**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA**

**FOURTH JUDICIAL DISTRICT AT FAIRBANKS**

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| In Re 2011 Redistricting Cases. | ) **CONSOLIDATED CASE NO.:**<br>) **4FA-11-2209-CI**<br>) 4FA-11-2213 CI<br>) 1JU-11-782 CI |

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**A.**
**INTRODUCTION**

1. Defendant Alaska Redistricting Board ("Board") is a statutorily created board vested with the authority and responsibility of reapportioning the House and Senate districts immediately following the official reporting of the decennial census of the United States. The Board adopted its Proclamation Plan as required by the Alaska Constitution on June 13, 2011. On July 13, 2011, Plaintiffs George Riley and Ronald Dearborn ("Riley Plaintiffs") filed a lawsuit, challenging certain aspects of the Proclamation Plan under the Alaska Constitution. The Fairbanks North Star Borough ("FNSB") also challenged the Proclamation Plan, as did the City of Petersburg. However, the FNSB dismissed its case against the Board on November 3, 2011, and the court resolved the City of Petersburg's sole remaining issue on summary judgment. Thus, only the Riley Plaintiffs participated at trial.

2. Trial was held in Fairbanks from January 9 through January 13, 2012, and January 16 through January 17, 2012.

3. In anticipation of trial and as required by Civil Rule 90.8(d), the Board filed with this Court and the Supreme Court a copy of the Board Record, which contained more than 13,000 pages of documents, on August 25, 2011. The Board Record consists of nearly every document either created or received by the Board throughout the entire process. It is a

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complete record of the 2011 redistricting process. It contains meeting materials and transcripts from all board meetings and public hearings, and copies of all the third party plans adopted by the Board, as well as the Board's option plans. It also contains a copy of Dr. Handley's final report submitted to the Department of Justice in support of preclearance, as well as a complete copy of the Board's preclearance submission. The Board provided a hard copy and a searchable, electronic copy to this Court, and electronic copies to all the parties. The Board supplemented the Board Record as necessary, again providing both hard copies and searchable, electronic copies. A complete copy of the Board Record is also on file with the Supreme Court, under case number S-14441.

4. Based on the evidence in the Record as supplemented by the testimony and exhibits introduced at trial, this Court finds as fact the following:

## B.
## THE REDISTRICTING PROCESS

5. Article VI, section 4 of the Alaska Constitution vests in a statutorily created Board the authority and responsibility of reapportioning the House and Senate districts immediately following the official reporting of the decennial census of the United States. This Board, known as the Alaska Redistricting Board, consists of five individuals appointed by different political leaders as outlined in Article VI, section 8(b) of the Alaska Constitution. Article VI, section 4 requires the Board establish 40 single-member House districts and 20 single-member Senate districts, each composed of two House districts. The ideal population of each House district is determined by dividing the state's total population by 40. Article VI, Section 6 requires the House districts be contiguous and compact and contain, as nearly as practicable, a relatively integrated socio-economic area. Section 6 also requires Senate districts be composed as nearly as practicable of two contiguous House districts. Statutes and civil rules

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dictate other aspects of the process, such as the planning committee responsible for handling administrative tasks prior to the Board's installation.

6. In the spring of 2010, the Planning Committee began preparations for the 2011 Redistricting Board. Board members and staff testified the Planning Committee submitted an RFP for redistricting software, to which Citygate responded and was ultimately chosen. The Planning Committee also purchased the laptops for the individual Board members, as well as rented office space. The Planning Committee also contacted Dr. Lisa Handley, who had served as the Voting Rights Act expert for the 2001 Redistricting Board, to give a presentation on the Voting Rights Act. She recommended what information the Board staff should gather in preparation for the Census data to be used by the Board's Voting Rights Act expert.

7. Eric Sandberg, a geographer with the Research and Analysis section of the Department of Labor, assisted the Planning Committee in selecting a software vendor and the appropriate hardware needed to run the specialty software. Mr. Sandberg's boss, Brynn Keith, was a member of the Planning Committee. The Department of Labor had provided a GIS specialist to assist the Board in the 1990 and 2000 redistricting cycle, and his boss recommended Mr. Sandberg to assist the 2011 Redistricting Board. Mr. Sandberg testified that he regularly works with GIS software, and would be able to answer any questions the Board members may have about the software. Mr. Sandberg also testified that as an analyst, he researches population trends throughout Alaska in preparing population projections. He was therefore familiar with the difficulties faced by the 2011 Redistricting Board.

8. On June 25, 2010, Governor Sean Parnell appointed John Torgerson of Soldotna, Executive Director of the Kenai Peninsula Economic Development District and former State Senator, and Albert Clough of Juneau, a retired commercial pilot, as the first

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members of the Redistricting Board. Albert Clough resigned on February 23, 2011, when he accepted full-time employment with the State of Alaska. Governor Parnell appointed PeggyAnn McConnochie, a real estate broker from Juneau, to replace Mr. Clough on the same day. Senate President Gary Stevens appointed Robert Brodie, a real estate broker and former mayor of Kodiak, on June 25, 2010. The Speaker of the House of Representatives, Mike Chenault, appointed Jim Holm of Fairbanks, a business owner and former state representative, on July 8, 2010. Alaska Supreme Court Chief Justice Carpeneti appointed Marie Greene of Kotzebue, CEO of Nana, Inc., and an Alaska Native (Inupiat), on August 31, 2010. Board member John Torgerson was elected Chair.

9. The Record reflects, as supplemented by the testimony of Board members and Board staff, that the Board faced a difficult challenge given demographic changes in Alaska's population over the last ten years. Alaska Native population in the rural areas experienced a significant loss in population, with a large number of Alaska Natives moving to more urban areas, causing an out-migration. This trend left the Alaska Native districts, which must be maintained under the federal Voting Rights Act, severely under populated. Board members and staff testified this meant the Board was for the first time in Alaska redistricting history going to have to add urban population to a rural, Alaska Native district in order to meet the one-person, one-vote requirement. It was not a matter of "if" urban and rural population were going to have to be combined, only a matter of "where" that population would come from.

10. The Board held its first meeting on September 13, 2010, and met regularly through June 14, 2011. Pursuant to Article VI, Section 10 of the Alaska Constitution, the Board was required to adopt a draft plan or plans 30 days after the reporting of the decennial

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census of the United States, and a final plan and proclamation no later than 90 days after the reporting of the census.

11. The Board hired Ron Miller to serve as Executive Director, who began work on October 26, 2010. Ron Miller then hired Taylor Bickford as assistant director on November 18, 2010, and Mary Core as an administrative assistant on January 3, 2011. Mr. Miller also hired Jim Ellis as an administrative coordinator on March 21, 2011.

12. Mr. Bickford testified he spent several weeks reviewing materials from the 2001 redistricting cycle in anticipation of the extremely accelerated process. He testified the official documents from the 2001 Redistricting Board were misplaced, so he relied on documents from the 2001 redistricting cases. He used these documents to create an electronic archive and set forth a timeline for the 2011 Redistricting Board.

13. All Board Members and Mr. Miller attended redistricting training at the National Conference of State Legislators ("NCSL") Redistricting Seminar in Providence, Rhode Island in September 25-28, 2010. Chair Torgerson, Mr. Miller, Mr. Bickford and Board counsel attended the NCLS Redistricting Seminar in National Harbor, Maryland on January 20-24, 2011.

14. Prior to the release of the Census data on March 15, 2011, Eric Sandberg began to collect and prepare election data as advised by Dr. Handley to the Planning Committee. Mr. Miller and Mr. Bickford began preparing a Request for Proposal for a Voting Rights Act expert. Chairman Torgerson testified that after the 2001 redistricting cycle, the budget for the Board was transferred from the legislature to the Governor's office. Under the Governor's office, the Board had to submit an RFP for every service it required, including legal counsel, a Voting Rights Act expert, and a redistricting software vendor. Board members and staff

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testified this process inherently took more time to hire necessary components than if the budget had been under the legislature.

15. On March 15, 2011, the Board received block level census data from the U.S. Bureau of the Census. Thus, the Board had until April 14, 2011, to adopt a draft plan, and until June 13, 2011, to adopt a final plan. The Census Bureau provided the information electronically in a TIGER format. The Board's software vendor, Citygate, loaded the TIGER files into the GIS redistricting software, and sent the updated shapefiles to the Board. The 2010 census data showed a total statewide population of 710,231 people. Therefore, the ideal size of a House district was 17,755, the number obtained by dividing the total population by 40.

16. On March 16, 2011, the Board published its "Alaska Redistricting Board 2011 Redistricting Guidelines." These guidelines set forth, in order of priority, the criteria the Board used when adopting its Proclamation Plan so as to comply with federal and state constitutional and statutory requirements. The Board listed compliance with federal law first, beginning with the one-person, one-vote mandate, and then the federal Voting Rights Act. The Board next listed the state constitutional requirements of compactness, contiguity, and relative socio-economic integration. The Board encouraged all third parties who submitted plans to the Board to follow these same guidelines.

17. The Board then scheduled a series of eight "pre-plan" public hearings in the state's population centers from March 22 to March 31. The purpose of these "pre-plan" hearings was to solicit public testimony on existing election district boundaries, and to receive general advice, ideas, and comments from the public about redistricting issues to assist the Board in developing draft plans. At these hearings, the Board also provided interested groups and individuals with the opportunity to submit proposed plans. The Board held these public

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hearings in Anchorage on March 22, in Wasilla on March 23, in Juneau on March 25, in Ketchikan on March 26, in Fairbanks on March 28, in Kotzebue on March 29, in Bethel on March 30, and via statewide teleconference at the Legislative Information Office in Anchorage on March 31.

18. Prior to the start of the March 31 statewide teleconference, the Board received scheduled plan presentations from a number of groups. The RIGHTS Coalition, Alaskans for Fair and Equitable Redistricting ("AFFER"), and Alaskans for Fair Redistricting ("AFFR") all submitted statewide plans and made presentations about those plans to the Board. Several local government entities, including the City and Borough of Juneau, Bristol Bay Borough, and the City of Valdez, submitted regional or single district plans. On April 8, 2011, the Alaska Bush Caucus, a group made up of rural, primarily Alaska Native state legislators submitted four alternative plans for the Alaska Native districts.

19. The Board began deliberating on draft plans on April 4, 2011. Board members and staff continued working, in formal public meetings and in work sessions of no more than two Board members, until April 13, 2011. The Board reported and discussed the products of these work sessions at each meeting.

20. On April 8, 2011, the Board hired Dr. Lisa Handley to serve as its Voting Rights Act expert. Chairman Torgerson notified the Board of its choice at the April 4, 2011 board meeting. A handful of individuals responded to the RFP submitted sometime in the beginning of March, and the Board ultimately chose Dr. Handley.

21. On April 9, 2011, the Board adopted a resolution to create nine protected Alaska Native districts.

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22. On April 11, 2011, Dr. Handley made a presentation to the Board consisting of a general overview of the Voting Rights Act as well as an outline of what work she would perform for the Board. During her presentation, Dr. Handley explained the type of analysis she would be performing for the Board over the next few weeks. She explained the Board would need to create the same number of districts that provided Alaska Natives the ability to elect their candidate of choice as the 2001 redistricting plan. This is known as the "Benchmark" for Department of Justice preclearance under the Voting Rights Act. From her Racial Bloc Voting analysis, Dr. Handley could determine the percentage of Alaska Native voting age population ("NVAP") necessary in each of these protected districts to provide Alaska Natives with the ability to elect their candidate of choice. She discussed with Eric Sandberg what information she would need in order to perform her Racial Bloc Voting analysis, which included the election data he had collected prior to receiving the Census data. Dr. Handley also strongly urged the Board to draft the Alaska Native Districts first given the demographic difficulties with which the Board was faced.

23. Dr. Handley was in Afghanistan at the time of the teleconference, working on a project for the United Nations. She testified that she did not return to the states until sometime near the end of April, at which time she began her Racial Bloc Voting analysis for Alaska.

24. On April 13, 2011, the Board adopted a total of five statewide plans to be submitted for public comment plus a number of regional and single district plans at its April 13, 2011, board meeting. Two of the five draft statewide plans were prepared by the Board and staff. These plans were designated Board Option 1 and Board Option 2, and included regional alternatives for the Mat-Su Borough and Southeast Alaska. The other three statewide plans adopted by the Board were the March 31, state-wide plans submitted by AFFR, AFFER, and

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the RIGHTS Coalition on March 31. The Board also adopted the regional and single-district plans submitted by the City and Borough of Juneau, Bristol Bay Borough, the City of Valdez, and the Alaska Bush Caucus, in order to allow the maximum possible public input.

25. Prior to receiving Dr. Handley's Racial Bloc Voting analysis, the Board operated under the 2001 redistricting cycle's previous target percentage 35% Alaska Native VAP when drawing protected Alaska Native districts. At the April 11, 2011, board meeting, Dr. Handley explained ten years ago in Alaska, a district with 35% Alaska Native routinely elected a Native-preferred candidate. This number was deduced by performing a Racial Bloc Voting analysis, which she had not yet done. Thus, she informed the Board that the number could be higher or lower, or remain the same.

26. Sometime in late April, Dr. Handley asked Eric Sandberg to create a chart that showed the population deviations in the current districts. Mr. Sandberg testified he used the shapefiles from the 2000 redistricting provided by the Census Bureau and used the 2010 population data to determine the current population of the current districts. This chart, identified as Joint Exhibit J38, showed several of the Alaska Native districts were drastically under populated. Dr. Handley therefore advised the Board begin drawing the Alaska Native districts first given the severity of the situation.

27. Between April 18 and May 6, the Board held public hearings on the draft plans in 32 communities across Alaska. During this time period, the Board and its staff logged nearly 60,000 air miles. These hearings, attended by over 640 people, were held in Anchorage, Fairbanks, Juneau, Cordova, Healy, Palmer, Delta Junction, Nome, Dutch Harbor, Kotzebue, Tok, Cold Bay, Bethel, Glennallen, Galena, Barrow, Kodiak, Sitka, Craig, Ketchikan, Wrangell, Seward, Petersburg, Homer, Kenai, Skagway, Haines, Valdez, Angoon, King

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Salmon, Dillingham, and Hoonah. The full Board attended both hearings in Anchorage, as well as the hearing in Fairbanks and Juneau. For the other hearings, the Board and staff split into three teams made up of two Board members and/or staff. The staff drafted written reports summarizing testimony received at each public hearing and presented those reports to the full Board on May 16, 2011.

28. Throughout the process, the Board received thousands of pages of written comment on the redistricting process and proposed plans in addition to comments at public hearings. The Board updated its website on a daily basis to include the public comments it received. A number of governmental entities, Alaska Native Corporations, Tribal Councils, and Alaska Native villages passed resolutions either supporting a regional plan or formally acknowledging its preferred district. Private plans were updated via email throughout the process, and two governmental entities, the Ketchikan Gateway Borough and the Mat-Su Borough, submitted regional plans for the Board's consideration.

29. The last public hearing was a statewide teleconference held in Anchorage at the Legislative Information Office on Friday, May 6. The Board invited groups to submit any new or revised plans. AFFR, AFFER, the RIGHTS Coalition, and Calista Corporation all submitted revised statewide plans, while the Municipality of Anchorage and FNSB both submitted revised regional plans. The teleconference also provided a forum for people from communities not visited by the Board to call in and provide comment.

30. The Board and staff testified that throughout the process, many of the third parties submitted plans with incomplete and incorrect population data, including using total Alaska Native population numbers instead of NVAP population numbers for their Alaska Native protected districts. This meant that many of the third party plans incorrectly stated the

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number of protected Alaska Native districts contained in their proposed plans. As a result, Board staff routinely had to download the shapefiles from the third parties into the Board's redistricting software and calculate the NVAP percentage for the third party plans so that the plans could be properly analyzed by the Board.

31. For example, Mr. Sandberg testified the RIGHTS Coalition used a different software program than the Board that was not directly compatible with the Board's software. As a result, he routinely had to convert the data from text files to shapefiles in order to download it into the Board's redistricting software. All of the Statewide Plans submitted by the three major third party groups, AFFR, AFFER and the RIGHTS Coalition on May 6 used total Native Population and not NVAP. As May 6th was the end of a long three week public hearing process, Board staff was given the weekend off and did not convert the third party plans expecting to do it the following week.

32. On Sunday May 8, 2011, the Board's Executive Director Ron Miller unexpectedly passed away. In addition to the emotional effect on the Board and its staff, Mr. Miller's death had the expected disruption to the Board's administration and process, requiring the appointment of a new executive director. Importantly, Mr. Miller had served as the point of contact between the Board and Dr. Handley, and had planned on providing Dr. Handley with the third party plans received on May 6. As a result of his death, the responsibility fell to Taylor Bickford, who was immediately made acting Executive Director and tasked with quickly coming up to speed on all of Mr. Miller's responsibilities.

33. The following week, Dr. Handley was advised of Mr. Miller's passing. On May 10, 2011, Mr. Bickford sent copies of the third party plans in their original format to Dr. Handley. Defendant's Exhibit S contains copies of the emails from Mr. Bickford to Dr.

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Handley which establishes that the third party plans attached for her to analyze. Mr. Bickford testified that the staff had not yet had an opportunity to convert or complete the third party data when he sent the plans given Mr. Miller's unexpected passing over the weekend. Therefore, Dr. Handley was analyzing the retrogressive effect of the third party plans submitted on May 6 based on total Native population percentages instead of NVAP.

34. Sometime in early May, Dr. Handley completed her preliminary Racial Bloc Voting ("RBV") analysis. She communicated the results of her analysis to Mr. Bickford and Board counsel Michael D. White telephonically sometime between May 10 and May 13.

35. Dr. Handley's RBV analysis found that voting in Alaska had become more polarized over the past decade (2002-2010). Accordingly, she advised that the overall statewide standard for creating an "effective" Alaska Native district had increased from 35% NVAP to a minimum of 41.8% NVAP. Dr. Handley also found that a more district-specific analysis was warranted in two areas: Benchmark House Districts 37 and 6. Because most contests in Benchmark District 37 were not as polarized, it consistently elected minority-preferred candidates despite having less than 41.8% NVAP. On the other hand, Benchmark House District 6, which was well over 41.8% NVAP, failed to elect the Alaska Native-preferred candidate in the 2010 election due to higher incidents of racially polarized voting and lower than statewide average of white crossover vote. Dr. Handley's analysis found that 49.7% NVAP was needed in Benchmark House district 6 in order to offer Alaska Natives an opportunity to elect their candidates of choice.

36. After learning of Dr. Handley's analysis, Mr. Bickford and Mr. White informed Chair Torgerson of Dr. Handley's analysis and recommended that the Board have Dr. Handley explain her analysis on the record for the public, preferably in person and that the Board reopen

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its public hearing process to allow third parties to submit revised plans based on the new NVAP standard.

37. On May 17, 2011, Dr. Handley appeared telephonically before the board and explained the findings from her RBV analysis as set forth in paragraph 35 above. During this meeting Dr. Handley also made passing reference to several third party plans as possibly meeting the benchmark. The evidence is clear that at the time Dr. Handley made these remarks, she had only had time for a cursory review of the third party plans and was reviewing plans that used total Alaska Native Population and not the proper NVAP standard.

38. In light of Dr. Handley's RBV analysis, the Board invited all groups that had previously submitted plans for the configuration of Alaska Native districts to participate in a public work session on May 24, 2011, at the Board's office in Anchorage. The purpose of the work session was to provide these groups the opportunity to present any final thoughts, ideas, revisions, or amendments to their plans. A number of groups responded to the invitation, including AFFR, AFFER, the RIGHTS Coalition, and Calista Corporation, and made formal presentations to the Board. The Board also received new and revised plan submissions from the Bering Straits Native Corporation and Tom Begich, a consultant to several Alaska Native interests.

39. Dr. Handley attended the May 24 board meeting in person. At this meeting Dr. Handley made two presentations: One a primer on the federal Voting Rights Act, and another on the results of her RBV analysis. She then listened to the presentations of all of the third party plans.

40. After the public hearing, Dr. Handley sat down with Board counsel and Mr. Bickford and they reviewed each of the new plans presented for compliance with the VRA. Dr.

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Handley advised Board counsel that none of the third party plans met the Benchmark and thus each was retrogressive and did not comply with Section 5 of the federal Voting Rights Act. Board staff subsequently prepared a spreadsheet report that showed the number of Alaska Native districts as represented by each third party, and calculated the Alaska Native VAP for each plan. A copy of this report is located in the Board Record at ARB00000407. At trial, Dr. Handley testified that she ultimately determined they were all retrogressive and therefore did not comply with the Voting Rights Act.

41. Given no viable third party option, the Board had to create its own plan for the Alaska Native Districts. Board members PeggyAnn McConnochie and Marie Greene, an Alaska Native, took the lead in drafting the Alaska Native districts needed to comply with the Voting Rights Act. Mr. Bickford testified Ms. McConnochie and Ms. Greene were taking longer than expected, so he also attempted to draft a plan that complied with the Voting Rights Act. His plan, referred to as the TB Plan, took the unique approach of changing the historical make up of District 40 (even though it was only -1.35% from the ideal district size) by dividing the North Slope Borough and the Arctic Northwest Borough into separate districts and picking up population from more urban areas in and around Fairbanks and along the southeast border of the state. Although Dr. Handley advised the TB Plan may not be retrogressive by the numbers, this plan had a number of other potential problems including the pairing of several important Alaska Native incumbents. The proposed plan also received overwhelming criticism from Alaska Native groups who felt that due to low voter registration and turn out on the North Slope, that new proposed North Slope District would very likely not provide Alaska Natives with the ability to elect their preferred candidate of choice. Board members and staff testified that if the Board had adopted the TB Plan, Alaska Native groups and leaders would have

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objected to the Department of Justice, thereby seriously jeopardizing Alaska's chances for preclearance.

42. A second Alaska Native district plan known as the PAME Bethel/Kodiak plan was created by Board members McConnochie and Greene with input from staff and other Board members, and was adopted unanimously in concept by the Board. Dr. Handley reviewed this plan and advised that it met the numbers and therefore was likely not retrogressive. This plan, however, included a Senate district which combined Kodiak with Bethel, thereby pairing one of the most powerful Alaska Native incumbent members of the Senate, Lyman Hoffman, with the current Senate president, Gary Stephens. Alaska Native groups in both the Bethel and Kodiak areas, and the Kodiak Gateway Borough, severely criticized this pairing. The Calista Corporation in particular notified the Board of its serious objections to this pairing and even suggested the Board split the Aleutians if necessary to prevent this pairing. Board member Greene was also very uncomfortable with this pairing. As with the TB Plan, the Board was concerned that such objections by Alaska Native groups would have seriously jeopardized its ability to obtain preclearance from the Department of Justice.

43. Additionally, the Board was faced with the reality that its redistricting plan had already paired Alaska Native Incumbent Senator Kookesh, due to the demographic changes in Southeast Alaska. Thus, if it adopted a plan that paired Senator Hoffman, the co-chair of Senate Finance, and the most influential and powerful Alaska Native incumbent, it would present a plan to the Department of Justice that paired 2 of the 7 Alaska Native incumbent Legislators. Given that the Board had the burden of establishing its plan for redistricting had neither the purpose nor the effect of discriminating against Alaska Natives' voting rights, the

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Board determined it faced a substantial risk of not obtaining preclearance if it did not avoid this pairing.

44. As a result, Board members McConnochie and Greene went back to the drawing board and created a third plan, the PAME Kodiak/Aleutians plan. Although this plan split the Aleutians, Dr. Handley advised it was not retrogressive and it also avoided the offensive Senate pairing.

45. Board members and staff testified it had been advised by counsel and thus was well aware of the Alaska Supreme Court's decision in *Hickel* that found splitting the Aleutian Islands was a per se violation of the Alaska Constitution, unless necessitated by federal law, such as Section 5 of the federal Voting Rights Act.. Yet, given the objections and concerns expressed by the Alaska Native community, the Board felt it had to at least try to avoid pairing Senator Hoffman and Senator Stephens especially since the Board was already forced to pair Alaska Native incumbent, Senator Kookesh. The Board was concerned such pairings would cost the plan preclearance. Thus, the Board adopted the PAME Kodiak/Aleutians plan into its final plan by a unanimous 5-0 vote on June 6, 2011.

46. On June 10, 2011, Dr. Handley provided the Board with a draft report that summarized and synthesized the advice she had provided to the Board up to that time.

47. Despite using some different nomenclature in her advice to the Board, Dr. Handley ultimately advised the Board that the "benchmark," which is the number of Alaska Native protected districts which the Board had to create in its new redistricting plan, was five effective House districts, one influence House district, and three effective Senate districts. Dr. Handley's conclusion is supported by the Plaintiffs' own Voting Rights Act expert, Dr.

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Theodore Arrington. This Court has already concluded the Board used the correct benchmark standard in creating its redistricting plan.

48. While working out the difficulties with the Alaska Native districts, the Board simultaneously worked on regional plans for Southeast Alaska, Fairbanks, Kenai, Mat-Su and Anchorage. Board member Jim Holm testified he drew the regional plan for Fairbanks because he was from that area and had lived there for much of his life. Each Board member presented their plan for the different regions they were tasked with drawing, and explained their reasons for drawing the districts as they did on the record. Board member Holm testified his goal for drawing Fairbanks was to maximize its representation. As a former representative from Fairbanks, Board member Holm felt South Central Alaska had gotten things over the years that Fairbanks could not get. He was interested in getting Fairbanks their fair share. With this goal in mind, Mr. Holm drew the Fairbanks districts using natural boundaries such as roads and streams to obtain as nearly as practicable an ideal population. Mr. Holm also testified the Alaska Native districts limited his configuration options for Fairbanks given that the Board was required to take approximately 5,500 residents from the western portion of the FNSB as explained in further detail below.

49. The Board eventually unanimously adopted each of the regional plans, including Fairbanks, in concept.

50. On June 6, 2011, the Board unanimously adopted its Final Plan in concept. On June 7, the Board also unanimously adopted its Senate pairings, and directed staff to make necessary technical corrections, produce maps, and prepare written metes and bounds description of district boundaries in preparation for the formal adoption of its Proclamation Plan on June 13.

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51. On June 13, 2011, the Board by a unanimous 5-0 vote adopted its Proclamation of Redistricting. The Board's Proclamation Plan has an overall population deviation of 8.47% between House districts and 7.54% between Senate districts, the lowest of any redistricting plan in Alaska's history. House District 39, the least populated, has a population deviation of –4.86% below the ideal district size. House District 6 is the most populated, with a population deviation of +3.61% above the ideal district size. The deviation range among House and Senate districts wholly within the five largest urban areas of Alaska, the Municipality of Anchorage, the FNSB, the Mat-Su Borough, the Kenai Peninsula Borough, and the City and Borough of Juneau, are even smaller, with the largest House deviation range being 2.46% and the largest Senate deviation range being 1.65%

52. As part of its Proclamation of Redistricting, as well as by a separate Resolution, and as explained in the accompanying report, the Board found that compliance with the requirements of Section 5 of the federal Voting Rights Act required it, in certain instances, to depart from strict adherence the Alaska Constitutional standards of contiguity, compactness and socio-economic integration. Specifically, the configuration of House Districts 34, 36, 37, 38 and 39 in its Proclamation Plan were required in order to comply with Section 5 of the federal Voting Rights Act. The Board also specifically found that compliance with the Voting Rights Act had ripple effects across the state, as well as limiting the number of options available to the Board in the pairing of House districts to form Senate districts. A copy of the Board's Proclamation of Final Redistricting and Accompanying Report is found in the Board Record at ARB00006017-ARB00006089, which was introduced at trial as Joint Exhibit J41.

53. After the Board adopted its Proclamation Plan, Board counsel and Board staff prepared the Board's preclearance submission to the Department of Justice. Dr. Handley

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finalized her draft report that summarized her findings from her Racial Bloc Voting analysis and her advice to the Board based on those results, to accompany the Board's request for preclearance. A copy of her final report was marked as Joint Exhibit J40.

54. The Board submitted its preclearance submission to the Department of Justice on August 9, 2011. The submission contained nine volumes and 44 folders of information, totaling more than 5,400 pages of documentation, and is included in the Board Record at ARB00006356-ARB00011791, ARB00013475-ARB00013492. Based on the advice of its consultants, the Board scheduled a meeting with the DOJ staff assigned to review and analyze Alaska's redistricting plan to answer any questions the DOJ might have about the Proclamation Plan.

55. On September 14, 2011, Board members John Torgerson and Marie Greene, along with Executive Director Taylor Bickford and Board legal counsel Michael White, met with representatives from the Department of Justice ("DOJ") in Washington, DC. Chairman Torgerson led a presentation explaining the Board's preclearance submission and advocating for preclearance. The only substantive question the DOJ representatives asked the Board members at that meeting related to the treatment of Alaska Native incumbents by the Proclamation Plan. In response to DOJ's inquiries, the Board representatives explained that the Proclamation Plan in fact kept every current Alaska Native incumbent or Alaska Native preferred candidate in an Alaska Native district and did not pair any Alaska Native incumbents with one unavoidable exception in Southeast.

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

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

57. On October 11, 2011, the DOJ precleared the Board's plan.

## C.
## THE PLAINTIFFS' CHALLENGES

58. The Riley Plaintiffs claim certain House and Senate districts in the Proclamation Plan adopted by the Board do not meet the constitutional requirements under Article VI, section 6 of the Alaska Constitution. The Riley Plaintiffs moved for partial summary judgment and summary judgment on many of their claims prior to trial.

59. This Court denied the Riley Plaintiffs' summary judgment motion on the benchmark standard. The Riley Plaintiffs requested this Court establish Dr. Handley, and their own Voting Rights Act expert Dr. Arrington, were wrong in concluding benchmark House District 6 was an effective district. This Court denied their request, instead finding both experts were correct in concluding the benchmark was five effective House districts and three effective Senate districts. Despite this ruling, the Riley Plaintiffs put on considerable evidence at trial that challenged the benchmark standard, and the need to create House District 38 as an effective House district. This Court considers all such evidence presented as irrelevant to any matter at issue in this case.

60. This Court granted the Riley Plaintiffs' partial summary judgment motion regarding the compactness of House District 1, 2, and 37. However, this Court did reserve the Board's right to justify its deviation from this constitutional requirement by establishing that it

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was impracticable to comply with State constitutional standards in light of the competing requirements of compliance with the federal Voting Rights Act as to House District 1 and 37.

61. This Court also granted the Riley Plaintiffs' summary judgment motion as to the contiguity of House District 37. This Court, however, reserved the Board's right to justify its deviation from the contiguous constitutional requirement due to compliance with the federal Voting Rights Act.

62. This Court granted the Riley Plaintiffs' motion, which the Board did not oppose, that the burden was on the Board at trial to justify its deviations from the constitutional requirements, as well as provide a legitimate, non-discriminatory reason for splitting the excess population of the FNSB.

63. This Court denied the Riley Plaintiffs' motion that requested this Court find the Board's process was invalid because it did not adopt formal findings in relation to its Proclamation Plan. This Court found the Board's final proclamation and accompanying resolutions sufficiently explained the Board's actions and its reasons therefore. The Court further finds that the Board made adequate findings to support all of the decisions it made regarding its Proclamation Plan and that this Court had ample evidence with which to review the Board's decisions.

64. At times throughout this case, the Plaintiffs have attempted to claim problems with the Board's process. This Court finds there is no merit to any of these allegations. The Board engaged in the most open redistricting process in state history, which is amply supported by the Board Record.

65. Despite not pleading a claim for partisan gerrymandering, the Riley Plaintiffs spent a majority of their time at trial presenting evidence attempting to prove that the Board

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engaged in partisan gerrymandering when drawing the Fairbanks districts. This Court finds such evidence presented by the Plaintiffs is both irrelevant and unpersuasive. There is no merit to the Plaintiffs' partisan gerrymandering claims.

66. Likewise, the Plaintiffs' allegation of racial gerrymandering has no basis in fact. Not only was no such claim pled by the Plaintiffs, but the record is devoid of any evidence whatsoever on such a claim.

**1. The Configuration of House District 1**

67. The Riley Plaintiffs moved for partial summary judgment on House District 1 prior to trial, arguing it was not compact under the Alaska Constitution. This Court granted the Riley Plaintiffs' partial summary judgment on this issue, but reserved the Board's right to justify its deviation from the constitutional requirement due to compliance with the Voting Rights Act.

68. Board members and staff testified the Board drew the rural Alaska Native districts first based on the advice of Dr. Handley. Dr. Handley strongly recommended the Board begin drawing with the minority districts during the April 11, 2011 board meeting. The configurations of the Alaska Native districts, many of which surrounded the Fairbanks area, limited not only the geographic configurations but the population pool as well. House District 38, an Alaska Native district required by the Voting Rights Act, set the western boundary of Fairbanks. This created a ripple or domino effect across the Fairbanks area.

69. Board members and staff testified they were aware of the Alaska Supreme Court's order in the 2001 redistricting cases that required urban districts to contain as nearly as practicable an ideal population. The Court recognized that in urban areas, and given the redistricting software available, the Board should be able to draw districts with minute

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population deviations. Board member Holm, who drew the districts within the Fairbanks area, testified he strived to reach as nearly as practicable the ideal population in each Fairbanks district.

70. Mr. Holm also testified he used natural boundaries such as roads and streams to create the boundaries of the Fairbanks districts. A map of House District 1, marked as Joint Exhibit J02, shows how the northwest corner of this district comes west to grab the population just north of the Noyes Slough, and not in House District 3. The boundary to the south follows College Road west until Noyes Slough, at which point the boundary continues along the slough, encircling the census blocks. Board members and staff testified Mr. Holm had to go west instead of north because the land north of House District 1 has little to no population. House District 1 contains 18,004 people, which is 1.40% deviation from the ideal district size. [ARB00002993.] Board members and staff testified that without this slight jog to the left, House District 1 would be short 681 people, resulting in a deviation of -3.83%.

71. In drawing election districts, the Board must consider the State as a whole. Alaska's sparse population magnifies the significance of relatively small population numbers. 1% of a district is only 175 people, so the tolerances with which the Board was required to work were extremely tight and moving even a few hundred people could have legal ramifications.

72. Due to these factors, the Board's configuration of House District 1 was justified by the ripple or domino effect created by its need to comply with the federal Voting Rights Act in the adjacent districts.

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### 2. The Configuration of House District 37

73. The Riley Plaintiffs also requested summary judgment on House District 37 prior to trial, arguing it was neither compact nor contiguous under the Alaska Constitution. This Court granted the Riley Plaintiffs' summary judgment, finding House District 37 was neither compact nor contiguous under the Alaska Constitution. However, this Court did reserve the Board's ability to justify its deviation from these constitutional standards due to compliance with the federal Voting Rights Act.

74. The Board Record as supplemented by the testimony of Board members and staff establishes that the Board did not initially draw a plan that split the Aleutian Islands.

75. Over the course of the redistricting process, some third parties submitted plans which proposed splitting the Aleutians.

76. Due to the population loss in Southeast Alaska, benchmark Senate District C, which combined an Alaska Native House district in Southeast with benchmark House District 6, could not be duplicated. However, Dr. Handley had advised in order to obtain preclearance, the Board needed to draw a plan that was not retrogressive, or preserved the same number of districts that provided Alaska Natives with the ability to elect their candidate of choice. This meant the Board needed to create three "effective" Senate districts. Southwest Alaska provided the best option.

77. Board members PeggyAnn McConnochie and Marie Greene took on the responsibility of drawing the Alaska Native districts. They drew a plan known as the PAME plan that combined House District 35, which mostly consisted of population from Kodiak Island, with House District 36, that contained population from Bethel and the Aleutian chain.

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Dr. Handley advised this created a third "effective" Senate district, and therefore was not retrogressive.

78. When the Board notified the public it intended to adopt the first PAME plan that did not split the Aleutian Islands, the Board received multiple objections from Alaska Native groups and local governments.

79. Board members and staff testified the main objection to the PAME plan was the pairing of Senator Lyman Hoffman from Bethel and Senator Gary Stephens from Kodiak. Senator Hoffman is an Alaska Native incumbent Senator. Senator Hoffman is co-chair of the Senate Finance Committee. Both are influential and powerful members of the Alaska Senate. Several of the Alaska Native groups threatened to object to the Department of Justice, and thereby jeopardize Alaska's ability to obtain preclearance, if the Board adopted the PAME plan with this pairing.

80. The Calista Corporation in particular notified the Board of its serious objections to this pairing and even suggested the Board split the Aleutians if necessary to prevent this pairing.

81. Additionally, the Board was faced with the reality that its redistricting plan had already paired Alaska Native Incumbent Senator Kookesh, due to the demographic changes in Southeast Alaska. Thus, if it adopted a plan that paired Senator Hoffman, the co-chair of Senate Finance, and the most influential and powerful Alaska Native Incumbent, it would present a plan to the Department of Justice that that paired 2 of the 7 Alaska Native Incumbent Legislators. Given that the Board had the burden of establishing its plan of redistricting had neither the purpose or the effect of discriminating against Alaska Native's voting rights, the

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Board determined it faced a substantial risk of not obtaining preclearance if it did not change pose and effect, preclearance would be denied

82. The Board Record and testimony made it clear Board member Marie Greene, an Alaska Native and CEO of an Alaska Native regional corporation, was also uncomfortable with the pairing. Given the objections from the Alaska Native community, Board members PeggyAnn McConnochie and Ms. Greene, who had drawn the first PAME plan, felt they needed to at least try and draw a plan that was not retrogressive and did not pair Senators Hoffman and Stephens. Board members and staff testified the only viable option was to split the Aleutian Islands.

83. Board members and staff testified the Board knew if it split the Aleutian Islands, it would violate the Alaska Constitution unless necessitated by the federal Voting Rights Act. However, the Board felt it had no choice in light of the competing requirements of the Federal Voting Rights Act.

84. In order to create a non-retrogressive plan that avoided pairing Senator Hoffman, the Board needed to increase the Alaska Native VAP in House District 36 so the Alaska Peninsula could be paired with Kodiak to form an "effective" Senate district. [ARB00003328; ARB00003431; ARB00013485.] The best way to accomplish that goal was to separate the communities in the Aleutian Chain with large, non-Alaska Native populations from the Western Aleutians, and add them to the Bethel region with its high concentration of Alaska Native VAP. [ARB00003326; ARB00003339; ARB00003430; ARB00003433.]

85. This increased the Alaska Native VAP in House District 36 to 71.45%, which, when combined with House District 35, resulted in an Alaska Native VAP of 43.75% in Senate District S. [ARB00006034.] Dr. Handley concluded this was high enough to create an

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"effective" Senate district. [ARB00013329-ARB00013369.] This also avoided pairing Senators Hoffman.

86. The Board Record and testimony made it clear the Board reasonably felt that splitting the Aleutian Islands was the only way it could draw a plan that was not retrogressive and did not pair another powerful Alaska Native senator. The Board was already forced to pair Alaska Native Senator Kookesh in Southeast Alaska due to dramatic population loss in that region.

87. The evidence establishes that the Board believed if it had paired another Alaska Native incumbent, or two out of the seven, in combination of the objections from the Alaska Native community, the Department of Justice would not preclear the Board's plan. Moreover, no other plan presented to the Board by any third party during the redistricting process meet the benchmark and thus were all retrogressive and did not comply with Section 5 of the Voting Rights Act.

88. The Board's decision was both reasonable and justified under the circumstances.

**3. <u>The Configuration of House District 38</u>**

89. The Riley Plaintiffs also claim House District 38, which combines rural Alaska Native villages with suburban, non-Alaska Native population from Ester and Goldstream, is not socio-economically integrated and therefore unconstitutional. The Board does not dispute House District 38 is not relatively socio-economically integrated, and this Court granted partial summary judgment on that issue based on the Board's admission. Once again, however, the Board argues it was justified in deviating from the constitutional requirement of socio-economic integration in the configuration of House District 38 due to its need to comply with the federal Voting Rights Act.

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90. Board members, staff, and the Riley Plaintiffs' own witnesses all agree the Board had to add urban population to a rural Alaska Native district in order to meet the one-person, one-vote standard and avoid retrogression. It was not a matter of if, but only a matter of where.

91. This Court has also recognized that the out-migration of Alaska Natives from rural to urban areas, as well as the relatively slower growth rate in rural Alaska, had the most profound effect on the 2011 redistricting process. This dramatic population shift left a vast majority of the Alaska Native Benchmark districts drastically under populated. [ARB00006024-ARB0006025; ARB00013351; ARB00013358 at n.22.] In order to meet the one-person, one-vote requirement, thousands of people needed to be added to the rural Alaska Native districts. [ARB00006544; ARB00006639-ARB00006666; ARB00013351.] This fact, coupled with the fact there were no groups of urban Alaska Native populations adjacent to these rural districts, forced the Board to think outside the box. [ARB00006024-00006025.]

92. This meant that for the first time in Alaska redistricting history, the Board was forced to combine non-Alaska Native populations with at least one rural Alaska Native district. [ARB00006024-ARB00006025; ARB00013358 at n.22.]

93. Every third party plan submitted to the Board contained at least one district that combined urban population with rural population in an Alaska Native district. [ARB00000745-ARB00000764; ARB00003990-ARB00004185; ARB00004186-ARB0000-4321; ARB00004410-ARB00004543; ARB00005186-ARB00005274; ARB00005324-ARB00005363.] Examples of such plans were identified as Defendant's Exhibit E. Several of these plans took population from the FNSB and added it rural Alaska Native populations. [*Id.*]

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94. Even the two Demonstration Plans (referred to as the Modified Rights Plans I and II), drawn by the Plaintiffs three and over six months after the Board adopted its Proclamation Plan, combined urban and rural population. Those plans simply took urban populations from other areas of the state rather than Fairbanks.

95. The Board Record as supplemented by the testimony of Board members and establish staff the Board ultimately chose to pick up the population from the Goldstream and Ester areas of the FNSB in order to bring the overall population of House District 38 within constitutional tolerance for a number of legitimate reasons.

96. First, the FNSB had excess population to give, just under half an ideal house seat, or approximately 8,700 people. [ARB00004156-ARB00004157.] Second, Fairbanks had some historical economic, cultural, and social ties to rural Native Alaska. [ARB00013410.] Third, its geographic location made it relatively proximate to the rural districts. Fourth, and most importantly, the FNSB had areas with historical Democratic voting patterns which were crucial for compliance with the federal Voting Rights Act. [ARB00004337; ARB00013358 at n.22.]

97. Board members, Board staff, and Dr. Handley all testified Dr. Handley advised Mr. Bickford and Board's legal counsel, Michael White, that if urban population had to be added to rural Alaska Native districts, the Board needed to add non-Alaska Natives that tend to vote Democratic because it would increase the potential effectiveness of that election district for a number of reasons. Such reasons include the Alaska Natives' political party of choice is the Democratic Party and Alaska Natives vote overwhelmingly for Democrats; Democrats are more likely to support an Alaska Native-preferred candidate and Alaska Native-preferred candidates are more likely to be Democrats. Mr. Bickford and Mr. White relayed Dr.

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Handley's advice to the Board on a number of occasions, including the May 25 and May 27 board meetings.

98. Dr. Handley also testified at trial that based on her analysis of Alaska Natives' voting patterns undertaken as part of her RBV analysis, that Alaska Natives tend to vote overwhelmingly Democratic, and therefore by adding non-Alaska Native voters that also vote Democratic, the Alaska Natives would have a much better chance of electing their candidate of choice due to the factors set forth above.

99. The Plaintiffs' own Voting Rights Act expert, Dr. Arrington, testified both in his deposition, whose testimony was presented by the Board as part of its case-in-chief, as well as upon cross-examination that he completely agreed with Dr. Handley's analysis and reasoning that when adding urban population to a rural minority district, "you would want to add Democrats" because adding Democrats potentially increases the effectiveness of the district. [Arrington Depo. at 103:12-104:5; 90:2-5, 19-22; 92:15-16; 99:7-12.]

100. The evidence is undisputed that the communities of Ester and Goldstream historically vote Democractic. The Plaintiffs admit that fact in their responses to the Board's Requests for Admissions. [Joint Exhibit J48, at pp. 25 & 26.] Mr. Bickford and Plaintiffs' witness Mr. Hardenbrook also provided un-rebutted testimony to that effect at trial.

101. Senators Paskvan and Thomas, as well as Mr. Hardenbrook, all testified that Fairbanks serves as a hub for rural Alaska and has strong historical ties with rural Native Alaska.

102. The Riley Plaintiffs never challenged the compactness or contiguity of House District 38.

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103. The pairing of some urban population with rural Alaska Native population was inevitable given the demographic shifts that occurred in Alaska over the past decade, and the population from Ester and Goldstream was the most reasonable and best choice to meet all the necessary legal requirements, including constructing a non-retrogressive plan that complied with Section 5 of the federal Voting Rights Act.

104. The evidence in this case is undisputed that the Board acted on the advice of their Voting Rights Act expert and legal counsel in making its decision. Moreover, the Proclamation Plan, which includes House District 38, is the only plan either created by or presented to the Board during the 90 day constitutionally mandated time period that both met the Benchmark and avoided the problematic pairing of Alaska Native incumbents. It is important to note that both the TB Plan and the PAME Plan, the other two Board plans that met the benchmark in numbers, both also took urban population out of Fairbanks in order to create a fifth "effective" Alaska Native House district.

105. The Board's decision to add the predominantly Democratic-voting, non-Alaska Native communities of Ester and Goldstream from the FNSB to an otherwise rural, Alaska Native district in order to increase the population without decreasing the effectiveness of the Alaska Native district was both necessary and reasonable.

### 4. Geographic Proportionality FNSB: Splitting the Excess Population of the Fairbanks North Star Borough.

106. The Riley Plaintiffs claim the Board violated the geographic proportionality rights of the voters in the FNSB, also known as the anti-dilution rule, by splitting the borough's excess population between two House districts. The Board argued it had a legitimate, non-discriminatory reason for doing so, and therefore did not violate the Equal Protection Clause of the Alaska Constitution.

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107. The 2010 Census numbers showed the FNSB had enough population equal to roughly 5.49 House districts, or an excess of 8,700 people. The Board Record, as supplemented by the testimony of Board members and staff, establish that the Board had to combine a portion of the FNSB's excess population, about 5,500 people, with House District 38 in order to comply with the federal Voting Rights Act.

108. The evidence also establishes that House District 38 could not absorb all of the FNSB's excess population because it would have reduced the Alaska Native VAP below the 42% standard necessary for an effective Alaska Native district. Thus, the Board took the maximum amount possible to meet the one-person one vote standard while still maintaining the effectiveness of House District 38.

109. That left the Board with two choices for the remaining FNSB excess population of approximately 3,200 people: (1) incorporate and evenly distribute the approximately 3,200 people into the remaining 5 house districts within the FNSB, thereby increasing the deviations within the FNSB by 3.5% per House district; or (2) combine the remaining excess population in the FNSB into a single district outside the Borough.

110. Board members and staff testified that increasing the average deviation within the FNSB districts by approximately 3.5% was not a viable option, especially given the relatively high growth rate in the FNSB area. Spreading the population amongst the five districts within the FNSB would have created deviations ranging between +4 and +5%, risking a violation of the "as near as practicable" population requirement of Article VI, Section 6 of the Alaska Constitution.

111. Board members and Board staff testified at trial that the Board chose a compromise position, placing most of the excess population balance into the Richardson

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Highway District, House District 6, which closely resembles its current configuration. Thus, the residents of the FNSB would still be voting with substantially the same group of people as they did over the past ten years. The remaining excess population was spread out among the five districts wholly within the FNSB within deviations considered acceptable by the Board ranging between 1.40% and 2.08%.

112. In order to ameliorate the effect of splitting the remaining excess population, the population from the FNSB placed into House District 6 was paired with House District 5, a district wholly within the FNSB, in order to form Senate District C. Accordingly, except for the population from the FNSB that was required to be placed in House District 38 in order to comply with the federal Voting Rights Act, all residents of the FNSB are contained in three Senate districts.

113. There is no evidence that the Board had any intent to discriminate against the residents of the FNSB.

114. The evidence establishes that the Board had valid, non-discriminatory reasons for splitting the excess population between two districts including compliance with the federal Voting Rights Act and the population equality requirements for urban areas of Article VI, section 6 of the Alaska Constitution, as well as the need to accommodate excess population.

**5. Geographic Proportionality FNSB: Senate Seats**

115. The Riley Plaintiffs also appear to raise a proportionality challenge to the FNSB Senate Seats, although they adduced no evidence on this claim at trail, nor argued the point in their closing argument.

116. The FNSB has a population of 97,581, or approximately 2.75 Senate districts.

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117. The evidence is undisputed that the FNSB has two Senate seats, Senate District A and Senate District B, comprised entirely of residents of the FNSB.

118. Senate District C contains a population comprised of approximately 55% of residents of the FNSB. Accordingly, the residents of the FNSB make up a majority of the population in three Senate districts.

119. The only residents of the FNSB who are not included in Senate Districts A, B, & C are those residents from the Ester and Goldstream areas of the FNSB who had to be included in House Dritct 38 for purposes of complying with the federal Voting Rights Act, as explained above.

120. There is no evidence that the Board intended to discriminate against the residents of the FNSB by virtue of its Senate pairings.

**6. Geographic Proportionality: City of Fairbanks Senate Districts**

121. The Riley Plaintiffs also claim the Board violated the anti-dilution rule by not placing both House districts that mostly consist of population within the City of Fairbanks into a single Senate district. The Board argued the City of Fairbanks did not have enough population to support a single Senate district, therefore there can be no violation of the anti-dilution rule.

122. The 2010 Census data revealed the total population of the City of Fairbanks is 31,535. Since a Senate district is comprised of two House districts, the City of Fairbanks population is roughly equal to .89% of a Senate district.

123. The City of Fairbanks does not contain enough population to support a Senate district based on its population alone, being approximately 11% short of the population for an

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ideal district, and over 6% short of having enough population to constitute a Senate seat that met the population equality requirements of the federal and state Constitutions.

124. There is no evidence that the Board intended to discriminate against the residents of the City of Fairbanks in its Senate pairings.

125. Board members and staff testified the City of Fairbanks effectively control one Senate seat, Senate District B, and constitute the plurality of the other, Senate District A. The parties stipulated the City of Fairbanks voters did not constitute a majority of either Senate district.

126. Senate District B, comprised of House Districts 3 and 4, has a total population of 36,219, 709 people larger than the ideal Senate district size of 35,510. [ARB00006034.] Of this total population, 17,522 reside within the City of Fairbanks. This means approximately 49% (48.36%) of the total population in Senate District B are City of Fairbanks residents. The total voting age population of Fairbanks City residents in Senate District B is even higher at 49.29%. The remaining 51% of the population is spread out among a number of small, unorganized areas such as Fox, Two Rivers, and Pleasant River. The community with the second largest number of voters in Senate District B is Steele Creek, with 14.12% of the total population and 14.06% VAP.

127. City of Fairbanks voters in Senate District A, made up of House Districts 1 and 2, are in a similar position. Although they comprise less of a plurality than the voters in Senate District B, the do make up the largest politically salient class of voters in Senate District A with 9,770 VAP, or 38.66% of the VAP. Just as in Senate District B, the remaining VAP in Senate District A is spread out among small, unorganized political subdivisions.

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### 7. Compactness of House District 5

128. The Riley Plaintiffs also claim House District 5 is not compact and therefore unconstitutional. The Board argued House District is in fact relatively compact.

129. House District 5 contains the population from the western edge of Fairbanks, between House District 38 and House District 3. It also contains the large, vacant section of military land sometimes referred to as the Eielson bombing range or military training grounds.

130. House District 5 is "visually compact." It is not an "odd-shaped district," nor does it contain any "corridors" of land or strange "appendages". The unpopulated bombing range is not used to connect two populated areas.

131. Board members and staff testified this unpopulated land had to go somewhere. By adding it to House District 5, it made the district more compact. It also enabled the Board to combine House District 5 and 6 to create Senate District C, and therefore reconnect the excess population of the FNSB in House District 6 with fellow FNSB voters in House District 5. Senate District C contains more than 55% of FNSB voters.

132. Leonard Lawson, a witness for the Riley Plaintiffs, testified if the Board were to remove the vacant section of military land from House District 5, the district would actually be less compact. Mr. Lawson also admitted that the unpopulated military land had to go somewhere.

133. The Plaintiffs presented no more compact options for House District 5. In fact, the most comparable House district in the Plaintiffs' Demonstration Plan, referred to as the Modified Rights Plan in this litigation, MRP House District 8, also combines the unpopulated military training ground with similar population from the same area of Fairbanks, and according to mathematical measurements of compactness, is less compact that House District 5.

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## CONCLUSIONS OF LAW

### STANDARD OF REVIEW

134. Judicial review of a redistricting plan "is meant to ensure that the reapportionment plan is not unreasonable and is constitutional under Article VI, § 6 of Alaska's constitution." *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1358 (Alaska 1987). The Board has the constitutional authority to reapportion Alaska's House and Senate districts, not the courts. *Groh v. Egan*, 526 P.2d 863, 866 (Alaska 1974); *see also Braun v. Borough*, 193 P.3d 719, 726 (Alaska 2008). As such, the Board has discretion in choosing its plan, and "the court will not lightly interfere with the reapportionment process." *In re 2001 Redistricting Cases*, 44 P.3d 141, 149 (Alaska 2002) (Carpeneti, J., dissenting); *Braun v. Borough*, 193 P.3d at 726. The courts do not have the constitutional authority to decide what is preferable between alternative rational plans for legislative reapportionment. *Id.*

135. Instead, the courts view a plan in the same light as it would "a regulation adopted under a delegation of authority from the legislature to an administrative agency to formulate policy and promulgate regulations." *Id.*; *see also Kenai Peninsula Borough v. State*, 743 P.2d at 1357-1358. While courts have the authority to ensure the Board's choices did not violate the constitution, they cannot substitute their independent judgment for that of the Board. *Kenai Peninsula Borough v. State*, 743 P.2d at 1357-1358.

### OVERVIEW OF FEDERAL LAW AND THE VOTING RIGHTS ACT

136. Redistricting involves a number of conflicting federal and state laws. Each requirement has its own intended purpose to ensure every person is afforded an equally effective vote. However, each requirement slightly hinders the ability to fully comply with the next, and so on. Courts have attempted to assist those responsible for redistricting with these

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conflicting requirements by providing a hierarchy of such standards, listed in order of priority. The Alaska Supreme Court has instructed the Board, responsible for redistricting in Alaska, to follow such a hierarchy. Those priorities are, in order of importance: (1) the federal constitution; (2) the federal Voting Rights Act; and (3) the requirements of article VI, section 6 of the Alaska Constitution. *In re 2001 Redistricting Cases*, 44 P.3d at 143 n.2, (quoting *Hickel v. Southeast Conference*, 846 P.2d 38, 62 (Alaska 1992).)

137. The federal Voting Rights Act, passed in 1965, was intended to protect the right to vote and to enforce the 14th Amendment and Article 1, Section 4, of the United States Constitution. Williamson, "The 1982 Amendments to the Voting Rights Act: A Statutory Analysis of the Revised Bailout Provisions," 62 Wash. U.L.Q. 1 (1984). Many believe it has provided minority voters an opportunity to participate in the electoral process and elect candidates of their choice, generally free of discrimination. Redistricting Law 2010, prepared by the National Conference of State Legislatures, November 2009, pg. 51. This body of law also places the most constricting parameters on redistricting bodies.

138. The Board's Voting Rights Act expert, Dr. Handley perhaps said it best when she characterized redistricting within the confines of the VRA as more of an art than a science. [ARB 00003879.] Section 2 prohibits any state or political subdivision from imposing a "voting qualification or prerequisite to voting or standard, practice or procedure…in a manner which results in the denial or abridgement of the right to vote on account of race or color." 42 U.S.C. § 1973(a) (2006). Section 5 requires covered jurisdictions to prove their voting changes have "neither…the purpose nor will have the effect of denying or abridging the right to vote on account of race, color" or membership in a language minority group. 42 U.S.C. § 1973c (2006).

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

140. The DOJ reviews the proposed election changes, which includes a redistricting plan, to ensure it "neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c (2006), *as amended by* Pub. L. No. 109-246, sec. 5, 120 Stat. 577, 580 (2006). A redistricting plan satisfies the effect prong if the electoral change does not lead to retrogression in minority voting strength. DOJ Section 5 Guidance at 7470-7471. The purpose is to insure that no voting-procedure changes would be made that would lead to a "retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Id.* at 7470.

141. The Department of Justice measures retrogression by comparing minority voting strength under the new plan in its entirety with minority voting strength under the immediately preceding or "benchmark" plan. DOJ Section 5 Guidance at 7470-7471.[1] Under Section 5, the covered jurisdiction has the burden of establishing that a proposed redistricting plan is not retrogressive. DOJ Section 5 Guidance at 7470. [*See also* ARB00013330.]

142. The DOJ has, over time, promulgated regulations to assist covered jurisdictions in navigating the preclearance process. The U.S. Supreme Court has given these administrative

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

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regulations promulgated by the DOJ strong persuasive effect in judicial preclearance proceedings. *E.g., Bossier Parish I*, 520 US at 483. Such regulations include a list of factors that may be considered when determining whether the submitted electoral change satisfies the intent and effect prongs. 28 C.F.R. §§ 51.57-51.61 (2008).[2] The list of factors is not, however, exhaustive. *Id.*

143. Board members and staff testified the Board was aware the effect on Alaska Native incumbents of any plan it adopted was of particular concern for the DOJ when reviewing submissions for preclearance under Section 5 of the VRA. In fact, when the Board met with the DOJ to explain and defend its plan prior to preclearance, the only substantive question the DOJ asked the Board was how the Proclamation Plan affected Alaska Native incumbents.

144. The Board also knew the DOJ would pay particular attention to the public comments the Board received from Alaska Natives, whether they approved or disapproved of the plan, and whether or not the Board took Alaska Native concerns into consideration when drawing the plan. 28 C.F.R. § 51.57-51.59. As a result, the Board actively sought input from the Alaska Native community throughout the redistricting process and took their concerns into account when drafting election districts.

145. Dr. Handley testified the 2011 redistricting process was the most complicated and difficult she had ever seen. A number of complicating factors made the Board's task extraordinarily difficult, including the (1) under-population of Benchmark Alaska Native

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

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districts; (2) lack of Alaska Native population concentrations adjacent to the Benchmark Alaska Native districts; and (3) inability to create minority districts in urban Alaska. The Board was only able to construct a non-retrogressive plan because, following the advice of its VRA expert, it drew the Alaska Native districts first. It was simply impossible to do otherwise. This had ripple effects across the state, including urban areas not otherwise concerned with the federal Voting Rights Act.

146. Compliance with Section 5 was further complicated by the legal realities facing the Board. In reviewing plans for discriminatory purpose, the DOJ bases its determination "on a review of the plan in its entirety." DOJ Section 5 Guidance at 7471. The DOJ will examine the circumstances surrounding the adoption of the redistricting plan "to determine whether direct or circumstantial evidence exists of any discriminatory purpose." *Id.* Thus, the Board knew it had to prevent any hint of possible discrimination in its final plan by adopting and presenting to the DOJ the strongest plan it could in terms of minority voting strength.

147. Further complicating matters was the fact that going into this redistricting cycle, it was unclear, even to VRA experts, exactly what position DOJ would take regarding the U.S. Supreme Court's decision in *Bartlett v. Strickland*, 556 U.S. 1 (2009). In that case, the Supreme Court held in a 5-4 plurality opinion that Section 2 of the Voting Rights Act does not require the drawing of a majority-minority district in which the minority group is less than 50 percent of the district's voting age population. *Id.* at 3. The *Bartlett* court, however, cautioned that its ruling concerned only the *Gingles* precondition for considering an "effects" violation of Section 2, insisting that its decision did not add preconditions to consideration of a discriminatory "purpose" violation. *Id.* at 15. The effects of *Bartlett* on Section 5 preclearance, in light of the 2006 amendments to the VRA emphasizing the "ability to elect"

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standard, was both confusing and potentially conflicting. This was particularly true in light of Justice Kennedy's caution that *Bartlett* did not apply to an intent analysis.

148. Dr. Arrington testified even he wouldn't have known what the Department of Justice would require in May 2011.

149. Faced with these conflicting and confusing legal standards, as well as the burden of establishing that its Proclamation Plan had neither discriminatory intent nor effect in order to obtain preclearance, all of which had to be done in a sixty day time period, it was crucial that the Board present as strong a plan as possible to DOJ.[3] Based on the advice of its VRA expert and its legal counsel, the Board determined that its best chance at preclearance was to present a redistricting plan that (1) avoided any hint of possible discrimination that could be considered by DOJ as evidence that the Board's Proclamation Plan had a discriminatory purpose; and (2) met the Benchmark, which consisted of five "effective" House districts, one "influence" House district, and three "effective" Senate districts. At the same time, in order to avoid any claim of discriminatory intent, the Board determined that it was reasonable to avoid pairing Alaska Native incumbents where possible, especially in light of the input from the Alaska Native community.

## OVERVIEW OF STATE LAW

150. The United States Constitution guarantees every citizen the right to vote and to have that vote counted. The ultimate goal of redistricting is to ensure every person is adequately represented. Since redistricting is inherently political in nature, the courts and legislatures have created additional requirements in an attempt to prevent political

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[3] Dr. Arrington agrees that when seeking preclearance from DOJ you want to present the strongest plan. [Arrington Depo. at 198:22-199:5.]

gerrymandering. Such requirements mandate House districts be compact, contiguous, and relatively socio-economically integrated. Alaska Const. Article VI, § 6.

151. Article VI, section 6 of the Alaska Constitution mandates that "[e]ach house district shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area." Moreover, each "shall contain a population as nearly as practicable to quotient obtained by dividing the population of the state by 40." Art. VI, Sec. 6. Each Senate district is required to "be composed as near as practicable of two contiguous House Districts. *Id.* Consideration "may be given to local government boundaries," and drainage and other geographic features are to be used in describing boundaries wherever possible. *Id.*

152. The Alaska Supreme Court has referred to redistricting in Alaska as a herculean task. This Court has identified it as a leviathanic task. The difficulty is caused by Alaska's unique geography and population distribution, which makes it impossible to draw conventionally compact districts that neatly approximate regular shapes like squares and circles. *In re 2001 Redistricting Cases*, 44 P.3d 141, 148 (Alaska 2002) (Carpeneti, J., dissenting). As a result, the Alaska Supreme Court has allowed some departure from strict compliance with the Alaska Constitution, giving the Board some flexibility by making the standard for compliance "as nearly as practicable." *Hickel v. Southeast Conference,* 846 P.2d at 50.

## THE PLAINTIFFS' LEGAL CHALLENGES

### 1. The Configuration of House District 1 is Justified by the "Ripple" Effect Created By the Board's Need to Comply With the Federal Voting Rights Act.

153. Based on the foregoing findings of fact, this Court hereby finds the Board was justified in its configuration of House District 1 in the Proclamation Plan due to compliance

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with the federal Voting Rights Act. Although House District 1 was not directly configured for Voting Rights Act purposes, it was a casualty of the ripple effect caused by the federal law.

154. The Board was limited in its geographic and population options due to the constricting parameters placed on the urban areas by the rural Alaska Native districts necessary to comply with the Voting Rights Act. House District 1 contains as nearly as practicable an ideal population. Its boundaries follow roads and streams, and contain populated census blocks within the City of Fairbanks. While other configurations may have been available, this Court finds it is the Board's job to make those decisions within the parameters of federal and state law. This Court thereby finds the Board acted reasonably in its configuration of House District 1 as justified by the federal Voting Rights Act. The Plaintiffs' challenge to House District 1 is therefore without merit.

**2. <u>The Configuration of House District 37 is Justified by the Board's Need to Comply With the Federal Voting Rights Act.</u>**

155. Based on the foregoing findings of fact, this Court hereby finds the Board's configuration of House District 37 in the Proclamation Plan was reasonably justified by the Board's need to draft a plan that was not retrogressive and therefore complied with Section 5 of the federal Voting Rights Act and would receive preclearance from the Department of Justice. The evidence establishes that in the configuration of House District 37, it was impracticable to comply with the compactness and contiguity requirements of Article VI, section 6 in light of the conflicting requirements of the VRA.

156. The Alaska Supreme Court in *Hickel v. Southeast Conference* held *sua sponte* that a split of the Aleutian Islands was a per se violation of the Alaska Constitution's contiguity requirement. 846 P.2d 38, 54 (Alaska 1992). The Court did, however, include the caveat "unless the severance of the Western Aleutians from the Eastern Aleutians is mandated by

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federal law…." *Id.* at 59. This Court finds this caveat is directly applicable to House District 37.

157. Splitting the Aleutian Islands was a last resort for the Board in an attempt to satisfy the federal Voting Rights Act and obtain preclearance from the DOJ. The Board needed a House district in Southwest Alaska that had a high enough Alaska Native VAP to pair with the Kodiak House district for an effective Senate district. The only way the Board could create such a House district was to remove the large, non-Alaska Native population in the Western Aleutian Islands from the Eastern Aleutian Islands. Such configuration also avoided pairing Senators Hoffman and Stephens, a major concern for the Alaska Native community.

158. Given these circumstances, this Court finds the federal Voting Rights Act did in fact mandate the Board split the Aleutian Islands. Thus, the Board configuration of House District 37 was necessitated by the federal Voting Rights Act and is therefore not unconstitutional. The Plaintiffs' challenge to House District 37 is therefore denied.

### 3. The Configuration of House District 38 is Justified by the Board's Need to Comply With the Federal Voting Rights Act.

159. Based on the foregoing findings of fact, this Court hereby finds the Board's configuration of House District 38 in the Proclamation Plan was reasonably justified by the Board's need to draft a plan that was not retrogressive and therefore complied with Section 5 of the federal Voting Rights Act and would receive preclearance from the Department of Justice. The evidence establishes that in the configuration of House District 38 it was impracticable to comply with the socio-economic integration requirements of Article VI, section 6 in light of the conflicting requirements of the VRA.

160. The evidence is both overwhelming and undisputed that demographic changes in Alaska's population over the last ten years created a severe loss in population in the rural,

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Alaska Native districts. Thus, in order to meet the one-person, one-vote standard – the ultimate goal of redistricting – urban population would need to be added to rural areas in order to obtain as nearly as practicable an ideal population. It was not a matter of if urban population must be added to an Alaska Native rural district, but a matter of where that population should come from.

161. Every proposed redistricting plan submitted to the Board by third parties recognized this fact as all of them had at least one house district that combined urban and rural population. Many plans, like the Board, took this population from the Fairbanks area. A couple of plans chose other areas of the state. The fact that other areas of the state could be used, however, does not make the Board's decision improper or unreasonable.

162. This Court finds the Board's choice to add population from the Ester and Goldstream areas of the FNSB to an otherwise rural, Alaska Native district was both logical and reasonable, and wholly within the Board's authority.

163. Both Voting Rights Act experts who testified in this case agree that when adding urban population to a rural Alaska Native district, the non-Alaska Native population should consist of voters who historically tend to vote Democratic. The reason being Alaska Natives tend to vote overwhelmingly Democratic. Thus, in order to preserve the Alaska Native voters' ability to elect their candidate of choice, which is most likely a Democrat, the Board should add non-Alaska Native voters who would also most likely vote for a Democrat. This Court finds no reason to question this conclusion. The Board, acting on the advice of its Voting Rights Act expert, was therefore reasonable in its choice.

164. The communities of Ester and Goldstream are also relatively close in geographic terms to rural areas. Although not relatively socio-economically integrated with the Alaska

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Native villages, Goldstream and Ester, as part of the FNSB, have some cultural and social ties with a majority of House District 38. The FNSB also had excess population available to bring the severely underpopulated rural region as nearly as practicable to an ideal district size. These facts, coupled with the advice of Dr. Handley, made the Board's choice to include Goldstream and Ester in House District 38 both logical and reasonable.

165. The Plaintiffs' allegations that the Board's choice to follow the advise of its Voting Rights Act expert to add Democratic voting, non-Alaska Native population to House District 38 is somehow "racist," or constitutes racial and/or partisan gerrymandering, is meritless.

166. The Board's configuration of House District 38 was necessitated by its need to construct a non-retrogressive plan that would comply with Section 5 of the federal Voting Rights Act, and is therefore not unconstitutional. The Plaintiffs' challenge to House District 38 is denied.

**4. <u>The Board Did Not Violate the Geographic Proportionality Rights of the Fairbanks North Star Borough Voters by Splitting the Excess Population.</u>**

167. Based on the foregoing findings of fact, this Court hereby finds the Board had a legitimate, non-discriminatory reason for splitting the excess population of the FNSB into two House districts. The Board did not, therefore violate the geographic proportionality rights of the FNSB voters.

168. A voter's right to an equally geographically effective or powerful vote is a significant constitutional interest, although not a constitutional right. *Kenai Peninsula Borough v. State*, 743 P.2d at 1371-72. The voter, as an individual member of a geographic group or community, has a significant interest in having his/her vote protected from disproportionate

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dilution by the votes of another geographic group or community. *In re 2001 Redistricting Cases*, 44 P.3d at 149-50 (Carpeneti, J., dissenting).

169. As a significant constitutional interest, a voter's right to an equally geographically effective vote is protected by the Equal Protection Clause. *Kenai Peninsula Borough*, 743 P.2d at 1371-72. The Alaska Equal Protection Clause is more stringent than its federal counterpart, but the analysis in determining whether a violation has occurred is very similar. *Id.* at 1372. When a voter claims the Redistricting Board *intentionally* discriminated against a particular geographic area, Alaska courts apply a neutral factor test. *Id.* (emphasis added) The courts look at both the process followed by the Board in formulating its decision and to the substance of the Board's decision. *Id.* If the evidence shows, based on a totality of the circumstances, that the Board acted intentionally to discriminate against the voters of a particular geographic area, then the Board has the burden of proving any intentional discrimination will lead to more proportional representation. *Id.*

170. The right to geographic equal protection **does not**, however, entitle members of a political subdivision to control a particular number of seats based upon their population, or proportional representation. *In re 2001*, at 143-44 & n. 7, 146-47. There is simply no requirement of "strict" proportionality. *Id.* It only means that a Redistricting 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." *Id.* at 144 & n. 8 (groups of voters are not entitled to proportionality absent invidious discrimination). Intentional discrimination can be inferred where a redistricting plan "unnecessarily divides a municipality in a way that dilutes the effective strength of municipal voters." *Id.* (emphasis added) Thus, "failure to keep all of a borough's excess population in the same house district"

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provides "some evidence of discriminatory intent." *In re 2001 Redistricting Cases*, 44 P.3d at 146-47.

171. An inference of intentional discrimination, however, can be rebutted by valid non-discriminatory justifications.[4] Such justifications may include the necessity of complying with federal and/or state law, such as one-person, one-vote, the VRA, the Article VI, Section 6 requirements of compactness, contiguity, and socio-economic integration, or "the need to accommodate excess population. *Id.* at 144, & n. 7. Simply put, the right to geographic equal protection does not trump the constitutional mandates of one-person, one-vote, compactness, contiguity, socio-economic integration, or the VRA. Moreover, as our Supreme Court made clear in its last guidance on redistricting, the "need to accommodate excess population would be sufficient justification to depart from the anti-dilution rule." *Id*. at 144, n. 7.

172. This Court finds the Board did not intentionally discriminate against the voters of the FNSB by splitting the excess population. The Board simply needed to accommodate the excess population that could not be placed into House District 38, which the Alaska Supreme Court has already recognized is a sufficient justification for departing from the anti-dilution rule. *Id.*

173. The Board needed approximately 5,500 voters from the FNSB to bring House District 38 within an acceptable deviation from an ideal population. The Board could not, however, place all of the excess population within House District 38. Doing so would have not only over populated House District 38, bringing the overall statewide deviation of the

[4] As stated by the Court in *In re 2001*: "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." 44 P.3d at 144.

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Proclamation Plan above the constitutionally mandated 10% maximum, but it would also have jeopardized the effectiveness of House District 38, an Alaska Native district protected by the federal Voting Rights Act.

174. Thus, the Board was forced to choose between spreading the additional 3,200 voters among the five Fairbanks districts, or placing the remaining voters wholly within another district. If the Board had spread the remaining excess population among the five Fairbanks districts, it would have increased the overall deviation among these districts to what the Board considered unacceptable levels.

175. Article VI, section 6 of the Alaska Constitution requires that each House District "shall contain a population as nearly as practicable to quotient obtained by dividing the population of the state by 40." The Alaska Supreme Court has made clear that this constitutional requirement means that the Board must make good faith efforts in urban areas to minimize deviations to as near a practical the ideal unless it was impracticable to do so. *Id*. at 145-46.

176. Here, the Board reasonably chose to place most of the remaining FNSB excess population in a single district, House District 6.

177. House District 6 is a relatively similar configuration to the current Richardson Highway district. The voters from the FNSB which the Board opted to place in this district are the same voters who have been voting in this district for the past 10 years. The Board also paired House District 6 with House District 5, a district wholly within the FNSB, thereby placing the remaining excess population into a Senate district with other FNSB voters, who constitute a majority in Senate District C.

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178. This Court finds such actions are not indicative of discrimination, intentional or otherwise. The Board's decision to split the FNSB's excess population was reasonable, legitimate, and legally permissible under the circumstances. The Board therefore did not violate the geographic proportionality rights of the voters of the FNSB by splitting its excess population. The Plaintiffs' anti-dilution rule challenge based on the split of excess population is denied.

**5. The Board Did Not Violate the Geographic Proportionality Rights of the Fairbanks North Star Borough Voters by Its Senate Pairings.**

179. Based on the foregoing findings of fact, this Court hereby finds the Board did not violate the geographic proportionality rights of the FNSB voters in the creation of the FNSB Senate seats.

180. Alaska law is clear that there is no requirement of "strict" proportionality. *In re 2001*, at 143-44 & n. 7, 146-47. The anti-dilution rule only means that a Redistricting 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." *Id*. at 144 & n. 8. There is no evidence that the Board intended to discriminate against the residents of the FNSB by virtue of its Senate pairings. In fact, the undisputed evidence establishes that the residents of the FNSB control three Senate seats in the Proclamation Plan.

181. The FNSB has a population of 97,581, or approximately 2.75 Senate Seats. The evidence is undisputed that in the Proclamation Plan, the FNSB has two Senate seats, Senate District A and Senate District B, comprised entirely of residents of the FNSB, as well as another Senate seat which contains a population comprised of approximately 55% of FNSB residents. Accordingly, the residents of the FNSB make up a majority of the population in and therefore control three Senate seats. This is all that is legally required.

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182. The fact that approximately 5,500 residents of the FNSB are placed into House District 38 which is paired with House District 37 to form Senate District S is neither evidence of discrimination nor a violation of the anti-dilution rule. The residents from the Ester and Goldstream areas of the FNSB had to be included in House Distritct 38 for purposes of complying with the federal Voting Rights Act, as explained above.

183. The Board therefore did not violate the geographic proportionality rights of the FNSB voters by its Senate pairings. Accordingly, the Plaintiffs' anti-dilution rule challenges to Senate Districts A, B, C, and S are hereby denied.

**6. <u>The Board Did Not Violate the Geographic Proportionality Rights of the City of Fairbanks Voters Because They Have No Constitutional Right to Be Placed in A Single Senate District.</u>**

184. Based on the foregoing findings of fact, this Court hereby finds the Board did not violate the geographic proportionality rights of the City of Fairbanks voters by placing them in two Senate districts. There is no evidence that the Board intended to discriminate against the residents of the City of Fairbanks by virtue of its Senate pairings.

185. In addition to the law set forth in paragraphs 168-171, failure to keep a *borough's* house districts together when forming Senate districts may "provides *some* evidence" of intentional discrimination. *In re 2001 Redistricting Cases,* 44 P.3d at 144, 146-47 (emphasis added). However, the Board can negate such an inference by providing legitimate, non-discriminatory reasons for doing so. *Id.* More importantly, there is no anti-dilution violation when the complaining group of voters falls short of having enough population to support an election district. *Id.* at 145.

186. This Court finds the City of Fairbanks is not entitled to a single Senate district under the anti-dilution rule. The 2010 Census data unequivocally shows the City of Fairbanks

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does not have enough population to support a single Senate district. Without enough population to support a Senate district, there can be no violation of the anti-dilution rule. *Id.*

187. Moreover, because the City of Fairbanks is subsumed within the FNSB, it would be impracticable to create a double layer of anti-dilution protection for residents that reside within two political subdivisions. All the residents of the City of Fairbanks are also all residents of the FNSB, and as such their right to an equally effective vote is already protected by virtue of that fact. To create a second tertiary layer of "proportionality" rights in such circumstances is neither required by law nor necessary. The Board's task in redistricting our vast, sparsely populated state is already difficult enough.

188. The Plaintiffs' attempt to argue that the anti-dilution rule focus on "effect" rather than "intent" is misplaced. The law focuses on "intent" because an "effect" standard is completely unworkable.

189. Additionally, to the extent the anti-dilution rule could be said to apply to the residents of the City of Fairbanks, there has been no violation. The evidence in this case is undisputed that the residents of the City of Fairbanks effectively control one Senate seat, Senate District B, which is all that is required by the law. *In re 2001*, at 143-44 & n. 7, 146-47.

190. Because the residents of the City of Fairbanks fall short of having enough population to support an election district, there is no anti-dilution rule violation. The Plaintiffs' anti-dilution challenge to the City of Fairbanks Senate pairings is therefore without merit and denied.

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## 7. The Configuration of House District 5 Meets the Relative Compactness Standard of the Alaska Constitution.

191. Based on the foregoing findings of fact, this Court hereby finds the configuration of House District 5 in the Proclamation Plan is compact.

192. Compactness looks at the shape of a district. *Id.* "'Compact' districting should not yield 'bizarre designs.'" *Hickel v. Southeast Conference*, 846 P.2d at 54 (*quoting Davenport v. Apportionment Comm'n of New Jersey*, 302 A.2d 736, 743 (N.J. Super.Ct.App.Div. 1973). Due to Alaska's irregular geography and uneven population distribution, the Alaska Supreme Court has made clear that the Alaska Constitution requires only relative compactness. *E.g.*, *In re 2001 Redistricting Cases*, 44 P.3d at 148 (Carpeneti, J., dissenting); *Kenai Peninsula Borough*, 743 P.2d at 1361 n. 13; *Carpenter v. Hammond*, 667 P.2d 1240, 1218 (Alaska 1983) (Matthews, J., concurring). "Absolute" or "ideal" compactness is not required. *Carpenter*, 667 P.2d at 1218 (Matthews, J., concurring). This standard takes into consideration the impossibility of drawing conventionally compact districts that neatly approximate regular shapes like squares and circles. *Id.* Departure from strict compactness in a given district is also allowable in order to accommodate all of the various constitutional and legal criteria for all of the districts in the state. *Id.*; *see also Hickel*, 846 P.2d at 2 n. 22.

193. When looking at the shape of a district, "odd-shaped districts" with "corridors" of land and strange "appendages" may raise concerns as to the compactness of a district. *Hickel*, 846 P.2d at 45-46. But "corridors" of land and "strange appendages" do not automatically mean a district is not compact. *Id.* Rather, such attributes simply *may* run afoul of or *may* violate the compactness requirement. *Id.* If the shape of a district is the natural result of Alaska's irregular geography or is necessitated by the need to create districts of equal population, then the district may be constitutional. *Id.* Courts look for "bizarre shapes" and

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"odd extensions" to an otherwise compact district because they may indicate that the configuration of an election district was due to partisan gerrymandering or intentional vote dilution, the very redistricting "ills" the compactness requirement is designed to prevent. *Id.* at 45.

194. This Court finds when using a visual test, House District 5 is relatively compact. It does not contain any odd appendages, corridors, or bizarre shapes that would otherwise raise a concern. House District 5 is also relatively compact under the mathematical measures of compactness as shown by the Board at trial.

195. The Riley Plaintiffs' seemingly only objection to the configuration of House District 5 is the inclusion of a large, unpopulated section of military land. However, much of Alaska consists of large, unpopulated sections of land. And as with all such pieces of land, it must go somewhere. The Board has the authority to choose where it should go. The Riley Plaintiffs' own witness, Leonard Lawson, admitted by adding this piece of vacant land to House District 5, it in turn made the district more compact. This Court therefore finds the Board's decision to include the vacant military land in House District 5 was reasonable.

196. Because House District 5 is relatively compact, the Plaintiffs' compactness challenge is without merit and therefore denied.

**CONCLUSION**

197. THEREFORE, IT IS HEREBY ORDERED that for the reasons set forth above, all claims presented at trial that the Board's Proclamation Plan is unconstitutional or that the plan violates either state or federal equal protection requirements are denied. In accordance with Article VI, section 11, this matter is returned to the Board for correction of House District 2, having been found not constitutionally compact on summary judgment.

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DATED at Fairbanks, Alaska this ____ day of February, 2010.

By:_____
HON. MICHAEL McCONAHY
Superior Court Judge

**CERTIFICATE OF SERVICE**

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

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