was it that you came to be involved 5 with the Alliance for Reproductive Justice? 6 A They were looking to see how redistricting 7 might affect them. They needed technology skills in 8 understanding what was involved in redistricting. I 9 was there in part to fulfill that need. 10 Q And how was it that in December of 2010 they 11 knew that you had any skills or knowledge about 12 redistricting? 13 A In December of 2010, Garen Tarr has been 14 involved with the Democratic Party, and that's how I 15 knew her. 16 Q I hear from your response, then, that you had 17 been involved as an employee of the Democratic Party 18 in getting up to speed or learning about 19 redistricting. Is that what I heard you say? 20 A Can you rephrase that question for me? 21 Q Sure. That might have been a pretty terrible 22 question, actually. 23 Let me ask you this: In December of 2010, 24 you say this Ms. Tarr approached you and said, hey, 25 the Alliance for Reproductive Justice is interested in</p>	<p style="text-align: right;">Page 36</p> <p>1 A There was some of both. 2 Q Okay. So they paid for some in advance, and 3 then you had some expenses and submitted it to them? 4 A Yes. 5 Q And that was the conference that was held 6 just outside of Washington, D.C., in Maryland? 7 A It was held at National Harbor. I believe 8 that's the Maryland side. 9 Q I thought I remember seeing you there. 10 You also took some training in the software. 11 When did you take that training? 12 A The training I took in software, this 13 training occurred -- and a lot of these dates blend 14 together when you have a busy schedule -- I believe it 15 was sometime around August. 16 Q Of 2011? 17 A Yes. 18 Q So after the plan had already been drafted 19 and you submitted all the six plans that you say you 20 drafted. You mean 2010, don't you? 21 A No. I mean 2011. 22 Q So you had no training in Maptitude until 23 after the board's plan had already been drafted? 24 A Yes. 25 Q So all the plans that you produced, and we'll</p>
<p style="text-align: right;">Page 35</p> <p>1 redistricting. 2 What I'm wanting to know is how it is that 3 she knew you had any knowledge or interest in that. 4 A When you work primarily in technology, when 5 people have technology questions, they ask it of you 6 lots of times. I get technology questions asked about 7 printers all the time, from people that have no 8 knowledge of me as a Democrat, but just know that I 9 work with technology. 10 Q You're saying it was technology. Prior to 11 December of 2010, had you had any training in 12 redistricting? 13 A Nothing that was specifically for 14 redistricting. 15 Q I know at some point in time you list on, I 16 think either your report or your resume, that you went 17 to one of the redistricting conferences put on by the 18 Conference of State Legislatures, the NCSL, whatever 19 it is. 20 A Yes. 21 Q When did you go there? 22 A That occurred in January of 2011. 23 Q And who paid for you to go there? 24 A The Alliance for Reproductive Justice. 25 Q Reimbursed you or flat out paid for it?</p>	<p style="text-align: right;">Page 37</p> <p>1 talk about those in a bit, were done without any 2 formal training? 3 A I don't think that would be accurate. 4 Q Okay. What other training did you have? 5 A I also went to the UAA University and took a 6 class on GIS software. 7 Q But you never finished that class, did you? 8 A No. 9 Q In fact, do you remember having a 10 conversation with Mr. Bickford sometime in the last 11 two to three weeks, where you went to the board or 12 went to him and asked that you be provided with all 13 the materials that you had submitted over the course 14 of redistricting, because you were going to submit it 15 to UAA in the hopes of getting credit for that GIS 16 class? 17 A Yes. I still do plan on doing that. 18 Q You haven't done it yet, though, have you? 19 A No. 20 Q You did that after you were retained by 21 Mr. Walleri, right? 22 A I can't recall the exact dates. The actual 23 information that I asked for from the board is for 24 academic purpose. 25 Q And in that same meeting or in that same</p>

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1 conversation you had with Mr. Taylor, he asked you
2 whether you were going to be involved in the
3 redistricting process, and you told him no?

4 **A No. Mr. Taylor asked whether or not the**
5 **Party was going to be involved in the redistricting**
6 **process.**

7 Q The Party is involved in the redistricting
8 process, isn't it?

9 **A The Party has voted, and has not voted to**
10 **become a litigant in redistricting.**

11 Q But it does have a redistricting committee,
12 doesn't it?

13 **A The Party does have a redistricting**
14 **committee.**

15 Q And it has a standing redistricting
16 committee, as far as I understand.

17 **A I'm not sure I would call that a standing**
18 **committee.**

19 Q Looking at Exhibit C there, you testified
20 that you were involved with the representatives for
21 the Alliance for Reproductive Justice, and you said:
22 "And so with that, we're thinking about putting forth
23 a plan to the board," right?

24 **A Yes.**

25 Q But they never did put forth any plan to the

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1 board, did they?

2 **A Yes. The Alliance for Reproductive Justice**
3 **became a part of the RIGHTS Coalition.**

4 Q The Alliance for Reproductive Justice became
5 a part of the RIGHTS Coalition?

6 **A Yes.**

7 Q So your involvement throughout the process
8 that we're aware of -- strike that question.

9 When did they become a part of the RIGHTS
10 Coalition?

11 **A I can honestly not recall the date.**

12 Q And the RIGHTS Coalition was essentially the
13 Democratic Party, wasn't it?

14 **A No.**

15 Q The chairman of the RIGHTS Coalition was Jake
16 Metcalfe. Is that right?

17 **A Yes.**

18 Q And he was also the chairman of the Alaska
19 Democratic Party Redistricting Commission, true?

20 **A Yes.**

21 Q Deborah Williams was a member of the RIGHTS
22 Coalition. Is that right?

23 **A Yes.**

24 Q Does she have a formal title with that?

25 **A No.**

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1 Q And she was the executive director of the
2 Alaska Democratic Party until she, I believe, got
3 married and moved away, and then Kay Brown became the
4 executive director, right?

5 **A Yes.**

6 Q And you, the technology and political
7 director for the Alaska Democratic Party, participated
8 as a member of the RIGHTS Coalition throughout the
9 process?

10 **A Yes.**

11 Q You presented plans to the board as part of
12 the RIGHTS Coalition team?

13 **A Yes.**

14 Q So were you paid for your work by the
15 Alliance for Reproductive Justice?

16 **A Not with salary.**

17 Q How else were you paid, then, if not by
18 salary?

19 **A It represented a wonderful opportunity to**
20 **gain knowledge, that they paid in terms of allowing me**
21 **to get additional technology training, which I thought**
22 **would be beneficial to myself.**

23 Q And you were encouraged to do so by your
24 employer, the Alaska Democratic Party?

25 **A I think defining the word "encouraged" would**

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1 **be necessary there.**

2 Q How do you define it?

3 **A If you're asking whether or not the Alaska**
4 **Democratic Party asked me to do this, they did not.**

5 Q By "do this," you mean -- what are you
6 talking about?

7 **A Be involved in redistricting.**

8 Q And so you did that solely for the purpose
9 as -- I'm just trying to figure out, Leonard, what
10 your actual status was when you were coming to the
11 board, presenting plans, giving testimony. Because on
12 the one hand, you say I'm in regard with the Alliance
13 for Reproductive Justice; and other the other hand,
14 you testify --

15 **MR. HENDERSON:** I'm going to object to that,
16 based upon, that's not a question, it's a compound
17 question, it's argumentative, et cetera, et cetera.

18 (Exhibit D marked.)

19 **BY MR. WHITE:**

20 Q Leonard, I've handed you an e-mail that's
21 dated March 18th, 2011. This is from yourself to
22 Mr. Bickford and Mr. Miller. You say: "I am working
23 with the Alliance of Reproductive Justice on
24 redistricting, and I am authorized to represent them
25 in that manner."

<p style="text-align: right;">Page 42</p> <p>1 That's what you told him on that day, right?</p> <p>2 A Yes.</p> <p>3 Q And that's in response to him telling you</p> <p>4 that he was a bit confused, because you introduced</p> <p>5 yourself as being affiliated with the Alliance for</p> <p>6 Reproductive Justice, but "I understand that you serve</p> <p>7 as the political/technological director for the Alaska</p> <p>8 Democratic Party"?</p> <p>9 A Yes.</p> <p>10 Q And you told him: "I am only with the</p> <p>11 Alliance for Reproductive Justice"?</p> <p>12 A Yes.</p> <p>13 Q That was your only involvement in</p> <p>14 redistricting?</p> <p>15 A Yes.</p> <p>16 Q And during time that you were doing this --</p> <p>17 and I think you produced a number of plans, right? I</p> <p>18 think it's at least six full statewide plans?</p> <p>19 A Yes. That sounds about right.</p> <p>20 Q And I'm imagining that to get to six full</p> <p>21 statewide plans for presentation, there had to have</p> <p>22 been innumerable iterations of those various plans.</p> <p>23 Is that a fair statement?</p> <p>24 A Yes.</p> <p>25 Q And you were spending long hours on this</p>	<p style="text-align: right;">Page 44</p> <p>1 Mr. Metcalfe gives you a tip of the cap there, doesn't</p> <p>2 he, starting at 11 through 13? "And one final</p> <p>3 comment. Leonard Lawson is sitting to my right, and</p> <p>4 he put in significant time and detail into these maps,</p> <p>5 and I just want to pass on my appreciation for his</p> <p>6 work."</p> <p>7 MR. WALLERI: Which page is that on?</p> <p>8 MR. WHITE: I'm sorry. Page 84. The bottom</p> <p>9 Bates number -- and just for the record, the actual</p> <p>10 whole document is ARB0012240 through ARB12245.</p> <p>11 BY MR. WHITE:</p> <p>12 Q So between the time that you testified before</p> <p>13 the board on March 13th, and the time that you</p> <p>14 testified before the board on -- I'm not sure if you</p> <p>15 testified that day or not, actually, but you appeared</p> <p>16 before the board as part of the presentation on</p> <p>17 March 31st, did your role in the redistricting process</p> <p>18 change? Are you now associated with the Right</p> <p>19 Coalition?</p> <p>20 A Well, there are two questions there, my role</p> <p>21 and what is my association.</p> <p>22 Q Well, first let's talk about your</p> <p>23 association. Did it change between March 13th and</p> <p>24 March 31st?</p> <p>25 A I guess you can see that there was a new</p>
<p style="text-align: right;">Page 43</p> <p>1 process. Isn't that fair to say?</p> <p>2 A Yes.</p> <p>3 Q And you were working on it during the day, at</p> <p>4 your day job in your office at the Alaska Democratic</p> <p>5 Party, weren't you?</p> <p>6 A Yes, I did some work there.</p> <p>7 Q And your employer knew you were doing that,</p> <p>8 right?</p> <p>9 A Yes.</p> <p>10 (Exhibit E marked.)</p> <p>11 BY MR. WHITE:</p> <p>12 Q Mr. Lawson, I've handed you what has been</p> <p>13 marked as Exhibit E, which are excerpts from the</p> <p>14 transcript of the board's public hearing on March 31st</p> <p>15 of 2011. And you were present on that day, as part of</p> <p>16 the RIGHTS Coalition team that presented its first two</p> <p>17 plans to the board, weren't you?</p> <p>18 A Yes.</p> <p>19 Q And you participated in the presentation with</p> <p>20 Jake Metcalfe?</p> <p>21 A Yes.</p> <p>22 Q And Deborah Williams?</p> <p>23 A Yes.</p> <p>24 Q And I think if you look at page 84 of the</p> <p>25 actual transcript, which would be ARB No. 12243,</p>	<p style="text-align: right;">Page 45</p> <p>1 association added, of the RIGHTS Coalition, which did</p> <p>2 not exist prior.</p> <p>3 Q When was the RIGHTS Coalition formed?</p> <p>4 A I would have to look back at other notes. I</p> <p>5 can't recall the exact date.</p> <p>6 Q What notes would you have that might refresh</p> <p>7 your recollection?</p> <p>8 A I'd have to search for a lot of stuff.</p> <p>9 Q What stuff are you talking about, Leonard?</p> <p>10 A I would say I would look back through my</p> <p>11 calendar, but I keep my calendar on my iPhone, and my</p> <p>12 iPhone, unfortunately, died a couple of days ago. So</p> <p>13 I really would have to think about what would have the</p> <p>14 exact date on it.</p> <p>15 Q Do you recall whether it was formed before or</p> <p>16 after March 13th of 2011?</p> <p>17 A March 13th, 2011, that was the date of this</p> <p>18 e-mail?</p> <p>19 Q No. That's March 18th. March 13th was when</p> <p>20 you first came to the board and said "I'm here on</p> <p>21 behalf of the Alaska Alliance for Reproductive</p> <p>22 Justice."</p> <p>23 A It was formed after March 13th.</p> <p>24 Q So it had to have been formed between March</p> <p>25 13th and March 31st, because on March 31st the RIGHTS</p>

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1 Coalition presented two plans to the board, didn't
2 they?

3 A Yes.

4 Q Okay. And who formed the RIGHTS Coalition?

5 A **The RIGHTS Coalition was formed as a way of
6 not duplicating resources, duplicating material.**

7 Q What does that mean?

8 A **The work that the Alliance for Reproductive
9 Justice started in December of 2010, there was a
10 Democratic Party committee that was not chaired until
11 after a central committee meeting in Juneau in early
12 2011. So at one point, the Alaska Democratic Party
13 was considering doing its own redistricting plans and
14 to try to push those forward.**

15 Q Okay. That's a fine answer. I don't think
16 you answered my question, but I'll try to ask it
17 again, if I can.

18 So who formed the RIGHTS Coalition?

19 A **That would be a more appropriate question for
20 Geran Tarr.**

21 Q It might be a more appropriate question for
22 her. If you don't know, simply say that, Leonard.
23 But I would appreciate an answer to my question. Do
24 you know who formed the RIGHTS Coalition?

25 A No.

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1 Q Okay. How did you become involved with it,
2 then?

3 A **Working with Geran Tarr, the organization was
4 now going to become part of a bigger group of people
5 that supported the idea.**

6 Q And who else were these people that were
7 supporting it besides the Alliance for Reproductive
8 Justice?

9 A **I know that the Democratic Party endorsed it.
10 There was a veterans group out of Juneau that endorsed
11 it, I believe. All of the endorsements to it, I would
12 not know all of them. My main focus has been on the
13 technology part of it.**

14 Q So you never went to any RIGHTS Coalition
15 meetings?

16 A **There was never a meeting of everyone in the
17 same room together. What I would do would be to have
18 a plan, I would present the plan to the Alaska
19 Democratic Party's redistricting committee. They
20 would say either yes or no. I'd give the plan to
21 Geran, who would present it to hers.**

22 Q To her what?

23 A **I would guess board. I gave the plan to
24 Geran, who I thought was going to take it to their
25 board and get it cleared.**

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1 Q Okay. You're aware that this Geran Tarr I
2 don't believe ever testified at all, ever, before the
3 board, right?

4 A No.

5 Q You don't know that?

6 A **I am aware and I believe it's accurate to say
7 Geran Tarr never testified before the board.**

8 Q Except when we were out town, you were pretty
9 much at every board meeting, weren't you, Leonard?

10 A **I made a number of board meetings, yes.**

11 Q I'd say you made over 80 percent, wouldn't
12 you?

13 A **That seems about accurate, yes.**

14 Q And you actually went out of town and went to
15 the Fairbanks public hearing, didn't you?

16 A Yes.

17 Q And if I recall correctly, Palmer, Wasilla?

18 A **I went to the meeting in Palmer.**

19 Q Okay. So the Alaska Democratic Party, that's
20 who you were giving your plans to at first. You would
21 come up with an idea, you would present it to the
22 redistricting committee of the Alaska Democratic
23 Party?

24 A **They were not, I would say, the first. The
25 plans I submitted, yes, went out to the different**

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1 **members of the RIGHTS Coalition, to get them cleared
2 to something that they could support.**

3 Q You say the other members. So you told me
4 the Alaska Democratic Party, you told me the Alliance
5 for Reproductive Justice, some veterans group that I
6 don't think you specified. Anybody else?

7 A **A number of people involved with the
8 different groups.**

9 Q So, individuals?

10 A **A number of individuals that were part of the
11 Democratic Party Redistricting Committee were also
12 affiliated with those groups, so they would be the
13 ones to take the plans to them.**

14 Q By "those groups," do you mean any other than
15 the groups you've identified for me here today?

16 A **I would imagine that all of the groups that
17 were listed as part of the RIGHTS Coalition got a copy
18 of the plans. My main job was technology. I'm not
19 the coalition builder as the other people were.**

20 Q You were in the back drawing plans most the
21 time?

22 A **It took a lot of time.**

23 Q You will agree with me, will you not, though,
24 Leonard, that through the entire redistricting
25 process, the only people who came before the board as

<p style="text-align: right;">Page 50</p> <p>1 formal representatives of the RIGHTS Coalition were 2 yourself, Mr. Metcalfe, and Ms. Williams? 3 A Yes, I believe that's accurate. 4 Q I don't remember if Kay Brown actually 5 switched roles or not. She was involved with another 6 group, the AFFR, right? 7 A Yes. 8 Q I think she was involved with them prior to 9 becoming the executive director of the Alaska 10 Democratic Party, but I don't know. Do you know, did 11 she formally switch roles and become a member of the 12 RIGHTS Coalition? 13 A I don't believe she ever became a member of 14 the RIGHTS Coalition. 15 Q And so over this process, Leonard, how many 16 plans would you say that you drew? 17 A That would very much depend on your 18 definition of plans and what one iteration from 19 another one means. 20 Q I mean, countless. Would that be hard to 21 say? I suppose not countless, but hard to define? 22 A It would be hard to define, yes. 23 Q Now, you agree with me, do you not, that the 24 RIGHTS Coalition actually submitted six plans, full 25 statewide plans, to the board?</p>	<p style="text-align: right;">Page 52</p> <p>1 And if you look starting at page 47 there, 2 Leonard, page 47 and 48 through 49 has some of the 3 testimony that you gave on that day. You recall 4 testifying on April 18th of 2011, don't you? 5 A Yes. 6 Q All right. And in there you're talking about 7 what you've been doing over the course of the past 8 time, it looks like. And looking at page 47, line -- 9 starting with line 3, you say: "I've had some work 10 trying to draw some of these maps. And I do believe 11 that one of the first things I should do here is 12 commend the board for the work that it's undertaken 13 here and some of the tough decisions that it had to 14 make to try to comply with the Voting Rights Act." 15 You see that testimony there, right? 16 A Yes. 17 Q And you were honestly saying that when you 18 testified on April 18th, right? 19 A Yes. 20 Q Having drawn the plans, you knew how 21 difficult it was to read a plan that would not be 22 retrogressive, don't you? 23 A I'm aware that that's very difficult. 24 Q If you look at page 48, it looks like that as 25 of April 18th, 2011, you're actually speaking on</p>
<p style="text-align: right;">Page 51</p> <p>1 A Yes. 2 Q And each and every one of those statewide 3 plans that were submitted to the board you drew? 4 A Yes. 5 Q And did you ever draw any full statewide 6 plans that were presented to any of the other members 7 of the RIGHTS Coalition, that were not presented to 8 the board? 9 A I drew a plan that would later -- I did draw 10 a plan towards the end of the redistricting process, 11 that was not presented to the board. And there was 12 also a plan that was drawn before we had testimony 13 from Dr. Lisa Handley, that was also not presented. 14 MR. WALLERI: Do you mind if we take a short 15 break? 16 MR. WHITE: Sure. Not a problem. Let's go 17 off record. 18 (Recess.) 19 (Exhibit F marked.) 20 MR. WHITE: Back on record. 21 BY MR. WHITE: 22 Q I handed you what has been marked as 23 Exhibit F, which is a one-page document which consists 24 of transcripts from the April 18th, 2011, public 25 hearing. It is Board Record No. 00012193.</p>	<p style="text-align: right;">Page 53</p> <p>1 behalf of the RIGHTS Coalition. If you look at line 2 16 on page 48, you say, quote: And to speak for a 3 moment, we at the RIGHTS Coalition have been listening 4 to the feedback that we've gotten from the board. 5 A Yes. 6 Q So at least as of April 18th, 2011, you were 7 an official representative of the RIGHTS Coalition? 8 A Yes. 9 Q And during that time, this was a volunteer 10 position with the RIGHTS Coalition? 11 A Yes. 12 Q You were still being paid by the Alaska 13 Democratic Party? 14 A Yes. 15 Q The RIGHTS Coalition didn't pay you anything? 16 A The things that I got from this, I was 17 getting, I considered, education. 18 Q Let me ask you more clearly: They didn't 19 give you any money? 20 A No. 21 Q When you went out and traveled like to 22 Fairbanks, who paid for that? 23 A The Alliance for Reproductive Justice would 24 reimburse me. 25 Q How would that happen? How would you</p>

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1 actually get reimbursed?
 2 **A I would compile the expenses and send it to**
 3 **Garen Tarr, and Garen Tarr would go over them and give**
 4 **me a check back.**
 5 Q Okay. So you should have all of those
 6 records that show that, right?
 7 **A I can't recall at this time whether or not I**
 8 **have all of those records.**
 9 Q Where would they be?
 10 **A Geran Tarr would have when the checks were**
 11 **written and all those things.**
 12 Q You don't know that the Alliance for
 13 Reproductive Justice has been dissolved, it's no
 14 longer in existence?
 15 **MR. WALLERI:** Asked and answered.
 16 **BY MR. WHITE:**
 17 Q Go ahead and answer.
 18 **A I do not know the current status of the**
 19 **Alliance for Reproductive Justice.**
 20 Q So you haven't had anything to do with them
 21 since when?
 22 **A That is a tough question to answer.**
 23 Q Do your best.
 24 **A I think it's hard to say have nothing to do**
 25 **with them. Geran Tarr, their executive director, I do**

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1 meet and speak with, but I'm not sure if all of those
 2 meetings could be considered part of the Alliance for
 3 Reproductive Justice.
 4 Q What would they be, then?
 5 **A Some are as a friend, some are as she has**
 6 **done volunteer work with the Party before.**
 7 Q Let me ask you this: Do you know how the
 8 Alliance for Reproductive Justice was funded?
 9 **A No, I don't know about all of the funding.**
 10 Q So you don't know whether or not the Alaska
 11 Democratic Party made contributions to the Alliance
 12 for Reproductive Justice?
 13 **A I think the Alaska Democratic Party has made**
 14 **contributions to the Alliance for Reproductive**
 15 **Justice.**
 16 Q The software, the Maptitude software that you
 17 were using during this whole process, who bought that?
 18 **A The Alliance for Reproductive Justice.**
 19 Q And who owns it now?
 20 **A It is part of a -- it's on a laptop.**
 21 Q Whose laptop?
 22 **A It's on a laptop that I have.**
 23 Q And how was it that it was actually
 24 purchased? Who purchased it?
 25 **A The Alliance for Reproductive Justice.**

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1 Q Who actually physically said, "I want to buy
 2 this software"? Not who paid for it, but who actually
 3 got the software and downloaded it?
 4 **A I purchased it.**
 5 Q And how did you buy it? Did you use a credit
 6 card, use a check? Did the Alliance give you a check
 7 and then you went out and got it?
 8 **A I used a credit card.**
 9 Q And when did you do that; do you remember?
 10 **A I cannot recall the exact date. It happened**
 11 **during early -- wow, I can't even for certain say**
 12 **whether or not it happened in December of 2010 or**
 13 **whether or not it happened in early 2011.**
 14 Q And so if you incurred any expenses or had
 15 any travel costs or any of that type of stuff during
 16 the whole redistricting process, that was all
 17 reimbursed to you or paid to you by the Alliance for
 18 Reproductive Justice?
 19 **A Yes.**
 20 Q And did they pay you by check?
 21 **A Yes.**
 22 Q Do you remember who their bank was?
 23 **A No, I do not remember who their bank was.**
 24 Q But you have a check, and that check would
 25 have been cashed into your bank account?

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1 **A Yes.**
 2 Q And you actually remember, recall getting a
 3 physical check?
 4 **A Yes.**
 5 Q And on there it said Alliance for
 6 Reproductive Justice?
 7 **A To be honest, I don't remember looking at**
 8 **that line. I gathered expenses, presented them to**
 9 **Geran, and would get a check.**
 10 Q So it could have come out of some other bank
 11 account, you just don't know?
 12 **A Yes, it is possible.**
 13 Q It's possible that you were reimbursed by the
 14 Alaska Democratic Party?
 15 **A I don't think that is possible.**
 16 Q How come?
 17 **A Because the methods that we go through to do**
 18 **a check are different than the methods that were went**
 19 **through with Geran Tarr. She would not be able to**
 20 **write a check or give me a check from the Alaska**
 21 **Democratic Party.**
 22 Q And you recall it was her that actually
 23 signed the checks?
 24 **A Yes.**
 25 Q So I think we're up to April now. You

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1 testified in front of the board, I think the last time
2 we talked about was April 18th. And after that time,
3 you testified before the board a couple more times,
4 didn't you?
5 **A Yes.**
6 **Q** I think on May 6th you were part of a
7 presentation of two more RIGHTS plans. Do you recall
8 doing that?
9 **A Yes, I recall testifying around that time.**
10 **Q** And those maps that were presented by the
11 RIGHTS Coalition were what you draw?
12 **A Yes.**
13 **Q** And you participated in the presentation?
14 **A Yes.**
15 **Q** And according to the transcript, you and I
16 actually had a dialogue on some questions about the
17 map and the plan?
18 **A Yes.**
19 **Q** Would it be fair to say that you were the
20 most knowledgeable person in the RIGHTS Coalition about
21 the plans that you drew?
22 **A Yes.**
23 **Q** And then again on May 24th, do you recall
24 testifying at that time regarding plans? That the
25 board gave people, who had presented plans before, the

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1 opportunity to present another plan, given the Voting
2 Rights Act analysis it had gotten from Dr. Handley?
3 **A Yes.**
4 **Q** And do you remember what the name was of the
5 plan that you presented on May 24th, 2011?
6 **A We had several names for it. I'm trying to**
7 **remember exactly what the name was that got into the**
8 **record.**
9 **Q** Let me ask you this, Leonard. You mentioned
10 earlier in your testimony, I think it was something
11 along the lines of that there was a list of people who
12 are actually members of the RIGHTS Coalition. Did you
13 present that information to the board?
14 **A To the Redistricting Board?**
15 **Q Yes.**
16 **A I think that information was presented -- as**
17 **far as telling the board who were members of the**
18 **RIGHTS Coalition, I think that might have been spoken**
19 **by Jake Metcalfe at some point.**
20 **Q** Okay. So at one of the board hearings that
21 were transcribed?
22 **A I believe. I can't be certain, though.**
23 **Q** So do you have a specific recollection that
24 Mr. Metcalfe -- strike that.
25 Did you, in the testimony that you gave, ever

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1 inform the board who were the members of the RIGHTS
2 Coalition?
3 **A I do not believe, in any of the testimony I**
4 **gave, I named all of the members of the RIGHTS**
5 **Coalition.**
6 **Q** And do you recall any -- did you name any
7 members?
8 **A I do not recall ever naming any members.**
9 **Q** Did you at any point in time tell the board
10 that the Alliance for Reproductive Justice was a
11 member of the RIGHTS Coalition?
12 **A I don't believe I ever explicitly said that,**
13 **but I can't be certain.**
14 **(Exhibits G and H marked.)**
15 **MR. WHITE:** G is the transcript, H is the
16 RIGHTS Coalition plan.
17 **BY MR. WHITE:**
18 **Q** Leonard, I've handed you, first of all, take
19 a look at the transcript, if you would, which is an
20 excerpt from the board's public hearing of May 24th,
21 2011. For the record, it is ARB00004222 through 4241.
22 And on the first page there, if you look at
23 line 20 through 23, Mr. Metcalfe, who's testifying,
24 says: "I'm a chair of the RIGHTS Coalition, with
25 Deborah Williams on my left and Leonard Lawson on my

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1 right, who are here to present today."
2 And you folks in fact presented a plan on
3 that day, didn't you?
4 **A Yes.**
5 **Q** And if you look at Exhibit H, that is in fact
6 a copy of the plan that you presented, is it not,
7 along with some interpretive material?
8 **MR. WALLERI:** Excuse me, Mike. We were
9 handed a four-page document and a map. Is this all
10 together as Exhibit H?
11 **MR. WHITE:** It is all together as Exhibit H,
12 that is correct. For the record, and I will state
13 that only plans that were adopted by the board were
14 made part of the administrative record, all other
15 plans were made available on the Web site, so this has
16 been downloadable from the Web site from the
17 beginning. If you look at the record, that's made
18 clear in there.
19 **MR. WALLERI:** Mike, I think that Mr. Lawson
20 is missing a copy of the map that was part of this
21 too.
22 **MR. BICKFORD:** You can have mine.
23 **BY MR. WHITE:**
24 **Q** It should be -- all right. Exhibit H should
25 be five pages.

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1 A Five, right.
 2 Q Is this the plan that was presented to the
 3 board on May 24th of 2011?
 4 A I believe it is.
 5 Q And if I recall, the presentation was
 6 actually made via your computer. You put it onto the
 7 projector and shot it over, you didn't actually have
 8 any hard copies. Do you remember that?
 9 A Yes. I believe so.
 10 Q And you were part of, if you look at the
 11 transcript, if you go to page 4226 on the bottom,
 12 which is actually page 41 of the transcript itself,
 13 and there, starting on line 14, Mr. Lawson, that's
 14 where you start your testimony.
 15 And if you peruse through the next number of
 16 pages, you will see that you're engaged in a
 17 discussion with the board, including myself and some
 18 of the other board members asking you questions on the
 19 plan.
 20 This plan that you presented, if you look at
 21 the map on Exhibit G, this was the plan that you
 22 presented, and, in your opinion, it complied with the
 23 Voting Rights Act?
 24 A I'm not an expert on the Voting Rights Act.
 25 Q But you, here in your materials, say that you

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1 think that it complies with the Voting Rights Act,
 2 right?
 3 You never presented a plan to the board that
 4 you thought would not pass muster with the Department
 5 of Justice, did you?
 6 A Well, that's an evolving question. And what
 7 I mean by that is, the very first plans that we
 8 presented might have had issues with the Department of
 9 Justice. Did I know that there would be issues with
 10 the Department of Justice at that time? I didn't have
 11 enough information, because it depended on what was
 12 possible.
 13 Q I appreciate that answer. My question wasn't
 14 all that clear. And in fact, I think you admitted in
 15 your testimony at some point in time that you had to
 16 go back to the drawing board, and that's why you had
 17 evolving plans over the course of the process, right?
 18 The first plan you presented I believe only had four
 19 effective districts and two influence districts,
 20 right?
 21 A The first plans that we presented, the terms
 22 "effective districts" and "influence districts"
 23 weren't there. The terms were "majority/minority
 24 districts."
 25 Q In this plan that you drafted, I just want to

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1 make sure I understand, House District 37, you split
 2 the Aleutian Chain in the plans you submitted to the
 3 board, right?
 4 A I do not believe that's a split in the
 5 Aleutians.
 6 Q House District 37 is in fact split, is it
 7 not? 38 goes halfway down and splits the Aleutian
 8 Chain and the bottom half is attached to 37, isn't it?
 9 A I think we actually have all of the Aleutian
 10 Chain defined by the islands that are in the Aleutian
 11 Chain in that district.
 12 Q 37 is not contiguous with us, though, is it?
 13 It's only contiguous by water?
 14 A Yes, it is contiguous by water.
 15 Q And you in fact admitted that in your
 16 testimony, didn't you? If you look at page 44, Board
 17 Record No. 4229, lines 9 through 13, you say: "This
 18 district is contiguous by water. If that is an issue,
 19 we can make this district also contiguous by land.
 20 But since most of the transportation here is by boat
 21 or by air, we thought being contiguous by water would
 22 be allowable by our State constitution."
 23 That's the plan that the RIGHTS Coalition
 24 presented, right?
 25 A Yes.

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1 Q And the RIGHTS Coalition had attorneys,
 2 didn't it?
 3 A Yes.
 4 Q And the attorneys were reviewing these plans
 5 as they were being drafted, weren't they?
 6 A Yes.
 7 (Exhibit I marked.)
 8 BY MR. WHITE:
 9 Q I've handing you now, Leonard, what has been
 10 marked as Exhibit I.
 11 MR. WALLERI: Just for a point of
 12 clarification: The maps are attached to Exhibit H?
 13 MR. WHITE: Yes.
 14 MR. WALLERI: Okay. Thanks.
 15 MR. WHITE: Yeah. It should be four pages,
 16 and the fifth page is the one statewide map.
 17 BY MR. WHITE:
 18 Q I'm handed you now, Leonard, what has been
 19 marked as Exhibit I, and this is your report on
 20 compactness that you provided to Mr. Walleri. I'm not
 21 going to ask you questions about the analysis you did
 22 on Fairbanks, because this relates only to the
 23 Petersburg case, but there's some background
 24 information here I want to talk to you about.
 25 In this report it says that: "I led a

<p style="text-align: right;">Page 66</p> <p>1 redistricting project by the Alliance for Reproductive 2 Justice that created and presented more than six 3 complete redistricting maps to the Alaska 4 Redistricting Board." 5 Do you see where I read that? 6 A Yes. 7 Q And I read that correctly, didn't I? 8 A Yes. 9 Q The Alliance for Reproductive Justice never 10 presented a single plan to the board, did it? 11 A It was one of the lead groups that was part 12 of the RIGHTS Coalition. 13 Q Every time you presented a plan as part of 14 the groups, you represented to the board that you were 15 part of the RIGHTS Coalition, did you not? 16 A Yes. 17 Q You never mentioned that you were leading a 18 redistricting project led by the Alliance for 19 Reproductive Justice? 20 A When I first gave testimony to the board, I 21 said the Alliance for Reproductive Justice. 22 Q May be presenting plans, right? 23 A Yes. 24 Q But then you never came back to the board 25 again and said: Hi, I'm from the Alliance for</p>	<p style="text-align: right;">Page 68</p> <p>1 A Sid McCausland is a resident of the Mat-Su 2 Valley. 3 Q And how is he involved? 4 A At one point in which Jake Metcalfe could not 5 present something before the board, he presented. 6 Q Okay. And Sid holds a position with whom? 7 A I honestly don't know if Sid has an official 8 position. 9 Q With anybody, huh? Was he a member of the 10 RIGHTS Coalition? 11 A Yes. He was suggested by Jake Metcalfe. 12 Q And so he was just a member, as an 13 individual, as far as you know, or did he have some 14 affiliation with one of these other members that 15 you've talked about? 16 A I think he's a registered Democrat, if that 17 makes him an affiliation with the Party. 18 Q No. I asked if he was a member of the RIGHTS 19 Coalition. I understand how you confuse the 20 Democratic Party and the RIGHTS Coalition, but wasn't 21 he a member of the RIGHTS Coalition? 22 A I'm sorry. I thought you asked if he was a 23 member of any other organization. 24 Q Oh, okay. If that's what I did, I'm sorry. 25 And you think he's a Democrat, right?</p>
<p style="text-align: right;">Page 67</p> <p>1 Reproductive Justice representing plans? 2 A No. At the point in time in which plans were 3 presented, we were part of the RIGHTS Coalition. 4 Q And by "we" who do you mean? 5 A The Alliance for Reproductive Justice. 6 Q So when you say here in this report that you 7 led a redistricting project by the Alliance for 8 Reproductive Justice, that process that you led was 9 what the board perceived as the RIGHTS Coalition plans 10 that would be presented over the course of several 11 months. Is that right? 12 A I'm sorry can you restate that question? 13 Q Sure. 14 You say here, you're talking about created 15 and presented more than six complete redistricting 16 maps to the Alaska Redistricting Board. You did that, 17 you drew more than six maps, and they were presented 18 to the board, correct? 19 A Yes. 20 Q And every time those were presented, the 21 people who participated in those presentations to the 22 board were Jake Metcalfe, Deborah Williams, and 23 yourself? 24 A I think you might be missing Sid McCausland. 25 Q Who's Sid McCausland?</p>	<p style="text-align: right;">Page 69</p> <p>1 A Yes. 2 Q Well, he's a member of the Alaska 3 Redistricting Committee, isn't he, the Alaska 4 Democratic Party Redistricting Committee? I 5 apologize. 6 A I believe he is. 7 Q All right. In your report here, you talk 8 about leading these projects. You say: "I have 9 attended the National Conference of State Legislatures 10 Redistricting Seminar, held over four days in 11 Washington, D.C." That's the one at Gray Harbor that 12 we talked about in January, right? 13 A Yes. 14 Q You say: I was trained on Maptitude software 15 by the software developers, Caliber Corporation, 16 during three days of training in Newton, 17 Massachusetts. 18 And you're telling me that that training 19 occurred in August of 2011? 20 A Yes, I believe that training occurred in 21 August. 22 Q So after the litigation in this case had 23 already started? 24 A Yes. 25 Q You went and took that training?</p>

<p style="text-align: right;">Page 70</p> <p>1 A Yes.</p> <p>2 Q And if I asked this, I apologize. Did the</p> <p>3 Alliance for Reproductive Justice pay for that?</p> <p>4 A Yes.</p> <p>5 (Exhibit J marked.)</p> <p>6 BY MR. WHITE:</p> <p>7 Q Mr. Lawson, I've handed you what has been</p> <p>8 marked as Exhibit J, which is a Certificate of</p> <p>9 Involuntary Dissolution/Revocation, which indicates</p> <p>10 that as of July 21st, 2011, the Alliance for</p> <p>11 Reproductive Justice ceased to exist.</p> <p>12 How could they pay for something --</p> <p>13 MR. WALLERI: Objection. Lack of foundation.</p> <p>14 BY MR. WHITE:</p> <p>15 Q Go ahead and answer the question.</p> <p>16 A What was the question?</p> <p>17 Q Sure.</p> <p>18 Look at the document in front of you. Does</p> <p>19 it say there in the third paragraph: "The corporation</p> <p>20 will cease to exist as of the date of this</p> <p>21 certificate, except as provided for by Alaska</p> <p>22 Statutes," and the date is July 21st, 2011, right?</p> <p>23 A Yes.</p> <p>24 Q And if you look at the paragraph above that,</p> <p>25 it says: "The corporation is resolved/revoked for</p>	<p style="text-align: right;">Page 72</p> <p>1 A The other training was database</p> <p>2 administration.</p> <p>3 Q And who was that training with?</p> <p>4 A A group called the New Organizing Institute.</p> <p>5 Q The training was for what, GIS-type stuff?</p> <p>6 A The training was for database use, good data</p> <p>7 practices.</p> <p>8 Q Just across the board, not related</p> <p>9 specifically to redistricting?</p> <p>10 A No, it was not related specifically to</p> <p>11 redistricting.</p> <p>12 Q The Maptitude training was. It was on the</p> <p>13 Maptitude software?</p> <p>14 A Yes, it was on Maptitude software.</p> <p>15 Q And if I'm understanding you correctly, you</p> <p>16 got the training after the board had adopted its final</p> <p>17 plan?</p> <p>18 A Yes.</p> <p>19 Q So all of the maps that you were drawing and</p> <p>20 submitted to the board prior to that time, you had</p> <p>21 never had any formal training on the software?</p> <p>22 A I had never had formal training on that</p> <p>23 particular software, no.</p> <p>24 Q Had you had training on other redistricting</p> <p>25 software?</p>
<p style="text-align: right;">Page 71</p> <p>1 failure to file a biennial report and/or pay the</p> <p>2 biennial tax/fees for the period ending July 2nd,</p> <p>3 2010."</p> <p>4 So according to this document, they hadn't</p> <p>5 even paid any biennial taxes since the period ending</p> <p>6 July 2nd, 2010. Do you know anything about this?</p> <p>7 A I do not.</p> <p>8 Q So do you actually have a check from the</p> <p>9 Alliance for Reproductive Justice dated after</p> <p>10 July 21st of 2011?</p> <p>11 A I think I made a mistake in what time I went</p> <p>12 to training.</p> <p>13 Q When did you go to training?</p> <p>14 A I'm now thinking it occurred in late June.</p> <p>15 Q And what caused you to change your mind?</p> <p>16 A Change my mind concerning what?</p> <p>17 Q When you went to get this training.</p> <p>18 A Because I'm thinking about when I left</p> <p>19 Alaska, and I am -- to go to the training. And I</p> <p>20 think I left Boston right before July 4th. I've done</p> <p>21 two trainings in this period of time, and one was for</p> <p>22 Washington, D.C., and I think I'm confusing the date</p> <p>23 of the D.C. trip for the date of the Boston trip when</p> <p>24 I first spoke.</p> <p>25 Q What was the other training?</p>	<p style="text-align: right;">Page 73</p> <p>1 A I've had training on GIS software, which</p> <p>2 would have been Esri's ArcView.</p> <p>3 Q But not on any specific redistricting</p> <p>4 software?</p> <p>5 A No.</p> <p>6 Q Why did you go take the training for the</p> <p>7 software after the redistricting was essentially done,</p> <p>8 or at least the drawing of the maps?</p> <p>9 A At this point in time, there was still a</p> <p>10 question about whether or not the Alliance for</p> <p>11 Reproductive Justice was going to be entering into</p> <p>12 part of the lawsuit. I took training to be prepared</p> <p>13 if we needed to do more in-depth analysis.</p> <p>14 Q Who did you have discussions with about</p> <p>15 whether or not the Alliance for Reproductive Justice</p> <p>16 would be filing a lawsuit?</p> <p>17 A Geran.</p> <p>18 Q That's it? Anybody else?</p> <p>19 A Concerning that organization, whether or not</p> <p>20 the Alliance for Reproductive Justice would be filing</p> <p>21 a lawsuit, only with Geran.</p> <p>22 Q And then you obviously had conversations with</p> <p>23 the Alaska Democratic Party, right, your employer?</p> <p>24 A About the Alaska Democrat Party?</p> <p>25 Q Filing a lawsuit?</p>

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1 A Yes.
 2 Q And they did not, right?
 3 A Yes, they decided not to.
 4 Q So other than this three days of training on
 5 the Maptitude software, that is the only formal
 6 training you have had on Maptitude?
 7 A Yes.
 8 Q And other than attending the four-day
 9 National Conference of State Legislatures
 10 Redistricting Seminar, you've never attended any other
 11 type of seminars on redistricting?
 12 A No.
 13 Q You say in here that "I worked as a database
 14 administrator for the past three years, most recently
 15 for the Alaska Democratic Party. Redistricting
 16 software and geographic information systems on which
 17 it is based is solely merging of databases with the
 18 visual display of information on a map. These
 19 disciplines are closely related."
 20 A Yes.
 21 Q Explain that to me. What does that mean?
 22 A GIS software is taking information from
 23 databases and putting a geographic component to it.
 24 Q Okay. But you're not doing GIS work for the
 25 Alaska Democratic Party, right?

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1 A No.
 2 Q In fact, you told us you were basically doing
 3 database as a voter, and getting those out to the
 4 proper campaigns, right?
 5 A Yes.
 6 Q So the work that you do for the Alaska
 7 Democratic Party really doesn't carry over to
 8 redistricting, does it?
 9 A Actually, it does, in understanding the
 10 software.
 11 Q In what way?
 12 A It is, at its core, a relational database,
 13 and so you have to -- when you're adding information
 14 to that database, you have to link those database
 15 tables. That is the premise. It is a database that
 16 just can display the information in things other than
 17 a spreadsheet.
 18 Q Okay. I have no idea what you just said, so
 19 I'm going to have to ask you to help me understand it.
 20 I feel more and more like my grandpa every day, who
 21 always used to ask me to make the VCR work right.
 22 You're saying that the work you did for the
 23 Alaska Democratic Party, you take information and
 24 attach a geographic component to it?
 25 A No, not in the work I did for the Alaska

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1 Democratic Party. I'm saying that the underlying
 2 operation of this software is database software.
 3 Q And isn't all software basically database
 4 software in the end?
 5 A If you're saying does a lot of software have
 6 databases in it, probably. I'm saying the skills that
 7 you need in order to operate it are very much similar,
 8 in that you have to understand what databases you're
 9 doing and what information it's recalling.
 10 Q So the theoretical aspect of it is what
 11 you're saying is similar?
 12 A In not just theory. In how you operate and
 13 use it and prepare it.
 14 Q If you'll recall, you presented a number of
 15 plans to the board, and information, over the course
 16 of March, April, and May. And every time you
 17 submitted something, you would get a call from Taylor
 18 Bickford because there was something wrong with it.
 19 Isn't that right?
 20 A I don't believe that's an accurate statement.
 21 Q You were never able to provide proper shape
 22 files to the board, in order for them to put the stuff
 23 onto the Web site so that the public could look at
 24 your plans. Isn't that right?
 25 A No, I don't believe that's accurate.

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1 Q Isn't it true that every time you in fact
 2 submitted it, it had to be sent down to the board's
 3 GIS person, Eric Sandberg, who had to actually do a
 4 conversion of what you provided, in order to make it
 5 readable by the general public?
 6 A I think the main issue were pictures of the
 7 map, not the actual data itself.
 8 Q Okay. First of all, you're admitting there
 9 were problems, right? You remember those?
 10 A I'm not sure I would classify that as a
 11 problem with software, the technology.
 12 Q But it was a problem with the operator. You
 13 were the operator, right? You didn't know how to get
 14 the board the information that it needed in order to
 15 make the maps public, did you?
 16 A That would not be an accurate statement.
 17 Q Isn't it true that you in fact informed
 18 Mr. Bickford during the process that you really didn't
 19 know what you were doing with the software?
 20 A I don't think that's an accurate statement.
 21 Q Prior to engaging in this process that we're
 22 having this litigation over and talking to you about
 23 today, you had never had any experience with the
 24 redistricting software. Fair to say?
 25 A Prior to what date?

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1 Q Prior to working on this redistricting
2 process in Alaska.
3 A **No, I did not.**
4 Q Okay. So prior to this go-around, back when
5 you worked for the Vermont Democratic Party, you
6 weren't involved in any redistricting back then?
7 A **No.**
8 Q So back in the last go-around -- you're 26
9 now -- you would have been 15 at the time and still in
10 high school during the last redistricting process.
11 Fair to say?
12 A **Yes.**
13 Q And you didn't have any involvement with
14 redistricting back then, I'm assuming.
15 A **No.**
16 Q So the first experience you have with
17 redistricting is here in Alaska during this
18 redistricting cycle?
19 A **Yes.**
20 Q The first time you used redistricting
21 software was in Alaska in this redistricting cycle?
22 A **Yes.**
23 Q And during the time that you were actually
24 drawing these maps, up to the board adopting its final
25 proclamation on June 13th, you had had no formal

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1 training whatsoever in the Maptitude software?
2 A **I had had training in a GIS software,**
3 **ArcView, which is very similar.**
4 Q And that's a fine answer to some question,
5 Leonard, but the answer to my question is no, you
6 didn't have any formal training on that software prior
7 to June 13th of 2011?
8 A **I had not had any formal training on that**
9 **specific software.**
10 Q So you were basically learning as you were
11 going. Fair to say?
12 A **Yes, I was learning things.**
13 Q I would equate it maybe to kind of OJT,
14 on-the-job training?
15 A **That's quite standard for software.**
16 Q So the answer to my question is, yes, you
17 were basically learning as you were going along?
18 A **Yes. Like I say, that's very standard for**
19 **software.**
20 Q Anything else that you believe, prior
21 training, prior experiences you had, that assisted you
22 in your experience, that is, drawing maps for the
23 Alaska redistricting cycle this go-around?
24 A **Experience in working with databases.**
25 Q Anything else?

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1 A **I think that is a major component, yes.**
2 Q It's fair to say you have not gone to school
3 and had any training on the issue of compactness,
4 right?
5 A **No.**
6 Q You're not a lawyer. You admitted that.
7 Right?
8 A **Uh-huh.**
9 Q You haven't read any of the legal cases on
10 what constitutes compactness, have you?
11 A **No, I have not.**
12 Q So the whole affidavit, which we're going to
13 talk about in a minute, in there, your entire
14 testimony is based upon running compactness tests
15 through the Maptitude software, right?
16 A **Yes.**
17 Q You input data, the software spits out
18 information, spits out a result for the compactness
19 test?
20 A **Yes.**
21 Q You don't have to know anything about what
22 compactness is or how it's defined in order to get a
23 result from the software, all you have to do is
24 correctly enter the data. Is that right?
25 A **Can you say that question again?**

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1 Q Sure.
2 You don't have to know anything about
3 compactness, as long as you correctly enter the data
4 into the tests that are provided by the software, it's
5 going to spit out the same result that you got?
6 A **Yes.**
7 Q So I could take the same data that you had,
8 and if I knew how, and I'm not saying I do, but I
9 could enter that into the computer, and it would spit
10 out a result for, in this instance, in the Petersburg
11 case, the Reock Test, right?
12 A **Yes.**
13 Q So I just want to make sure: So this
14 mathematical formula that is the Reock Test is the
15 sole basis for your testimony concerning compactness,
16 right?
17 A **Yes.**
18 Q Let's take a look at your affidavit.
19 (Exhibit K marked.)
20 **BY MR. WHITE:**
21 Q Do you have in front of you, Leonard, your
22 affidavit?
23 A **Yes.**
24 Q Okay. I've handed you what has been marked
25 for purposes of your deposition as Exhibit K. This is

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1 the affidavit that you provided to Mr. Klinkner in
2 this litigation, is it not?
3 **A Yes.**
4 Q And look at page 4 of this affidavit and just
5 confirm for me that that is in fact your signature.
6 **A Yes.**
7 Q Can you tell me, did you draft this affidavit
8 yourself, or was a draft provided to you and then you
9 edited it?
10 **A I provided a draft to Holly Wells.**
11 Q Okay. And what happened after that?
12 **A It was put in this type of format. There was**
13 **other information concerning standard deviations that**
14 **were asked whether or not it would be simpler to take**
15 **out. I said I didn't have a problem with that, and**
16 **that ended up becoming the final draft here.**
17 Q Okay. So let me make sure I understood your
18 testimony correctly. We don't know when, because you
19 can't remember, you were contacted by Mr. Klinkner
20 and/or Ms. Wells -- and I'm going to use those
21 combined. You were contacted by someone at Birch
22 Horton, either you contacted them or they contacted
23 you, but in any event, the end result of all of that
24 was that you were going to produce an affidavit?
25 **A Yes.**

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1 Q And you told me that you actually did the
2 substance. You wrote down -- it may not have been
3 form -- but you essentially provided the substance of
4 what was to be used for your affidavit?
5 **A Yes.**
6 Q And then this came back to you, and I'm
7 assuming there was back and forth over getting it
8 finalized, that type of stuff. Is that right?
9 **A Yes.**
10 Q And you mentioned something about the
11 original -- well, let me ask you. How did you provide
12 Mr. Klinkner with the original substance of what
13 became your affidavit? Did you e-mail it to him? Did
14 you drop it off? Was it handwritten?
15 **A I believe I e-mailed it to him.**
16 Q Did you e-mail it to Mr. Klinkner or
17 Ms. Wells?
18 **A I believe it was Ms. Wells.**
19 **MR. WHITE:** Tom, do you have any problem
20 providing that e-mail that Leonard sent to you?
21 **MR. KLINKNER:** No.
22 **BY MR. WHITE:**
23 Q How many e-mails did you exchange with either
24 Ms. Wells or Mr. Klinkner over the course of this
25 process of getting your affidavit completed?

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1 **A I cannot say the exact number.**
2 Q More than ten?
3 **A I do not believe it's more than ten. There**
4 **were e-mails there that didn't quite concern this**
5 **affidavit.**
6 Q What did they concern?
7 **A I think there were a couple of e-mails about**
8 **when I would be able to meet to sign the affidavit,**
9 **because it had to be witnessed.**
10 Q So there was some procedural stuff that's
11 necessary in order to get this done. How many
12 substantive e-mails would you say you exchanged with
13 any member of Birch Horton?
14 **A I don't know the exact number.**
15 Q I think you said it was less than ten,
16 though, you think?
17 **A Yes.**
18 Q How long of a process, between the time you
19 gave them your original substantive comments on your
20 compactness analysis and the time this affidavit was
21 signed on October 12th, 2011?
22 **A It was a pretty quick turnaround time. I**
23 **don't know exactly how many days it was.**
24 Q Days, not weeks, though?
25 **A Yeah, I believe days would be the more**

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1 **appropriate term.**
2 Q Would it have been after you supplied your
3 expert report in the other litigation, which was sent
4 to us on -- well, it couldn't have been, because that
5 didn't get to us until October 17th. If I remember
6 right, your analysis appears to have been done in the
7 early part of October, on the 4 and 5th, if I remember
8 the documents correctly. So let me ask you a question
9 rather than testifying here.
10 Do you recall whether or not you completed
11 this affidavit before or after you did your other
12 report for Mr. Walleri?
13 **A This affidavit was first.**
14 Q This affidavit was first?
15 **A Yes.**
16 Q And as part of what you're analyzing here, if
17 you look at your affidavit, you're talking about you
18 analyzed a plan promulgated by the board and the
19 modified RIGHTS plan, right?
20 **A Yes.**
21 Q Now, the modified RIGHTS plan is the
22 demonstrative plan that you drew in this case --
23 sorry.
24 The plan you talk about here as the modified
25 RIGHTS plan, is exactly the same as the plan that's

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1 called the demonstrative plan that you drew and
2 provided to Mr. Walleri. Is that correct?
3 **A Yes, the demonstration plan ends up being the**
4 **same.**
5 Q There's s no difference between that map and
6 the map that you analyzed here for the City of
7 Petersburg?
8 **A I don't believe that would be accurate.**
9 Q The shape files are the same?
10 **A Yes.**
11 Q And so if you have the shape files of the
12 maps you analyzed, we should be able to replicate the
13 analysis that you did here, under the Reock Test,
14 right?
15 **A Yes.**
16 Q Can you think of any reason why, if you
17 attempt to replicate it, other than operator error --
18 rule that out -- any other reason why, if you're using
19 the exact same shape files that you provided, you
20 might get a different result on compactness tests?
21 **A If they were the exact same shape files, I**
22 **think the same result would be there.**
23 Q Now, are you positive that you provided the
24 board with the exact same shape files that you've
25 analyzed as part of your compactness analysis in this

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1 affidavit?
2 **A If you're asking could I be 100 percent**
3 **certain that there was no small change or no change**
4 **throughout all of the files? I believe that those are**
5 **the same files.**
6 Q So you didn't make any changes to the
7 demonstrative plan shape files before you provided
8 them to the board?
9 **A I was debating a couple of changes. I don't**
10 **believe they occurred.**
11 Q What changes were you debating?
12 **A The change I was debating is whether or not**
13 **the Borough of Yakutat should be in a district that**
14 **goes in with the Borough of Juneau, or whether or not**
15 **the borough of Yakutat should be in a district that**
16 **goes in with Cordova and Whittier.**
17 Q And Anchorage, right, South Anchorage?
18 **A Yes.**
19 Q The demonstrative plan, House District -- I'm
20 going to have to guess, since I don't have the map.
21 Whatever that district is includes Yakutat, includes
22 Seward and goes all the way into South Anchorage,
23 doesn't it?
24 **A It goes into the borough of Anchorage.**
25 Q The Municipality of Anchorage, that's what

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1 you meant when you said borough?
2 **A Yes.**
3 Q Anchorage isn't a borough anymore, it's a
4 municipality.
5 **A Yeah.**
6 Q I'm not sure if it's legally significant or
7 not, but I want to use the proper terminology.
8 And you were debating that, why?
9 **A Because Yakutat is in a very, I would say**
10 **unique position. There are things that make sense for**
11 **it to go in with the Cordova district, and there are**
12 **things that make sense for it to go into what is**
13 **District 4 in that plan. And it has such a small**
14 **population, that it could go either way.**
15 Q Of course, based upon your experience in this
16 litigation, you don't believe that that house district
17 is socially economically integrated, do you? It can't
18 be. Yakutat and Anchorage? It's your claim that that
19 district meets the standards of the Alaska
20 constitution, as far as you know what they are?
21 **A Is there an argument to be made that Yakutat**
22 **should go in with a district that includes some part**
23 **of Anchorage? Yes, I believe that there's an argument**
24 **that can be made there.**
25 Q It's not have a very good argument, though,

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1 right?
2 **A I think that's a legal question, isn't it?**
3 Q Well, I'm just asking your opinion. You've
4 expressed a lot of opinions over the course of this
5 litigation, in testifying about the plans that you've
6 presented and how they comply with various different
7 portions of the legal requirements.
8 **A They have some of the same problems as**
9 **Cordova does and some of the same other communities**
10 **that are in this district, and if I'm not mistaken, I**
11 **think that there's even a flight from here to Yakutat,**
12 **isn't there?**
13 Q Okay. Let's look at your affidavit again.
14 **A Okay.**
15 Q And you confirmed for me that the modified
16 RIGHTS plan that you're talking about in this
17 affidavit is in fact the same thing as the
18 demonstrative plan that you drew and was submitted as
19 part of your report in the other case, and you replied
20 upon the VRA expert in the other case. I don't want
21 to ask you about that, what I do want to ask you: Why
22 do you call it the modified RIGHTS plan? Why don't
23 you say: This is the demonstrative plan that I
24 drafted as part of my testimony and as part of my
25 duties in the other case?

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1 **A Because at this point in time, the**
 2 **demonstrative plan hadn't been finalized.**
 3 Q You ran your population analysis on the
 4 demonstration plan on October 4th and 5th, according
 5 to your report, so how could it have not been
 6 finalized by October 12th of 2011?
 7 **A This report came first.**
 8 Q This report did?
 9 **A The affidavit was the first thing produced.**
 10 Q For anything you did in this part of this
 11 litigation, is that what you're telling me?
 12 **A This affidavit comes before my report that I**
 13 **developed for Mr. Walleri.**
 14 Q Okay. Can you grab Exhibit K for me, and
 15 Exhibit I again? Do you remember I said we might go
 16 back to that? That's your compactness report.
 17 Turn to page 2 of that document. And this is
 18 the measure of compactness you that attest that you
 19 ran on the date of October 4th, 2011, at 3:47:21 p.m.,
 20 right?
 21 **A Yes.**
 22 Q That's before this affidavit, isn't it? You
 23 signed this affidavit on October 12th, right?
 24 **A Yes. I ran the numbers.**
 25 Q And this analysis, this measure of

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1 compactness, is for the demonstrative plan, isn't it?
 2 **A So you're saying if I used the same analysis**
 3 **for both?**
 4 Q You did, didn't you?
 5 **A Yes.**
 6 Q Okay. So the demonstrative plan had to have
 7 been completed by October 4th of 2011 or you couldn't
 8 have done a compactness test on it, right?
 9 **A It was there. It wasn't finalized.**
 10 Q So you're telling me that you ran your
 11 compactness measurements that you did -- both in this
 12 plan and in the compactness measure here, were on
 13 incomplete plans?
 14 **A It wouldn't be accurate to call them**
 15 **incomplete.**
 16 Q What's the difference between incomplete and
 17 not finished? I'm confused there.
 18 **A Because it is a complete plan, but that plan**
 19 **could still be subject to changes before it's entered**
 20 **into evidence.**
 21 Q But it hadn't been subject to changes, right?
 22 The plan that you did the analysis on on October 4th
 23 is the same plan that you're talking about for
 24 Southeast in your affidavit of October 12th.
 25 **MR. WALLERI:** I think that has all been asked

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1 and answered. I think he's been pretty clear about
 2 it.
 3 **BY MR. WHITE:**
 4 Q You can go ahead and answer.
 5 **A Yes.**
 6 Q So I just want to make sure I understand this
 7 correctly, and I'm not trying to delay things here,
 8 because I am confused.
 9 This report says October 4th. In this
 10 affidavit you give an analysis of the compactness of
 11 the Southeast districts of the demonstrative plan,
 12 right?
 13 **A Yes.**
 14 Q That demonstrative plan, the Southeast
 15 districts, Districts 1 through 4, as you say in your
 16 affidavit, right?
 17 **A Yes.**
 18 Q So if we look at this measure of compactness
 19 completed on this day, Districts 1 through 4 are the
 20 same numbers that you use in this affidavit?
 21 **A Yes.**
 22 Q But you're saying you didn't call it the
 23 demonstrative plan in this affidavit, because you did
 24 this affidavit before you did this analysis. Did I
 25 hear your testimony correctly?

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1 **A No. This analysis came first.**
 2 Q All right. But you didn't say that a little
 3 while ago, right?
 4 **MR. WALLERI:** Let's not be argumentative.
 5 **MR. WHITE:** I'm trying not to be.
 6 **MR. WALLERI:** Why don't you go back and
 7 rephrase the question to a proper question.
 8 **BY MR. WHITE:**
 9 Q You can go ahead and answer.
 10 **A Could you state the question again?**
 11 Q I'd be happy too.
 12 I just want to make sure I understand this
 13 correctly. I asked you, first of all, when we were
 14 talking about your affidavit, I said, all right, you
 15 call this the modified RIGHTS plan here. Why don't
 16 you call this the demonstrative plan? And you say it
 17 was because the demonstrative plan wasn't done yet.
 18 That's what you told me, right?
 19 **MR. WALLERI:** Objection. It assumes facts
 20 not in evidence and recharacterizes the testimony.
 21 **MR. WHITE:** We can go back and read it back
 22 if you want to spend the time.
 23 **BY MR. WHITE:**
 24 Q Just tell me what you told me, then, because
 25 I'm not trying to trick you, Leonard. What did you

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1 say?

2 **A The report from Mr. Walleri had not been**

3 **completed yet. The idea of whether or not there**

4 **should be changes to the demonstration plan had not**

5 **been finalized. Since there were no changes to the**

6 **demonstration plan, I used the same analysis.**

7 Q So it's fair to say, correct me if I'm wrong,

8 that this analysis on October 4th of 2011 is the same

9 analysis that you rely upon in this affidavit, right?

10 **A Yes.**

11 Q You use the same plan for Southeast that is

12 referenced here?

13 **A Yes.**

14 Q In your analysis here. And "here" I'm

15 referring to the measurements of compactness on 10/4.

16 You used that here for your affidavit in the

17 Petersburg case?

18 **A Yes.**

19 Q And in that case, you use only the Reock

20 Test, right?

21 **A In the affidavit, yes, I say only the Reock**

22 **Test.**

23 Q And you understand and are aware that there

24 are other number of other different tests, right?

25 **A Yes.**

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1 Q How many other tests are there?

2 **A Would you like me to count them?**

3 Q If you know off the top of your head.

4 **A I'd rather refer to the notes here.**

5 Q I'd like to know what your actual knowledge

6 is, without referring to the notes. And if you don't

7 know, just tell me you don't know, and that's a fine

8 answer. Off the top of your head, how many are there?

9 **A I would like to refer to my notes.**

10 Q You can't tell me without referring to your

11 notes. Is that what you're telling me?

12 **MR. WALLERI:** Objection. If he has asked to

13 refer to his notes, he should be allowed to refer to

14 them. Otherwise, it's just harassment.

15 **MR. WHITE:** It's not harassment. If he

16 doesn't know, he can tell me he doesn't know.

17 **BY MR. WHITE:**

18 Q All's I'm asking you is to tell me off the

19 top of your head. If you don't know, just tell me you

20 don't know. Without referring to notes, can you tell

21 me how many compactness tests there are?

22 **A To be absolutely sure, I would like to see my**

23 **notes.**

24 Q Okay. What's your best guess?

25 **A If you just want a guess, I would say there**

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1 **were eight.**

2 Q Let's start with the Reock Test, then,

3 Leonard. Tell me what the Reock Test is?

4 **A The Reock Test is a measure of compactness in**

5 **which a ratio of two different areas is undertaken.**

6 Q You understand the math of it, or are you

7 relying upon what the software does?

8 **A I understand the math of it as well.**

9 Q Okay. Can you explain that to me?

10 **A Yes.**

11 Q Please do.

12 **A You take the area of the district and divide**

13 **it by the area of the smallest circle that encompasses**

14 **the entire district.**

15 Q Okay. And then how is it measured? How is

16 compactness measured?

17 **A This gives a score from zero to 1, with 1**

18 **being the most compact.**

19 Q So under the Reock Test, the number closest

20 to one would be the most compact?

21 **A Yes.**

22 Q Is that plus or minus?

23 **A There's no minus there.**

24 Q You can't go over? You can't have a

25 compactness of 1.1?

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1 **A No.**

2 Q Only zero to 1?

3 **A Yes.**

4 Q Okay. What about the Schwartzberg Test, what

5 is that?

6 **A I think that's outside of the affidavit,**

7 **isn't it?**

8 Q I'm entitled to know what your knowledge is

9 regarding compactness. I'd just like to know what the

10 Schwartzberg Test is.

11 **A I'd want to refer to notes.**

12 Q Okay. So you don't know. Of your own

13 recollection, you cannot give me an answer as to what

14 the Schwartzberg Test is. Is that true?

15 **MR. WALLERI:** Objection. That's a

16 mischaracterization of his testimony. He said he

17 would like to refer to his notes.

18 **BY MR. WHITE:**

19 Q You can go ahead and answer.

20 **A I would like to refer to notes.**

21 Q Okay. Can you tell me what the Schwartzberg

22 Test is without referring to your notes?

23 **A I'd like to give the most accurate testimony**

24 **possible, and to do that, I'd like to look at my**

25 **notes.**

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1 Q I'm certain that you would, but I'm entitled
2 to know what your recollection is. And all I would
3 like you to do is answer a very simple question. Can
4 you tell me what the Schwartzberg Test is without
5 referring to your notes?

6 A In order to be 100 percent accurate, I'd like
7 to refer to the notes.

8 Q I'm not asking you to be 100 percent
9 accurate. I'm asking you for your recollection or
10 your knowledge, without referring to notes, of what
11 the Schwartzberg Test is. Can you do that?

12 A There are multiple compactness tests there.
13 Some of them have very incremental differences. I
14 would rather refer to notes, to bring those out, to
15 make sure that those unique differences are explained
16 properly.

17 Q I'm not asking for accuracy. I'm just asking
18 you to give me what your knowledge is, without
19 referring to notes, of what the Schwartzberg Test is.

20 A In this type of situation, I do not believe
21 that I could give that answer with 100 percent
22 accuracy without referring to notes, in a pressurized
23 situation.

24 Q I'm not trying to pressurize you. So give
25 your best shot. What's the Schwartzberg Test? I'm

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1 not holding you to any standard of accuracy, just,
2 what do you know about the Schwartzberg Test as we sit
3 here today, without referring to notes?

4 A I would say that would be very difficult for
5 me to answer right now.

6 Q Okay. So the answer to my question is you
7 cannot tell me anything about the Schwartzberg Test
8 without referring to your notes. Is that what I hear
9 you saying?

10 A In order to give an answer with the accuracy
11 that I would like to have, I would like to refer to my
12 notes.

13 Q I'm not going to beat a dead horse here much
14 longer, because it is a dead horse. All I'm asking
15 you: Do you know what the Schwartzberg Test is?

16 A Have I heard about it? Yes.

17 Q Can you tell me what it is without having to
18 refer to notes?

19 A I don't believe I could with the required
20 accuracy.

21 Q What accuracy could you do?

22 A That is very, very subjective.

23 Q A hundred percent? You said no. 50 percent?

24 What about the Ehrenburg Test, what's that?

25 A Again, I couldn't be 100 percent accurate

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1 without referring to notes, but it deals with the
2 smallest inscribed circle in that district.

3 Q What about the Polsby-Popper Test?

4 A I can't say with 100 percent accuracy without
5 referring to notes.

6 Q Without any reference to accuracy, I say
7 Polsby-Popper Test, what can you tell me?

8 A It's one of the tests that's included in the
9 Maptitude software.

10 Q And what is the test?

11 A I'd have to say again that I would really
12 like to refer to notes. That was not a major part of
13 this affidavit.

14 Q What about the Perimeter Test?

15 A It looks at the total perimeter of all the
16 districts combined. And again, it's not one of the
17 tests that I used in making any judgments. I ran all
18 tests, but I did not use it in compiling the
19 affidavit.

20 Q You ran all the tests for the testimony you
21 presented here today, or in response to the other
22 stuff that you've done for Mr. Walleri that we'll
23 about talk about at other time?

24 A When I ran the compactness test, I decided to
25 run all of them at once. I think we've already gone

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1 over when I ran that test.

2 Q And then you took the results from that test,
3 from the compactness analysis you did for Mr. Walleri,
4 and you applied it to this affidavit, is that what
5 you're telling me, your testimony in the Petersburg
6 case? You didn't do a separate analysis of just the
7 Southeast districts for your testimony in the
8 affidavit. Is that right?

9 A Yes.

10 Q The Population Polygon Test?

11 A It is a test that looks at the population --
12 well, I'm sorry. I should go back and be a little bit
13 more clear.

14 Again, I wouldn't be 100 percent accurate
15 without looking at notes, but it looks at the
16 population that is in the smallest polygon that
17 contains that district.

18 Q For us non-math majors, what's a polygon?

19 MR. WALLERI: Objection. You didn't let him
20 complete his answer.

21 BY MR. WHITE:

22 Q I'm sorry. I certainly didn't mean to
23 interrupt you. Please continue if you have more to
24 say.

25 A Yes.

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1 It looks at the population of the district,
2 in compared to the population of the smallest polygon
3 that contains that district. There is a couple of
4 terms in there that basically have the meaning that
5 the polygon is not going to have any sides that -- I
6 hate to say face inwards, but any of the sides of that
7 polygon, if extended out in straight lines, would not
8 intersect any other part of that polygon.
9 Q So can you tell me, what is a polygon?
10 A A polygon is a geometric shape with multiple
11 sides.
12 Q But not any particular number of sides?
13 A No. There's no requirement on the number of
14 sides, just that it is greater than three, which is
15 required, three or greater.
16 Q So it's a standard math term, a polygon?
17 A Yes.
18 Q Okay. Whose decision was it in your
19 affidavit to only refer to one test, only the Reock
20 Test, and not the other tests of which you've already
21 you've previously done an analysis for the Southeast
22 districts?
23 A It was my decision.
24 Q So without consulting Mr. Klinkner or
25 Ms. Wells, you determined that you would only refer to

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1 the Reock Test?
2 A I might have told them that I was only
3 referring to the Reock Test in some e-mail and asked
4 if that was all right.
5 Q And why would you only want to refer to one
6 test, if you're doing a compactness analysis using a
7 software that provides a number of different tests or
8 measurements of compactness?
9 A Well, for the area of the state, you would
10 want to pick the test that best represents the
11 conditions that are being put there.
12 Q What does that mean?
13 A Well, I don't think Perimeter is a good test.
14 That's my opinion, because we've got lots of
15 coastline, we've got lots of islands. I don't believe
16 that test fits in. I don't believe tests that deal
17 with population fit well with a mostly rural area. I
18 think those tests are designed more for very urban
19 areas.
20 Q And you're basing these opinions on what?
21 A These are opinions that are based off of
22 looking at what each test actually accomplishes and
23 how it goes about accomplishing it.
24 Q So you made a decision to only use the Reock
25 Test, knowing that some of the other tests actually

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1 provide results that would be in opposition to the
2 Petersburg's motion, right?
3 A I chose to use the Reock Test because of what
4 it accomplishes. I don't believe population tests
5 were appropriate for this area of the state.
6 Population tests assume that there is no differences
7 between one group of people and another group of
8 people, which is not always accurate.
9 MR. WHITE: Read that back, please.
10 (Answer read back.)
11 MR. WHITE: Let's take a break.
12 (Recess.)
13 MR. WHITE: Back on record.
14 BY MR. WHITE:
15 Q Leonard, what's your understanding of the
16 meaning of compactness?
17 A Are you asking for a legal definition?
18 Q I'm asking for your understanding.
19 A I think compactness goes to -- sorry. Could
20 you restate that question?
21 Q Sure.
22 I'm just asking you for what your
23 understanding of the meaning of compactness is.
24 A I obviously can't provide a legal definition
25 of such.

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1 Q I agree. You're not a lawyer; you've
2 admitted that. I'm not asking you for the legal
3 definition of compactness, just your understanding of
4 what that term is.
5 A It's kind of a very subjective term that
6 people have gone on about for a while. I would say
7 that it would be -- describe it as efficiency of
8 shape, highly efficient shapes.
9 Q In your affidavit, if you could turn to page
10 3 of that affidavit, in paragraph 9 you talk about
11 Southeast Alaska is composed of Districts 31, 32, 33,
12 and 34 in the board plan, and you set forth the Reock
13 Test scores for each of those districts respectively,
14 right?
15 A Yes.
16 Q And you're able to determine that number
17 solely from use of the software, correct?
18 A Yes.
19 Q You plugged in the shape files or whatever
20 data goes in, and it spits out these numbers?
21 A Yes.
22 Q And Paragraph 10, you say that Southeast
23 Alaska is composed of Districts 1, 2, 3, 4 in the
24 modified RIGHTS plan, and you then list their scores.
25 Is that right?

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1 A Yes.
2 Q And then in the next sentence, you say:
3 "This shows they are much more compact than the
4 proclamation districts to which they correspond."
5 Do you see that sentence there?
6 A Yes.
7 Q Okay. I've got a number of questions about
8 that.
9 First, what do you mean, "much more compact"?
10 What does that mean?
11 A That the numerical number that was given by
12 the test was closer to one in the -- what would become
13 the demonstration plan, but here called modified
14 RIGHTS plan, was much closer to one in the
15 demonstration plan than it was in the board's
16 proclamation plan.
17 Q Okay. Then how do you describe "much"?
18 Where is that line drawn? I mean, you say, for
19 example, one of the districts here is .26 and .20.
20 You say, you believe in your opinion or your
21 understanding, that's much more compact, not just more
22 compact.
23 A The reason why I gave the words "much more
24 compact" had to do with a number of the scores for
25 districts in the proclamation plan landing outside of

Page 107

1 one standard deviation.
2 Q What does that mean?
3 A Standard deviation is a statistical measure.
4 Q That's the stuff that was in the affidavit,
5 but is not in this affidavit, right? There's no
6 testimony in this affidavit regarding standard
7 deviations?
8 A No.
9 Q So is it relative? Is there a scale? I'm
10 just trying to understand. Use the Reock Test. All
11 right? That's what I'm referring to, only that test.
12 What's the difference between a .20 and a .26? Is
13 that much more contact or just more contact?
14 A Sorry. Restate that question again.
15 Q Sure.
16 A hypothetical district -- two districts.
17 One district has a .20 score from the Reock Test,
18 another one has a .26 score on the Reock Test. Is
19 this district that scores the .26 score on the Reock
20 Test more contact or much more compact?
21 A All right. And what was the first number,
22 again?
23 Q .20, .26.
24 A The standard there I was using is relative.
25 Q Explain.

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1 A It was relative to the other scores in the
2 board's proclamation plan.
3 Q I'm still not getting you. What do you mean,
4 "relative to"?
5 A If you look at the mean score in the board's
6 proclamation plan, and then look at the standard
7 deviation between that mean score and the scores that
8 were on the proclamation plan, you see that a number
9 of scores land outside the standard deviation.
10 Q So that's all stuff that's not part of your
11 affidavit. Nowhere in here do you talk about standard
12 deviations at all. Is that right?
13 A Yes, that is correct.
14 Q So then when does something become -- how do
15 I determine when something is more compact or much
16 more compact? Where on that sliding scale does it
17 happen? I've got 20 and 26. Is that much more or
18 just more?
19 A It's a relative term.
20 Q Meaning they have to be compared to other
21 things, you can't compare just those two?
22 A I think the most appropriate way to use it
23 would be to use it in relation to what is possible.
24 Q Well, it's always possible to draw more
25 compact plans, right? You could ignore all the other

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1 constitutional requirements and just draw perfect
2 circles around the state, right?
3 A It's not always possible to draw a perfect
4 circle.
5 Q So you admit that, right, particularly in
6 Alaska?
7 A Yes.
8 Q And you understand that the standard the
9 courts use in Alaska is a relative compactness, right?
10 A I'm not a lawyer.
11 Q You've heard that term, right, "relative
12 compactness"?
13 A I've heard the term "relative compactness."
14 Q What do you think that means?
15 A I would think that would be a legal term.
16 Q I'm not asking for a legal definition. When
17 someone tells you, you know, the compactness standard
18 in Alaska means relative compactness, what do you
19 understand that to mean?
20 A I think that's asking a question that's
21 outside of something I can give a very good answer of.
22 Q You say here in your affidavit: "This shows
23 that they are much more compact than the Proclamation
24 districts to which they correspond."
25 The second part of that sentence, "to which

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1 they correspondence," what do you mean? What are you
2 talking about? What comparison is being made there?
3 **A I'm making a comparison to districts that are**
4 **in the modified RIGHTS plan and districts that are in**
5 **the proclamation plan by their geographical area.**
6 **Since you couldn't compare them based on district**
7 **numbers, since they were a different numbering scheme,**
8 **I was saying the districts that are in the Southeast**
9 **of Alaska, when you compare one set of them to**
10 **another.**

11 Q You just said something that I want to make
12 sure I understand, "set." And that's what you did
13 when you made this statement, right? You're comparing
14 all four districts in Southeast in the demonstrative
15 plan to all four districts in the proclamation plan
16 when you say "this shows that they are much more
17 compact," right?

18 **A I'm saying that, taken as a whole, the**
19 **districts in the modified RIGHTS plan, demonstration**
20 **plan, have higher scores when taken as a whole.**

21 Q Under the Reock Test?

22 **A Under the Reock Test.**

23 Q Okay. As a whole, though. You're not
24 comparing District 1 to District 31, District 2 to
25 District 32. You're saying, in fact you say here:

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1 "Three out of four of these districts, and thus the
2 Southeast district as a group, are more compact under
3 the modified RIGHTS plan."

4 So your testimony in your affidavit is about
5 the group of Southeast districts, correct?

6 **A Yes, that the districts in the Southeast, in**
7 **the modified RIGHTS plan, have higher scores on the**
8 **Reock Test.**

9 Q Well, not all of them, right? So when you
10 talk about the group being more compact, you're
11 talking about all four of the districts that are being
12 compared as a group. Am I understanding your
13 affidavit correctly?

14 **A Yes, as a group.**

15 Q You didn't do any individual comparisons of
16 "this district versus this district" in your analysis
17 in this affidavit, right?

18 **A There are complications that arise when you**
19 **say "this district versus this district," because it**
20 **is complex to say which district should be compared**
21 **with which other district.**

22 Q Let's start with this: You're testifying on
23 behalf of the Petersburg plaintiffs, right?

24 **A Yes.**

25 Q The Petersburg plaintiffs are challenging

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1 House District 32, correct? Do you know that?

2 **A They're challenging the district in which**
3 **Petersburg is in, yes.**

4 Q Do you know which district that is?

5 Do you need to have the question read back?

6 **A Yes.**

7 **MR. WHITE:** Read that back, please.

8 (Question read.)

9 **A I would think that that would be District 32.**

10 **BY MR. WHITE:**

11 Q All right. So when you're doing a
12 compactness analysis -- and you understand that
13 they're not challenging any of the other districts in
14 Southeast; Petersburg is only challenging House
15 District 32; you understand that, right?

16 **A Those are legal. I'm only here for the**
17 **technical.**

18 Q I'm just asking. This isn't legal. Do you
19 know what districts the people who have employed you
20 to provide this testimony are actually challenging?

21 **A It quite honestly hasn't been a major concern**
22 **of mine. I only perform the test.**

23 Q Okay. In doing that test, you said it was
24 very difficult to do these comparisons. Do you think
25 it's fair to compare the district in which Petersburg

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1 is in in the proclamation plan, to the district that
2 Petersburg is in in the demonstrative plan?

3 **A I think that that is a complex comparison**
4 **that is not immediately straightforward.**

5 Q Why?

6 **A Because there are multiple considerations.**
7 **For example, in the proclamation plan, Petersburg is**
8 **not in a district that's listed as a VRA district,**
9 **whereas when it is in the RIGHTS plan, Petersburg is**
10 **in a district that is listed as a VRA district.**

11 Q What does that have to do with compactness?

12 **A It means that there are additional**
13 **circumstances that may need to be accounted for.**

14 Q What do you mean?

15 **A The Voting Rights Act has conditions that**
16 **plans should have to take into account, that plans**
17 **need to take into account.**

18 Q And that had to be taken into account when
19 you drew your demonstrative plan, too, didn't it?

20 **A Yes.**

21 Q So when you did in fact draw that, limiting
22 it now just to Southeast and the map as a whole, I
23 suppose, you took the Voting Rights Act consideration
24 into account when you were drawing your map, right?

25 **A Yes, there were things that we did for the**

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1 Voting Rights Act that were taken into account in
2 drawing the map.

3 Q You said "we." Who's "we"?

4 A The Southeast district in the modified RIGHTS
5 plan and in the demonstration plans have changed very
6 little from plans that were originally presented under
7 the RIGHTS Coalition. When drawing maps for the
8 RIGHTS Coalition, I have asked many people about which
9 areas of the state are more integrated with other
10 areas of the state.

11 Q Okay. How does that relate to your
12 compactness testimony here?

13 A As in who I spoke with? How is who I spoke
14 with related to my testimony here?

15 Q No. How is the fact that -- you know, it
16 sounds like you're talking about essentially what is
17 referred to in districting as socioeconomic
18 integration. How is that related to compactness of
19 Southeast districts?

20 MR. HENDERSON: Object as to the
21 characterization.

22 BY MR. WHITE:

23 Q And if I've misstated, I certainly didn't
24 mean to do that. I'm trying to help you.

25 You said you talked to other people around

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1 other things.

2 What I'm wanting to know is, if you don't
3 compare the two districts that are actually being
4 challenged here, the district that's being challenged
5 with the district in which you draw Petersburg into,
6 how can you make any sort of comparison whatsoever?

7 A Could you restate that question?

8 Q I'll certainly try.

9 I just want to make sure. You've told me
10 that your analysis, when you say that the Southeast
11 district as a group are more compact under the
12 modified RIGHTS plan, you're testifying that it's the
13 group of the Southeast districts, the four that are
14 down there, that are more compact as a whole, as a
15 group, than in the proclamation plan. I understand
16 your affidavit correctly, right? Look at your
17 affidavit, paragraph 10, Leonard.

18 A Yes, I do describe them as group.

19 Q So you're not providing any testimony on
20 individual districts in terms of their compactness,
21 you're just saying, as a group, one plan is more
22 compact than the other plan, right?

23 A There are scores in each individual district.

24 Q Okay. I understand that. Can you show me
25 where in your affidavit it says that House District 32

Page 115

1 the state about what parts, what people, or what areas
2 of the state are more related to the other areas, or
3 words to that effect, right? Did I hear your
4 testimony correctly?

5 A Yes. When you asked about who we were, I was
6 referring to people that I consulted in the RIGHTS
7 Coalition, people that were outside the RIGHTS
8 Coalition that I consulted.

9 Q Okay. When you drew the demonstrative plan,
10 did you get input from anybody, in terms of how to
11 draw that plan?

12 A No.

13 Q So that was solely your work?

14 A Yes. But this area of the state did not
15 change drastically from the original.

16 Q And by "this area," you mean Southeast?

17 A Yes.

18 Q And now we're back to the question before.
19 We were talking about, you said it was complicated to
20 compare the two districts that Petersburg was in in
21 the two plans. And you then, if I'm wrong -- I'm not
22 trying to mischaracterize you. So if I say something
23 you don't agree with, let me know. All right.

24 Then you said, well, you have to look at the
25 Voting Rights Act, and then you talked about some

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1 is less compact than the comparable district in the
2 demonstrative plan?

3 A I don't believe it says that specifically in
4 that way in this affidavit.

5 Q Because you didn't do an individual
6 comparison, correct, there's nothing in here? And if
7 there is, please take all the time you need to review
8 your affidavit and show me where it is. But I've
9 looked at it, and I don't see anywhere in there where
10 you're making that analysis. Can you point me to
11 somewhere where you are?

12 MR. WALLERI: Objection. Counsel is
13 testifying. If you have a question, please phrase it
14 as a question.

15 BY MR. WHITE:

16 Q You can go ahead and answer.

17 A In the affidavit, I do not specifically make
18 that statement.

19 Q When you did your analysis on the Southeast
20 plans, did you compare any of the districts'
21 compactness for the benchmark plan?

22 A No, I did not.

23 Q And when I say benchmark plan, you know what
24 that means, right?

25 A I am assuming you're referring to the plan

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1 that was adopted in the 2001-2002 redistricting.
2 (Exhibit L marked.)
3 **BY MR. WHITE:**
4 Q Leonard, Exhibit L, which I've handed you, is
5 a map of the amended final redistricting plan from the
6 2000 redistricting go-around. In other words, this is
7 the plan for Southeast that is currently in effect.
8 And so when I say benchmark, you understand what I
9 mean, right?
10 A Yes.
11 Q Okay. And in this plan, you didn't do any
12 comparisons of the compactness of this plan as opposed
13 to the board's proclamation plan, did you?
14 A No.
15 Q So you didn't compare, for example, the
16 compactness of House District 2A, which Petersburg is
17 currently in and has been in place for the last ten
18 years, with the compactness of the plan that
19 Petersburg is placed in in the proclamation plan?
20 A No.
21 Q And you ran no test whatsoever, not just the
22 Reock Test, none of the various tests that you can use
23 to measure compactness, right?
24 A No.
25 Q When I say "a deviation," "a deviation of

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1 population," do you know what I'm talking about?
2 A I assume you mean deviation from the ideal.
3 Q Okay. And a plan has -- each district has a
4 deviation that's either plus or minus. Generally you
5 try to get as close as possible to the ideal, right?
6 When we're talking about deviations in redistricting,
7 do you have an understanding of what that is?
8 A Yes.
9 Q And did you look at or do any type of
10 comparison of what the deviation of the demonstrative
11 plan is for the four house districts in Southeast
12 versus the proclamation plan?
13 A No.
14 Q So you don't know that the population
15 deviation -- you understand that's what is mandated by
16 the one person/one vote standard, don't you?
17 A Yes.
18 Q And the idea is that theoretically, to have
19 one person/one vote, everybody should be in the same
20 size district, right?
21 A Theoretically.
22 Q And so the closer you make districts to the
23 ideal, the more true the representation is. Is that
24 kind of your understanding of what one person/one vote
25 is?

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1 A I think it's more sophisticated than that.
2 Q In what way?
3 A That deviations should be examined
4 differently depending on which area of the state they
5 are in.
6 Q Okay. Why?
7 A Because one group of people is not always
8 exchangeable for any other group of people.
9 Q How come?
10 A Because of their interactions.
11 Q What do you mean by that?
12 A That there are certain groups of people that
13 should not be interchanged with other groups of people
14 to make a house district.
15 Q Okay. And that's why? What's your
16 understanding of why that is?
17 A Because there needs to be socioeconomic
18 integration.
19 Q So as between one person and one vote and
20 socioeconomic integration, as far as you understand,
21 which one prevails?
22 A We're talking about a degree of difference.
23 Q What do you mean?
24 A If you had -- what I mean is that there are
25 certain levels of deviations that are acceptable in

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1 some parts of the state that would not be acceptable
2 in other parts of the state.
3 Q What do you base that on? How do you come to
4 that understanding?
5 A I believe the Alaska Redistricting Board made
6 that a point at one of the hearings.
7 Q Okay. So the question that started down
8 this, is that, as between one person/one vote under
9 the Federal Equal Protection Clause and social
10 economic integration, you're saying the standard
11 varies. You don't know which one prevails or which
12 one has legal precedence over that, which ones trumps
13 the other one, if you will, or do you?
14 A I think that's more a legal opinion.
15 Q Okay. So I just want to make sure: You
16 don't know what the deviation of the demonstrative
17 plan in the four house districts are as opposed to the
18 deviation in the proclamation plan?
19 A I could refer to notes, and know, for this.
20 Q So you did do, if you look at your affidavit,
21 on page -- the first page after you sign it, so I
22 think that's page 5, the four house districts at issue
23 in Southeast are Districts 1 through 4, aren't they?
24 A Yes.
25 Q And this page is an analysis you did, right?

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1 A Yes.
2 Q You produced this. This is another report
3 that you can produce out of the redistricting
4 software, right?
5 A Yes.
6 Q So it lists population plus 18, which means
7 voting age population, right?
8 A Yes.
9 Q And then you've got Native population. And
10 you're using Native plus 1. And I'm not going to talk
11 about that. We've had enough of that and what that
12 means. And then we have Native plus 1 voting age
13 population, ideal value deviation, right?
14 A Yes.
15 Q And then you have percentage of deviation?
16 A Yes.
17 Q And then you list that for each of the four?
18 A Yes.
19 Q And in order to get a range of deviation, you
20 understand, don't you, that you take the district with
21 the highest overpopulation, which is District 1, at
22 3.69 percent, and then you add that to, if you will,
23 the district with the lowest number of people in it,
24 which is District 2, at a negative 4.5 percent, and
25 that's how you come up with an overall range for a

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1 plan or for a group of districts?
2 A Yes.
3 Q So for the Southeast demonstrative plan, the
4 population deviation, the overall range, is
5 8.14 percent, if you add those two numbers together,
6 isn't it?
7 A Yes.
8 Q And if you look at the proclamation
9 districts, the four Southeast districts, the range in
10 that plan is 6.62 percent, isn't it?
11 A I would have to refer to those that have
12 that.
13 (Exhibit M marked.)
14 BY MR. WHITE:
15 Q Leonard, I've handed you what's has been
16 marked as Exhibit M, which is Mr. Klinkner's and his
17 associate's summary judgment motion, well written,
18 although not well taken, in my opinion.
19 And on the last page, Exhibit B, if you will,
20 is the proclamation district population analysis.
21 MR. WALLERI: What page is that, again?
22 MR. WHITE: The last page of the whole thing
23 there. Board No. 00006034.
24 BY MR. WHITE:
25 Q So we know this is the proclamation district

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1 population analysis that was part of the board's
2 proclamation and issued in its final report.
3 And we know from your affidavit, that
4 Districts 31 through 34 are the actual house districts
5 in Southeast that you would compare to Districts 1
6 through 4 in the demonstrative plan, right?
7 A Yes. Districts 31 through 34 in the
8 proclamation.
9 Q All right. And then they have the percentage
10 deviation in there as well, don't they?
11 A Yes.
12 Q And if we do the same analysis that we do
13 there, a positive deviation of 2.79, and a negative
14 deviation of 3.83, add those numbers together, that
15 equals 6.62 percent, doesn't it?
16 A That looks about right.
17 Q At the time that you signed your affidavit on
18 October 12th of 2011 in this case, you knew that you
19 had run other plans on compactness for the Southeast
20 districts, right?
21 A I'm sorry. Say that again.
22 Q Sure.
23 At the time you signed your affidavit on
24 October 12th, you had already run all of the tests
25 that are allowed under Maptitude, the seven or eight

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1 that there are, you had run those for the four
2 districts in Southeast, hadn't you?
3 A Yes.
4 Q And some of those tests that you had run and
5 were aware of, show that the board's proclamation
6 plan, in some instances is more compact than your
7 demonstrative plan, right?
8 A Yes, there are some tests.
9 Q Yet, you didn't mention any of those tests in
10 your affidavit. The only test that's in there is the
11 Reock Test, right?
12 A Yes.
13 Q And it was your decision to only use the
14 Reock Test in your affidavit?
15 A Yes.
16 Q In your opinion, based upon your experience
17 in this redistricting -- because that's the only thing
18 you're relying upon to give your testimony here today,
19 right, is this last redistricting go-around?
20 A Yes.
21 Q Is the difference between, under the Reock
22 Test, between a district that is .18 and .21,
23 significant?
24 A Can you repeat that question?
25 Q Sure.

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1 The Reock Test, the one you used in your
2 affidavit to do the analysis of the demonstrative plan
3 and the proclamation plan, one district has a score of
4 .18, the other district has a score of .21. Is the
5 difference between those two scores significant, in
6 your mind?

7 **A I think the situation -- I think there needs
8 to be more context to that situation.**

9 Q How come?

10 **A Because we're looking at relative to what's
11 possible.**

12 Q Okay. So your testimony here is that your
13 plan, it was more possible to draw a group of
14 districts in Southeast that were more compact as a
15 whole, than the districts in Southeast in the
16 proclamation plan, right?

17 **A Yes, it was possible to draw more compact
18 districts.**

19 Q You could have even drawn more compact
20 districts than the ones in the demonstrative plan,
21 couldn't you?

22 **A Given the circumstances that are present in
23 Southeast Alaska, that was as compact as I could get
24 them.**

25 Q So you're saying you could not have drawn

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1 **incumbents live. Considering that there used to be
2 five districts in Southeast Alaska and now there is
3 only four, it is highly likely that some incumbent was
4 paired.**

5 Q So you don't know whether or not Bill Thomas
6 is paired, under your plan, with Rene [as spoken]
7 Munoz in Juneau?

8 **A Without much certainty, I can say I believe
9 Bill Thomas is in Skagway. I'm not exactly sure where
10 Munoz is. But Skagway is put in with a part of the
11 City and Borough of Juneau, so depending on where she
12 is, that could be paired.**

13 Q So you're telling me that was not a
14 consideration that you took into account when drawing
15 the maps in Southeast?

16 **A We did not take into account any incumbent
17 legislator.**

18 Q And you understand the board is required to
19 take into account where Native incumbents live, right?

20 **MR. WALLERI:** Objection. It assumes facts
21 not in evidence and misstates the law.

22 **BY MR. WHITE:**

23 Q Go ahead and answer.

24 **A Can you restate the question or can you say
25 it again?**

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1 more compact districts than what you've drawn?

2 **A Given the circumstances of Southeast Alaska,
3 and possibly given a lot of time, it might be possible
4 to get more compact.**

5 Q When you say "under the circumstances" -- I'm
6 sorry. I didn't mean to interrupt you. Go ahead.

7 **A That was it.**

8 Q When you say "under the circumstances," what
9 circumstances are you talking about?

10 **A One is geography and where people are. I
11 guess another one would be consideration for the
12 Voting Rights Act.**

13 Q What about equal protection considerations?

14 **A There's a range of deviation that's
15 considered acceptable in rural places of Alaska, and
16 the demonstration plan was within that range.**

17 Q What about pairing of Native incumbents?

18 **A It was not a consideration under which we
19 operated. We didn't operate under any consideration
20 of incumbents whatsoever.**

21 Q So the plan, the demonstrative plan that
22 you've drawn in Southeast, in fact pairs Bill Thomas,
23 an Alaska Native incumbent, with another incumbent
24 legislator, doesn't it?

25 **A I never took an extensive look at where**

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1 Q Sure.

2 Do you know whether or not the board is
3 required to take into account where Native incumbents
4 live?

5 **A I do not. That's a legal question.**

6 Q So hypothetically, if the board was required
7 to, that would affect how compact you could make a
8 district, in theory, right?

9 **A If you add on additional requirements, that
10 could affect how something could be drawn.**

11 Q The plan that you drew, the demonstrative
12 plan for Southeast, also removes the current Alaska
13 Native incumbent legislator from the Native district
14 and places him in another district and then pairs him
15 with an incumbent, right?

16 **A Who are you referring to in that?**

17 Q Sure. Bill Thomas is the current Alaska
18 legislator who is in now -- you have the map in front
19 of you from the amendment plan, right?

20 He lives in Haines, by the way. I'm assuming
21 you guys will not object to me stating that. It's a
22 known fact. And in the proclamation -- the benchmark
23 plan, excuse me, Haines is part of the Native
24 district, is it not?

25 **A In the benchmark plan?**

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1 Q Yes.
 2 A **Haines is part of District 5, yes.**
 3 Q And in the demonstrative plan that you have
 4 done, Haines is part of District 4, correct?
 5 A **Yes.**
 6 Q And District 4 is not the Native influence
 7 district in Southeast under the demonstrative plan, is
 8 it?
 9 A **Yes, it's not.**
 10 Q That's District 3, isn't it?
 11 A **No, it's not.**
 12 Q 2?
 13 A **The VRA district in the demonstration plan**
 14 **would be District 2.**
 15 Q Okay. But Haines is not in District 2, then,
 16 right?
 17 A **No, it's not.**
 18 **MR. WHITE:** Let's take a quick break, and
 19 I'll go through my notes and exhibits here.
 20 (Recess.)
 21 (Exhibit N marked.)
 22 **MR. WHITE:** Back on record.
 23 **BY MR. WHITE:**
 24 Q Leonard, I'd like you to have in front of you
 25 the amended final redistricting plan, in other words,

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1 the benchmark plan, and that's Exhibit L, right?
 2 A **Yes.**
 3 Q And then I would like you to find the
 4 proclamation house district plan as well, which I
 5 think we've introduced. If we haven't, someone needs
 6 to let me know so I can do that.
 7 This one. It's attached to the summary
 8 judgment motion, Exhibit M.
 9 A **Okay.**
 10 Q Grab Exhibit M, the summary judgment motion.
 11 A **Okay.**
 12 Q And go to the proclamation
 13 house district map.
 14 So what I want you to have in front of you,
 15 Leonard, is the amended final redistricting plan,
 16 Exhibit L, and the proclamation house district plan
 17 from the summary judgment motion, which is Exhibit M,
 18 okay? Do you have those two maps in front of you?
 19 A **So you want exhibit which one? The**
 20 **proclamation?**
 21 Q The proclamation, Exhibit M, and Exhibit L,
 22 the amended final redistricting plan, the benchmark
 23 plan.
 24 A **All right.**
 25 Q So can you tell me, is House District 32 in

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1 the proclamation plan more compact than
 2 House District 5 in the amended final redistricting
 3 plan?
 4 A **Without running any tests whatsoever?**
 5 Q Well, can you make a conclusion of whether
 6 it's compact or not without running a test?
 7 A **What I would -- I would not feel comfortable**
 8 **making a conclusion without anything whatsoever.**
 9 Q So you wouldn't want to make a conclusion
 10 without having actually run the mathematical
 11 compactness tests?
 12 A **Yes.**
 13 Q And if I ask you that same question regarding
 14 whether House District 2A in the amended final
 15 redistricting plan, the benchmark plan, is more
 16 compact than House District 32 in the proclamation
 17 plan, would I receive the same answer?
 18 A **Yes.**
 19 Q Looking at the demonstrative plan you have in
 20 front of you, Exhibit N, House District 4, do you see
 21 there, the purple at the top?
 22 A **Yes.**
 23 Q And then you have on the bottom part there,
 24 Elvin Cove, Pelican, Tenakee Springs. Do you see
 25 that?

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1 A **Yes.**
 2 Q Would you call that an appendage to House
 3 District 4?
 4 A **Is that a legal term?**
 5 Q What's your understanding of what "appendage"
 6 means?
 7 A **Are you saying is it connected to District 4?**
 8 Q Well, it's only connected by water, right?
 9 A **This map actually doesn't make a distinction**
 10 **between water and ice covering, so I am not certain**
 11 **what the actual connections are between different**
 12 **parts here. For example, the whole glacier by Juneau**
 13 **is considered water as if it's the ocean.**
 14 Q Right. And you can see that in Exhibit L,
 15 right? It has the Juneau icefield actually listed on
 16 there, right?
 17 A **Yes.**
 18 Q And if you look at and compare the area that
 19 constitutes what I'm calling the appendage of House
 20 District 4 on the amended final redistricting plan,
 21 Exhibit L, there is no indication there's any
 22 icefields there, right?
 23 A **There is an indication of a connection by**
 24 **land, it looks like, on the amended final**
 25 **redistricting proposal, and there's no indication of a**

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1 connection of land by this version, looking at the
2 demonstration plan.

3 Q Okay. I'm a little confused. Help me
4 understand what you're saying. What connection are
5 you talking about?

6 A There is a water route in this version of the
7 plan that --

8 Q Okay. This record is going to be really
9 messed up. When you say "this version," you're
10 talking about the demonstrative plan, right?

11 A Yes, Exhibit N.

12 Q All right. And when you refer to the water,
13 what specifically area are you looking at?

14 A Just south of Pelican.

15 Q Okay.

16 A And there is a, it looks like the two --
17 these were created on two different versions of
18 software, and they're treating water a bit differently
19 from one to the other.

20 Q Okay. And so what is the point you're trying
21 to make? That's what I don't understand. Are you
22 saying that -- do you see where Pelican is on
23 Exhibit N and it kind of comes down into a point? Are
24 you saying that between the purple area there and the
25 blue area, there's water; is that what you're trying

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1 to tell me?

2 A Yes. And if that water is still there, it's
3 not anywhere near as apparent on Exhibit M or Exhibit
4 L.

5 Q So you're saying you just don't know whether
6 there's water there or not; is that what you're
7 telling me?

8 In other words, were debating over -- and I'm
9 going to go ahead and hand you a pen. Just circle the
10 area that you're talking about, so that the record is
11 clear on it.

12 A (Witness complies.)

13 Q Okay. Can you tell me what you just circled
14 there?

15 A Yes. There is this bit of water.

16 Q Okay. I don't think I'm disputing that
17 that's in fact water. Are you saying that it isn't?

18 A I'm saying that it's not represented the same
19 way in Exhibit L or Exhibit M.

20 Q That's not water, is it? That line on the
21 demonstrative plan is actually the line for the Sitka
22 City and Borough, isn't it?

23 A That may be --

24 Q If you look at the proclamation
25 house districts, you can see the Sitka City and

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1 Borough is in there. So that's not actually a water
2 line, that's some kind of boundary line.

3 A Yes.

4 Q Because if we look at the geography on the
5 two maps of L and M, Pelican is not an island.

6 A Yes.

7 Q And it appears it's on an island in your map.
8 Is that right?

9 A In the map that you provided, N, in which you
10 yourself said you thought that was water, it looks
11 like water. That is a bad representation of the
12 demonstration plan.

13 Q Well, you provided it.

14 A It's a horrible demonstration plan if you're
15 confusing borough boundaries with lakes and rivers.

16 Q Well, this is what you provided us, right?
17 These are the shape files you provided us.

18 A Shape files, but this is an interpretation of
19 shape files by pictures, so these are not the pictures
20 I provided.

21 Q You provided -- let's look at the pictures
22 you provided.

23 A Yes. If you would like to look at Exhibit M,
24 which does contain a better picture.

25 Q That's the proclamation house Districts,

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1 that's not yours. The only picture you have provided,
2 and if you look at your affidavit and the attachments
3 thereto, if you will, the second to the last page,
4 Attachment 2, which would be page 7 of Exhibit K.

5 A Yep.

6 Q That's what you provided, right?

7 A Yes.

8 Q Okay. And you're telling me that this map is
9 more clear than the map you're looking at as
10 Exhibit N?

11 A I'm saying that the color used to describe
12 the borough boundary in Exhibit N is the same color as
13 water, and that leads to lots of confusion.

14 Q It's fair to say that you can look at this
15 map and get a better idea of where the boundaries are
16 on Exhibit N than you can on Exhibit K, page 7?

17 A I don't think it's fair to say that I can get
18 a better idea of where the boundaries are if the
19 boundaries look like water.

20 Q That's what we're talking about, right, that
21 that's what you provided?

22 A Yes.

23 Q And that's the only map of Southeast that you
24 provided in your affidavit or that's attached to the
25 Petersburg motion, right?

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1 A Yes.
2 Q I just want to make sure: You're telling me
3 this map is clearer than this map?
4 A I'm saying it's very difficult when you have
5 borough boundaries being defined in the same color as
6 water. I mean, you yourself made that mistake.
7 Q No other borough boundaries are on this map,
8 right?
9 A It makes me wonder about the boundaries in
10 the northeast that would be the Haines Borough
11 boundary.
12 Q Look at Exhibit L. Would you say that
13 Exhibit L is far clearer than this map, Exhibit N?
14 A Between Exhibit L and Exhibit N?
15 Q Yes.
16 A I think it's easier to tell the difference
17 between borough boundaries and water on Exhibit L than
18 on Exhibit N.
19 Q The plan that you drew -- and you can look at
20 whatever map of Southeast you want, whichever you
21 think is clearer. Okay?
22 A Okay.
23 Q Whichever one you feel helps you, you know,
24 look at the map and be able to help me understand
25 where various things are. Whatever map you want to

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1 look at. All right?
2 A Okay.
3 Q House District 4, the area that contains
4 Elvin Cove, Pelican and Tenakee Springs, right?
5 A Yes.
6 Q You admit, one, it's only attached to
7 District 4 by water, it's not connected by land?
8 A On the area that includes Tenakee Springs, I
9 actually believe it is attached by land.
10 Q To the rest of District 4?
11 A Well --
12 Q That's what I'm talking about.
13 A -- there are a number of waterways, so are
14 you asking whether or not --
15 Q I'm asking whether -- you would agree with
16 me, wouldn't you, that if you look at the top portion
17 of House District 4, and then you look down at the
18 other portion that's kind of the tail down there at
19 the end, the part that actually has Pelican on it, has
20 Elvin Cove on it, and has Tenakee Springs on it,
21 that's all part of District 4, right?
22 A Yes. Are you saying that's all connected by
23 land?
24 Q No. That portion of District 4 is not
25 connected by land to the rest of District 4, right?

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1 A Okay. Yes. I would agree with that.
2 Q Do you know whether or not, because I can't
3 tell, there is actually a waterway between the purple
4 portion of District 4 and the portion where Hoonah and
5 Game Creek is? They're all part of the same land
6 mass, aren't they?
7 A I believe they are part of the same land
8 mass.
9 MR. WHITE: I am done. Thank you, Leonard,
10 for your time.
11 MR. KLINKNER: I don't have any questions.
12 MR. WALLER: No questions.
13 (Proceedings concluded at 4:31 p.m.)
14 (Signature reserved.)
15 -o0o-
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1 CERTIFICATE
2
3 I, LISA L. SHAFFER, Certified Shorthand
4 Reporter, and Notary Public in and for the State of
5 Alaska, do hereby certify that the witness in the
6 foregoing proceedings was duly sworn; that the
7 proceedings were then taken before me at the time
8 and place herein set forth; that the testimony
9 and proceedings were reported stenographically by
10 me and later transcribed by computer transcription;
11 that the foregoing is a true record of the
12 testimony and proceedings taken at that time;
13 and that I am not a party to nor have I any
14 interest in the outcome of the action herein
15 contained.

16 IN WITNESS WHEREOF, I have hereunto set
17 my hand and affixed my seal this 31st day
18 of October, 2011.
19
20
21

22 LISA L. SHAFFER, CSR
23 My Commission Expires 9/26/15
24
25

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

IN RE 2001 REDISTRICTING CASES,

Plaintiffs,

vs.

REDISTRICTING BOARD, et al,

Defendant.

Consolidated Case No. 3AN-01-8914 CI
1KE-01-0316 CI 3AN-01-8996CI
4FA-01-1592 CI 3AN-01-8908 CI
4FA-01-1608 CI 3AN-01-9026 CI
3VA-01-0040 CI 3AN-01-8995 CI

**ORDER GRANTING RUEDRICH PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT RE: LACK OF COMPACTNESS OF HOUSE
DISTRICT 16**

The Ruedrich plaintiffs have moved for summary judgment asking this court to declare the Final Redistricting Plan adopted by the Alaska Redistricting Board unconstitutional with respect to the Board's Redistricting of House District 16, Chugiak/Eagle River. Plaintiffs assert that the Board's redistricting of House District 16 violates the requirement in the Alaska Constitution, Article VI, § 6, that all districts "shall be formed of . . . compact territory." Following briefing, oral argument was held on this motion on December 20, 2001. For the reasons discussed below this court finds that House District 16 is not compact and violates Article VI, § 6 of the Alaska Constitution and is, therefore, unconstitutional and invalid. There are no material facts in dispute on this issue and, summary judgment is, therefore, appropriate.

The mandate for redistricting of election districts is set forth in Article VI, Section 6 of the Alaska Constitution, which states:

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.

The Alaska Supreme Court has stated, “[c]ontiguity, compactness, and relative socio-economic integration are constitutional *requirements*.” Hickel v. Southeast Conference, 846 P.2d 38, 44 (Alaska 1992). In order to be constitutional, a district may not lack any of these characteristics. Id. at 45.

These requirements prevent gerrymandering, or intentional vote dilution. See Id. “Gerrymandering is ‘the deliberate and arbitrary distortion of district boundaries and populations for partisan or personal political purposes. The term ‘gerrymandering,’ however, is also used loosely to describe the common practice of the party in power to choose the redistricting plan that gives it an advantage at the polls.’” Kenai Peninsula Borough v. State, 743 P.2d 1342, 1367 n. 28 (Alaska 1987) (quoting Davis v. Bandemer, 478 U.S. 109, 164 (1986)) (citations omitted).

In a broad sense gerrymandering is dividing an area into political units in an unnatural way with the purpose of bestowing advantages on some and thus

disadvantaging others. The compactness requirement, as well as the other requirements of Article 6, § 6 were designed to prevent gerrymandering. As Justice Matthews has observed, however: “[t]he intent to gerrymander may be very difficult to prove, especially if the objective was one other than to benefit the political party in power. However, if the compactness and integration requirements are observed, the opportunities to gerrymander are quite limited.”¹ Carpenter v. Hammond, 667 P. 2d, 1204, 1220 (Alaska 1983) (Matthews, J. concurring). Although there is some dispute whether proof of intent to gerrymander should be a prerequisite to a finding of a constitutional violation,² this does not appear to be a requirement of Alaska law.³

The term “compact” as used in the Alaska Constitution means “...having a small perimeter in relation to the area encompassed.” Hickel, 846 P.2d at 45 (quoting Carpenter, 667 P.2d at 1218 (Matthews, J., concurring)). “ ‘Compact’ districting should not yield ‘bizarre designs.’ ” Id. (quoting Davenport v. Appportionment Comm’n of New Jersey, 124 N.J. Super 30, 304 A.2d 736, 743 (N.J.Super.Ct.App.Div. 1973)). The compactness inquiry looks to the shape of a district. As the Hickel court ruled:

¹ Some commentators disagree with this assertion and argue that compactness requirements do little to prevent gerrymandering. See e.g., M. Lewyn, “How to Limit Gerrymandering,” 45 Fla. L. Rev. 403, 464-468 (1993); B. Grofman, “Criteria for Districting: A Social Science Perspective,” 33 UCLA L. Rev. 77, 89, 118 (1985). Still other commentators suggest that a compactness requirement actually serves to create a type of gerrymandering. Lowenstein & Steinberg, “The Quest for Legislative Districting in the Public Interest: Elusive or Illusory,” 33 UCLA L. Rev. 1, 23 (1985).

² Carpenter, 667 P.2d at 1220 (Compton, J. dissenting); See also D. Polsby & R. Popper, “The Third Criterion: Compactness as a Procedural Safeguard Against Partisan Gerrymandering,” 9 Yale L. & Pol’y Rev. 301, 327 (1991)

Odd-shaped districts may well be the natural result of Alaska's irregular geometry. However, "corridors" of land that extend to include a populated area, but not the less-populated land around it, may run afoul of the compactness requirement. Likewise, appendages attached to otherwise compact areas may violate the requirement of compact districting.

Hickel, 846 P.2d at 45-46.

When analyzing compactness, the court should "...look to the relative compactness of proposed and possible districts in determining whether a district is sufficiently compact." Id. (quoting Carpenter, 667 P.2d at 1218 (Matthews, J., concurring.)).

There appear to be two methods by which courts have analyzed compactness or commentators have suggested that they do so. The scholarly literature in some cases suggest a number of different mathematical measures of compactness, each focusing on different variables. See Karcher v. Daggett, 462 US 725, 757 n. 19 (Stevens, J. concurring) and sources cited therein; In Re: Colorado General Assembly, 825 P.2d 185 (Colorado 1992); In Re: Reapportionment II, 647 P.2d 209, 212 (Colorado 1982). An advantage of such tests is that those redistricting a state have an objective measure by which to assure a district is compact. A problem with such mathematical tests is that the commentators are unable to agree on an appropriate measure of compactness. Indeed the supporters of one compactness measure tend to be quite critical of other

³ Plaintiffs have suggested that District 16 was drawn as it was to place two incumbent Republican legislators in the same district. This court makes no findings as to what the Board's intent was in drawing proposed House District 16; this court's decision is based solely on the geography of the District.

measures. See Lewyn, supra note 1, at 464-468. Moreover, even were there agreement upon a mathematical formula that should be used to judge compactness, the geographical, climatical, ethnic, cultural and socio-economic differences that make reapportionment a “Herculean task” in Alaska would seem to make any mathematical definition of compactness difficult to apply on a statewide basis. Indeed, the Alaska Supreme Court, in another context, has already recognized the impossibility of achieving the mathematical precision of equal proportions that is feasible in other states. Egan v. Hammond, 502 P.2d, 856, 865-66 (Alaska 1972).

The second alternative used by courts to analyze the compactness requirement is a visual one. See Schrage v. State Board of Elections, 430 N.E. 2d 483, 486-87 (Illinois 1981). Davenport v. Apportionment Commission of the State of New Jersey, 404 A.2d, 736, 743 (App. Div. 1973). The Alaska Supreme Court appears to suggest that this is how compactness should be judged in Alaska. Hickel, 846, P.2d at 45-56. But this approach also has its problems. The approach is by its very nature arbitrary. One judge may believe a district is sufficiently compact while another may not. As one commentator has noted:

Individual judges do not confront enough redistricting cases to be likely to develop sufficiently informed intuitions about the broader pattern of district shapes. If left to their untutored qualitative assessments, judges are likely to render inconsistent and unpredictable decisions, as has occurred with previous efforts to enforce compactness standards. Yet the cost of uncertainty in this area are particularly high. Redistricting forces on all sides will struggle to exploit any uncertainties for political gain. Fomenting yet more litigation and further delaying the time at which plans become effective create additional costs.

R. Pildes & R. Niemi, "Expressive Harms, 'Bizarre Districts,' and Voting Rights: Evaluating Election-District Appearances after Shaw v. Reno," 92 Mich. L. Rev. 483, 437 (1993). This arbitrariness is further compounded by the recognition that virtually any district can be made more compact. At some point a district must be deemed "compact enough" to satisfy the requirements of the Alaska Constitution. The standards by which one may determine whether any district is unconstitutional due to lack of compactness or compact enough to satisfy the constitutional mandate presently is ill defined in Alaska.⁴

Nevertheless, the cases suggest several principles by which the compactness of a district may be judged without the need to resort to mathematical formula. First, courts should give particular scrutiny to districts that are in "odd" or "bizarre" shapes. "Appendages" attached to otherwise compact areas may be suspect. Likewise, "corridors" of land that extend to include a populated area but not the less populated land around it, may run afoul of the compactness requirement. However, if the odd shape of the district is the natural result of Alaska's irregular geometry then the district may be constitutional. Likewise, if the shape is necessitated by the need to create districts of equal population, then the district may be constitutional. Hickel, *supra*, 846 P.2d at 45-46. Finally, absolute or "ideal" compactness is not required for each district. The constitution calls only for "relative" compactness. Carpenter, *supra*, 667 P.2d, 1204, 1218 (Matthews, J. concurring).

⁴ This court hopes the Alaska Supreme Court will remedy this problem in its anticipated review of this
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Applying these principles to District 16, I conclude that District 16 lacks compactness and is therefore unconstitutional. The shape of District 16 is “odd” and contains an appendage extending into Eagle River at its southernmost boundary. District 16 and its adjoining districts are entirely within the Borough of Anchorage and there is no need to create the district in its current shape to account for population deviation or to comply with any other mandate of the Alaska Constitution. There has been no suggestion that the shape of the district is necessary to comply with Federal Law. Instead, defendants suggest that the shape of District 16 helps to link neighborhoods that have a known community interest. Begich Affidavit at 13. While this goal may be a laudable one it cannot justify a district whose shape violates the Alaska Constitution. Defendants also assert that the shape of the district follows natural lines of drainage and thoroughfare. Even were this true, however, these natural lines of drainage and thoroughfare do not appear to constitute the “irregular geometry” that the Hickel Court indicated might justify the creation of an odd-shaped district. There appears to be no geographical reason why District 16 cannot be more compact.

Plaintiffs submitted with their motion several maps showing proposed and possible District 16s that are more compact than the one proposed by the Board in its final redistricting plan. At oral argument plaintiffs also submitted a “super compact demonstration district” that is even more compact. Both of these

proposed districts are more compact than District 16 as proposed by the Board.⁵ As suggested by Justice Matthews in his concurring opinion in Carpenter and by the Alaska Supreme Court in its opinion at Hickel, a court must look to the relative compactness of proposed and possible districts in determining whether a district is sufficiently compact. Plaintiffs have demonstrated that District 16, as proposed by the Board, can easily be made more compact and that there is no reason not to do so.

Defendants have suggested that there are material facts in dispute and that summary judgment on this issue is not necessary. This court concludes that any facts that might be in dispute are not material to this decision. Summary judgment is therefore appropriate. For the above stated reasons, the court concludes that District 16, as proposed by the Board, is not sufficiently compact to satisfy the requirements of Article VI, § 6, of the Alaska Constitution and is therefore unconstitutional. Plaintiff's Motion for Summary Judgment on this issue is GRANTED.

DATED at Anchorage, Alaska this 31st day of December 2001.

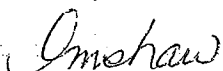


Mark Rindner
Superior Court Judge

⁵ The maps submitted by Plaintiffs to the court in support of their motion for summary judgment demonstrate the arbitrariness of the visual test for judging compactness as well as the difficulty the Board may face without further clarification from the Supreme Court. Both the "Demonstration District" map and the "Super Compact Demonstration" map show District 16 can be made more compact than the District 16 proposed by the Board. Clearly the "Super Compact Demonstration" is more compact than the "Demonstration District" 16. Yet it is unclear to this court whether the "Demonstration District" 16 would be unconstitutional or whether the Demonstration District 16 is compact enough to satisfy the requirements of Article VI, Section 6, even though the Demonstration District clearly can be made more compact.

I certify that on December 31, 2001, a copy of the attached order was mailed to each of the following at their addresses of record:

James L. Baldwin PO Box 110300 Juneau, AK 99811	Kyle W. Parker 1031 West 4 th Avenue, Suite 504 Anchorage, AK 99501
Bob Blasco 801 West 10 th Street, Ste. 300 Juneau, AK 99801	Jonathan Rubini 1007 W. 3 rd Avenue, Suite 100 Anchorage, AK 99501
Charlie Cole 406 Cushman Street Fairbanks, AK 99701	Douglas J. Serdahely 1031 West 4 th Avenue, Suite 504 Anchorage, AK 99501
Kenneth P. Eggers 3201 C Street, Suite 400 Anchorage, AK 99503	Bill Walker 550 West 7 th Avenue, Suite 1850 Anchorage, AK 99501
Jeffrey Feldman 500 L Street, Suite 400 Anchorage, AK 99501	Michael Walleri 3030 Wendell Street, Suite C Fairbanks, AK 99701
Ken Jacobus 425 G Street, Ste 920 Anchorage, AK 99501	Stephen Williams 500 L Street, Suite 400 Anchorage, AK 99501
Tom Klinkner 1127 West 7 th Avenue Anchorage, AK 99501	Philip Volland 211 H Street Anchorage, AK 99501
Joseph Levesque 550 West 7 th Ave, Suite 1850 Anchorage, AK 99501	
Myra M. Munson 318 Fourth Street Juneau, AK 99801	



Lynn Shaw

Proclamation House Districts

Southeast

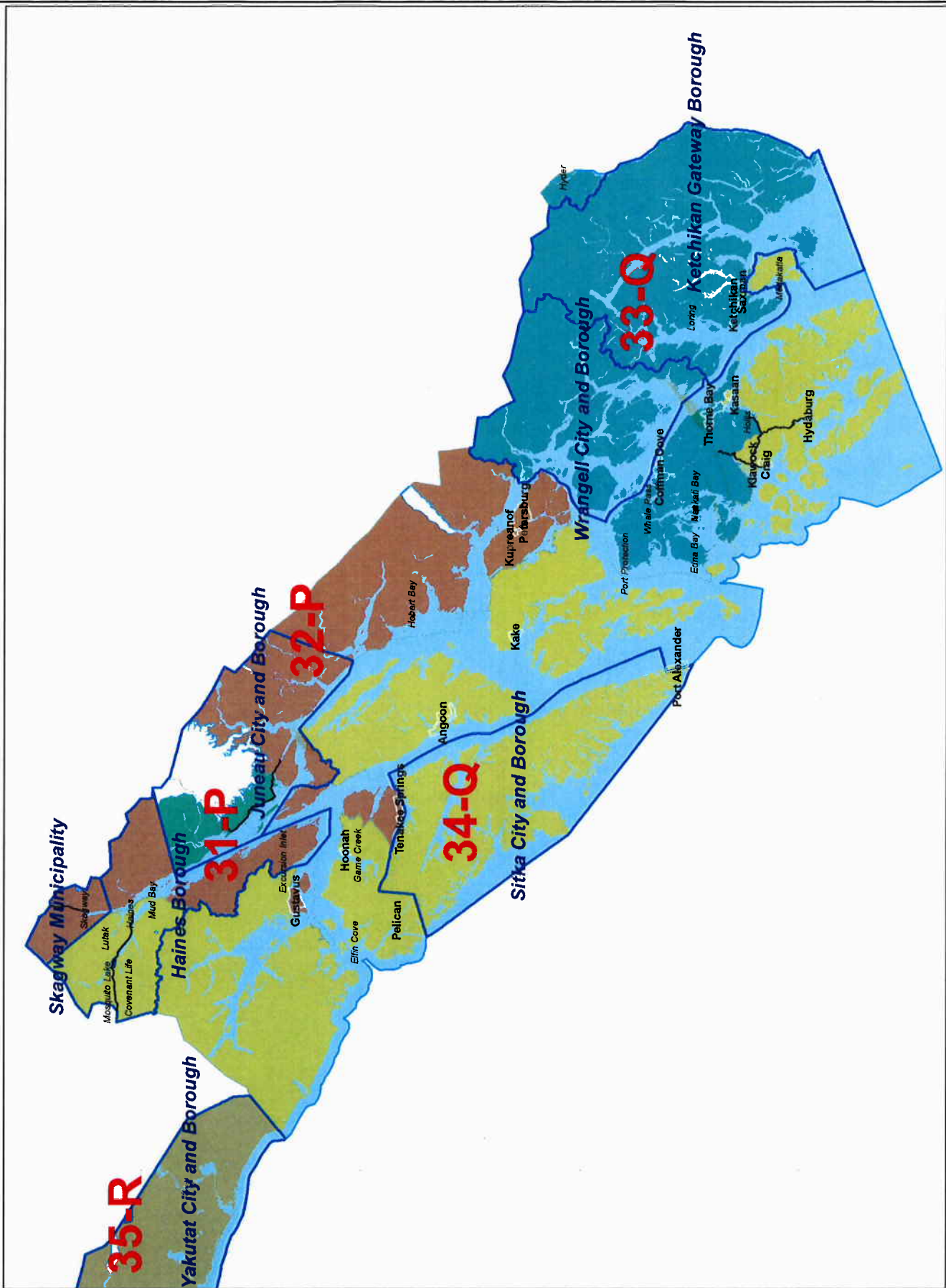
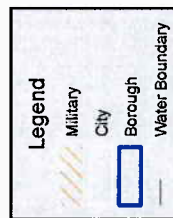








Exhibit C
Page 1 of 1

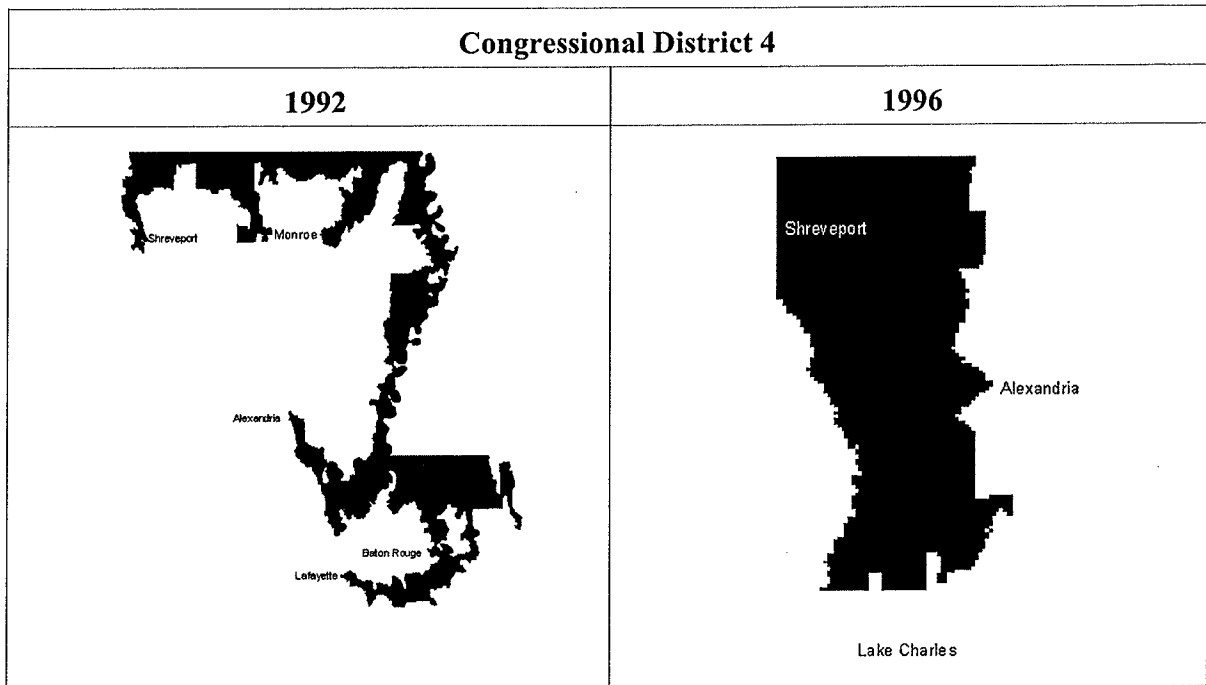


Prepared by:
Alaska Redistricting Board

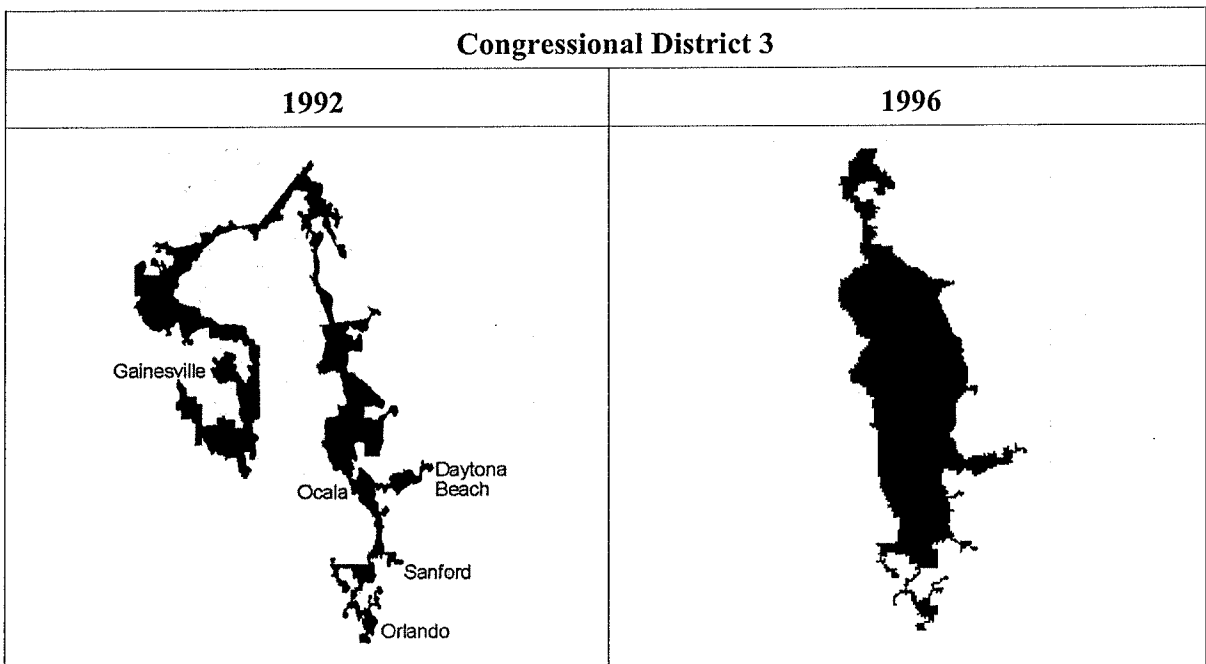
Texas

Congressional District 30	
1992	1996
	
Congressional District 18	
1992	1996
	
Congressional District 29	
1992	1996
	

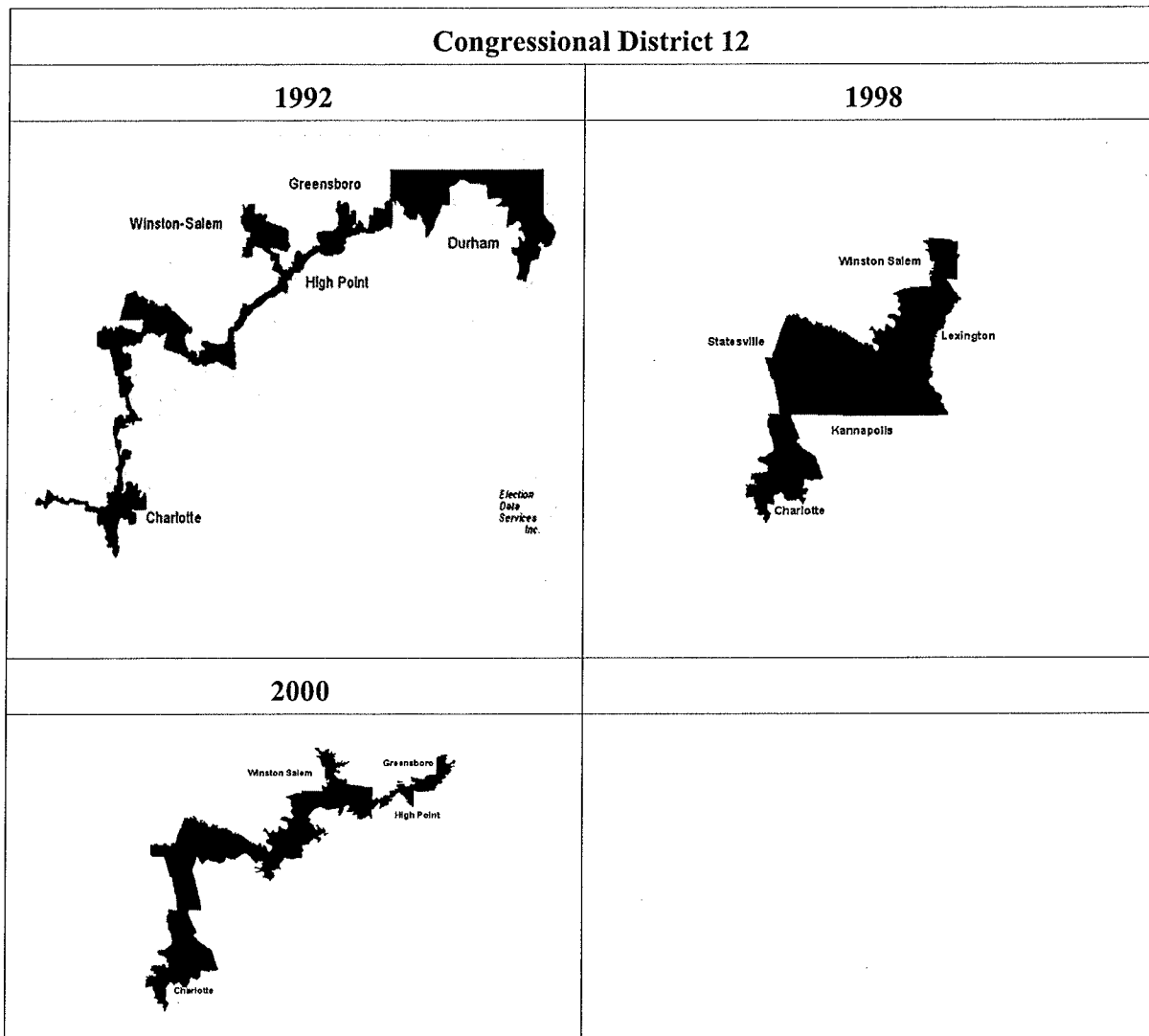
Louisiana



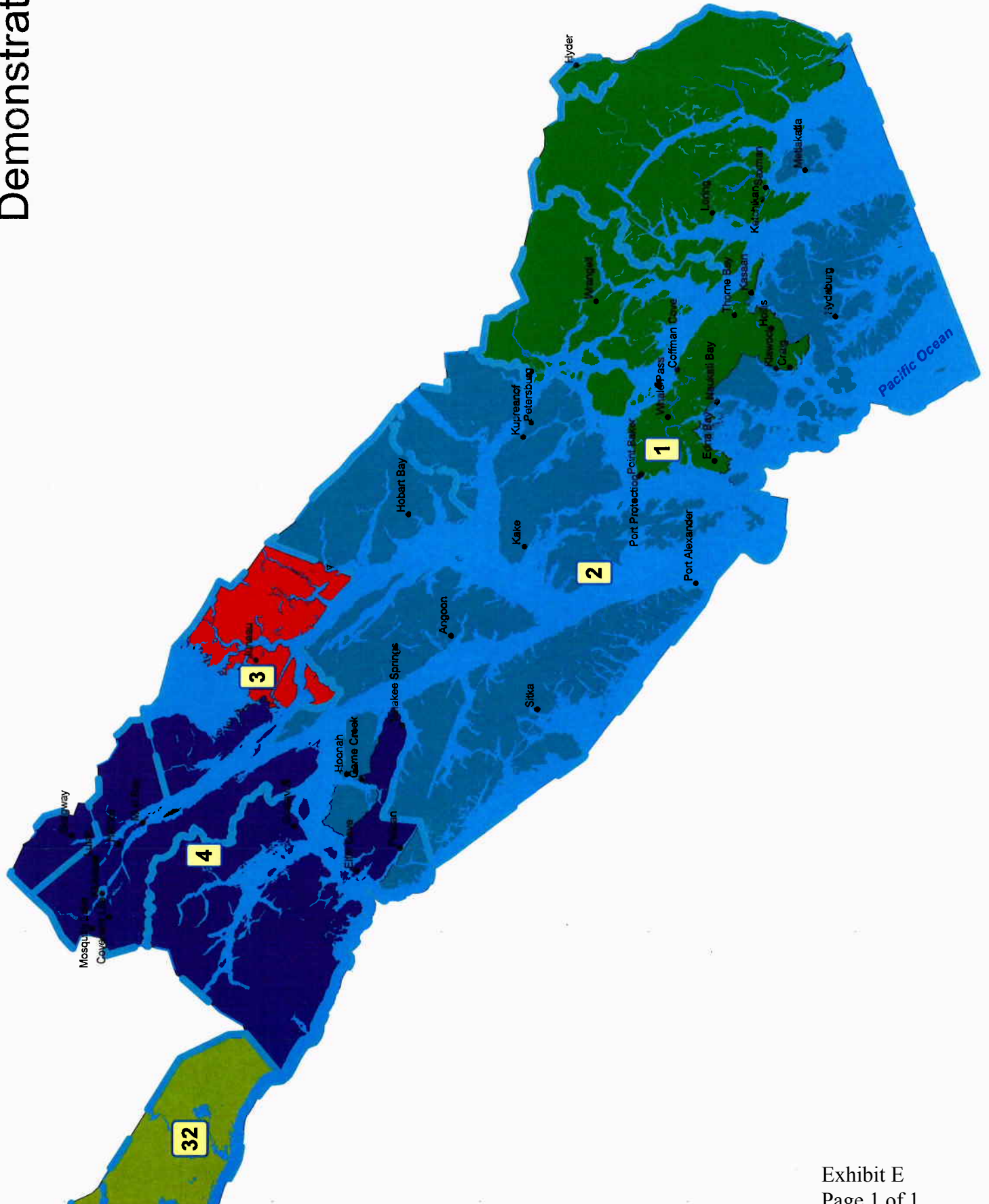
Florida



North Carolina



Demonstrative Plan



From: Holly Wells
Sent: Friday, October 28, 2011 9:52 AM
To:
Subject: FW: Southeast Compactness
Attachments: Draft report on compact.docx

From: Leonard Lawson [mailto:llawsonwork@gmail.com]
Sent: Wednesday, October 05, 2011 4:40 PM
To: Holly Wells
Subject: Re: Southeast Compactness

I am hoping this is what you need. Sorry for the delay I just run some in-depth numbers today.

-Leonard

On Tue, Oct 4, 2011 at 4:41 PM, Holly Wells <hwells@bhb.com> wrote:

Leonard,

I understand that the tests have to be kept separate so that there is not a change in the scales but I guess what I was wondering is if a compactness test can be ran on the entire Southeast area under the Board's Plan and then under the RIGHTS plan as I suspect the compactness of districts 1-4 in the RIGHTS plan as compared to districts 31-35 is more compact than simply the compactness of District 2 in the RIGHTS plan when compared to District 32 in the Board's plan. I know I am not articulating myself very well...sorry! If you could call me tomorrow morning to discuss this all that would be great.

Thanks again Leonard!

Holly Wells

Birch Horton Bittner & Cherot

direct 907-263-7247

fax 907-276-3680

From: Leonard Lawson [mailto:llawsonwork@gmail.com]
Sent: Tuesday, October 04, 2011 3:05 PM
To: Holly Wells
Subject: Re: Southeast Compactness

It would not be appropriate to sum these numbers. Some of the numbers are more compact when higher and others are more compact when smaller. Not to mention that these numbers "grow" at different scales. That is to say a 1.0 change in one scale may mean nothing while in some tests it may be the entire scale. It is way better to look at each test individually and compare the same test applied to the Boards map and the map you wish to substitute.

-Leonard

On Oct 4, 2011, at 11:12 AM, "Holly Wells" <hwells@BHB.com> wrote:

Leonard,

If at all possible, I was hoping to focus on the compactness of the Southeast only and was wondering if it is mathematically valid to take the sums for each of the Southeast districts under the Board's plan and compare them to the sum of the Southeast districts under the RIGHTS plan. Can you help me do this properly or let me know if it just isn't feasible?

Thanks!

Holly Wells

Birch Horton Bittner & Cherot

direct 907-263-7247

fax 907-276-3680

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Measures of Compactness Reports

Maptitude for Redistricting computes seven measures of compactness: Reock, Schwartzberg, Perimeter, Polsby-Popper, Length-Width, Population Polygon, Population Circle, and Ehrenburg.

Plan Name:	Current Congress1		
Plan Type:	Congressional		
Date:	2/10/2010		
Time:	2:15:25PM		
Administrator:	Howard		
User:	J. Smith		

Measures of Compactness

2/10/2010

DISTRICT	Roock	Schwartzberg	Perimeter
1	0.26	2.54	141.04
2	0.49	1.56	237.56
3	0.57	1.38	1,424.02
4	0.40	1.59	1,163.12
5	0.44	2.25	562.98
6	0.33	2.65	296.04
Sum	N/A	N/A	3,735.16
Min	0.26	1.56	N/A
Max	0.57	2.65	N/A
Mean	0.42	2.03	N/A
Std. Dev	0.11	0.51	N/A

The following references were used to develop these measures:

- Cox, E. P. A method of assigning numerical and percentage values to the degree of roundness of sand grains. *Journal of paleontology*, 1:179-183, 1927.
- Hofeller, T., and B. Grofman. Comparing the compactness of California congressional districts under three different plans: 1980, 1982 and 1984. In B. Grofmann, editor, *Toward Fair and Effective Representation*, pages 281-288, New York, 1990. Agathon.
- Niemi, R. G., B. Grofman, C. Carlucci, and T. Hofeller. Measuring compactness and the role of a compactness standard in a test for partisan and racial gerrymandering. *Journal of Politics*, 52(4):1155-1181, 1990.
- Polsby, D. D., and R. D. Popper. The third criterion: compactness as a procedural safeguard against partisan gerrymandering. *Yale Law and Policy Review*, 9:301-353, 1991.
- Reock, E. C., Jr. Measuring the compactness as a requirement of legislative apportionment. *Midwest Journal of Political Science*, 5:70-74, 1961.
- Schwartzberg, J. E. Reapportionment, gerrymanders, and the notion of compactness. *Minnesota Law Review*, 50:443-452, 1966.
- Young, H. P. Measuring the compactness of legislative districts. *Legislative Studies Quarterly*, 13(1):105-115, 1988.
- Ehrenburg 1892, see Frolov, Y. S., Measuring the shape of geographic phenomena: a history of the issue, *Soviet Geography* 16, 676-87, 1995.
- Iowa State Legislature Web Site:
[HTTP://WWW.LEGIS.STATE.IA.US/REDIST/JUNE2001REPORT.HTM](http://www.legis.state.ia.us/redist/june2001report.htm).

Reock Test

The Reock test is an area-based measure that compares each district to a circle, which is considered to be the most compact shape possible. For each district, the Reock test computes the ratio of the area of the district to the area of the minimum enclosing circle for the district. The measure is always between 0 and 1, with 1 being the most compact. The Reock test computes one number for each district and the minimum, maximum, mean and standard deviation for the plan.

See [Reock 1961] and [Young 1988].

Schwartzberg Test

The Schwartzberg test is a perimeter-based measure that compares a simplified version of each district to a circle, which is considered to be the most compact shape possible. This test requires the base layer that was used to create the districts. The base layer is used to simplify the district to exclude complicated coastlines.

For each district, the Schwartzberg test computes the ratio of the perimeter of the simplified version of the district to the perimeter of a circle with the same area as the original district. The district is simplified by only keeping those shape points where three or more areas in the base layer come together. Water features and a neighboring state also count as base layer areas. This measure is usually greater than or equal to 1, with 1 being the most compact. Unfortunately, the simplification procedure can result in a polygon that is substantially smaller than the original district, which can yield a ratio less than 1 (e.g., an island has a 0 ratio). The Schwartzberg test computes one number for each district and the minimum, maximum, mean and standard deviation for the plan.

See [Schwartzberg 1966] and [Young 1988].

Perimeter Test

The Perimeter test computes the sum of the perimeters of all the districts. The Perimeter test computes one number for the whole plan. If you are comparing several plans, the plan with the smallest total perimeter is the most compact.

See [Young 1988].

Polsby-Popper Test

The Polsby-Popper test computes the ratio of the district area to the area of a circle with the same perimeter: $4\pi \text{Area}/(\text{Perimeter}^2)$. The measure is always between 0 and 1, with 1 being the most compact. The Polsby-Popper test computes one number for each district and the minimum, maximum, mean and standard deviation for the plan.

See [Cox 1929], [Polsby and Popper 1991], and [Niemi, Grofman, Carlucci, and Hofeller 1990].

Length-Width Test

The length-width test computes the absolute difference between the width (east-west) and the height (north-south) of each district. The bounding box of a district is computed in longitude-latitude space, and the height and width of the box through the center point are compared. The total is divided by the number of districts to create the average length-width compactness. A lower number indicates better length-width compactness. This measure of compactness is designed for contiguous districts, since the bounding box encloses the entire district.

See [HTTP://WWW.LEGIS.STATE.IA.US/REDIST/JUNE2001REPORT.HTM](http://www.legis.state.ia.us/redist/june2001report.htm).

Population Polygon Test

The population polygon test computes the ratio of the district population to the approximate population of the convex hull of the district (minimum convex polygon which completely contains the district). The population of the convex hull is approximated by overlaying it with a base layer, such as Census Blocks. The measure is always between 0 and 1, with 1 being the most compact. The Population Polygon test computes one number for each district and the minimum, maximum, mean and standard deviation for the plan.

See [Hofeller and Grofman 1990] and [Niemi, Grofman, Carlucci, and Hofeller 1990].

Population Circle Test

The population circle test computes the ratio of the district population to the approximate population of the minimum enclosing circle of the district. The population of the circle is approximated by overlaying it with a base layer, such as Census Blocks. The measure is always between 0 and 1, with 1 being the most compact. The Population Circle test computes one number for each district and the minimum, maximum, mean and standard deviation for the plan.

See [Hofeller and Grofman 1990] and [Niemi, Grofman, Carlucci, and Hofeller 1990].

Ehrenburg Test

The Ehrenburg test computes the ratio of the largest inscribed circle divided by the area of the district. The measure is always between 0 and 1, with 1 being the most compact. The Ehrenburg test computes one number for each district and the minimum, maximum, mean and standard deviation for the plan.

See [Frolov 1975].

Plan Name: Test VRA strenghten
Plan Type: House
Date: 10/4/2011
Time: 3:47:21PM
Administrator: Leonard Lawson
User: llawson

Measures of Compactness

10/4/2011

DISTRICT	Reock	Schwartzberg	Perimeter	Polsby-Popper	Length-Width	Population Polygon	Population Circle	Ehrenburg
1	0.51	1.62	739.58	0.26	4.95	0.87	0.84	0.44
2	0.26	2.34	1,461.21	0.13	36.22	0.26	0.25	0.38
3	0.50	1.29	281.13	0.37	16.13	0.59	0.58	0.45
4	0.53	1.64	671.48	0.26	5.88	0.75	0.48	0.40
5	0.32	2.19	1,601.91	0.15	10.36	0.25	0.04	0.15
6	0.53	1.46	51.61	0.29	1.65	0.92	0.83	0.44
7	0.32	1.58	335.62	0.23	42.66	0.40	0.18	0.32
8	0.38	1.40	267.39	0.30	2.29	0.28	0.18	0.45
9	0.66	1.23	12.78	0.64	0.35	0.96	0.72	0.49
10	0.33	2.08	57.70	0.19	3.66	0.45	0.34	0.34
11	0.46	1.35	806.42	0.46	45.62	0.06	0.05	0.41
12	0.41	1.37	154.91	0.42	2.24	0.70	0.05	0.50
13	0.56	1.53	31.14	0.38	0.50	0.88	0.74	0.52
14	0.45	1.31	28.28	0.54	4.33	0.89	0.69	0.38
15	0.35	1.56	141.31	0.34	20.47	0.35	0.19	0.52
16	0.56	1.28	149.37	0.55	12.40	0.43	0.18	0.49
17	0.38	1.53	14.89	0.30	0.94	0.92	0.81	0.32
18	0.41	1.30	50.75	0.55	0.88	0.50	0.22	0.50
19	0.53	1.47	8.93	0.44	0.00	0.83	0.62	0.46
20	0.35	1.69	8.93	0.33	1.22	0.82	0.54	0.25
21	0.55	1.35	7.98	0.53	0.73	0.91	0.75	0.46
22	0.50	1.47	11.68	0.45	1.45	0.88	0.48	0.53
23	0.35	1.62	16.18	0.37	1.60	0.70	0.36	0.39
24	0.58	1.40	10.92	0.49	0.79	0.85	0.58	0.47
25	0.35	1.43	11.04	0.48	1.69	0.91	0.42	0.33
26	0.45	1.31	49.09	0.57	5.74	0.62	0.28	0.57
27	0.42	1.39	10.71	0.49	1.70	0.85	0.62	0.41
28	0.44	1.24	26.63	0.62	1.90	0.88	0.30	0.61
29	0.47	1.23	9.68	0.65	0.13	0.94	0.50	0.58
30	0.56	1.37	19.16	0.47	0.36	0.80	0.42	0.59
31	0.38	1.45	19.45	0.40	2.84	0.73	0.41	0.41
32	0.16	2.19	1,578.76	0.13	244.61	0.63	0.04	0.22
33	0.34	1.44	71.89	0.43	16.35	0.93	0.70	0.29
34	0.50	1.83	562.01	0.18	15.84	0.43	0.12	0.44
35	0.44	1.45	791.31	0.36	11.52	0.34	0.33	0.42
36	0.16	2.02	2,893.38	0.11	391.20	0.72	0.36	0.22
37	0.00	3.34	5,897.20	0.02	629.73	0.13	0.03	0.09
38	0.23	2.47	2,924.54	0.08	61.51	0.58	0.28	0.23
39	0.20	2.27	4,158.20	0.13	354.90	0.04	0.03	0.22
40	0.29	1.56	2,343.65	0.31	255.53	0.99	0.13	0.39
Sum	N/A	N/A	28,288.84	N/A	N/A	N/A	N/A	N/A
Min	0.00	1.23	N/A	0.02	0.00	0.04	0.03	0.09
Max	0.66	3.34	N/A	0.65	629.73	0.99	0.84	0.61
Mean	0.40	1.63	N/A	0.36	55.32	0.65	0.39	0.40
Std. Dev.	0.14	0.43	N/A	0.17	132.92	0.28	0.25	0.12

Plan Name: Test VRA strenghten
Plan Type: House

Administrator: Leonard Lawson
User: llawson

DISTRICT	Reock	Schwartzberg	Perimeter	Polsby- Popper	Length-Width	Population Polygon	Population Circle	Ehrenburg
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Plan Name: Proclamation Plan
Plan Type:
Date: 10/5/2011
Time: 11:13:27AM
Administrator:

Measures of Compactness

10/5/2011

DISTRICT	Reock	Schwartzberg	Perimeter	Polsby-Popper	Length-Width	Population Polygon	Population Circle	Ehrenburg
1	0.45	1.82	46.12	0.26	1.51	0.53	0.42	0.39
2	0.19	2.03	76.51	0.18	1.64	0.75	0.70	0.30
3	0.32	1.65	338.42	0.22	38.75	0.22	0.19	0.34
4	0.46	1.39	19.48	0.46	0.16	0.92	0.57	0.64
5	0.39	1.53	236.03	0.28	12.10	0.32	0.20	0.58
6	0.37	1.82	1,333.77	0.20	98.95	0.46	0.13	0.37
7	0.46	1.49	642.29	0.37	30.45	0.31	0.11	0.57
8	0.46	1.74	44.27	0.30	0.70	0.76	0.59	0.45
9	0.28	1.74	34.39	0.30	5.81	0.80	0.48	0.35
10	0.46	1.44	151.71	0.38	0.34	0.84	0.06	0.54
11	0.51	1.40	184.69	0.40	5.91	0.40	0.18	0.41
12	0.45	1.58	66.34	0.35	3.30	0.46	0.41	0.32
13	0.40	1.53	32.01	0.39	1.70	0.49	0.29	0.48
14	0.37	1.46	8.97	0.46	1.76	0.85	0.41	0.29
15	0.47	1.58	11.91	0.39	0.07	0.81	0.51	0.36
16	0.39	1.58	12.09	0.36	1.61	0.80	0.40	0.48
17	0.42	1.45	8.48	0.45	0.95	0.90	0.64	0.39
18	0.46	1.38	16.38	0.45	1.38	0.83	0.43	0.34
19	0.47	1.35	51.24	0.53	5.59	0.42	0.35	0.57
20	0.27	1.67	20.66	0.31	3.29	0.72	0.46	0.27
21	0.42	1.23	27.23	0.59	2.47	0.85	0.33	0.58
22	0.43	1.41	12.57	0.49	1.39	0.85	0.34	0.49
23	0.52	1.32	13.26	0.56	1.52	0.91	0.50	0.41
24	0.46	1.36	15.19	0.52	1.75	0.85	0.44	0.40
25	0.39	1.36	13.69	0.46	0.90	0.98	0.58	0.28
26	0.52	1.24	89.72	0.52	8.50	0.75	0.50	0.56
27	0.35	1.49	148.30	0.38	16.26	0.73	0.34	0.31
28	0.51	1.53	455.67	0.34	9.81	0.46	0.12	0.25
29	0.38	1.60	81.45	0.36	10.61	0.88	0.75	0.27
30	0.47	1.37	336.58	0.41	24.11	0.57	0.37	0.46
31	0.43	1.41	217.30	0.25	12.91	0.86	0.80	0.38
32	0.18	2.71	1,096.12	0.09	74.44	0.45	0.36	0.17
33	0.56	1.48	680.42	0.34	2.82	0.81	0.78	0.40
34	0.20	2.44	1,527.33	0.12	99.76	0.26	0.25	0.22
35	0.08	3.13	2,843.66	0.06	302.89	0.42	0.04	0.09
36	0.29	2.12	3,460.58	0.12	38.51	0.27	0.06	0.44
37	0.00	2.51	3,858.25	0.02	673.80	0.04	0.02	0.13
38	0.22	1.86	2,138.45	0.20	296.01	0.21	0.03	0.20
39	0.20	2.31	4,301.76	0.12	354.90	0.04	0.03	0.19
40	0.35	1.46	2,164.37	0.36	241.29	0.99	0.14	0.40
Sum	N/A	N/A	26,817.65	N/A	N/A	N/A	N/A	N/A
Min	0.00	1.23	N/A	0.02	0.07	0.04	0.02	0.09
Max	0.56	3.13	N/A	0.59	673.80	0.99	0.80	0.64
Mean	0.37	1.67	N/A	0.33	59.77	0.62	0.36	0.38
Std. Dev.	0.13	0.42	N/A	0.14	134.49	0.27	0.22	0.13

Plan Name: Proclamation Plan
Plan Type:

Administrator:
User:

DISTRICT	Reock	Schwartzberg	Perimeter	Polsby-Popper	Length-Width	Population Polygon	Population Circle	Ehrenburg
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Corr, Nicole A.

From: Thomas Klinkner [tklinkner@BHB.com]
Sent: Wednesday, October 19, 2011 11:49 AM
To: White, Michael
Cc: Tardugno, Anita; Corr, Nicole A.; Manna, Lynne E.
Subject: RE: Summary Judgment Motion

Mike,

Lawson has confirmed that the Southeast districts in the Demonstration Plan are identical to those in the plan accompanying the Petersburg summary judgment motion.

From: White, Michael [mailto:MWhite@PattonBoggs.com]
Sent: Tuesday, October 18, 2011 6:06 PM
To: Thomas Klinkner
Cc: Tardugno, Anita; Corr, Nicole A.; Manna, Lynne E.
Subject: Summary Judgment Motion

Tom:

Got your motion. Can you please confirm that the SE plan that is part of your motion is the "Demonstration Plan" that the Fairbanks Plaintiffs provided with their VRA expert report. I ask because we have the shape files for that plan and if they are in fact the same (which they appear to be) then I don't need to ask for the shape files again. Let me know.

Changing subjects, when do you expect to get your stipulation dismissing your claims over to me. I want to get the taken care of as soon as possible.

Additionally, I am thinking I need to depose Mr. Lawson before we can respond to your motion. While I am not 100% there yet, I just wanted to give a heads up. I would prefer avoiding having to file a Rule 56(f) motion, which I am sure the Court would grant, if I can. I will give you a call tomorrow to discuss this and a couple of other issues.

Regards

Michael D. White
Patton Boggs LLP
mwhite@pattonboggs.com

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11/4/2011

Exhibit H
Page 1 of 3

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Holly Wells

From: Leonard Lawson [llawsonwork@gmail.com]
Sent: Wednesday, October 19, 2011 10:56 AM
To: Thomas Klinkner
Cc: Holly Wells; Jill Dolan; Michael Walleri
Subject: Re: Redistricting Litigation

Yes the Southeast Alaska districts are the same in the Demonstration plan and in Petersburg's Plan.

-Leonard

On Wed, Oct 19, 2011 at 8:47 AM, Thomas Klinkner <tklinkner@bhb.com> wrote:

Leonard,

I have been asked by counsel for the Redistricting Board to confirm that the districting of Southeast Alaska that you prepared for the Petersburg Plaintiffs' motion for summary judgment on compactness is identical to the districting of Southeast Alaska in the Demonstration Plan that you prepared to accompany Dr. Arrington's report. Can you confirm this? Thank you for your assistance.

Thomas F. Klinkner | Birch Horton Bittner & Cherot
1127 W 7th Avenue | Anchorage, AK 99501
Tel: (907) 276-1550 | Fax: (907) 276-3680
Email: tklinkner@bhb.com | Website: www.birchhorton.com

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

IN RE 2001 REDISTRICTING CASES,)

)

)

Plaintiffs,)

)

vs.)

) Consolidated Case No. 3AN-01-8914 CI

REDISTRICTING BOARD, et al.,)

)

Defendant.

) **MEMORANDUM AND ORDER**

_____)

I. INTRODUCTION

In accordance with Article VI of the Alaska Constitution, the Alaska Redistricting Board (the “Board”) is required to reapportion Alaska’s House of Representatives and the Senate immediately following the official reporting of each decennial census of the United States. Under Article VI, Section 8 of the Alaska Constitution, the Board consists of five members, two of whom are appointed by the Governor, one of whom is appointed by the Speaker of the House of Representatives, one of whom is appointed by the Senate President, and one of whom is appointed by the Chief Justice of the Alaska Supreme

Court. At least one Board member must be a resident of each of the four judicial districts.

Article VI, Section 10 of the Alaska Constitution, requires the Board to adopt one or more proposed redistricting plans thirty days after the reporting of the decennial census. Thereafter the Board must hold public hearings to obtain comments on the draft plan(s). The Board then must adopt a final plan and proclamation no later than ninety days after the reporting of the census.

Under Article VI, Section 11, any qualified voter may apply to the superior court to compel the Board to correct any errors in redistricting. Original jurisdiction in these matters is vested in the superior court. On appeal from the superior court, this matter is reviewed by the Alaska Supreme Court *de novo*. Since statehood, every single redistricting plan has been the subject of such legal challenge.

II. HISTORY OF THE BOARD'S WORK

A. The Board's Practical Preparations

Anticipating the time restraints that would be placed upon the Board, the legislature in 1999 created the Redistricting Planning Committee. This five member committee was created in the fall of 1999, and members were appointed by the same authorities that would appoint the Board. The committee set up the Board's office in Juneau, leased the necessary office equipment, and contracted with consulting firms that would provide the data and analysis necessary for review of a redistricting plan by the U.S. Department of Justice under section 5 of the federal Voting Rights Act.

A technical committee, headed by Kathryn Lizik, was created prior to the formation of the Board. This committee identified and purchased the necessary redistricting software and hardware. The redistricting software required a fairly lengthy technical setup to create an environment in which the actual redistricting work could occur. The committee verified that the census data received from the United States Census Bureau (“Census Bureau”) was accurate and ready to be used for the redistricting process. This committee also contracted with the vendor who was providing the voting precinct results data to another contractor, Dr. Handley. Dr. Handley performed the Voting Rights Act analysis. In addition, the committee created a series of maps and put items of interest on the Board’s website.

The Census Bureau released two different types of data files containing census data. The first type of file was a geographic file referred to as “TIGRE,” or Topologically Integrated and Geographic Referencing and Encoding System. The second file type included population data, with statistics for all existing race combinations, the new race combinations for the year 2000, and statistics for those persons who are eighteen years of age or older. The population data was a very large file because it contained data for every possible category of geography in the state. There were population data summary tables for the entire state, and for all boroughs, all cities, all Alaska Native Regional Corporations, and any other grouping of population.

In Ms. Lizik’s experience, the census data received from the Census Bureau needed to be verified. This verification was performed by creating a series of “summing tables” that verified each individual piece of population data added up correctly on

different summary levels. An extensive series of checks were performed for each population category.

The technical committee encountered some problems with the software because Alaska does not fit into an easy-to-use geographic file for most of the geographical-based software. For example, the Aleutian Islands chain falls into a latitude and longitude across the International Dateline. A special projection had to be performed in order for the island chain to display within the entire state. Other modifications with the software had to be made to make the files more user-friendly for the Board. This included such items as explaining the terminology used on the spreadsheets, and explaining how the race data was formulated.

In addition, “census blocks” were created. A census block is the smallest unit of data available for population. In urban areas, a block is about four streets. In more rural areas of the state, the Census Bureau allowed more flexibility. A census block group is a statistical summary area that may closely relate to neighborhoods of cities and towns, created by the Census Bureau as an effort to assist the states in the redistricting process. From a statistical standpoint, census block groups identify groups of blocks that have a similar social and economic makeup on a small local level. Census blocks were used for district formation.

The Board received the population file from the Census Bureau on March 19, 2001. The technical committee provided a presentation to the Board on March 26, 2001, and created the first redistricting scenario by April 10, 2001.

B. The Work of the Board

The Board was appointed in August 2000 and began its work shortly thereafter. At Board meetings, the Board would schedule its next meeting, and give public notice. After initial planning and housekeeping meetings, the Board began to conduct meetings by teleconference, allowing members of the public to attend throughout the state. At Board meetings, particularly earlier ones, various administrative issues were also discussed, including leasing of office space, acquiring computer and office equipment,

compensation and travel reimbursement, hiring office staff, and hiring contractors. Other relevant topics addressed at Board meetings are discussed below.

September 12, 2000

The Board heard a presentation by the Redistricting Planning Committee members regarding preparations made by them and upcoming decisions the Board would need to address.

September 22, 2000

The Board elected Vicki Otte as Chair Person and voted that the Chair have the authority to sign on behalf of the Board. James Baldwin, from the Department of Law, provided an overview of the Open Meetings Act.

The Board developed a staffing plan and Board members submitted names of potential employees. The Board also discussed who should act as independent counsel. Additionally, the Board discussed the budget, reviewed vendor contracts, including Dr. Lisa Handley's contract, approved the lease of the office in Juneau, and discussed their compensation and per diem arrangements.

October 11, 2000

The Board interviewed three candidates for the Executive Director position Gordon Harrison, John Hartle, and Kevin Jardell, and voted to retain Harrison. The Board voted to hire Phillip Volland as its independent counsel.

November 3, 2000

Harrison reported to the Board regarding his activities since assuming the job of Executive Director on October 25, 2000. These activities were administrative in nature and included: obtaining a phone number and mailing address for the Board; notifying various government agencies and contractors of this information; setting up the office, including computer systems and other office equipment and furniture; and assessing further office staffing needs. Harrison also asked the Board to begin to think about other issues such as holding public hearings prior to the ninety-day redistricting process.

The Board discussed how nonresident military personnel should be treated and whether the federal census data would need adjustment for possible undercount. Baldwin explained that a recent bill adopted by the legislature, Senate Bill 99, specified that the Board may not attempt to distinguish between resident and nonresident components of population groups, and that the Board must use the non-adjusted census data. Baldwin pointed out that this legislation was not precleared by the U.S. Department of Justice.

In addition, the Board discussed such items as the maintenance of a website, travel reimbursement rules, and the issue of an Anchorage office.

November 29, 2000

The Board heard reports from: 1) Resource Data Inc., a firm who provided historical voting data; 2) Kathryn Lizik of the Alaska Department of Labor, who described the procedures used by the Census Bureau, and 3) Gordon Harrison, who gave updates on administrative issues such as the status of the Juneau office and the website. Harrison also reported that he was contacting interest groups to inform them that redistricting was scheduled for the Spring of 2001, and that they should begin planning for it and thinking about how they wanted to interact with the Board.

Counsel for the Board also discussed legal issues the Board should be aware of, such as the necessity for a formal policy governing communications between the public and Board members, public notice of Board meetings, and changes in redistricting law.

Board member Mason proposed a motion concerning census data, and emphasized that the Board needed to establish that it had taken a “hard look” at the question of eliminating nonresident military personnel from the population base, for compliance with the Hickel decision.

December 8, 2000

The Board received public comment from non-Board members attending the meeting. The Alaska Department of Labor and Workforce Development addressed the Board on the possibility of adjusting the Census Bureau data and current information concerning nonresident military personnel.

In executive session, the Board and its counsel discussed options for preclearance and the risks of litigation associated with these options.

A member of the public, Vic Fischer, addressed the Board about the desire of an organization, Alaska Common Ground, to hold a public forum on the topic of redistricting. The Board had no objections to cooperating with this proposed forum.

January 16, 2001

David Becker, an attorney with the U.S. Department of Justice addressed the Board. Becker described the responsibilities of the U.S. Department of Justice under Sections 2 and 5 of the federal Voting Rights Act. Specifically, Alaska is covered under Section 5 of the Act, and therefore any changes in redistricting must be precleared, either by a Washington district federal court or by the Civil Rights Section of the Department of Justice.

The Board also heard remarks from Lt. Governor Fran Ulmer, and public comments from April Ferguson of the Bristol Bay Native Corporation. Ferguson urged the Board to transcribe the minutes of its meetings and post the transcriptions on the internet. Gordon Harrison indicated that he had been working with the Alaska Municipal League to encourage local governments to address local redistricting issues and communicate their position to the Board. Susan McNabb from the North Slope Borough addressed the Board and stated that call-in radio shows are an effective means of gathering and disseminating information.

Board member Mason moved that the Board arrange to have a transcript made of each of its meetings. The motion was approved.

Each of the Board members , except Mason, planned on attending an upcoming National Conference of State Legislatures in Dallas. Counsel advised Board members on appropriate conduct while at this conference to avoid violating the Open Meetings Act.

February 9, 2001

Members of the public made general comments to the Board. The Board also discussed the logistics involved with procurement of the census data and mapping concerns.

February 26, 2001

A member of the public asked questions about the exclusion of nonresident military from the population base. Gordon Harrison presented a draft list of guidelines for the Board to consider for drawing and evaluating new election districts.

March 14, 2001

Members of the public, including the assistant city manager of the City of Unalaska, a city council member from Valdez, and an attorney for the Tanana Chiefs Conference, addressed the Board. Dr. Handley gave an overview presentation on racial bloc voting. Volland discussed the issue of including or excluding nonresident military personnel, and recommended that the Board take a “hard look” at the issue. Volland also discussed the new requirement that senate districts be composed of contiguous house districts as near as practicable and discussed whether or not senate terms may be truncated.

March 26, 2001

Harrison discussed the scheduling of pre-plan hearings between March 30 and April 6, 2001. Hearings were scheduled for March 30 in Anchorage, March 31 in Palmer, April 2 in Fairbanks, April 3 in Juneau, April 4 in Ketchikan and April 6 in Bethel. The Board discussed these hearings, public notice, and ways to ensure good participation. Counsel for the Board also presented a draft set of instructions for the staff to begin preparing district scenarios.

March 30, 2001

The Board received a draft statewide plan from a group called Alaskans for Fair Redistricting (“AFFR”). This was the first complete statewide draft plan presented to the Board. AFFR representatives testified at the March 30, 2001 public hearing and explained the plan’s rationale. AFFR also submitted a statewide map as well as other maps, and a 65-page report that explained the legal criteria AFFR applied to the development of its plan. [Exhibit 24] The report highlighted trouble or controversial areas in the plan and indicated that the plan was not a final product but rather a starting point for the solicitation of public comment.

April 2, 2001

The Board received a presentation from Tanana Chiefs Conference (“TCC”) regarding the Fairbanks area.

April 10, 2001

The Board received a second presentation from TCC regarding statewide rural districts. The presentation compared districts proposed by TCC to the AFFR plan. Testimony was received from citizens throughout the state.

James Baldwin, Alaska Assistant Attorney General, reported to the Board on the progress of the Department of Law on preparing a submission to the U.S. Department of Justice for preclearance of portions of HJR 44 and Senate Bill 99. Gordon Harrison presented several draft redistricting scenarios. He prefaced these scenarios with a

description of the three primary factors that influenced them: 1) the problem of finding enough people for then existing House District 40; 2) the necessity of maintaining then existing House District 36 as a Native majority district; and 3) the necessity of adding a district to the Mat-Su Borough, and therefore eliminating an existing district.

Scenarios presented were named Yupik Nation, Interior East, and Interior West. Scenarios presented also included Southeast Alaska. After a discussion of these draft scenarios, the five Board members and Harrison split up into three groups of two to work further on the draft scenarios. Each group took a specific scenario. The groups used the same guidelines given to the staff for the development of scenarios, specifically adhering to federal and state law.

April 11, 2001

The Board members discussed the draft scenarios each prepared. Board member Mason discussed scenarios for Southwest Alaska that he and Board member Okakok had prepared. Board member Sharp discussed a plan for the Interior that he had prepared. Gordon Harrison explained differences between the staff scenario Interior East and Board member Sharp's scenario. Board member Lessmeier and Chairperson Otte described scenarios for Southeast Alaska.

April 12, 2001

The Board discussed the draft scenarios previously worked on by Board members and staff. Scenarios were discussed for the following areas: Southeast Alaska, the Fairbanks area, and Southwest Alaska. The Board then discussed at length alternative

scenarios that combined regional scenarios into statewide scenarios. These included two alternative scenarios for Anchorage: one that sought to conform to existing district boundaries, and another that sought to follow Community Council boundary lines.

Volland advised that the scenarios troubled him because they failed to give sufficiently close proportional representation to the major urban areas. The scenarios considered gave the Municipality of Anchorage sixteen House districts, whereas its population was entitled to 16.6. The scenarios gave the Mat-Su area four districts, whereas its population entitled it to only 3.8. The scenarios gave the Fairbanks North Star Borough effective control of six districts, whereas its population was entitled to only 5.2. The Board agreed that the scenarios should be reworked to give Anchorage sixteen districts and a fraction of another; the Mat-Su Borough should have three districts and an appropriate fraction of a fourth; and Fairbanks should have five seats and a fraction of a sixth.

April 13, 2001

Board member Mason was not present. Board member Sharp described his revision of an Interior scenario that included the Denali Borough, the North Star Borough, and parts of the Richardson Highway. Gordon Harrison briefly described a plan he created called Interior East 1.

The Board discussed matters relating to the production of its draft report, and the schedule of hearings after draft plans were adopted. The consensus of the Board was that the staff would return at the next meeting with two statewide plans, one worked on by

Board member Sharp, the other by Board member Lessmeier, and two alternative Anchorage scenarios. The statewide plans would be able to accommodate regional scenarios for Southeast Alaska already discussed by the Board, and a three district scenario for the Kenai Peninsula.

April 16, 2001

The Board viewed and discussed at length several draft scenarios. These scenarios included one for the Interior developed by Board member Sharp, and staff scenarios referred to as Interior West 2, Interior East 3, Anchorage “Community Council,” and Anchorage “status quo.” The Board also discussed a statewide plan submitted by a group called “Concerned Citizens for Redistricting Equity” (“CARE”).

The Board adopted Interior West 1 as one of its draft plans, and also adopted both the “Community Council” and “Status Quo” alternatives for Anchorage. The Board also adopted the plan submitted by AFFR as one of its draft plans. Board members Lessmeier and Sharp voted against adopting the AFFR plan.

April 17, 2001

The Board adopted Board member Sharp’s draft scenario called Interior United. The Board discussed the adoption of the AFFR plan. Specifically, Board member Lessmeier asked the Board to reconsider its action in adopting the AFFR plan. His motion failed, with Board members Sharp and Lessmeier voting in favor of reconsidering the adoption of the AFFR plan. Board member Lessmeier then moved that the Board publish a statement identifying who had prepared the AFFR plan, and

declaring that the plan was not prepared by the Board or the Board's staff, that the Board had not collectively analyzed the plan in any significant detail, and that the AFFR plan was included as an alternative for discussion purposes only. This motion failed by a two to three vote, with Board members Lessmeier and Sharp voting yes.

The Board then discussed the issue of Senate pairings. After discussion, the Board adopted Senate pairings prepared by staff. The Board also adopted the Anchorage/Mat-Su Status Quo Senate pairings. Board member Lessmeier moved that the Board adopt a plan presented by the Calista Regional Native Corporation. This motion was tabled until the following day to allow review of this plan.

April 18, 2001

Representatives from the Calista Regional Native Corporation discussed their draft plan. The Board then adopted the Calista plan as a draft plan. This brought to four the number of statewide draft plans adopted by the Board as required by the Alaska Constitution. The AFFR Plan; the Calista Plan; and Board Plans 1 and 2.

May 4 – May 19, 2001

Between May 4 and May 19, 2001, the Board held public hearings regarding the four draft plans pursuant to Section 6, Article 10 of the Alaska Constitution. These hearings were held in Anchorage on two different days, and in Fairbanks, Healy, Dillingham, Delta Junction, Glennallen, Valdez, Cordova, Wasilla, Kenai, Homer, Galena, Bethel, Juneau, Sitka, Wrangell, Petersburg, Ketchikan, Angoon, and Hoonah. [Exhibit 520] Executive Director Harrison addressed a meeting of the Southwest Alaska Municipal Conference in Unalaska on May 11, 2001. One day of the Anchorage hearings

and the Juneau hearing were held by teleconference, in order to give people from the entire state the opportunity to testify. The entire Board attended the hearings conducted by teleconference. At least two Board members were present at all of the other hearings. The hearings were recorded, and the public was given access to transcripts and audio tapes. Although testimony at many locations tended to focus on one or the other of the proposed plans, residents in all parts of the state who attended a hearing were made aware that there were four alternate plans under consideration. The public was also made aware that these plans were draft plans and that the final plan could, and likely would, differ from the proposed plans. Approximately 370 people testified at these hearings. Residents in a particular locale generally favored one of the plans over the others, but there was no uniformity throughout the State as to which plan was preferable.

May 21, 2001

Dr. Handley presented the preliminary results of her racial bloc voting analysis. She analyzed elections in which there was a discernable Native-preferred candidate for legislative office in 1994, 1996, 1998, and 2000. She found evidence of legally significant racial polarized voting only for elections in former District 36.

Board members had traveled to public hearings around the state in groups of two or three in order to maximize the number of communities they could visit. Board members summarized public testimony they received at these locations for the benefit of non-attending Board members, which included the following locations: Fairbanks, Healy, Delta Junction, Glennallen, Valdez, Dillingham, Cordova, Wasilla, Homer, Kenai, Bethel, and Galena.

The Board also received a revised plan from AFFR (referred to in this litigation as AFFR Plan B) that had been electronically transmitted the evening of May 18, 2001. AFFR's counsel, Myra Munson, explained Plan B to the Board and presented a letter to the Board and the public that explained each change made to Plan A by Plan B. [R2641-53].

May 22, 2001

The Board began to review plans submitted by outside groups and individuals. Myra Munson, a representative from AFFR, gave an overview of the revisions of her group's plan and answered questions from Board members and staff. The Board also looked at a statewide plan submitted by the TCC. The Board examined plans of the Anchorage areas, one submitted by two Anchorage Assembly members (the "neighborhood plan," which had been incorporated into the AFFR plan), and one submitted by the Anchorage Mayor ("Option B"). In addition, the Board examined a plan submitted by the Mat-Su Borough. These plans were compared with the Board's two Anchorage plans.

The Board discussed districts on which a tentative agreement could be reached. It was agreed that House Districts 37 and 38 would probably remain as shown in the Board's Plans 1 and 2. The Board examined several plans for Southeast Alaska. Counsel for the Board discussed legal issues associated with extending the current House District 5 to include Cordova, as proposed in the AFFR plan. The Board adopted this approach, and also adopted a tentative pairing of House Districts 39 with 40, and 36 with 6.

Shismaref and Pilot Station would be included in House District 38. Trial testimony referred to this process as putting a district “on the shelf.”

The Board also examined the Kenai scenarios, including those presented in Board’s Plans 1 and 2, AFFR’s Kenai plan, and a status quo scenario previously prepared by staff but not adopted as a draft plan.

The plan submitted by the Mat-Su assembly was tentatively agreed upon. The Board examined several scenarios for Fairbanks, including one submitted by an individual at the Fairbanks public hearing.

May 23, 2001

Board member Sharp described his scenario that included the Denali Borough in a Richardson Highway district that extended to Valdez and included Glennallen. A member of the public, Brian Rogers, described his plan for Fairbanks, which had been incorporated into the revised statewide AFFR plan. The differences of these two plans were discussed.

Anchorage Mayor George Weurch and Susan Fison, Director of the Planning Department of the Municipality of Anchorage, described to the Board their plan referred to as Option B. Two Anchorage residents who were connected by teleconference, Melinda Taylor and Doug Van Etten, both Anchorage Assembly members, described an Anchorage plan that had been incorporated into the revised AFFR statewide plan.

The Board also discussed the Kenai Peninsula districts.

May 24, 2001

Gene Soldani presented a new “status quo” scenario for the Kenai Peninsula that was drawn around current house district lines. The Board also reviewed Board member Sharp’s Fairbanks scenario.

June 6, 2001

Counsel for the Board recommended that the Board address the content of their final report. Gordon Harrison recommended that the Board present the final report in a proclamation format.

June 7, 2001

The Board determined that it would wait until the final plan was adopted before addressing the issue of setting terms of senators not otherwise standing for reelection in 2002. In addition, the Board discussed the question of including nonresident military in the population base. The consensus was that the including nonresident military personnel would not materially affect the redistricting plan adopted by the Board.

The Board also discussed the contents of the proclamation that would be issued with the final plan.

Gordon Harrison informed the Board that he had received two statewide plans from the Kenai Native Association. He also received a revision of the Anchorage Mayor’s plan. Each Board member was to be provided with copies of these plans.

The Board discussed whether it was willing to include an overall population deviation of 10% in its final plan. Counsel for the Board opined that a larger deviation than 10% could be justified on several grounds. The Board decided it would accept a larger deviation if necessary.

Board member Mason discussed revisions he had made to the most recent AFFR plan. He referred to this as the “Full Representation Plan.” The Board discussed the inclusion of Valdez in a South Anchorage district. Board member Lessmeier compared districts in the Full Representation Plan with comparable districts in the Anchorage Mayor’s Option B plan. The Board passed a motion that Valdez would not be included with an Anchorage house district, with Chair Otte voting no.

June 8, 2001

Board member Mason moved the Board to reconsider its vote regarding a Valdez/South Anchorage district. Board member Mason indicated that he was not committed to this pairing, but wanted to keep the option open. The motion passed by a three to two vote, with Board members Lessmeier and Sharp voting against it.

The Board then discussed at length how a seat shared between the Municipality of Anchorage and the Mat-Su Borough could be divided to give each side its correct proportion. The Board reviewed a partial draft plan prepared by its staff that divided a shared district on the basis of a 57% (Mat-Su) to 43% (Anchorage) split.

June 9, 2001

The Board viewed a revised plan submitted by the Anchorage Planning Department that divided the shared district with the Mat-Su Borough on a roughly 60-40 basis in favor of Mat-Su. Tom Begich, an Anchorage consultant on contract to the Alaska Department of Law, described Anchorage neighborhoods to the Board.

Board member Mason moved that the Board adopt the Full Representation Plan as its final plan. Board member Okakok seconded the motion.

The Board voted against removal of the five Fairbanks districts and House District 35 (the Richardson Highway District) from inclusion in the plan. The Board also voted against incorporating into the plan a south Anchorage-Valdez district proposed by Kevin Jardell. The Board unanimously voted to change the plan so that the two Juneau house districts remain identical to the existing Juneau house districts.

After some discussion, it was concluded that Chair Otte need not recuse herself from a vote on the Full Representation Plan. In addition, the Board voted against including a plan submitted to the Board by the Mat-Su Borough.

The Board voted three to two to adopt the Full Representation Plan as amended by the motion by Board member Lessmeier, including senate pairings, as the Board's final plan. Board members Lessmeier and Sharp dissented.

The Board also decided that a map titled "Full Representation," dated June 6, 2001, would be available in commercial copy shops for the public, with a disclaimer that the final maps issued might include minor differences from this map.

The Board directed its staff to make technical corrections, and on June 18, 2001, the Board released the final Proclamation of Redistricting (the “Proclamation”). The two minority members of the Board issued a Report of Minority Redistricting Board Members, criticizing the final plan and the process by which the plan was adopted.

The plan set forth in the Proclamation (the “Final Plan”) described each of the election districts. According to Article VI, Section 6 of the Alaska Constitution, each district is to contain a population “as near as practicable to the quotient obtained by dividing the population of the state by forty.” The 2000 census showed a total statewide population of 626,932 people, resulting in an ideal house district size of 15,673 people.

Under the Final Plan, there is an overall deviation of 12 percent. This overall deviation is the lowest in state history. The overall deviation would not exceed ten percent but for the deviation in one district (District 40). Seven districts have a majority of Native population (House Districts 6, 37, 38, 39, 40, and Senate Districts S and T). Two districts have a Native population of greater than 37 percent (House District 5 and Senate District C).

Under the criteria set forth in Egan v. Hammond, 502 P.2d 856 (Alaska 1972), the Board identified the terms of seven sitting senators that must be truncated. The Proclamation identified those districts with two-year senate terms versus those districts with four-year terms. Accordingly, a new election is required in 2002 for some senate districts.

In the Report to Accompany the Proclamation, the Board identified certain critical problems created by demographic changes that influenced the Board's ultimate decision. Problems include the shortfall of population in southeast Alaska (the region had population for 4.6 house seats); the shortfall of population in the Alaska Peninsula-Aleutian Islands district; the Municipality of Anchorage's population equivalent to 16.6 house seats; the underpopulation of the previous Richardson Highway district; and the need to maintain effective representation by Alaska Natives in a certain number of house and senate districts in order to comply with the federal Voting Rights Act. The solutions chosen by the Board to these problems have been challenged in every aspect of this litigation.

III. LEGAL PROCEEDINGS

The Alaska Constitution allows challenges to the Final Plan. Article VI, section 11 states, "[a]ny qualified voter may apply to the superior court to compel the Redistricting Board, by mandamus or otherwise, to perform its duties under this article or to correct any error in redistricting..." In accordance with Article VI, section 11, nine lawsuits were filed in superior courts throughout the State, and were consolidated under the caption, In Re 2001 Redistricting Cases v. Redistricting Board, et al., Consolidated Case No. 3AN-01-8914CI. All of these lawsuits named the Board as a Defendant. Some cases also named the individual Board members as defendants. Plaintiffs all have standing to bring these lawsuits and this court has original jurisdiction under the Alaska Constitution.

The State moved and was allowed to participate as a Defendant-Intervenor. In addition, the court granted a motion to intervene submitted by several Alaska Native individuals and two Alaska Native organizations (the “Native-Intervenors”). The Alaska Legislature (the “Legislature”) also was permitted to intervene as a plaintiff. The Legislature’s Complaint in Intervention was later dismissed because it had not been filed within the thirty day time limit imposed by Article VI, Section 11 of the Alaska Constitution. The Legislature was allowed participation as *amicus curiae*, as was AFFR, the Mat-Su Borough and the Fairbanks North Star Borough.

This court issued a Scheduling Order on August 28, 2001, which set a fifteen-day trial to begin on January 14, 2002, and conclude on February 4, 2002. On November 15, 2001, the Alaska Supreme Court adopted a new civil rule, 90.8, which required this court to issue its opinion by February 1, 2002. Accordingly, this court modified the original Scheduling Order and a three-week trial began on January 7, 2002 and concluded on January 25, 2002.

The court held regular status conferences with the parties every other week beginning on September 7, 2001, with minor deviations to accommodate the court’s schedule. As issues arose, the court held additional hearings as needed. During the course of this litigation, many motions were filed and decisions made. A comprehensive list is attached to this opinion as Appendix B. The parties began extensive discovery and multi-track depositions were taken of the approximately 160 witnesses initially identified.

After briefing and argument, the court decided numerous summary judgment motions. Some of these were granted while most were denied or deferred.

The Plaintiffs as a group assert that the Board's plan is unconstitutional in a number of respects. Before ruling on the specific issues, it is necessary to discuss the substantive law.

IV. APPLICABLE LAW

As discussed earlier, litigation arises systemically with the announcement of the new redistricting plans. As a result, this court is guided by a series of Alaska case law and must recognize the practices established by the Alaska Supreme Court in prior redistricting cases. In addition to state requirements, federal law also applies. A discussion of applicable state and federal law follows.

A. Article VI, Section 6 of the Alaska Constitution

The mandate for redistricting of election districts is set forth in Article VI, Section 6 of the Alaska Constitution, which states:

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.

As the Hickel court ruled, “[c]ontiguity, compactness, and relative socio-economic integration are constitutional *requirements*.” Hickel, 846 P.2d at 44. In order

to be constitutional, a house district may not lack any of these characteristics. See Id. at 45.

These requirements prevent gerrymandering, or intentional vote dilution. See Id. “Gerrymandering is ‘the deliberate and arbitrary distortion of district boundaries and populations for partisan or personal political purposes. The term ‘gerrymandering,’ however, is also used loosely to describe the common practice of the party in power to choose the redistricting plan that gives it an advantage at the polls.’” Kenai Peninsula Borough, 743 P.2d at 1367 n. 28 (quoting Davis v. Bandemer, 478 U.S. 109, 164 (1986)) (citations omitted). The court will discuss each characteristic below.

1. Contiguity

“Contiguous territory is territory which is bordering or touching.” Hickel, 846 P.2d at 45. As one commentator has noted, “[a] district may be defined as contiguous if every part of the district is reachable from every other part without crossing the district boundary (i.e. the district is not divided into two or more discrete pieces).” Id. (quoting Grofman, Criteria for Districting: A Social Science Perspective, 33 U.C.L.A. L.Rev. 77, 84 (1985). Because of Alaska’s large size and numerous archipelagos, absolute contiguity is impossible. See Hickel, 846 P.2d at 45. To accommodate Alaska’s unusual shape, a contiguous district may contain some amount of open sea. See id.

“However, the potential to include open sea in an election district is not without limits. If it were, then any part of coastal Alaska could be considered contiguous with

any other part of the Pacific Rim.” Id. Accordingly, the Alaska Constitution provides for the additional requirements of compactness and socio-economic integration. See id.

2. Compactness

The term “compact” as used in the Alaska Constitution means “...having a small perimeter in relation to the area encompassed.” Id. (quoting Carpenter, 667 P.2d at 1218 (Matthews, J., concurring)). “ ‘Compact’ districting should not yield ‘bizarre designs.’ ” Id. (quoting Davenport v. Apportionment Comm’n of New Jersey, 124 N.J. Super 30, 304 A.2d 736, 743 (N.J.Super.Ct.App.Div. 1973)). The compactness inquiry looks to the shape of a district. As the Hickel court ruled:

Odd- shaped districts may well be the natural result of Alaska's irregular geometry. However, “corridors” of land that extend to include a populated area, but not the less-populated land around it, may run afoul of the compactness requirement. Likewise, appendages attached to otherwise compact areas may violate the requirement of compact districting.

Hickel, 846 P.2d at 45-46. When analyzing compactness, the court should “look to the relative compactness of proposed and possible districts in determining whether a district is sufficiently compact.” Id. (quoting Carpenter, 667 P.2d at 1218 (Matthews, J., concurring.)).

3. Relative Socio-Economic Integration

Election districts must be composed of relatively socio-economically integrated areas according to Article VI, Section 6 of the Alaska Constitution. The term socio-

economic integration was explained by delegates of the Alaska Constitutional Convention as:

Where people live together and work together and earn their living together, where people do that, they should be logically grouped that way.

....

It cannot be defined with mathematical precision, but it is a definite term, and is susceptible of a definite interpretation. What it means is 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. It has, as I say, no mathematically precise definition, but it has a definite meaning.

Carpenter, 667 P.2d at 1215 (quoting Groh, 526 P.2d at 878, quoting Minutes, Constitutional Convention 1836, 1873)). This description supports the view that election districts were intended to be composed of economically and socially interactive people in a common geographic region. See Carpenter, 667 P.2d at 1215.

In order to satisfy this constitutional requirement, the Board must provide “sufficient evidence of socio-economic integration of the communities linked by the redistricting, proof of actual interaction and interconnectedness rather than mere homogeneity.” Hickel, 846 P.2d at 46 (quoting Kenai Peninsula Borough, 743 P.2d at 1363).

The requirement of relatively integrated socio-economic areas “helps to ensure that a voter is not denied his or her right to an equally powerful vote.” Hickel, 846 P.2d at 46. Furthermore, the Alaska Supreme Court has commented on this requirement as follows:

[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.

Id. (quoting Groh v. Egan, 526 P.2d 863, 890 (Alaska 1974)(Erwin, J., dissenting)).

The term “relatively” means that the court will “compare proposed districts to other previously existing and proposed districts as well as principal alternative districts to determine if socio-economic links are sufficient.” Hickel, 846 P.2d at 47. The term “relatively” does not mean “minimally,” nor does its use intend to weaken the constitutional requirement of integration. See Id.

The Alaska Supreme Court has noted, however, that this requirement is given “some flexibility by the constitution since districts need be integrated only ‘as nearly as practicable.’” Hickel, 846 P.2d at 45, n.10. The Alaska Supreme Court has further noted that, “the flexibility that this clause provides should be used only to maximize the other constitutional requirements of contiguity and compactness.” Id.

In the previous redistricting cases, the Alaska Supreme Court has identified several specific characteristics of socio-economic integration. These include: service by the state ferry system, daily local air taxi service, a common major economic activity, shared fishing areas, a common interest in the management of state lands, the predominantly Native character of the populace, and historical links. See Hickel, 846 P.2d at 46, discussing Kenai Peninsula Borough, 743 P.2d at 1361. When examining

socio-economic integration, the Alaska Supreme Court also has been persuaded by other factors, including: geographic proximity, link by daily airline flights, shared recreational and commercial fishing areas, and dependence on a community (Anchorage) for transportation, entertainment, news and professional services. See Hickel, 846 P.2d at 46, discussing Kenai Peninsula Borough, 743 P.2d at 1362-63.

In Groh, the court stated that “patterns of housing, income levels and minority residences” in an urban area “may form a basis for districting, [although] they lack the necessary significance to justify” large population variances. Hickel, 846 P.2d at 47, quoting Groh, 526 P.2d at 879. The court also identified transportation ties (ferry and daily air service), geographical similarities, and historical economic links as more significant factors. Id.

B. Equal Protection/Population Variances

In Kenai Peninsula Borough, the court established that, “[i]n the context of voting rights in redistricting and reapportionment litigation, there are two basic 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.” Kenai Peninsula Borough, 743 P.2d at 1366.

1. One Person, One Vote

The principle of “one person, one vote” is quantitative in nature. Hickel, 846 P.2d at 47. “[A] State [must] make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable.” Reynolds

v. Sims, 377 U.S. 533, 577 (1964), quoted in Kenai Peninsula Borough, 743 P.2d at 1358; and Hickel, 846 P.2d at 47. “Whatever the means of accomplishment, 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.” Reynolds v. Sims, 377 U.S. 533, 579 (1964), quoted in Kenai Peninsula Borough, 743 P.2d at 1358; and Hickel, 846 P.2d at 47.

“[A]s a general matter an apportionment plan containing a maximum population deviation under 10% falls within a category of minor deviations. The state must provide justification for any greater deviation.” Kenai Peninsula Borough, 743 P.2d at 1366, quoted in Hickel, 846 P.2d at 48.

The Alaska Supreme Court has recognized “several other state policies which may also justify a population deviation greater than 10 percent.” Hickel, 846 P.2d at 48.

In Kenai Peninsula Borough, the court noted that the state’s desire to maintain political boundaries is sufficient justification, provided that this principle is applied consistently. See Kenai Peninsula Borough, 743 P.2d at 1360; Hickel, 846 P.2d at 48. The Alaska Supreme Court has also rejected other policies as inadequate justifications for population deviation. In Groh, the court held that the:

...mining potential in the [Nome] area and the need for a ‘common port facility’ did not justify a 15 percent overrepresentation where ‘the makeup of the population both to the north and the east [did] not vary significantly from that of the adjoining villages within the Nome [election district] boundaries.’

Hickel, 846 P.2d at 48 (quoting Groh, 526 P.2d at 877).

2. Fair and Effective Representation

The principle of “fair and effective representation” is qualitative in nature. Hickel, 846 P.2d at 47. The Alaska Supreme Court has stated, “[t]hat the equal protection clause protects the rights of voters to an equally meaningful vote has been inferred from Reynolds in which the Supreme Court said that ‘the achieving of fair and effective representation for all citizens is concededly the basic aim of legislative apportionment.’” Kenai Peninsula Borough, 743 P.2d at 1367 (quoting Reynolds, 377 at 565-66).

Fair and effective representation issues arise in the use of multi member and single member districts. The Alaska Supreme Court has ruled that:

Employing a multi-member district to achieve “a rough sort of proportional representation” for rural areas in the legislature would thus be permissible under the equal protection clause in light of Gaffney. If, however, the creation of such a district instead was purposefully used to exclude a certain group from political participation, it is more suspect.

Kenai Peninsula Borough, 743 P.2d at 1368. However, the Alaska Supreme Court has noted that, “[i]n cases where the excluded group is a racial minority, such gerrymandering would be unconstitutional.” Id., at n.30 (citations omitted). Furthermore, “[o]nly where there is evidence that excluded groups have ‘less opportunity to participate in the political processes and to elect candidates of their choice’ have we refused to approve the use of multi-member districts.” Id. (quoting Davis v. Bandemer, 478 U.S. 109 (1986)).

The Alaska Supreme Court has ruled that regarding single member districts:

As with individual districts, where unconstitutional vote dilution is alleged in the form of statewide political gerrymandering, the mere lack of proportional representation will not be sufficient to prove unconstitutional discrimination. Again, without specific supporting evidence, a court cannot presume in such a case that those who are elected will disregard the disproportionately underrepresented group. Rather, *unconstitutional discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade a voter's or a group of voters' influence on the political process as a whole.*

...

And, as in individual district cases, *an equal protection violation may be found only where the electoral system substantially disadvantages certain voters in their opportunity to influence the political process effectively. In this context, such a finding of unconstitutionality must be supported by evidence of continued frustration of the will of a majority of the voters or effective denial to a minority of voters of a fair chance to influence the political process.*

Id. at 1368-69 (emphasis in original).

Alaska's equal protection clause imposes a stricter standard than its federal counterpart. See Hickel, 846 P.2d at 49; Kenai Peninsula Borough, 743 P.2d at 1371.

The Alaska Supreme Court has ruled:

In the context of reapportionment, we have held that upon a showing that the Board acted intentionally to discriminate against the voters of a geographic area, the Board must demonstrate that its plan will lead to greater proportionality of representation...Because of the more strict standard, we do not require a showing of a pattern of discrimination, and do not consider any effect of disproportionality de minimis when determining the legitimacy of the Board's purpose.

Hickel, 846 P.2d at 49; see also Kenai Peninsula Borough, 743 P.2d at 1372.

3. Voting Rights Act

In addition to the state requirements, the Federal Voting Rights Act, 42 U.S.C. § 1973 (1988) governs redistricting of state election districts. This Act protects the voting power of racial minorities. See Hickel, 846 P.2d at 49. “Under section 5 of the Act, a reapportionment plan is invalid if it ‘would lead to a retrogression in the position of racial of racial minorities with respect to their effective exercise of the electoral franchise.’” Hickel, 846 P.2d at 49 (quoting Kenai Peninsula Borough, 743 P.2d at 1361, quoting Beer v. United States, 425 U.S. 130, 141 (1976)).

Furthermore, in order to comply with section 5 of the Act, the Alaska Supreme Court has ruled that a “state may constitutionally reapportion districts to enhance the voting strength of minorities in order to facilitate compliance with the Voting Rights Act.” Kenai Peninsula Borough, 743 P.2d at 1361; quoted in Hickel, 846 P.2d at 49-50.

Section 2 of the Federal Voting Rights Act, as amended in 1986, “creates a cause of action to remedy the use of certain electoral laws or practices which, when interacting with social and historical conditions, create an inequality in the opportunities enjoyed by voters to elect their preferred representatives.” Hickel, 846 P.2d at 50; citing Thornburg v. Gingles, 478 U.S. 30, 47 (1986). Plaintiffs may have a redistricting plan invalidated if: (1) under the totality of the circumstances, the redistricting results in unequal access to the electoral process; and (2) racially polarized bloc voting exists. Id.

C. Senate Districts

By its terms, all the requirements of Article VI, section 6 do not apply to senate districts. The Alaska Supreme Court previously has ruled, “the provisions of article VI, section 6 which set forth socio-economic integration, compactness and contiguity requirements are inapplicable to redistricting and reapportionment of senate districts.” Kenai Peninsula Borough, 743 P.2d at 1365. Under the 1998 Amendment, Article VI, Section 6 now mandates that “[e]ach senate district shall be composed as near as practicable of two contiguous house districts.” The other Article VI, Section 6 requirements of compactness and socio-economic integration were not added, nor made applicable to Senate districts by the 1998 Amendment. Thus, these requirements do not apply to Senate districts.

Furthermore, it is well established that redistricting may require truncation of senate terms. As the Alaska Supreme Court ruled in Egan v. Hammond:

A need to truncate the terms of incumbents may arise when reapportionment results in a permanent change in district lines which either excludes substantial numbers of constituents previously represented by the incumbent or includes numerous other voters who did not have a voice in the selection of that incumbent. The discretionary authority to require mid-term elections when necessary is well established.

502 P.2d at 873-74 (citations omitted).

D. The Board’s Process/Open Meetings Act

In addition to reviewing the Final Plan for constitutionality, another critical issue that this court must examine is the Board’s process itself. The Board’s creation and process is governed by Article VI of the Alaska Constitution. As discussed earlier, in August 2000, the Board was constituted and began preparations for the redistricting

process. The census results were reported to the State on March 19, 2001, and draft plans were adopted by April 18, 2001. The Board held public hearings throughout the state and gathered comments on the draft plans. By a three to two vote, the Plan was approved and released by Proclamation dated June 18, 2001.

Article VI, Section 10, of the Alaska Constitution specify the manner in which the Redistricting Board must proceed. That provision states:

Section 10. Redistricting Plan and Proclamation. (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 final plan shall set out boundaries of house and senate districts and shall be effective for the election of members of the legislature until after the official reporting of the next decennial census of the United States.

(b) Adoption of a final redistricting plan shall require the affirmative votes of three members of the Redistricting Board.

The Alaska Supreme Court has also ruled that the Open Meetings Act and the Public Records Act apply generally to the activities of the Board. The requirements of the Open Meeting Act are set forth in AS 44.62.310-.312 (the “Open Meeting Act”). Additional requirements that the Board must follow also are set forth in the Public Records Act.

The Open Meetings Act states, “[a]ll meetings of a government 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” It further requires that reasonable public notice be given. In

addition, a “meeting” is defined as “a gathering of members of a governmental body when...more than three members or a majority of the members, whichever is less, are present”

The Public Records Act allows, unless specifically provided otherwise, that “the public records of all public agencies are open to inspection by the public under reasonable rules during regular office hours.”

Violations of the Open Meetings Act or the Public Records Act do not automatically void the Final Plan, if this court determines that public interest serves otherwise.

E. Record Before The Court

Under new Civil Rule 90.8 (d), the record before the court consists of:

The record in the superior court proceeding consists of the record from the Redistricting Board (original papers and exhibits filed before the board and the electronic record or transcript, if any, of the board’s proceedings), as supplemented by such additional evidence as the court, in its discretion, may permit. If the court permits the record to be supplemented by the testimony of one or more witnesses, such testimony may be presented by deposition without regard to the limitations contained in Civil Rule 32(a)(3)(B). A paginated copy of the record from the Redistricting Board shall be filed in the Supreme Court at the same time it is filed in the superior court.

The parties disputed what the record from the Redistricting Board would be, and this issue was resolved by the court. On January 7, 2002 the Record from the Redistricting Board, consisting of 13 volumes and 6359 pages, was filed with this court. The record was later supplemented during trial by the Board to add another volume

consisting of pages 6360-6524. Numerous witnesses testified both live at trial and by way of designated deposition testimony. A list of all such witnesses is attached as Appendixes C and D to this opinion. Numerous exhibits were also received into evidence during the course of the trial as indicated on the record.

F. Standard of Review

Groh v. Egan, 526 P.2d 863 (Alaska 1974) established the general standard of review to be applied by the courts when exercising jurisdiction under Article VI, Section 11. In Groh, the Alaska Supreme Court ruled:

It cannot be said that what we may deem to be an unwise choice of any particular provision of a reapportionment plan from among several reasonable and constitutional alternatives constitutes "error" which would invoke the jurisdiction of the courts. 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 that the agency has not exceeded the power delegated to it, and second to determine whether the regulation is reasonable and not arbitrary. Of course, additionally, we always have authority to review the constitutionality of the action taken, but we have stated that a court may not substitute its judgment as to the sagacity of a regulation for that of the administrative agency, and that the wisdom of a given regulation is not a subject for review.

Carpenter v. Hammond, 667 P.2d 1204, 1214 (Alaska 1983)(quoting Groh v. Egan, 526 P.2d 863, 866-67 (Alaska 1974)). see also Kenai Peninsula Borough v. State, 743 P.2d

1352, 1357-58 (Alaska 1987); Hickel v. Southeast Conference, 846 P.2d 38 (Alaska 1992).

Furthermore, the Alaska Supreme Court has ruled that, “[i]n short, our review is meant to ensure that the reapportionment plan is not unreasonable and is constitutional under article VI, section 6 of Alaska’s constitution.” Kenai Peninsula Borough, 743 P.2d at 1358 (quoting Carpenter, 667 P.2d at 1214, quoting Groh, 526 P.2d at 866-67).

The Alaska Supreme Court has never struck down an otherwise constitutional legislative district on the grounds that such a district is “unreasonable.” Nor has the court discussed the legal standards by which the concept of “unreasonableness” should be measured. The court’s comparison in Groh of the reapportionment process to an agency’s promulgation of regulations suggest that the proper standard of review is the one used in Interior Alaska Airboat Association, Inc. v. State, 18 P.3d 686, 690 (Alaska 2001). Under this test, “in determining whether a regulation is reasonable and not arbitrary courts are not to substitute their judgment for the judgment of the agency. Therefore, 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.” A court must examine not policy but process and must ask whether the agency, here the Board, has failed to consider an important factor or whether the agency has not really taken a “hard look” at the salient problems or has not generally engaged in reasoned decision making. Id. at 693.

Accordingly, this court’s role is a limited one. The court cannot pick a plan it likes, nor can it impose a plan it prefers. Rather, the court’s role is to measure the plan

against constitutional standards; the choice among alternative plans that are otherwise constitutional is for the Board, not the Court. Cf. Gaffney v. Cummings, 412 U.S. 735, 750-51, 93 S.Ct. 2321, 2330, 37 L.Ed. 298 (1973) (redistricting plan not rendered unconstitutional simply because some “resourceful mind” has come up with a better one.)

G. Practical Applications

In addition to the legal principles discussed, the court notes the practical problems connected with redistricting in Alaska. The Alaska Supreme Court, in virtually every redistricting case, has recognized the following general principles:

At the outset we recognize the difficulty of creating districts of equal population while also conforming to the Alaska constitutional mandate that the districts ‘be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area.’

When Alaska’s geographical, climatical, ethnic, cultural and socio-economic differences are contemplated the task assumes Herculean proportions commensurate with Alaska’s enormous land area. The problems are multiplied by Alaska’s sparse and widely scattered population and the relative inaccessibility of portions of the state...

...

Despite the possibility of belaboring this opinion we feel obliged to set forth a few of the facts which make it difficult to fit Alaska’s reapportionment plan into standards established for the 48 contiguous states which preceded it into the Union. Alaska has a total land area of 586,400 square miles-as large as the entire Louisiana Purchase, and one-fifth the total area of the continental United States. Its boundaries embrace four time zones. The state contains the highest mountain on the North American continent, glaciers that exceed the size of the State of Rhode Island, and a coastline longer than the total coastline along the remainder of the continental United States. Mountain ranges which equal or exceed the length and height of the Rockies divide Alaska into five relatively isolated regions which in turn

are subdivided by river systems and other geographic factors such as broad expanses of frozen tundra challenging the most advanced roadway engineering.

...

When confronted with conditions so different from those of any other single state in the continental United States, it is readily apparent that it becomes well nigh impossible to achieve the mathematical precision of equal proportions which is feasible in those other states.

Egan, 502 P.2d at 865-66 (footnotes omitted) (quoted in Groh, 526 P.2d at 875; Kenai Peninsula Borough, 743 P.2d at 1359; and Hickel, 846 P.2d at 50).

Another factor that must be considered by this court, especially when analyzing claims concerning the process by which the Board conducted its business and formulated its Final Plan is the limited time in which the Board was required to conduct its business. As amended in 1998, Article VI, Section 10 of the Alaska Constitution required the Board to adopt a proposed plan or plans within thirty days of receiving the official census reports, to then hold hearings on these proposed plans, and to adopt a final plan within ninety days of receiving the census reports. Former Article VI, Section 10 required the Board to adopt a proposed plan and submit it to the governor within ninety days of receiving census data; the governor then had an additional ninety days during which he could notify the Board's proposal and issue the final proclamation of redistricting. No public hearings were required. These new constitutional requirements placed extraordinary time constraints upon the Board's ability to work and required extraordinary personal and professional sacrifices from the Board members, and any review of the process by which the Board conducted its business can fairly be considered only in that context.

With these legal and practical principles in mind the court will address the legal issues raised by the parties in light of the evidence submitted by the parties both at trial and in pretrial proceedings. This decision is intended as the findings of fact and conclusions of law required by Civil Rule 52 and is intended to be the decision required by Civil Rule 90.8(c).

V. DUE PROCESS ISSUES

The Plaintiffs have challenged the means by which the Board conducted its business in a number of respects. Each of these issues is discussed below.

A. Due Process

Plaintiffs contend that the following actions violated due process: 1) adopting a Final Plan that was not provided to the public during the public hearing process; 2) adopting a Final Plan that was not prepared by the Board or Board staff and was not developed in accordance with the guidelines adopted by the Board for the development of a Final Plan; 3) adopting a Final Plan that was not reviewed by the Board, the Executive Director, the Board's attorney, or the Board's consultants under the guidelines adopted by the Board before it was approved by the Board as the Final Plan; 4) adopting a Final Plan in which the public did not have access to view the corresponding map; 5) adopting a Final Plan without any notice to the public on the meeting agenda that the Board would be voting to adopt a plan; and 6) adopting a Final Plan that was not one of the plans published by the Board for public comment and testimony.

The question of whether there has been a violation of due process depends upon what process is required to be afforded Plaintiffs under state and federal constitutions as well as Alaska statutes.

The concept of due process stems from the American ideal of fairness. See Bolling v. Sharpe, 347 U.S. 497 (1954). The Alaska Supreme Court has repeatedly 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 interest affected by the governmental action.” In the Matter of K.L.J., 813 P.2d 276, 278 (Alaska 1991) (citations omitted). Furthermore, the due process clause of the Alaska Constitution is “flexible, and the concept should be applied in a manner which is appropriate in the terms of the nature of the proceedings.” Id. (citations omitted). In addition, “[t]he crux of due process is opportunity to be heard and the right to adequately represent one’s interests.” Id., 813 P.2d at 279 (citation omitted).

The Alaska Supreme Court has adopted the balancing test from Mathews v. Eldridge, 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18 (1976) to determine what process is due, which states:

Identification of the specific dictates of due process generally involves consideration of three distinct factors: the private interest affected by the official action; the risk of an erroneous deprivation of such interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government’s interest, including the fiscal and administrative burdens that additional or substitute procedural requirements would entail.

In the Matter of K.L.J., 813 P.2d at 279 (citations omitted).

When considering due process issues arising from redistricting, the matter at hand is analogous to an administrative agency adopting a new regulation, or administrative rule making. “When an agency is considering promulgation of a rule or regulation, it is required by law to give notice and an opportunity to comment to those who potentially will be affected by a regulation.” State of Alaska v. Hebert, 743 P.2d 392 (Alaska Ct. App. 1987), aff’d, 803 P.2d 863 (Alaska 1990).

The United States Supreme Court has held that before adoption of the Administrative Procedure Act (“APA”), “the formulation of procedures was basically to be left within the discretion of the agencies to which Congress had confided the responsibility for substantive judgments.” Vermont Yankee Nuclear Power Corporation v. Natural Resources Defense Council, Inc., 435 U.S. 519, 524 (1978). The United States Supreme Court described this principle as:

...an outgrowth of the congressional determination that administrative agencies and administrators will be familiar with the industries which they regulate and will be in a better position than federal courts or Congress itself to design procedural rules adapted to the peculiarities of the industry and the tasks of the agency involved.

Vermont Yankee, 435 U.S. at 525 (quoting FCC v. Schreiber, 381 U.S. 279, 290 (1965)).

In addition, the United States Supreme Court has ruled, “[b]ut this much is absolutely clear. Absent constitutional constraints or extremely compelling circumstances the ‘administrative agencies ‘should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties.’” Vermont Yankee, 435 U.S. at 543 (quoting FCC v. Schreiber, 381 U.S. at 290, quoting FCC v. Pottsville Broadcasting Co., 309 U.S. 134, 143 (1940)).

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. Beyond that, the Board has freedom to conduct its proceedings in a manner that it believes best facilitates the formulation of a final redistricting plan. We thus turn first to the Open Meetings Act and examine the Board's compliance with such.

1. Open Meetings Act/Public Records Act

The Plaintiffs contend that the Board's adoption of the Plan violated the Open Meetings Act and the Public Records Act for numerous reasons. They argue that the Board members improperly: 1) took "straw" votes by e-mail or phone; 2) met with Alaskans For Fair Redistricting ("AFFR") representatives and legal counsel in meetings closed to the public and to any non-AFFR member and any person not aligned by political party with the Board members involved in these meeting and the AFFR representatives; 3) communicated amongst themselves in numbers of three or more via e-mail or telephone with regards to issues that are specific constitutional duties of the Board and should have been done in a public meeting; and 4) communicated amongst themselves in number of three or more via members of the Governor's Office, Department of Law, or members of the Board's staff regarding specific issues that were required to be addressed in a public meeting.

The Alaska Supreme Court has ruled that the Board must comply with the Open Meetings Act. As previously discussed, the Open Meetings Act requires that all meetings of a governmental body of a public entity of the state are open to the public, unless

provided otherwise. Reasonable public notice of meetings must be given. “Meetings” are defined as when three or more Board members are present, or the gathering is prearranged for the purpose of considering a matter upon which the governmental body is empowered to act and the governmental body has only authority to advise or make recommendations for a public entity but has no authority to establish policies or make decisions for the public entity.

The Open Meetings Act specifically allows attendance and participation at meetings by members of the public or by members of a governmental body by teleconference. If practicable, agency materials that are to be considered at the meeting shall be made available at the teleconference locations.

The Public Records Act requires that unless specifically provided otherwise, the public records of all public agencies are open to inspection by the public under reasonable rules during regular office hours. In addition, the public agency “is encouraged to make information available in usable electronic formats to the greatest extent possible.”

Action taken to the contrary of the Open Meetings Act is voidable. However, according to AS 44.62.310(f), this court is not required to void the Final Plan simply because of Open Meeting Act violations:

A court may hold that an action taken at a meeting held in violation of [the Open Meetings Act] is void only if the court finds that, considering all of the circumstances, the public interest in compliance with [the Open Meetings Act] outweighs the harm that would be caused to the public interest and to the public entity by voiding the action.

In making this determination, the court must consider the following: 1) the expense that may be incurred by the public entity, other governmental bodies, and individuals if the action is voided; 2) the disruption that may be caused to the affairs of the public entity, other governmental bodies, and individuals if the action is voided; 3) the degree to which the public entity, other governmental bodies, or individuals may be exposed to additional litigation if the action is voided; 4) the extent to which the governing body, in meetings held in compliance with the Open Meetings Act, has previously considered the subject; 5) the amount of time that has passed since the action was taken; 6) the degree to which the public entity, other governmental bodies, or individuals have come to rely on the action; 7) whether and to what extent the governmental body has, before or after the lawsuit was filed to void the action, engaged in or attempted to engage in the public reconsideration of matters originally considered in violation of the Open Meetings Act; 8) the degree to which violations of the Open Meetings Act were willful, flagrant, or obvious; and 9) the degree to which the governing body failed to adhere to the policy under AS 44.62.312(a).

This court has previously ruled that the Board violated the Open Meetings Act by using e-mail among three or more Board members to discuss Board business. See Order of January 3, 2002. These e-mails primarily concerned discussions regarding the locations of the public hearings that were to be held regarding the proposed plans initially adopted by the Board. Additional e-mails among Board members concerning other procedural matters on administrative topics also appear to have been sent. There is no evidence that the Board utilized such group e-mail to discuss the actual redistricting itself. There is no indication that there was any serial communication among Board

members either by e-mail or by other forms of communication to discuss Board business among three or more Board members.

The Board decided in the process that Board members could meet individually with members of the public to discuss the redistricting process. All members of the Board did this with a wide variety of public and private individuals. This is not a violation of the Open Meetings Act. There is also some indication that on a few occasions two Board members may have met to discuss matters regarding redistricting. Indeed, Board members often worked in groups of two as they sought to develop redistricting plans or to improve on those plans. Again, this is not a violation of the Open Meetings Act.

Each of the Board members testified that they individually did not violate the requirements of the Open Meetings Act. They further testified that they did not observe any violation of the Open Meetings Act by other members of the Redistricting Board. The court finds the testimony of each of the Board members to be credible.

Upon considering the facts and evidence and the factors set forth in AS 44.62.310(f), discussed previously, the court finds that the Board's violations of the Open Meetings Act through the use of e-mail is insufficient to void the final redistricting plan and does not require any sanction be imposed. The use of the group e-mails in question was for planning and administrative purposes rather than a substantive discussion of the Redistricting Plans themselves. This court recognizes that the Board was under great time constraints through the redistricting process. The use of e-mails appears designed to save time and only appears to involve planning issues rather than a substantive discussion

of the Redistricting Plans themselves. While even such planning decisions, particularly regarding where the Board would hold its public hearings, are covered by the Open Meetings Act, this court concludes that considering all of the circumstances the public interests in requiring compliance with the Open Meetings Act does not outweigh the harm that would be caused to the public interest by voiding the entire Redistricting Plan on this basis. See Hickel, 846 P.2d at 56-57.

2. Article VI, Section 10

Plaintiffs contend that the Board violated Article 6, Section 10 of the Alaska Constitution, contending that the Board violated the constitutional requirement by accepting late filed plans and not holding public hearings on the late filed plans, including one that was eventually adopted by the Board. At argument held on December 20, 2001, this court granted, on the record, a motion for summary judgment filed by the Native-Intervenors on this issue.

Article VI, Section 10 requires the Board to adopt one or more proposed redistricting plans within thirty days after the official reporting on the decennial census. The evidence indicates that the Board complied with this requirement and adopted four such proposed plans in a timely fashion. The Board is then required to hold public hearings on “all plans proposed by the board.” The Board did so holding twenty-one hearings around the state from May 4 through May 19. Two of the hearings were state-wide teleconferences.

During this period, and in the period thereafter, several new regional plans were presented by individuals and groups. AFFR submitted a revised statewide plan on May 18, 2001. Other plans or proposals were submitted by the Mayor of Anchorage, by two members of the Anchorage Assembly, by the Mat-Su Borough, and by Native organizations. On June 7, 2001, during a public meeting, Board member Mason presented what he termed the “Full Representation Plan.”

The evidence indicates the Full Representation Plan is a revision of the second AFFR plan which itself is a revision of the initial AFFR plan adopted by the Board as one of the four proposed plans that were the subject of the public hearings. The Full Representation Plan was discussed by the Board at its public meetings on June 7th and June 8th. Some minor modifications to Juneau districts were made to this plan while other modifications to Anchorage districts were discussed and rejected. On June 9th the Board voted to adopt the Full Representation Plan with the modifications that had been approved earlier.

Defendants contend, and this court agrees, 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. Indeed, given the extraordinary time constraints imposed by Article VI, Section 10 on the work of the Board, any other requirement would likely discourage the Board’s consideration of plans submitted after the initial thirty day time period. Likewise, if the Board were required to hold additional public hearings on any significant or substantial modifications made after public comment was received on the original proposed plans, the Board might be discouraged because of lack

of time to hold hearings, from making such modifications based on public input. The evidence indicates that many of the Board members were trying to modify parts of the various plans virtually until a final vote was taken. The Board's work would also likely be hindered by the uncertainty of whether a modification to a plan was significant enough to warrant additional public hearings.

The Aleutian East Plaintiffs also seem to complain that no public hearings were held in their region, despite a request to do so. There is no requirement that such hearings be held in every part of the state. As previously indicated, at least two of the public hearings were statewide teleconferences. Likewise, the complaint of the Aleutians East Plaintiffs that the Board held a hearing in Dillingham when area municipal officials were at a conference in Unalaska is not a constitutional violation.

This court concludes that the Board fully complied with the requirements of Article VI, Section 10 of the Alaska Constitution.

3. Other Due Process Issues

The plaintiffs raise a number of issues concerning the due process that they were afforded. For example, they claim that the final plan was submitted by AFFR, a private interest group, with little or no input from the public. AFFR Plan B, which was submitted to the Board on May 21 was never published on the Board's web site so that the public did not have easy access to the AFFR Plan B Map. The Full Representation Plan that ultimately was adopted by the Board was initially presented on June 6, 2001 and

also was not published on the Board's web site or widely distributed to the public. Plaintiffs also complain that the Board considered plans after public hearings had been completed, contending that the Board should have had further public hearings on any new plans that the Board was considering or any final plan that the Board intended to adopt. Plaintiffs also contend that by allowing private groups to contact and influence individual Board members also deprived them of due process asserting that AFFR was able to orchestrate the final outcome of the redistricting process with the majority Board members. While any of these assertions might not individually suffice to establish a violation of due process, plaintiffs assert that the overall effect of all of these violations denied them a meaningful opportunity to participate in the redistricting process or to be heard.

a. AFFR

AFFR admittedly played a central role in the 2001 redistricting process by drafting and promoting a statewide redistricting plan. The plan ultimately adopted by the Board is substantially similar, but not identical, to the proposed AFFR plan.

AFFR was a statewide coalition of citizens and groups, who self-organized in early 2001 for the purpose of participating in the redistricting process. Scott Sterling and April Ferguson were the most instrumental in organizing AFFR. Myra Munson was AFFR's legal counsel. Members and founders include Native organizations, labor groups, environmental groups, and Alaska state citizens. AFFR is an unincorporated association that issued bylaws and held formal meetings.

AFFR was concerned that the changes requiring the Board adopt a plan within ninety days of release of the census results would fundamentally disenfranchise people in rural Alaska, whether Native or non-Native. AFFR believes that the opportunities to

participate in the redistricting process are reduced in very remote places, and that shortening the timeframe would further reduce participation.

AFFR advocated for a plan that would elect a “more progressive” legislature, particularly on issues of acute concern to the Native community, such as subsistence. The term “more progressive” has been described by counsel for AFFR as not a partisan concept, but rather electing legislators who would represent the views of the general populous and more moderate Democratic or Republican members. AFFR had no formal affiliation with either the Republican or Democratic Parties, and did not received any funding from either.

AFFR contacted the Board’s Executive Director to find out what redistricting software the Board planned to use. AFFR purchased “AutoBound,” the same specialized redistricting software program used by the Board. It also retained Ecotrust, Inc., a technical consulting firm with expertise in mapmaking that could manage the sophisticated redistricting software.

AFFR’s goal was to provide the Board with a draft statewide plan in time for the Board’s first scheduled public hearing after the release of the census data in order to maximize the opportunity for public scrutiny and discussion of its plan. On March 19, 2001, AFFR downloaded the raw census data directly from the Census Bureau web site. Under its self-imposed deadline, AFFR had eleven days to draft its plan and submit it to the Board prior to the first public hearing scheduled for March 30, 2001.

AFFR members worked intensively round-the-clock and in consultation with dozens of people from around the state in preparation of its first draft plan (“Plan A”). AFFR asserts that the preferences of individuals from various parts of the state were given deference, provided that their preferences advanced the primary objectives of AFFR and were consistent with legal requirements. AFFR consulted with representatives of TCC and individuals from the Bristol Bay region and Southeast Alaska.

In addition to developing a statewide map, AFFR also prepared a 65-page report to accompany and explain that map. The report discussed the legal criteria AFFR applied to the development of its plan, and included a statewide map of the entire plan, a series of regional maps, a separate map and thorough description of each proposed district, and a textual explanation of the logic of each proposed district’s construction. The report reiterated that Plan A was not a final product, but rather a starting point for the solicitation of public comment. The report also highlighted trouble areas. AFFR’s report was given to the Board and made available to the press, and upon request, to any member of the public. Plan A maps were posted on the internet. AFFR representatives testified at

the Board's public hearing in Anchorage on March 30, 2001, to present the plan and explain its rationale.

During the period while the Board held public hearings, AFFR worked to develop a revised plan. AFFR designed its revised plan to incorporate many of the comments and criticisms that had been received concerning the original plan, as well as additional reflection and study by AFFR members. The AFFR revised plan was complete to the satisfaction of some key AFFR members by May 10, but those members continued to solicit feedback from others. Some people who had seen the revised AFFR plan commented on it during public testimony between May 10 and May 19. After sufficient AFFR members agreed to the new proposal, it took a significant amount of time to finalize an accurate detailed computerized map and plan. The revised AFFR plan was submitted to the Board in electronic format on Friday evening, May 18, the same day that the computer work on it was finished. Discussion on the plan commenced on Monday, May 21. Although plaintiffs suggest that AFFR delayed submission of Plan B to avoid public comment, this court concludes that there was no intent on anyone's part within AFFR to delay submission of the revised plan to the Board.

AFFR's counsel followed up the electronic submission of the plan with a detailed letter explaining the proposed changes. AFFR's counsel's letter was included in the Board's reading file. However, the electronic version of the AFFR Plan B was not added to the reading file or placed on the Board's web site because no electronically-submitted plans were included in the reading file or placed on the web site. The only plans placed on the web site were those formally adopted by the Board. It is noteworthy, however, that that Board, through its staff, was willing to provide a copy of AFFR's electronic

submission to anyone who requested it, in exactly the same manner that the Board staff was prepared to share other electronic submissions. AFFR would also have provided a copy of its revised plan had anyone requested it.

In the final days of the Board's deliberations, mapping of newly proposed plans was simply not possible. It required approximately two weeks for Board staff to prepare a final map of each Board plan, after the Board had voted to adopt the district lines. The final plan adopted by the Board was not able to be the subject of a public hearing due to the time frames imposed by the Constitution. It is noteworthy that the Final Plan incorporated portions of many aspects of other plans, including the original AFFR Plan, that had been the subject of public hearings, or which had been discussed by the Board following the public hearings throughout the State that took place in May. There simply is no meaningful aspect of the Final Plan that had not been the subject of some public discussion at some point in the process, even though the complete Final Plan may not have been discussed until the last two days before it was adopted by the Board.

Of the four final plans adopted before the public hearings, the AFFR Plan was most similar to the Final Plan. The Final Plan was also similar to the AFFR Plan B submitted on May 18, which AFFR had developed to incorporate criticisms it had heard through its own contacts and through the Board's public hearings. The AFFR Plan B was further modified by Julian Mason to incorporate other changes that had been suggested to him during the process. Mason developed the Full Representation Plan having consulted with a number of people, including AFFR representatives. He also received technical assistance from AFFR representatives.

While the evidence establishes that the process, particularly in the last few days in which the Board was reaching its decision, was not perfect and could be improved, the evidence does not indicate that the public was deprived of a meaningful opportunity to be heard or to be involved in the process. The Board went to extraordinary lengths to involve the public in the process. All Board members were genuinely committed to

making the redistricting process open and accessible to the public to the largest extent feasible. The Board created and maintained a web site that explained the redistricting process and encouraged public participation. The Board amassed a large e-mail “notice list,” which grew throughout the process, to advise anyone who requested this information of important developments and deadlines in the redistricting process. Materials that individuals and groups submitted to the Board were made available for public review in the Board’s “reading file.” This reading file of materials submitted to the Board was over 5,000 pages. This included over 1,200 comments submitted to the Board’s web site by e-mail. The reading file was available to any member of the public and copies could be obtained through commercial copy services in Juneau, Anchorage and Fairbanks. The Board also encouraged submission of plans from groups throughout the State and considered plans that were submitted by groups and individuals. Indeed Kevin Jardell, who was working for the legislature, submitted his own individual plan to the Board as late as June 9, 2001.

The software and census data used by the Board was available to purchase by any member of the public who cared to do so. Board members frequently reminded people that the final plan could differ from any of the proposed plans.

Certainly the Board’s process can and should be improved. Rural areas, such as the City of Craig, were at a disadvantage due to their inability to directly attend Board hearings in person or to technological problems associated with placing information on the Board’s web site or creating maps. Remote areas of the State are always at a disadvantage in this regard. Hopefully, future technological advances will cure some of

these problems. The Board may also wish, in the future, to consider adopting regulations concerning at what point the Board will stop considering new plans or proposals. The Board may also wish to assure that new plans or proposals submitted after the initial 30 day period or revisions to plans adopted by the Board are placed on the web.

Citizen involvement in the redistricting process is a two-way street however. The more actively involved any group is in the redistricting process, the better informed it will be. Due process is not violated when a party is not informed of information that others who were more actively involved in the process had available to them. The evidence establishes that, on balance, all members of the public were provided an opportunity to be heard and were able to adequately represent their interests throughout the redistricting process. AFFR did nothing improper in the redistricting process. They did nothing that any other organized group of citizens could have done. That AFFR was effective in their efforts did not deprive the plaintiffs of their own opportunity to participate in the process or to be heard. No actions of the Board or individual Board members denied plaintiffs a meaningful opportunity to participate in the redistricting process or to be heard. Indeed, if anything, the evidence indicates that the 2001 redistricting process was the most open process in this State's history and that public involvement in the process was continually emphasized and encouraged by the Board.

b. Undue Influence

Plaintiffs contend that their due process rights were violated due to improper contacts or undue influence on Board members. These claims focus primarily on two Board members who voted in favor of the Redistricting Plan - Vicki Otte, and Leona Okakok.

As to Otte, plaintiffs raise the concern that Otte was placed in fear of losing her job if she did not vote in favor of the AFFR Plans. Otte is Executive Director of the Association of ANCSA Regional Corporation Presidents and CEOs. Some of these regional corporations were contributors to AFFR and supported the AFFR Plans and the Boards final plans while other ANCSA Corporations opposed portions of the Final Plan effecting their own communities. The record indicates that the issue of a potential of conflict of interest regarding Otte was raised during the Board's deliberations and discussed in executive session with counsel for the Board who concluded that no conflict of interest exists. Otte specifically denied any conflict of interest and denied that she was influenced improperly by any person or organization or that she acted for any improper reason. The court finds Otte's testimony to be credible in all respects and finds there to be no evidence to the contrary.

A similar claim is raised regarding Leona Okakok. This allegation centers around a critical vote taken by the Board regarding whether or not the Board should consider a House District pairing the City of Valdez with a portion of South Anchorage.

This issue was first debated at the Board Meeting of June 7, 2001. Following extensive discussion and debate, primarily between Michael Lessmeier and Julian Mason the Board adopted a motion proposed by Bert Sharp to not pair Anchorage with Valdez in any final plan adopted by the Board. The vote in favor of the motion was four to one with Vicki Otte the dissenting vote. It is clear from his trial testimony, however, that Julian Mason was opposed to the motion and voted in favor of the motion only as a parliamentary procedure in order to seek reconsideration of the vote. During the debate

on the motion Leona Okakok indicated that she was uncomfortable with the pairing of Valdez and Anchorage because she considered Anchorage to have a different lifestyle than Valdez which she described as rural in nature.

This vote was a critical setback for the AFFR Plan and the Full Representation Plan then under consideration by the Board. Myra Munson, the attorney for AFFR, attempted to contact several persons who might speak with Okakok on the subject and make known their views regarding this issue. One of these people was David Crosby, a Juneau attorney whose clients included Arctic Slope Regional Corporation. (“Arctic Slope”) Okakok works for an entity related to Arctic Slope although she does not work for Arctic Slope itself. Crosby attempted to contact the corporate officers of Arctic Slope to see if they would be willing to meet or speak with Okakok. He was unable to speak with these principles of Arctic Slope, however, because Arctic Slope was holding corporate meetings and these individuals were not available. Crosby spoke briefly himself with Okakok whom he did not know. Okakok clearly was uncomfortable speaking with Crosby on the subject and asked him to put anything he cared to say in writing. This apparently was Okakok's standard way of dealing with redistricting issues raised by persons with whom she did not have familiarity. Crosby then drafted a letter to Okakok [Exhibit 340]. In that letter Crosby indicated that Arctic Slope was concerned about piecemeal decisions being made including the vote to separate Anchorage and Valdez. He indicated that Arctic Slope strongly supported the current AFFR proposal and that it believed that an essential component of the AFFR proposal involved keeping Valdez in a district with Anchorage. He expressed Arctic Slope’s support for the AFFR Plan or some variation of it.

Crosby dropped the letter off at the Goldbelt Hotel in Juneau where Okakok was staying. Okakok does not remember ever receiving that letter, reading it or being influenced by it. Following the conclusion of the Board meeting on June 7, Otte and Okakok walked back to the hotel together. Okakok indicated to Otte that she wished she had further information regarding Anchorage. Otte indicated that she knew somebody who might be able to explain Anchorage and its communities to her. A meeting took place that evening that lasted approximately one hour with Otte, Okakok, Jim Baldwin, an attorney for the State Attorney General's Office and Thomas Begich, a consultant with expertise in Anchorage neighborhoods. The meeting lasted approximately one hour. During that time Begich showed Okakok an aerial map and explained why certain areas were neighbors to other areas and why certain areas could not be neighbors to other areas. He answered her questions. After reviewing the map and after listening to Begich, Okakok concluded that South Anchorage was not an industrial urban area of Anchorage and that the Anchorage, Indian, Bird Creek, and Girdwood portions of the City and Borough of Anchorage were more suburban or even rural in character. Following the meeting with Begich all of the Board members attended a barbecue. There is no indication that any Board business was discussed at this barbecue.

The next day Mason moved to reconsider the Valdez vote. His motion was to rescind the prior vote so that the Board would be free if they chose to do so to pair Valdez with Anchorage. Mason's motion did not compel the Board to pair Anchorage with Valdez. Both Mason and Okakok changed their prior votes and the motion was passed by a 3 to 2 vote.

Plaintiffs contend that Okakok was improperly pressured or unduly influenced to change her vote. Okakok's testimony as well as anyone in a position to influence Okakok directly contradicts this assertion. Okakok specifically testified that she was not unduly or improperly influenced by any other Board member or any person or organization outside the Board. Nor was she motivated by any improper reason. She clearly indicated that her only motivation was to adopt a Redistricting Plan that was fair for the entire state. There is no indication that any Board member or any other person spoke with Okakok on the evening of June 7 following the Board meeting and attempted to influence her to change her vote on Valdez. The court finds that Okakok's testimony is fully

credible and that her testimony is the best evidence of what occurred regarding the Valdez vote.

Plaintiffs also complain of undue influence as a result of *ex parte* communication with Board members. This claim is directed principally at AFFR contacts with individual majority Board members, and particularly with Mason's contact with AFFR at the end of the redistricting process when the Full Representation Plan came into existence.

There is nothing improper with individual Board members discussing the redistricting plans with members of the public, because the concept of *ex parte* communications does not apply to the Board. This concept is discussed in Sierra Club v. Costle, 657 F.2d 298, 400 n.501: (D.C. Cir. 1981):

In ordinary rulemaking proceedings the parties are not identified in advance. Neither are conflicting interests established in advance among those subject to the proposed regulations...In such a situation the very concept of *ex parte* communications is strikingly out of place; there are no parties to begin with, and it is not known what parties will develop and what their conflicting interests will be.

Virtually every Board member met individually with members of the public. Indeed the Board considered this a useful process to gather information and receive public input. The Open Meetings Act is not violated by such individual lobbying of Board members and there is nothing improper about this. See Brookwood Area Homeowner's Ass'n v. Anchorage, 702 P.2d 1317, 1323 n.7. (Alaska 1985)

The court finds that all Board members were credible when they testified to facts they were told and descriptions of their own actions and motivations. No Board member was motivated by any improper reason. All Board members were open minded in the

sense that none began his or her involvement in the redistricting process with any preconceived idea of the final plan. Each Board member made a good faith effort to adopt a constitutional plan. Each Board member exercised his or her independent judgment and was not unduly or improperly influenced by any other Board member or any person or organization outside the Board. Although Board Member Michael Lessmeier believed that the majority Board members had a secret agenda and collaborated together outside of the Board's formal process, no evidence supports his belief and the direct evidence of the majority Board members directly contradicts that belief.

c. Board's effort to encourage public participation

The evidence indicates that the Board actively encouraged public participation in the redistricting process. Gordon Harrison and individual Board members participated in various forums and addressed community groups regarding redistricting. Public officials and representatives were informed of activities of the Redistricting Board and encouraged to participate in the process. The Board developed and maintained a computer web site that became operational early in the redistricting process. Included on the web sites were the Board approved plans, information concerning the Board's activities, meeting schedules, and transcripts of public hearings. The web site also allowed the public to communicate with the Board staff or Board members via e-mail. A contact list was

developed that eventually consisted of almost 600 individuals, legislative members and staff, organizations and media outlets were developed. Persons or organizations on this contact list were provided with public notice of upcoming meetings.

In addition to the Notice of Board Activities and Upcoming Meetings published on the web site, the Board published Notice of Meetings in newspapers in Juneau, Anchorage, and Fairbanks. Such notices were published three times prior to any meeting beginning at least five days before the meeting.

Additionally, the board maintained a reading file available to the public that contained all e-mail communications, letters or proposals that were submitted to the Board during the redistricting process. The reading file was periodically taken to a local copy shop that was available in Juneau, Fairbanks and in Anchorage.

Some of the public meetings held by the Board were also teleconferenced statewide. This included any of the regular Board meetings except for the meeting at which the Board determined which plans would be adopted prior to the public hearings and the meeting at which the Board adopted a final plan. These latter two meetings were in the nature of work sessions that did not easily lend themselves to teleconferencing. All of the meetings and hearings of the Board were open to the public and the public attended and participated in such meetings.

This is not to say that all information presented to the Board was available to the public. In particular, plans received by the Board after the adoption of the four draft plans and after the public hearings required by the Alaska Constitution were held were not easily obtainable by the public. In particular this includes AFFR Plan B and the Full Representation Plan. Such plans were not available on the web site because they were not adopted as official Board plans and due to the dictate of time. The Full Representation Plan in particular, was developed and introduced to the Board only shortly before its adoption by the Board, and there was little opportunity for the public to learn the particulars of this plan or to make any comment on it. Nor were any maps of this plan made available to the public until after the plan was finally adopted by the Board. While this made it harder for the public, particularly in rural areas, to obtain information during the critical last days of the work, this information was available. The

overall process was fair and open and the public was afforded a meaningful opportunity to take part in the process and be heard.

VI. EQUAL PROTECTION ISSUES

A. One Person One Vote Population Deviation - House District 40

House District 40 is the only reason that the total deviation in the plan for house and senate seats exceeds 10%. The District is the most northern district in the State. That district has an overall deviation of -6.9%. As such, the Board is required to justify the population deviation in House District 40. Both the size and the unavailability of easily moved population blocks make this deviation acceptable. The Board considered and rejected moving Shishmaref into District 40. This would have reduced the deviation in District 40 to within 5% of the ideal population but would have increased the deviation in adjoining House District 39 to -7.8%. The Board also considered moving Pilot Station out of House District 6 and into House District 39, but that would have affected the deviation in House District 6 and would have had voting rights act implications for District 6, a district that the Board's voting rights expert had warned them might impact the Voting Rights Act. The Board's record reflects that Pilot Station was moved into House District 6 specifically to increase native population in that district. Shishmaref was then moved into District 39 to decrease the population loss in that district. All Board members joined in the decision to approve the boundaries of House District 40, believing that this choice would result in the lowest population deviation. As previously noted the overall deviation in the plan of 12.0% for house districts and 10.6% for senate districts is the smallest overall deviations of any plan in Alaska since statehood. The only reasons these deviations exceed the 10% threshold is due to District 40. This court finds that these deviations are acceptable and justified.

B. Voting Rights Act

Alaska is subject to the provisions of Section 5 of the Federal Voting Rights Act, 42 U.S.C. § 1973c. This provision prohibits an Alaska Redistricting Plan from having a retrogressive effect on Native voting strength. Because Alaska is subject to Section 5 of the Voting Rights Act, no new Redistricting Plan may take effect without being “precleared” by the United States Department of Justice. The 2001 Plan has been precleared by the Department of Justice, and this court therefore presumes that the plan satisfies the Voting Rights Act.

Compliance with the Voting Rights Act was a legitimate and essential goal for the Redistricting Board. Under Section 5 of the Voting Rights Act, any proposed new plan is measured against the “benchmark” which is the last approved Final Plan with updated census information. Thus, the benchmark for the 2001 Final Plan was the 1994 proclamation districts using population from the 2000 census. [Exhibits 516-519] The benchmark plan has four majority Native House Districts two other effective Native House Districts, two majority Native Senate Districts and one other effective Native Senate District. An effective district in Alaska is a district with a minimum of 35% Native residents. This figure is determined empirically. Historically a district in Alaska with a minimum of 35% Native residents has elected the Native preferred candidate in each contested election. A Native preferred candidate is a candidate preferred by Native voters in the district; this does not necessarily imply that a Native preferred candidate will in fact be a Native. For Voting Rights Act analysis, the fact that a candidate or

representative is a Native is irrelevant unless that candidate is the Native preferred candidate.

The Native percentage required to achieve an effective Native District in the area covered by former House District 36 is larger than 35% because this area of the State has been shown to have racial block voting. The Board's expert, Dr. Handley, studied voting patterns in House District 6 in the proclamation plan and determined that the 56% Native population is sufficient to maintain an effective Native District. The Department of Justice was persuaded by her analysis.

Handley determined preliminarily (without full research) that a Senate District containing House District 6 needed to have a Native voting age population of approximately 43% in order to be an effective Native Senate seat. Her analysis was only preliminary and did not constitute a full determination as to whether or not a Senate District having a lessor percentage of Native voting age population would satisfy the Voting Rights Act. Determining the minimum number of Natives to establish an effective district would require specific analysis that was not done by Dr. Handley.

In conducting its preclearance analysis to determine whether or not a redistricting plan has a retrogressive effect on minority voting strength, the United States Department of Justice first considers whether the number of effective minority districts has declined between the benchmark plan and the proposed new plan. In addition, the Department of Justice considers other factors that are relevant to whether the plan will have a retrogressive effect on minority voting strength, including whether minority incumbents were paired against each other or paired against non-Native incumbents, whether the

percentage of minority voters in an effective Native District has declined significantly, whether minorities favor or disapprove of the plan, and whether minorities had inadequate opportunity to participate in development of and comment on the plan. Hickel, 846 P.2d at 97 (Appended Opinion of Judge Weeks) (citing Thornburg v. Jingles, 478 US 30, 60-62 (1986)). If the Final Plan had failed to preserve four Native majority House Districts and two Native majority Senate Districts, plus an additional two effective Native House seats and one effective Native Senate seats (as measured at minimum by the 35% Native threshold), there was a significant chance that the Department of Justice may not have approved the plan. Given the advice of its expert, Dr. Handley, the Board acted reasonably in using 35% as a minimum threshold for the effective Native Districts. The Board appropriately was concerned with the need to adopt a plan that was likely to be precleared by the Department of Justice. It was also reasonable for the Board to avoid a plan that paired Native incumbents against one another in an effective Native District, or that paired a Native incumbent against a non-Native incumbent in an effective Native District since the Department of Justice had objected to plans in other states that paired minority incumbents in these circumstances.

The Board did not give undue weight to Voting Rights Act considerations and did not compromise Alaska Constitutional Redistricting principles, except to the extent that the Board believed it was necessary to do so to comply with the Voting Rights Act. The Board's assessment of what was needed to satisfy the Voting Rights Act was reasonable. Whether other plans considered by the Board or whether alternatives suggested by the Plaintiffs would have satisfied the Voting Rights Act cannot be determined on the record before the court. What is important is whether the Board's plan satisfies the Voting

Rights Act and whether Voting Rights Act considerations and decisions made by the Board were reasonable.

C. Geographic Equal Protection

A number of Plaintiffs have asserted that the Board's Final Plan violates the equal protection clauses of the Federal and State Constitutions by not giving equal weight to voters in all parts of the State. This Geographic Equal Protection Claim turns upon interpretation of the Alaska Supreme Court's decision in Kenai Peninsula Borough v. State, 743 P.2d at 1352 (Alaska 1987).

In Kenai Peninsula Borough the Alaska Supreme Court was asked to consider the Constitutionality of Senate District E, a two member senate district composed of three house districts; Districts 6, 7 and 16. District E had been created to respond to public dissatisfaction with the former senate configuration and to retain the balance between regional and Anchorage senate representation. The Board had received testimony indicating that a single-member senate district made up of two of the house districts would become an "Anchorage" seat. By aligning House Districts 6, 7 and 16 into a two member senate district, the Board deliberately fashioned Senate District E to retain the balance between regional and Anchorage senate representation. The question raised in Kenai Peninsula Borough was whether this purpose was legitimate and whether Senate District E was constitutional.

Senate District E was challenged by certain voters who (as Plaintiffs have done in this case) argued that the Board had impermissible motives in designing Senate District E, contending that the Board included South Anchorage within the district in order to produce a rural constituency and to dilute the political power of Anchorage voters. These parties base their claim on the equal protection clauses of the Federal and State Constitutions, asserting that the dilution of the political power of Anchorage voters was invalid because it disfavored voters from a particular geographic area. In Kenai Peninsula Borough the Alaska Supreme Court established that, “[I]n the context of voting rights in redistricting and reapportionment litigation, there are two basic 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.” Id. at 1366. It is the concept of fair and effective representation that is raised by plaintiff’s geographic equal protection claim.

The principle of “fair and effective representation” is qualitative in nature. Hickel, 846 P.2d at 47. The Alaska Supreme Court has stated, “[t]hat the equal protection clause protects the rights of voters to an equally meaningful vote has been inferred from Reynolds in which the Supreme Court said that ‘the achieving of fair and effective representation for all citizens is concededly the basic aim of legislative apportionment.’” Kenai Peninsula Borough, 743 P.2d at 1367 (quoting Reynolds, 377 at 565-66).

Fair and effective representation issues arise in the use of multi-member and single member districts. The Alaska Supreme Court has ruled that:

Employing a multi-member district to achieve “a rough sort of proportional representation” for rural areas in the legislature would thus be permissible under the equal protection clause in light of Gaffney. If, however, the creation of such a district instead was purposefully used to exclude a certain group from political participation, it is more suspect.

Kenai Peninsula Borough, 743 P.2d at 1368. However, the Alaska Supreme Court has noted that, “[i]n cases where the excluded group is a racial minority, such gerrymandering would be unconstitutional.” Id. n.30 (citations omitted). Furthermore, “[o]nly where there is evidence that excluded groups have ‘less opportunity to participate in the political processes and to elect candidates of their choice’ have we refused to approve the use of multi-member districts.” Id. (quoting Davis v. Bandemer, 478 U.S. 109 (1986)).

The Alaska Supreme Court has ruled that regarding single member districts:

As with individual districts, where unconstitutional vote dilution is alleged in the form of statewide political gerrymandering, the mere lack of proportional representation will not be sufficient to prove unconstitutional discrimination. Again, without specific support evidence, a court cannot presume in such a case that those who are elected will disregard the disproportionately underrepresented group. Rather, *unconstitutional discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade a voter’s or a group of voters’ influence on the political process as a whole.*

...

And, as in individual district cases, *an equal protection violation may be found only where the electoral system substantially disadvantages certain voters in their opportunity to influence the political process effectively. In this context, such a finding of unconstitutionality must be supported by evidence of continued frustration of the will of a majority of the voters or effective denial to a minority of voters of a fair chance to influence the political process.*

Kenai Peninsula, 743 P.2d at 1368-69, quoting Bandemer, 106 S.Ct. at 2810 (emphasis in original). Alaska’s equal protection clause imposes a stricter standard than its federal

counterpart. See Hickel, 846 P.2d at 49; Kenai Peninsula Borough, 743 P.2d at 1371.

The Alaska Supreme Court has ruled:

In the context of reapportionment, we have held that upon a showing that the Board acted intentionally to discriminate against the voters of a geographic area, the Board must demonstrate that its plan will lead to greater proportionality of representation...Because of the more strict standard, we do not require a showing of a pattern of discrimination, and do not consider any effect of disproportionality de minimis when determining the legitimacy of the Board's purpose.

Hickel, 846 P.2d at 49; see also Kenai Peninsula Borough.

At the outset, this court notes that the Kenai Peninsula Borough case appears to be the only case in which the concept of geographical equal protection was applied. When Kenai Peninsula Borough was decided there were few constraints on the redistricting of senate districts other than the analysis inherent in equal protection analysis. The Kenai Peninsula Borough court held that the provisions of Article VI, Section 6 of the Alaska Constitution which set forth socio-economic integration, compactness and contiguity requirements were inapplicable to redistricting and reapportionment of senate districts. Today, in contrast, senate districts must be composed as near as practicable of two contiguous house districts. Likewise, at the time Kenai Peninsula Borough was decided, multi-senate districts were constitutionally permissible. Today, they are not. See Article VI, Section 4. Thus at the time Kenai Peninsula Borough was decided there were few constraints on the manner by which the senate districts could be drawn and, as a result, the opportunity to gerrymander such districts was high. The equal protection analysis used in Kenai Peninsula Borough appears to be an effort by the Alaska Supreme Court to restrict the then nearly unfettered ability to draw senate districts. This problem has been reduced by the 1998 Amendment to the Alaska Constitution.

The Kenai Peninsula Borough court favorably cited a portion of Justice Powell's dissent in Davis v. Bandemer, 478 U.S. 109 (1986), in which Justice Powell suggested that the constitutionality of an apportionment plan be tested according to a number of neutral criteria. Several of these neutral factors are already embodied in the requirements for the drawing of House Districts under Article VI, Section 6, and the fair and open procedures under which the Redistricting Board must operate including the requirements of Article VI, Section 10, the Open Meetings Act and the Public Records Act. That such neutral factors are already required for House Districts further suggest that the Kenai Peninsula Borough court may have been concerned primarily with the then unfettered ability of the Redistricting Board to create multi-member Senate Districts without any constraint whatsoever.

Under federal law a plan will be invalidated on grounds of political gerrymandering only if there is evidence both of intent to discriminate against a political party and evidence of discriminatory effect. Davis v. Bandemer, 478 U.S. 109, 127 (1986); Hickel, 846 P.2d at 49. Federal courts further require that discriminatory effect “must be supported by evidence of continued frustration of the will of a majority of the voters or effective denial to a minority of voters of a fair chance to influence the political process.” Bandemer, 478 U.S. at 133; Hickel, 846 P.2d at 49. Under the qualitative principle of federal equal protection, fair representation is denied only where there is “proof that the group has been consistently and substantially excluded from the political process [and] denied political effectiveness over a period of more than one election.” Id. quoting Kenai Peninsula Borough, 743 P.2d at 1369.

This standard cannot be met by a party, such as the Republicans in this instance, that will (even by their own testimony) continue to hold more than a majority of the seats after any election that might occur under the 2001 Final Plan. The record in this case is devoid of evidence that the Board's Final Plan has any discriminatory effect against the Republican Party. According to Plaintiff Randy Ruederich's own testimony, the plan adopted by the Board preserves essentially the same number of seats for Republican legislators as the 1994 Plan under which Republicans hold a super-majority in both houses. Further, by Ruederich's own testimony the Board's Final Plan is more favorable to Republicans than the alternative plan (Board Plan 1) that was under consideration.

Plaintiff's attempt to establish discriminatory effect based on a showing of different population deviations also does not prove gerrymandering or a denial of fair and effective representation. Plaintiffs rely on the testimony of an expert, Dr. Kip Viscusi to support this allegation. Viscusi suggests the Districts where Democrats are likely to be elected have negative population deviations (i.e. are underpopulated) while Districts where Republicans are likely to be elected have positive deviations (i.e. are overpopulated). However, deviations within 10% are de minimus under Federal and State Law. Deviations that satisfy the one person, one vote requirement do not prove intentional or effective discrimination against a political party, particularly where in every district of the State over half the registered voters are not registered to any party and particularly where the evidence indicates that such deviations will have no effect on the number of Republicans that are elected.

Indeed, the testimony of Dr. Viscusi, which examines such deviations based on impressionistic and unscientific characterizations of whether a district is likely to elect a Republican or Democrat, is far less significant than the fact that such deviations are not likely to effect the number of Republicans or Democrats that are elected to the legislature. If the Board's Final Plan were discriminatory, as suggested by the Plaintiffs, it makes little sense that the Board would select a plan where fewer Democrats were elected than under other plans available to the Board. The court accepts the testimony of

Dr. McDonald and Dr. Kousser, who testified based on conventional and well accepted political science measures, that the Board's Final Plan is politically fair, and rejects the testimony of Dr. Viscusi for the reasons explained by Dr. McDonald and Dr. Kousser.

Plaintiffs also assert that the Board's intent to discriminate and deprive geographic areas of fair and effective representation is demonstrated by the fact that under the Board's Final Plan Republican incumbents are paired against other incumbents in the same district twenty times while no Democrat incumbents are paired in this way. The pairing of incumbents in an unequal manner or unusual population deviations are both factors that require a court to take a "hard look" at a Redistricting Plan. The court has done so in this instance. But the evidence does not support any finding of discriminatory intent by the Board. There are fewer Democrats in the legislature compared to Republicans, so as a statistical matter there is a much greater likelihood that Republican incumbents will be paired against one another compared to Democrats. Moreover, several of the Democratic legislators are Native and the testimony establishes that any pairing of Native incumbents might raise Voting Rights Act concerns.

The Board was not required to adopt a policy to protect incumbents wherever possible, although such a policy would have been constitutional. Nor was the Board required to treat all incumbents evenhandedly. To the extent that there is evidence that some Board members considered the effect of a particular proposal on specific incumbents and tried to protect those incumbent seats the evidence indicates that this primarily occurred with Native incumbents. This was entirely legal and constitutional permissible and most likely required to achieve preclearance by the Department of

Justice. Most significant to the court again is the fact that the evidence indicates that where Republican incumbents were removed from a district to create an open seat, the Republicans still are considered likely to win that seat. The best evidence of a discriminatory intent is the impact that the Board's action likely will have. If there is not evidence of any real impact on the political process then a claim that discriminatory intent may be inferred from a particular action carries little weight.

The testimony of each of the Board members establishes that neither the majority of the Board nor any individual member adopted a policy to target particular incumbents by altering their districts or pairing them against other incumbents. The testimony of the individual members further establishes that neither the majority of the Board nor any individual member sought to discriminate against any political party or geographic area of the State. None of the Board members had any agenda other than to try to create a Redistricting Plan that was fair to the entire State. To the extent that there is evidence that groups such as the AFFR, submitted plans for the Board's consideration that may have taken into account the likely effect of their proposal on incumbents, this was entirely legal and constitutionally permissible. Indeed, the evidence establishes that the Board received plans and proposals from groups of all political persuasions. The Board was not required to inquire into AFFR's motives (or the motives of any other group), nor was it required to reject a plan merely because some of the developers of the Plan might have had political motivations. The constitutionality of the Final Plan is not effected by the motivations of the citizen groups that advocated for or against the plan. Redistricting is an inherently political process. A plan is not invalid merely because districts are drawn

with a political agenda or with an awareness of the likely political consequences.
Gaffney v. Cummings, 412 U.S. 735, 752-54 (1973).

Arguments also have been offered by various plaintiffs asserting that fair and effective representation cannot be obtained if a district is overly large. The pairing of House District 5 and House District 6 created Senate District C, which is acknowledged to be the largest Senate District in the United States. This court rejects the argument that fair and effective representation is impossible in a district that size. Senate districts in Alaska have historically been large due to the sheer size of our state and the population distribution within the state. An examination of Senate Districts R or Senate District S or T under the 1994 Plan reveals other Districts that pose the same geographical challenges as Senate District C does under the challenged plan. The so called "Iceworm" District under the 1994 Plan is another example. Senate Districts T and S under the 2001 Plan pose similar challenges for any Senator. Georgianna Lincoln is the Senator representing Senate District R under the 1994 Proclamation, which previously has been the largest legislative district in the United States. While recognizing the challenges of representing such a large district, Senator Lincoln testified that meaningful representation can be provided even in the largest districts in Alaska. The court accepts and finds Lincoln's testimony to be completely credible.

Certain plaintiffs also assert a denial of fair and effective representation contending that a representative cannot effectively represent either their proposed House or Senate District due to inbuilt conflicts among the citizens of the district. Thus, the Valdez residents of proposed House District 32 contend that there are conflicts and

competition between Anchorage and Valdez concerning the business of the two ports in these two communities and between the South Anchorage citizens who work for the oil companies and owners of the Trans-Alaska Pipeline compared to the citizens of Valdez whose tax base may depend upon taxing the pipeline or the tankers owned by the oil producers. Likewise, citizens of Craig contend that their interest in the Chum Salmon Fishery in Southeast Alaska may conflict with the concerns of the residents of the Yukon-Kuskokwim Delta where the Chum Salmon runs have seriously declined. They contend that this creates a problem in the pairing of House Districts 5 and 6 into Senate District C. A similar claim is brought by the Lake and Peninsula residents of House District 37 as well as the Aleutian East Borough residents of House District 37 who contend that the pairing of House District 37 with House District 38 denies them fair and effective representation because of conflicts between fishermen in these areas regarding the so-called Area M controversy regarding diminished runs of salmon in the Yukon-Kuskokwim Delta. Similar other claims are made throughout the State.

The court is not persuaded by these arguments. There is nothing in the Constitution that requires the voters within a legislative district share the same political goals or ideological viewpoint. Conflicts among citizens of legislative districts are an inevitable part of the political process. Competition is an essential part of our economic system. The allegations made by plaintiffs in this case are no different than the conflicts presented by sports fishing and commercial fishing interests in the House and Senate Districts on the Kenai Peninsula. The requirement that Senate Districts be comprised of two contiguous House Districts limits the options available to the Board to create Senate Districts. The court notes that Senator Lincoln believes that the Senate District C pairing

is a manageable one. The court also notes that while Representative Con Bunde, who represents the hillside area in South Anchorage, expressed his opposition to an Anchorage Valdez District, he apparently intends to run for a Senate Seat that would represent the communities of Anchorage and Valdez. The court assumes Representative Bunde believes he can fairly represent these areas if he is elected. This court also assumes that any potential Senator or Representative will run expecting to fairly represent the interests of his or her entire Legislative District.

The Alaska Constitution does not require that a legislative district consists only of people of common and not conflicting or competing interests. In fact to some degree every legislative district contains people with conflicting and competing interests. Areas that are the most socio-economically integrated are in many ways the most likely to have conflicts as well as common interests. For example, regions may have competing interests in where the proposed gas pipeline is located but they each share a common interest in development of gas on the North Slope. Likewise regions that compete with one another for fish share a common interest in that resource and both benefit from policies that enhance the fishery, even if they may compete with one another for a larger allocation of the fish.

These current political conflicts are of a different character than centuries-long traditions of warfare and cultural antagonisms that have caused the Alaska Supreme Court to reject pairings among different native cultures. See Hickel, 846 P.2d at 53-54 (describing the joining of the North Slope and Inupiaq and the interior Athabaskan areas into one district as a “worst case scenario”).

This court recognizes that the Hickel court struck down a district that merged Palmer with the Prince William Sound communities, noting that Palmer was part of an organized Borough whereas Prince William Sound was not, and indicating that because of this factor, the interests of Palmer residents might be adverse to those of residents of an unorganized Borough on issues such as property taxes and State funding of programs such as education. Hickel, 846 P.2d at 52-53. Given that many of the incorporated boroughs in the State do not contain enough population for a single legislative district it is invariably required that a organized borough be paired to some extent with an unorganized area. The conflict described by the Hickel court between residents of incorporated boroughs and unorganized boroughs on issues such as property taxes and State funding of programs such as education exist for many of the districts that have been historically created in the State and approved by the Alaska Supreme Court. This court believes that the Alaska Supreme Court struck down the district that merged Palmer with the Prince William Sound communities less based on any perceived conflict within such a borough and more significantly based on the fact that “the record does not establish any significant interaction or interconnectedness between these areas.” Id. at 53.

Finally, both the Prince of Wales Island plaintiffs and the Lake and Peninsula Borough plaintiffs argue that because their communities are split into two House Districts and also into two separate Senate Districts they are being denied fair and effective representation. They argue that fair and effective representation requires that they be able to maximize their political influence by being placed together in a single house district or, failing that, that in two house districts paired into a single Senate District. Valdez makes a similar argument concerning its ability to effectively control the political process in

arguing that their placement in a district comprised largely of Anchorage residents deprives them of an opportunity for fair and effective representation. Again, this court is not persuaded by these arguments which require this court to make assumptions about political races that have not yet been run and which are contrary to the history of political races in Alaska. Representatives in Alaska often come from smaller communities within a district. Indeed, the single congressman for the state of Alaska, Representative Don Young, comes from the small rural community of Fort Yukon. Political races are also often decided by the slimmest of margins thus requiring those running for office to pay attention to even the smallest communities in their district. Further, communities such as those on Prince of Wales Island or in the Lake and Peninsula Borough may well be benefited by having their residents represented by two House Representatives or two Senators rather than one. Likewise the citizens of Valdez may obtain political benefit by having a representative linked to the other representatives from Anchorage whose support is necessary for the passage of virtually any legislation in the state. The assumption that these communities will be harmed by the manner in which the districts have been drawn or that these communities have been deprived of fair and effective representation as a result is not one that the court can make. Such "second-guessing" of the Board's decision on this basis is an inappropriate exercise for this court to undertake.

Ultimately, the quality of the fair and effective representation that any community receives is less dependant upon the concerns raised by the plaintiff in this lawsuit and more upon the quality of the representative elected by the citizens of the district and the willingness of those citizens to be actively involved in the political process. Indeed, no drawing of district lines or any redistricting of political boundaries can guarantee fair and

effective representation without the informed and active participation of the citizens of this State in the political process.

This court finds no evidence that the Board acted intentionally to discriminate against the voters of any geographic area of the State or that the Board intended to discriminate against any group of voters within the State. The Board did not act to deprive any group of voters or any area within the State of their right to fair and effective representation. The evidence is insufficient to show that the Board's plan denies any group of voters in the State their fair chance to influence the political process.

D. Proportionality

A critical decision for the Board was its determination to create a plan that would allow Anchorage to control 17 House Seats and to allow the Matanuska Susistna Borough to control 4 House Seats. The impact of this decision, given the available population, was that Anchorage and the Mat-Su could not share a seat in common. This meant that Anchorage had to be paired with communities to the south (in this case Valdez) while Mat-Su had to be paired with communities to the north in House District 12. The Board also attempted to ensure roughly proportional representation for residents in all parts of the State. The parties vigorously dispute whether this is Constitutionally required, if so to what extent, and whether the Board consistently applied this policy throughout the State. This issue again turns on the meaning of the Alaska Supreme Court's decision in Kenai Peninsula Borough.

In Kenai Peninsula Borough the Alaska Supreme Court reviewed the Constitutionality of Senate District E, a two-member district composed of House Districts 6, 7 and 16. The Board had created this district to respond to public dissatisfaction with the former Senate configuration linking House Districts 5, 6 and 7 and to retain the balance between regional and Anchorage Senate representation. Based on testimony the Board had received and the personal knowledge of Board members, the Board's view was that a single member Senate District made up of House Districts 6 and 7 would become an "Anchorage" seat. By creating a two-member Senate District the Board hoped to avoid this and to prevent another "Anchorage" Senate seat. 743 P.2d at 1356, 1370.

The 1980 census population of the Municipality of Anchorage was such that on a proportional basis Anchorage was entitled to 8.51 senators. Redistricting toward proportionality would have allowed Anchorage voters to win a ninth Senate seat. Id at 1373. Under the Board's Plan at issue in Kenai Peninsula Borough Anchorage had received only 8 Senate seats. The Kenai Peninsula Borough plaintiffs challenged this claiming that the Board had violated the Alaska Equal Protection Clause to an equally geographically and effectively powerful vote. Applying the equal protection analysis traditionally applied under the Alaska Constitution, see Alaska Pacific Assurance Company v. Brown, 687, P.2d, 264, 269-70 (Alaska 1984), the Kenai Peninsula Borough court found a voters' right to an equally geographically effective or powerful vote to be a significant constitutional interest but not a fundamental right under the Alaska Constitution. Kenai Peninsula Borough, 743 P.2d at 1372.

The court then went on to determine the purposes served by the Board's action. The Board had asserted that it had fashioned Senate District E to retain the balance between regional and Anchorage senate representation. The court analyzed the purpose served by the Board's action under criteria that are particularly significant to this case:

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.*

Id. at 1372. The Kenai Peninsula Borough court noted that the requirements of equal protection under the Alaska Constitution are stricter than the requirements of the Federal Constitution. The court thus held:

Because our Equal Protection Clause is more stringent than the Federal Equal Protection Clause, a showing of a consistent degradation of voting power in more than one election will not be required; rather once the Board's discriminatory intent is evident, its purpose in redistricting will be held illegitimate unless that redistricting effects a greater proportionality of representation. Moreover, because of our stricter constitutional standard, we will not consider any effect of disproportionality de minimus when determining the legitimacy of the Board's purpose.

Id. Because the Board sought to prevent another Anchorage Seat in the State Legislature the Kenai Peninsula Borough court found the Board's intent to be discriminatory on its face. Moreover, because the Board's action tended towards disproportionality in that Anchorage received only 8 seats and was under represented by .51 Senate seats rather than 9 Seats where it would be over represented by .49 Senate seats, the Kenai Peninsula Borough court found the Board's purpose in creating Senate District E was illegitimate and therefore held the district unconstitutional under the Equal Protection Clause of the Alaska Constitution. Id. at 1373.

It is noteworthy that the trial court in Kenai Peninsula Borough had found that the plan was not the product of a discriminatory intent on the Board's part and the Alaska Supreme Court reversed this factual finding as clearly erroneous. Id at n.39. Yet while strictly analyzing the effect of disproportionality and using this lack of proportionality to conclude that the district was unconstitutional under the Equal Protection Clause of the Alaska Constitution, Id, the court noted in a footnote the following:

If we were to rely on discriminatory effect alone, we would be establishing a proportional representation standard and also effectively selecting which of alternative reapportionment plans seem preferable, rather than determining whether the challenged plan is reasonable and thereby be encroaching on the governor's reapportionment power. [citation omitted] We thus will require a showing of proportionality only after intentional discrimination has been proven. We note that article VI, section 6 alone identifies the criteria governing reapportionment; if the framers had intended to make proportionality a criterion for the establishment of new districts, they presumably would have included it in this section or written a sister provision.

Id. at 1370 n.33. (emphasis added)

The statements contained in footnote 33 of Kenai Peninsula Borough appear to conflict with the analysis the court actually undertook in the case. More importantly this footnote appears to conflict with the Kenai Peninsula Borough court's description of the right to geographic equal protection as "the interests of individual members of a geographic group or community in having their votes protected from disproportionate dilution by the votes of another geographic group or community." Id at 1371. The Redistricting Board asserts, and this court has no doubt, that had the Board paired Anchorage and Mat-Su in a district controlled by Mat-Su (as originally proposed) so that Mat-Su controlled the four House seats to which it was entitled, but Anchorage only controlled sixteen House seats, the Board would have been sued by Anchorage citizens

contending that Anchorage did not receive its right to control the seventeen House seats to which it was entitled. It was to avoid this problem that the Board made several of the decisions challenged in this litigation, particularly District 32 and District 12.

This court believes that the seemingly contradictory statements in Kenai Peninsula Borough can be reconciled as follows. *Strict* proportionality is not a requirement of the Alaska Constitution. A community that is entitled to less than 8.5 seats may constitutionally receive anywhere from 7.51 seats to 8.49 seats for example. However geographic equal protection will be violated when evidence demonstrates a community is denied the right to control the proportionate number of seats it would be entitled to control measured by whole numbers because of an intent to discriminate against a geographic region. Thus, for example, if a community is entitled by population to control 8.51 Seats it should be given the right to control nine seats rather than eight seats. In analyzing the ability to control whole seats, de minimus impacts will not be disregarded, although such de minimus effects may not require a remedy. Thus, as in Kenai Peninsula Borough, a community that is entitled to control 8.51 seats and only receives 8.49 seats states a claim of geographic equal protection because that community has arguably been deprived of the right to control a whole seat.

Analyzing the Board's Plan under these principles, no discriminatory effect or intent is established. As demonstrated in Trial Exhibit 526 (Attached to this Opinion as Appendix E) each borough has the right to control the same number of House and Senate seats in whole numbers to which it is entitled on the basis of population. Further, each smaller organized area that has asserted an equal protection claim is districted in such a

way that its percentage of the population in a district closely approximates its ideal percentage if all residents were proportionately represented. Further, the claim of geographic equal protection also fails because of the complete absence of any evidence of any intent by the Board to discriminate against the residents of any geographic area. This is true both as to organized areas and as to unorganized areas. The Board's Final Plan fully complies with the requirements of equal protection under both the United States and Alaska Constitutions including the requirement of Geographic Equal Protection and the requirement of Fair and Effective Representation.

VII. ARTICLE VI, SECTION 6 ISSUES

A. Additional Legal Considerations

1. Contiguity

Every house district in the Board's plan is comprised of a single contiguous area as viewed on a map. No district contains two or more discrete or unconnected parts. Both the Valdez plaintiffs and the Fairbanks North Star Borough urge this court to adopt a definition of contiguity such that a district could be found not to be contiguous if existing transportation systems required residents of the district to cross other districts in order to transverse the district in question. There is no support under Alaska law for such a definition of contiguity and this court rejects this approach. Contiguity is not dependent on the vagaries of existing transportation systems. Rather, the concept is a visual one designed to assure that no district contains two or more discrete or unconnected parts. There is no indication that any district in the Board's Plan fails to satisfy this contiguity requirement.

2. Socio-Economic Integration

The parties dispute exactly what is necessary to demonstrate the requisite socio-economic integration necessary to satisfy the requirements of Article VI, Section 6. Plaintiff's expert, Professor Robert Deacon, suggests that representative government will be more effective if each legislative district includes populations that interact frequently with one another and have developed norms for achieving common goals. According to Deacon, in order for the trust needed for people to interact effectively to develop, repeated direct interaction and cooperation is necessary. Deacon would place emphasis on actual face to face interaction among people and the quality of such interaction.

On the other hand, Dr. Rosita Worl, a defense expert, testified that such trust does not necessarily depend on actual face to face interaction. Indeed, given the large geographic areas that comprise legislative districts, particularly in the more rural areas of the State, such direct interaction is not possible among all portions of a district. Nor is such interaction likely to be equal within the entire district. According to Worl, socio-economic integration can be achieved based on common cultures and values without the need for direct, repeated, face to face interaction among every community in a district. Worl also indicated people can develop a culture of trust and an ability to work together based on common cultures and values without the need for direct and constant interaction. Similar testimony was provided by Dr. Polly Wheeler.

The court observes that Deacon's and Worl's observations are not mutually exclusive. Socio-economic integration can be demonstrated both by direct face to face and repeated interaction among neighbors and by evidence that a district is bound together by systems of common culture, common values, common economic needs, that unite people within an area. Indeed, given Alaska's significant Native populations, cultural and linguistic integration of a district may demonstrate that the district is significantly socio-economically integrated.

As a matter of constitutional requirement, however, there is nothing in the Alaska Constitution that requires that every community within a district have actual interaction with every other community within a district. Cf. Kenai Peninsula Borough, 743 P.2d at 1362-63 (finding significant socio-economic integration based on interaction between communities within district and communities outside of district but with common region even though interaction between actual communities within district was "minimal"). Indeed, a glance at many of the legislative districts that have historically been formed

within the State indicates that a requirement that every community within a district directly interact with every other community within that district would be virtually impossible to achieve. Districts within Alaska have often been the size of several States in the Lower 48. Often the communities within such large districts are geographically isolated and small in population. They are not interconnected by road systems or by other convenient means of transportation. Such communities are not integrated as a result of repeated and systematic face to face interaction. Rather they are linked by common culture, values, and needs. The constitutional requirement of socio-economic integration does not depend on repeated and systematic interaction among each and every community within a district. Rather, the requirement in Article VI, Section 6 of the Alaska Constitution may, by its very terms, be satisfied if the “area” comprising the district is relatively socio-economically integrated without regard to whether each community within the “area” directly and repeatedly interacts with every other community in the area.

B. Regional Applications

1. Southeast Alaska

Two lawsuits have been filed by cities and individual voters regarding the Redistricting Board’s plan for Southeast Alaska. The City of Cordova, the Native Village of Eyak, and individual residents of those communities have challenged the Board’s inclusion of the City of Cordova and the Native Village of Eyak in House District 5 under the Final Plan. District 5 extends from Cordova, a Prince William Sound community and other Prince William Sound communities of Tatitlek and Chenega down to the southern boundary between Alaska and Canada. It includes much of what was

known as the “Islands District” in Hickel. District 5 includes most of Prince of Wales Island including the City of Craig. However, Prince of Wales Island is divided between two districts, District 1 and District 5 under the Board’s plan. The Prince of Wales Island communities of Hollis, Thorne Bay, and Coffman Cove are placed in District 1. The remaining communities on Prince of Wales Island are in District 5.

Both the City of Craig and Cordova contend that there is insufficient socio-economic integration between Prince William Sound communities included in District 5 with the southeastern Alaska communities in District 5. They also contend that House District 5 is not compact. The City of Craig also contends that, by intentionally fragmenting the community of Prince of Wales Island, the final plan deprives the voters of Prince of Wales Island and the City of Craig of an equally powerful and geographically effective vote. The City of Craig also challenges the Constitutionality of Senate District C in which the City of Craig is placed.

Efforts by previous Redistricting Boards to include the City of Cordova in a House District comprised of various communities in southeast Alaska have twice before been declared unconstitutional by the Alaska Supreme Court. In Carpenter v. Hammond, the court declared unconstitutional a district similar to the one before this court that included the Communities of Cordova, Yakutat, Haines, Skagway, Klukwan, Gustavus, Angoon, Kake, Thorne Bay, Klawok, Craig, and Hydaburg. Finding that Cordova was not socio-economically integrated with the Southeast Coastal Communities in the district, the Carpenter court noted that “the record is simply devoid of evidence of significant social and economic interaction between Cordova and the remaining communities

comprising House Election District 2.” Carpenter, 667 P.2d at 1215. It is noteworthy, however, that while describing the record as being “simply devoid” of such evidence the court described the issue as “an extremely close one.” Id.

Justice Matthews concurred separately in Carpenter to explain his understanding of the requirement of socio-economic integration and to state his belief that the proposed House District was also unconstitutional because it was not compact. Justice Matthews was the only member of the Carpenter court to reach this latter conclusion. Justice Compton, the only member of the court from Southeast Alaska, dissented, concluding that given the acknowledged closeness of the question the court should have deferred to the judgment of the Board.

In Egan v. Hammond, 502 P.2d 856 (Alaska 1972), the Master’s report observed the following with respect to the possibility of the inclusion of Cordova in a Southeastern District in order to cure the over representation in the Ketchikan district:

It is not feasible to reach beyond the Southeast Region because of the clear separation of the region from the balance of Alaska (the air miles from the northwestern-most population in the region at Yakutat to the nearest population in southcentral region, Cordova, is 225 miles).

Id. at 892. The Alaska Supreme Court, in adopting the Master’s plan, came to the same conclusion stating:

The Ketchikan House and Senate districts vary from the norms by –22.5%. Within the time available the Court was unable to reduce substantially this variance and still meet the mandate of the Alaska Constitution requiring a district of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area.

Id. at 928 n.2.

In Groh v. Egan, 526 P.2d 863 (Alaska 1974) the Alaska Supreme Court also concluded that the State also had justified a population deviation of a greater than 10% with respect to two southeastern Alaska districts on the grounds that only alternative thereto would be extending a Southeastern District to include Cordova. The court explained:

With reference to the Juneau and Wrangell-Petersburg areas, the Board was confronted with the difficult problem of juggling the more contiguous, compact, relatively integrated socio-economic areas of Southeast Alaska without extending a substantial distance into an unrelated area separated by immense natural barriers. Yakutat, the northwestern-most settlement in Southeast Alaska, which is itself separated by greater distance from the other communities in the region, is 225 air miles from the nearest population center in the southcentral region, Cordova. There are valid considerations both historically and geographically for not endeavoring to span that gap.

Id at 879. Justice Matthews noted that in Carpenter that “*currently* there is no better reason than there was in 1972 or 1974 for including Cordova in a Southeastern Alaska District because as previously noted, Southeastern Alaska taken alone is entitled to its present six members in the House of Representatives. Carpenter, 667 P.2d at 1220. (emphasis added).

There are significant changes regarding redistricting in Southeast since these earlier cases were decided. Although Southeast Alaska supported six districts in 1983 when Carpenter was decided, population losses in Southeast Alaska reduced this number to five districts in the 1994 plan. Under the 2000 Census the area traditionally defined as “Southeast” (the area east of the 141st Longitude Line) contained only sufficient population for 4.6 seats. The 141st longitude line has also moved westward to the 144th longitude line due to the annexation of territory by the Borough of Yakutat, although much of this territory is scarcely populated.

To solve the one person, one vote problems created by this population loss, the Board considered several alternatives. The Board considered creating four seats in the Southeast District but each of those districts would have been greatly over populated with an average population deviation of +16.4%, which would have raised equal protection claims. If five districts were created in which the population deviation were equally spread among the districts the deviation for each district would have been approximately -7% . But that would have involved combining the rural areas in southeast with portions of urban areas in Juneau and Ketchikan in violation of the Alaska Supreme Court's decision in Hickel, 846 P.2d at 51. The population in Juneau was sufficient to create two House Districts with nearly ideal population and the Board did so creating District 3 with a population deviation of -3% and District 4 with a population deviation of -1.10%. Spreading the southeastern population deviation over the remaining three districts led to unacceptably high population deviation unless Cordova, the next population center, was added to a Southeastern District. Indeed former House District 5 (the "Island District") was approximately 15% below ideal population while former House District 1 (Ketchikan) was 9% below ideal population and former House District 2 (Sitka, Wrangell and Petersburg) was 6% below ideal population. A plan containing Cordova in a Southeast District was supported by all of the Southeast Legislators. [Board 2621] In order to deal with these population variations every single one of the draft plans adopted by the Board including Board Plans 1 and 2, the AFFR Plan, and the Calista Plan all included Cordova in a Southeast District.

2. House District 1

Because of a loss of population in the Ketchikan Gateway Borough, it was necessary to pair additional communities with Ketchikan to make up a district. The Board combined a portion of Prince of Wales Island, including the residents of Hollis, Thorne Bay and Coffman Cove in this district. While the residents of Prince of Wales Island are understandably upset about the fracturing of Prince of Wales Island into two house districts (and two Senate districts) there is no legal requirement mandating that the Prince of Wales communities be placed in a single House or Senate district. Rather each of the districts must be analyzed under the requirements of the Alaska Constitution.

It is clear that House District 1 satisfies these requirements. House District 1 is compact and contiguous. Counsel for the Prince of Wales Island plaintiffs conceded that the residents of Coffman Cove, Thorne Bay and Hollis are socio-economically integrated with Ketchikan. The evidence supports this as well. Residents of Hollis, Thorne Bay, and Coffman Cove indicated relationships and ties with Ketchikan. Prince of Wales Island is in the same recording district as Ketchikan and the same judicial district. There is regular air service between Ketchikan and Thorne Bay and Coffman Cove, and regular barge service from Ketchikan to Thorne Bay and Hollis. A new ferry service connects Hollis and Ketchikan on a daily basis. Ketchikan assisted in the financing of the ferry by guaranteeing a substantial loan. Private businesses on Prince of Wales Island rely on distributors in Ketchikan. The Southeast Islands School District hires a pilot who flies every day from Ketchikan to Thorne Bay and from there provides transportation to specialized teachers throughout the district. The school district obtains supplies and services from Ketchikan regularly. The people on Prince of Wales Island regularly shop in Ketchikan. They obtain essential services such as medical and dental from Ketchikan.

Prince of Wales Island residents regularly read the Ketchikan Daily Newspaper and go to the movies in Ketchikan. It is noteworthy as well that the communities placed in House District 1 are former logging communities like Ketchikan. These communities are generally non-Native, like Ketchikan, thus avoiding possible Voting Rights Act issues.

This court finds that House District 1 satisfies the requirements of Article VI, Section 6 of the Alaska Constitution and is not unreasonable.

3. House District 5

The testimony of Dr. Rosita Worl established the strong, historical and linguistic ties among Cordova and the southeast islands. Eyak, Tlingit and Haida are the traditional native inhabitants of southeast Alaska and Prince William Sound. These groups are all considered Northwest Coast Culture Indians. They all share important cultural characteristics, including similar social organizations in terms of moiety, clan and house structure. They share a system of matrilineal descent. Dr. Worl explained that the way a community organizes its social life unites people as a group throughout the geographic region of the southeast and Cordova. This means, for example, that people in Ketchikan have "relatives" in Yakutat, even though they are not biologically related. The same clans extend throughout the southeast into Cordova. People who are part of the same clan and same house share tangible and intangible property even though they live over an extended geographic range. This attitude toward shared ownership unites people throughout the area. Dr. Worl explained that the shared native culture, which includes a relationship to the land, ideology, and ceremonial life unites the people in the Southeast and Cordova Region and is very strong.

One indicator of integration throughout the region is the potlatch tradition. In the past year, approximately a dozen potlatches were held in the region and drew 200 people each, many of whom traveled to go to the potlatch. The potlatch tradition specifically unites Cordova and Yakutat residents who share potlatch ceremonies.

Additionally Eyak, Tlingit and Haida languages are part of the same language family. Historically, the Tlingit who are associated with Southeast Alaska lived in the

Cordova area and they traded with the Eyak and even with the Athabascans in the Copper River Valley. The trade relationships stretched throughout the Southeast and Cordova. The original Eyak were very similar to the northern Tlingit who with the same clan structure, ceremonies and some intermarriage. Over time the Eyak became "Tlingitized". The Eyak culture disintegrated and some of the survivors moved from Cordova to the Yakutat area. Specific interactions between the Cordova and Yakutat natives include familial relationships, sharing of traditional foods, school athletic exchanges, shared business activities, such as commercial fishing and sport hunting, shared hunting and fishing grounds, and shared setnet sites.

The Chugach Corporation (the ANCSA Corporation for the Cordova area) has selected lands within the Yakutat Borough, and conducts a timber business there and offers Yakutat tribe members the same hiring preferences it offers to its own members. The Chugach and SeaAlaska Corporations (the regional corporation for Southeast Alaska) share common interests and interact over management of forests in their area. Before the ANCSA Corporations were developed, the Alaska Native Brotherhood and Sisterhood had a political organization that united natives throughout Southeast. The Alaska Native Brotherhood had camps in a number of places, including Yakutat and Cordova, residents were involved in that camp.

The evidence indicates that subsistence remains very strong in Southeast. The relative importance of subsistence distinguishes the small rural communities from the more urban areas of Southeast. In rural areas residents participate in all aspects of subsistence (production, utilization and distribution) whereas in urban areas the natives

participate primarily by being the recipients of distribution. In addition to the native cultural ties throughout Southeast and Cordova there are a number of other economic ties. There is regular commercial plane service among Cordova, Yakutat, Juneau, and Ketchikan linking the region. SeaAlaska Corporation, formally operated a fish processing operation in Cordova and owned real estate in Cordova although those interests have been sold. There is a significant bottom fishing out of Cordova, which overlaps with the Southeast fishery. In particular, halibut area 3A is common to and utilized by permit holders both in Cordova and Southeast.

The communities at the extreme ends of the district, Cordova and Prince of Wales Island, have common interests in the regulation of commercial fishing. These communities also have common problems with economies based on fishing and timber, both of which are in decline. Formerly, Southeast fishermen from as far away as Craig fished regularly in Prince William Sound; this has stopped due to the advent of the limited entry permit system, which restricts fisherman to a single region. The Southeast Island economy, including Cordova at one end and Prince of Wales at the other end is based on forest and fishing. Hunting guides and charter operators use Cordova as a base for operations in the area of the Tsiu River between Cordova and Yakutat. There are ties between the village of Eyak and natives in the Yakutat area. Cordova plays Yakutat in school athletics and residents from the Yakutat area obtain medical care from Cordova. Indeed, "Yakutat" is an Eyak word.

Yakutat not only has significant relationships with Cordova to the west but to the Southeast communities to the south. The people of Hoonah have a centuries long

relationship with the people of the Yakutat area. The Tlingit-Haida Central Council represents people in 19 communities from Yakutat south. The Tlingit-Haida Regional Electrical Authority serves six communities. The Tlingit-Haida Regional Housing Authority has built homes in such communities as Klukwan, Hydaburg, and Saxman.

District 5 is essentially composed of the Islands District, which under the 1994 Plan extended from the Dickson Entrance to the 141st Meridian. New District 5 extends this district westward to include the communities of Cordova, Tatitlek and Chenga. Given that the Hickel court concluded that the question of whether or not the Cordova area communities were relatively socio-economically related to the Southeast communities of the Island District to be a "close question" even though their record then was "devoid of evidence of significant social and economic interaction between Cordova and the remaining communities comprising House Election District 2", this court concludes that the record now before it establishes sufficient evidence that the area comprising District 5 is nearly as practicable a relatively integrated socio-economic area, particularly in light of the population losses in Southeast Alaska that require that Cordova be included in a Southeastern District.

The Craig plaintiffs also challenge the district as not being sufficiently compact. In Hickel, 846 P.2d at 52, n.23, the court noted that the Island District that had been approved by the Alaska Supreme Court as part of its 1992 interim plan while non-compact, was permissible in order to comply with the Voting Rights Act. The 1994 plan ultimately validated a district that extended from the Dickson Entrance to the 141st Meridian. While the extension of the district northward and westward to include

Cordova increases the problem, this court notes that the problem is caused by population imbalance and by geography. This is similar to the Aleutians Island District which is even less compact and is similarly the result of population imbalance and geography. The Hickel court recognized that odd-shaped districts may well be the natural result of Alaska's irregular geometry. District 5 does not present the problem of appendages attached to otherwise compact areas or corridors of land that extend to include a populated area but not the less-populated land around it. There simply is little choice but extending the Southeast District into Cordova in order to pick up the population needed for Southeast.

The Craig plaintiffs have suggested that Board Plans 1 and 2, which also paired Cordova in a Southeastern District appears more compact in that it creates House District 2 that is comprised of the more southern communities in Southeast Alaska including Wrangell and Petersburg, but excluding Ketchikan. This proposed district also appears to be non-compact with an appendage reaching north to Klukwan. In rejecting this district, the Board also took into account the almost unanimous sentiment in Southeast from the small rural and mostly native communities who wanted to be combined in a district of similar communities and not joined with larger more urban areas. Board Plans 1 and 2 mixes some small towns and villages with Petersburg and Wrangell, and other small communities and villages with Sitka. Further, people from the more urbanized areas of Sitka, Petersburg and Wrangell all supported keeping intact their district under the 1994 plan, which, under the 2000 census, approximated an ideal district comprised of these three communities with some minor population adjustment.

In light of all the above considerations it does not appear that a more compact Southeast District including Cordova was feasible or necessary to comply with the Alaska Constitution. This court concludes that House District 5 complies with the requirements of Article VI, Section 6, of the Alaska Constitution.

4. House District 12

House District 12 includes the part of the Matanuska-Susitna Borough along the Parks Highway beginning just south of Talkeetna to the Borough's northern boundary and all of the Matanuska-Susitna Borough along the Glenn Highway east of the City of Palmer. District 12 also includes the entire Denali Borough, the Fort Wainwright Military Reservation and adjacent territory within the Fairbanks North Star Borough, and a portion of the unorganized borough that includes the Fort Greeley Military Reservation and the City of Delta Junction. Proposed House District 12 is similar in many respects to House District 34 in the Hickel Plan that was declared unconstitutional as combining areas with virtually no socio-economic integration. Hickel, 846 P.2d at 53. The geographic differences between proposed House District 12 and the House District 34 that was struck down by the Hickel court do not appear to have measurably increased socio-economic integration. Unlike House District 5 the evidence in the record does not appear to justify the need for this district based strictly on population deviation. Nor do changes since the Hickel decision indicate increased socio-economic links in this district.

The Alaska Range is a substantial physical barrier that divides the northern and southern portions of House District 12. As a result, the evidence indicates that the district

is divided in half. Those districts north of the boundary between the Denali Borough and the Matanuska Susitna Borough interact northward with Fairbanks. Those districts south of the border of the Denali Borough and the Matanuska-Susitna Borough relate southward towards Palmer, Wasilla and Anchorage. The areas of Big Delta, Delta Junction and Salcha and the Military Reservations included in District 12 are also oriented towards Fairbanks.

The interaction between these two halves of the district is minimal. Residents of the Denali Borough do not commute to work in the Matanuska-Susitna Borough and residents of the Matanuska-Susitna Borough do not commute to work in the Denali Borough. Northern Mat-Su Residents go to Wasilla or Anchorage to obtain goods and services that they cannot obtain locally. Denali Borough residents go to Fairbanks for shopping, banking and medical care. Electrical utility service is provided by different utilities in each of the parts of the district. The Matanuska-Susitna Borough and the Denali Borough each operate its own school districts. The Alaska Local Boundary Commission has described the context between the Denali Borough and the Matanuska-Susitna Borough as tenuous.

None of the Board members who testified provided any evidence of socio-economic integration within House District 12. Indeed, Bert Sharp, the Board member most familiar with the area indicated that in his opinion there was no such integration. Little evidence was introduced by the Board demonstrating that there was socio-economic integration in the district. Although the Board's expert, Dr. Tuck, opined that there was social and economic integration in District 12, the little evidence he introduced

does not support this opinion. Although many of the communities within District 12 are linked by the Parks Highway, there is little evidence that those communities north of the border between the Denali Borough and the Matanuska-Susitna Borough actually interact with each other. While there is some common linkage in the tourism industry directed that Denali National Park, much of this tourism either comes from Anchorage or from Fairbanks rather than from the communities within House District 12. There is a claim of some shared agricultural activity between the Delta Junction area and the Matanuska-Susitna Borough but the amount of such activity is unquantified and does not appear to be great. The Usibelli Coal Mine that principally operates within the Denali Borough has some undeveloped land holdings in the Matanuska-Susitna Borough. If these holdings within the Matanuska-Susitna Borough were developed, that might demonstrate some economic integration within the district. But these holdings are not developed and therefore do not demonstrate any such economic integration. The Board notes that all the communities within House District 12 are small isolated rural communities. But this merely demonstrates homogeneity rather than socio-economic integration. There are hunting areas within House District 12 utilized both by residents of the Matanuska-Susitna Borough and the Denali Borough. The best that can be said, however, is that there is some “minimal” socio-economic interaction within the district. This is insufficient under the Alaska Constitution. Hickel, 846 P.2d at 47.

The Board contends that its decisions concerning House District 12 were largely driven by population shifts in that district and surrounding districts. Unlike Southeast Alaska or the Aleutian Island Chain where population loss and geography left the Board with little or no other options, the problems the Board faced regarding House District 12

were to some extent the result of other choices made by the Board. This court is aware that the Board must develop a *statewide* plan and that decisions made in one part of the State as to any district have a ripple effect on other districts throughout the State that may limit the choices available to the Board as the plan is finally completed. But every district in the State has approximately the same 15,673 people and each of these people have the same constitutional rights. While the Board is free to create districts that have greater socio-economic integration than the Alaska Constitution requires, it is not free to create districts that have less socio-economic integration than the Constitution requires if this can be avoided. House District 12 is not sufficiently socio-economically integrated to satisfy the requirements of Article VI, Section 6 of the Alaska Constitution and is therefore declared unconstitutional.

5. Anchorage House Districts Excluding District 32

Districts 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31.

By Order dated December 31, 2001, this court concluded that House District 16 was not compact and therefore violated Article VI, Section 6 of the Alaska Constitution. Although the Board asks this court to reconsider its decision the court believes its December 31, 2001 order is correct and reaffirms it in this decision.

All of the other Anchorage districts are compact and satisfy the Alaska Constitution in this regard. All of the Anchorage districts also satisfy the constitutional requirement for contiguity. The Alaska Supreme Court has indicated that by definition

those districts composed wholly of a single borough are socio-economically integrated. Hickel, 846 P.2d at 51 - 52; AS 29.05.031. Thus, each of the Anchorage districts are socio-economically integrated in accordance with Article VI, Section 6 of the Alaska Constitution.

All of the Anchorage districts also satisfy the one person, one vote quantitative requirements. The maximum population variation within the Anchorage districts is less than 10%. Plaintiffs suggest that because issues of socio-economic integration do not exist for districts contained wholly within a borough, districts contained wholly within the Municipality of Anchorage can, and should be drawn as close to an ideal population. Although this may be true as a possibility, the Alaska Supreme Court has never imposed such a requirement as a matter of law. Rather, as previously discussed, maximum population deviations under 10% are considered to be minor deviations that do not require further justification. Hickel, 846 P.2d at 47-48; Groh, 526 P.2d at 877. Mathematical precision of the kind suggested by the plaintiffs is not required under either the United States or Alaska Constitution. Indeed, the evidence indicates that a requirement that population deviations for districts contained wholly within Municipal Boroughs would shift the impact of statewide deviations to those rural districts not wholly contained within borough boundaries and thus make the task of redistricting even more difficult than it currently is.

6. House District 32: Valdez to South Anchorage

Perhaps the most difficult decision for the Board and the most highly debated part of this litigation concerns House District 32, a district that extends from the City of

Valdez on the east to portions of the hillside area of South Anchorage on the west. The district includes the City of Whittier, the communities of Hope and Sunrise that are part of the Kenai Peninsula Borough along Turnagain Arm, and those communities within the City and Borough of Anchorage including Indian, Bird, and Girdwood also along the Turnagain Arm. This court has already ruled that this district satisfies the compactness and contiguity requirements of Article VI, Section 6 of the Alaska Constitution. The primary issue is whether the district is relatively socio-economically integrated.

Virtually all the public testimony before the Board from Valdez residents was opposed to any pairing of Valdez with Anchorage. Under the 1994 Proclamation Plan Valdez was placed in a district that principally contained districts along the Richardson Highway. Under both the Board's Draft Plan 1 and Draft Plan 2 Valdez would also have been paired with Richardson Highway Communities. Under both plans Valdez would have also been placed in a district with Whittier. The AFFR Plan had Valdez paired with a portion of South Anchorage as well as Whittier and Seward. The public testimony in Valdez was in favor of the Board's Draft Plan 1 or for a plan that would link the Prince William Sound communities together.

While the pairing of Valdez with its Richardson Highway Communities to the north has been referred to in this litigation as the "Historic Richardson Highway District" Valdez's inclusion in such a district is by no means historic. Valdez in the past has been paired with Prince William Sound Communities to the east and west. Under the 1984 Redistricting Plan Valdez was included in a district that included Cordova, extended eastward to the traditional boundary of Southeastern Alaska, and included communities of Whittier, Seward, Moose Pass, Copper Landing and Hope to the west. [Defendant Exhibit 602].

While Valdez is, in some respects, a rural community it is, in many respects, industrialized. It is the terminus of the Alyeska Trans-Alaskan Pipeline with the industrial oil storage and shipment facilities that that entails. There is a grain storage facility for the unsuccessful Delta Barley Project. Valdez operates a significant port facility and there is a significant small boat harbor located in Valdez. It is a regular stop for the Alaska Ferry System, which operates between Valdez and Whittier. Valdez also has an airport capable of handling the regular daily jet service between Anchorage and Valdez. In some respects Valdez, while located in a rural area, is one of the more industrial cities in the State.

There is significant evidence of socio-economic integration in House District 32. There is daily direct commercial jet service between Anchorage and Valdez several times a day although weather often influences the availability of this service. Regular ferry service links Valdez and Whittier five months of the year. Fuel is shipped regularly from Valdez to Anchorage. There are business relationships between Valdez and Anchorage including banking. Most of the food for Valdez is shipped there through Anchorage as well as a portion of other freight bound for Valdez. Valdez tourist operators solicit businesses in Anchorage and some Anchorage residents recreate in Valdez although the majority of their recreation tends to occur on the Kenai Peninsula.

Most professional services in Valdez are obtained through Anchorage, including major medical care, legal work and accounting services. Anchorage businesses advertise in the Valdez yellow pages. Residents of Valdez travel to Anchorage for business meetings and Anchorage residents have held conventions in Valdez. The Prince William Sound Community College in Valdez has about half of its business contracts with Anchorage. Valdez students attend the University of Alaska in Anchorage and a small amount of Anchorage students attend Prince William Sound Community College.

Long distance telephone service for the Valdez area is provided by an Anchorage based company, GCI, which is seeking to expand to offer local service there as well. There is an obvious strong connection in the oil industry between Valdez and Anchorage. While the Valdez plaintiffs characterize this relationship as one of conflict in which Valdez residents have an economic interest in taxing assets owned by the oil companies and the oil companies seek to decrease such taxes, this conflict is the kind that

invariably results from interaction among the residents of the district even though the ultimate outcomes sought as a result of this interaction may differ.

The people who live in Valdez also go to Anchorage to buy goods that are not available or are more expensive in Valdez including cars, major appliances, and other more expensive items. Both Valdez and Anchorage are in the Third Judicial District. There are a sizeable number of Anchorage based firms who employ Valdez residents. There is regular freight traffic by water from Valdez to Anchorage.

A sample issue of the Valdez newspaper [Plaintiff's Exhibit 264] reflects numerous social ties among the people of Valdez and the people of Anchorage including an obituary for an Anchorage resident, an ad for a charity cultural event in Anchorage, an advertisement by the Anchorage Convention and Visitors Bureau for New Years Eve events in Anchorage, an ad for an Anchorage restaurant and an ad for an Anchorage attorney soliciting business. The paper reports competition of Valdez youth in athletic events in Anchorage. The exhibit contains a column by a Valdez resident attending school at UAA. The paper itself is published in Anchorage. There is however some indication that other papers for small communities throughout Alaska are also published by the same Anchorage based company and that some of the advertisements in the Valdez Newspaper are published Statewide in other small community newspapers throughout the entire State.

There is significant evidence as well of social interaction between Anchorage and Valdez residents. Valdez residents frequently call Anchorage both for business and other reasons. Valdez residents travel to Anchorage to attend the symphony, theater, and other

cultural events. These residents have friends and family who reside in Anchorage and frequently interact with family and friends for this reason. While Valdez does not regularly play the larger Anchorage High Schools due to size constraints, Valdez does compete in high school sports against smaller Christian schools located in Anchorage. Anchorage residents fish in Valdez to a limited degree although such fishing activities are considerably less than those that occur among Anchorage residents in the Kenai Peninsula or the Matanuska-Susitna Borough. Most of the recreational skiing that takes place by Valdez residents occurs in Thompson Pass although there is a small amount of skiing occasionally done in Girdwood. Anchorage residents do not regularly appear to ski in Valdez although Valdez and Alyeska Ski Resort in Girdwood have organized extreme skiing events. Events at Girdwood are considered qualifiers for the World Extreme Championships that take place just outside of Valdez.

The parties both rely on polls to demonstrate the presence or lack of socio-economic integration between Valdez and Anchorage. Plaintiffs commissioned a poll by David Dittman [Appendix to Exhibit 254, Exhibit 342]. But the Dittman Survey asked Valdez residents about their interactions with South Anchorage and whether they felt “more connected” to various communities as compared to the Hillside/Rabbit Creek area of Anchorage. The focus on South Anchorage or the Hillside/Rabbit Creek area of Anchorage, rather than Anchorage as a whole, clearly is contrary to the decision of the Alaska Supreme Court in Kenai Peninsula Borough, 743 P.2d at 1362-1363. There the Alaska Supreme Court held it was too fine a distinction to compare the interaction of North Kenai with South Anchorage and held that it was appropriate to examine North

Kenai's interaction not just with South Anchorage but with Anchorage as a whole. Because the Dittman Poll does not follow this procedure its evidentiary value is limited.

Defendants rely on a poll conducted by Ivan Moore Research [Exhibit 565]. The Ivan Moore Report indicates significant Anchorage contacts between Valdez residents and Anchorage residents that demonstrate that there is economic and social interaction between Valdez and Anchorage.

This is not to say that there are not significant ways in which Anchorage and Valdez are not completely linked or that there are not other communities with which Anchorage or Valdez do not have greater socio-economic integration. The evidence clearly establishes that Anchorage has greater socio-economic links with communities such as Palmer or Wasilla in the Matanuska-Susitna Borough than it does with Valdez. Similarly, Valdez has greater links with other communities in Prince William Sound or even communities along the Richardson Highway than it does with Anchorage. The testimony of the Valdez witnesses establish that utility services for Valdez are generally oriented to communities along the Richardson Highway rather than to Anchorage. Shipments into and out of the Port of Valdez, while having some linkage with Anchorage, are primarily oriented towards the Richardson Highway. Marine transportation and commercial fishing activities are oriented towards Prince William Sound communities. Valdez residents clearly do not consider themselves oriented in their socio-economic relationships with Anchorage.

Population factors effected the pairing of Valdez. The population of Anchorage has grown since 1990 so that under the 2000 census Anchorage is entitled to 16.6 House

Seats. The Board desired to complete a 17th Seat for Anchorage but had limited possibilities to do so. The Mat-Su Borough's population had also increased such that the population of the Mat-Su Borough supported 3.78 Seats. The Kenai Peninsula Borough's population supported 3.17 seats. If each borough was to be fully represented, the approximately 6,000 people needed to complete the 17th Anchorage seat could not come from the Mat-Su Borough since that would deprive the Mat-Su Borough of the population it needed to control 4 House seats; and the population could not come from the Kenai Peninsula Borough, since that would deprive the Kenai Peninsula Borough of population it needed to control 3 seats. Moreover, the need to pair Cordova with Southeastern Alaska effectively eliminated the possibility of creating a Prince William Sound District. The Board's desire to allow Anchorage to effectively control 17 seats left the Board with few choices other than to look southward towards Valdez and to add population to Anchorage from the Valdez area in order to complete a seventeenth Anchorage seat.

Whittier also serves to provide integration of the District. Valdez has previously been placed in a District with Whittier and has links with Whittier including ferry service and Prince William Sound economic and recreational activities and groups. Anchorage is linked to Whittier by the Railroad and now a highway connection. Whittier serves as a place where Anchorage residents depart into Prince William Sound.

Defendant's expert Dr. Tuck stated his opinion that there is a fair amount of economic interaction and social economic integration between Anchorage and Valdez.

While some of the factual underpinnings of this opinion are in error and require adjustment, even with such adjustment Dr. Tuck's opinion is supported by the evidence.

Based on all of the evidence, this court concludes that District 32 contains as nearly as practicable a relatively integrated socio-economic area. This integration is not just minimal but significant. The court notes that many of the factors that the Alaska Supreme Court has indicated will demonstrate socio-economic integration are present in District 32. These include linkage of communities by ferry service, linkage of communities by daily airline flights, a common major economic activity in the Trans-Alaskan Pipeline and the oil activity related to the pipeline which is located in Valdez but controlled by owners in Anchorage. The linkage between Anchorage and Valdez is similar in many ways to the linkage between North Kenai and South Anchorage approved in Kenai Peninsula Borough. There the Alaska Supreme Court found it persuasive that North Kenai and South Anchorage were geographically proximate, were linked by daily airline flights, and were both strongly dependent on Anchorage for transportation, entertainment, news and professional services. Kenai Peninsula Borough, 743 P.2d at 1362-63; Hickel, 846 P.2d at 46-47. In this regard the court observes that in the 1981 Redistricting Plan North Kenai was linked to both Seward and Valdez while in the 1984 Plan the North Kenai South Anchorage District was upheld. The same type of links that demonstrate socio-economic integration between North Kenai and Valdez and between North Kenai and Anchorage are also present between Anchorage and Valdez.

District 32 satisfies the requirements of Article VI, Section 6 of the Alaska Constitution. It is clear that the Board gave careful consideration and extensive

deliberation to this district and took a hard look at the factors both in favor and against such a pairing. The Board was well aware of the issues regarding this district and had a reasonable basis for making the choice that it did.

7. Districts 36 and 37 The Aleutians East Borough, Lake and Peninsula Borough, and Kodiak Island Borough Problem.

Population deviations also caused significant problems in redistricting the southwestern portion of the State including the Aleutian Islands, the Aleutians East Borough, the Lake and Peninsula Borough and the Kodiak Island Borough. The population of former House District 40 was 28% below the 2000 ideal district population of 15,673 due to the closing of the Adak Naval Base. The Hickel court had indicated the need to keep the entire Aleutian Chain together and the Board was aware of this. Former District 6, which was a district comprised of the Kodiak Island Borough was 11% below ideal population. Thus it was necessary for the Board to find additional population for both old District 40 and old District 6.

These population changes made it inevitable that a Municipal Borough would have to be split. The Board could either add population from the Kodiak Island Borough to the Aleutians District; take population from the Kenai Peninsula Borough and add it to the Kodiak District and combine the Aleutian Islands and the Lake and Peninsula Borough into a single district; or split the Lake and Peninsula Borough adding the southwestern portion of the Lake and Peninsula Borough to an Aleutians District while adding the northern portion of the Lake and Peninsula Borough to a Kodiak District. Public sentiment throughout the State was mixed. There was strong public testimony for maintaining the communities in Kachemak Bay in a single district. The Lake and

Peninsula Borough did not wish to be split and Kodiak desired to maintain its identity as a separate house district.

The Board ultimately decided to split the Lake and Peninsula Borough in half, combining the southwestern portion of that Borough with the Aleutians East Borough and the Western Aleutian Chain to form House District 37 and combining the northeastern portion of the Lake and Peninsula Borough with the Kodiak Island Borough to form House District 36. Although any Borough is considered socio-economically integrated as a whole the upper Lake and Peninsula people form a district sub-area of the Bristol Bay Region of the Borough. The Borough is two distinct halves; the “Lake” half and the “Peninsula” half. If the Borough had to be split, a split along that line was not unreasonable.

The Lake and Peninsula Borough covers approximately 300 miles and is approximately 24,000 square miles in area. It was incorporated in April 1989. The population of the Borough is 1,823 persons. It is noteworthy that in each Redistricting Plan before 1984, the territory that now comprises the Lake and Peninsula Borough was divided between districts.

Although the evidence indicates that the socio-economic ties within the Lake and Peninsula Borough communities are greater than the socio-economic ties that exist between the Lake and Peninsula Borough communities within House District 36 and the Kodiak Island communities that comprise the rest of House District 36, or between the Lake and Peninsula communities in House District 37 and the other communities in House District 37, there is significant socio-economic integration among all of these

communities. The communities in this area all participate in the Southwest Alaska Municipal Conference. Residents of the Bristol Bay area share subsistence use areas with residents of the Alaska Peninsula. There are linguistic and historical cultural ties in these communities. There are significant transportation links in these areas. Fishing is a major economic activity. Indeed, paragraphs 16 and 17 of the First Amended Complaint of the Aleutians East Borough acknowledges the significant social and economic interaction of the community regions in Southwestern Alaska including the Bristol Bay Borough, Dillingham, Kodiak Island, the Alaska Peninsula, including the Lake and Peninsula Borough, the Western Aleutian Chain, the Pribiloff Islands, and the Aleutians East Borough. All of these communities share services by the State Ferry System, by commercial shipping companies, and by local air taxi service. The communities even use the same lobbyist, Mark Hickey.

The plaintiffs suggest, however, that despite this admitted socio-economic integration, that the fracturing of the Lake and Peninsula Borough into two districts is impermissible under Hickel. In Hickel, the Alaska Supreme Court recognized that “where possible all of a Municipality’s excess population should go to one other district in order to maximize effective representation of the excess group.” Hickel, 846 P.2d at 52. The court reasoned that;

Dividing the Municipality’s excess population among a number of districts would tend to dilute the effectiveness of the votes of those in the excess population group. Their collective votes in a single district would speak with a stronger voice than if distributed among several districts. Id at 52 n. 26

The Hickel court noted as well “that a primary indication of intentional discrimination against a geographic region was a lack of adherence to establish political subdivision boundaries.” Id; See also, Kenai Peninsula Borough, 743 P.2d at 1372-73.

Defendants contend that the discussion in Hickel applies only to the division of a Municipality or Borough’s excess population and that nothing in any of the cases prevents the dividing of a Borough’s population between districts when the population of the Borough is insufficient to make up a single district. The language of both the cases and the Alaska Constitution suggest that the Board has the discretion to divide a Borough between two districts so long as such a division is not improperly motivated. Thus Hickel indicated that “where possible” all of a Municipality’s excess population should go to one other district in order to maximize effective representation of the excess group. Article VI, Section 6, specifies that “consideration *may* be given to local government boundaries.” (Emphasis added). This suggests that the Board may consider local boundaries but is not constitutionally required to do so. Indeed the Hickel court specifically noted that “Article VI, Section 6 does not require that districts be drawn along municipal boundaries. Rather, the provision states only that “[c]onsideration may be given to local government boundaries.” 846 P.2d at 51. The Hickel decision also suggests that division of municipalities would be permissible so long as the resulting districts evidence a pattern of relative socio-economic integration. Id.

Further support for this proposition is found in the legislative history of the Alaska Constitution. Article VI, Section 6 of the Alaska Constitution provides: “Consideration may be given to local government boundaries.” The convention decided

to reject an amendment which would have replaced “may” with “shall” in the language above. This was done to provide future reapportionment boards with “a little flexibility.”

3 Proceedings, Constitutional Convention, at 1900.

As indicated above the population losses in Kodiak and the Aleutian Chain left the Board with little choice but to divide some Borough boundaries. The districts that were created were socio-economically integrated. There is no indication that the Board’s decision to split the Lake and Peninsula Borough between Districts 37 and 36 was improperly motivated. Rather this choice was dictated by diminished population in these areas. This court concludes that the division of the Lake and Peninsula Borough between two districts was not unreasonable or otherwise unlawful. This court further concludes that both Districts 37 and 36 are sufficiently socio-economically integrated to satisfy the requirements of Article VI, Section 6 of the Alaska Constitution.

8. Senate Seats

As previously indicated Article VI, Section 6 only requires that Senate Districts be composed as near as practicable to contiguous House Districts. Compactness and socio-economic integration are not requirements for Senate Districts. Each senate district in the Board Plan consists of two contiguous House Districts.

Senate Districts must also be “reasonable” and the Board must, therefore, have rational non-arbitrary reasons for the way it paired house districts to create senate seats. For those senate districts challenged in this litigation it is clear that the Board has taken a hard look at the salient problems and has generally engaged in reasoned decision making

and that the Board had rational, non-arbitrary reasons for the way it paired house districts to create senate seats.

Senate District C, although encompassing a vast area, was paired after considerable deliberation because House Districts 5 and 6 contain a relatively integrated native population. The Board had been warned to pay attention to House District 6 in any pairing due to potential voting rights problems. The testimony of Dr. Polly Wheeler, Dr. Worl, and Robert Loescher all establish commonalities in integration between the Tlingit Haida of the Southeast in District 5 and the Athabascans of District 6.

Dr. Polly Wheeler, an anthropologist and expert in Alaska native cultures testified concerning the Final Plan's socio-economic integration of Alaskan natives. Wheeler explained that language is a critical element of socio-economic integration to a cultural anthropologist, particularly in Alaska. Wheeler testified that the two major language families for Alaska natives are those of the Eskimo Aleuts and the Tlingit Athabascans. Wheeler also testified that House District 5 (primarily a Southeast district), is a Tlingit area and has the same language area as the Athabascans, who reside in House District 6 (an Interior district). Wheeler further testified that based on the language families of the Dena'ina or Athabascans, Eyaks, and Tlingits, at one time they all had the same ancestors.

The requirement that Senate Districts be comprised of contiguous house districts meant that any pairing of House District 5 would encompass a large geographic area. The same requirement also meant that any other pairing for House District 6 that might satisfy the Voters Rights Acts would combine Athabascans with Eskimos, two groups with whom there is little in common and who have historically been in conflict. Indeed such a pairing was described in the Hickel case as a "worst case scenario." The Board was aware of both the strengths and weaknesses of Senate District C, and made its determination to create this district in a rational and non-arbitrary way. The communities in both halves of Senate District C are small and no one community obviously

dominates. The communities in Senate District C share a strong interest in subsistence as well.

The Board also had a rational, non-arbitrary reason for the way it paired House Districts 37 and 38 into Senate District S even though this places portions of the Lake and Peninsula Borough into two separate Senate Districts. To satisfy the contiguity requirement there were only three possible options for pairing House District 37. It was rational for the Board to pair House Districts 40 and 39 into Senate District T since this Senate District is comprised of Inupiaq Eskimos who historically have shared a Senate Seat. If Districts 37 and 36 had been paired to avoid placing portions of the Lake and Peninsula Borough into two separate Senate Districts the only district that House District 38 could have been paired with to satisfy the contiguity requirement would have been House District 6. This would have paired Eskimos and Athabaskans again and would have possibly paired two native incumbents. Testimony indicated that the pairing of native incumbents would likely raise Voting Rights Act concerns. The Board was aware of the problems involved in these pairings and had rational non-arbitrary reasons for their actions.

The Senate Districting for the Mat-Su Borough is reasonable and not arbitrary as well. The configuration of Senate Districts for the Mat-Su Borough was largely determined by the odd number of House Districts for both Fairbanks and Anchorage. One of the Fairbanks Districts had to be paired outside of the Borough as did one of the House Districts. The Board paired both into Mat-Su. Had a Fairbanks District not been paired with a Mat-Su District, the fifth Fairbanks District would have to be paired with

House District 6. House District 6 was a problematic district under Dr. Hanley's Voting Rights Act analysis. It was reasonable and not arbitrary for the Board to avoid this pairing and to pair a Fairbanks District with a district comprised of a portion of the Mat-Su Borough (House District 12). The Mat-Su Borough continues to have majority control of two senate seats even though only one senate seat is composed entirely of Mat-Su residents. This court notes that while the pairing is a reasonable one, this court's finding that House District 12 is unconstitutional, will inevitably require an adjustment to Senate District F.

Finally, the Board's determination of which Senate terms of incumbents were to be truncated appears to fully comply with the rationale of Egan v. Hammond, 502 P.2d at 873-74, and is reasonable and not arbitrary.

VIII. CONCLUSION

THEREFORE, IT IS HEREBY ORDERED that for the reasons set forth above, House Districts 12, and 16 violate the principles of the Alaska Constitution and are declared unconstitutional. All other claims that the Board's Plan is unconstitutional or that the plan violates either state or federal equal protection requirements are denied. Likewise, all claims that the manner by which the Board created the plan was unconstitutional or violated statutory or other legal requirements are also rejected. In accordance with Article VI, Section 11, this matter is returned to the Board for correction and development of a new plan consistent with this decision. The court assumes that this

decision will be appealed by one or more parties and stays this decision pending further review by the Alaska Supreme Court.

DATED this 1st day of February 2002, in Anchorage, Alaska.

Mark Rindner

Superior Court Judge

An Amendment to Article VI of the Alaska Constitution, effective January 3, 1999 (the “1998 Amendment”), changed the composition and responsibilities of the Board. Prior to the 1998 Amendment, the governor set the boundaries of election districts and senate districts with the advice of a board selected entirely by the governor. The 1998 Amendment created the Alaska Redistricting Board, and set forth procedures and other deadlines for the redistricting process. See 1998 Ballot Measure No. 3 (1998 Legislative Resolve 74; 20th Legislature’s SCS CSHJR 44(JUD)). These changes are discussed in this opinion to the extent they are relevant to the legal challenges against the current Proclamation of Redistricting.

The current Board members were appointed in August 2000. Governor Tony Knowles, a Democrat, appointed Vicki Otte and Julian Mason, both of Anchorage. The Speaker of the House of Representatives Brian Porter, a Republican, appointed Michael Lessmeier of Juneau. Senate President Drue Pearce, also a Republican, appointed Bert Sharp of Fairbanks. Alaska Supreme Court Chief Justice Dana Fabe appointed Leona Okakok of Barrow.

Alaska case law regarding redistricting are as follow: Wade v. Nolan, 414 P.2d 698 (Alaska 1966); Egan v. Hammond, 502 P.2d 856 (Alaska 1972); Groh v. Egan, 526 P.2d 863 (Alaska 1974); Carpenter v. Hammond, 667 P.2d 1204 (Alaska 1983), appeal dismissed 464 U.S. 801 (1983); Kenai Peninsula Borough v. State, 743 P.2d 1352 (Alaska 1987); and Hickel v. Southeast Conference, 846 P.2d 38 (Alaska 1992).

See AS 15.10.300.

The court bases the findings discussed in this section primarily from the testimony of Kathryn Lizik, the Board’s Director of Geographic Information System (“GIS”) Technology.

Hardware included five Windows operating system work stations and a server upon which the data (both geographic and population) was stored. The software included

AutoBound, a program specifically designed for redistricting, and ArcView, a GIS program.

No transcripts appear to exist for these pre-plan meetings.

Prior to the 1998 Amendment, the language of this section substituted “as near as practicable” with “at least equal.” No legislative history indicates that this language change was intended to substantively change prior Alaska case law interpreting this provision.

Pursuant to AS 15.10.200(b), adopted by the legislature in 1999 (Senate Bill 99), the statewide population *included* nonresident military. Prior redistricting plans had been adjusted by subtracting the estimated number of nonresident military personnel in Alaska at the time of the census enumeration. The legislation prohibiting against the adjustment of the census figures was not precleared by the U.S. Justice Department when the Board was doing its work.

This deviation is calculated by comparing the district with the greatest negative deviation (-6.9% in district 40) to the district with the greatest positive deviation (+ 5.1% in district 33).

The Proclamation contains a District Population Analysis that lists the population deviations for all house and senate districts, which is attached as Appendix A.

The Alaska Supreme Court has broadly interpreted the concept of standing, favoring the increased accessibility to judicial forums. Accordingly, “any qualified voter” is authorized to institute and maintain a reapportionment suit seeking to correct any errors in redistricting. Carpenter, 667 P.2d at 1209-10. In a pretrial decision, this court held that the right to bring such a suit was not limited to individuals but included governmental entities and certain organizations as well.

The consolidated lawsuits are: Aleutians East Borough v. Alaska Redistricting Board, Case No. 3AN-01-8914CI; Halvarson v. Alaska Redistricting Board, Case No. 4FA-01-1608CI; City of Valdez v. Alaska Redistricting Board, Case No. 3VA-01-0040CI; City of Craig v. Otte, Case No. 1KE-01-0316CI; City of Wasilla v. State of Alaska, Alaska Redistricting Board, Case No. 3AN-01-8995CI; Ruedrich v. Redistricting Board, Case No. 3AN-01-9026CI; Luper v. Alaska Redistricting Board, Case No. 3AN-01-8908CI; City of Cordova v. Alaska Redistricting Board, Case No. 3AN-01-8996CI; City of Delta Junction v. State of Alaska, Case No. 4FA-01-1592CI.

The Native-Intervenors are as follows: Walter Sobeloff, Sr., Robin Renfroe, Richard Glenn, Steve Ginnis, Walter Johnson, Dewey Skan, Teresa Nelson, Gail Schubert, Doyon, Limited, and Tanana Chiefs Conference, Inc.

At the same time the Alaska Supreme Court adopted Appellate Rule 216.5 governing any appeal in these cases.

See cases cited supra footnote 3.

The Alaska Supreme Court has ruled that a borough is, by definition, a socio-economically integrated area. See Hickel, 846 P.2d at 52.

Gaffney v. Cummings, 412 U.S. 735 (1973).

The Alaska Supreme Court, however, has “decline[d] to determine whether an independent constitutional basis exists for ensuring public access to the Board’s meetings.” Hickel, 846 P.2d at 57.

See AS 40.25.100-.220.

AS 44.62.310(a).

See AS 44.62.310(e).

AS 44.62.310(h)(2)(A).

AS 40.25.110.

See Hickel, 846 P.2d at 57. Since Hickel, the Open Meetings Act has been amended to specifically incorporate this concept. See 46-48 infra.

Article VI, Section 11 states, “...Original jurisdiction in these matters is vested in the superior court. On appeal from the superior court, the cause shall be reviewed by the supreme court on the law and the facts...”

Throughout the redistricting proceedings, this problem was analogized as a Rubik’s cube, because making changes in one district to satisfy the constitutional requirements will inevitably impact another district’s criteria. This court concludes this analogy is an apt one.

The Board actually had less time to complete its work due to the need to load the census data into the computer systems used to generate the proposed plan on the front end of the process and the need to do technical work on the Final Plan on the back end of the process.

See Hickel, 846 P.2d at 57.

See AS 44.62.310(a).

See AS 44.62.310(e).

See AS 44.62.310(h)(2)(A).

See AS 44.62.310(h)(2)(B).

See AS 44.62.310(a).

See AS 44.62.310(a).

See AS 40.25.110(a).

AS 40.25.115(a).

See AS 44.62.310(f).

AS 44.62.310(f)(1)-(9).

This 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 of public 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 including AFFR Plan B, suggestions for Fairbanks proposed by Brian Rogers and suggestions for Anchorage submitted by individual Anchorage Assembly members. 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.

Sterling is currently serving as the Chair of the Democratic Party. Ferguson is the General Counsel for Bristol Bay Native Corporation.

Gaffney v. Cummings, 412 U.S. 735 (1973)

Kenai Peninsula Borough has been characterized by the parties and even some witnesses as a difficult to analyze decision and this court agrees. Both sides have found support in some of the language in Kenai Peninsula Borough for their competing arguments.

In such an instance, the Board of course may demonstrate that it did not intentionally discriminate against a geographic region by demonstrating that such disproportionality was required by other constitutional considerations.

It was not improper for the Board to attempt to provide each borough and municipality the opportunity to control the “right” number of seats based on population. Indeed, under this court’s analysis, the Board was required to try to do so.

The court does not consider geographic equal protection claims brought by unorganized areas. By definition, residents of an unorganized area do not have any right to be represented together.

The court's analysis disposes of Wasilla's claim that the rights of Mat-Su Borough residents were violated in that Mat-Su controls 1.52 Senate seats under the plan even though by population Mat-Su should control 1.89 seats. Both the plan and population give Mat-Su the right to control 2 seats.

In addition to the draft plans proposed by the Board, other plans also included Cordova in a Southeast District. A coalition called Concerned Alaskans for Redistricting Equality (CARE) whose contact was a member of the Law Firm representing the Ruedrich plaintiffs, submitted a statewide redistricting proposal to the Board. [BR1994-2001]. The CARE proposal indicated that CARE had attempted to run a number of different scenarios in an attempt to keep Cordova with a more northern House District. However CARE was unable to justify any scenario that did not include Cordova in a southeast district given the constraints imposed by the United States and Alaska Constitutions. CARE also indicated that its research provided evidence of a stronger socio-economic tie of subsistence between Cordova, Skagway, Haines and other mixed-economies of southeast communities than with the market economy of Valdez and other more northern communities. CARE ended up placing Cordova in a Southeast Island, Prince William Sound District that consists solely of subsistence communities with strong and traditional direct ties to commercial fishing.

The Hickel court described District 34 as combining Willow, Talkeetna and a large portion of the rural northern part of the Mat-Su Borough with a majority of the Denali Borough and a part of the Fairbanks North Star Borough that includes the communities of North Pole, Salcha and Eielson Air Force Base. Hickel, 846 P.2d at 52.

While Anchorage and Valdez are less geographically proximate than North Kenai and South Anchorage, Valdez and Anchorage are far more geographically proximate than many of the communities in other districts.

The courts opinion in this regard also disposes of the claim of Delta Junction that the "Delta Junction area", an unincorporated area should not have been divided among two districts, although as previously discussed and for other reasons District 12, in which a portion of this area is located is declared unconstitutional and will have to be redrawn.

This court intends that this decision act as a final judgment that may be immediately appealed in accordance with new Appellate Rule 216.5. Any party who believes that a separate "Final Judgment" is necessary may submit one which incorporates the terms of this decision to the court for its signature.

This court recognizes that various parties are likely to move for attorneys fees in light of this decision. Given the time demands on the parties imposed by Appellate Rule 216.5 and given the practical reality that any determination of a "prevailing party" cannot be made until after this case is reviewed by the Alaska Supreme Court, all applications for attorneys fees are stayed until after the Alaska Supreme Court rules in this matter. Any such applications shall be filed within thirty days after ruling by the Alaska Supreme Court in this case.

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

DATTON BOGGS LLP

FOURTH JUDICIAL DISTRICT AT FAIRBANKS

IN RE: 2011 REDISTRICTING CASES.)
)
)
)

CASE NO. 4FA-11-2209CI

PETERSBURG PLAINTIFF'S RESPONSES TO
ALASKA REDISTRICTING BOARD'S FIRST DISCOVERY REQUESTS,
AS MODIFIED BY AGREEMENT ON NOVEMBER 1, 2011

COMES NOW Plaintiffs City of Petersburg, Mark L. Jensen, Nancy C. Strand, and Brenda L. Norheim (collectively "Petersburg Plaintiffs" or "the City" or individually, "Jensen," "Strand," or "Norheim") and hereby responds to Defendant Alaska Redistricting Board's First Discovery Requests, as modified by agreement on November 1, 2011, as follows:

GENERAL OBJECTIONS

1. The City objects to the extent that the discovery requests seek production of documents that are already in Defendant's possession, custody and/or control, and/or that can be as easily obtained by Defendant.
2. The City objects to the extent the discovery requests seek information that is protected by the attorney-client privilege and work product doctrine.
3. The City objects to the extent the discovery requests impose upon Petersburg Plaintiffs greater obligations than required under the applicable rules of civil procedure.

IN RE: 2011 REDISTRICTING CASES
PETERSBURG PLTFS' RESPONSES TO BOARD'S FIRST
DISCOVERY REQUESTS
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CASE NO. 4FA-11-2209CI
PAGE 1 OF 17

BIRCH HORTON BITTNER & CHEROT
ATTORNEYS AT LAW
1127 WEST SEVENTH AVENUE
ANCHORAGE, ALASKA 99501-3301
TELEPHONE (907) 276-1550 • FACSIMILE (907) 276-3680

REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1: Please admit that any redistricting plan adopted by the Board must comply with the federal Voting Rights Act of 1965, as amended.

RESPONSE TO REQUEST FOR ADMISSION NO. 1: Admitted.

REQUEST FOR ADMISSION NO. 2: Please admit that the Board's Proclamation Plan complies with Section 5 of the federal Voting Rights Act of 1965, as amended.

RESPONSE TO REQUEST FOR ADMISSION NO. 2: Admitted.

REQUEST FOR ADMISSION NO. 3: Please admit that between 2000 and 2010, the population of Southeast Alaska decreased.

RESPONSE TO REQUEST FOR ADMISSION NO. 3: The population of House Districts 1 through 5 in the 2001 Proclamation Plan was greater than the population of House Districts 31 through 34 in the 2011 Proclamation Plan. However 2001 Proclamation Plan House District 5 included Yakutat and most of Prince William Sound, as well as a portion of Southeast Alaska. Thus it is not clear from the information available to the Petersburg Plaintiffs whether the population of Southeast Alaska declined from 2000 to 2010; therefore denied.

REQUEST FOR ADMISSION NO. 4: Please admit that between 2000 and 2010, the population of Southeast Alaska decreased to the extent that this area no longer had the necessary population to support five house districts.

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ATTORNEYS AT LAW
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ANCHORAGE, ALASKA 99501-3301
TELEPHONE (907) 276-1550 • FACSIMILE (907) 276-3680

RESPONSE TO REQUEST FOR ADMISSION NO. 4: Admitted that the 2010 population of Southeast Alaska was not sufficient to support five house districts; otherwise denied.

REQUEST FOR ADMISSION NO. 5: Please admit that between 2000 and 2010, the population of Southeast Alaska decreased to the extent that this area no longer had the population necessary to support four and one half senate districts.

RESPONSE TO REQUEST FOR ADMISSION NO. 5: Admitted that the 2010 population of Southeast Alaska was not sufficient to support four and one-half senate districts; otherwise denied.

REQUEST FOR ADMISSION NO. 6: Please admit that no redistricting plan provided to the Board by any third party met the requirements of Section 5 of the federal Voting Rights Act of 1965, as amended.

RESPONSE TO REQUEST FOR ADMISSION NO. 6: Admitted.

REQUEST FOR ADMISSION NO. 7: Please admit that the Board's Proclamation Plan is not retrogressive.

RESPONSE TO REQUEST FOR ADMISSION NO. 7: Admitted.

REQUEST FOR ADMISSION NO. 8: Please admit that the Board's Proclamation Plan is free from discriminatory purpose with respect to Alaska Natives' exercise of the electoral franchise.

RESPONSE TO REQUEST FOR ADMISSION NO. 8: Admitted.

REQUEST FOR ADMISSION NO. 9: Please admit that Alaska has the largest land area of any state in the United States.

RESPONSE TO REQUEST FOR ADMISSION NO. 9: Admitted.

REQUEST FOR ADMISSION NO. 10: Please admit that Alaska has the lowest population density of any state in the United States.

RESPONSE TO REQUEST FOR ADMISSION NO. 10: Admitted.

REQUEST FOR ADMISSION NO. 11: Please admit that between 2001 and 2010, urban areas of Alaska showed a higher rate of population growth than rural areas.

RESPONSE TO REQUEST FOR ADMISSION NO. 11: Admitted.

REQUEST FOR ADMISSION NO. 12: Please admit that as of April 2010, at least 49% of Alaska Natives of voting age lived in the urban areas of Alaska.

RESPONSE TO REQUEST FOR ADMISSION NO. 12: Admitted.

REQUEST FOR ADMISSION NO. 13: Please admit that it is impossible to create an Alaska Native Effective District within any urban areas of Alaska.

RESPONSE TO REQUEST FOR ADMISSION NO. 13: Admitted.

REQUEST FOR ADMISSION NO. 14: Please admit that it is impossible to create an Alaska Native Equal Opportunity District within any urban areas of Alaska.

RESPONSE TO REQUEST FOR ADMISSION NO. 14: Admitted.

REQUEST FOR ADMISSION NO. 15: Please admit that it is impossible to create an Alaska Native Influence District within any urban areas of Alaska.

RESPONSE TO REQUEST FOR ADMISSION NO. 15: Admitted.

REQUEST FOR ADMISSION NO. 16: Please admit that a number of plans submitted to the Board contained an Alaska Native election district in Southeast Alaska with a higher percentage of Alaska Natives.

RESPONSE TO REQUEST FOR ADMISSION NO. 16: The request does not identify the thing in comparison to which a higher percentage of Alaska Natives was contained in a number of plans submitted to the Board; therefore denied.

REQUEST FOR ADMISSION NO. 17: Please admit that according to the 2010 federal census data, the population of the City of Petersburg is 2,948 people.

RESPONSE TO REQUEST FOR ADMISSION NO. 17: Admitted.

REQUEST FOR ADMISSION NO. 18: Please admit that the entire boundary of the proposed Petersburg Borough is contained within Proclamation HD 32.

RESPONSE TO REQUEST FOR ADMISSION NO. 18: Admitted.

REQUEST FOR ADMISSION NO. 19: Please admit that when the requirements of the federal Voting Rights Act of 1965, as amended, conflict with the requirements of the Alaska Constitution, deference must be given to the requirements of the Voting Rights Act.

RESPONSE TO REQUEST FOR ADMISSION NO. 19: Admitted that, to the extent that the requirements of the federal Voting Rights Act of 1965, as amended, conflict with the requirements of the Alaska Constitution, deference must be given to the requirements of the Voting Rights Act; otherwise denied.

REQUEST FOR ADMISSION NO. 37: Please admit Benchmark HD-1 is short 3,422 people from the ideal district size of 17,755.

RESPONSE TO REQUEST FOR ADMISSION NO. 37: Admitted.

REQUEST FOR ADMISSION NO. 38: Please admit Benchmark HD-2 is short 3,104 people from the ideal district size of 17,755.

RESPONSE TO REQUEST FOR ADMISSION NO. 39: Admitted.

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ATTORNEYS AT LAW
1127 WEST SEVENTH AVENUE
ANCHORAGE, ALASKA 99501-3301
TELEPHONE (907) 276-1550 • FACSIMILE (907) 276-3680

REQUEST FOR ADMISSION NO. 39: Please admit Benchmark HD-3 is short 2,322 people from the ideal district size of 17,755.

RESPONSE TO REQUEST FOR ADMISSION NO. 39: Admitted.

REQUEST FOR ADMISSION NO. 40: Please admit Benchmark HD-4 is short 1,913 people from the ideal district size of 17,755.

RESPONSE TO REQUEST FOR ADMISSION NO. 40: Admitted.

REQUEST FOR ADMISSION NO. 41: Please admit Benchmark HD-5 is short 3,909 people from the ideal district size of 17,755.

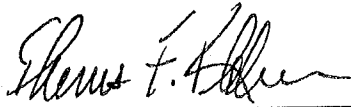
RESPONSE TO REQUEST FOR ADMISSION NO. 41: Admitted.

REQUEST FOR ADMISSION NO. 42: Please admit that combined Benchmark HD-1, HD-2, HD-3, HD-4, and HD-5 are short a total of 14,670 people from the ideal district size of 17,755 for five house districts.

RESPONSE TO REQUEST FOR ADMISSION NO. 42: Admitted.

DATED this 2nd day of November 2011.

BIRCH HORTON BITTNER & CHEROT
Attorneys for Petersburg Plaintiffs

By: 
Thomas F. Klinkner, ABA #7610112
Holly C. Wells, ABA #0511113

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

In Re 2011 Redistricting Cases.) **CONSOLIDATED CASE NO.:**
) **4FA-11-2209-CI**
) 4FA-11-2213 CI
) 1JU-11-782 CI

AFFIDAVIT OF MICHAEL D. WHITE

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, MICHAEL WHITE, being first duly sworn, depose and state as follows:

1. I am counsel of record for Defendant the Alaska Redistricting Board ("the Board") in this action, and as such, am personally familiar with the proceedings and filings therein.

2. A true and accurate copy of the deposition transcript for Leonard Lawson is attached as Exhibit A.

3. A true and accurate copy of Judge Rindner's Order Granting Ruedrich Plaintiffs' Motion for Summary Judgment Regarding House District 16 is attached as Exhibit B.

4. A true and accurate copy of the Map of Proclamation House Districts, Southeast Region is attached as Exhibit C.

5. A true and accurate copy of examples of "Odd", "Bizarrely Shaped" districts found not compact is attached as Exhibit D.

6. A true and accurate copy of the Map of Modified RIGHTS Plan House Districts, Southeast Region is attached as Exhibit E.

7. A true and accurate copy of documents Bates Numbered PE000058-PE000061 (email from Holly Wells to Leonard Lawson sent October 4, 2011 at 4:41PM; email from Leonard Lawson to Holly Wells sent October 5, 2011 at 4:40PM) are attached as Exhibit F.

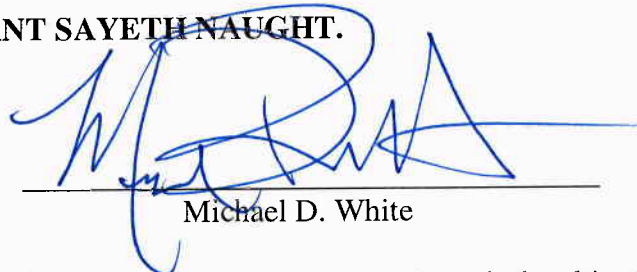
8. A true and accurate copy of the Measures of Compactness Reports; Measures of Compactness, Test VRA strengthen dated October 4, 2011 at 3:47:21PM; and Measures of Compactness, Proclamation Plan dated October 5, 2011 at 11:13:27AM are attached as Exhibit G.

9. A true and accurate copy of the email from Thomas Klinkner to Michael White received October 19, 2011 at 11:49AM is attached as Exhibit H.

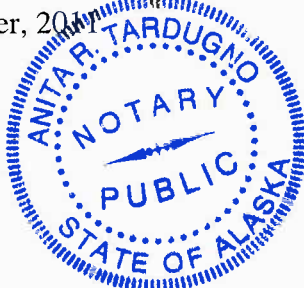
10. A true and accurate copy of Judge Rindner's Memorandum and Order entered February 1, 2002 is attached as Exhibit I.


11. A true and accurate copy of the Petersburg Plaintiff's Responses to Alaska Redistricting Board's First Discovery Requests, As Modified by Agreement on November 1, 2011 is attached as Exhibit J.

FURTHER YOUR AFFIANT SAYETH NAUGHT.


Michael D. White

SUBSCRIBED AND SWORN to before me at Anchorage, Alaska this 4th day of November, 2011.




Notary Public in and for the State of Alaska
My Commission Expires: 1/1/2012

PATTON BOGGS LLP
601 West Fifth Avenue
Suite 700
Anchorage, AK 99501
Phone: (907) 263-6300
Fax: (907) 263-6345

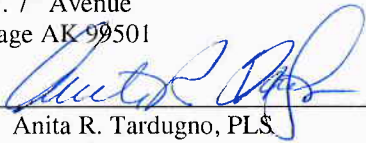
CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of November 2011 at 2:45
am/pm, a true and correct copy of the foregoing document was
served on the following via:

☒ Electronic Mail on:

Michael J. Walleri; walleri@pci.net
2518 Riverview Drive
Fairbanks, AK 99709

Thomas F. Klinkner; tklinkner@BHB.com
Birch, Horton, Bittner & Cherot
1127 W. 7th Avenue
Anchorage AK 99501

By: 
Anita R. Tardugno, PLS
Legal Secretary
PATTON BOGGS LLP

029810.0101\72554

PATTON BOGGS LLP
601 West Fifth Avenue
Suite 700
Anchorage, AK 99501
Phone: (907) 263-6300
Fax: (907) 263-6345

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT FAIRBANKS

In Re 2011 Redistricting Cases.

) CONSOLIDATED CASE NO.:

) **4FA-11-2209-CI**

) 4FA-11-2213 CI

) 1JU-11-782 CI

AFFIDAVIT OF JOHN C. TORGERSON

STATE OF ALASKA

)

)

SS.

THIRD JUDICIAL DISTRICT

)

I, JOHN TORGERSON, being first duly sworn, depose and state as follows:

1. I am the Chair of the Defendant the Alaska Redistricting Board (“the Board”) and have personal knowledge of and can testify to all of the facts set forth below.

2. On Wednesday, September 14, 2011, I participated in a meeting with representatives of the Voting Section of the Civil Rights Division of the United States Department of Justice (“DOJ”) at their offices in Washington D.C. to discuss the Board’s Preclearance Submission under Section 5 of the federal Voting Rights Act (“VRA”).

3. Board Member Marie Greene, the Board's Executive Director Taylor Bickford, Board Counsel Michael White and Dr. Lisa Handley, the Board's VRA expert, also attended this meeting on behalf of the Board.

4. At this meeting, I led a presentation to DOJ explaining the Board's Preclearance Submission and advocating for preclearance. Upon completion of our formal presentation, the DOJ's only substantive questions related to the treatment of Native Incumbents by the Proclamation Plan, including whether any Alaska Native incumbents were removed from a Benchmark Alaska Native District or paired with other incumbents.

5. In response to DOJ's questions, we informed DOJ that in the Board's Proclamation Plan every current Alaska Native incumbent or Alaska Native Preferred Candidate was kept in an Alaska Native District. We also advised that with one unavoidable exception no Alaska Native incumbents were paired in our Plan.

6. As to the one Alaska Native Incumbent who was paired, we explained to DOJ that due to the significant population loss in Southeast Alaska, that region lost one House district and half of a Senate district and therefore it was impossible to (a) recreate Benchmark Senate District C in which Alaska Native Senator Al Kookesh, of Angoon is the incumbent; and (b) create any other Alaska Native effective or influence Senate District which included a Southeast Alaska District. As a result, pairing Senator Kookesh with incumbent Senator Bert Stedman of Sitka in Proclamation Senate District Q was unavoidable. We pointed out to DOJ that no other viable redistricting plan presented to or consider by the Board was able to avoid pairing Senator Kookesh.

7. We also pointed DOJ to that portion of our Preclearance Submission regarding Southeast. We explained that the Board drew the Southeast Alaska districts in order to ensure that Representative Bill Thomas of Haines, who was the Alaska Native Incumbent in Benchmark HD-5, (the Benchmark Alaska Native Influence House District in Southeast) was kept in the Proclamation Alaska Native Influence District (Proclamation HD-34) and was not paired. We explained to DOJ that every other viable alternative plan presented to the Board either paired Representative Thomas with a non-Alaska Native incumbent from the same party, or drew him out of the Alaska Native District. Some did both.

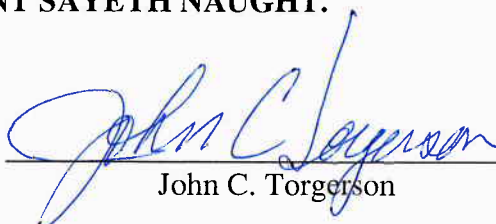
8. I served as an Alaska State Senator representing the Kenai area from 1995-2003. During my tenure, among other duties, I served as the Co-Chair of the Senate Finance

Committee from 1999-2000 and am familiar with its functions and importance as well as its counter-part committee in the House, the House Finance Committee. Representative Thomas currently serves as the Co-Chair of the House Finance Committee of the Alaska Legislature. The House Finance Committee is generally considered one of if not the most powerful and influential house committees due to its control of the budgeting process. The Co-Chair of Finance is considered one of the five leadership positions among the organization that controls the House. The Co-Chair is joined in this leadership roll by the other Co-Chair of Finance, the Speaker of the House, the Rules Chairman, and the Majority Leader. Accordingly, a legislator who serves as a co-chair of the House Finance Committee is one of the most influential and powerful House members in the Alaska legislature.

9. It is my understanding that two of the factors DOJ considers when reviewing a redistricting plan for preclearance under Section 5 of the VRA are: (a) the extent to which the Board afforded members of the affected racial and language minority group the opportunity to participate in the redistricting process; (b) the extent to which the Board took the concerns of members of the affected racial and language minority groups into account in drafting its redistricting plan. The affected racial/language minority group in Alaska is the Alaska Native community. From the beginning of the redistricting process, the Board actively sought input from the Alaska Native community and took their concerns into account when drawing plans. During the public hearing process, the Board received considerable input from the Alaska Native community in Southeast Alaska to not pair Alaska Native Incumbents where avoidable.

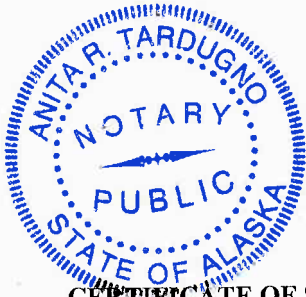
FURTHER YOUR AFFIANT SAYETH NAUGHT.

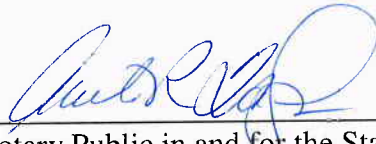
PATTON BOGGS LLP
601 West Fifth Avenue
Suite 700
Anchorage, AK 99501
Phone: (907) 263-6300
Fax: (907) 263-6345



John C. Torgerson

SUBSCRIBED AND SWORN to before me at Anchorage, Alaska this 1st day of November 2011.




Notary Public in and for the State of Alaska
My Commission Expires: January 1, 2012

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Legal Secretary
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029810.0101\72504

PATTON BOGGS LLP
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Suite 700
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT FAIRBANKS

In Re 2011 Redistricting Cases.

) **CONSOLIDATED CASE NO.:**

) **4FA-11-2209-CI**

) 4FA-11-2213 CI

) 1JU-11-782 CI

AFFIDAVIT OF MARIE N. GREENE

STATE OF ALASKA

)

)

ss.

SECOND JUDICIAL DISTRICT

)

I, MARIE N. GREENE, being first duly sworn, depose and state as follows:

1. I am a member of the Defendant the Alaska Redistricting Board ("the Board") and have personal knowledge of and can testify to all of the facts set forth below.

2. On Wednesday, September 14, 2011, myself, along with Board Chair John Torgerson, Board Executive Director Taylor Bickford, Board Counsel Michael White and the Board's Voting Rights Act expert, Dr. Lisa Handley, met with representatives of the Voting Section of the Civil Rights Division of the United States Department of Justice ("DOJ") at their offices in Washington D.C. to discuss the Board's Preclearance Submission under Section 5 of the federal Voting Rights Act ("VRA") and answer any questions.

3. At that meeting, Chair Torgerson led a presentation to DOJ explaining the Board's Preclearance Submission and advocating for preclearance. At the end of our presentation, the only substantive questions asked by the DOJ representatives related to the treatment of Native Incumbents by the Proclamation Plan, including whether any Alaska Native incumbents were removed from a Benchmark Alaska Native District or paired with other incumbents.

4. In our response to DOJ's questions, we informed them that in our proposed Proclamation Plan, every current Alaska Native incumbent or Alaska Native Preferred Candidate was kept in an Alaska Native District and with one unavoidable exception no Alaska Native incumbents were paired.

5. We further explained to DOJ that due to the significant population loss in Southeast Alaska, that region lost one house district and half of a senate district. As such, it was impossible to recreate Benchmark Senate District C (in which Alaska Native Senator Al Kookesh, of Angoon is the incumbent) or any other Alaska Native effective or influence Senate District which includes a Southeast Alaska district. Unfortunately, pairing Senator Kookesh with incumbent Senator Bert Stedman of Sitka in Proclamation Senate District Q was unavoidable. We pointed out to DOJ that no other viable redistricting plan presented to or consider by the Board was able to avoid pairing Senator Kookesh.

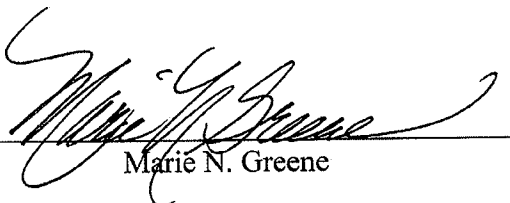
6. We also informed DOJ that (as indicated in our Preclearance Submission material) the Board drew its plan in Southeast Alaska in order to ensure the incumbent Alaska Native Legislator from the Benchmark Alaska Native Influence House District in Southeast Alaska (Representative Bill Thomas of Haines in Benchmark HD-5) was kept in the Proclamation Alaska Native Influence District (Proclamation House District 34) and was not paired. Every other viable alternative plan presented to the Board either paired Representative Thomas with a non-Alaska Native incumbent from the same party, or drew him out of the Alaska Native District. Some did both.

7. It is my understanding that two of the factors DOJ considers when reviewing a redistricting plan for preclearance under Section 5 of the VRA is (a) the extent to which the Board afforded members of the affected racial and language minority group the opportunity to

participate in the redistricting process; and (b) the extent to which the Board took the concerns of members of the affected racial and language minority groups into account in drafting its redistricting plan. The affected racial/language minority groups in Alaska are Alaska Natives. From the beginning of the redistricting process, the Board actively sought input from the Alaska Native community and took their concerns into account when drawing election districts.

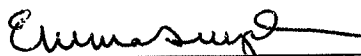
8. I am an Inupiat Alaska Native, a shareholder of, and currently the CEO of the NANA Regional Corporation, an Alaska Native Corporation. I am also a shareholder of KIC, the Alaska Native Village Corporation for Kotzebue, where I reside. Throughout the redistricting process I received input from a number of Alaska Native leaders and groups. One point consistently made was the importance of avoiding election districts that paired Alaska Native Incumbent Legislators wherever possible. This is particularly true in Southeast where a number of the proposed plans paired several Alaska Native Incumbents which was a major concern to the Southeast Alaska Native Community.

FURTHER YOUR AFFIANT SAYETH NAUGHT.


Marie N. Greene

SUBSCRIBED AND SWORN to before me at Kotzebue, Alaska this 1st day of November 2011.




Notary Public in and for the State of Alaska
My Commission Expires: 1/31/2013

PATTON BOGGS LLP
601 West Fifth Avenue
Suite 700
Anchorage, AK 99501
Phone: (907) 263-6300
Fax: (907) 263-6345


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029810.0101\72507

PATTON BOGGS LLP
601 West Fifth Avenue
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Phone: (907) 263-6300
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT FAIRBANKS

In Re 2011 Redistricting Cases.

) **CONSOLIDATED CASE NO.:**

) **4FA-11-2209-CI**

) **4FA-11-2213 CI**

) **1JU-11-782 CI**

NOTICE OF FILING UNSIGNED AFFIDAVIT

COMES NOW Defendant Alaska Redistricting Board, by and through counsel, PATTON BOGGS LLP and hereby gives notice of filing the unsigned signature page to the Affidavit of Taylor R. Bickford ("Affidavit") in support of its Memorandum Of Points and Authorities in Opposition To Petersburg Plaintiffs' Motion For Partial Summary Judgment on The Issue Of Compactness And In Support Of The Alaska Redistricting Board's Cross-Motion For Summary Judgment, filed herewith. Mr. Bickford is currently out of town, but has reviewed the Affidavit and states the representations contained therein are true and correct to the best of his knowledge, information and belief. The original signature page will be filed with the Court upon receipt by counsel.

DATED at Anchorage, Alaska this 4th day of November 2011.

PATTON BOGGS LLP
Counsel for Defendant
Alaska Redistricting Board

By: 

Michael D. White
Alaska Bar No. 8611144
Nicole A. Corr
Alaska Bar No. 0805022

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Anita R. Tardugno, PLS
Legal Secretary
PATTON BOGGS LLP

029810.0101\72562

PATTON BOGGS LLP
601 West Fifth Avenue
Suite 700
Anchorage, AK 99501
Phone: (907) 263-6300
Fax: (907) 263-6345

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

In Re 2011 Redistricting Cases.) **CONSOLIDATED CASE NO.:**
) **4FA-11-2209-CI**
) 4FA-11-2213 CI
) 1JU-11-782 CI

AFFIDAVIT OF TAYLOR R. BICKFORD

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, TAYLOR BICKFORD, being first duly sworn, depose and state as follows:

1. I am the Executive Director of Defendant the Alaska Redistricting Board ("the Board") and have personal knowledge of and can testify to all of the facts set forth below.

2. On Wednesday, September 14, 2011, I, Board Chair John Torgerson, Board Member Marie Greene and Board Counsel Michael White, and the Board's VRA expert Lisa Handley met with representatives of the Voting Section of the Civil Rights Division of the United States Department of Justice ("DOJ") at their offices in Washington D.C.

3. The purpose of that meeting was to discuss the Board's Preclearance Submission under Section 5 of the federal Voting Rights Act and answer any questions.

4. At that meeting the Board representatives, led by Board Chair Torgerson, made a presentation to DOJ explaining its Preclearance Submission and advocating for preclearance. At the end of the Board's presentation, the only substantive questions asked by the DOJ representatives related to the treatment of Alaska Native incumbents by the Proclamation Plan, including whether any Alaska Native incumbents were removed from a Benchmark Alaska Native District or paired with other incumbents.

5. The Board informed DOJ that every current Alaska Native Incumbent or Alaska Native Preferred Candidate was kept in an Alaska Native District and with one unavoidable exception no Alaska Native incumbents were paired. We explained to DOJ that due to the significant population loss in Southeast Alaska, that region lost one House District and half of a Senate district. As such, it was impossible to recreate Benchmark Senate District C (in which Alaska Native Senator Al Kookesh, of Angoon is the incumbent) or any other Alaska Native effective or influence Senate District which includes a Southeast Alaska District. Thus, pairing Senator Kookesh with incumbent Senator Bert Stedman of Sitka in Proclamation Senate District Q was unavoidable. Proclamation Senate District Q, includes the Alaska Native Influence District in Southeast Alaska, Proclamation House District 34. Proclamation Senate District Q has a 26.06% Native Alaska voting age population. We pointed out to DOJ that no other viable redistricting plan presented to or consider by the Board was able to avoid pairing Senator Kookesh.

6. We also informed DOJ that as indicated in our Preclearance Submission, the Board drew its plan in Southeast Alaska in order to ensure the incumbent Alaska Native Legislator from the Benchmark Alaska Native Influence House District in Southeast (Representative Bill Thomas of Haines in Benchmark HD-5) was kept in the Proclamation Alaska Native Influence District (Proclamation House District 34) and was not paired. Every other viable alternative plan presented to the Board either paired Representative Thomas with a non-Alaska Native incumbent from the same party, or drew him out of the Alaska Native District. Some did both.

7. I have reviewed the so-called "Modified RIGHTS Coalition Plan" ("MRC Plan") relied upon by the Petersburg Plaintiffs in their "Motion for Partial Summary Judgment

on the Issue of Compactness.” The MRC Plan also pairs Senator Kookesh and Senator Stedman in MRC Plan Senate District A. It also draws Representative Thomas out of the Southeast Alaska Native Influence District (MRC Plan HD-2) and places him in MRC Plan HD-4 pairing him with a non-Native incumbent Representative Cathy Muñoz of Juneau.

8. Every redistricting plan submitted to the Board by third-parties over the course of the redistricting process included an Alaska Native “Influence District” in Southeast Alaska.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Taylor R. Bickford

SUBSCRIBED AND SWORN to before me at Anchorage, Alaska this ____ day of November, 2011.

Notary Public in and for the State of Alaska
My Commission Expires: _____

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PATTON BOGGS LLP
601 West Fifth Avenue
Suite 700
Anchorage, AK 99501
Phone: (907) 263-6300
Fax: (907) 263-6345

029810.0101\72497

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT FAIRBANKS

In Re 2011 Redistricting Cases.

) **CONSOLIDATED CASE NO.:**
) **4FA-11-2209-CI**
) 4FA-11-2213 CI
) 1JU-11-782 CI

**ORDER DENYING THE PETERSBURG PLAINTIFFS MOTION FOR
PARTIAL SUMMARY JUDGMENT ON THE ISSUE OF COMPACTNESS AND
GRANTING THE ALASKA REDISTRICTING BOARD'S CROSS-MOTION
FOR SUMMARY JUDGMENT**

The Court having reviewed the parties' motions, cross-motions, memorandums and supporting documents, and all other pertinent matters in the record, and otherwise being fully advised in the premises, finds and **ORDERS** as follows:

1. The Petersburg Plaintiffs' Motion for Partial Summary Judgment on the Issue of Compactness regarding Proclamation House District 32 is hereby **DENIED**.

2. Defendant Alaska Redistricting Board's Cross-Motion for Summary Judgment is hereby **GRANTED**.

3. The Court finds the Board is entitled to summary judgment because there is no genuine issue of material fact and that the Board is entitled to judgment as a matter of law on the issue of the compactness of Proclamation House District 32 for the following reasons:

A. Proclamation House District 32 is "relatively compact" and therefore meets the compactness requirements of Article VI, §6 of the Alaska Constitution; and

B. To the extent the Board had to deviate from the requirements of Article VI, § 6 of the Alaska Constitution, the Board actions were reasonable and justified by

its need to avoid retrogression in the voting rights of Alaska Natives and obtain preclearance from the Department of Justice under Section 5 of the federal Voting Rights Act.

Dated at Fairbanks, Alaska this _____ day of November, 2011

Michael P. McConahy
Superior Court Judge

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029810 0101\72561

PATTON BOGGS LLP
601 West Fifth Avenue
Suite 700
Anchorage, AK 99501
Phone: (907) 263-6300
Fax: (907) 263-6345