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 COMPLIANCE WITH ORDER OF REMAND AND REQUEST FOR ENTRY OF FINAL JUDGMENT

COMES NOW, the Alaska Redistricting Board ("Board") by and through counsel, Patton Boggs LLP, and hereby seeks entry of final judgment affirming the Amended Proclamation Plan, a copy of which is attached as Exhibit A, as final and in full compliance with the previous orders of this court and the Alaska Supreme Court, and in support states the following.

I. INTRODUCTION

On March 15, 2012, this court remanded the Proclamation Plan to the Board for formulation of a final plan that complies with the Order of the Alaska Supreme Court issued March 14, 2012 ("Order"). The Order required the Board's Proclamation Plan be remanded for the Board to develop a redistricting plan following the process outlined in footnote 22 of *Hickel v. Southeast Conference,* 846 P.2d 38 (Alaska 1993) ("*Hickel* process").[1] The *Hickel* process requires the Board to: (1) design a plan that complies

[1] The Alaska Supreme Court opined that because the Board did not follow the *Hickel* process, the Court was unable to determine whether departure from strict adherence to the requirements of Article VI, section 6 of the Alaska Constitution in the configuration of Proclamation House Districts 37 and 38 was reasonably necessary in order to comply with section 5 of the federal Voting Rights Act ("VRA"). [Order at ¶ 7.]

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with the requirements of the Alaska Constitution (i.e., develop a "*Hickel* Plan"); (2) measure that plan against the requirements of the VRA to determine whether it complies with the VRA, and if it does not; (3) adopt a final plan that deviates from the requirements of the Alaska Constitution "to the least degree reasonably necessary to ensure compliance with the Voting Rights Act."[2] The court also recommended the Board make findings "in furtherance of the *Hickel* process" in order to "expedite further judicial review."[3]

The Board reconvened on March 26 and met daily through March 31, 2012 to develop a new plan of redistricting following the mandated *Hickel* process. The Board adopted its Amended Proclamation Plan and issued a new Proclamation of Redistricting on April 5, 2012.[4] The Board made findings on the record[5] as to its compliance with each step of the *Hickel* process prior to adoption in concept of its Amended Proclamation Plan on March 31, 2012. On April 5, 2012, the Board also unanimously adopted its "Written Findings in Support of Alaska Redistricting Board's Amended Proclamation Plan" ("Written Findings")[6] prior to unanimously adopting its Proclamation of Redistricting. The Board's Amended Proclamation Plan complies in all

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[2] Order at ¶ 11 & n.15.

[3] *Id.* at n.15.

[4] A copy of the Board's Proclamation of Redistricting and accompanying maps, demographic data, reports, and written findings are attached hereto as Exhibit A.

[5] Transcripts were made of each of the Board's meetings and have all been posted on the Board's website. Copies of those transcripts are attached hereto as Exhibit B. The Board is currently in the process of preparing a supplement to the Board Record with appropriate page cites, which will be filed with the court shortly.

[6] The Board's Written Findings are attached hereto as pp. 3-17 of Exhibit A.

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respects with this court's February 3, 2012, "Memorandum Decision and Order Re: 2011 Proclamation Plan ("Superior Court Order"), as well as the Order. Because the Board's Amended Proclamation Plan complies in all respects with the Orders of this court and the Alaska Supreme Court, the Board now seeks entry of final judgment affirming the Amended Proclamation Plan as final.

II.
SUMMARY OF BOARD PROCESS

On March 16, 2012, the Board scheduled meetings during the time period of March 26-31, 2012 to work toward enacting a revised redistricting plan following the *Hickel* process. The Board properly noticed these meetings and made them open to the public.[7] The agenda[8] for each meeting and nearly all of the maps and material reviewed and considered by the Board was also posted on the Board's website, either prior to each meeting or as soon as possible afterwards.

A detailed and thorough description of the *Hickel* process followed by the Board in constructing and adopting its Amended Proclamation Plan is set forth in the Board's Written Findings, which are incorporated by reference as though fully set forth herein. The Board's Written Findings, which detail and summarize the findings made on the record by the Board, establishes:

[7] A copy of the notice, which was posted to the Board's website, is attached hereto as Exhibit C.

[8] A copy of the Board's Agenda for each of its meetings, which also were posted to the Board's website, is attached hereto as Exhibit D.

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1. The Board followed and fully complied with the *Hickel* process in the adoption of its Amended Proclamation Plan.[9]

2. Following the *Hickel* process, the Board unanimously adopted a *Hickel* Plan that complied with all Alaska constitutional requirements.[10]

3. Based on the analysis of the Board's VRA expert, Dr. Handley, and the advice of counsel:

(a) The Board's *Hickel* Plan did not comply with the requirements of Section 5 of the VRA because it contains at least one less "ability to elect" House district and one less "ability to elect" Senate district than the Benchmark and was therefore retrogressive and would not be precleared by the Department of Justice ("DOJ");

(b) It is not possible to construct a redistricting plan that strictly complies with the Alaska Constitution and meets the requirements of the VRA; and

(c) Under the Supremacy Clause of the U.S. Constitution, the Board was required to depart from strict adherence to the requirements of Article VI, Section 6 of the Alaska Constitution in order to create a non-retrogressive redistricting plan capable of obtaining preclearance from DOJ.[11]

4. To comply with the VRA, the Board was required to create one additional "ability to elect" (or effective) Alaska Native House district and one additional "ability to elect" (or effective) Senate district while departing from Alaska constitutional requirements to the least degree reasonably necessary to ensure compliance with the VRA.[12]

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[9] Written Findings *passim*.

[10] Written Findings at ¶¶ 1-9. Copies of the *Hickel* Template and the four proposed *Hickel* Plans referenced in the Written Findings are attached hereto as Exhibit E. The memorandum of Board counsel analyzing the *Hickel* Plans referenced in the Written Findings is attached hereto as Exhibit F. All of the maps and the memorandum were posted on the Board's website and made part of the Board record. [Written Findings at ¶¶ 5, 7.]

[11] Written Findings at ¶¶ 10-17. A copy of Dr. Handley's memorandum analyzing the Board's *Hickel* Plan, which was made available to the public and posted on the Board's website, is attached hereto as Exhibit G.

[12] *Id.* at ¶¶ 19-20.

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5. The Board received five (5) statewide proposed redistricting plans from third parties, which it reviewed, analyzed, and considered. None of the third-party plans met all the necessary legal requirements for one or more of the following reasons: (a) the plan did not comply with the *Hickel* process; and/or (b) the plan did not meet the requirements of the VRA; and/or (c) the proposal unnecessarily deviated from the requirements set forth in the Alaska Constitution.[13]

6. On March 31, 2012, after considering, analyzing, and discussing several different options that borrowed ideas from some of the third party proposals,[14] and receiving advice from its VRA expert and Board counsel,[15] the Board by unanimous vote, adopted the plan referred to as the "Bethel-to-Chain" Plan as its Amended Proclamation Plan in concept. The plan adopted by the Board complied with the *Hickel* Process, met the requirements of the VRA, and deviated from the requirements of the Alaska Constitution to the least degree reasonably necessary to ensure compliance with the VRA.[16]

7. On April 5, 2012, the Board unanimously adopted its "Written Findings" prior to unanimously adopting its Proclamation of Redistricting.[17]

8. The Board's Amended Proclamation Plan complies in all respects with the requirements of this court's Order and the Supreme Court's Order.[18] The Amended Proclamation Plan created pursuant to the *Hickel* process:

(a) Departs from strict adherence to the Alaska constitutional requirements of Article VI, section 6 only to the least degree reasonably necessary in order to ensure compliance with the requirements of the VRA. Of all the plans considered, the plan adopted by the Board does the least harm to the Alaska Constitution.[19]

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[13] Written Findings at ¶¶ 20-25. Copies of these proposed plans, which were posted on the Board's website and made part of the Board Record, are attached hereto as Exhibit H.

[14] *See id.* at ¶¶ 26-33.

[15] *Id.* at ¶¶ 28-32.

[16] *Id.* at ¶ 33.

[17] *Id.* at ¶ 43.

[18] *Id.* at ¶¶ 35-40.

[19] *Id.* at ¶¶ 39-40.

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(b) Rectifies the compactness issues found by this court in House Districts 1 and 2 of the Proclamation Plan.[20]

(c) Mutes any remaining proportionality issues with the House districts in the Fairbanks Northstar Borough ("FNSB") because the excess population of the FNSB is split only once.[21]

(d) Mutes the City of Fairbanks' ("City") proportionality claim because it creates a city Senate district combining the two city House districts.[22]

III.
DESCRIPTION OF THE AMENDED PROCLAMATION PLAN

A. Description Of The Amended Proclamation Plan.

The Amended Proclamation Plan leaves unchanged from the Proclamation Plan, the districts located in Southeast, Anchorage, and the North Slope (Districts 12-27, 31-35, and 40). The differences between the Proclamation Plan and the Amended Proclamation Plan necessary in order to comply with this Court's Order and the Supreme Court's Order are as set forth below.

1. *The City of Fairbanks and FNSB Districts.*

The Amended Proclamation Plan rectifies the compactness problems found to exist by this court in Proclamation Plan House Districts 1 and 2. The fix created ripple effects that required some reconfiguration of all five House districts within the FNSB, resulting in five House districts wholly within the FNSB that meet the compactness

[20] *Id.* at ¶ 36. *See also* Exhibit A at pp.22, 24-29.

[21] Written Findings at ¶ 37.

[22] *Id.* at ¶ 38.

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standard of Article VI, section 6 of the Alaska Constitution.[23] The Amended Proclamation Plan splits the excess population of the FNSB once by adding 5,756 FNSB residents into House District 38 in order to solve the rural population shortfall and comply with the equal population requirements of the federal and state constitutions.[24] The remaining excess FNSB population was spread as evenly as practicable across districts wholly within the FNSB.[25]

Additionally, in the Amended Proclamation Plan, the City of Fairbanks' House districts (House District 3 and House District 4) are paired together to form Senate District A, resulting in the residents of the City of Fairbanks constituting 85.88% of the population of that Senate district.[26]

2. *House District 39.*

In the Amended Proclamation Plan, House District 39 is substantially similar to House District 39 in the original Proclamation Plan, with a few exceptions. Two villages, Tanana and Ruby, were moved from House District 38 to House District 39. Additionally, the community of Kenny Lake was moved from House District 6 and added to House District 39. These minor changes were necessitated by the ripple effect caused by the Board's decision to reunite the Aleutian Chain while still maintaining the requisite number of effective

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[23] *Id.* at ¶ 36.

[24] Written Findings at ¶ 37.a.

[25] *Id.* at ¶ 37.b.

[26] *Id.* at ¶ 38.b.

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House and Senate districts.[27]

3. *House District 38.*

House District 38 in the Amended Proclamation Plan is also substantially similar to House District 38 with only minor differences. On the northern end of the district, two villages, Tanana and Ruby, were moved from House District 39 into House District 38. On the southern end of the district, four villages – Anvik, Shageluk, Flat, Holy Cross and Russian Mission – were moved from House District 38 to House District 36. Additionally, minor changes were made on the eastern end of the district. A few small census blocks were moved from House District 5 to House District 38 in order to reunite the community of Ester which was split in the original Proclamation Plan. As with House District 39, the changes to House District 38 were made necessary by the ripple effect caused by the Board's decision to reunite the Aleutian Chain while still maintaining the requisite number of effective House and Senate districts.

4. *House District 37.*

In order to reunite the Aleutian Chain into a single contiguous House district while still maintaining the required number of effective House and Senate districts, the board had to make changes to House District 37. A number of villages near Bethel – Napiak, Oscarville, Kwethluk, Atmautluak, Kasigluk, Nunapitchuk, Mertarvik, Newtok, Tununak, Toksook Bay, and Nightmute – were moved from House District 37 to House

[27] In order to comply with the VRA requirements and create a fifth effective House district, the Board was required to depart from the Alaska constitutional compactness and socio-economic integration requirements in its configuration of HD-39. The departures from these requirements were, to the least degree, reasonably necessary to comply with the VRA. [Written Findings at ¶¶ 39 & 39.a.]

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District 36. Additionally, a number of villages in southwest Alaska – Eek, Quinhagak, Goodnews Bay, Platinum, Twin Hills, Togiak, Clark's Point, Egegik, Pilot Point, Ugashik, Port Heiden, Chignik, Chignik Lake, Chignik Lagoon, Ivanof Bay, Perryville, Nelson Lagoon, Sand Point, King Cove, Cold Bay, and False Pass – were moved from House District 36 to House District 37.

5. *House District 36.*

In order to reunite the Aleutian Chain into a single contiguous House district, as well as create a House district with sufficient Alaska Native voting age population ("NVAP") to create a third "ability to elect" Senate district,[28] changes to House District 36 were required. A number of villages near Bethel – Napiak, Oscarville, Kwethluk, Atmautluak, Kasigluk, Nunapitchuk, Mertarvik, Newtok, Tununak, Toksook Bay, and Nightmute – were moved from House District 37 into House District 36. Additionally, a number of villages in southwest Alaska – Eek, Quinhagak, Goodnews Bay, Platinum, Twin Hills, Togiak, Clark's Point, Egegik, Pilot Point, Ugashik, Port Heiden, Chignik, Chignik Lake, Chignik Lagoon, Ivanof Bay, Perryville, Nelson Lagoon, Sand Point, King Cove, Cold Bay, and False Pass – were moved from House District 36 to House District 37.

6. *House District 35.*

Seldovia and Seldovia Village, previously located in House District 35 in the

[28] In order to create a third effective Senate district, at least one Alaska Native effective House district had to maintain a high enough concentration of NVAP to allow it to be paired with a House district with a relatively low NVAP. [Written Findings at ¶ 19.b.]

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Board's original Proclamation Plan, were placed into House District 30 to reduce the number of splits in the Kenai Peninsula Borough ("KPB").

7. *Kenai Peninsula Borough.*

As a result of the population shift between House District 35 and House District 30, minor adjustments were required across the KPB House districts. Population was shifted between House Districts 28, 29, and 30 in order to reduce deviations across those districts.

8. *House District 6.*

In order to split the excess population of the FNSB only once, the Board was required to alter the boundaries of House District 6 (in both the original and amended plans) by removing all the residents of the FNSB. Additionally, House District 39 was short population due to adjustments among the rural districts in the Amended Proclamation Plan. As a result of the population shortfall, the community of Kenny Lake was removed from House District 6 and added to House District 39.

These two adjustments to the boundaries of House District 6 required further adjustments. Population from the Farm Loop area of House District 8 was moved and added to House District 6. Additionally, population from the Tanaina area was taken out of House District 7 and added to House District 6.

9. *Matanuska Susitna Borough.*

In addition to the population that was moved from House District 7 and House District 8 to House District 6 minor adjustments were required across the Matanuska

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Susitna Borough House districts. Population was shifted between House District 7, 8, 9, and 10 in order to reduce the deviations across those districts.

10. *Senate District S.*

The pairing of House districts to form Senate districts has been changed slightly. Because the Board determined that it was in the public interest to avoid further litigation, the Board muted the City of Fairbanks' Senate seat proportionality claim by creating a City of Fairbanks Senate district (Senate District A) although it was not legally required to at this juncture. As a result of this pairing, the other Senate pairing in the FNSB was also switched to create Senate District B.[29]

IV.
THE AMENDED PROCLAMATION PLAN COMPLIES WITH THE SUPERIOR COURT ORDER AND THE SUPREME COURT ORDER

The Supreme Court Order directed the Board on remand to follow the *Hickel* process to ensure any redistricting plan it adopted complied with the requirements of Article VI, section 6 of the Alaska Constitution to the greatest extent possible.[30] If the Board determined the deviation from the Alaska Constitution was required to satisfy the requirements of the VRA, the Board was required to "adopt a redistricting plan that includes the least deviation reasonably necessary to satisfy the Act, thereby preserving the mandates of the Alaska Constitution to the greatest extent possible."[31] The Superior Court Order also directed the Board to take certain action to remedy constitutional

[29] See Exhibit A at pp. 20, 68.

[30] Order at ¶ 11.

[31] *Id.*

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defects in the original Proclamation Plan. As established by the Board Record as summarized by the Board's Written Findings, the Amended Proclamation Plan complies with both Orders in all respects.

A. The Amended Proclamation Plan Complies With The Requirements Of The Supreme Court Order.

The Supreme Court held that the Board is legally required to use the *Hickel* process when constructing a redistricting plan for Alaska. Using the *Hickel* process, the Board first adopted a *Hickel* Plan, which meets the requirements of Article VI, section 6 of the Alaska Constitution. [32] The *Hickel* Plan, however, was retrogressive because it did not contain the required number of Alaska Native "ability to elect" districts.[33]

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[32] Written Findings at ¶¶ 1-9. In order to meet the equal population requirements of the Alaska and federal constitutions in creating its *Hickel* Plan, the Board had to add substantial population from an urban area to a rural district. [*Id.* at ¶ 3.b.] The requirement of adding urban population to a rural district, as noted by both this court and the Supreme Court, is not a matter of "if" but only a matter of where and has nothing to do with the requirements of the VRA. [*Id.*] The four different *Hickel* Plans attempt to resolve the rural population shortfall by taking population from four different urban areas of the state. The Board considered four different options for accomplishing this: drawing population from Anchorage, Kenai, Mat-Su, and Fairbanks. [*Id.* at ¶¶ 3-4, Exhibit E at pp. 2-5, Exhibit F at pp. 2-5.]

The Board's *Hickel* Plan resolves the rural population shortfall by taking 5,809 people from the Ester/Goldstream area of the "FNSB" and adding it to the *Hickel* Plan House District 37, which otherwise closely resembles District 6 in the 2002 plan. [Exhibit F at p. 2.] As previously established by the Board Record as supplemented at trial, Fairbanks has approximately ½ a district of excess population that must be accommodated. [*Id.*] Adding this urban population to *Hickel* Plan House District 37 does not effect the district's socio-economic integration because the FNSB has historical social, cultural, and economic ties with rural Alaska and is an economic and transportation hub for the villages in the district. [*Id.*] This court has already found that it is reasonable for the Board to take excess population from the FNSB to meet population requirements. [*Id.*, Superior Court Order at pp. 111, n.164.] Using population from the FNSB creates no proportionality issues. The FNSB is split only once in the *Hickel* Plan with the remaining excess population spread out among the five districts wholly within the Borough. [Exhibit F at p. 3.] In compliance with the Supreme Court Order, the Board unanimously adopted the *Hickel* Plan as its baseline constitutional plan. [*Id.* at ¶ 8.]

[33] *Id.* at ¶¶ 10-15. The *Hickel* Plan fails to meet the requirements of the VRA because it provides fewer effective House and Senate districts than the Benchmark Plan and is, therefore, retrogressive. Because there are other plans in existence, including the Proclamation Plan, which are not retrogressive, the retrogression of the *Hickel* Plan is not unavoidable. [*Id.* at ¶ 12.]

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Accordingly, the Board found it necessary to deviate from the *Hickel* Plan in order to meet the requirements of Section 5 of the VRA because it was impossible to both strictly adhere to the Alaska Constitution and meet the requirements of the VRA.[34] After taking a hard look at all its options, the Board adopted the Amended Proclamation Plan, which deviates from the *Hickel* Plan to the least degree reasonably necessary in order to ensure compliance with the VRA.[35] The Amended Proclamation Plan, therefore, fully complies with the Supreme Court Order and should be approved by this court.

1. *The Deviations From The Hickel Plan, Which Resulted In The Amended Proclamation Plan, Were Necessary To Comply With Voting Rights Act Requirements.*

In compliance with the Supreme Court Order, the Board unanimously adopted the Amended Proclamation Plan, which is not retrogressive and, to the extent it does not strictly follow the requirements of Article VI, section 6 of the Alaska Constitution, varies from those requirements to the least degree reasonably necessary to ensure compliance with the VRA.[36] As set forth in the Board Record as summarized in its Written Findings, the Amended Proclamation Plan deviates from strict adherence to Alaska constitutional requirements in the configuration of only two districts, House District 39 and House District 38.[37]

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[34] *Id.* at ¶¶ 16-17.

[35] *Id.* at ¶¶ 39-40.

[36] *Id.*

[37] *Id.* at ¶ 39.a & .b.

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1. *House District 39.*

In order to create the fifth effective House district required by the VRA, the Board had to relax the compactness and socio-economic integration requirements of the Alaska Constitution in its configuration of House District 39.[38] In order to meet the requirements of the VRA, the Board had to reconfigure House District 37 in the *Hickel* Plan and unpack the two districts with over 80% Alaska NVAP – House District 39 with 84.22% NVAP and House District 38 with 82.65% NVAP and spread out the NVAP into other districts.[39]

The resulting configuration of House District 39 in the Amended Proclamation Plan is created by splitting House District 39 in the *Hickel* Plan and adding the northern portion of that district (including Nome and other traditional Alaska Native villages along the Bering Straights and Norton Sound) with its large concentration of NVAP, and adding it to a reconfigured *Hickel* House District 37 to create House District 39 an Alaska Native "ability to elect" district with 65.63% NVAP.[40] This configuration is very similar to House District 39 in the original Proclamation Plan with some minor population adjustments as explained in Section III.A.2 above. In configuring HD-39,

[38] Written Findings at ¶ 39.a.

[39] *Id.* at ¶ 19.a.

[40] *Compare* Exhibit E at p. 6 to Exhibit A at p. 18.

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the Board departed from Alaska constitutional requirements to the least degree reasonably necessary in order to ensure compliance with the VRA.[41]

2. *House District 38.*

In order to create the fifth effective House district required by the VRA, the Board also had to relax the socio-economic integration requirements of the Alaska Constitution in its configuration of House District 38.[42] This required the splitting of House District 39 in the *Hickel* Plan as for the reasons explained above regarding Amended Proclamation Plan House District 39.[43]

The resulting configuration of House District 38 in the Amended Proclamation Plan is created by splitting House District 39 in the *Hickel* Plan and adding the southern portion of that district (the Wade-Hampton area) with its large concentration of NVAP and adding it to the southwest portion of *Hickel* House District 37, which includes the Denali Borough and the Ester/Goldstream area of the FNSB,[44] to create House District

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[41] Written Findings at ¶ 39.a. No legal challenges were made related to House District 39 in the Board's original Proclamation Plan. In fact, the Plaintiffs' maps produced for trial purposes contain a district nearly identical to House District 39. [*See* Pl. Ex. 14, Def. Ex. A.] Moreover, the RIGHTS Coalition Plan provided to the Board on March 28, 2012, contains a nearly identical district, which the RIGHTS Coalition claims actually complies in all respects with the Alaska Constitution. [Exhibit H at p. 30; Exhibit H at p. 27.]

[42] Written Findings at ¶ 39.b.

[43] *Id.* at ¶ 19.a.

[44] This Court has previously held that the Board's choice of using excess population from the FNSB "was reasonable and could be used in a Native district," and that "the Board acted reasonably when it selected Fairbanks and specifically Ester/Goldstream as an area from which to take excess population." [Superior Court Order at 111 n.164, 132.] This ruling was left undisturbed by the Supreme Court's Order.

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38 an Alaska Native "ability to elect" district with 45.72% NVAP.[45] This configuration is very similar to HD-38 in the original Proclamation Plan with some minor population adjustments as explained in Section III.A.3 above. In configuring House District 38, the Board departed from Alaska constitutional requirements to the least degree reasonably necessary in order to ensure compliance with the VRA.[46]

In short, the Board has fully complied with all the requirements of the Alaska Supreme Court's Order. Following the mandated *Hickel* process, the Board (1) designed a *Hickel* Plan that complied with the requirements of the Alaska Constitution;[47] (2) measured that plan against the requirements of the VRA to determine whether it complies with the VRA, which it did not[48]; and thus, (3) adopted a final plan that deviates from the requirements of the Alaska Constitution "to the least degree reasonably necessary to ensure compliance with the Voting Rights Act."[49] The Board

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[45] *Compare* Exhibit E at p. 6 to Exhibit A at p. 18.

[46] Written Findings at ¶ 39.b.

[47] Written Findings at ¶¶ 1-9.

[48] *Id.* at ¶¶ 10-15.

[49] *Id.* at ¶¶ 16-40. While Senate District S in the Amended Proclamation Plan is contiguous by water via Nunivak Island, the Board expressly found that this configuration met the "as nearly as practicable" contiguity requirement of the Alaska Constitution because (1) the absolute contiguity of land masses is impossible in Alaska, considering her numerous archipelagos and islands; and (2) the Article VI, section 6 contiguity requirement for Senate districts is more flexible than for House districts, requiring only that they be "composed as near as practicable of two contiguous House Districts." [*Id.* at ¶¶ 32.b & .c; 39.c.] The Board further found that to the extent a court may disagree with the Board's conclusion, that it was required to relax the "as nearly as practicable" contiguity requirement in its configuration of Senate District S to the least degree reasonably necessary to ensure compliance with the VRA. [*Id.* at ¶ 39.c.] In other words, to the extent there may considered a departure from strict adherence to the Alaska Constitution in the configuration of Senate District S, it was necessary in order to allow for the creation of a third effective Senate district and to avoid the unnecessary pairing of any Alaska Native incumbents. [*Id.*]

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made findings both on the record, as well as in written form as recommended by the Supreme Court. Accordingly, since the Board has also complied with this court's Order by fixing the compactness issues in relation to Proclamation Plan House District 1 and 2, this court should enter a final judgment approving the Board's Amended Proclamation Pan.

B. The Amended Proclamation Plan Complies With The Requirements Of The Superior Court Order.

This court found, *inter alia*, that Proclamation Plan House District 1 and House District 2 violated the compactness standard of Article VI, section 6 of the Alaska Constitution. The Board did not appeal this decision, but instead voluntarily agreed to redraw the offending districts. Two potentially open legal questions also remained open regarding proportionality, which the Board deemed in the best interest of the public to rectify in order to avoid additional litigation in the hope that a final redistricting plan could be implemented in time for the 2012 elections. Accordingly, the Amended Proclamation Plan complies with the Superior Court's order and moots the two proportionality claims raised by the Riley/Dearborn Plaintiffs.

1. *House District 1.*

This court found that House District 1 in the original Proclamation Plan was not compact and thus remanded it to the Board to draw "a more compact district the removes the appendage" in the eastern portion of the district.[50] The Amended Proclamation Plan contains a revised district, designated House District 3, that removes

[50] Superior Court Order at 117.

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the appendage and creates a district that meets Alaska's compactness requirements.[51] Accordingly, the Board has complied with this court's requirement that the Board rectify the compactness problems with House District 1.[52]

2. *House District 2.*

This court also remanded House District 2 in the Proclamation Plan to the Board to fix its compactness problems.[53] The Amended Proclamation Plan revises the district, now designated as House District 1, creating a compact district that meets the requirements of the Alaska Constitution.[54] Accordingly, the Board has complied with this court's requirement that the Board rectify the compactness problems with House District 2.

3. *The Amended Proclamation Plan Moots Fairbanks North Star Borough's Proportionality Claim Regarding Splitting Excess Population.*

Though this court held the Board had legitimate, non-discriminatory reasons for splitting the excess population of the FNSB into two House districts, a ruling not overturned by the Supreme Court, the Board determined it was in the public's best interest to avoid potential further litigation over the Plaintiffs' FNSB proportionality

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[51] Written Findings at ¶ 36; Exhibit A at pp. 20, 26.

[52] *Id.* As explained in and found by the Board on the record, rectifying the compactness problems In House Districts 1 & 2 had ripple effects that required some reconfiguration of all five of the House districts within the FNSB. The reconfiguration of these districts results in five districts wholly within the FNSB that all meet Alaska compactness standards. [*Id.*; Exhibit A at pp. 20, 24-28.]

[53] Superior Court Order at 117.

[54] Written Findings at ¶ 36. *See also* Exhibit A at p. 24.

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claim.[55] Accordingly, the Amended Proclamation Plan splits the excess population of the FNSB only once by adding 5,756 FNSB residents into HD-38 in order to remedy the rural population shortage and comply with the equal population requirements of the federal and state constitutions.[56] The remaining excess FNSB population was spread as evenly as practicable across the five House districts wholly contained within the FNSB. This resulted in slightly higher deviations in the FNSB districts, but the range of deviation among those House districts is only 0.60%.[57] The Board's action effectively renders moot any proportionality claims as to the FNSB.[58]

4. *The Amended Proclamation Plan Moots Plaintiffs' Proportionality Claim Regarding the City of Fairbanks Senate Pairing.*

The Alaska Supreme Court held that this court applied the wrong legal standard in analyzing the Riley Plaintiffs' City of Fairbanks Senate pairing proportionality claim and thus, it did not address the merits of Plaintiffs' claim.[59] While the Board believes its legal position is correct that (a) the residents of the City of Fairbanks do not constitute a politically salient class separate from the residents of the FNSB, and (b) even if city residents do constitute a politically salient class the Board did not intentionally discriminate against that class, nonetheless, the Board has determined it is in the

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[55] Written Findings at ¶ 37.

[56] *Id.* at ¶ 37.a.

[57] Written Findings at ¶ 37.b.

[58] Written Findings at ¶ 37.c.

[59] Order at ¶ 13.

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public's best interest to avoid further litigation on this issue.[60] Accordingly, in the Amended Proclamation Plan, the City of Fairbanks House districts (House District 3 and House District 4) are paired to form Senate District B in which the residents of the City of Fairbanks constitute 85.88% of the population of that Senate district.[61] The Board's action renders the Riley Plaintiffs' City of Fairbanks Senate seat proportionality claim moot as the residents of the City of Fairbanks have effective control of that district.

In sum, the Board has complied with all of the mandates of this Court and effectively mooted any remaining proportionality claims. The Board's Amended Proclamation Plan therefore complies with the Orders of both this court and the Alaska Supreme Court.[62] Accordingly, this court should enter final judgment approving the Amended Proclamation Plan.

V.
CONCLUSION

The Amended Final Plan complies with the requirements of both this court's and the Supreme Court Orders in all respects. Accordingly, the Board requests this court issue a final judgment approving the Final Proclamation Plan adopted by the Board on April 5, 2012. A proposed Final Judgment is provided herewith.

DATED at Anchorage, Alaska this 10th day of April 2012.

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[60] Written Findings at ¶ 38.a.

[61] *Id.* at 38.b.

[62] Written Findings at ¶ 35.

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of April 2012, a true and correct copy of the foregoing document was served on the following via:

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