IN THE SUPREME COURT OF THE STATE OF ALASKA

In Re 2021 Redistricting Cases.	)	Supreme Ct. No. S-18332
	)	Superior Court Case Nos. 3AN-21-08869 CI 3VA-21-00080 CI

CITY OF VALDEZ AND MARK DETTER'S
PETITION FOR REVIEW

March 2, 2022

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The City of Valdez and Mark Detter, through their counsel, Brena, Bell & Walker, P.C., hereby seek appellate review of the superior court's Findings of Fact and Conclusions of Law and Order ("Order"), issued February 15, 2022.

I. QUESTIONS PRESENTED FOR REVIEW

This Petition for Review is brought on behalf of the City of Valdez and Mark Detter (Plaintiffs) requesting that this Court grant immediate review of the trial court's Order issued February 15, 2022. Review is sought regarding the following issues:

1. Whether the Alaska Redistricting Board (Board) engaged in reasoned decision-making, applied the constitutional requirements for establishing districts properly and consistently, and took a hard look at redistricting alternatives when determining where Valdez should be districted.

2. Whether Districts 29 and 36 meet the constitutional requirement that districts be relatively integrated socio-economic areas to the degree practicable as required by article VI, section 6 of the Alaska Constitution.

3. Whether District 36 meets the constitutional requirement that districts be compact as required by article VI, section 6 of the Alaska Constitution.

4. Whether the Board's inconsistent reliance upon ANCSA[1] boundaries meets the constitutional requirements of article VI, section 6 of the Alaska Constitution.

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[1] Alaska Native Claims Settlement Act.

5. Whether the Board followed the *Hickel*[2] process when "Board Members were actively considering [Voting Rights Act ("VRA")]-related issues since the beginning of the process."[3]

II. STATEMENT OF GROUNDS FOR GRANTING REVIEW

Review of the questions presented should be granted for the reasons set forth in Appellate Rule 402(b)(1) and (2). In light of the extremely expedited timeline for disposition of appeals related to the trial court's Order, all appeals related to the Order should be decided in advance of any remand to the Board. Delay in deciding all appeals related to the Order will likely result in 2022 elections being determined under a redistricting plan that has not been fully litigated. Thus, absent immediate review of the Order, Plaintiffs' legal rights will be impaired. Additionally, the trial court's Order involves important questions of law on which there are substantial grounds for differences of opinion, and immediate review by this Court will "materially advance the ultimate termination of the litigation."[4]

III. INTRODUCTION

Since statehood, every Governor and Board has properly applied the constitutional standards of article VI, section 6 to place Valdez in a house district with Richardson Highway communities, with Prince William Sound communities, or with both. The Board

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2 *Hickel v. Southeast Conference*, 846 P.2d 38 (Alaska 1992).

3 Order at 128 [EXC.2013]

4 Appellate Rule 402(b)(2).

in this case has orphaned the voters of Valdez from their closest neighbors and placed them in a district with voters with whom they do not work, live, or share common concerns. The Board took this action not through a careful consideration of the constitutional requirements for establishing a district, but by default as the result of the Board members' choosing to first pursue their own nonconstitutional polices, and then, with time running out, choosing to ignore the remaining viable alternatives and the voters of Valdez altogether.

This Court should act to ensure house districts are established based upon constitutional requirements and not upon non-constitutional policies of the Board's individual members. This Court should also act to ensure that the constitutional requirements for establishing house districts are not defined so broadly or applied so inconsistently that they lose practical meaning as limitations on the Board's discretion. Based on the record in this case, this Court should properly define the constitutional requirements for establishing house districts and remand this matter to the Board to apply those proper definitions when evaluating the viable alternatives it chose not to consider for the voters of Valdez.

IV. STANDARD OF REVIEW

Plaintiffs incorporate by reference the standard of review articulated in the Skagway Plaintiffs' petition. This Court should review the Board's 2021 Proclamation Plan and the trial court's Order with particular vigor in light of the highly expedited nature of this litigation. The four and one-half month delay in obtaining the census data changed the

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beginning date for the districting process, but not the ending date. As a result, the parties and trial court were tasked with conducting what is normally a six-month proceeding in six weeks. The trial had only six days from receiving over 1,000 pages of proposed findings and conclusions and four days from closing arguments to issue its 171-page Order.

Under these extreme circumstances, a rigorous analysis of the constitutional requirements, prior case authority, and their application to the facts of Valdez's case was, perhaps inevitably, compromised. Accordingly, Valdez respectfully requests this Court ensure justice has been met in this case through its careful *de novo* review of whether the districts Valdez has challenged meet the constitutional requirements set forth in article VI of the Alaska Constitution.

V. STATEMENT OF FACTS

The trial court's Order sets forth a recitation of relevant facts. However, noteworthy in the Order is the absence of discussion of facts related to the Board's refusal to take a hard look at viable redistricting alternatives that comported with the overwhelming public comment provided by Valdez and the Matanuska-Susitna Borough (Mat-Su); the absence of substantive discussion regarding constitutional redistricting criteria with regard to Districts 29 and 36; Board members' prioritization of particular outcomes over the constitutional redistricting criteria; and inconsistent application of redistricting criteria to advance individual Board member priorities. Additional facts are embedded in the argument section of this Petition for efficiency. Due to the nature of the Board's proceedings, review of video from Board meetings is often the only way to discern what

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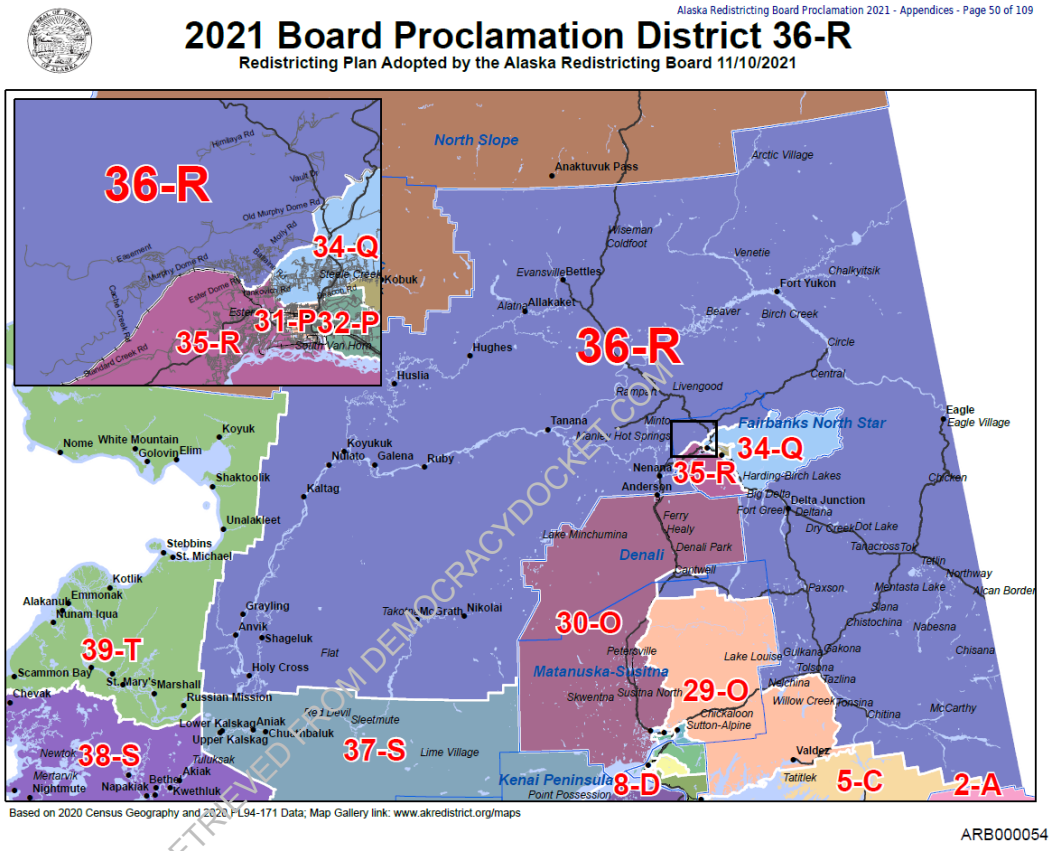
specifically was discussed and the nature of the discussion. Plaintiffs encourage the Court to review video excerpts identified in the citations and in the excerpt. The Board's Final Plan focusing on the Districts related to Valdez is embedded below for reference.



The Board left itself only four days, November 2 through November 5, 2021, after the public hearing tour to incorporate public comments and finalize a house plan. Accordingly, review of the Board's actions during this critical time period is particularly germane to this Court's inquiry.[5] Time after time the Board delayed deliberations

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[5] The Board also held public meetings on August 23-24, 2021, September 7-9, 2021, September 17, 2021, and September 20, 2021. During the September 17 and 20, 2021, meetings, the Board heard presentations from the Alaska Democratic Party, which placed Valdez in a rural interior district; AFFR, which placed Valdez in a Prince William Sound district with Kodiak and placed Cordova in a rural interior district; from AFFER, which

regarding where to district Valdez or refused to consider alternatives for Valdez until no options remained aside from pairing Valdez exclusively with Mat-Su.

A. November 2, 2021

During the November 2, 2021, meeting, the Board first broached the subject of where to place Valdez during their mapping work session in the late afternoon[6] but Member Bahnke immediately shifted the discussion to District 40,[7] on which the Board reached consensus. The Board then spent substantial time addressing Southeast[8] and briefly discussed the possibility of including Cordova in Southeast, which would make it possible to place Valdez within a maritime district with other Prince William Sound communities and Kodiak. However, Board Member Borromeo stated she was comfortable "not entertaining bringing in Cordova,"[9] and the Board proceeded to discuss configurations for Southeast without Cordova. At the end of the discussion, the Board noted that they had

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included Valdez with many Richardson Highway communities, rural interior communities and Eielson within the FNSB; and from the Senate Minority Caucus, which paired Valdez with Kodiak and western Cook Inlet and placed Cordova in a rural interior district including some population from Fairbanks North Star Borough (FNSB). The Board engaged in a public hearing tour from September 27-November 1, 2021, but did not have public meetings for the purposes of mapping.

[6] Board Meeting Tr. 69:10-21 (Nov. 2, 2021, afternoon) [ARB008766] (Member Simpson asked, "Do we have another home for Valdez?" to which Mr. Torkelson replied "Well that's another question. Where does Valdez go?") [EXC.0301].

[7] Board Meeting Tr.69:22-23 (Nov. 2, 2021, afternoon) [ARB008766] ("I thought we were going to start with District 40.") [EXC.0301-62].

[8] Board Meeting Tr.71:1 – 130:2 (Nov. 2, 2021, afternoon) [ARBARB008768-008827) [EXC.0303-62].

[9] Board Meeting Tr.76:22 – 78:17 (Nov. 2, 2021, afternoon) [ARB008773-008775] [EXC.0308-10].

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two versions of Southeast to decide on "once we get down to the wire" neither of which included Cordova in Southeast,[10] and Member Simpson stated "if we spend this kind of time on even four districts, we're never going to get done in time."[11]

The Board then began discussing Anchorage[12] and did not discuss Valdez again during the meeting except for brief mention of Valdez's comments, which the Board declined to print out[13] and which most members did not recall reading.[14]

B. November 3, 2021

The Board opened the November 3, 2021, meeting by discussing Anchorage[15] before shifting to other areas of the state,[16] acknowledging that they had "finished Kenai" but not yet addressed Mat-Su,[17] and working to accommodate the FNSB assembly

[10] Board Meeting Tr.126:25 – 127:5 (Nov. 2, 2021 Afternoon) [ARB008823-008724] [EXC.0358-59].

[11] Board Meeting Tr.134:8-10 (Nov. 2, 2021 Afternoon) [ARB008831] [EXC.0366].

[12] Board Meeting Tr.130:23 – 147:19 (Nov. 2, 2021 Afternoon) [ARB008827– 08844] [EXC.0362-79].

[13] Board Meeting Video at 1:13:30 (Nov. 2, 2021) [EXC. 2074]; Board Meeting Tr.104:5-10 (Nov. 2, 2021 Afternoon) [ARB008801] [EXC.0336].

[14] Board Meeting Tr.104:5-10 (Nov. 2, 2021 Afternoon) [ARB008801] (Simpson: "I don't remember much [of Valdez's Comments]") [EXC.0336].; Borromeo Depo. Tr. 143:11-23 ("I skimmed the comments from the City of Valdez. They were quite extensive, and they came in during a very busy time. . . . Q: Did you review the City of Valdez' resolution? A: No.") [EXC.1319]; Binkley Depo. Tr. 151:9-12 ("were you aware that Valdez filed extensive comments, later, with regard to its position? A: I don't recall that.") [EXC. 1334].

[15] Board Meeting Tr. 2:7 – 107:14 (Nov. 3, 2021) [ARB007362-007467] [EXC.0411-0516].

[16] Board Meeting Tr. 107:15 – 235:4 (Nov. 3, 2021) [ARB007467-007595] [EXC.0516].

[17] Board Meeting Tr. 234:3 – 24 (Nov. 3, 2021) [ARB007594] [EXC.0643].

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resolution requesting that excess population be shed into another district.[18] The Board quickly concluded, "you have to probably shed them into 36 and then drop Valdez," which would necessitate pairing Valdez with Mat-Su.[19]

Member Marcum was concerned with pairing Valdez and Mat-Su noting the "clear socioeconomic reasons" why they should not be districted together,[20] and Ms. Borromeo responded that "if we keep Southeast like we're thinking and Cordova like we're thinking, Valdez is either a district of 5,000 or 3,500 or 4,000 residents or they're going to have to go to the next neighboring borough that they'll fit in."[21] Without further discussion on Valdez or Mat-Su, the Board decided that FNSB population "obviously [is] going to go into 36"[22] and engaged in a lengthy discussion regarding how to accomplish this.[23] During

[18] Board Meeting Tr. 234:20 – 239:25 [ARB ARB007594 – 007599] [EXC.0643-48].

[19] Board Meeting Tr. 239:22-25 (Nov. 3, 2021) [ARB007599] (Bahnke: "So you have to probably shed them into 36 and then drop Valdez." Binkley: "Put Valdez in with the Valley.") [EXC.0648].

[20] Board Meeting Tr. 240:1-6 (Nov. 3, 2021) [ARB007600] ("MEMBER MARCUM: Okay. I'm going to speak up here now. Because first of all, Mat-Su was [very clear] They didn't want Valdez. Valdez was exceptionally clear, to a hundred and however many pages, that they don't want Mat-Su either. So I think that's important for us to keep in mind.") [EXC.0649].; Board Meeting Tr. 240:24 – 241:22 (Nov. 3, 2021) [ARB007600-007601] [EXC.0649-50].

[21] Board Meeting Tr. 240:7-23 (Nov. 3, 2021) [ARB007600] [EXC.0649].

[22] Board Meeting Tr. 242:5 (Nov. 3, 2021) [ARB007602] [EXC.0651].

[23] Board Meeting Tr. 242:8 – 271:8 (Nov. 3, 2021) [ARB007602-007631] [EXC.0651-0680].

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the discussion, Mr. Singer asked, "Have you all made -- or talked about Valdez yet, or not really?" to which Chairman Binkley responded "Well, depends on what happens here."[24]

The Board noted that "we did hear from Cordova that they don't mind being a part of Southeast" and again briefly discussed placing Cordova in Southeast[25] but declined to explore any such plan. Instead, the Board reviewed Member Borromeo's plan pairing Valdez exclusively with Mat-Su.[26] Member Borromeo explained:

> So my proposed Mat-Su Borough still does take in Valdez. I think it's a necessary fit, albeit a little bit uncomfortable. But *because of the other policy decisions* that I would make in the [FNSB], the rural Interior and the VRAs, as well as Southeast in keeping that northern boundary at Yakutat versus bringing Cordova in, *this is the only place that's really left for Valdez to go*.[27]

Next, the Board discussed Member Marcum's proposed plan, which was a modification of V.3 and placed Valdez in District 36 with Richardson Highway communities.[28] At the conclusion of the presentations, Member Simpson stated that the Board had a "binary choice" regarding what to do with Valdez.[29]

[24] Board Meeting Tr. 271:9-12 (Nov. 3, 2021) [ARB007631] [EXC.0680].

[25] Board Meeting Tr. 280:21 – 24 (Nov. 3, 2021) [ARB007640] [EXC.0689].

[26] Board Meeting Tr. 319:3 – 332:11 (Nov. 3, 2021) [ARB007679-007692] [EXC.0728-41].

[27] Board Meeting Tr. 319:8 – 16 (Nov. 3, 2021) [ARB007679] (emphasis added) [EXC.0728].

[28] Board Meeting Tr. 307:24 – 316:24 (Nov. 3, 2021) [ARB007667-007676] [EXC.0716-25].

[29] Board Meeting Tr. 330:12-17 (Nov. 3, 2021) [ARB007690] [EXC.0739].

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Chairman Binkley noted the Mat-Su Borough "don't want to partner with Valdez."[30] In response, Member Borromeo stated, "Yeah. Like I said, I gave them everything they wanted plus a little more. I aim to please."[31] Member Bahnke stated "What I like about this in terms of the Mat-Su and what you've done in terms of 36 is it keeps 36 intact, meaning you're not pushing rural Interior villages out into Inupiat Yup'ik coastal communities. And it looks like we've met most of what the borough -- Mat-Su Borough had asked for." [32] The Board erupted in laughter when Chair Binkley responded "plus more."[33]

The Board then discussed a mapping exercise to explore other options for Valdez without disrupting District 36.[34] Thus, by November 3, the Board had decided not to explore any redistricting alternatives that altered District 36. Instead of engaging in a mapping exercise, the Board entered executive session to receive advice regarding whether pairing Valdez with Mat-Su would cause legal issues and determine "what we might bother

[30] Board Meeting Tr. 326:21-24 (Nov. 3, 2021) [ARB007686] [EXC.0716].

[31] Board Meeting Tr. 326:25 – 327:2 (Nov. 3, 2021) [ARB007686-007687] [EXC.0716-17].

[32] Board Meeting Tr. 331:11-18 (Nov. 3, 2021) [ARB007631] [EXC.0740].

[33] Board Meeting Video at 6:31:25 (Nov. 3, 2021) [EXC.2080]; Board Meeting Tr. 331:11-18 (Nov. 3, 2021) [ARB007631] [EXC.0740].

[34] Board Meeting Tr. 335:6 – 336:20 (Nov. 3, 2021) [ARB007695-007696] (Binkley: "I think it would be instructive for us to go through that exercise, just to see what all the disruptions would be in all the other areas, so at least we've given it a good shot to try and accommodate what Valdez's desires are without disrupting District 36, as Melanie's indicated.") [EXC.0744-45].

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to do." [35] The Board did not reenter public session until the next day, and the mapping exercise to explore accommodating Valdez's desires "without disrupting 36" never occurred.

C. November 4, 2021.

The November 4, 2021, meeting began with Member Borromeo suggesting the Board finalize the map by starting in District 40 and working down the coast to the Aleutians.[36] Member Marcum disagreed that the Board had reached consensus on areas other than District 40 and noted "we'll have to make policy decisions as we go that are going to require a fair amount of discussion, as opposed to just map drawing."[37] Member Simpson responded "there's a time pressure on us which is going to impact the amount of deliberations we're able to do"[38] and the Board needed to find consensus "with an up-down vote" and "come up with a map by, like, tomorrow."[39]

Chairman Binkley identified the decision of whether to shed population from FNSB and "whether Valdez stays in or out" of District 36 as "pivotal decisions" and noted that

[35] Board Meeting Video at 6:36:52 (Nov. 3, 2021) [EXC. 2081]; Board Meeting Tr. 335:6 – 336:20 (Nov. 3, 2021) [ARB007695-007696] [EXC.0744-45].

[36] Board Meeting Tr. 5:10-15 (Nov. 4, 2021) [ARB009175] ("what I'm suggesting is that we just do the North Slope all the way down to the Aleutians. I -- I've heard a lot of similar thoughts and also concerns on those districts, and I think that we -- we could come to consensus on them.") [EXC.0798].

[37] Board Meeting Tr. 5:18 – 6:6 (Nov. 4, 2021) [ARB009175-009176] [EXC.0798-99].

[38] Board Meeting Tr. 6:18-19 (Nov. 4, 2021) [ARB009176] [EXC.0799].

[39] Board Meeting Tr. 6:9-25 (Nov. 4, 2021) [ARB009176] [EXC.0799].

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the decision "kicks [Valdez] into the Mat-Su."[40] Rather than discuss Valdez, the Board reached consensus on District 40[41] and Southeast without considering placing Cordova in a Southeast district.[42]

Shortly thereafter, Member Simpson suggested the Board "go to Valdez and see if we can take care of that."[43] Instead, the Board explored potential modifications to Member Borromeo's Mat-Su districts.[44] During this discussion, Member Bahnke stated:

> And I think it's already been established that Valdez is socioeconomically compatible with the Mat-Su or with Anchorage, and geographically for compactness sake, I believe it makes more sense to connect them to the Mat-Su than it would to connect them to Anchorage. *But I do believe counsel advised us there is precedence for including Valdez in the Mat-Su*.[45]

Member Marcum stated that she would like to "wait on deciding for sure what to do with Valdez until we talk about Fairbanks"[46] and again expressed concern with pairing Valdez and Mat-Su. Member Bahnke responded that "there has been precedence established that there is socioeconomic linkages that have been established between Valdez and the Mat-Su"[47] and Chairman Binkley stated "let's not rehash that. Let's see if we can get consensus

[40] Board Meeting Tr.10:15 – 11:5 (Nov. 4, 2021) [ARB009180-009181] [EXC.0803].

[41] Board Meeting Tr.15:7 – 16:3 (Nov. 4, 2021) [ARB009185-009186] [EXC.0808-09].

[42] Board Meeting Tr.16:3 – 22:20 (Nov. 4, 2021) [ARB009186-009192] [EXC.0809-15].

[43] Board Meeting Tr. 22:22 – 23:4 (Nov. 4, 2021) [ARB009192-009193] [EXC.0815-16].

[44] Board Meeting Tr. 23:8 – 32:19 (Nov. 4, 2021) [ARB009193-009202] [EXC.0816-25].

[45] Board Meeting Tr. 37:1-9 (Nov. 4, 2021) [ARB009207] (emphasis added) [EXC.0830].

[46] Board Meeting Tr. 37:16 - 22 (Nov. 4, 2021) [ARB009207] [EXC.0830].

[47] Board Meeting Tr. 37:23 – 38:16 (Nov. 4, 2021) [ARB009207-009208] [EXC.0830-31].

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on the [FNSB] and maybe that'll solve both problems."[48] The Board then reached general consensus on how to shed FNSB population into District 36,[49] confirmed that none of the VRA districts were impacted by their decision, and Chairman Binkley noted "the only thing is Valdez is out."[50]

The Board then added an appendage to District 36 that broke the Mat-Su and Denali borough boundaries in order to place Cantwell into District 36 and keep Ahtna intact.[51] At the conclusion of their discussion, Chairman Binkley asked if the Board had any objections, to which Member Marcum responded, "I just want it to be clear that, you know, that takes us to another very hard discussion about Valdez."[52] Chairman Binkley replied, "Yeah. Yeah. Okay. Well, let's – let's move on. So fireworks?"[53] Member Bahnke replied that "Valdez has been established to have some socioeconomic ties with the Mat-Su area compared to the other option, which would push villages from District 36 into District 39."[54] Member Marcum replied, "[a]nd I will continue on the record to say that Mat-Su Borough has testified to the socioeconomic non-integration of Valdez. Valdez has testified to the non-integration of them with the Mat-Su Borough."[55] Rather than discuss any

[48] Board Meeting Tr. 38:23 – 39:1 (Nov. 4, 2021) [ARB009208-009209] [EXC.0831].

[49] Board Meeting Tr. 39:15 – 72:6 (Nov. 4, 2021) [ARB009209-009242] [EXC.0832-65].

[50] Board Meeting Tr. 71:6 – 72:25 (Nov. 4, 2021) [ARB009242] [EXC.0864-65].

[51] Board Meeting Tr. 72:7 – 80:7 (Nov. 4, 2021) [ARB009242-009250] [EXC.0865-73].

[52] Board Meeting Tr. 79:24 – 80:5 (Nov. 4, 2021) [ARB009249-009250] [EXC.0872-73].

[53] Board Meeting Tr. 80:6-1 (Nov. 4, 2021) [ARB009250] [EXC.0873].

[54] Board Meeting Tr. 80:8-19 (Nov. 4, 2021) [ARB009250] [EXC.0873].

[55] Board Meeting Tr. 80:8-19 (Nov. 4, 2021) [ARB009250] [EXC.0873].

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alternatives for Valdez, Chairman Binkley stated, "[w]hy don't we wait until we have consensus, and then we'll establish everything on the record"[56] and "assuming everything comes together and we have a solution on Valdez, shall we look at Cordova in District 5, and the Kenai Peninsula?"[57]

The Board reached consensus on those districts without consideration of alternatives that placed Valdez with Prince William Sound communities.[58] The Board entered executive session without discussing potential alternatives for Valdez. After returning from executive session, the Board immediately began discussing areas of consensus including the fact that Valdez would not be placed with Richardson Highway communities in District 36 or with Prince William Sound communities in District 5.[59]

Mr. Singer advised the Board that the superior court in 2001 allowed a pairing with Valdez and Anchorage and stated that "Valdez is currently paired with portions of the Mat-Su."[60] In response, Member Bahnke stated "they've both already been identified as being compact, contiguous, socioeconomically integrated" and Mr. Singer responded, "I think what I would say is that they're both likely constitutionally permissible options."[61]

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[56] Board Meeting Tr. 80:20-22 (Nov. 4, 2021) [ARB009250] [EXC.0873].

[57] Board Meeting Video at 1:40:30 [EXC. 2083]; (Nov. 4, 2021) Board Meeting Tr. 81:12-16 (Nov. 4, 2021) [ARB009251] [EXC.0874].

[58] Board Meeting Tr. 80:20 – 100:20 (Nov. 4, 2021) [ARB009250-009270] [EXC.0873].

[59] Board Meeting Tr. 102:25 – 104:16 (Nov. 4, 2021) [ARB009272-009274] [EXC.0895-97].

[60] Board Meeting Tr. 108:17 – 109:2 (Nov. 4, 2021) [ARB009278-009279] [EXC.0901-02].

[61] Board Meeting Tr. 109:3-13 (Nov. 4, 2021) [ARB009279] [EXC.0902].

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Member Simpson then stated, "I feel like we've discussed some solution to both Valdez and Fairbanks . . .we should focus on Anchorage getting more squared away, assuming Valdez is not going there kind of at the last minute."[62] After a lengthy discussion of Anchorage,[63] Ms. Borromeo stated "at this point, the only other option that I see for Valdez is an Anchorage pairing" although she was ready to vote on that too and suggested the Board "close out" Fairbanks, and Districts 39, 38, and 37.[64] After Ms. Marcum suggested exploring other alternatives for Valdez, Member Borromeo stated "I firmly object to placing Valdez into a large, rural district."[65] Member Marcum then stated that Valdez's goal of being part of a Richardson Highway district is a "historical issue and I just want to make sure we give it due diligence."[66] Member Bahnke expressed the binary nature of the Board's inquiry by stating:

> We've also heard perspective from Doyon. The whole reason they formed their coalition was to preserve the socioeconomic integrity of those rural Interior communities. So everyone's got their preference, but what litmus test -- which -- *which of the two pairings of Valdez, either in that rural Interior district versus where it has already been established by the courts that it has socioeconomic ties to the Mat-Su Valley*. . . . I don't feel like that rural Interior district is an option for Valdez. [67]

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[62] Board Meeting Tr. 113:4-8 (Nov. 4, 2021) [ARB009283] [EXC.0906].

[63] Board Meeting Tr. 113:10 – 159:1 (Nov. 4, 2021) [ARB009283-009329] [EXC.0906-52].

[64] Board Meeting Tr. 159:5-15 (Nov. 4, 2021) [009329] [EXC.0952].

[65] Board Meeting Tr. 160:5-6 (Nov. 4, 2021) [ARB0092330] [EXC.0953].

[66] Board Meeting Tr. 160:16 – 161:12 (Nov. 4, 2021) [ARB0092330-009331] [EXC.0953-54].

[67] Board Meeting Tr. 161:14 – 162:2 (Nov. 4, 2021) [ARB009331-009332] (emphasis added) [EXC.0954-55].

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Member Borromeo responded, "I don't think it preserves a path forward for you to get Valdez out of the Mat-Su."[68] Member Simpson noted:

> As to Valdez, intuitively, I thought Richardson Highway made the most sense for Valdez, much like the folks there have argued. *But the problem is that we also have an overpopulated Fairbanks, and there's no place for those people to go except into that large rural district. . . . Once you do that, it precludes any practicable solution to Valdez, really, except going with the closest contiguous and reasonably compact option, which looks like it's going to be forced over toward Mat-Su.* So that was not my first choice, but I think it's what we're left with as a practical solution to Valdez. And so I don't feel great about doing that, but I don't see a viable, practicable alternative to (indiscernible). And therefore, I don't think that Valdez into Anchorage is a likely scenario that we have to deal with when looking at Anchorage.[69]

After Member Marcum suggested that she wanted to explore other options for Valdez that could affect Districts 37, 38, and 39, Member Bahnke responded: "I already feel like I'm comfortable with where we need to put Valdez."[70] Board Members Bahnke, Borromeo, and Simpson then indicated they would not vote to place Valdez in District 36 and Member Bahnke stated "[i]t's off the table, as far as I'm concerned."[71] Member Marcum responded "[w]e can't default to the Mat-Su. . . . without clearly examining all the other options."[72] In response, Member Borromeo insisted "[t]he only other option that the Board is willing to consider, or the three of us have said that we're not willing to

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[68] Board Meeting Tr. 162:5-7 (Nov. 4, 2021) [ARB009332] [EXC.0955].

[69] Board Meeting Tr. 163:16 – 164:10 (Nov. 4, 2021) [ARB009333-009334] (emphasis added) [EXC.0956-57].

[70] Board Meeting Tr. 168:2-3 (Nov. 4, 2021) [ARB009338] [EXC.0961].

[71] Board Meeting Tr. 168:4-11 (Nov. 4, 2021) [ARB009338] [EXC.0961].

[72] Board Meeting Tr. 168:12-18 (Nov. 4, 2021) [ARB009338] [EXC.0961].

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consider, putting Valdez into the Interior. So we'd be putting . . . it with Anchorage."[73] Thus, the Board foreclosed consideration of districting Valdez any other communities.

Member Marcum offered to present several alternatives she had drawn pairing Valdez with the Richardson Highway corridor that the Board had not yet seen.[74] Other Board members refused to review the proposed alternatives let alone take a hard look at them.[75] Ms. Marcum then offered to prepare a map that paired Valdez with Anchorage, but again Board members argued against considering that alternative stating "[i]t's an unnecessary delay."[76] The Board had "not considered Anchorage with Valdez at all" prior to November 4, the day before they adopted a Final Plan.[77]

Member Marcum insisted that consideration of a district that paired Valdez with Anchorage was important because "you will not consider Valdez's primary request and the historical record of Valdez with the Interior"[78] and "I've got three different versions of

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[73] Board Meeting Tr. 168:19-22 (Nov. 4, 2021) [ARB009338] [EXC.0961].

[74] Board Meeting Tr. 171:1-173:17 (Nov. 4, 2021) [ARB009341-009343] ("I have multiple versions of putting Valdez in with District 36 that allows us to still break parts of the [FNSB]. But it does require changes to the districts that now you are wanting to lock in. And that's why I think that we can't close off those conversations today. . . I'd be happy to show you some of the Valdez with Interior maps that I've put together.") [EXC.0964].

[75] Board Meeting Video at 1:31:00 (Nov. 4, 2021) [EXC. 2082]; Board Meeting Tr. 171:1 – 173:17 (Nov. 4, 2021) [ARB009341-009343] [EXC.0964-66];

[76] Board Meeting Tr. 174:2-10 (Nov. 4, 2021) [ARB009344] [EXC.0967]; *See also* Board Meeting Tr. 170:19-22 (Nov. 4, 2021) [ARB009338] [EXC.0963]; Board Meeting Tr. 173:23-25 (Nov. 4, 2021) [ARB009343] [EXC.0966]; Board Meeting Tr. 171:24-25 (Nov. 4, 2021) [ARB009341] [EXC.0964].

[77] Board Meeting Tr. 171:17-18 (Nov. 4, 2021) [ARB009341] [EXC.0964].

[78] Board Meeting Tr. 170:23 – 171:1 (Nov. 4, 2021) [ARB009340-009341] [EXC.0963-64].

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making changes to the VRA districts that I have not pushed on you because I wanted the opportunity to get the other parts of the map right."[79] Members Bahnke and Borromeo both stated that they felt Member Marcum was "holding the VRA districts hostage."[80] Member Marcum responded, "[h]ow is it holding hostage when it would require changes to those districts in order to make other parts of the state compact, contiguous and socioeconomically integrated?"[81]

Member Marcum continued to express concern over locking in Districts 37, 38, and 39, which would force the Board to pair Valdez with Anchorage or Mat-Su.[82] Member Simpson replied, "we're down to the last day,"[83] and the Board proceeded to discuss and gain consensus on Districts 37, 38, and 39 and further discuss how to shed population from FNSB into District 36.[84] The Board articulated their consensus that Valdez would not be placed in District 36 and that it could only be placed with Mat-Su or Anchorage.[85]

[79] Board Meeting Tr. 174:11-175:19 (Nov. 4, 2021) [ARB009344-009345] [EXC.0967-68].

[80] Board Meeting Tr. 175:14-15 (Nov. 4, 2021) [ARB009345] [EXC.0968]; Board Meeting Tr. 172:20-22 (Nov. 4, 2021) [ARB009342] ("I feel like 39 and 36 are being held hostage until we decide on an Anchorage map.") [EXC.0965].

[81] Board Meeting Tr. 175:16-19 (Nov. 4, 2021) [ARB009345] [EXC.0968].

[82] Board Meeting Tr. 176:6-24 (Nov. 4, 2021) [ARB009346] [EXC.0969].

[83] Board Meeting Tr. 176:25 – 177:19 (Nov. 4, 2021) [ARB009346-009347] [EXC.0969-70].

[84] Board Meeting Tr. 179:22 – 192:15 (Nov. 4, 2021) [ARB009349-009362] [EXC.0972-85].

[85] Board Meeting Tr. 188:19-22 (Nov. 4, 2021) [ARB009358] ("CHAIR BINKLEY: . . .I think there's consensus -- maybe not unanimity, but I think there's consensus on Valdez either going in Mat-Su or Anchorage.") [EXC.0981].

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The Board did not review any of Member Marcum's alternatives pairing Valdez with the Richardson Highway corridor or engage in the due diligence she suggested before entering recess.

D. November 5, 2021.

Member Marcum began the November 5, 2021, meeting by stating:

> I have concerns about Valdez, and, you know, so I had offered yesterday to -- to try to find another solution to Valdez. *They've been really clear about their desire to be with Richardson Highway, and that was taken off the table yesterday. There are other solutions that they proposed for coastal, and that was also not a possibility. It was taken off the table. And so what -- you know, that kind of left them with Anchorage or the Mat-Su.* They've testified that they do not want to be with the Mat-Su -- official resolutions and such - the Mat-Su has testified they don't want Valdez with them, so I wanted to -- to look at really the only other opportunity to pair them with another area, and that would be with Anchorage. And so I volunteered to try to -- to do that, and I spent a lot of time on that last night. However, based upon some of the parameters that we now understand from our legal counsel, I was not able to find a reasonable solution for putting Valdez with Anchorage.[86]

Member Marcum also stated that "when legal constraints we were made aware of shut the door on the idea of Valdez being with Anchorage, I realized I had a -- a marathon to complete within a sprint time period to try to make those revisions."[87] The Board did not articulate what legal constraints that "shut the door" on pairing Valdez with Anchorage.

No alternative districts for Valdez were discussed during the rest of the meeting even though the Board received a substantial amount of public comment against separating

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[86] Board Meeting Tr. 5:1-22 (Nov. 5, 2021) [ARB007862] (emphasis added) [EXC.1076].

[87] Board Meeting Tr. 28:17-21 (Nov. 5, 2021) [ARB007885] [EXC.1077].

Goldstream from FNSB and regarding the lack of compactness and socio-economic integration of District 36. At meeting's end, the Board adopted its Final Plan.

VI. ARGUMENT

A. The Board Failed to Engaged in Reasoned Decision-Making in Forming Districts 29 and 36.

The record reflects that the Board took no look at whether District 29 satisfies the constitutional redistricting requirements and failed to consider viable alternatives due to time constraints, prioritization of Board member priorities, and misapplication of Alaska law. The Board spent minimal time analyzing how to accommodate the strong public testimony against pairing Valdez and Mat-Su together in a district.[88] Indeed, District 29 in the Final Plan is virtually unchanged from Member Borromeo's proposed plan, Board Composite Version 4 (V.4), which was developed prior to the Board's public hearing tour with minimal involvement of other Board members.[89] The trial court held that the lack of deviation from the Board's proposed plans for Districts 37-40 "creates a strong inference that the Board never truly considered available alternatives."[90] The same holds true for the

[88] Order at 78 ("Public testimony strongly supported keeping Valdez in its traditional corridor. Indeed, there was no public testimony from either the Valdez side or the Mat-Su side which favored placement of Valdez with the communities of Palmer and Wasilla.") [EXC.1963].

[89] Compare ARB001430 (V.4) [EXC.0029] with ARB000054 (Final Plan) [EXC.1175].; Borromeo Depo. Tr. 48:14-15 ("the House map that the Board adopted was largely based on v.4, which was the map that I drew.") [EXC.1306]; Borromeo Depo. Tr. 165:14-16 ("No. I think it would be fair to say that I spent considerable time with staff, not necessarily with my colleagues on the Board, building out maps.") [EXC.1325].

[90] Order at 125-128 (footnotes omitted) [EXC.2010-13].

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absence of any significant change to District 29 between V.4 and the Final Plan despite the voluminous public comment opposing V.4.

In addition, V.4 was adopted outside of the constitutionally mandated deadline for adopting proposed plans set forth in article VI, section 10. In the 2021 redistricting process, this deadline was September 11, 2021, but V.4 was not adopted until September 20, 2021.[91] V.4 was not an updated draft of Board Composite Version 2 (V.2), but an entirely new 40 district plan with radically different districts than those in V.2. Prior to their adoption, V.4 was never made available for public review or comment nor had V.4 been shared with other members of the Board.[92] The late adoption of V.4 violated article VI, section 10, and improperly constrained the opportunity for public comment on that plan.

Rather than undertake to fulfill the Board's duty of engaging in a fact-specific inquiry aimed at maximizing the constitutional redistricting criteria, the Board defaulted to pairing Valdez exclusively with Mat-Su because it was "the only place that's really left for Valdez to go."[93] Upstream decisions regarding the configuration districts throughout the state including Districts 36 through 40, Southeast Alaska, and the FNSB, which advanced individual Board member priorities, left a singular option for where to district Valdez — an exclusive pairing with Mat-Su. After satisfying Board member priorities unrelated to

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[91] Borromeo Depo. Tr. 50:8-21[EXC.1308].

[92] Borromeo Depo. Tr. 50:8-21[EXC.1308]; Board Meeting Tr. 147:2 – 196:22 (Sept. 20, 2021) [ARB10290-010339] [EXC.0037-86].

[93] Board Meeting Tr. 319:8-16 (Nov. 3, 2021) [ARB007679] (emphasis added) [EXC.0728].

the requirements of article VI, section 6, the Board simply placed Valdez in the only place left and searched for some legal justification afterwards.

The Board consistently delayed discussions regarding where Valdez should be districted until the Board had already made upstream policy decisions that foreclosed consideration of other viable alternatives.[94] The Board gained consensus on every region of the state aside from Anchorage, which resulted in the Board's defaulting to the "*only place that's really left for Valdez to go*."[95]

The Board even discussed taking a hard look at accommodating Valdez at the end of the November 3, 2021, meeting in order to "see what all the disruptions would be in all the other areas, so at least we've given it a good shot to try and accommodate what Valdez's desires are without disrupting District 36."[96] However, rather than give it a "good shot," the Board entered executive session and never engaged in the mapping exercise they had discussed. It is evident that the Board's position with regard to exploring alternatives shifted after entering executive session on the evening of the November 3 meeting. Thus, the Board appears to have received legal guidance that foreclosed the consideration of viable redistricting alternatives and decided that they would not "bother"[97] to engage in any attempt to accommodate Valdez.

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[94] Board Meeting Tr. 319:8-16 (Nov. 3, 2021) [ARB007679] [EXC.0728].

[95] Board Meeting Tr. 319:8-16 (Nov. 3, 2021) [ARB007679] (emphasis added) [EXC.0728].

[96] Board Meeting Tr. 330:12-17 (Nov. 3, 2021) [ARB007695] [EXC.0739].

[97] Board Meeting Video at 6:36:52 (Nov. 3, 2021) [Exc. 20181]; Board Meeting Tr. 335:6 – 336:20 (Nov. 3, 2021) [ARB007695-007696] [EXC.0744-45];

The trial court found that Valdez has greater socio-economic links with Fairbanks, Anchorage, and Prince William Sound communities than it does with the Mat-Su Borough.[98] Yet, the Board never took a look, much less a hard, look at any proposed plans that districted Valdez with these areas. Instead, the Board searched for legal authority from third parties as well as from its own counsel regarding whether previous redistricting plans could justify pairing Valdez with Mat-Su.[99] Accordingly, the trial court erroneously determined that "the Board made a good faith effort to district Valdez in accordance with public testimony"[100] and "the Board did take a 'hard look' at the issue of where to put Valdez and certainly did not ignore public testimony."[101] Indeed, the Board not only failed to accommodate the public testimony from Valdez, but the Board failed to even read Valdez's written comments.[102] This Court should order the Board to consider the options

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[98] Order at 78-79 ("The evidence establishes that Valdez has greater socio-economic links with Fairbanks and Anchorage than it does with Palmer or Wasilla in the Matanuska-Susitna Borough. Similarly, Valdez has greater links with other communities in Prince William Sound such as Cordova than it does with Palmer or Wasilla.") [EXC.1963-64].

[99] Board Meeting Tr. 37:1-9 (Nov. 4, 2021) [ARB009207] (Bahnke: "But I do believe counsel advised us there is precedence for including Valdez in the Mat-Su.") [EXC.0830]; Board Meeting Tr. at 106:24 – 107:11 (Nov. 4, 2021) [ARB009276-009277] (Singer: "And then there was litigation about the current pairing of Valdez with Mat-Su, mostly focused on issues of compactness, and the Court affirmed -- the Superior Court affirmed the current district in which Valdez and Mat-Su are paired.") [EXC.0899-0900].

[100] Order at 52 n. 321 [EXC.1937].

[101] Order at 147[EXC.2032].

[102] Board Meeting Tr.104:5-10 (Nov. 2, 2021 Afternoon) [ARB008801] (Simpson: "I don't remember much [of Valdez's Comments]")[EXC.0336].; Borromeo Depo. Tr. 143:11-23 ("I skimmed the comments from the City of Valdez. They were quite extensive, and they came in during a very busy time. . . . Q: Did you review the City of Valdez' resolution? A: No.") [EXC.1319]; Binkley Depo. Tr. 151:9-12 ("were you aware that

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it expressly failed to analyze with clarification regarding the proper application of the constitutional redistricting standards.

B. The Board Defaulted to Pairing Valdez Exclusively with the Mat-Su Borough Without any Fact-Specific Consideration of Whether the Constitutional Redistricting Criteria Were Satisfied.

The record reflects no discussion of constitutional redistricting criteria with regard to District 29 aside from a passing mention of maintaining unoccupied census blocks for purposes of compactness[103] and references to previous court determinations regarding District 9 in the 2013 Proclamation.[104] A review of Board meeting transcripts and recordings reveals no substantive discussion of socio-economic integration within District 29. Chairman Binkley described Board discussion of socio-economic integration as "general in nature" but could not recall the context of these conversations or point to any portion of the record that evidenced such discussions occurred.[105] The record is devoid of any evidence that the Board engaged in any fact-specific analysis of socio-economic integration between Valdez and the Mat-Su Borough.

Moreover, Board member testimony reveals a general lack of knowledge regarding the nature of District 29 and its population characteristics. Members Borromeo and

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Valdez filed extensive comments, later, with regard to its position? A: I don't recall that.") [EXC. 1334].

[103] Board Meeting Tr. 35:3 – 37:13 (Nov. 4, 2021) [ARB009205-009207] [EXC.0828-30].

[104] *See, e.g.,* Board Meeting Tr. 109:3-13 (Nov. 4, 2021) [ARB009279] (Bahnke: "they've both already been identified as being compact, contiguous, socioeconomically integrated.") [EXC.0902].

[105] Binkley Depo. Tr. 151:13 – 152:11[EXC.1334-35].

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Marcum testified they were not aware of the percentages of Mat-Su population included in District 29 or where the majority of the population resided,[106] and Members Simpson, Bahnke, and Marcum were unable to say whether District 29 included any Richardson Highway communities.[107] The Board appears to have not considered or understood that District 29 separates Valdez from all Richardson Highway communities and pairs Valdez exclusively with the Mat-Su.[108] In response to Member Marcum's stating that Valdez was "100 percent unanimous in wanting Richardson Highway," Member Borromeo erroneously stated: "in my version they're getting a good portion of it."[109] In reality, Member Borromeo's version as adopted in the Final Plan includes no Richardson Highway communities and would cause a Valdez citizen to drive 120 miles outside of District 29 along the Richardson and Glenn Highways before reentering District 29.[110] By using the pipeline as an eastern boundary, the Board created the impression that District 29 contains a substantial amount of Richardson Highway communities; but only 45 miles of the Richardson Highway directly north of Valdez's city center is actually included in the

[106] Borromeo Depo. Tr. 146:25 – 147:4 [EXC.1320]; Marcum Depo. Tr. 103:13 – 104:21[EXC.1269-70].

[107] Simpson Depo. Tr. 137:11-17 [EXC.1301]; Bahnke Depo. Tr. 101:18-25 [EXC.1296]; Marcum Depo. Tr. 99:22 – 100:9 [EXC.1267-68].

[108] Board Meeting Tr. 37:10-13 (Nov. 4, 2021) [ARB009207] (Simpson: "I like that this does go -- we start to go up the Richardson Highway, which I think we've all identified as a place that is relevant to Valdez, as well.") [EXC.0830].

[109] Board Meeting Tr. 112:15-20 (Nov. 4, 2021) [ARB009282] [EXC.0905].

[110] Trial Tr. 489:15 – 492:20 (Duval) [EXC.1602-05]; Duval Aff. at 6 [EXC.1277], Exhibit B at 2 [EXC.1291].

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District.[111] The Board's lack of knowledge regarding District 29's boundaries and population characteristics reflects the Board's failure to take a hard look at the district prior to adopting it.

The Board did not engage in any fact-specific analysis of socio-economic integration in District 29 and instead defaulted to pairing Valdez with Mat-Su based upon case law that addressed a substantially different historical district. The only discussion of socio-economic integration between Valdez and the Mat-Su Borough during Board deliberations occurred during the November 4 meeting and is limited to broad references to "precedence" establishing socio-economic integration.[112]

Reference to this justification for districting Valdez with Mat-Su began after the Board's executive session on the evening of November 3, 2021, to determine whether that pairing presented legal issues and after Member Borromeo solicited case law from the Doyon Coalition's legal counsel, Mr. Amdur-Clark, that same evening.[113] Thus, the Board

[111] Trial Tr. 489:15 – 492:20 (Duval) [EXC.1602-05]; Duval Aff. at 6 [EXC.1276], Exhibit B at 2 [EXC.1291].

[112] Board Meeting Tr. 37:1-9 (Nov. 4, 2021) [ARB009207] (Bahnke: "And I think it's already been established that Valdez is socioeconomically compatible with the Mat-Su or with Anchorage, and geographically for compactness sake, I believe it makes more sense to connect them to the Mat-Su than it would to connect them to Anchorage. But I do believe counsel advised us there is precedence for including Valdez in the Mat-Su.") [EXC.0830]; Board Meeting Tr. 37:23 – 38:16 (Nov. 4, 2021) [ARB009207-009208] [EXC.0830-31]; Board Meeting Tr. 80:8-19 (Nov. 4, 2021) [ARB009250] [EXC.0873]; Board Meeting Tr. 161:14-25 (Nov. 4, 2021) [ARB009331] [EXC.0954].

[113] Borromeo Depo. Tr. 162:18 – 164:12 [EXC.1322]; Ex. VDZ-3010 at 129 [ARB00155158] [EXC.1718].

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did not even offer court "precedence" as evidence of socio-economic integration between Valdez and the Mat-Su Borough until the day before the Board adopted the Final Plan.

Similarly, it was not until the November 3, 2021, meeting that the Board discussed the propriety of relying on historical districts.[114] Chairman Binkley stated that "we're not supposed to look at the current map," and Member Bahnke expressed her desire to be consistent in "not consider[ing]" historical districts.[115] During that discussion, Mr. Singer stated, "if you're looking how to solve for socioeconomic integration you can look at . . . what did we do last time."[116] Earlier in the meeting Mr. Singer stated "if it's just hey, it's in the current plan and nobody challenged it - - there's no legal guidance there"[117] Thus, the Board was informed that reliance on historical districts was appropriate in some circumstances just two days before adoption of the Final Plan, which militates against a finding that the Board took a hard look at historical house districts in analyzing the constitutionality of District 29.

Had the Board actually taken a hard look at District 9 in the 2013 Proclamation and the case law analyzing that District, it would have become readily apparent that districting Valdez exclusively with Mat-Su is not supported on that basis. The case law relied upon by the Board articulated the reasoning behind the formation of District 9 as "they chose to

[114] Board Meeting Tr. 292:1 – 293:22 (Nov. 3, 2021) [ARB007652-007653] [EXC.0701-02].

[115] Board Meeting Tr. 293:9-16 (Nov. 3, 2021) [ARB007653] [EXC.0701.

[116] Board Meeting Tr. 292:12 – 293:4 (Nov. 3, 2021) [ARB007652-007653] [EXC.0700-01].

[117] Board Meeting Tr. 94:16-19 (Nov. 3, 2021) [ARB007454] [EXC.0503].

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take population from the east side of the Mat-Su Borough and combine it with '*the most strongly integrated economic corridor in the state, the pipeline corridor, the Richardson Highway corridor from the south region of the North Star Borough to Valdez.*'"[118] In delivering this case law to Ms. Borromeo, even Mr. Amdur-Clark acknowledged that "it's not super strong"[119] support for pairing Valdez with the Mat-Su Borough.

Despite the fact that *In re 2011 Redistricting Cases* discusses socio-economic integration of District 9 in the context of maintaining the Richardson Highway corridor, the Board nevertheless relied exclusively on that case to support socio-economic integration in District 29, which separates Valdez from all other Richardson Highway communities. A comparison of District 9 from the 2013 Proclamation[120] and District 29 from the Final Plan[121] reveals the obvious differences between the two districts. As a result of the Board's failure to take a hard look at District 29 and instead rely exclusively on *In re 2011 Redistricting Cases* as evidence of socio-economic integration, Valdez has been entirely separated from both Richardson Highway communities and Prince William Sound communities for the first time in Alaska history.

The Board cannot be deemed to have taken a hard look at redistricting alternatives for Valdez when the Board has merely relied upon inapposite case law first reviewed the day before adopting a Final Plan. The Board has a duty to engage in a fact-specific inquiry

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[118] *In re 2011 Redistricting Cases*, 2013 WL 6074059 at *13 (emphasis added).

[119] Ex. VDZ-3010 at 129 [ARB00155158] [EXC.1718].

[120] ARB001590 [EXC.0001].

[121] ARB000044 [EXC.1165].

with the goal of maximizing redistricting criteria. Searching for case law to find some *de minimis* justification after reaching consensus on District 29 does not constitute a hard look. The trial court erred in determining that the Board's reliance on an inapposite order regarding a substantially different historical district constitutes insufficient analysis of socio-economic integration. The Final Plan should be remanded to the Board with instruction to engage in a fact-specific analysis of alternatives with an eye toward maximizing the constitutional redistricting criteria.

A. The Board Violated the *Hickel* Process.

The record demonstrates the Board did not follow the *Hickel* process and drew the initial map taking into consideration VRA implications. In doing so, the Board locked in the VRA districts early and varied them very little.[122] This resulted in limiting the Board's consideration of the full range of alternative mapping options that would otherwise comply with the constitutional requirements set forth in the Alaska Constitution. The trial court acknowledged as much but was unwilling to enforce the *Hickel* process.[123] This Court should enforce it.

B. The Board Improperly Prioritized Individual Board Member Goals to the Detriment of Constitutional Redistricting Criteria.

As noted by the trial court, "[r]ather than drawing districts based on individual prerogatives, the Board must make a good-faith effort to harmonize both 'the greater good

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[122] Order at 126 [EXC.2011].

[123] Order at 124-30 [EXC.2009-15].

of the State' and the desires of each community 'to the greatest extent possible.'"[124] As Delegate Hellenthal described during the constitutional convention, the Board must seek to rise above "selfish desires" and advance the interests of the state as a whole.[125] This Court has made it abundantly clear that the Board "is not permitted to diminish the degree of socio-economic integration in order to achieve other policy goals."[126]

By prioritizing the interests of Doyon, Ahtna, Bering Straits, and FNSB over the interests of other communities including Valdez and the Mat-Su Borough, the Board acted in direct contravention of the direction provided by this Court and the framers of the Alaska Constitution. The trial court erred in failing to find that the Board improperly supplanted constitutional redistricting criteria with prerogatives unrelated to the Board's duty to maximize compactness and socio-economic integration within all districts.

1. The Board Improperly Prioritized the Formation of a Doyon-Ahtna District.

Despite the fact that over 70 percent of the population in District 36 is non-Native,[127] the Board prioritized creating a district that included all Doyon and Ahtna Native villages together and avoided combining any Bering Straits or Calista communities with Doyon communities. In particular, Members Bahnke and Borromeo[128] both advocated strongly

[124] Order at 133[EXC.2018].

[125] Order at 132 (citing PACC 1836 (Jan. 11, 1956) (statement of Del. Hellenthal)) [EXC.2017].

[126] *Hickel*, 846 P.2d at 45 n.10.

[127] Ex. VDZ-3003 at 1216 (Brace) [EXC.VDZ-1683].

[128] Member Bahnke is a Bering Straits Native Association shareholder and the President of Kawerak, Inc., which is a nonprofit corporation organized by Bering Straits. Ms.

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for this outcome as did the Doyon Coalition[129] with the additional goal of separating Valdez from the interior.[130] The record establishes a pattern of deference to the preferences of the Doyon Coalition and Board Members Borromeo and Bahnke.[131]

The Board received a presentation from the Doyon Coalition early on in the redistricting process in a private meeting that was not a matter of public record.[132] Before the Board started drawing maps, Chairman Binkley had a private conversation with Doyon's CEO regarding Doyon's priorities.[133] Members of the Doyon Coalition and Ms. Borromeo engaged in substantive text message conversations during Board deliberations regarding how to achieve their mutual goals.[134] Plaintiffs ask this Court to review the text

Borromeo is a Doyon shareholder and the chairman of the board of directors of MTNT, Limited, the ANCSA Village Corporation for McGrath, Takotna, Nikolai, and Telida.

[129] The Doyon Coalition includes Doyon, Tanana Chiefs Conference, Fairbanks Native Association, Sealaska, and Ahtna.

[130] Board Meeting Tr. 107:2-6 (Sep. 17, 2021) [ARB008409] [EXC.0023]; Board Meeting Tr. 285:18-19 (Nov. 3, 2021) (Borromeo: "Again, I left Valdez out. I don't consider this to be part of the Interior.") [ARB007645][EXC.0684].

[131] Bahnke Depo. Tr. 53:18-19 ("I felt like I had certain expertise and that should be given some deference.") [EXC.1293]; Simpson Depo. Tr. 172:15-22 ("in terms of the big rural districts, in northern -- well, like the big horseshoe district . . . there was deference, I think, given to board members who did have that knowledge.") [EXC.1302]; Simpson Depo. Tr. 14:1-5 ("I think most of the board gave quite a bit of deference to Melanie Bahnke, who was from Nome, and kind of took the lead as far as, you know, the socioeconomic issues for those western Alaska districts.") [EXC.1299].

[132] Bahnke Depo. Tr. 87:6 – 88:25 [EXC.1294-95].

[133] Binkley Depo. Tr. 53:1-17; 55:5-22 [EXC.1328].

[134] Ex. VDZ-3010 [ARB00155140-00155159] [EXC.1700-19]; Ex. VDZ-3010 [ARB00155141] (Text messages between Ms. Sanford who is a Doyon Coalition representative and was an FNSB assembly member at the time and Ms. Borromeo

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messages between Ms. Borromeo and Doyon representatives, Ms. Sanford and Mr. Amdur-Clark.

The Board acknowledged the Doyon Coalition's goal of keeping Interior Doyon and Ahtna villages together in one District,[135] endeavored to create a district that achieved this goal,[136] and routinely referred to District 36 as the "Doyon District" or the "Doyon-Ahtna-District"[137] The record is replete with Board members advocating for the creation of a Doyon-Ahtna district and refusing to consider alternative configurations for Districts 36-40 that did not maintain the ANCSA boundary between Bering Straits and Doyon.[138] Member Bahnke went as far as to take off her "redistricting board hat" and provide testimony against

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regarding their involvement in procuring the resolution from FNSB that changed Chairman Binkley's position on shedding excess population from FNSB) [EXC.1701].

[135] Board Meeting Tr. 161:14-25 (Nov. 4, 2021) [ARB009331] (Bahnke: "We've also heard perspective from Doyon. The whole reason they formed their coalition was to preserve the socioeconomic integrity of those rural Interior communities.") [EXC.0954].

[136] *See, e.g.* Board Meeting Tr. 253:20-25 (Nov. 5, 2021) [ARB008110] ("the Board has -- with District 36, it's really sought to create a Doyon district. So it's -- it's consistent, and I think it's within your discretion.") [EXC.1122].

[137] Board Meeting Tr. 32:21 (Nov. 2, 2021 Morning) [ARB008962] [EXC.0119]; Board Meeting Tr. 47:24, 72:25 (Nov. 4, 2021) [ARB009217, 009242] [EXC.0840, 0865]; Board Meeting Tr. 188:24, 253:24 (Nov. 5, 2021) [ARB008045, 008110] [EXC.1120, 1122]; Binkley Depo. Tr. 159:4-7 (Acknowledging District 36 is a Doyon-Ahtna District) [EXC.1338].

[138] Board Meeting Video at 3:19:31 (Nov. 3, 2021) [Exc. 2076]; Board Meeting Video at 3:24:30 (Nov. 3, 2021) [EXC.2077]; Board Meeting Video at 3:39:38 (Nov. 3, 2021) [EXC.2078]; *See, e.g.,* Board Meeting Tr. 109:9-21 (Sep. 20, 2021) [ARB010252] [EXC.0035]; Board Meeting Tr. 194:16-20 (Nov. 3, 2021) [ARB007554] [EXC.0603]; Board Meeting Tr. 80:10-14 (Nov. 4, 2021) [ARB009250] [EXC.0873]; Board Meeting Tr. 164:13 – 183:9 (Nov. 3, 2021) [ARB007534-007543] [EXC.0583-92]; Board Meeting Tr. 182:1-12 (Nov. 3, 2021) [ARB007542] [EXC.0591].

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combining any Doyon villages with any Bering Straits villages as "a regional tribal leader for the Kawerak Region."[139]

Board members acknowledged that the Board is obligated to consider all viable options and that "[i]f there's a situation in which viable options are not considered, then that represents a challenge to the Board to fulfill its constitutional mandate."[140] However, the Board did not seriously consider viable alternatives that did not accomplish the priorities of creating a Doyon-Ahtna district and segregating Bering Straits communities from Doyon communities.[141] Board Members Bahnke and Borromeo's priorities also substantially diminished constitutional redistricting criteria and resulted in adjacent districts having the largest population deviations in the entire plan.[142]

[139] Board Meeting Video at 3:12:00 (Nov. 3, 2021) [EXC.2075]; Board Meeting Tr. 164: 174:13 (Nov. 3, 2021) [ARB007534-007535] [EXC.0583-84].

[140] Borromeo Depo. Tr. 35:24 – 36:3 [EXC.1304].

[141] *See, e.g.,* Board Meeting Tr. 335:6 – 336:20 (Nov. 3, 2021) [ARB007695-007696] (Discussing accommodating Valdez without disrupting District 36) [EXC.0744-45]; Board Meeting Tr. 38:11-16 (Nov. 4, 2021) [ARB009208] (Bahnke: "If the alternative is going to be to push those 4,000 people into District 39, there are some major socioeconomic concerns I have there; whereas if this is the alternative, there has been precedence established that there is socioeconomic linkages that have been established between Valdez and the Mat-Su.") [EXC.0831].

[142] Trial Tr. 1294:15 – 1295:1 (Brace) (District 39 is the most underpopulated district at negative 4.81 percent or 882 people and District 40 is the most overpopulated district at 2.67 percent or 489 people) [EXC.1637].

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2. The Board Improperly Prioritized Maximizing Native Population in District 36.

The Doyon Coalition articulated its desire to maximize electoral influence of interior Athabascan communities' numerous times throughout the redistricting process,[143] and the Board openly sought to maximize the percentage of Native voters in District 36.[144] In analyzing whether the Board violated the *Hickel* Process, the trial court held:

> Member Bahnke's statements throughout the redistricting process evidence a strong preoccupation with both VRA requirements and the percentage of Alaska Natives in rural areas. She was also in charge of drawing the so-called VRA districts. The transcripts and videos of public Board meetings make it abundantly clear that Board Members were actively considering VRA-related issues since the beginning of the process. And the fact that all four of the Board's proposed plans contained identical versions of Districts 37, 38, 39, and 40 also creates a strong inference that the Board never truly considered available alternatives.[145]

The Board, therefore, did not take a "hard look" at all viable redistricting alternatives based upon Board members individual priorities. Despite these findings in the context of compliance with the *Hickel* process, the trial court declined to analyze whether these facts established an improper motivation of the Board to advance the interests of individual Board members over the constitutional redistricting criteria.

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[143] *See, e.g.,* ARB004041 [EXC.0021]; ARB002331 [EXC.0018]; ARB002086-002087 [EXC.0016-17]; ARB002257 [EXC.0004]; ARB002261-002264 [EXC.0008-11].

[144] Board Meeting Tr. 243:9 – 245:22 (Nov. 3, 2021) [ARB007603-007605] [EXC.0652-54].

[145] Order at 125-128 (footnotes omitted) [EXC.2010-13].

District 36 is not subject to the VRA, and the Board was under no legal obligation to maximize the percentage of the Alaska Native population in District 36.[146] In light of this fact, the Board's attempt to maximize the electoral influence of Alaska Natives in District 36 falls squarely within the definition of gerrymandering, which is the "dividing of an area into political units 'in an unnatural way with the purpose of bestowing advantages on some and thus disadvantaging others.'"[147] The trial court erred in failing to find that the Board's efforts to maximize electoral influence of Doyon and Ahtna villages constitutes gerrymandering.

Despite apparent recognition that it is "fundamentally wrong to give one community undue influence over another"[148] and "giving a particular part of the state more influence is not listed in our constitution, and it's irrational,"[149] the Board improperly prioritized giving Doyon and Ahtna villages more influence by keeping them united in one district. This Court should remand the Final Plan with instructions for the Board to engage in the redistricting process based upon the duty to maximize constitutional redistricting criteria rather than advance Board member priorities related to the creation of a Doyon-Ahtna district and maximizing electoral influence of Doyon and Ahtna villages.

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[146] Board Meeting Tr. 244:16-17 (Nov. 3, 2021) [ARB007604] ("our VRA experts have said that District 36 is not a VRA district.") [EXC.0653].

[147] *Hickel*, 846 P.2d at 45 (quoting *Carpenter v. Hammond*, 667 P.2d 1204, 1220 (Alaska 1983)).

[148] Borromeo Depo. Tr. 58:22 – 59:1 [EXC.1311].

[149] Borromeo Depo. Tr. 58:8-11 [EXC.1310].

3. The Board Improperly and Inconsistently Relied Upon ANCSA Boundaries.

The Board relied heavily upon ANCSA boundaries to support the creation of District 36 and justify keeping Bering Straits communities separate from Doyon communities. The Board's focus on maintaining specific ANCSA boundaries began early on in the redistricting process and was apparent throughout the process.[150] As a result, the Board constrained its consideration of viable redistricting alternatives, diminished constitutional redistricting criteria throughout the Final Plan, ignored geographic boundaries and drainages, which are required to be considered under article VI, section 6, by splitting the lower Yukon River into three different districts, and created adjacent districts with the highest deviations in the entire state.[151]

Counsel for the Board provided conflicting interpretations of Alaska law regarding the use of ANCSA boundaries in the redistricting process. On September 17, 2021, Mr. Singer advised the Board that "Alaska's Supreme Court has recognized ANCSA boundaries as a -- one way to look at socioeconomic integration"[152] and stated that

[150] *See, e.g.,* Board Meeting Tr. 227:2-10 (Aug. 24, 2021) [ARB011498] [EXC.0003]; Board Meeting Tr. 164:16-21 (Sept. 17, 2021) [ARB008466] [EXC.0024]; Board Meeting Tr. 214:12-24 (Sept. 17, 2021) [ARB008516] [EXC.0027]; Board Meeting Tr. 34:21 – 36:18 (Sept. 20, 2021) [ARB010177-010179] [EXC.0031-33]; Board Meeting Tr. 196:2 – 198:25 (Nov. 3, 2021) [ARB007556-007558] [EXC.0605-07]; Board Meeting Tr. 52:4 – 53:7 (Nov. 4, 2021) [ARB009222-009223] [EXC.0845].

[151] Trial Tr. 1294:15 – 1295:1 (Brace) (District 39 is the most underpopulated district at negative 4.81 percent or 882 people and District 40 is the most overpopulated district at 2.67 percent or 489 people) [EXC.1637].

[152] Board Meeting Tr. 164:16-21 (Sept. 17, 2021) [ARB008466] [EXC.0024].

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prioritizing ANCSA boundaries over borough boundaries was an open question under Alaska law.[153] Subsequently, on September 20, 2021, Mr. Baxter advised the Board "borough's municipalities are, by definition, socioeconomically integrated. We do not have that for ANCSA boundaries"[154] and "[w]ith ANCSA boundaries, it should be an analysis of whether that area, whether the specific town, village we are talking about is economically integrated."[155] The Board did not receive clear guidance regarding the legal standards for the use of ANCSA boundaries in redistricting, which appears to have exacerbated the Board's reliance.

Ms. Bahnke described ANCSA boundaries as "the closest thing that you can have to a borough that delineates socioeconomic integration"[156] and considered ANCSA boundaries to carry similar weight to borough boundaries.[157] ANCSA regional corporation boundaries should not be afforded the same status as local government boundaries, which are specifically mentioned in article VI, section 6.[158] There is no legal authority

[153] Board Meeting Tr. 177:17 – 178:6 (Sept. 17, 2021) [ARB008479-008480] [EXC.0026-27].

[154] Board Meeting Tr. 35:3-15 (Sept. 20, 2021) [ARB010178] [EXC.0032].

[155] Board Meeting Tr. 36:4-15 (Sept. 20, 2021) [ARB010179] [EXC.0033].

[156] Board Meeting Tr. 52:8-13 (Nov. 4, 2021) [ARB009222] [EXC.0845].

[157] Board Meeting Tr. 78:12-14 (Sept. 20, 2021) [ARB010221] ("I know Counsel has advised that ANCSA boundaries versus borough boundaries, there's not necessarily a hierarchy.") [EXC.0034].

[158] Alaska Const., art. VI, § 10 ("Consideration may be given to local government boundaries.").

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specifically identifying ANCSA boundaries as an indicator of socio-economic integration nor is there authority suggesting that breaking ANCSA boundaries should be avoided.

The boundaries of regional corporations were established under ANCSA as follows: "Under the Act, the state was divided into 12 regions, and separate corporations were established for each region. By the division it was sought to establish homogeneous grouping of Native[159] peoples having a common heritage and sharing common interests."[160]

The purpose of ANCSA was to form "homogeneous grouping" of Alaska Natives in 1970 but does not concern the homogeneous grouping of the roughly 15 percent of Alaskans who are Native in 2021 or the 85 percent of Alaskans who are *non-Native* in 2021.[161] The purpose of ANCSA does not concern the article VI, section 6 constitutional standards for contiguity, compactness, or socio-economic integration (as opposed to homogeneous grouping) required to be considered in forming house districts in 2021. Further, ANCSA corporations are private for-profit corporations[162] and are not entitled to control a senate district under the proportionality doctrine or otherwise.

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[159] *Groh v. Egan*, 526 P.2d 863, 877 n.2 (Alaska 1974) ("Native" is basically defined in the Act as a citizen of the United States who is 1/4th degree or more Alaska Indian, Eskimo or Aleut, or combination thereof.") (citing 43 U.S.C.A. § 1602(b)).

[160] 43 U.S.C.A § 1606.

[161] VDZ-3003 at 1216.

[162] Binkley Depo. Tr. 154:5-7 [EXC.1336]; Trial Tr. 975:19-23[EXC.1634].

The process for ANCSA enrollment[163] resulted in substantial intermingling of distinct Native populations in various regional corporations. For example, "CIRI is known as the "melting pot" of Alaska Native regional corporations, and virtually every Alaska Native group is featured among our nearly 9,100 shareholders-Aleut/Unangax, Alutiiq/Sugpiaq, Athabascan, Haida, lnupiat, Tlingit, Tsimshian and Yup'ik. The diversity of CIRI's shareholders is a key to the company's success.[164]

At trial, Ms. Otte stated that Doyon has Yup'ik shareholders and that she assumed Doyon has Inupiaq shareholders, that Yup'iks and Cup'iks live in her village of McGrath,[165] and that less than 20 percent of ANCSA shareholders living within traditional villages "is probably pretty common with all of the regions."[166] Ms. Wright testified that ANCSA regions do not consist of just one native group and that Doyon has "a large non-native population.[167] In addition, evidence presented at trial established that District 36 contains less than 30 percent Native population.[168] Non-native populations were not considered during the process of establishing ANCSA regional corporation boundaries and, therefore, ANCSA boundaries do not provide evidence of socio-economic integration among non-Native populations.

[163] 43 U.S.C.A. § 1604(b).

[164] Ex. VDZ-3023 [EXC.1729].

[165] Trial Tr. 900:15 – 903:4 [EXC.1674-77].

[166] Trial Tr. 901:21-25 [EXC.1675].

[167] Trial Tr. 927:12-14 [EXC.1629].

[168] Ex. VDZ-3003 at 1216 [EXC.1683].

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Thus, the Board's reliance on ANCSA corporation boundaries to divide Bering Straits and Doyon populations based upon purported socio-economic differences is not supported by Alaska law or the record. As Mr. Baxter correctly articulated, the Board must conduct a fact-specific analysis of socio-economic integration within a proposed District rather than rely an ANCSA boundaries as *de facto* evidence of socio-economic integration within a boundary or differences outside of a boundary. The Board failed to conduct such a fact-specific analysis when refusing to combine any Doyon villages with any Bering Straits villages and creating District 36 to form a Doyon-Ahtna district.

While this Court has "implied that adherence to Native corporation boundaries might also provide justification [for a population deviation greater than ten percent], as long as the boundaries were adhered to consistently,"[169] the Board used ANCSA boundaries in a wholly inconsistent manner. Members Bahnke and Borromeo vigorously sought to maintain the boundary between Bering Straits and Doyon and keeping Doyon and Ahtna whole.[170] At the same time, the Board broke the Calista region into three districts, the Chugach region into two districts, broke the Koniag region for no apparent purpose, and combined a portion of Calista with the Bristol Bay region and Aleut region along with a portion of Koniag and CIRI regions.[171] There is no rhyme or reason to the

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[169] *Hickel*, 846 P.2d at 48 (citing *Groh,* 526 P.2d at 877-78).

[170] Board Meeting Video at 3:12:00 (Nov. 3, 2021) [EXC.2075].

[171] Brace Aff. at Exhibit D [EXC.1508].

Board's decisions to maintain, combine, or break ANCSA-region boundaries aside from their primary goal of fulfilling the wishes of Doyon, Ahtna and Being Straits.

The Board's decision to place Cantwell in District 36 exemplifies the detriment the Board's selective focus on maintaining some ANCSA boundaries. Cantwell's population is only 27.5 percent Native[172] and only 30 Ahtna shareholders live in Cantwell;[173] yet, the Board broke both Denali and Mat-Su borough boundaries to keep Ahtna whole. The Board openly acknowledged that adding Cantwell to District 36 was detrimental to the compactness requirement[174] and ignored comment from the Denali Borough opposing "having Cantwell carved out."[175]

The Board's inconsistent reliance on ANCSA boundaries does not justify the creation of District 29, which is not socio-economically integrated, and District 36, which is neither socio-economically integrated nor compact. This court should reinforce the Board's duty to maximize the constitutional redistricting criteria ahead of other policy considerations and remand the Final Plan with instructions that the Board avoid diminishing those criteria for the sake of maintaining specific ANCSA boundaries.

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[172] Ex. VDZ-3008 at 3[EXC.1698].

[173] Trial Tr. 942:18-21 (Anderson) [EXC.1630].

[174] Board Meeting Tr. 253:14-19 (Nov. 5, 2021) [ARB008110] [EXC.1122].

[175] Board Meeting Tr. 188:15-20 (Nov. 5, 2021) [ARB008045] [EXC.1120].

4. The Board Improperly Constrained the Alternatives Considered by Prioritizing Protection of the FNSB Boundaries.

Chairman Binkley advocated strongly for maintaining the integrity of FNSB boundaries throughout the redistricting process to the extent that other Board members perceived him as negotiating to advance his priorities as late as November 3.[176] Only on the evening of November 3, 2021, just two days before the adoption of the final house district plan, did Chairman Binkley concede that FNSB should shed population. As a result of Chairman Binkley's prioritization of protecting the borough boundaries of FNSB where he lives,[177] the Board did not consider a full range of redistricting alternatives. At the November 4, 2021, meeting Chairman Binkley articulated his long-held position that FNSB Boundaries should not be broken and the impact of the FNSB assembly resolution on his position.[178]

[176] Board Meeting Tr. 187:8-14 (Nov. 3, 2021) [ARB007547] (Binkley: "Well, if you agree that the Fairbanks North Star Borough should be whole, then we won't have that problem of trying to take population out of the Fairbanks North Star Borough." Bahnke: "I feel like you're trying to negotiate with me to keep Fairbanks North Star Borough whole.") [EXC.0506]; Ex- VDZ-3010 at 117 [ARB00155146] ("JB is negotiating FNSB. MB called him out.") [EXC.1706].

[177] Binkley Depo. Tr. 17:12-22 ("Q: Fairbanks boy through and through; right? A: Well, they say that you can take the boy out of Fairbanks but not Fairbanks out of the boy.") [EXC.1327].

[178] Board Meeting Tr. 40:2 – 41:22 (Nov. 4, 2021) [ARB009210-9211] ("You know, the premise that I looked at for Fairbanks was keeping the borough whole . . . But then we had the borough assembly that weighed in on that. . . . And that's significant. And I gave that a lot of weight. Even though it wasn't a unanimous decision on the part of the borough, it was significant that the elected body from the entire borough said you should push out people from the borough.") [EXC.0833].

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Chairman Binkley's desire to maintain FNSB's boundaries foreclosed consideration of numerous viable redistricting options including districting Valdez with Richardson Highway communities and the FNSB. Ms. Borromeo testified that it would be "fundamentally wrong to ask of the Board to protect the boundaries of Fairbanks to a greater degree than the borough boundaries for other boroughs."[179] However, Chairman Binkley sought to protect FNSB boundaries at the expense of breaking other borough boundaries and creating districts that fail to satisfy the constitutionally mandated redistricting criteria.[180]

Ms. Borromeo testified that it was "painfully obvious" that FNSB boundaries had to be broken.[181] However, Chairman Binkley continued advocating for maintaining the boundaries of the FNSB as late as the November 3, 2021, Board meeting. Chairman Binkley did not concede that the FNSB should shed some population until the evening of November 3, 2021. By that time the Board could not consider viable redistricting alternatives previously ignored by Chairman Binkley's prioritization of protecting FNSB boundaries. Indeed, after Chairman Binkley changed his position, the Board only

[179] Borromeo Depo. Tr. 117:12-16 [EXC.1315].

[180] Borromeo Depo. Tr. 116:18 – 117:5 ("[Chairman Binkley] wanted to preserve some borough boundaries but not all. And for his borough, his home borough to be overpopulated by 20 percent, Mat-Su to be underpopulated by 20 percent, Anchorage to be underpopulated by 20 percent, it didn't make sense to me then and it doesn't make sense to me now, that you would not break the borough boundary for Fairbanks North Star but you would break the borough boundary between the Mat-Su Borough and the Municipality of Anchorage.") [EXC.1314].

[181] Borromeo Depo. Tr. 115:13-15 [EXC.1313].

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considered the option of shedding population into District 36, which necessitated pairing Valdez and Mat-Su. [182] This last-minute change not only limited the range of redistricting alternatives considered but also took valuable time from the Board during the critical decision-making period summarized in Section V, herein.

C. The Board Improperly Constrained the Options Considered by Misapplying the Proportionality Doctrine.

The Board improperly constrained the redistricting alternatives it considered by misapplying Alaska law regarding how population from within borough boundaries may be included in districts with population from outside borough boundaries. For example, the Board refused to consider redistricting alternatives that combined population from FNSB with population from communities outside of FNSB in more than one district and the trial court erroneously held that the Board was reasonable in determining such alternatives were not viable.[183]

At trial, counsel for the Board suggested that breaking FNSB boundaries twice would require the Board to "go to the Alaska Supreme Court and convince it that it wasn't possible to put those excess population for Fairbanks in just one rural district."[184] The Board operated under the assumption that it was bound to only break FNSB's boundaries

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[182] Board Meeting Tr. 163:16 – 164:10 (Nov. 4, 2021) [ARB009333-009334] [EXC.0957].

[183] Order at 86 – 87 [EXC.1971-72].

[184] Trial Tr. 667:20-23 [EXC.1611].

once regardless of whether breaking the boundaries more than once would facilitate a redistricting plan that better satisfies the constitutional redistricting criteria.[185]

Prioritizing the protection of borough boundaries over compactness, contiguity, and socio-economic integration is contrary to Alaska law. The Alaska Constitution states that "consideration *may* be given to local government boundaries."[186] In *Hickel,* this Court held that *excess* population within a borough should, *where possible*, be placed in one other district,[187] and "[a] municipality should not be made to contribute so much of its population to districts centered elsewhere that it is deprived of representation which is justified by its population."[188] The plan being reviewed in *Hickel* divided the Mat-Su Borough into five districts, one of which was wholly composed of land within the Mat-Su Borough and four of which were centered outside of the Borough.[189] On those specific facts, the Court held that the "plan unfairly diluted the proportional representation the residents of the Mat-Su Borough are guaranteed."[190]

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[185] Bahnke Depo. Tr. 102:17-19 ("I also remember [the] map that Valdez presented as their preferred map would have broken the Fairbanks Borough boundaries twice.") [EXC.1297]; Borromeo Supp. Aff. at 6-7, ¶ 19[EXC.1599-1600]; Bahnke Aff. at 15, ¶ 24 [EXC.1343]; Binkley Aff. at 12, ¶ 34 ("Valdez's approach also required splitting the [FNSB] twice, which was contrary to what we understood to be the instructions of the court as to how to handle excess population from a borough.") [EXC.1340].

[186] Alaska Const., article VI, section 6 (emphasis added).

[187] *Hickel*, 846 P.2d at 52 (citing *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1369, 1372-73 (Alaska 1987)).

[188] *Hickel*, 846 P.2d at 53 (emphasis added).

[189] *Hickel,* 846 P.2d at 52.

[190] *Hickel*, 846 P.2d at 53.

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In the *2001 Redistricting Cases* litigation, the Supreme Court found that the Board unduly limited the range of choices it considered by virtue of a misinterpretation of Alaska law.[191] The Board interpreted *Kenai*[192] "to preclude the board from pairing population from the Matanuska-Susitna Borough with the Municipality of Anchorage because both Anchorage and the borough had sufficient excess population to "control" an additional seat."[193] The Supreme Court held:

> *Kenai Peninsula Borough* does not entitle political subdivisions to control a particular number of seats based upon their populations. *Kenai Peninsula Borough* simply held that the board cannot intentionally discriminate against a borough or any other "politically salient class" of voters by invidiously minimizing that class's right to an equally effective vote. *Kenai Peninsula Borough* recognizes that when a reapportionment plan unnecessarily divides a municipality in a way that dilutes the effective strength of municipal voters, the plan's provisions will raise an inference of intentional discrimination. But an inference of discriminatory intent may be negated by a demonstration that the challenged aspects of a plan resulted from legitimate nondiscriminatory policies such as the article VI, section 6 requirements of compactness, contiguity, and socio-economic integration.[194]

Thus, it is improper to constrain the scope of redistricting alternatives considered based upon the premise that boroughs are entitled to control a specific number of house districts. During the 2021 redistricting process the Board constrained the range of redistricting options it considered based upon the mistaken legal premise that the FNSB could not be included in more than one district that included population from outside of

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[191] *In re 2001 Redistricting Cases*, 44 P.3d at 144.

[192] *Kenai*, 743 P.2d at 1352.

[193] *In re 2001 Redistricting Cases*, 44 P.3d at 144.

[194] *In re 2001 Redistricting Cases*, 44 P.3d at 144 (footnote omitted).

FNSB in direct contradiction to this Court's holding in *In re 2001 Redistricting Cases*.[195] The trial court erred in holding that the Board properly viewed any redistricting alternative that placed population from FNSB in more than one district as not viable.[196]

A redistricting plan does not run afoul of the legal requirement that geographic areas be afforded proportional representation merely because population from within a borough is joined with population outside of a borough in more than one district. Accordingly, it is improper to foreclose consideration of such redistricting alternatives. The Board must conduct a fact-specific analysis of redistricting options based upon the constitutional redistricting criteria and determine whether specific alternatives satisfy the proportionality requirement in the context of the specific alternative being considered. The Board and the trial court misapplied Alaska law by limiting the range of viable redistricting options considered based upon the assumption that FNSB boundaries could only be broken once. This Court should, as in *In re 2001 Redistricting Cases*, remand the Final Plan to the Board to take a hard look at options that it may have ignored including the Valdez Alternative[197] based upon the Board's misinterpretation of Alaska law.

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[195] *In re 2001 Redistricting Cases*, 44 P.3d at 144 ("Because the board was mistaken in its interpretation of the doctrine of proportionality, the board's range of choices was unduly limited. We therefore remand so the board can revisit the question of redistricting Southcentral Alaska unencumbered by this mistaken assumption.").

[196] Order at 86-87 [EXC.1963].

[197] Ex. VDZ-3021 [EXC.1728].

D. Districts 29 and 36 Do Not Contain Relatively Socio-Economically Integrated Areas.

The Board and the trial court have interpreted the constitutional requirement of socio-economic integration in such an expansive manner that the requirement is rendered virtually meaningless. The *de minimis* evidence of socioeconomic integration among the communities included in Districts 29 and 36 fails to establish maximized socio-economic integration within those districts particularly in light of other viable alternatives that better maximize socio-economic integration.

To satisfy the constitutional requirement of socio-economic integration, there must be "sufficient evidence of socio-economic integration of the communities linked by the redistricting, proof of actual interaction, and interconnectedness *rather than mere homogeneity.*"[198] In his concurring opinion in *Carpenter*, Justice Matthews explained that "[i]ntegration connotes interaction and connectedness, while homogeneity refers to similarity or uniformity."[199] The Board and the trial court have abrogated the underlying purpose of the socio-economic integration requirement by relying on minimal evidence of homogeneity among communities as support for finding socio-economic integration among the communities in District 36 and 29.

The delegates to the Constitutional Convention explained the "socio-economic principle" as follows:

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[198] *Hickel*, 846 P.2d at 46 (citing *Kenai*, 743 P.2d at 1363) (emphasis added).

[199] *Carpenter v. Hammond*, 667 P.2d at 1218.

> [W]here people live together and work together and earn their living together, where people do that, they should be logically grouped that way.[200] [In addition,] the delegates define an integrated socio-economic unit as "an economic unit inhabited by people. In other words, the stress is placed on the canton idea, a group of people living within a geographic unit, socio-economic, following if possible, similar economic pursuits."[201]

This description supports the concept that election districts were intended to be comprised of socially and economically interactive people in a common geographic area.[202] In previous reapportionment decisions, this Court has identified specific characteristics of socio-economic integration. For example, in *Kenai* the court found that service by the state ferry system, daily local air taxi service, a common major economic activity, shared fishing areas, and historical links evidenced socio-economic integration of Hoonah and Metlakatla with several other southeastern communities.[203]

The Alaska constitution "requires maximizing socio-economic integration" within districts.[204] Redistricting decisions that reduce socio-economic integration may not be made except for purposes of maximizing the other constitutional requirements and contiguity and compactness.[205] The Board "is not permitted to diminish the degree of socio-economic integration in order to achieve other policy goals."[206]

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[200] *Hickel*, 846 P.2d at 46.

[201] *Hickel*, 846 P.2d at 46.

[202] *Carpenter*, 667 P.2d at 1215.

[203] *Hickel*, 846 P.2d at 46 (citing *Kenai*, 743 P.2d at 1361).

[204] *Hickel*, 846 P.2d at 70.

[205] *Hickel*, 846 P.2d at 45 n.10.

[206] *Hickel*, 846 P.2d at 45 n.10.

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"In addition to preventing gerrymandering, the requirement that districts be composed of relatively integrated socio-economic areas helps to ensure that a voter is not denied his or her right to an equally powerful vote."[207] This Court has commented on the significance of the requirement for socio-economic integration:

> [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 that representation of those areas of the state having common interests.[208]

1. District 29 Is Not Socio-Economically Integrated.

The trial court's determination that District 29 satisfies the socio-economic integration requirement is not supported by the record and is based upon a misapplication of Alaska law. District 29 is the result of the Board's goal of creating a district that includes all Doyon and Ahtna villages in District 36, which is adjacent to District 29, rather than an effort by the Board to maximize the constitutional redistricting criteria.

The Board did not consider any evidence of socio-economic integration within District 29 during any public Board meeting. The evidence of socio-economic integration advanced by the Board after adoption of the Plan provides evidence of some homogeneity

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[207] *Hickel*, 846 P.2d at 46.

[208] *Hickel*, 846 P.2d at 46 (citing *Groh v. Egan*, 526 P.2d 863, 890 (Alaska 1974)).

but no significant socio-economic integration,[209] and cannot support a determination that the Board engaged in reasoned decision-making. The trial court's Order evidences the lack of evidence of socio-economic integration between Valdez and the Mat-Su Borough.[210] The court determined that "[t]he question of whether Valdez and the Mat-Su borough are socio-economically connected, or simply homogenous communities is a close one"[211] as is the question of whether Valdez and the communities of Palmer and Wasilla are socio-economically integrated.[212]

The trial court's relied the proposition that "Alaska law is abundantly clear that no community is entitled to be districted with the communities it is most closely linked to"[213] and that districts will only be found to be unconstitutionally lacking in relative socio-economic integration if "[t]he record is simply devoid of significant social and economic interaction among the communities within an election district,"[214] ignores the Board's duty to maximize constitutional redistricting criteria. The court's interpretation of Alaska law abrogates the underlying purpose of article VI, section 6 by allowing the Board to form districts that fail to maximize socio-economic integration even where such districts do not materially advance other constitutional redistricting criteria. This has permitted the Board

[209] Order at 78 [EXC.1963].

[210] Order at 78-80 [EXC.1963-1965].

[211] Order at 82 [EXC.1967].

[212] Order at 88 [EXC.1973].

[213] Order at 79 [EXC.1964].

[214] Order at 79 (citing *Hickel*, 846 P.2d at 46 (quoting *Carpenter*, 667 P.2d at 1215 (internal quotation marks omitted))) [EXC.1964].

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to advance priorities unrelated to constitutional redistricting criteria so long as the record is not entirely devoid of evidence of socio-economic homogeneity.

a. The Trial Court Erred in Relying on Historical House Districts as Evidence of Socio-Economic Integration.

The trial court erred in relying on historical house districts as justification for determining that District 29 is sufficiently socio-economically integrated and finding that District 29 is substantially similar to District 9 in the 2013 Proclamation and District 12 in the 2002 Proclamation.[215] The trial court erroneously concluded that the dramatic increase in the percentage of population from the Palmer and Wasilla areas included in District 29 compared to District 9 "pertains to Valdez's vote dilution claims, not the issue of socio-economic integration."[216] While District 9 was comprised of 43.15 percent population from the Palmer and Wasilla suburbs,[217] District 29 is comprised of 76.2 percent population from these areas.[218]

This increase in the percentage of population from the Palmer and Wasilla areas is relevant to the relative socio-economic integration of District 29 because the increase reflects the substantial differences in the communities included in District 29 as opposed to District 9. District 9 included nearly all Richardson Highway communities, and those communities, with which Valdez shares strong socio-economic ties, constituted

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[215] Order at 81 [EXC.1966].

[216] Order at 82 n.470 [EXC.1967].

[217] Ex. VDZ-3006 at 3.

[218] Order at 106 [EXC.1991].

31.06 percent of District 9's population.[219] Conversely, District 29 includes no Richardson Highway communities and instead replaces that population exclusively with population from the Palmer and Wasilla areas that are not socio-economically integrated with Valdez.

The trial court also relied on the fact that District 9 was "specifically challenged in the 2011-2013 litigation, and the courts found the District constitutional"[220] despite acknowledging that the litigation focused on the compactness of District 9.[221] The *In re 2011 Redistricting Cases* superior court order[222] relied upon by the trial court does not support a determination that District 29 is socio-economically integrated. To the contrary, that order articulated the Board's reasoning in forming District 9 as "they chose to take population from the east side of the Mat-Su Borough and combine it with '*the most strongly integrated economic corridor in the state, the pipeline corridor, the Richardson Highway corridor from the south region of the North Star Borough to Valdez.*'"[223] Thus, during the 2011 redistricting process the Board determined that combining Mat-Su population with Valdez in District 9 satisfied the socio-economic integration requirement by virtue of maintaining the integrity of the pipeline corridor and including Richardson Highway

[219] Ex. VDZ-3006 at 3 [EXC.1695].

[220] Order at 81 [EXC.1966].

[221] Order at 81 n.466 ("While this challenge was primarily focused on compactness rather than socio-economic integration . . . it nonetheless provides strong evidence that the current district is constitutional if it is substantially similar to the district previously upheld by the court.") [EXC.1966].

[222] *In re 2011 Redistricting Cases,* 2013 WL 6074059 (Alaska Super. Ct. (Feb. 3, 2012)).

[223] *In re 2011 Redistricting Cases*, 2013 WL 6074059 at *13 (emphasis added).

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communities with Valdez. District 29 does not maintain the integrity of the pipeline corridor and, instead, separates Valdez from all other communities along the pipeline and the Richardson Highway.

The trial court similarly erred in relying on District 12 in the 2002 redistricting proclamation in determining that District 29 is socio-economically integrated. The trial court relied on a supreme court order in the *In re 2001 Redistricting Cases* encouraging the Board to consider shedding excess population from the combined area of the Mat-Su Borough *and* Anchorage to the north, south, or east.[224] First, the Mat-Su Borough did not have excess population to shed based upon the 2020 census data, and District 12 in the 2002 Proclamation, which contains some population from Mat-Su, was intended to create a "Richardson Highway district"[225] that included Valdez. The Board explained its reasoning for forming District 12 in its report accompanying the 2002 Proclamation as follows:

> District 12 represents an effort to reconstruct a Richardson Highway district (District 35 in the 1994 plan) within the severe population constraints created by the 2000 census numbers. The district reaches from the Eielson precinct in the [FNSB] to the City of Valdez. The population of Valdez (4036) is essential to the viability of this district . . . There is insufficient population for a highway district solely along the Richardson Highway between Eielson and Valdez, so additional population (approximately 2700) was obtained from the Mat-Su Borough along the Glenn Highway.[226]

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[224] *In re 2001 Redistricting Cases*, 44 P.3d at 144 n.7.

[225] Ex. VDZ-3013 at 3-4 [EXC.1722-23].

[226] Ex. VDZ-3013 at 3-4 [EXC.1722-23].

Thus, District 12 took population from the Mat-Su Borough in order to facilitate the formation of a "Richardson Highway District." Unlike District 29, District 12 does not pair Valdez exclusively with the Mat-Su Borough but instead combines some eastern Mat-Su population with a Richardson Highway district that included nearly all Richardson Highway communities from Valdez to Eielson.

Neither District 12 in the 2002 Proclamation nor District 9 in the 2013 Proclamation is substantially similar to District 29 in the Plan. Indeed, District 29 lacks the one characteristic that drove the creation of both of these historical districts—the formation of a Richardson Highway district that combined communities along "*the most strongly integrated economic corridor in the state*."[227] The court erred in relying on historical districts as evidence of socio-economic integration between the Mat-Su Borough and Valdez.

b. The Trial Court Misapplied Alaska Law in Determining that Valdez and the Mat-Su Borough Are Socio-Economically Integrated.

The trial court misapplied Alaska law in determining that Valdez and Mat-Su are sufficiently socio-economically integrated by virtue of purported integration with Anchorage, no portion of which is included in District 29. Specifically, the trial court misapplied *Kenai* and placed too much weight on the concept of "regional integration" as evidence of sufficient socio-economic integration between Valdez and Mat-Su:

> This Court's conclusion about socioeconomic integration between Valdez and Mat-Su is greatly influenced by the Supreme Court's determination in

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[227] *In re 2011 Redistricting Cases*, 2013 WL 6074059 at *13 (emphasis added).

> *Kenai*. If the Court had not taken such a broad view of the issue and held that regional integration was enough, this Court might have reached a different conclusion on the issue. But *Kenai* is the established law on this issue.[228]

In *Kenai*, this Court considered whether including South Anchorage and North Kenai (Nikiski) in the same district[229] violated article VI, section 6.[230] The Court first noted the State's arguments that there was "no constitutionally permissible alternatives to joining North Kenai with South Anchorage," and the result of not joining them would be a population deviation "in excess of the 16.4% maximum deviation permitted under the Federal Constitution."[231] The analysis operated under the premise that no other options were available.

While the State invited the Court to consider South Anchorage and Anchorage "an indivisible area for the purpose of determining North Kenai's socio-economic ties with South Anchorage,"[232] the Court thoroughly evaluated multiple socio-economic factors (interaction, economic, social, transportation, and geographic factors) between North Kenai and South Anchorage specifically and between their hub communities of Kenai and Anchorage.[233] The Court compared the level of socio-economic integration to other cases in which it has rejected or accepted the integration as sufficient and held, "Kenai draws too

[228] Order at 82 n.475 [EXC.1967].

[229] *Kenai,* 743 P.2d. at 1361-62.

[230] *Kenai,* 743 P.2d. at 1361-62.

[231] *Kenai,* 743 P.2d. at 1362.

[232] *Kenai,* 743 P.2d. at 1362.

[233] *Kenai*, 743 P.2d at 1362-63.

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fine a distinction between the interaction of North Kenai with Anchorage and that of North Kenai with South Anchorage" where no other viable options existed.[234] In the present case, the trial court has expanded the analysis in *Kenai* to allow a finding of socio-economic integration of communities outside of Anchorage by virtue of socio-economic ties with Anchorage.

Kenai simply does not stand for the proposition that "regional integration" supports a finding of socio-economic integration between communities that share purported socio-economic ties to a municipality outside of their district. The Court in *Kenai* did not state that two municipalities *outside* of Anchorage with socio-economic ties to Anchorage are, therefore, socio-economically integrated with one another. Instead, after a fact-specific inquiry, *Kenai* held that the distinction between socio-economic integration with specific areas within Anchorage and Anchorage as a whole was too fine a distinction.

The trial court erred by expanding *Kenai* to allow a finding of sufficient socio-economic integration where two disparate communities such as Valdez and the Palmer and Wasilla areas share socio-economic ties with Anchorage even though they were not placed in a District with any portion of Anchorage.[235] In so doing, the trial court renders the constitutional requirement of socio-economic integration devoid of substance. This overly

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[234] *Kenai*, 743 P.2d at 1263.

[235] Order at 82-83 ("Valdez and the Mat-Su Borough are also relatively socio-economically integrated for the purposes of Article VI, § 6 because both communities are socio-economically integrated with Anchorage.") [EXC.1967-68].

broad reading of *Kenai* would allow communities such as Talkeetna and Homer, both of which have ties to Anchorage, to be placed in a district together.

The trial court's determination of sufficient socio-economic integration between Valdez and the Mat-Su Borough communities within District 29 is also based on a flawed assumption that Valdez and Anchorage are socio-economically integrated based solely upon the superior court's decision in *In re 2001 Redistricting Cases*.[236] The configuration of District 32 in the 2001 Proclamation was never substantively litigated before this Court because District 32 was "based on a mistaken legal premise that constrained the board's view of the permissible range of constitutional options for these areas."[237] On remand, the Board placed Valdez in a district with Richardson Highway communities and a portion of the FNSB.[238]

During the 2011 redistricting process, the Board thoroughly considered pairing Valdez with Anchorage "but ultimately decided against because of socio-economic integration concerns."[239] During the 2021 redistricting process, the Board did not engage in any fact-specific analysis regarding Valdez's socio-economic integration with Anchorage and did not rely on the purported socio-economic integration of Valdez and the Mat-Su Borough with Anchorage. Indeed, the Board abandoned its attempt to pair Valdez

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[236] Order at 83 (citing *In re 2001 Redistricting Cases*, 2002 WL 34119573 at *103-13) [EXC.1968].

[237] *In re 2001 Redistricting Cases*, 44 P.3d at 143.

[238] Ex. VDZ-3005 at 4 [EXC.1688].

[239] *In re 2011 Redistricting Cases*, 2013 WL 6074059 at *13.

with Anchorage because it was not feasible within legal parameters.[240] Thus, the trial court's presumption that Valdez is socio-economically integrated with Anchorage is unsupported by the record.

The trial court also misapplied *In re 2001 Redistricting Cases* in finding that Valdez and the Mat-Su Borough are socio-economically integrated[241] based upon the flawed assumption that the Mat-Su Borough and Anchorage "should be treated as one and the same for purposes of socioeconomic integration."[242] The trial court relies solely on *In re 2001 Redistricting Cases* for this proposition.[243] This broad interpretation of the socio-economic integration factor to allow a finding of sufficient socio-economic integration among any Mat-Su Borough and Anchorage communities fails to capture the intent behind article VI, section 6. Neither the Board nor the trial court can properly rely upon blanket assertions of socio-economic integration among communities within different local government boundaries without engaging in a fact-specific analysis with an eye toward maximizing socio-economic integration within districts.[244]

The trial court's extension of *Kenai* to allow a finding of sufficient socio-economic integration among any communities that are socio-economically integrated with Anchorage ignores this Court's holding that "the Alaska constitution requires maximizing

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[240] Board Meeting Tr. 5:19-22 (Nov. 5, 2021) [ARB007862] [EXC.1076].

[241] *In re 2001 Redistricting Cases*, 44 P.3d at 141.

[242] Order at 83 [EXC.1968].

[243] Order at 83 (citing *In re 2001 Redistricting Cases,* 44 P.3d at 144 n.7.) [EXC.1968].

[244] *Hickel*, 846 P.2d at 73.

socio-economic integration" within districts.[245] The Board has a duty to maximize the constitutional redistricting requirements, and redistricting decisions that reduce socio-economic integration may not be made except for purposes of maximizing the other constitutional requirements including contiguity and compactness.[246]

2. District 36 Is Not Socio-Economically Integrated.

The record reflects no evidence of socio-economic ties among Alaska Native villages along the lower Yukon River such as Holy Cross and predominantly non-Native communities along the Richardson Highway such as Glennallen. The same is true for rural Doyon villages that are generally not on the highway system and rural Ahtna villages which are.[247] At trial, the evidence proffered by the Board to establish socio-economic integration among road communities and lower Yukon River communities established some homogeneity but virtually no actual interaction or interconnectedness. The Board offered testimony that people in the Doyon and Ahtna regions "share some socioeconomic similarities" because they engage in subsistence, access similar types of healthcare, face similar challenges with regard to access to utilities, and have similar concerns with regard to the quality of rural schools.[248] These socio-economic factors could be applied to

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[245] *Hickel*, 846 P.2d at 70 ("This court found that the Alaska constitution requires maximizing socio-economic integration, and the supreme court agreed.").

[246] *Hickel*, 846 P.2d at 45 n.10.

[247] Trial Tr. 944:17-20 [EXC.1631].

[248] Trial Tr. 888:6 – 889:6 [EXC.1622-23].

virtually any rural community in Alaska. As such, all of these socio-economic factors represent homogeneity or similarity rather than interconnectedness or interaction.

The primary evidence regarding socio-economic integration in District 36 provided by the Board was the fact that both Doyon and Ahtna have primarily Athabascan shareholders.[249] However, District 36 is less than 30 percent Native,[250] and only 19 percent of Doyon shareholders live in traditional Doyon villages.[251] Far more Doyon shareholders live in communities outside District 36 than live inside District 36.[252] The Board's focus on homogeneity among Alaska Native communities in District 36 improperly ignores socio-economic integration among both the Native communities in the Ahtna and Doyon regions and the remaining 70 percent of the population that is non-Native. The trial court's order reflects the absence of any evidence of actual socio-economic integration and instead relies on evidence of homogeneity.[253]

Chairman Binkley specifically articulated the lack of socio-economic integration among the Yukon River communities and communities along the Richardson Highway included in District 36 stating that these communities are "different, completely,"[254] "very different," and that "there is a huge difference in socio-economic integration between those

[249] Trial Tr. 888:6-9 [EXC.1622].

[250] VDZ 3003 at 1216 [EXC.1683].

[251] Trial Tr. 777:19-23 [EXC.1613].

[252] Trial Tr. 777:19 – 779:5 [EXC.1613-15].

[253] Order at 90 – 96 [EXC.1975-81].

[254] Board Meeting Video at 6:43:10 (Nov. 5, 2021) [EXC.2084]; Board Meeting Tr. 242:15-25 (Nov. 5, 2021) [ARB008099] [EXC.1121].

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areas."[255] The record establishes that the Board did not engage in any discussion of factors establishing socio-economic integration among the communities along the road system and the Yukon River Communities included in District 36. Chairman Binkley stated that "it's difficult to say, socioeconomically . . . that District 36 is homogenous,"[256] let alone socio-economically integrated. Chairman Binkley also testified that he was unaware of any place in the record where the Board discussed anything besides the differences among these communities.[257]

The Board did not proffer or consider evidence sufficient to establish socio-economic integration between Native villages along the Yukon and road-accessible communities along the Alaska, Richardson, and Glenn Highways. With regard to the residents of Holy Cross and Glennallen, Board Member Borromeo testified that residents of Glennallen do not live with residents of Holy Cross, that they potentially work together, although she was not personally aware of any people that do, and agreed that they do not play together.[258] Ms. Borromeo also agreed that "road communities are significantly different than river communities"[259] and testified that she could not recall a single

[255] Board Meeting Video at 6:43:10 (Nov. 3, 2021) [EXC.2084]; Board Meeting Tr. 251:15-25 (Nov. 3, 2021) [ARB007611] [EXC.0660].

[256] Board Meeting Tr. 251:15-25 (Nov. 3, 2021) [ARB007611] [EXC.1683].

[257] Binkley Depo. Tr. 111:18 – 112:1 [EXC.1331-32].

[258] Trial Tr. 836:8 – 838:24 [EXC.1617].

[259] Trial Tr. 835:22-25 [EXC.1616].

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conversation in which a single economic factor linking Glennallen and Holy Cross was discussed by the Board.[260]

The trial court held "the Board took a very broad view of socioeconomic integration when it came to District 36" and identified that the evidence of socio-economic integration relied upon by the Board, such as statewide reliance on the oil and gas industry, was applicable to all communities in Alaska.[261] Ultimately the trial court relied upon a superior court order in the *In re 2001 Redistricting Cases* litigation, for the proposition that socio-economic integration exists in District 36 despite the lack of "repeated and systematic interaction."[262] The record in this case establishes no interaction among the Richardson Highway communities and the lower Yukon River communities in District 36.[263] This Court has held there must be "proof of actual interaction, and interconnectedness *rather than mere homogeneity.*"[264] Because the record is devoid of evidence of any interconnectedness and interaction between numerous communities included in District 36, the trial court erred in determining that it is sufficiently socio-economically integrated.

The record is devoid of evidence of any significant socio-economic integration among Richardson Highway communities and lower Yukon River communities. The

[260] Trial Tr. 839:23 – 840:4 [EXC.1620-21].

[261] Order at 92 [EXC.1977].

[262] Order at 96 (citing *In re 2001 Redistricting Cases,* No. 3AN-01-8914CI, 2002 WL 34119573, at *61 (Alaska Super. Ct. Feb. 01, 2002) [EXC.1981].

[263] Trial Tr. 836:8 – 838:24 [EXC.1617-19].

[264] *Hickel*, 846 P.2d at 46 (citing *Kenai*, 743 P.2d at 1363).

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Richardson Highway communities in District 36 are substantially more socio-economically integrated with FNSB and Valdez.[265] The Board was presented with viable redistricting options that provided greater relative socio-economic integration and better satisfied the compactness requirement.

The Board failed to provide any evidence that the lack of socio-economic integration in District 36 was the result of seeking to maximize the constitutional redistricting criteria of compactness and contiguity and the trial court erred in permitting this failure.

E. District 36 Is Not Compact.

District 36 encompasses a 198,605 square mile area and stretches from the Yukon River village of Holy Cross to the Copper River Valley community of McCarthy. District 36 combines 35 percent of Alaska's geographic area into only one of the forty house districts. Were it a state, District 36 would be the third largest state in our nation. The Board was apparently unaware of the actual size of the districts they drew because they did not measure the square mileage the districts.[266]

Chair Binkley stated on the record that District 36 as it appeared in V.3 and V.4, which are more compact than District 36 in the Final Plan, are not compact. In the context of comparing the compactness of a proposed District 39 that included some Doyon villages

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[265] *In re 2011 Redistricting Cases*, 2013 WL 6074059 at *13 (describing the Richardson Highway corridor from the South region of FNSB to Valdez as "the most strongly integrated economic corridor in the state, the pipeline corridor, the Richardson Highway corridor from the south region of the North Star Borough to Valdez.").

[266] Binkley Depo. Tr. 121:16-25 [EXC.133].

specifically, Chair Binkley stated "if you want to talk about compact, look at the Doyon region in version 3 and 4. That wouldn't be compact by any stretch of the imagination."[267] This opinion was based upon proposed districts that did not include the Cantwell appendage, which the Board openly acknowledged was detrimental to compactness.[268] This Court has expressly held that "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," and "appendages attached to otherwise compact areas may violate the requirement of compact districting."[269] The compactness requirement should not result in "bizarre designs" for districts. [270]

The Board considered factors that have no bearing on compactness in analyzing whether District 36 was sufficiently compact. When asked what measures of compactness the Board applied before adopting District 36, Ms. Borromeo answered "we looked at the

[267] Board Meeting Tr. 198:9-12 (Nov. 3, 2021) [ARB007558] [EXC.0607].

[268] Board Meeting Tr. 253:8-10 (Nov. 5, 2021) [ARB008110] ("in the light of the fact that we have noted the socioeconomic reasons for taking Cantwell out. Obviously it is not a compact change, right, so do you have any concerns about the compactness."); Board Meeting Tr. 253:14-15 (Nov. 5, 2021) [ARB008110] ("I agree that it's -- it is -- 36 becomes a little less compact as a result of putting Cantwell in, and it's sort of a coin toss as to whether that makes sense.") [EXC.1122].

[269] *Hickel*, 846 P.2d at 45-46.

[270] *Hickel*, 846 P.2d at 45 (citing *Davenport v. Apportionment Comm'n of New Jersey*, 124 N.J. Super. 30, 304 A.2d 736, 743 (App. Div. 1973) (citations omitted) (quoted in *Carpenter*, 667 P.2d at 1218-19)).

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district – district's water tributaries, mountain ranges, regions from an Alaska Native perspective. Those were the type of things that I remember considering. "[271]

District 36 is both a bizarre horseshoe shape and includes two appendages that protrude into populated areas without subsuming adjacent unpopulated areas—one that carves out Glennallen and neighboring population along the Glenn Highway and one that carves out a portion of the Denali Highway in order to reach Cantwell and preserve Ahtna's ANCSA boundary. The Board utilized the eye test to determine compactness rather than objectively measuring the districts. District 36 simply does not pass the eye test with regard to compactness. District 36 was rendered substantially less compact than otherwise possible by virtue of Board member priorities unrelated to the constitutional redistricting criteria

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[271] Borromeo Depo. Tr. 120:6-12 [EXC.1316].

VII. CONCLUSION

The Board chose to prioritize the nonconstitutional goals of its individual members over the consistent application of the constitutional requirements throughout the redistricting process. Time-and-again the Board deferred to the priorities of the individual member from the geographic area under discussion. This is simply not the constitutional process the Board is required to undertake and, as a result, the process failed to produce constitutionally compliant outcomes.

The Board set aside its constitutional obligations to establish compact and socio-economically integrated districts when it prioritized the nonconstitutional goal of creating a "Doyon" or "Doyon-Ahtna" district (District 36). The Board's favored treatment of the Native voters in these villages, which constitute less than 30 percent of District 36, over all other voters cannot possibly survive constitutional scrutiny.

The Doyon District is not compact. It would be the third-largest state in our union. It is not so large because Alaska is a vast state with low population densities, as may sometimes justify a larger district, but because the Board set aside the constitutional requirements for establishing house districts and instead decided to: (1) establish VRA-districts early in the process in direct violation of the *Hickel* process, locking in portions of the Doyon District's boundaries; (2) inconsistently and arbitrarily apply ANSCA boundaries to artificially separate Native villages along the lower Yukon drainage, while ignoring other ANSCA boundaries altogether; (3) form a noncompact horseshoe shape around the population of Fairbanks in an effort to keep Fairbanks intact in deference to

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Chair Binkley; and (4) establish and advance a goal of maximizing the voting power of far-flung Native villages (that are currently in four different districts) by combing them into a single district, even though the district was over 70 percent non-Native. The Board then further violated compactness by adding two strange appendages to capture 30 Ahtna shareholders in Cantwell and to capture the predominately non-Native population of Glennallen, breaking two borough boundaries in the process.

The Doyon District is also not relatively socio-economically integrated. There is no substantive or creditable evidence in the record suggesting these two disparate sets of communities are relatively socio-economically integrated at all, much less to the maximum degree practicable.

Since statehood, every governor and board has properly applied the constitutional standards of article VI, section 6 to place Valdez in a house district with the Richardson Highway communities, with the Prince William Sound communities, or with both. The Board in this case has orphaned the voters of Valdez from their closest neighbors and placed them completely in a district with voters with whom they do not work, live, or share common concerns. The Board took this action as a default in order to achieve the nonconstitutional goals it had already committed to achieve.

The Board's actions ignored the public process, which overwhelmingly suggested Valdez should not be districted, let alone exclusively paired, with the Mat-Su Borough. The public process yielded voluminous and near unanimous comments in favor Valdez being placed with the people its voters live, work, and share common interests with along

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the Richardson Highway, as it has been for decades, in what has been framed by the courts as *"the most strongly integrated economic corridor in the state, the pipeline corridor, the Richardson Highway corridor from the south region of the North Star Borough to Valdez."*[272]

Rather than ensuring District 29 met the constitutional requirements for a house district, the Board chose to protect its nonconstitutional priorities and reach out to everyone it could for justification supporting pairing Valdez exclusively with the Mat-Su Borough for the first time in history. In doing so, the Board stretched this Court's prior authority beyond recognition and advanced theories that diminish if not entirely abrogate the limitations to the Board's discretion set forth in article VI, section 6 of the Alaska Constitution.

The Board did not map, much less look hard at establishing (1) a Richardson Highway house district; (2) a Valdez, Seward, and Kodiak house district by shifting Cordova into Southeast; or (3) an Anchorage and Valdez house district. The Board chose not to even look at the maps already prepared by Member Marcum because they would require modification to the VRA districts and Doyon District in order to form a Richardson Highway or Prince William Sound district. In addition, the Board discouraged Member Marcum from mapping an Anchorage and Valdez district altogether. Any of these alternatives would have resulted in more compact and socio-economically integrated house districts throughout Alaska, which the Board could have considered if they had properly

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[272] *In re 2011 Redistricting Cases*, 2013 WL 6074059 at *13 (emphasis added).

and consistently applied the constitutional requirements. This Court should enforce these requirements and remand this matter back to the Board for consistent application when evaluating the viable alternatives it chose not to consider for the voters of Valdez.

RESPECTFULLY SUBMITTED this 2nd day of March, 2022.

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