

A Voting Rights Analysis of the Alaska Amended Proclamation State Legislative Plan

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May 25, 2012

1.0 Introduction

I was asked by the Alaska Redistricting Board to review the Amended Proclamation State Legislative Plan, redrawn and adopted by the Board in response to litigation, to determine if the proposed plan satisfies the requirements of Section 5.

In my expert opinion, the Amended Proclamation Plan is not retrogressive. This conclusion is based on both the extensive analyses I conducted in conjunction with my assessments of the 2002 Benchmark Plan and the Proclamation Plan passed in June 2011, as well as my review and analysis of the newly adopted Amended Proclamation Plan.

The discussion of the Benchmark and Proclamation Plan that follows is taken from my earlier report, "A Voting Rights Analysis of the Proclamation Alaska State Legislative Plans: Measuring the Degree of Racial Bloc Voting and Determining the Effectiveness of Proposed Minority Districts," submitted to the Department of Justice on August 11, 2011.

2.0 Background

Because of litigation, the Alaska Redistricting Board has had to redraw the state legislative plan (Proclamation Plan) previously submitted to and precleared by the US Department of Justice on October 11, 2011.

2.1 Proclamation Plan Rejected by the Court

Portions of the Proclamation Plan, including two rural state house districts (Districts 37 and 38) with substantial Alaska Native populations, were struck down by the trial court in *In re 2011 Redistricting Cases*. The trial court held that House District 37 violated Alaska's contiguity requirement and House District 38 violated the state constitutional socio-economic integration requirement. The trial court rejected the Board's contention that the deviations from the state constitutional requirements in these two districts were necessary in order to comply with Section 5 of the Voting Rights Act, instead finding that all of the Alaska Native districts that were created had a higher than necessary Alaska Native voting age population.

The Board appealed the trial court's decision on House Districts 37 and 38 to the Alaska Supreme Court. The Alaska Supreme Court remanded the entire state legislative plan back to the Board, requiring the Board to redraw the plan using the following approach: (1) create a plan that first complies with the requirements of the Alaska Constitution, (2) then measure that plan against the requirements of the Voting Rights Act to determine if it complies with

the Act, and (3) if it does not, modify the plan such that it deviates from the requirements of the Alaska Constitution “to the least degree reasonably necessary to ensure compliance with the Voting Rights Act.”

The Board met at the end of March 2012 to design a new plan to comply with the Alaska Supreme Court’s Order. The Amended Proclamation Plan was adopted unanimously by the Board on March 31 and Chairman Torgerson signed the Proclamation of Redistricting on April 5. The Board filed its Notice of Compliance with the trial court on April 10, requesting that the court approve the Amended Proclamation Plan as the final redistricting plan.

The trial court, however, denied the Board’s request, finding the Board failed to comply with the first step of the Supreme Court’s Order of remand. The Board appealed the trial court’s decision on May 1, 2012. On May 22, the Alaska Supreme Court issued an order implementing the Amended Proclamation Plan as an interim redistricting plan for the 2012 elections.¹

2.2 The 2002 Benchmark Plan

Under the 2002 Benchmark Plan, there are four majority Alaska Native state house districts: Districts 6, 38, 39, and 40. Three of these districts (Districts 38, 39, and 40) have elected the Native-preferred candidate to the legislature in every election over the past decade. The fourth district (District 6),² although currently represented by a non-Native preferred white Republican, successfully elected the Native-preferred candidate until the 2010 election.

In addition to these four districts, there is a fifth “effective” state house district:³ District 37. Although this district is not majority Native in composition, it has consistently elected a Native-preferred candidate throughout the decade, even when voting was racially polarized.

¹ Originally, in an order issued on May 10, 2012, the Alaska Supreme Court required the Board to reconfigure the legislative districts in Southeast for the Interim Plan, taking into account only the Alaska constitutional requirements of compactness, contiguity, and socio-economic integration. The Court held that there was no Voting Rights Act justification for deviating from these Alaska constitutional requirements in Southeast Alaska. However, after the Board complied with the Court’s Order, the Supreme Court rescinded this portion of the Order, accepting the Southeast districts as originally configured in the Amended Proclamation Plan. The Alaska Supreme Court did this because of the “risk that the United States Department of Justice would decline to preclear [the plans] under the Voting Rights Act.”

² District 6 is majority Native in total population but slightly less than majority in Alaska Native voting age population (VAP).

³ Because the term “effective” is commonly used in the voting rights literature and by the US Department of Justice to indicate a district that provides minority voters with the ability to elect candidates of their choice to office, I use the term “effective district” interchangeably with an “ability to elect district.” See, for example, “Drawing Effective Minority Districts: A Conceptual Framework and Some Empirical Evidence” Bernard Grofman, Lisa Handley, and David Lublin, 79 *North Carolina Law Review* 1383 (2000-2001).

The table below provides the racial composition (as well as the general location) of all five of these state house districts.⁴

Table 1: Effective State House Districts under the 2002 Benchmark Plan (2010 Census Data)

House District	Location	Percent Alaska Native Population	Percent Alaska Native Voting Age Population
6	Interior Villages	53.64	49.97
37	Aleutian Islands	45.04	37.79
38	Bethel	86.94	82.67
39	Bering Strait	87.74	83.44
40	North Slope	71.95	63.60

There are two majority Alaska Native state senate districts under the 2002 Benchmark Plan: Districts S and T. Both of these districts have consistently elected Native-preferred candidates to the state senate. In addition, Senate District C, which is 46.01% Native in total population and 42.41% in Alaska Native VAP, has consistently elected a Native-preferred candidate, even when voting in the senate election was polarized.

The table below provides the racial composition of these three effective Benchmark state senate districts. Because state senate districts are created by pairing state house districts, the table includes the two state house districts that have been combined to create the senate district.

Table 2: Effective State Senate Districts under the 2002 Benchmark Plan (2010 Census Data)

Senate District	House Pairing to Produce Senate District	Percent Alaska Native Population	Percent Alaska Native Voting Age Population
C	Districts 5 and 6	46.01	42.41
S	Districts 37 and 38	66.56	58.32
T	Districts 39 and 40	79.40	72.38

⁴In addition to these five house districts with substantial Alaska Native populations, there is a district in Southeast Alaska (House District 5 in the 2002 Benchmark Plan) that is approximately one third Alaska Native in population and has elected an Alaska Native to legislative office over the course of the decade. The Alaska Native representative since 2004, however, is a Republican that did not receive a majority of the Alaska Native votes in the contest in which he faced an Alaska Native Democrat. The Board retained a comparable Alaska Native percentage district in Southeast Alaska in both its Proclamation and Amended Proclamation Plans.

2.3 Meeting the 2002 Benchmark

Drawing a legislative plan that meets the Benchmark was quite challenging in Alaska for three reasons:

- Most of the Alaska Native districts are significantly under-populated.⁵
- There are virtually no substantial Alaska Native population concentrations adjacent to these rural minority districts to draw from to meet one person, one vote standards. As a consequence, the population disparities have to be made up by adding substantial non-Alaska Native population to the districts.
- There are no Alaska Native population concentrations large enough in the urban areas to create a majority Alaska Native district to substitute for any loss in the number of rural majority Alaska Native districts.

Not a single plan, either created by the Alaska Redistricting Board or submitted to the Board, offered Alaska Native population percentages comparable to those in the 2002 Benchmark Plan. However, the Board was able to create a legislative plan that provided Alaska Native voters with an equivalent ability to elect Alaska Native-preferred candidates: the Proclamation Plan.

2.4 The Proclamation Plan

The Proclamation Plan, passed 5-0 by the Board in June 2011 and precleared by the Department of Justice in August 2011, contains the same number of districts that provide Alaska Natives with the ability to elect Native-preferred candidates as the 2002 Benchmark Plan.

The Proclamation State House Plan (see Table 3, below) includes five majority Native population districts, although only three of these districts retain their majority Native status when voting age population statistics are considered.

⁵The primary explanation for both the under-population of the existing minority districts and the inability to add significant minority population to these rural districts is the substantial amount of out-migration of Alaska Natives from the rural areas into the urban areas, coupled with the higher growth rate in general in the urban areas.

Table 3: Proclamation State House Districts with Substantial Alaska Native Populations

House District	Total Population	Percent Deviation from Ideal Population	Percent Alaska Native Population	Percent Alaska Native Voting Age Population
36	17095	-3.72	78.26	71.45
37	16899	-4.82	56.18	46.63
38	17027	-4.10	53.38	46.36
39	16892	-4.86	72.50	67.09
40	16953	-4.52	71.15	62.22

The configuration of the 2002 Plan had to change substantially in order to maintain the requisite number of effective Alaska Native districts. It was necessary to unpack two heavily Alaska Native house districts (Districts 38 and 39) and disperse the Alaska Native population in these districts across several proposed districts in order to avoid retrogression. The Alaska Native population in Benchmark District 38, for example, was divided between Proclamation Districts 36 and 37. A portion of Benchmark District 39 was combined with many of the interior villages from Benchmark District 6 to produce Proclamation District 39. The remainder of Benchmark District 39 was placed in Proclamation District 38, which also moved into Fairbanks to pick up sufficient additional population to meet the one person, one vote standard. In fact, one of the districts challenged in the ensuing litigation was Proclamation District 38 – although plaintiffs in this litigation agreed that at least one of the Alaska Native rural districts would have to pick up substantial population from an urban area, Plaintiffs argued that the population should come from some area of the State other than Fairbanks (or some area of Fairbanks other than an area that encompassed a concentration of Democratic voters).

Another change made by the Proclamation Plan was to divide the Aleutian Islands (which are intact in Benchmark District 37) between Proclamation Districts 36 and 37. The Board did this in order to increase the Alaska Native VAP in Proclamation District 36 so that the Alaska Peninsula could be paired with Kodiak to form a third effective senate district. This configuration also avoided the pairing of Alaska Native incumbent Senator Hoffman with the President of the Senate, Senator Stevens. However, the division of the Aleutian Islands also prompted a legal challenge.

As difficult as it was to draw a non-retrogressive state house plan, producing a non-retrogressive state senate plan proved even more challenging. Although most of the plans put forward to the Board managed to create two majority Native state senate districts, the third district offered in these plans was, in every instance, below the 41.8% Alaska Native VAP target and therefore not likely to be effective. The Proclamation Plan, however, offered a third effective senate district – one that is comparable to the Alaska Native percentages in Benchmark Senate District C.

The house district pairings used to produce the Proclamation Senate Plan creates two majority Alaska Native senate districts, although only one of these retains its majority when voting age population is considered.⁶ In addition, the Plan also creates a third effective state senate district: District R is 48.65% Native population and 43.75% Native VAP. This district is comparable in Native percentage to Benchmark District C (which is 46.01% Native population and 42.41% Native VAP) and it exceeds the target Native VAP percentage of 41.8% needed to elect a Native-preferred candidate.⁷

Table 4: Proclamation State Senate Districts with Substantial Alaska Native Populations

Senate District	House Pairing to Produce Senate District	Total Population	Percent Deviation from Ideal Population	Percent Alaska Native Population	Percent Alaska Native Voting Age Population
R	Districts 35 and 36	34581	-2.62	48.63	43.75
S	Districts 37 and 38	33926	-4.46	54.78	46.85
T	Districts 39 and 40	33845	-4.69	71.82	65.05

3.0 Amended Proclamation Plan

The major difference between the Proclamation Plan and the Amended Proclamation Plan, at least with regard to this voting rights analysis, is the reunification of the Aleutian Chain into a single district, and the ripple effect of that change across several other Alaska Native districts. A map overlaying the two sets of districts – the Proclamation Plan and the Amended Proclamation Plan – is attached to this report.

⁶Proclamation District S, although only 46.85% Alaska Native in VAP, is composed of two state house districts that are very likely to be effective and therefore this proposed senate district is also likely to be effective. In addition, Proclamation District S exceeds the 41.8% Alaska Native VAP target.

⁷Using the estimates derived from the racial bloc voting analysis I conducted, I calculated the average Alaska Native population percentage needed to elect Alaska Native-preferred candidates to office. I did this by taking into account the average turnout rates for Alaska Native and white voters (the average turnout rate for Alaska Native voters is 45.6% compared to 41.2% for white voters), as well as the estimated percentage of votes that the Native-preferred candidate can expect from Alaska Native voters (approximately 71% of the Native voters vote cohesively for the Native-preferred candidate) and white voters (approximately 44% of the whites crossover to vote for the Native-preferred candidate). A lengthier discussion of the percent Alaska Native needed to elect the Alaska Native-preferred candidate can be found in my earlier report, “A Voting Rights Analysis of the Proclamation Alaska State Legislative Plans: Measuring the Degree of Racial Bloc Voting and Determining the Effectiveness of Proposed Minority Districts,” submitted to the Department of Justice on August 11, 2011.

Under the Amended Proclamation Plan, District 40 (the North Slope district) remains completely unchanged. There are only slight modifications to Districts 38 and 39:

- District 39: Two villages, Tanana and Ruby, were moved from House District 39 and put into House District 38. In addition, the community of Kenny Lake was moved from House District 6 into District 39.
- District 38: As mentioned above, the villages of Tanana and Ruby, in the northern portion of the district, were moved from House District 39 to House District 38. In the southern portion of the district, five villages (Anvik, Shageluk, Flat, Holy Cross, and Russian Mission) were removed from District 38 and put into District 36. The final change was the addition of a few small census blocks assigned to House District 5 in the Proclamation Plan in order to unite the community of Ester.

The minor changes to Districts 38 and 39 were the result of the ripple effect caused by the reunification of the Aleutian Chain, as well as the requirements of one person, one vote and the need to maintain the requisite number of effective house districts.

The modifications made to Districts 36 and 37 were more substantial in order to reunite the Aleutians into a single district (House District 37). A number of villages in southwest Alaska on the Aleutian Peninsula (including 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 out of District 36 and into District 37. And a number of villages north of Bethel (including Napiak, Oscarville, Kwethluk, Atmautluak, Kasigluk, Nunapitchuk, Mertarvik, Newtok, Tununak, Toksook Bay, and Nightmute) had to be removed from District 37 and placed in District 36. (Bethel itself, however, remains in District 37 in order to avoid the pairing of Alaska Native incumbent Senator Hoffman with Senator Stevens.)

The result of these changes was to increase the Alaska Native voting age population in District 36 and decrease it in District 37 relative to the Proclamation Plan. Although the Alaska Native percentage is lower in Amended District 37 (42.97% Alaska Native VAP), it is still higher than the Alaska Native percentage in the 2002 Benchmark district that includes all of the Aleutian Chain and consistently elected the Alaska Native-preferred candidate during the last decade (District 37 in the 2002 Benchmark is 37.79% Alaska Native VAP.)

Table 5, below, lists the population data for the house districts in the Amended Proclamation Plan.

Table 5: Amended Proclamation State House Districts with Substantial Alaska Native Populations

House District	Total Population	Percent Deviation from Ideal Population	Percent Alaska Native Population	Percent Alaska Native Voting Age Population
36	16809	-5.33	85.70	81.13
37	17860	.59	51.02	42.97
38	16857	-5.06	52.38	45.72
39	16827	-5.23	70.84	65.63
40	16953	-4.52	71.15	62.77

The Alaska Native population in the three senate districts in the Amended Proclamation Plan also changes, of course:

- District T: The Alaska Native population shifts only slightly because of the small changes made to District 39.
- District S: The Alaska Native population decreases because the percentage Alaska Native in District 37 (with the Aleutians reunited), as well as District 38, decreases.
- District R: The Alaska Native population increases because District 36 has a much higher Native population in the Amended Plan than in the original Proclamation Plan.

The table below (Table 6) provides the racial composition of the three state senate districts with substantial Alaska Native populations in the Amended State House Plan.

Table 6: Amended Proclamation State Senate Districts with Substantial Alaska Native Populations

Senate District	House Pairing to Produce Senate District	Total Population	Percent Deviation from Ideal Population	Percent Alaska Native Population	Percent Alaska Native Voting Age Population
R	Districts 35 and 36	33760	-4.93	52.47	47.37
S	Districts 37 and 38	34717	-2.23	51.68	44.24
T	Districts 39 and 40	33780	-4.87	71.00	64.17

The Alaska Native population in the five Amended state house districts and the three Amended state senate districts are all above the target percentage of 41.8% Alaska Native VAP. The largest decrease in Alaska Native population is in Amended House District 37. The Alaska Native percentage decreases in this district in order to reunite the Aleutians. But, as

previously mentioned, the resulting percentage (42.97% Alaska Native VAP) is still higher than it is under the Benchmark district that includes the Aleutian Chain (Benchmark District 37 is 37.79% Alaska Native VAP).

4.0 Comparison of Benchmark, Proclamation and Amended Proclamation Plans Using Recompiled Election Results

One means of determining if proposed minority districts are likely to elect minority-preferred candidates to office is to examine recompiled election results for elections that included minority candidates that are preferred by minority voters. Both primary and general elections should be analyzed: recompiled primary results will indicate whether the minority-preferred candidate can win the party nomination (in the political party of minority voters' preference) in the proposed district, and recompiled general election results will determine if the minority-preferred candidate can go on to actually win the seat.

Although I often make use of recompiled election results to assist me in determining the likely effectiveness of a proposed district, in Alaska this approach was not particularly instructive because in neither of the statewide general elections that included an Alaska Native candidate was that candidate the minority-preferred candidate. More specifically, in the 2006 contest for US Representative, the very popular long-time white Republican incumbent (Don Young) received the support of the majority of both Alaska Native and white voters – the Alaska Native candidate (Diane Benson) was not the candidate of choice of Alaska Native voters. And in the 2002 race for Governor, the Alaska Native candidate (Diane Benson) ran as the Green Party candidate and received very few votes, including very few Alaska Native votes.

In the litigation that followed the adoption of the Proclamation Plan (*In re 2011 Redistricting Cases*), however, Plaintiffs' expert Dr. Arrington examined recompiled election results. Although there were a number of serious flaws with his approach,⁸ I ultimately relied on recompiled elections results for one statewide general election and two Democratic primary elections to compare the legislative plans (the 2002 Benchmark Plan, the Proclamation Plan, and the Demonstration Plan put forward by Plaintiffs in the case) in my rebuttal report. I

⁸In the rebuttal report I offered in the case, I point out that not only did Dr. Arrington ignore the fact that there was not a minority-preferred Alaska Native candidate in the contests he examined, he also included contests that were not racially polarized (recompiling election results for a contest that is not polarized provides no information about the effectiveness of a proposed minority district in instances when the electorate is racially polarized) and accorded equal weight to all of the primary contests he employed – not only polarized and not polarized contests, but Democratic and Republican primaries. Since very few Alaska Natives choose to participate in Republican primaries, it does not inform the analysis to consider these primaries when determining if proposed districts will provide minority voters with the ability to elect minority-preferred candidates to office. Only Democratic primaries, and only contests that are racially polarized, are useful in comparing the effectiveness of districts across various proposed plans in Alaska.

have used recompiled results for these same three contests to compare the effectiveness of the 2002 Benchmark, Proclamation and Amended Proclamation Plans here.

General Election Analysis As mentioned above, in neither of the two statewide general elections analyzed was the Alaska Native candidate the minority-preferred candidate. Moreover, only one of these two contests was racially polarized – the 2002 election for governor. In this 2002 contest, a clear majority of Alaska Native voters supported Fran Ulmer (the Democratic candidate) while a majority of the white voters supported her Republican opponent, Frank Murkowski (who won the contest).

Although the 2002 gubernatorial contest does not include an Alaska Native candidate preferred by Alaska Native voters, it does include a clear Alaska Native-preferred candidate (Ulmer). Table 7, below, presents the recompiled election results for this 2002 general election contest to determine how the Alaska Native-preferred candidate did in each of the minority districts in the Benchmark, Proclamation and Amended Proclamation Plans.

Table 7: Recompiled Results for the 2002 General Election for Governor

Benchmark Plan				Proclamation Plan				Amended Proclamation Plan			
District	Dem	Rep	% Dem	District	Dem	Rep	% Dem	District	Dem	Rep	% Dem
6	1915	1880	50.5	36	2264	1455	60.9	36	2603	1193	68.6
37	1383	1402	49.7	37	1863	852	68.6	37	1661	1164	58.8
38	2434	689	77.9	38	2835	1763	61.7	38	2831	1742	61.9
39	2446	1071	69.5	39	2778	1824	60.4	39	2700	1875	59.0
40	1991	1173	62.9	40	1841	1148	61.6	40	1841	1148	61.6
C	4101	4087	50.1	R	4068	4072	50.0	R	4332	3732	53.7
S	3817	2091	64.6	S	4698	2615	64.2	S	4492	2906	60.7
T	4437	2244	66.4	T	4619	2972	60.8	T	4541	3023	60.0

Only in the Amended Proclamation Plan did the Alaska Native-preferred candidate carry all eight districts. (In the 2002 Benchmark Plan the Alaska Native-preferred candidate was defeated in District 37.)

Democratic Primary Analysis My racial bloc voting analysis of Alaska primary elections over the course of the past decade indicate two relevant points for examining recompiled election results in this instance: Alaska Natives tend to vote in Democratic primaries rather than Republican primaries, and only two of the four statewide Democratic primaries that included Alaska Native candidates were polarized. The two Democratic contests that were polarized and therefore are of some comparative value are the 2008 primary for US Representative (Diane Benson, an Alaska Native, was the Alaska Native-preferred candidate but whites supported Ethan Berkowitz) and the 2006 primary for Lieutenant Governor (Donald Olson, an Alaska Native, was the Alaska Native-preferred candidate but the white-preferred candidate was Berkowitz).

The election results for these two Democratic primaries were recompiled for the Benchmark, Proclamation and Amended Proclamation Plans. Table 8, below, summarizes the results of this recompilation by indicating the percentage of times (100%, 50% or 0%) that the Alaska Native-preferred candidate carried the minority districts in each of the three plans. (The recompiled election results on which this summary is based can be found in the Appendix.)

As demonstrated by Table 8, the minority-preferred candidate wins at least one of the two primaries in every district in all three of the plans, including the Amended Proclamation Plan.

**Table 8: Percentage of Racially Polarized Primary Election Contests in which the Alaska Native-Preferred Candidate Carried the District:
Benchmark, Proclamation and Amended Proclamation Plans**

<i>District</i>	Benchmark Plan	<i>District</i>	Proclamation Plan	Amended Proclamation Plan
6	50%	36	100%	100%
37	50%	37	100%	50%
38	100%	38	100%	50%
39	50%	39	100%	50%
40	50%	40	50%	50%
C	50%	R	50%	50%
S	100%	S	100%	50%
T	50%	T	50%	50%

It should also be noted that although the Alaska Native candidate won the 2006 primary in Proclamation District 38, it was by one vote; and although the Alaska Native candidate lost this contest in Amended District 38, it was also by only one vote. Thus there is, in fact, very little difference between District 38 in the Proclamation Plan and District 38 in the Amended Proclamation Plan. (The Alaska Native candidate in the 2008 primary won in both Proclamation and Amended Proclamation Districts 38.)

The same is true of District 39: the Alaska Native candidate won by nine votes in the 2008 primary in the Proclamation Plan but lost by six votes in the Amended Proclamation Plan. (The Alaska Native candidate won overwhelmingly in District 39 in the 2006 primary in both the Proclamation and Amended Proclamation Plans.)

5.0 Alternative Plans Proposed

Although several Alaska Native groups have come forward expressing concerns about both the Proclamation and Amended Proclamation Plans, the alternative plans offered or

supported by these groups do not provide Alaska Natives with a greater opportunity to elect their candidates of choice to legislative office.

The Calista Plan The Calista Corporation, in conjunction with the plaintiffs in *In re 2011 Redistricting Cases*,⁹ argue that Amended Proclamation District 38 is not an effective Alaska Native district.¹⁰ They have offered the courts a series of alternative plans, the latest version (the Calista Plan) which is summarized in Table 9 below.

Table 9: Alaska Native Voting Age Populations of Districts with Significant Alaska Native Populations in Amended Proclamation and Calista Plans

Districts	Amended Proclamation Plan	Calista Plan
36	81.13	80.55
37	42.97	41.06
38	45.72	47.19
39	65.63	66.72
40	62.77	62.77
R	47.37	47.26
S	44.24	43.90
T	64.17	64.71

Although Calista District 38 has a slightly higher Alaska Native VAP (47.19%) than Amended Proclamation District 38 (45.72%), the district is unlikely to elect Alaska Native-preferred candidates. This is because, unlike the Amended Proclamation District 38, which brings in white Democrats from Fairbanks to meet the equal population standard in the district, the Calista Plan brings in white Republicans.¹¹ As a consequence, although Alaska Natives vote

¹⁰The claim appears to rest on a report by Dr. Chase Hensel, a cultural and linguistic anthropologist. Hensel compares the turnout rates in seven homogenous Native precincts to two homogenous non-Native precincts in Amended Proclamation District 38. Hensel concludes that non-Natives turned out at higher rates than Natives in primary and general elections in this proposed district and implies that the district is therefore not effective. There are several problems with this approach: first, only homogeneous precincts are examined (no regression or ecological inference estimates are produced to estimate turnout rates for the entire district); second, only turnout rates are considered – cohesion and crossover rates are ignored in making his determination; and third, when cohesion and crossover rates are considered, as is the case with recompiled election results, Amended Proclamation District 38, is, in fact, effective.

¹¹The rural Native districts were substantially under-populated and therefore at least one of the five districts had to pick up urban population not previously included within this set of Native districts. Proclamation District 38 picks up this population in Fairbanks. Because the Alaska Native population in

Democratic, Calista District 38 is a Republican district. This is true not simply in the 2002 general election for governor, but for most of the recent statewide competitive general elections, as Table 10, below, illustrates.

Table 10 provides recompiled election results from recent statewide general elections for Amended Proclamation District 38 and Calista District 38. Amended Proclamation District 38 is, as intended by the Board, a solidly Democratic district (the Democratic candidate carried the district in all 10 contests). However, Republican candidates carried Calista District 38 in seven of the 10 contests examined.

Table 10: Recompiled General Election Results for the top two candidates House District 38 in the Amended Proclamation Plan and the Calista Plan¹²

Election	Amended Proclamation Plan: District 38			Calista Plan: District 38		
	Dem	Rep	% Dem	Dem	Rep	% Dem
2002 Governor	2831	1742	61.9	2196	2246	49.4
2006 Governor	2906	1438	66.9	2312	1585	59.3
2010 Governor	2359	2336	50.2	1599	2419	39.8
2004 US President	2602	2513	50.9	1888	3451	35.4
2008 US President	2599	2422	51.8	2005	2840	41.4
2006 US Representative	2465	2125	53.7	1725	2331	42.5
2008 US Representative	2692	2209	54.9	2175	2503	46.5
2004 US Senate	3373	1741	66.0	2770	2475	52.8
2008 US Senate	3069	1888	61.9	2680	2037	56.8
2010 US Senate	1399	1060	56.9	784	1189	39.7

AFFR 7th Adjusted Plan Other Alaska Native groups have expressed support for the AFFR 7th Adjusted Plan (Bristol Bay Native Corporation; Doyon, Limited). The Alaska Native VAPs for the Alaska Native districts in this plan (compared to the Amended Proclamation Plan) can be found in Table 11, below.

Fairbanks is not sufficiently concentrated to ensure that the population added from Fairbanks is mostly Alaska Native, a conscious effort was made by the Board to ensure that the white population that was added to Proclamation District 38 tended to vote Democratic since Alaska Natives tend to vote Democratic.

¹²This table does not include the 2002, 2004 or 2010 US Representative contests in which Republican candidate Don Young won with 69% or more percent of the vote – clearly supported by all voters, including Alaska Natives – nor does it include the 2002 US Senate contest in which long-serving, Republican candidate Ted Stevens won an overwhelming victory (78%) – again clearly supported by Alaska Natives as well as white voters.

**Table 11: Alaska Native Voting Age Populations of Districts with
Significant Alaska Native Populations in
Amended Proclamation and AFFR 7th Adjusted Plans**

Amended Proclamation Plan Districts	Amended Proclamation Plan: Percent Alaska Native VAP	AFFR 7th Adjusted Plan Districts	AFFR 7th Adjusted Plan: Percent Alaska Native VAP
36	81.13	35	42.82
37	42.97	36	62.45
38	45.72	37	84.06
39	65.63	38	34.56
40	62.77	39	79.73
R	47.37	R	52.65
S	44.24	S	56.65
T	64.17	T	42.06

This plan offers as one of its eight Alaska Native districts a district in the interior (District 35) that is only 42.8% Alaska Native in voting age population.¹³ More importantly, this district, like Calista District 38, brings in urban white Republicans rather than Democrats to meet equal population standards. The result is a district in which Alaska Native-preferred candidates can expect little crossover because it is a solidly Republican district – Republican candidates carried 70% of the recent statewide competitive general elections in this proposed district, as Table 12, below, illustrates.

**Table 12: Recompiled General Election Results for the top two candidates
House District 38 in the Amended Proclamation Plan and
House District 35 in the AFFR 7th Adjusted Plan**

Election	Amended Proclamation Plan: District 38			AFFR 7th Adjusted Plan: District 35		
	Dem	Rep	% Dem	Dem	Rep	% Dem
2002 Governor	2831	1742	61.9	2389	2665	47.3
2006 Governor	2906	1438	66.9	2342	1965	54.4
2010 Governor	2359	2336	50.2	1782	2639	40.3
2004 US President	2602	2513	50.9	2137	3993	34.9
2008 US President	2599	2422	51.8	2090	3390	38.1
2006 US Representative	2465	2125	53.7	1938	2542	43.6
2008 US Representative	2692	2209	54.9	2457	2785	46.9
2004 US Senate	3373	1741	66.0	3105	2859	52.1
2008 US Senate	3069	1888	61.9	2892	2371	55.0
2010 US Senate	1399	1060	56.9	1782	2639	40.3

¹³ In addition, the Aleutian Island district in this plan (District 38), is only 34.6% Alaska Native in voting age population.

The AFFR Plan, like the Calista Plan, provides one less effective Alaska Native district than the 2002 Benchmark Plan and both plans are therefore retrogressive.

6.0 Conclusion

In my expert opinion, the Amended Proclamation Plan is not retrogressive. The 2002 Benchmark Plan included eight effective Alaska Native districts, five in the state house and three in the state senate. The Amended Proclamation Plan also offers five effective Alaska Native districts in the state house and three in the state senate. Table 14, below, lists the effective districts in both the 2002 Benchmark and the Amended Proclamation Plans.

Table 14: Effective State Legislative Districts in the 2002 Benchmark and Amended Proclamation Plans

2002 Benchmark Districts	Percent Alaska Native Voting Age Population	Amended Proclamation Districts	Percent Alaska Native Voting Age Population
6	49.97	36	81.13
37	37.79	37	42.97
38	82.67	38	45.72
39	83.44	39	65.63
40	63.60	40	62.77
C	42.41	R	47.37
S	58.32	S	44.24
T	72.38	T	64.17

Although the Alaska Native voting age percentages in the districts declined between the two plans, a decrease was unavoidable given the loss of population in the Alaska Native rural districts. Moreover, the decline was not sufficiently low to jeopardize the effectiveness of the districts.

Appendix A
Recompiled Election Results for Democratic Primaries:
Benchmark, Proclamation and Amended Proclamation Plans

Table A1: 2006 Democratic Primary for Lieutenant Governor

Table A1a: 2002 Benchmark Plan

District	Votes for Berkowitz	Votes for Olson	Votes for Rollins	Votes for Rollison	Percent Berkowitz	Percent Olson (Native-Preferred)	Percent Rollins	Percent Rollinson
6	494	218	188	70	50.9	22.5	19.4	7.2
37	456	312	178	84	44.3	30.3	17.3	8.2
38	301	624	241	92	23.9	49.6	19.2	7.3
39	187	1491	90	44	10.3	82.3	5.0	2.4
40	168	1018	84	32	12.9	78.2	6.5	2.5
C	1037	473	469	221	47.1	21.5	21.3	10.0
S	757	936	419	176	33.1	40.9	18.3	7.7
T	355	2509	174	76	11.4	80.6	5.6	2.4

Table A1b: Proclamation Plan

District	Votes for Berkowitz	Votes for Olson	Votes for Rollins	Votes for Rollison	Percent Berkowitz	Percent Olson (Native-Preferred)	Percent Rollins	Percent Rollinson
36	503	555	266	107	35.2	38.8	18.6	7.5
37	351	412	139	75	34.0	40.0	18.7	7.3
38	624	625	195	77	41.0	41.1	12.8	5.1
39	426	1237	140	62	22.8	66.3	7.5	3.3
40	159	928	81	31	13.3	77.4	6.8	2.6
R	893	693	398	173	41.4	32.1	18.5	8.0
S	975	1037	388	152	38.2	40.6	15.2	6.0
T	585	2165	221	93	19.1	70.7	7.2	3.0

Table A1c: Amended Proclamation Plan

District	Votes for Berkowitz	Votes for Olson	Votes for Rollins	Votes for Rollison	Percent Berkowitz	Percent Olson (Native-Preferred)	Percent Rollins	Percent Rollinson
36	526	649	305	120	32.9	40.6	19.1	7.5
37	371	337	163	67	39.6	35.9	17.4	7.1
38	621	620	196	73	41.1	41.1	13.0	4.8
39	401	1226	134	63	22.0	67.2	7.3	3.5
40	159	928	81	31	13.3	77.4	6.8	2.6
R	885	785	427	180	38.9	34.5	18.8	7.9
S	992	957	359	140	40.5	39.1	14.7	5.7
T	560	2154	215	94	18.5	71.3	7.1	3.1

Table A2: 2008 Democratic Primary for US House of Representatives

Table A2a: 2002 Benchmark Plan

District	Votes for Berkowitz	Votes for Benson	Percent Berkowitz	Percent Benson (Native-Preferred)
6	497	740	40.2	59.8
37	458	546	45.6	54.4
38	678	1195	36.2	63.8
39	798	792	50.2	49.8
40	652	645	50.3	49.7
C	1208	1429	45.8	54.2
S	1136	1741	39.5	60.5
T	1450	1437	50.2	49.8

Table A2b: Proclamation Plan

District	Votes for Berkowitz	Votes for Benson	Percent Berkowitz	Percent Benson (Native-Preferred)
36	659	925	41.6	58.4
37	560	942	37.3	62.7
38	894	946	48.6	51.4
39	910	919	49.8	50.2
40	608	589	50.8	49.2
R	1350	1406	49.0	51.0
S	1454	1888	43.5	56.5
T	1518	1508	50.2	49.8

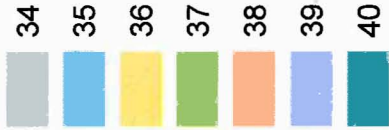
Table A2c: Amended Proclamation Plan

District	Votes for Berkowitz	Votes for Benson	Percent Berkowitz	Percent Benson (Native-Preferred)
36	765	1124	40.5	59.5
37	483	796	37.8	62.2
38	894	941	48.7	51.3
39	900	894	50.2	49.8
40	608	589	50.8	49.2
R	1427	1575	47.5	52.5
S	1377	1737	44.2	55.8
T	1508	1483	50.4	49.6

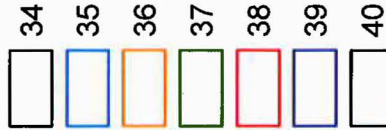
COMPARISON BETWEEN PROCLAMATION PLAN AND AMENDED PROCLAMATION PLAN

Legend

Amended Proclamation Plan



Proclamation Plan



39 Amended Proclamation District

40 Proclamation District

