

IN THE SUPREME COURT OF THE STATE OF ALASKA

)  
In the Matter of the 2021 )  
Redistricting Cases )  
(Matanuska-Susitna, S-18328) )  
(City of Valdez, S-18329) ) Supreme Court No. S-18332  
(Municipality of Skagway, S-18330) )  
(Alaska Redistricting Board, S-18332) ) (S-18328, S-18329, S-18330,  
) S-18332 consolidated)  
)  
\_\_\_\_\_  
Trial Court Case No. 3AN-21-08869CI

RESPONSE TO PETITIONS FOR REVIEW FROM THE SUPERIOR COURT  
THIRD JUDICIAL DISTRICT AT ANCHORAGE  
THE HONORABLE THOMAS A. MATTHEWS

**ALASKA REDISTRICTING BOARD'S  
RESPONSE TO PETITIONS FOR REVIEW**

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## AUTHORITIES PRINCIPALLY RELIED UPON

### ALASKA CONSTITUTION

#### Article VI – Legislative Apportionment

##### § 6. District Boundaries

The Redistricting Board shall establish the size and area of house districts, subject to the limitations of this article. Each house district shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area. Each shall contain a population as near as practicable to the quotient obtained by dividing the population of the state by forty. Each senate district shall be composed as near as practicable of two contiguous house districts. Consideration may be given to local government boundaries. Drainage and other geographic features shall be used in describing boundaries wherever possible.

##### § 10. Redistricting Plan and Proclamation

(a) Within thirty days after the official reporting of the decennial census of the United States or thirty days after being duly appointed, whichever occurs last, the board shall adopt one or more proposed redistricting plans. The board shall hold public hearings on the proposed plan, or, if no single proposed plan is agreed on, on all plans proposed by the board. No later than ninety days after the board has been appointed and the official reporting of the decennial census of the United States, the board shall adopt a final redistricting plan and issue a proclamation of redistricting. The final plan shall set out boundaries of house and senate districts and shall be effective for the election of members of the legislature until after the official reporting of the next decennial census of the United States.

(b) Adoption of a final redistricting plan shall require the affirmative votes of three members of the Redistricting Board. *[Amended 1998]*

##### § 11. Enforcement

Any qualified voter may apply to the superior court to compel the Redistricting Board, by mandamus or otherwise, to perform its duties under this article or to correct any error in redistricting. Application to compel the board to perform must be filed not later than thirty days following the expiration of the ninety-day period specified in this article. Application to compel correction of any error in redistricting must be filed within thirty days following the adoption of the final redistricting plan and proclamation by the board. Original jurisdiction in these matters is vested in the superior court. On appeal from the superior court, the cause shall be reviewed by the supreme court on the law and the facts.

Notwithstanding section 15 of article IV, all dispositions by the superior court and the supreme court under this section shall be expedited and shall have priority over all other matters pending before the respective court. Upon a final judicial decision that a plan is invalid, the matter shall be returned to the board for correction and development of a new plan. If that new plan is declared invalid, the matter may be referred again to the board.  
*[Amended 1998]*

*Editor's Note: The Division of Elections publishes maps and district descriptions resulting from the Proclamation of Redistricting by the Alaska Redistricting Board, April 25, 2002.*

## **I. SUMMARY OF ARGUMENT**

Municipality of Skagway Borough and Brad Ryan (“Skagway Plaintiffs”); City of Valdez and Mark Detter (“Valdez Plaintiffs”); and the Matanuska-Susitna Borough and Michael Brown (“Mat-Su Plaintiffs”) petition this Court for review of the superior court’s rulings affirming that House Districts 3-4, 25-30, and 36 complied with Article VI, Section 6 of the Alaska Constitution. Because all of these house districts are comprised of territory that is compact and contiguous, and are populated with people who are relatively socio-economically integrated and in a number that is as near as practicable to 1/40th of the State’s population, this Court should affirm the superior court’s decision with regard to these challenged districts.

Valdez is upset because it desired to be districted only with much smaller communities, such that it would be the largest fish in the pond and have an outsized voice in its house district. The Valdez Plaintiffs challenge House District 29 because it places Valdez’s 4,000 residents into a district with voters from the Mat-Su Borough. But Valdez’s political desires do not negate its socio-economic integration with its neighbors in the Mat-Su Borough, to which Valdez has a direct transportation link via the Richardson and Glenn Highways. Valdez and Mat-Su residents also share common hunting and fishing grounds at Eureka, Klutina Lake, and Lake Louise; common jobs in the oil industry; travel to compete against each other in public school sports; and have economic commonalities, like locally-funded school districts and public utilities. These things differentiate Palmer and Valdez from the small rural communities along the Richardson Highway with which Valdez seeks to be districted.



The Mat-Su Plaintiffs take aim at the slight overpopulation of House Districts 25-30, which range from 1.10% overpopulation in House District 30, to 2.66% overpopulation in House District 25. But such minor population deviations do not dilute the Mat-Su Borough's voting power. Based on the results of the 2020 U.S. Census, the Mat-Su Borough was entitled to 5.84 ideally populated house districts. This population entitled the Mat-Su to proportionally control six house districts. That is precisely what the Mat-Su Borough received in House Districts 25-30: proportional control of six house districts. It is entitled to no more. Population deviations between 1.10% and 2.66% over the ideal population number of 18,335 are well under the 5% range that this Court upheld in recent redistricting cycles, and far less than the 10% population deviation allowed under federal law. House Districts 25-30 meet the population requirements of Article VI, Section 6 and Alaska's equal protection clause.

Both the Mat-Su and Valdez Plaintiffs complain about a small portion of House District 36 that includes Cantwell. Cantwell has a population of roughly 200 people, and the Board included it in the rural Interior district (House District 36) based on public testimony that Cantwell shared significant socio-economic connections with the rural communities in the Copper River Valley. Moreover, placing Cantwell into House District 36 had the effect of reducing the overpopulation of District 30.

In appealing the superior court's decision that House District 3 complies with Section 6's socio-economic requirement, Skagway seeks to challenge this Court's precedent dating back to *Kenai Peninsula Borough v. State*, which holds that if a community outside a borough (Skagway) is socio-economically integrated with a borough

(City and Borough of Juneau), it may be districted with any portion of that borough.<sup>1</sup> There is good reason this Court has refused to require the Board to delve into the minutia required to determine which neighborhoods within a borough or municipality are *most* socio-economically integrated: it would unduly complicate the already “Herculean” task of redistricting the Alaska Legislature. This Court should reject Skagway’s attempt to overrule its precedent that acknowledges this reality.

## II. STATEMENT OF CASE<sup>2</sup>

### A. Factual Background

In the 90 days between August 12, 2021—when the U.S. Census Bureau reported its results<sup>3</sup>—and November 10, 2021—when the Alaska Redistricting Board (“Board”) issued its Final Plan and Proclamation of Redistricting (“Final Plan”)<sup>4</sup>—the Board engaged in the reapportionment process outlined in Article VI of the Alaska Constitution. The Final Plan sets the boundaries of the election districts for the forty house districts and twenty senate districts, from which representatives who live in those districts are elected to represent the residents of those districts.

The Skagway Plaintiffs, Valdez Plaintiffs, and Mat-Su Plaintiffs challenged the legality of various aspects of the Board’s Final Plan below. On appeal, the Valdez

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<sup>1</sup> *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1362-63 (Alaska 1987).

<sup>2</sup> The Board cites to its Excerpt filed with its Petition for Review in this consolidated matter, and is including as an Excerpt with this brief only those portions not previously designated by any party. The Board’s Excerpt filed herewith will be a continuation of ARB Exc. 001-ARB Exc. 941 already on file, beginning with ARB Exc. 942.

<sup>3</sup> MSB Exc. 502.

<sup>4</sup> MSB Exc. 518.

Plaintiffs specifically challenge House Districts 29 and 36; the Mat-Su Plaintiffs challenge House Districts 25-30, and 36; and the Skagway Plaintiffs challenge House Districts 3 and 4. These Petitioners also challenge the Board’s compliance with Alaska’s statutory Open Meetings Act (“OMA”) and the Board’s compliance with the *Hickel* process. In this response, the Board provides only the factual background necessary for this Court to analyze the Board’s adoption of the nine challenged house districts and compliance with the OMA and *Hickel* process.<sup>5</sup>

**1. The Board Receives the U.S. Census Results and Begins Mapping in Southeast Alaska**

On August 12, 2021, the U.S. Census Bureau released the results of the 2020 U.S. Census regarding Alaska’s population.<sup>6</sup> The Census reported Alaska’s population to be 733,391.<sup>7</sup> Under Article VI, Section 6, the ideal quotient for each of the forty house districts is 18,335.<sup>8</sup>

The U.S. Census Bureau’s release of results triggered the Board’s obligation to adopt a proposed plan or plans by September 11.<sup>9</sup> After meeting August 23 and 24, Board members worked for several weeks on crafting draft plans to share with the full Board.<sup>10</sup>

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<sup>5</sup> For a full discussion of the Board’s meetings, public-hearing tour, and decisions, *see* Alaska Redistricting Board’s Proposed Findings of Fact and Conclusions of Law pp. 6-47 (Feb. 9, 2022) (ARB Exc. 1155-1200); *see also* ARB Exc. 755-75.

<sup>6</sup> ARB Exc. 12.

<sup>7</sup> ARB Exc. 1090-91.

<sup>8</sup> Alaska Const. art. VI, sec. 6.

<sup>9</sup> Alaska Const. art. VI, sec. 10(a).

<sup>10</sup> ARB Exc. 9-14; ARB Exc. 133-50.

On September 9, 2021, the Board adopted two proposed redistricting plans for forty house districts.<sup>11</sup> These proposed plans were denoted as “Board Composite v.1” (“Board Version 1”)<sup>12</sup> and “Board Composite v.2” (“Board Version 2”).<sup>13</sup> The Board received immediate vocal comment from the public about Versions 1 and 2, and particularly about an error in excluding certain census blocks on the south side of Ketchikan.<sup>14</sup> The Board also received public testimony on September 17 and 20 regarding Versions 1 and 2.<sup>15</sup>

The Board refined Board Versions 1 and 2, based on public testimony.<sup>16</sup> Board Version 1 was refined into “Board Proposed Plan v.3” (“Board Version 3”).<sup>17</sup> Board Version 2 was refined into “Board Proposed Plan v.4” (“Board Version 4”).<sup>18</sup>

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<sup>11</sup> ARB Exc. 948-54 (minutes of September 7-9, 2021 meetings).

<sup>12</sup> ARB Exc. 17-74 (Board Composite v.1).

<sup>13</sup> ARB Exc. 75-130 (Board Composite v.2).

<sup>14</sup> *See* ARB Exc. 766; ARB Exc. 959 (Board Meeting Minutes September 17, 2021) (“Following the adoption of the two plans, the board continued to work toward greater compactness and fewer deviations; the board also addressed concerns expressed about Southeast Alaska and will be bringing new versions of this area to the September 20, 2021 board meeting.”); ARB Exc. 144-48 (Board Meeting Minutes September 20, 2021) (describing the public comments received about issues with Versions 1 and 2 and changes made to refine these maps into Versions 3 and 4).

<sup>15</sup> ARB Exc. 766-67.

<sup>16</sup> ARB Exc. 958-66; ARB Exc. 133-50.

<sup>17</sup> ARB001341-ARB001387 (complete Board Proposed Plan v.3 contained within trial court record at these cites).

<sup>18</sup> ARB001388-ARB001434 (complete Board Proposed Plan v.4 contained within trial court record at these cites).

The Board also adopted four additional third-party redistricting plans submitted by various groups.<sup>19</sup> Each of these four plans included proposed senate pairings.<sup>20</sup> These groups were: Alaskans for Fair and Equitable Redistricting (“AFFER”);<sup>21</sup> Alaskans for Fair Redistricting (“AFFR”);<sup>22</sup> Coalition of Doyon, Tanana Chiefs Conference, Fairbanks Native Association, Sealaska Corporation, and Ahtna Incorporated (“Doyon Coalition”);<sup>23</sup> and Alaska Senate Minority Caucus.<sup>24</sup> Thus, as of September 20, the Board had six proposed redistricting plans: Board Versions 3 and 4, AFFER, AFFR, Doyon Coalition, and Senate Minority Caucus.<sup>25</sup>

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<sup>19</sup> ARB Exc. 148-50 (Board Meeting Minutes September 20, 2021) (showing votes to adopt Versions 3 and 4, AFFER, AFFR, Doyon Coalition and Senate Minority Caucus as proposed plans for public hearing roadshow).

<sup>20</sup> *See* ARB001232-001293 (complete AFFER Proposed Plan contained within trial court record at these cites); ARB001294-ARB001340 (complete AFFR Proposed Plan contained within trial court record at these cites); ARB001435-ARB001481 (complete Doyon Coalition Proposed Plan contained within trial court record at these cites); ARB001482-ARB001528 (complete Senate Minority Caucus Proposed Plan contained within trial court record at these cites).

<sup>21</sup> ARB001232-ARB001293 (AFFER’s Proposed Plan); ARB Exc. 973-81.

<sup>22</sup> ARB001294-ARB001340 (AFFR’s Proposed Plan); ARB Exc. 982-84.

<sup>23</sup> ARB001435-ARB001481 (Doyon Coalition’s Proposed Plan); ARB Exc. 985-88.

<sup>24</sup> ARB001482-ARB001528 (Senate Minority Caucus’s Proposed Plan); ARB Exc. 989-92.

<sup>25</sup> *See* ARB001341-ARB001387 (Board v.3); ARB001388-ARB001434 (Board v.4); ARB001232-ARB001293 (AFFER’s Proposed Plan); ARB001294-ARB001340 (AFFR’s Proposed Plan); ARB001435-ARB001481 (Doyon Coalition’s Proposed Plan); ARB001482-ARB001528 (Senate Minority Caucus’s Proposed Plan).

The Alaska Constitution gives the Board 90 days from the release of the U.S. Census data to adopt a final redistricting plan, and by September 20, 51 days remained of that 90-day period.<sup>26</sup>

**2. The Board Adopts Proposed Plans that Include Mat-Su’s, Skagway’s, and Valdez’s Preferred Election Districts, and Takes All Six Proposed Plans to Public Hearings in Valdez, Palmer, Wasilla, and with Skagway via Zoom**

Some of the proposed plans included the house districts favored by the Mat-Su, Valdez, and Skagway Plaintiffs. On September 20, 2021, the Board adopted AFFER’s proposed redistricting plan that included the Mat-Su Plaintiffs’ preferred house and senate districts.<sup>27</sup> AFFER’s redistricting plan adopted by the Board contained House Districts 11-16.<sup>28</sup> At trial, Mat-Su’s expert witness confirmed that AFFER<sup>29</sup> coordinated with the Mat-Su Borough and AFFER’s House District 11-16 were Mat-Su’s preferred house districts.<sup>30</sup>

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<sup>26</sup> Alaska Const. art. VI, sec. 10(a).

<sup>27</sup> ARB Exc. 148-50 (September 20 Board Meeting Minutes).

<sup>28</sup> ARB Exc. 973, ARB Exc. 976-81 (AFFER HDs 11-16); *see also* ARB Exc. 974 (Mat-Su Insert).

<sup>29</sup> Mat-Su’s expert witness, Steve Colligan, at first attempted to distinguish between two of his businesses, E-Terra and AFFER, arguing that E-Terra, not AFFER, coordinated with Mat-Su to submit its preferred house districts, but this difference is irrelevant because Colligan agreed that regardless of which entity had the contract with Mat-Su, AFFER’s submission contained Mat-Su’s preferred districts. *See* Jan. 24, 2022 Trial Tr. 369:3-12, 373:6-10 (Colligan Cross).

<sup>30</sup> Jan. 24, 2022 Trial Tr. 369:25-370:2 (Colligan Cross) (“Q: Okay. So when you drew the AFFERS map for Mat-Su you were focused on what the Mat-Su wanted? A: That’s correct.”); *see also* Jan. 24, 2022 Trial Tr. 373:6-10 (“Q: Let me ask this question: The map submitted on – in mid September, as a proposed plan by AFFER, does that incorporate Mat-Su’s preferred districts for the Mat-Su Borough? A: I would say, in general, yes, correct.”).

While all five members of the Board voted to adopt the AFFER plan as one of the Board's proposed plans, Member Borrromeo stated that she voted to adopt the AFFER plan despite concerns about "problematic proposed districts for much of rural Alaska" because the Mat-Su Borough itself desired the districts contained in AFFER's redistricting plan, which warranted the Board taking it on its public hearing roadshow to get "public testimony throughout the state."<sup>31</sup>

The same day, the Board adopted Version 3 that included Valdez in a house district encompassing most communities along the Richardson Highway.<sup>32</sup> Board Version 3 contained House District 36.<sup>33</sup> Board Version 3's House District 36 placed Valdez in a district that included Richardson Highway communities north of Valdez up to the southern boundary of the Fairbanks North Star Borough, along with a many rural villages throughout Interior Alaska.<sup>34</sup>

The Board adopted three proposed plans that placed the Municipality of Skagway Borough ("Skagway") in a house district as desired by the Skagway Plaintiffs.<sup>35</sup> Board

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<sup>31</sup> ARB Exc. 993 at 211:10-22 ("Just for purposes of discussion, I want to say that the Alaskans for Fair and Equitable Redistricting presented problematic proposed districts for much of rural Alaska, in my opinion, and I - - I do have concern with this plan as a whole. That said, they did have a Mat-Su that was signed on by the borough itself and another coalition member here. So on balance, I believe this plan does warrant the Board taking it under consideration and into public testimony throughout the state.").

<sup>32</sup> ARB Exc. 148-50 (September 20 Board Meeting Minutes).

<sup>33</sup> ARB Exc. 968 (Board v.3 map, House District 36).

<sup>34</sup> ARB Exc. 968 (Board v.3 map, House District 36).

<sup>35</sup> ARB Exc. 148-50 (September 20 Board Meeting Minutes).

Version 4 included House District 3.<sup>36</sup> The Senate Minority Caucus plan included House District 33.<sup>37</sup> The Doyon Coalition plan included House District 4.<sup>38</sup> All of these proposed house districts placed Skagway in a district with the southern portion of the City and Borough of Juneau.<sup>39</sup> The Board’s other two proposed plans placed Skagway in a district with the northern part of Juneau, similar to the final adopted District 3.<sup>40</sup>

Between September 27 and November 1, the Board traveled throughout Alaska and held in-person and Zoom hearings to receive public comment on its six proposed plans or any other districts proposed by the public.<sup>41</sup> Because the Board realized early on in its process the “difficulty of placing Valdez,”<sup>42</sup> on September 30, the Board held a public hearing in Valdez. This meeting was “one of its earliest stops, during which large printouts of all the adopted proposed maps were hung on the walls and citizens were permitted to share their thoughts with the Board.”<sup>43</sup> Two of Valdez’s trial witnesses, Valdez’s Clerk Sheri Pierce and its Capital Facilities Director Nathan Duval, attended the public hearing, and “shared their views” about their preferred “Richardson Highway” house district with

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<sup>36</sup> ARB Exc. 970 (Board v.4 map, House District 3).

<sup>37</sup> ARB Exc. 992 (Senate Minority map, House District 33).

<sup>38</sup> ARB Exc. 986 (Doyon map, House District 4).

<sup>39</sup> *See supra* nn. 36-38.

<sup>40</sup> *See* ARB Exc. 157 (Board v.3 map, House District 4); ARB Exc. 152 (AFFER map, House District 4).

<sup>41</sup> ARB Exc. 768-69.

<sup>42</sup> ARB Exc. 830-31.

<sup>43</sup> ARB Exc. 768.



the Board.<sup>44</sup> The Board also held public hearings in Wasilla and Palmer, and held a “Skagway public hearing using the Zoom internet platform.”<sup>45</sup>

The superior court below summarized the Board’s ambitious public hearing tour:

The Board embarked on a five-week public roadshow from Ketchikan to Utqiagvik, eliciting 63 hours of public testimony. The Board also held statewide teleconferences and virtual meetings, even accommodating requests for Zoom meetings from smaller communities. And throughout the entire process the Board elicited and received countless written submissions by mail, e-mail, and through the Board’s website.<sup>46</sup>

**3. From November 2-5, the Board Reconvenes in Anchorage to Debate and Adopt its Final Map of Alaska’s Forty House Districts**

After the public hearing roadshow, the Board reconvened in Anchorage to finalize its house district map.<sup>47</sup> Ultimately, the Board placed Skagway in House District 3 with the northern portion of the City and Borough of Juneau; Valdez in House District 29 with the eastern portion of the Mat-Su Borough; the City of Houston and the northern portion of the Mat-Su Borough were placed in House District 30 with most of the Denali Borough, except Cantwell; and the rural Interior communities of Alaska were placed in House District 36.

**a. House Districts 3 and 4**

The Board’s adoption of House Districts 3 and 4 were discussed at length at pages

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<sup>44</sup> ARB Exc. 768.

<sup>45</sup> ARB Exc. 768.

<sup>46</sup> ARB Exc. 905 (internal citations omitted).

<sup>47</sup> ARB Exc. 769.

10-16 of the Board's Petition for Review dated March 2, 2022.<sup>48</sup> The Board respectfully incorporates that discussion by reference and does not repeat it here.

As to the substance of House District 3, Skagway challenges the superior court's rulings that Skagway is sufficiently socio-economically integrated with the entirety of the City and Borough of Juneau to be districted with any portion of that borough, and that all areas within the City and Borough of Juneau are socio-economically integrated such that splitting neighborhoods within it has no constitutional bearing.<sup>49</sup>

House District 3 is comprised of the whole Municipality of Skagway Borough, the Haines Borough, Gustavus, and the northern portion of the City and Borough of Juneau that includes Auke Bay and most of the Mendenhall Valley.<sup>50</sup> It is shown below:

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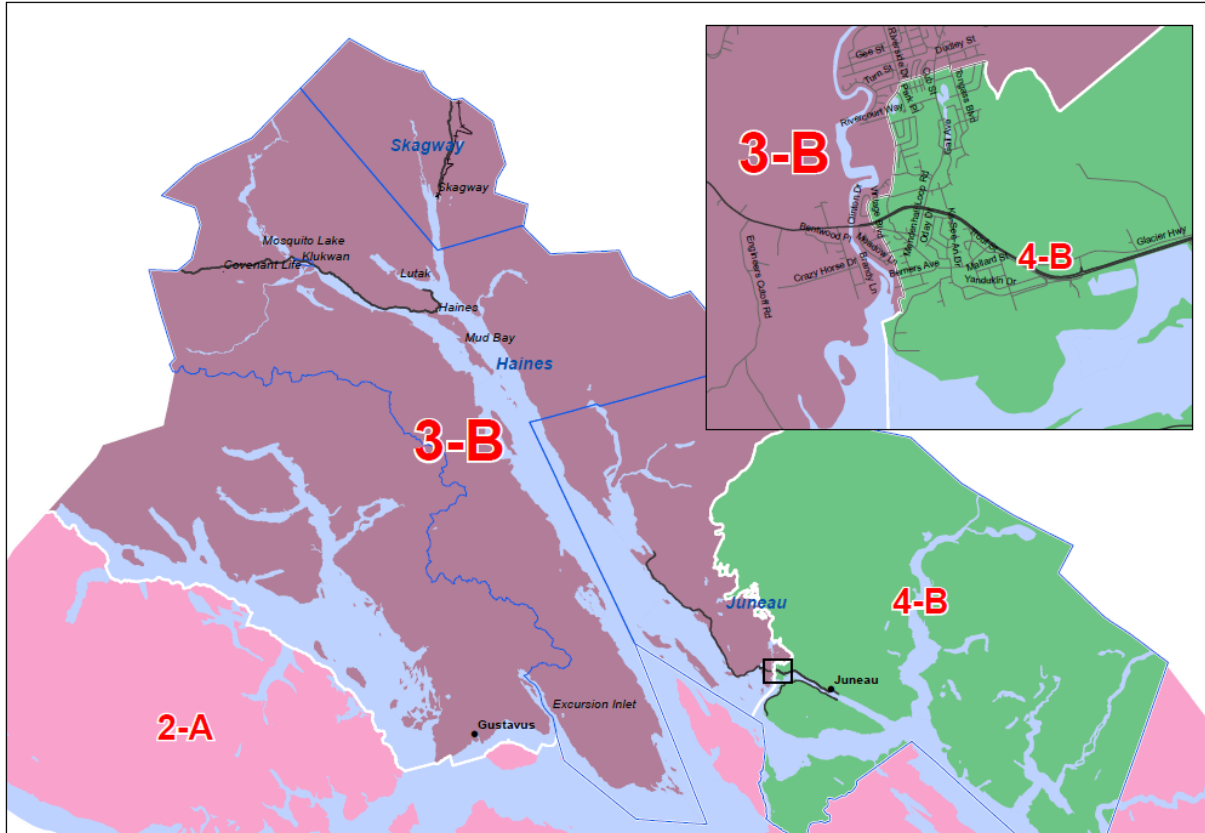
<sup>48</sup> ARB's Pet. Rev. 10-16 (Mar. 2, 2022).

<sup>49</sup> Municipality of Skagway Borough and Brad Ryan's Corrected Pet. Rev. 1 (Questions Presented 1 and 3) (Mar. 3, 2022).

<sup>50</sup> ARB Exc. 323-24.



## 2021 Board Proclamation District 3-B Redistricting Plan Adopted by the Alaska Redistricting Board 11/10/2021



Based on 2020 Census Geography and 2020 PL94-171 Data; Map Gallery link: [www.akredistrict.org/maps](http://www.akredistrict.org/maps)

ARB000021

The Board *unanimously* rejected Skagway’s preferred district that placed it in a house district with the southern/downtown portion of the City and Borough of Juneau, and adopted House District 3.<sup>51</sup> The Board rejected Skagway’s preferred district because placing it with the northern portion of Juneau, as opposed to downtown, renders House District 3 significantly more compact, as required by Section 6.<sup>52</sup> In addition, legal precedent informs that Skagway is socio-economically integrated with all of the City and

<sup>51</sup> Feb. 3, 2022 Trial Tr. 1865:7-17 (Simpson Redirect).

<sup>52</sup> Feb. 3, 2022 Trial Tr. 1850:3-16.

Borough of Juneau, not just the portion Skagway prefers.<sup>53</sup> Given the importance of cruise ships to all of the City and Borough of Juneau and Skagway, the Board rejected Skagway's premise that it should not be in a district with residents of the Mendenhall Valley and Auke Bay neighborhoods of Juneau because those residents do not appreciate tourism and cruise ships like downtown Juneauites do.<sup>54</sup> As Member Borromeo testified, the Board considered Skagway's request (even adopting three proposed plans that incorporated its preference) and eventually selected a more-compact option.<sup>55</sup>

The location of the dividing line between House Districts 3 and 4 is the product of pure math and the shape of U.S. Census blocks for the area. The southern, eastern, and western boundaries of House District 4 are the boundaries of the City and Borough of Juneau.<sup>56</sup> Member Simpson started from the southern boundary of the City and Borough of Juneau and "drew the northern line by gathering census blocks moving outward from downtown Juneau, stopping when I had sufficiently populated the district."<sup>57</sup> House District 4 was sufficiently populated when the line reached the location within the Mendenhall Valley neighborhood of the borough shown in the depiction of House District

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<sup>53</sup> *Groh v. Egan*, 526 P.2d 863, 879 (Alaska 1974).

<sup>54</sup> Feb. 3, 2022 Trial Tr. 1854:8-16 (Simpson Redirect); ARB Exc. 511 (Binkley Aff., ¶ 20).

<sup>55</sup> ARB Exc. 491-92 (Depo. of N. Borromeo, at 76:14-77:9) (explaining that to increase socio-economic integration as desired by Skagway, the districts Skagway desired sacrificed compactness and contiguity).

<sup>56</sup> ARB Exc. 586 (Simpson Aff., ¶ 18) ("The southeastern, southwestern, and northeastern boundaries of House District 4 are the boundaries of the City and Borough of Juneau.").

<sup>57</sup> ARB Exc. 586-87 (Simpson Aff., ¶ 18).

3 above.<sup>58</sup> Member Simpson worked with staff to make the line separating House Districts 3 and 4 as straight as possible, and the squiggles of that line are the result of odd-shaped U.S. Census blocks.<sup>59</sup>

**b. House District 29 (Valdez/Eastern Mat-Su)**

Where to place Valdez was front and center in Board discussions from the outset of its work in 2021.<sup>60</sup> The Board considered all viable options for Valdez. One option was to place Valdez in a Richardson Highway “corridor” that included Glennallen, Paxson, Delta Junction, and Eielson Air Force Base from the Fairbanks North Star Borough (“FNSB”).<sup>61</sup> The problem with this option was that it fractured the excess population of the FNSB into multiple districts outside the borough.<sup>62</sup> The FNSB has enough population for 5.2 house districts, or approximately 4,000 people over five ideally populated house districts.<sup>63</sup> Valdez itself has a population of approximately 4,000 people.<sup>64</sup> When the Board drew a Richardson Highway “corridor” district running from Valdez north, the populations of the communities along that corridor left room in the district for only 2,000 people from the Eielson Air Force Base area of the FNSB.<sup>65</sup> This left the other 2,000 FNSB

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<sup>58</sup> ARB Exc. 586-87 (Simpson Aff., ¶ 18).

<sup>59</sup> ARB Exc. 587 (Simpson Aff., ¶ 18).

<sup>60</sup> ARB Exc. 838-39.

<sup>61</sup> ARB Exc. 838.

<sup>62</sup> ARB Exc. 838.

<sup>63</sup> ARB Exc. 838.

<sup>64</sup> ARB Exc. 838.

<sup>65</sup> ARB Exc. 838.

residents to be placed in another district outside of the FNSB.<sup>66</sup> The Board rejected this option because it unnecessarily split FNSB’s excess population into multiple districts outside of its borough boundaries, which was counter to this Court’s instruction in *Hickel* that “where possible, all of a municipality’s [or borough’s] excess population should go to one other district.”<sup>67</sup> It was possible to place FNSB’s excess population in one other district (House District 36), so the Board rejected this as the best option for a Valdez house district.

Another option considered by the Board was a Valdez-Cordova-Richardson Highway district.<sup>68</sup> Valdez submitted this as its preferred proposal during the redistricting process as “Valdez Option 1.”<sup>69</sup> This results in the same problem with the Richardson Highway “corridor” district discussed above: contrary to *Hickel*, it splinters the FNSB’s excess population of 4,000 into multiple districts.<sup>70</sup>

Another option was to place Valdez in a “Prince William Sound/Kodiak” house district, as did the Board’s adopted AFFER and the Senate Minority Caucus maps.<sup>71</sup> The problem with this option was that it resulted in having to place Cordova in a house district with the rural Interior, including the Brooks Range community of Arctic Village.<sup>72</sup> The

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<sup>66</sup> ARB Exc. 838.

<sup>67</sup> ARB Exc. 839 (quoting *Hickel v. Southeast Conference*, 846 P.2d 38, 52 (Alaska 1992)).

<sup>68</sup> ARB Exc. 839-40.

<sup>69</sup> ARB Exc. 839-40.

<sup>70</sup> ARB Exc. 839.

<sup>71</sup> ARB Exc. 838-39.

<sup>72</sup> ARB Exc. 838-39.

Kodiak Island Borough (“Kodiak”) has a population of 13,101.<sup>73</sup> A house district with Kodiak and Valdez is only approximately 1,200 people under the ideally populated house district of 18,335.<sup>74</sup> There is no room for Cordova’s population of roughly 2,600.<sup>75</sup> As shown by AFFER’s (House District 5) and the Senate Minority Caucus’s (House District 6) maps, this arrangement results in Cordova’s placement in a house district with rural Interior communities such as Tok, Fort Yukon, and Arctic Village, with which Cordova, an ocean-side fishing community, does not share social or economic ties.<sup>76</sup>

Another option was to place Valdez in a district with South Anchorage.<sup>77</sup> But Anchorage only needed roughly half of Valdez’s population to fully populate 16 ideally-populated house districts, and it was further away from Valdez than the Mat-Su Borough.<sup>78</sup>

The Board concluded that the Mat-Su Borough and Valdez were sufficiently socio-economically integrated to be in a house district together. These areas are connected by the Richardson and Glenn state highways.<sup>79</sup> Valdez and Mat-Su schools are both partially

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<sup>73</sup> See U.S. Census Results for Alaska (available at: <https://www.census.gov/library/stories/state-by-state/alaska-population-change-between-census-decade.html>).

<sup>74</sup> Exc. 838-39. Kodiak’s population of 13,101 plus Valdez’s approximate population of 4,000, results in a total of 17,101 persons.

<sup>75</sup> Exc. 838-39.

<sup>76</sup> Exc. 838-39.

<sup>77</sup> See ARB Exc. 1048-57 (Nov. 4 Meeting Tr. 104:4-113:3); ARB Exc. 1062-65 (Nov. 4 Meeting Tr. 173:12-176:9) (similar); ARB Exc. 1077 (Nov. 5 Meeting Tr. 5:2-22) (discussing challenge of mapping Valdez with Anchorage in a manner consistent with other constitutional parameters); ARB Exc. 1078-88 (Nov. 5 Meeting Tr. 186:21-196:13) (discussion and decisions on Mat-Su districts including Valdez).

<sup>78</sup> *Id.*

<sup>79</sup> ARB Exc. 831.

funded by local property taxes, as opposed to being Rural Education Attendance Areas, and play each other in sports.<sup>80</sup> Both areas have helicopter-ski operations that operate in the Chugach Mountains that separate Valdez and Mat-Su.<sup>81</sup> Residents of both areas enjoy recreating in neighboring communities, including Lake Louise within the Mat-Su Borough.<sup>82</sup> Residents of both Mat-Su and Valdez hunt caribou within the Mat-Su Borough near Eureka.<sup>83</sup> Mat-Su residents also fish in Valdez and some rent boat slips in Valdez.<sup>84</sup>

The nearest large store, hospital, and automobile dealership to Valdez are all located in the Mat-Su Borough.<sup>85</sup> Residents of the communities on the Richardson Highway, including Valdez, pass through the Mat-Su when traveling to Anchorage.<sup>86</sup>

The Mat-Su Borough and Valdez both have residents who work in Alaska's oil industry. The terminus of the Trans-Alaska Pipeline System is in Valdez, and the vitality

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<sup>80</sup> ARB Exc. 831.

<sup>81</sup> Jan. 24, 2022 Trial Tr. 179:22-180:15 (DeVries Cross); 263:14-17 (Scheidt Cross); 283:10-12 (Scheidt Cross).

<sup>82</sup> Jan. 24, 2022 Trial Tr. 180:16-20 (DeVries Cross); 219:5-7 (Brown Cross); 262:16-263:13 (Scheidt cross discussing Valdez residents recreating at Lake Louise and Tazlina and Klutina Lakes); Jan. 25, 2022 Trial Tr. 481:17-20 (Duval recreating at Klutina Lake).

<sup>83</sup> Jan. 24, 2022 Trial Tr. 219:11-13 (Brown Cross); Jan. 25, 2022 Trial Tr. 481:5-12 (Duval Cross).

<sup>84</sup> Jan. 24, 2022 Trial Tr. 218:24-219:4 (Brown Cross); Jan. 25, 2022 Trial Tr. 483:8-12 (Duval Cross identifying Mat-Su use of Valdez Harbor).

<sup>85</sup> Jan. 24, 2022 Trial Tr. 183:5-18 (DeVries Cross discussing Palmer amenities as closest to Valdez); ARB Exc. 1067 (submission of D. Rumbo: "Unlike the AFFER Plan, Map #73975 continues to include the City of Valdez with the Mat-Su because Valdez is a developed community with a substantial tax base on the road system near the Mat-Su. The closest Wal-Mart to Valdez is in the Mat-Su. It should not be paired with other communities that are not on the road system, like it is in the AFFER Plan.").

<sup>86</sup> Jan. 24, 2022 Trial Tr. 184:12-18 (DeVries Cross).



of the oil industry is an important focus for Valdez.<sup>87</sup> Residents of the Mat-Su work on the North Slope. Thus, Mat-Su and Valdez “share a concern about the viability of the North Slope oil fields and its transportation of oil down through TAPS.”<sup>88</sup>

Both Mat-Su Borough and Valdez have significant connections to the Municipality of Anchorage.<sup>89</sup> About a third of the residents of the Mat-Su Borough commute to work in Anchorage.<sup>90</sup> The residents of Mat-Su also use professional services from Anchorage, shop in Anchorage, attend concerts in Anchorage, eat at restaurants in Anchorage, and take commercial flights out of Anchorage.<sup>91</sup> Likewise, because of its substantial transportation and economic connections to Anchorage, Valdez has been districted with South Anchorage as recently as 2002.<sup>92</sup>

Given these choices, the Board determined that placing Valdez with the eastern side of the Mat-Su Borough in House District 29, as shown below, was the best option:<sup>93</sup>

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<sup>87</sup> Jan. 24, 2022 Trial Tr. 178:14-15 (DeVries Cross), 207:15-17 (Brown Cross); 255:11-24 (Scheidt Cross).

<sup>88</sup> Jan. 24, 2022 Trial Tr. 218:14-19 (Brown Cross).

<sup>89</sup> Jan. 24, 2022 Trial Tr. 178:23-179:1 (DeVries Cross); 224:3-225:1 (Brown Cross discussing ties between Mat-Su and Anchorage to include: air travel, restaurants, concerts and entertainment, commuting to work, shopping, the Alaska Railroad, and the Glenn Highway).

<sup>90</sup> Jan. 24, 2022 Trial Tr. 179:2-9 (DeVries Cross).

<sup>91</sup> Jan. 24, 2022 Trial Tr. 224:3-225:1 (Brown Cross discussing ties between Mat-Su and Anchorage to include: air travel, restaurants, concerts and entertainment, commuting to work, shopping, the Alaska Railroad, and the Glenn Highway).

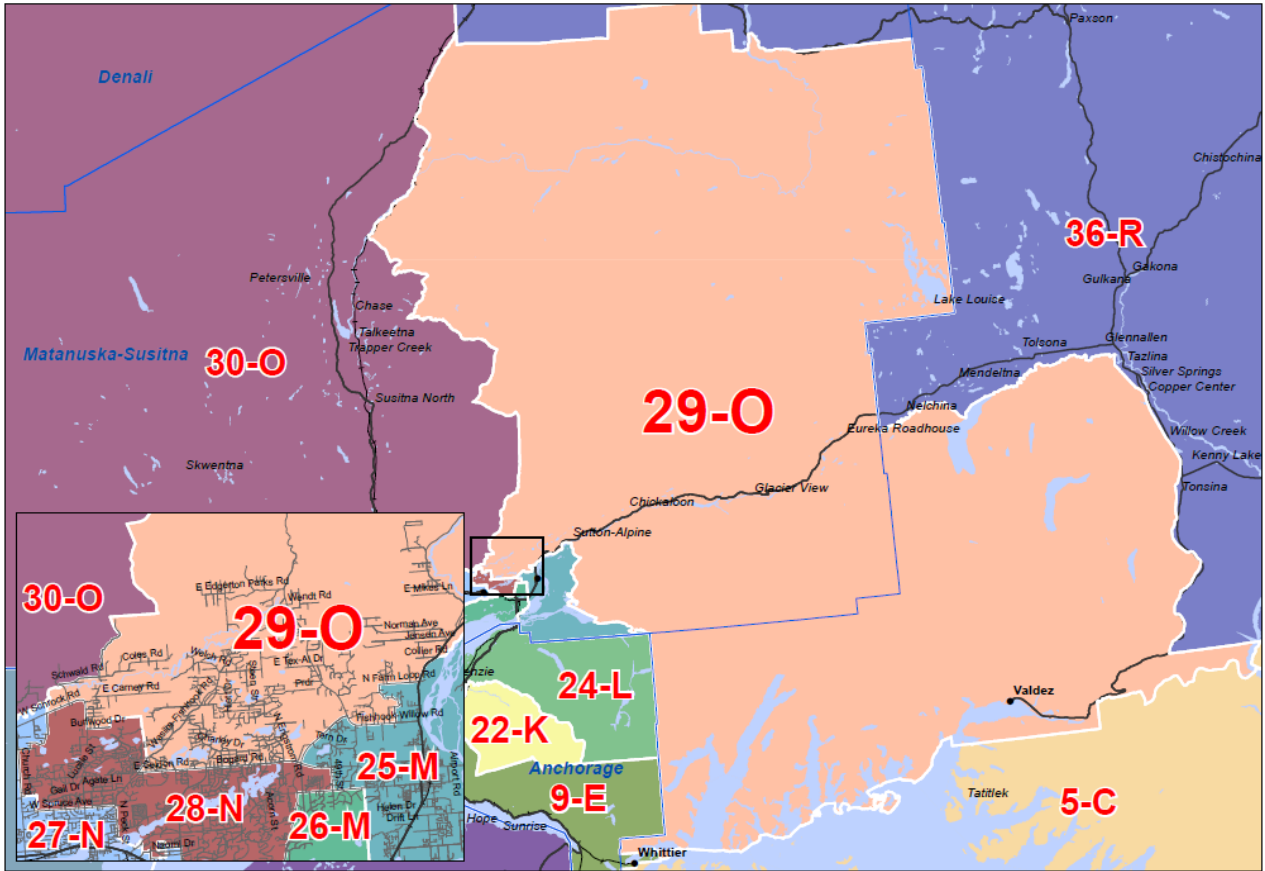
<sup>92</sup> *In re 2001 Redistricting Cases*, 2002 WL 34119573, at \*\*103-113 (Alaska Super. Feb. 1, 2002).

<sup>93</sup> ARB Exc. 350.



# 2021 Board Proclamation District 29-O

Redistricting Plan Adopted by the Alaska Redistricting Board 11/10/2021



Based on 2020 Census Geography and 2020 PL94-171 Data; Map Gallery link: [www.akredistrict.org/maps](http://www.akredistrict.org/maps)

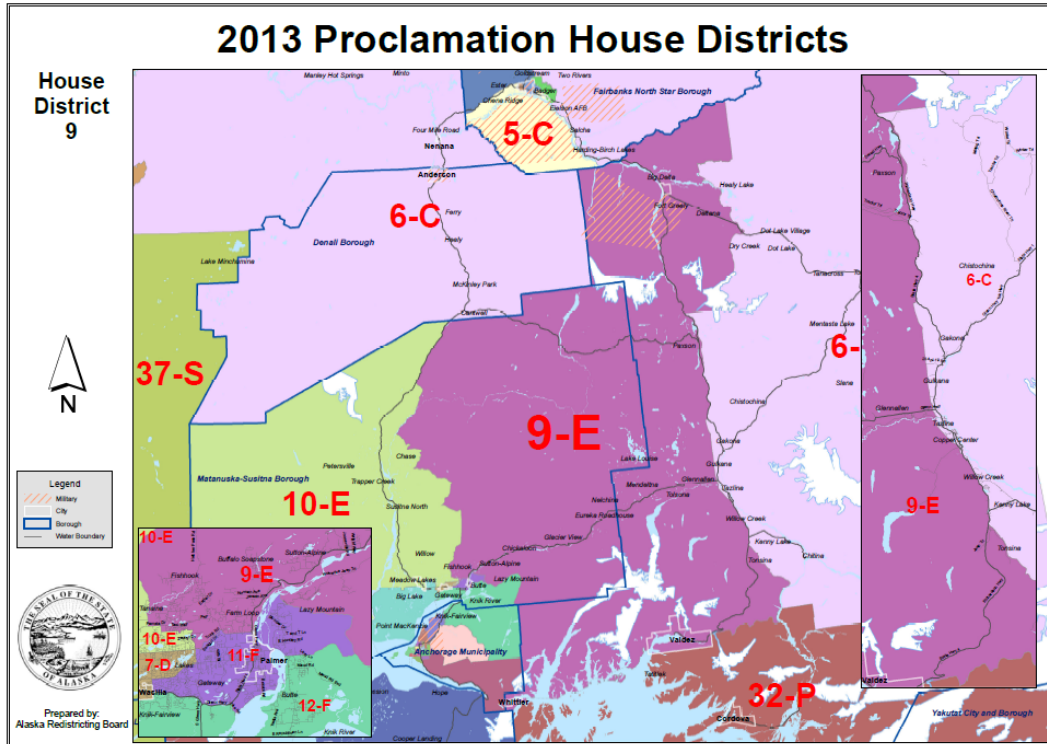
ARB000047

House District 29 has a population of 18,773 people within it.<sup>94</sup> House District 29 contains a majority of the same residents<sup>95</sup> and is “substantially similar” to House District 9 of the 2013 Proclamation Plan, as shown below:<sup>96</sup>

<sup>94</sup> ARB Exc. 426-27.

<sup>95</sup> ARB Exc. 630 (Torkelson Aff., ¶ 52) (“[T]he Board-adopted House District 29 contains 75% of the base population of the 2013 House District 9, which also includes Valdez.”).

<sup>96</sup> ARB Exc. 942.



ARB001590

**c. House District 30 (Northern Mat-Su and Denali Borough)**

House District 30 “extends from the shores of Cook Inlet in the south northward through a portion of the Denali Borough to the edge of the Fairbanks North Star Borough in the north.”<sup>97</sup> District 30 includes the City of Houston as its core, and includes Talkeetna, and most of the Denali Borough, with the exception of Cantwell, which was placed in the rural Interior House District 36.<sup>98</sup> House District 30 has 18,536 people in it,<sup>99</sup> and is shown below:<sup>100</sup>

<sup>97</sup> ARB Exc. 850.

<sup>98</sup> ARB Exc. 351.

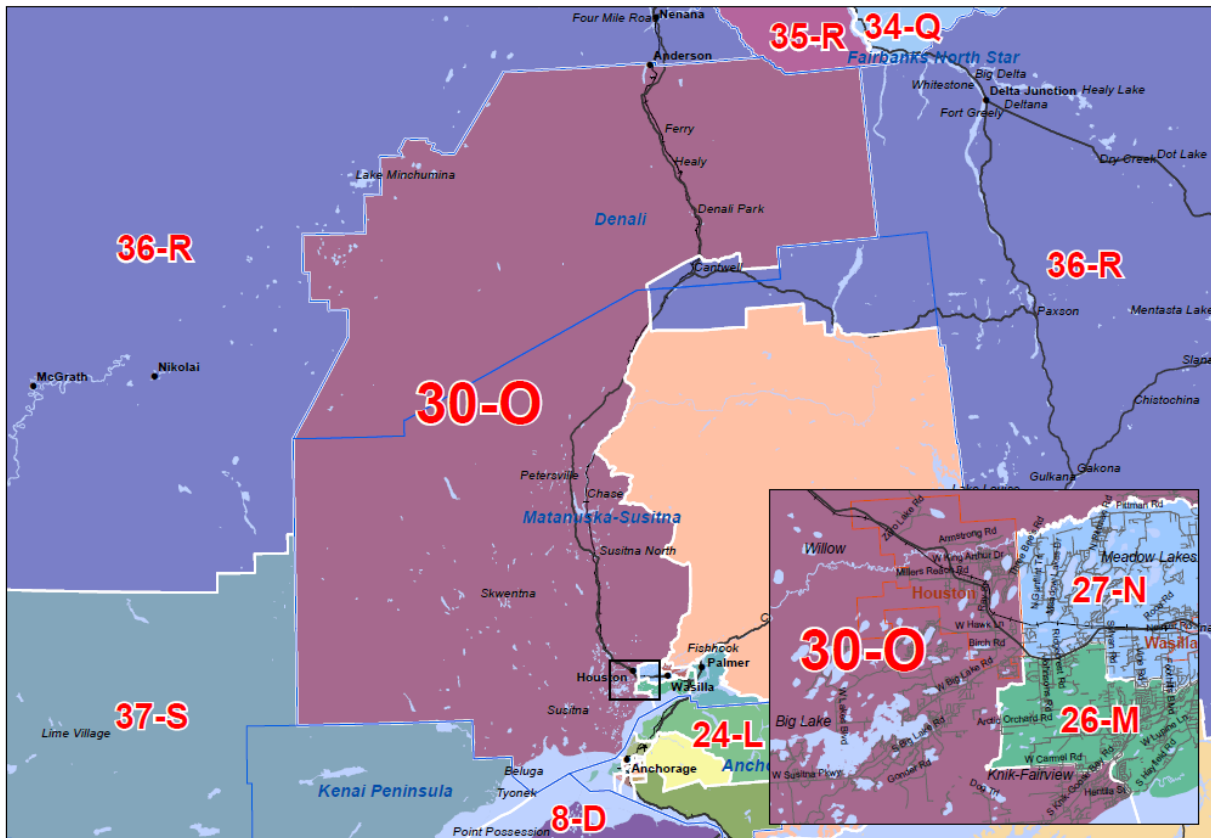
<sup>99</sup> ARB Exc. 426-27.

<sup>100</sup> ARB Exc. 351.



# 2021 Board Proclamation District 30-O

Redistricting Plan Adopted by the Alaska Redistricting Board 11/10/2021



Based on 2020 Census Geography and 2020 PL94-171 Data; Map Gallery link: [www.akredistrict.org/maps](http://www.akredistrict.org/maps)

ARB000048

The Board did not include Cantwell in House District 30. Instead, the Board included Cantwell in House District 36 based on public testimony that Cantwell (which is in the Denali Borough) shared close family, social, and historic ties to the villages to its east in the Copper River Valley.<sup>101</sup>

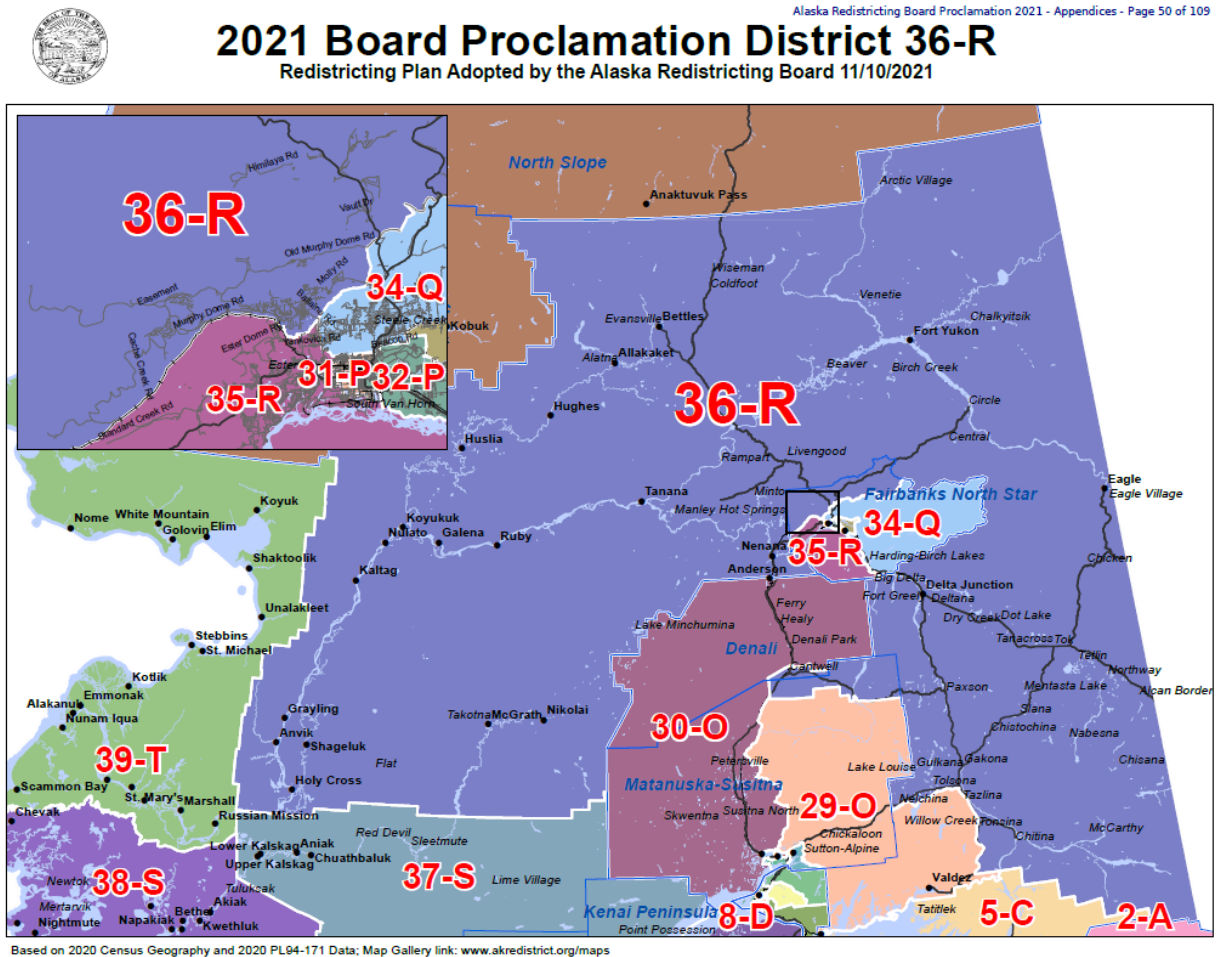
### d. House District 36

The Board adopted House District 36 as its rural Interior district.<sup>102</sup> House District

<sup>101</sup> ARB Exc. 843-45.

<sup>102</sup> ARB Exc. 847 (“The evidence in general shows the board viewed District 36 as a ‘rural’ district, and concluded that rural communities generally share socio-economic ties.”).

36 is the largest house district in Alaska, contains approximately 35% of the state’s landmass, and spans from McCarthy in the east to Arctic Village in the north to Holy Cross in the west.<sup>103</sup> It is shown below:



ARB000054

There are 18,558 people who live in House District 36’s “immense and predominantly roadless rural area.”<sup>104</sup> The Board placed Cantwell of the Denali Borough into House District 36 because of Cantwell’s socio-economic connections with the communities of the

<sup>103</sup> ARB Exc. 841-42.

<sup>104</sup> ARB Exc. 842.

Copper River Valley.<sup>105</sup> As drawn, House District 36 nearly encompasses the Doyon and Ahtna regions, two Alaska Native Claims Settlement Act Regional Corporations.<sup>106</sup> Cantwell is one of Ahtna’s eight traditional villages and it shares the same “language, customs, [and] traditions” with the Copper River Valley communities and they also “hunt, fish, and do berry picking together.”<sup>107</sup>

Prior redistricting plans confirm that this sparsely populated area of Alaska is commonly districted in one geographically large house district. House District 36 is very similar in shape and geography to the Interior district (House District 6) in the 2002 Amended Proclamation Plan,<sup>108</sup> and the Interior district (House District 36) from the 1994 Final Reapportionment Plan.<sup>109</sup>

**e. On November 10, 2021, the Board Adopts its Final Redistricting Plan and Issues its Proclamation of Redistricting**

On November 10, 2021, the Board finished its work.<sup>110</sup> On that 90th day after the U.S. Census Bureau had delivered the Alaska results of the 2021 U.S. Census, the Board issued its Final Plan and Proclamation of Redistricting (“Final Plan”).<sup>111</sup> The Board’s Final Plan sets the forty house and twenty senate districts that comprise the Alaska Legislature,

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<sup>105</sup> ARB Exc. 843.

<sup>106</sup> ARB Exc. 845.

<sup>107</sup> ARB Exc. 844.

<sup>108</sup> ARB Exc. 006.

<sup>109</sup> ARB Exc. 001.

<sup>110</sup> ARB Exc. 305-418 (2021 Proclamation of Redistricting).

<sup>111</sup> ARB Exc. 305-418 (2021 Proclamation of Redistricting).

and truncates senate terms.<sup>112</sup> The Board’s Final Plan also includes the report from its Voting Rights Act (“VRA”) consultant, showing the Final Plan’s compliance with the VRA.<sup>113</sup>

## **B. Procedural Background**

Five plaintiff groups, including the Skagway Plaintiffs, Valdez Plaintiffs, and Mat-Su Plaintiffs, filed legal challenges to the Board’s Final Plan by Article VI, Section 11’s December 10, 2021 deadline.<sup>114</sup> These plaintiff groups filed a myriad of claims against the Board.<sup>115</sup>

Between December 10 and January 21, the Board produced over one hundred thousand pages of e-mail communications that constituted *all* of the messages to and from the Board and its staff, except for privileged communications.<sup>116</sup> All Board members and its executive director were deposed during early-mid January 2022.<sup>117</sup> Just over a month after the lawsuits were filed, this matter went to trial before superior court Judge Thomas

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<sup>112</sup> ARB Exc. 315-61 (House and Senate Districts); ARB Exc. 305-306 (truncation of senate terms); ARB Exc. 417-18 (Board’s Senate Allocation Table and “core constituency” analysis).

<sup>113</sup> ARB Exc. 381-95, 400-12, 416 (VRA Report).

<sup>114</sup> ARB Exc. 775.

<sup>115</sup> ARB Exc. 941 (Listing “Claims Raised” by complaints).

<sup>116</sup> ARB Exc. 487 (Fourth Pretrial Order) (“The Board shall prepare in electronic form for supplementation by December 31, 2021 to the parties **all correspondence** to or from the board members or staff, excluding only correspondence that is claimed to be protected attorney client privilege.”) (emphasis added).

<sup>117</sup> See ARB Exc. 1122-23 (Notice of Lodging Dep. Trs., dated Jan. 18, 2022).

Matthews on January 21, 2022.<sup>118</sup> On February 11, 2022, Judge Matthews heard closing statements, and on February 15, 2022, he issued his decision from which the parties are seeking review.<sup>119</sup>

Judge Matthews ruled all of the challenged house districts complied with Article VI, Section 6's substantive requirements that districts be compact, contiguous, relatively socio-economically integrated, and populated as near as practicable to 1/40th of the State's population.<sup>120</sup> The superior court also rejected Mat-Su's equal protection challenges to House Districts 25-30, and Valdez's equal protection challenge to House District 29 that placed Valdez and Mat-Su in a district together.<sup>121</sup> Judge Matthews ruled that the Board complied with the *Hickel* process by first completing a 40-district map based on the requirements of Article VI, Section 6 before testing those districts against the requirements of the Voting Rights Act of 1965.<sup>122</sup> Consistent with the statutory Open Meetings Act's ("OMA") permissive remedy, Judge Matthews declined to void the Board's redistricting plan based on violations of the OMA because the Board attempted to comply with the OMA and was not acting in bad-faith in convening executive sessions.<sup>123</sup>

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<sup>118</sup> ARB Exc. 776.

<sup>119</sup> ARB Exc. 750-941.

<sup>120</sup> ARB Exc. 826-61 (holding against Section 6 challenges to House Districts 25-30, and 36), ARB Exc. 870 (holding against Section 6 challenge to House Districts 37-39), ARB Exc. 876 (holding against Section 6 challenge to House Districts 3 and 4).

<sup>121</sup> ARB Exc. 852-61.

<sup>122</sup> ARB Exc. 876-83.

<sup>123</sup> ARB Exc. 915.



The Valdez, Mat-Su, and Skagway Plaintiffs challenge these ruling in their petitions for review.

### III. STANDARD OF REVIEW

Under Article VI, Section 11 of the Alaska Constitution, the superior court has original jurisdiction over lawsuits to “compel correction of any error in redistricting.”<sup>124</sup> This Court “may not substitute its judgment as to the sagacity of a [redistricting plan] for that of the [Board; the] wisdom of [the plan] is not a subject for review.”<sup>125</sup> “We review the plan to ensure that the Board did not exceed its delegated authority and to determine if the plan is ‘reasonable and not arbitrary.’”<sup>126</sup> “The court cannot pick a plan it likes, nor can it impose a plan it prefers. Rather, the court’s role is to measure the plan against constitutional standards; the choice among alternative plans that are otherwise constitutional is for the Board, not the Court.”<sup>127</sup>

This Court has never struck down an otherwise constitutional legislative district on the grounds that such a district is “unreasonable.”<sup>128</sup> The examination of a reviewing court is to assess whether the Board has “engaged in reasoned decision making.”<sup>129</sup>

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<sup>124</sup> Alaska Const. art. VI, sec. 11.

<sup>125</sup> *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 17 (Alaska Super. Feb. 1, 2002) (citing *Carpenter v. Hammond*, 667 P.2d 1204, 1214 (Alaska 1983)).

<sup>126</sup> *In re 2011 Redistricting Cases*, 294 P.3d 1032, 1037 (Alaska 2012).

<sup>127</sup> *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 18 (citing *Gaffney v. Cummings*, 412 U.S. 735, 750-51 (1973)).

<sup>128</sup> *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 17.

<sup>129</sup> *Interior Alaska Airboat Assoc., Inc. v. State. Bd. of Game*, 18 P.3d 686, 690 (Alaska 2001).

Another factor that must be considered by this Court, especially when analyzing claims about the process undertaken by the Board, is the limited time the Board has to conduct its business.<sup>130</sup> As amended in 1998, Article VI, Section 10 of the Alaska Constitution requires the Board to adopt a proposed plan or plans within thirty days of receiving the census reports and a final plan within 90 days. Former Article VI, Section 10 required the Board to adopt a proposed plan and submit it to the governor within ninety days of receiving the census data; the governor then had an additional ninety days to issue the final proclamation of redistricting. No public hearings were required. These new constitutional requirements place extraordinary time constraints upon the Board's ability to work and require extraordinary personal and professional sacrifices from the Board members, and any review of the process by which the Board conducted its business can fairly be considered only in that context.<sup>131</sup>

Contrary to arguments of Skagway and Valdez, this Court's review is not limited solely to the transcripts of the Board's meetings. Rather, "Article VI, section 11 also compels us to consider facts de novo upon the record *developed in the superior court* in reviewing a reapportionment plan."<sup>132</sup> In suggesting that this Court's review should be limited only to the Board's formal proceedings, Valdez seeks to avoid the substantial trial

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<sup>130</sup> Alaska Const. art. VI, sec. 10(a).

<sup>131</sup> *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 18.

<sup>132</sup> *Kenai Peninsula Borough v. State*, 743 P.3d 1352, 1358 (Alaska 1987) (emphasis added).

testimony, including from its own witnesses, that establishes its socio-economic connections with the Mat-Su Borough.

Citing to inapposite federal law about formal agency rulemaking, Skagway and Valdez contend that this Court must review to determine if the Board made findings as to each and every district in its plan. This Court rejected such a requirement in the *In re 2011 Redistricting* case: “The Board is not required to specifically find that each district in its *Hickel* plan complies with the Alaska Constitution.”<sup>133</sup> Rather, the plan is constitutional if it meets the requirements of Section 6 based on the information in the superior court record.<sup>134</sup> Skagway’s and Valdez’s reliance on federal law regarding formal executive agency rulemaking is not applicable to the constitutional process of the Alaska Redistricting Board.

#### **IV. ARGUMENT**

##### **A. Article VI, Section 6’s Requirements**

Article VI, Section 6 of the Alaska Constitution governs the substantive requirements for election districts in Alaska redistricting.<sup>135</sup> The only substantive, non-procedural, redistricting requirements mandated by Section 6 of the Alaska Constitution are easily summarized as the following requirements:

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<sup>133</sup> *In re 2011 Redistricting Cases*, 294 P.3d 1032, 1038 (Alaska 2012).

<sup>134</sup> *Id.* at 1040.

<sup>135</sup> Alaska Const. art. VI, sec. 6.

| House Districts  | Senate Districts  |
|--|---|
| <ol style="list-style-type: none"> <li>1. Contiguous</li> <li>2. Compact</li> <li>3. Relatively integrated socio-economically</li> <li>4. Population as near as practicable to 1/40th of the State population</li> </ol> | <ol style="list-style-type: none"> <li>1. Two contiguous house districts</li> </ol> |

Section 6 further directs that local government boundaries *may* be given consideration, and that “[d]rainage and other geographic features shall be used in describing boundaries wherever possible.”<sup>136</sup> That is the universe of the requirements for redistricting set out in Section 6.

While easy to summarize, Alaska courts recognize that these requirements pose significant difficulty in application.<sup>137</sup> Given the challenges posed by Alaska’s vast size and unique geography, the Alaska courts have recognized the need to apply these factors in a manner that “preserve[s] flexibility in the redistricting process so that all constitutional requirements may be satisfied as nearly as practicable.”<sup>138</sup>

### 1. Contiguous

“Contiguous territory is territory which is bordering or touching.”<sup>139</sup> Thus, “[a] district may be defined as contiguous if every part of the district is reachable from every

<sup>136</sup> Alaska Const. art. VI, sec. 6.

<sup>137</sup> *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 18 (Alaska Super. Feb. 1, 2002).

<sup>138</sup> *Hickel v. Southeast Conference*, 846 P.2d 38, 50 (Alaska 1992), *as modified on reh’g* (Mar. 12, 1993) (citing *Egan v. Hammond*, 502 P.2d 856, 865–66 (Alaska 1972); *Groh v. Egan*, 526 P.2d 863, 875 (Alaska 1974); and *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1359 (Alaska 1987)).

<sup>139</sup> *Hickel*, 846 P.2d at 45.

other part without crossing the district boundary (i.e., the district is not divided into two or more discrete pieces).”<sup>140</sup> It is a visual concept.<sup>141</sup> Given Alaska’s “numerous archipelagos,” “a contiguous district may contain some amount of open sea,” and still satisfy the compactness and socio-economic integration requirements.<sup>142</sup>

Under this same reasoning, even if transportation barriers such as mountains or waterways prevent travel between some portions of the district, where the district comprises a single mass of land it is nonetheless contiguous. “Contiguity is not dependent on the vagaries of existing transportation systems,”<sup>143</sup> and given Alaska’s natural geography, it will often be the case that convenient transportation connections are necessarily absent.

## 2. Compact

“The compactness inquiry . . . looks to the shape of a district.”<sup>144</sup> “Compact” in the redistricting context “means having a small perimeter in relation to the area encompassed.”<sup>145</sup> Compact districts generally “should not yield ‘bizarre designs.’”<sup>146</sup> However, the courts have recognized that tensions will exist between the Article VI,

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<sup>140</sup> *Id.* (citation omitted).

<sup>141</sup> *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 36.

<sup>142</sup> *Id.*

<sup>143</sup> *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 59, *aff’d in relevant part*, 44 P.3d 141, 143 (Alaska 2002) (“Except insofar as they are inconsistent with this order, the orders of the superior court challenged by the petitioners are AFFIRMED.”).

<sup>144</sup> *Hickel v. Southeast Conference*, 846 P.2d 38, 45 (Alaska 1992).

<sup>145</sup> *Id.*

<sup>146</sup> *Id.* (citation omitted).

Section 6 factors, and thus some reduction in compactness may be justified to “further . . . [an]other requirement of article VI, section 6.”<sup>147</sup> Recognizing that parts of Alaska include large, sparsely populated areas and vast roadless regions, “[w]hen analyzing compactness, the court should ‘look to the relative compactness of proposed and possible districts in determining whether a district is sufficiently compact.’”<sup>148</sup>

By the same principle, given Alaska’s natural landscape, “neither size nor lack of direct road access makes a district unconstitutionally non-compact.”<sup>149</sup> In previous redistricting cycles, it was not uncommon for districts to be “the size of several States in the Lower 48,” which alone does not render them non-compact.<sup>150</sup>

That is not to say, however, that the size of a district is entirely irrelevant to compactness. Because the concept of compactness under Alaska law roughly compares the length of the perimeter of a district to its geographic area,<sup>151</sup> a jog in the district line or an appendage may have a much greater impact on the compactness of a relatively small, densely populated district than it would on a larger, sparsely populated district.<sup>152</sup>

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<sup>147</sup> *In re 2001 Redistricting Cases*, 44 P.3d 141, 143 (Alaska 2002). In that case, the Supreme Court struck down a district that contained a bizarre shape because it was unnecessary to further any of the other Section 6 requirements.

<sup>148</sup> *In re: 2011 Redistricting Cases*, 2013 WL 6074059, at \*19 (Alaska Super. Nov. 18, 2013) (quoting *Hickel*, 846 P.2d at 45).

<sup>149</sup> *In re 2001 Redistricting Cases*, 47 P.3d 1089, 1092 (Alaska 2002).

<sup>150</sup> *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 60-61 (Alaska Super. Feb. 1, 2002).

<sup>151</sup> *Hickel v. Southeast Conference*, 846 P.2d 38, 45 (Alaska 1992).

<sup>152</sup> *See* Jan. 24, 2022 Trial Tr. 405:14-406:15 (Colligan Cross).

### 3. As Near as Practicable a Relatively Integrated Socio-Economic Area

Article VI, Section 6 requires each district to contain “as nearly as practicable a relatively integrated socio-economic area.”<sup>153</sup> Socio-Economic integration is “[w]here people live together and work together and earn their living together, where people do that, they should be logically grouped that way.”<sup>154</sup>

This principle must be applied with an understanding of Alaska’s landscape and peoples. The word “relatively” preceding the words “socio-economic integration,” “means that we compare proposed districts to other previously existing and proposed districts as well as principal alternative districts to determine if socio-economic links are sufficient.”<sup>155</sup>

To assess the interconnectedness of communities, Alaska courts have found varying factors relevant, including: “service by the state ferry system, daily local air taxi service, a common major economic activity, shared fishing areas, a common interest in the management of state lands, the predominately Native character of the populace, and historical links,” as well as geographic proximity, ties from “daily airline flights,” and reliance on a common hub or city “for transportation, entertainment, news and professional services.”<sup>156</sup> Alaska courts, including the superior court below, appreciate that regional Alaska Native Claims Settlement Act (“ANCSA”) boundaries “are indicative of socio-

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<sup>153</sup> Alaska Const. art. VI, sec. 6.

<sup>154</sup> *Hickel*, 846 P.2d at 46.

<sup>155</sup> *Id.* at 47.

<sup>156</sup> *Hickel*, 846 P.2d at 46-47; see also *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 19 (Alaska Super. Feb. 1, 2002) (citing *Hickel*, 846 P.2d at 46).

economic integration and may be used to guide redistricting decisions, and may justify some degree of population deviation.”<sup>157</sup>

Socio-economic integration is not a static measure or gauge, but necessarily differs across communities and geography. Consequently, “[s]ocio-economic integration can be demonstrated both by direct face to face and repeated interaction among neighbors and by evidence that a district is bound together by systems of common culture, common values, common economic needs, that unite people within an area.”<sup>158</sup>

Particularly when it comes to drawing districts covering the more rural regions of the state, “there is nothing in the Alaska Constitution that requires that every community within a district have actual interaction with every other community within a district.”<sup>159</sup> Looking at prior districts, it is evident “that a requirement that every community within a district directly interact with every other community within that district would be virtually impossible to achieve.”<sup>160</sup> The Alaska Constitution does not require the Board to achieve the impossible. “Rather, the requirement in Article VI, Section 6 of the Alaska Constitution may, by its very terms, be satisfied if the ‘area’ comprising the district is relatively socio-

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<sup>157</sup> E.g., *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1359 n.10 (Alaska 1987) (citing *Groh v. Egan*, 526 P.2d 863, 877 (Alaska 1974)); see also *Hickel*, 846 P.2d at 48 (“[A]dherence to Native corporation boundaries might also provide justification [for population deviations], as long as the boundaries were adhered to consistently.” (citing *Groh*, 526 P.2d at 877–78)).

<sup>158</sup> *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 60.

<sup>159</sup> *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 60 (citing *Kenai Peninsula Borough*, 743 P.2d at 1362-63).

<sup>160</sup> *Id.*



economically integrated without regard to whether each community within the ‘area’ directly and repeatedly interacts with every other community in the area.”<sup>161</sup>

All communities within a given borough are socio-economically integrated as a matter of law, because “[b]y statute, a borough must have a population which ‘is interrelated and integrated as to its social, cultural, and economic activities.’”<sup>162</sup> Thus, house districts comprised of populous from within a single borough are, by definition, socio-economically integrated.<sup>163</sup>

Importantly socio-economic integration “is given some flexibility by the constitution . . . to maximize the other constitutional requirements of contiguity and compactness.”<sup>164</sup> Attempts to increase socioeconomic integration within a borough at the expense of population equality is unjustified and does not comport with Section 6.<sup>165</sup>

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<sup>161</sup> *Id.* at 61.

<sup>162</sup> *Hickel v. Southeast Conference*, 846 P.2d 38, 51 (Alaska 1992) (quoting AS 29.05.031).

<sup>163</sup> *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 42 (Alaska Super. Feb. 1, 2002) (citing *Hickel*, 846 P.2d at 51-52).

<sup>164</sup> *Hickel*, 846 P.2d at 45 n.10.

<sup>165</sup> *In re 2001 Redistricting Cases*, 44 P.3d 141, 146 (Alaska 2002) (“The board considered and rejected Anchorage plans with significantly lower maximum deviations, apparently because these plans did not respect the board’s conception of neighborhood boundaries. But as we held in *Groh v. Egan*, Anchorage neighborhood patterns cannot justify ‘substantial disparities’ in population equality across Anchorage districts. Anchorage is by definition socio-economically integrated, and its population is sufficiently dense and evenly spread to allow multiple combinations of compact, contiguous districts with minimal population deviations. Accordingly, the Anchorage deviations are unconstitutional, and require the board on remand to make a good faith effort to further reduce the deviations.”) (internal citations omitted).

#### 4. As Near as Practicable to 1/40th of the State's Population

Section 6 requires house districts to “contain a population as near as practicable to the quotient obtained by dividing the population of the state by forty.”<sup>166</sup> This requirement protects the right to “one person, one vote.” The Alaska Supreme Court has stated that Article VI, Section 6 “will in many cases be stricter than the federal threshold [of 10% deviation acceptability]” due to the requirement that the population be “as near as practicable” to 1/40 of the state’s population.<sup>167</sup> However, the Court has also recognized that population deviations above or below 1/40 of the state’s population may be necessary to accommodate the other requirements of Article VI.<sup>168</sup> But the Court has never set a specific deviation percentage from the ideal quotient that would amount to a Section 6 violation as a matter of law.<sup>169</sup>

In *Hickel*, the Governor’s commission set a policy of not allowing maximum deviation of “more than two percent” for its redistricting plan, meaning the sum of the percentage difference between the most populated and least populated house districts could not be more than two percent total.<sup>170</sup> This goal of minimizing population deviations led

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<sup>166</sup> Alaska Const. art. VI, sec. 6.

<sup>167</sup> *In re 2001 Redistricting Cases*, 44 P.3d 141, 145-46 (Alaska 2002).

<sup>168</sup> *Hickel v. Southeast Conference*, 846 P.2d 38, 48 (Alaska 1992).

<sup>169</sup> *In re 2001 Redistricting Cases*, 44 P.3d at 145-46.

<sup>170</sup> *Hickel*, 846 P.2d at 42 (“In March [the Board] adopted the following policies to guide the development of redistricting plans. . . . One person, one vote: equal protection for all individuals will be realized by equal population among districts, with the least populated and most populated districts separated by a variance of no more than two percent.”).

the Governor’s commission to create districts that ignore local government boundaries.<sup>171</sup> The superior court held that this “needlessly nullified Alaska constitutional requirements” in an attempt to “reach its various policy goals, including the creation of districts with no more than two percent population deviation from the ideal district size.”<sup>172</sup> The Court affirmed that the Board may not overemphasize minimizing population deviations to the harm of contiguity, compactness, and socio-economic integration.<sup>173</sup>

In *In re 2001 Redistricting Cases*, the Board created house districts within the Municipality of Anchorage that resulted in the maximum population deviation (the sum of the two districts with the greatest positive and negative deviations) of 9.5%.<sup>174</sup> The Board believed it had no obligation to even attempt to reduce the deviations because prior to the 1998 amendment to Article VI the Alaska Supreme Court had ruled that “maximum deviations below ten percent were insufficient, without more, to make out a prima facie case that a plan or part thereof was unconstitutional.”<sup>175</sup> But, after the 1998 amendments, which imposed the requirement that districts be “as near as practicable” to the ideal quotient, the Board has the obligation to attempt to “achieve deviations substantially below the ten percent federal threshold, particularly in urban areas.”<sup>176</sup>

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<sup>171</sup> *Id.* at 61 (“The districts do not contain, as nearly as practicable, relatively integrated socio-economic areas, identified with due consideration given to existing local government boundaries.”).

<sup>172</sup> *Id.* at 43.

<sup>173</sup> *Id.* at 43-44, and 61.

<sup>174</sup> *In re 2001 Redistricting Cases*, 44 P.3d 141, 145-46 (Alaska 2002).

<sup>175</sup> *Id.* at 145.

<sup>176</sup> *Id.* at 146.

**B. The Superior Court Correctly Concluded that the Board Did Not Violate the *Hickel* Process**

Under the misguided view of Valdez, Mat-Su, and Skagway, the “*Hickel* process” is something akin to the Curse of Macbeth—merely uttering words about race or the Voting Rights Act during the crafting of house districts will cause the Board certain legal peril. But the *Hickel* process is a procedural rule and was not intended to police the words of Board members. Because the Board followed the correct process by first crafting forty house districts compliant with Article VI, Section 6, the fact some Board members made passing reference to race or the Voting Rights Act does not establish any error in redistricting. The *Hickel* rule does not restrain the Board’s speech or thinking, but instead orders the Board’s process. The Board followed the correct order in the steps it took to adopt the 2021 Proclamation Plan.

To promote the best map according to Article VI, Section 6 before modifying any districts for race-based reasons mandated by the VRA, this Court requires that the Board follow what it labeled the “*Hickel* process.”<sup>177</sup> This Court has explained:

The Board must first design a reapportionment plan based on the requirements of the Alaska Constitution. That plan then must be tested against the Voting Rights Act. A reapportionment plan may minimize article IV, section 6 requirements when minimization is the only means available to satisfy Voting Rights Act requirements.<sup>178</sup>

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<sup>177</sup> See *Hickel v. Southeast Conference*, 846 P.2d 38, 51 n.22 (Alaska 1992) (explaining the reason for mandating the Board follow this staggered “methodology in reconciling the requirements of the Voting Rights Act with the requirements of the Alaska Constitution.”); *In re 2011 Redistricting Cases*, 274 P.3d 466, 467 (Alaska 2012).

<sup>178</sup> *Hickel*, 846 P.2d at 51 n.22.

During the 2011 redistricting cycle, the Board failed to follow the *Hickel* process.<sup>179</sup> The 2011 Board began its redistricting work by first drawing Alaska Native “influence districts,” including in Southeast Alaska, even though “influence districts” are not actually required by the VRA.<sup>180</sup> The Board’s error was not that it started in a geographic location that happened to contain Alaska Native residents, but rather that it crafted districts using race data for the specific purpose of designing “influence districts.”<sup>181</sup> This Court reasoned the Board’s initial focus on the VRA constrained its thinking and caused it to overlook options that better optimized socio-economic integration and compactness.<sup>182</sup> Consequently, this Court remanded the plan back to the Board to follow the *Hickel* process and adopt a new plan by first considering the Section 6 requirements of the Alaska Constitution.<sup>183</sup>

This redistricting cycle, the Board was not going to make the same mistake. It scrupulously adhered to the *Hickel* process by completing all of its proposed plans without analyzing or applying the VRA, or even considering racial data. It drafted those plans by starting in Southeast Alaska,<sup>184</sup> and worked its way around the state creating house districts comprised of areas that were compact, contiguous, and relatively socio-economically integrated with populations as close as practicable to 18,335. The Board did not conduct a

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<sup>179</sup> *In re 2011 Redistricting Cases*, 274 P.3d at 467.

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.* at 468.

<sup>184</sup> ARB Exc. 765.

VRA analysis until the proposed plans were set,<sup>185</sup> and the VRA analysis did not require any changes to the districts the Board was considering. That VRA analysis is attached to the Final Plan.<sup>186</sup>

Perhaps recognizing how thin their claims are on the merits, the Valdez, Mat-Su, and Skagway petitioners attempt to manufacture a *Hickel* process violation where none exists. Valdez’s fact section starts in November, ignoring that the Board started crafting house districts on August 23 and 24, followed by weeks of intensive effort before reconvening on September 7.<sup>187</sup> The August meetings, the recordings of which are part of the record,<sup>188</sup> show the Board focused on drawing forty compact, contiguous, and socio-economically integrated districts.<sup>189</sup> Further, contrary to Petitioners’ assertions that the Board started by drawing “VRA districts,” the Board actually started with Southeast

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<sup>185</sup> ARB Exc. 1131 (Supp. Aff. Nicole Borromeo, ¶ 6, dated Jan. 19, 2022) (“In Paragraph 55, Mr. Brace incorrectly opines that the Board considered VRA information at the outset of its map drawing efforts. The opposite is true: the Board avoided VRA information until its house map was nearly final. The Board followed the *Hickel* process by mapping all 40 house districts without consideration of racial data for any of the areas of Alaska.”); ARB Exc. 1126-27 (Supp. Aff. Melanie Bahnke, ¶ 8, dated Jan. 19, 2022) (“The Board drew forty house districts by focusing on the Alaska Constitution’s requirement to adopt compact, contiguous, and relatively socio-economically integrated districts. We adopted our draft maps without considering data about race.”); ARB Exc. 1145-46 (Supp. Aff. Peter Torkelson, ¶¶ 21-23, dated Jan. 20, 2022) (discussing Board beginning mapping in Southeast Alaska and that “The results of the Racial Block Voting and Voting Rights Act compliance analysis were not shared with Board members until November 2, 2021.”).

<sup>186</sup> See ARB Exc. 381-97; ARB Exc. 400-13; ARB Exc. 416.

<sup>187</sup> See ARB Exc. 604-05 (Torkelson Aff. ¶¶ 19-20).

<sup>188</sup> ARB Exc. 234 (Links to Board Meeting Videos).

<sup>189</sup> ARB Exc. 234 (listing video URLs for August meetings).

Alaska. Thereafter, various members began drawing districts across the state. Board members continued working daily individually with staff and in groups of two through the end of August and into September to craft ideas for a full statewide redistricting map.

Mat-Su falsely claims that the Board “locked in” its “VRA districts.”<sup>190</sup> The record and the superior court’s findings refute this spin. For example, the superior court observed that the Board continued to modify the borders of Districts 37, 38, and 39 up until the day it adopted the house plan: “Accordingly, the VRA districts were never completely ‘locked in’ until November 5.”<sup>191</sup>

An exchange on the September 8 record is demonstrative of the Board’s compliance with the *Hickel* process. The Native American Rights Fund wrote a letter to the Board criticizing it for **not** considering racial data in adopting its initial maps.<sup>192</sup> Member Bahnke raised the letter with the Board and asked counsel for advice about it. The following exchange ensued:

Mr. Singer: Mr. Chair, and members of the Board, I’ve reviewed the letter provided by the Native American Rights Fund, and I respectfully disagree with several points in the letter. And I think that while--while well intentioned, that letter is inviting the Board to make legal errors, and I’d urge your caution. So the United States Supreme Court has directed that we may not racial gerrymander --

Member Bahnke: Uh-huh

Mr. Singer: -- and the Equal Protection Clause, the United States Constitution prohibits using race to draw -- draw district boundaries. I -- I think it’s a mistake to consider race at this stage.

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<sup>190</sup> Mat-Su Pet. Rev. 6.

<sup>191</sup> ARB Exc. 881.

<sup>192</sup> ARB Exc. 943-47.

The Board's obligation is to draw 40 house districts that are compact, contiguous, and socioeconomically integrated. The -- the -- the value that the five of you bring to Alaskans is your deep knowledge and history in this state, and what matters is your consideration of how communities are inner -- interact and are socioeconomically integrate[d].

One aspect of that may be that there -- that -- that there are villages that are Alaska Native, but that's not a numeric[al] analysis.

That's an analysis about how people live; about how people work; about how people engage in subsistence; about how people seek medical care; about where they work; about how they live their lives.

And -- and I think that the Board is already appropriately considering those aspects when it talks about small island communities that are interlinked in Southeast or upriver communities from Bethel.

So I would con- -- I would encourage the Board to continue on the path that you're on. You're having the right discussion.

You are considering the right factors, and that it would be a mistake at this stage to use population numbers broken down by race as a tool in drawing the 40 district boundaries.

There will be a voting rights analysis. The Board has engaged an expert to conduct that analysis to make sure that after you first comply with the Alaska Constitution, that we are also complying with the Voting Rights Act and -- and our obligations to protect the minority vote. That's a different stage, and -- and I -- I just strongly encourage you not to [combine] those stages.

And I -- and I respectfully disagree with the NARF [Native American Rights Fund] letter for omitting any discussion of our obligations under the United States Constitution and the whole body of law that the U.S. Supreme Court has established with regard to racial gander -  
-gerrymandering.<sup>193</sup>

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<sup>193</sup> ARB Exc. 955-57.



The Board agreed with counsel’s advice, and rejected the invitation to consider racial data. As the trial court found: “the Board rejected an invitation from the Native American Rights Fund to explicitly consider racial data when drawing maps, and the Board decided to disable the display of all racial data in its districting software.”<sup>194</sup>

The record further shows that the Board delegated to its staff and retained counsel the task of reviewing the Board’s proposed plans for VRA compliance. Included in the final Proclamation Plan is a full VRA report, as well as statistical analyses.<sup>195</sup> For the Voting Rights Act to apply, the three *Gingles* factors must be satisfied.<sup>196</sup> This requires finding there is a district in which a majority of the voting age population belongs to a minority group, that the minority group is politically cohesive, and that there is racial block voting where white voters tend to vote contrary to the minority, thereby potentially suppressing the minority’s ability to choose candidates.<sup>197</sup> If all these things are met, then the Board is obligated to protect the minority vote by drawing the district in a manner that maintains the minority’s ability to select candidates of their choice.

In Alaska, there are four house districts that meet the U.S. Supreme Court’s test from *Thornburg v. Gingles*: Districts 37-40.<sup>198</sup> The Board’s VRA analysis found that when the Board drew its four compact, contiguous, and relatively socio-economically integrated

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<sup>194</sup> ARB Exc. 883 (citing ARB 10422-24 Tr. 4:20-13:9 [ARB Exc. 955-57]).

<sup>195</sup> See ARB Exc. 381-97; ARB Exc. 400-13; ARB Exc. 416.

<sup>196</sup> *Thornburg v. Gingles*, 478 U.S. 30, 48-51 (1986).

<sup>197</sup> See *id.* at 50-51.

<sup>198</sup> *Id.* at 47.

districts for rural Alaska in Districts 37-40, it satisfied the VRA. By simply drawing districts in accord with the state constitution, the Board also complied with the VRA. Thus, the VRA analysis did not require the Board to sacrifice compactness, contiguity, or relative socio-economic integration in order to protect Alaska Native voters.<sup>199</sup> Unlike in prior redistricting cycles, the Board was not faced with having to couple urban voters with rural voters in order to sufficiently populate an Alaska Native district, because both the North Slope and Bethel regions enjoyed significant population gains in the last census. Unlike in 2011, the Board's VRA analysis did not constrain its consideration of other redistricting priorities—to the contrary, the Board first focused on designing compact, contiguous, and socio-economically integrated districts with close to equal populations, and then later confirmed that its approach also satisfied the VRA. The Board complied with *Hickel*.

Petitioners seem to suggest that any mention of race prior to adoption of a final house plan is a violation of *Hickel*. This assertion is flawed for numerous reasons. First, no such directive can be found anywhere in *Hickel*. Second, race data is included in the U.S. Census,<sup>200</sup> which forms the basis for the Board's work as specified in Article VI, Section 3. It would be incongruous for this Court to order the Board not to consider data that the Alaska Constitution requires the Board to consider. Third, while *Hickel* directs the Board to prioritize the state constitution, it does not direct the Board to ignore the VRA, and the Board has a statutory obligation to abide by federal law. A rule that the Board

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<sup>199</sup> ARB Exc. 393.

<sup>200</sup> See U.S. Census Bureau, *About the Topic of Race* (available at: <https://www.census.gov/topics/population/race/about.html>).

cannot mention race nor consider the VRA until it adopts a final house plan, coupled with the 90-day time limit for redistricting, would unreasonably handcuff the Board’s ability to conduct any meaningful VRA review and leave it vulnerable to liability under the VRA. While it is appropriate for this Court to direct the procedural order of things so as to assure proper focus on the state constitution, it would be a bridge too far to suggest that the Board cannot take reasonable measures to comply with federal law.

**C. The Superior Court Correctly Concluded that House Districts 3, 25-30, and 36 Comply with Article VI, Section 6’s Requirements**

The superior court correctly determined that all of the house districts satisfied the requirements of Article VI, Section 6.<sup>201</sup>

**1. District 3 Complies with Section 6**

The superior court concluded that House District 3 was comprised of people who were socio-economically integrated because the Mendenhall Valley and Auke Bay are part of the City and Borough of Juneau and Skagway is socio-economically integrated with that borough.<sup>202</sup> On appeal, Skagway argues that the superior court erred in holding that House Districts 3 and 4 complied with Article VI, Section 6, in two respects: (1) by not ruling that the Board was required to “maximize” socio-economic integration by placing Skagway in a house district with the *portion* of the City and Borough of Juneau it interacts with most

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<sup>201</sup> ARB Exc. 826-61 (holding against Section 6 challenges to House Districts 25-30, and 36), ARB Exc. 870 (holding against Section 6 challenge to House Districts 37-39), ARB Exc. 876 (holding against Section 6 challenge House Districts 3 and 4).

<sup>202</sup> ARB Exc. 875-76.

and with which it shares the most common interests,<sup>203</sup> and (2) by failing to rule that the Board must, where possible, draw districts that respect neighborhood boundaries in the City and Borough of Juneau.<sup>204</sup> The terms of Article VI, Section 6 and this Court's precedent reject Skagway's position.

District 3 is contiguous because all portions of the district are visibly touching.<sup>205</sup> It is compact because it contains no bizarre appendages or protrusions.<sup>206</sup> It is comprised of people who are relatively socio-economically integrated because, as Skagway concedes, Skagway and downtown Juneau are sufficiently integrated to be in a house district.<sup>207</sup> The population of House District 3 is 18,195, which is only 0.76% under the ideal house population of 18,335.

House District 3 is comprised of the entire Skagway Borough, Haines Borough, Gustavus, and the northern portion of the City and Borough of Juneau that includes the neighborhoods of Mendenhall Valley and Auke Bay.<sup>208</sup> The Board unanimously adopted the more compact House District 3, and rejected the Skagway Plaintiffs' preferred district that placed Skagway in a house district with the southern or downtown portion of the City and Borough of Juneau by excluding its more proximately situated neighbors.

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<sup>203</sup> Skagway Pet. Rev. 39-48.

<sup>204</sup> Skagway Pet. Rev. 48-50.

<sup>205</sup> ARB Exc. 324.

<sup>206</sup> ARB Exc. 324.

<sup>207</sup> ARB. Exc. 875-76.

<sup>208</sup> ARB Exc. 325; ARB Exc. 363 (metes and bounds description of House District 3).

Skagway complains that Article VI, Section 6 should require the Board to draw a less-compact district that maximizes its socio-economic integration, meaning it should be districted with the southern part of the City and Borough of Juneau.<sup>209</sup> Assuming, arguendo, Skagway's premise that it has stronger socio-economic integration with the southern portion of the City and Borough of Juneau—a premise the Board strongly disputes—Skagway's Section 6 claim still fails. Nothing in Section 6 states that the Board should disregard compactness to increase an already socio-economically integrated area's integration. Rather, Section 6 says that districts must be “formed of contiguous and compact territory containing as near as practicable a *relatively* integrated socio-economic area.”<sup>210</sup> The qualifier “relatively” means compared to alternatives and is only used to “determine if socio-economic links are sufficient.”<sup>211</sup> Relatively does not require that the Board maximize socio-economic integration.

Additionally, *Hickel* recognized that the qualifier “as nearly as practicable” before “relatively integrated socio-economic area” in Section 6 provides the Board flexibility in satisfying this criterion, and that concerns for socio-economic integration can give way to the requirements of compactness and contiguity.<sup>212</sup> This Court explained:

The requirement of relative socio-economic integration is given some flexibility by the constitution since districts need be integrated only “as nearly as practicable.” Alaska Const. art. VI, § 6. However, the flexibility

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<sup>209</sup> Skagway Pet. Rev. 39-48.

<sup>210</sup> Alaska Const. art. VI, sec. 6 (emphasis added).

<sup>211</sup> *Hickel v. Southeast Conference*, 846 P.2d 38, 47 (Alaska 1992).

<sup>212</sup> *Id.* at 44-45 n.10.

that this clause provides should be used only to maximize the other constitutional requirements of contiguity and compactness.<sup>213</sup>

In other words, Section 6 mandates compact and contiguous districts, and the degree of socio-economic integration required depends on the alternatives available given the compactness and contiguity requirements.<sup>214</sup>

The Skagway Plaintiffs cite Appendix E of *Hickel* to support their claim that Section 6 requires the Board to “maximize” socio-economic integration.<sup>215</sup> Appendix E is superior court Judge Larry Weeks’s analysis of a court-created interim redistricting plan that was used for upcoming state elections after the Court invalidated as unconstitutional Governor Hickel’s redistricting plan.<sup>216</sup> In describing the “Western Alaska” portion of the court-created interim plan, Judge Weeks explained that he made changes to the plan suggested by the special masters because, in his view, the special masters’ plan “unduly disrupted the socio-economic fabric in Bristol Bay.”<sup>217</sup> The court adopted a different alternative suggested by Governor Hickel’s reapportionment board for the area, but “[c]hanges then had to be made” by Judge Weeks “to establish contiguity, to maximize socio-economic integration, to avoid pitting incumbent minorities against another, and to

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<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

<sup>215</sup> Skagway Pet. Rev. 40 n.143 (citing *Hickel*, 846 P.2d at 73).

<sup>216</sup> *Hickel*, 846 P.2d at 64-79 (“The plan being promulgated by this order is an interim plan. It is in effect only until a final plan is promulgated by the reapportionment board in accordance with the supreme court’s order.”).

<sup>217</sup> *Id.* at 73 (“The masters adopted the State’s alternative ‘B’ for western Alaska

equalize population.”<sup>218</sup> It is this passing reference “to maximize socio-economic integration” in the superior court’s decision, attached as an appendix to *Hickel*, that Skagway seizes upon as a constitutional requirement.<sup>219</sup>

The Skagway Plaintiffs make too much of this passing reference. Under the pre-1998 Amendment version of Article VI, this Court directed lower courts to create interim plans, and the lower court had to explain its districts, as Judge Weeks did in *Hickel*. While it is helpful for Judge Weeks to explain why he rejected the masters’ proposed interim plan for Western Alaska, it does not change that Section 6 requires *relative* socio-economic integration, not *maximized* socio-economic integration. Judge Weeks was merely explaining his reasoning, not announcing a new constitutional standard.<sup>220</sup>

The *Hickel* Court did not adopt a requirement that districts must be drawn to maximize socio-economic integration. In discussing House District 35, which spanned from Point Hope to Tyonek, the Court quoted Judge Weeks’s reasoning that this district was “probably the single worst combination that could be selected if a board were trying to maximize socio-economic integration in Alaska,” but went on to hold that this district was unconstitutional because it “does not encompass, as nearly as practicable, a relatively integrated socio-economic area.”<sup>221</sup> The *Hickel* Court correctly applied the Constitution’s requirement that districts be “relatively socio-economically integrated” as near as

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<sup>218</sup> *Id.*

<sup>219</sup> Skagway Pet. Rev. 40 n.143.

<sup>220</sup> *Hickel v. Southeast Conference*, 846 P.2d 38, 73 (Alaska 1992).

<sup>221</sup> *Id.* at 53-54.

practicable, and did not tack on a new requirement that the Board draw districts that *maximize* integration.

The Skagway Plaintiffs recognize that *Hickel* allows for the reduction of socio-economic integration of a district in order to maximize contiguity or compactness.<sup>222</sup> House District 3 maximizes compactness and is therefore consistent with *Hickel*'s recognition that socio-economic integration can yield to a desire for more compact districts. That is what the Board did in adopting House District 3, which is undoubtedly more compact than the "Pac-Man" House District 33 from the 2013 Proclamation Plan, which Skagway prefers.

This Court should uphold Section 6's requirement that house districts be *relatively* socio-economically integrated and reject Skagway's attempt to elevate socio-economics above the compactness and contiguity requirements, when *Hickel* said the Constitution permits just the opposite.

Next, the Skagway Plaintiffs seek to overrule this Court's precedent that if a community outside a borough is socio-economically integrated with that borough, it can be districted with any portion of the borough.<sup>223</sup> Since *Groh v. Egan*, this Court has recognized that Skagway has socio-economic ties to the entire City and Borough of Juneau:

There are close transportation ties between Juneau, Haines, and Skagway by daily scheduled air flights and frequent ferry service; a Juneau-Haines Highway connection has been planned. The district is quite distinct from the rest of the Southeast region by virtue of the nature of its development and the fact that it is almost entirely composed of portions of the mainland, rather

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<sup>222</sup> Skagway Pet. Rev. 41 (citing *Hickel*, 846 P.2d at 45 n.10).

<sup>223</sup> Skagway Pet. Rev. 42-45.



than the islands of the archipelago; historically the three communities have always been closely linked, with Juneau serving as an economic hub for Haines and Skagway.<sup>224</sup>

This reasoning holds true today. Nothing has occurred since *Groh* that has severed Skagway’s integration with the City and Borough of Juneau. Under Section 6, Skagway shares close social and economic ties with the City and Borough of Juneau in its entirety.

*Kenai Peninsula Borough v. State* confirms that it is not the role of the courts to parse which portion of a borough is the most integrated with a community outside of it.<sup>225</sup>

There, Nikiski argued that it could not be districted with South Anchorage because it had only minimal contacts with that part of the Municipality of Anchorage and had more robust contacts with the commercial and transportation portions of the municipality.<sup>226</sup> This Court upheld the Nikiski-South Anchorage district because of Nikiski’s significant contacts with the Municipality of Anchorage as a whole: “We think Kenai draws too fine a distinction between the interaction of North Kenai with Anchorage and that of North Kenai with South Anchorage”:<sup>227</sup>

In *Groh*, we found that the state’s criteria for districting Anchorage—housing, ethnicity, income levels, rates of growth, and development—created districts that were too indistinguishable to justify the population deviations from ideal district population size in issue. Likewise, any distinctions between Anchorage and South Anchorage are too insignificant to constitute a basis for invalidating the state’s plan as unreasonable or arbitrary.<sup>228</sup>

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<sup>224</sup> *Groh v. Egan*, 526 P.2d 863, 879 (Alaska 1974).

<sup>225</sup> *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1363 (Alaska 1987).

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

<sup>228</sup> *Id.* at 1363 n.17 (internal citation omitted).

Importantly, the *Kenai* Court explicitly rejected the argument that Skagway makes here that it should only be districted with northern Juneau if no other constitutional options exist.<sup>229</sup> This Court should follow its sound, long-standing precedent and refuse to wade into the muddled waters of distinguishing between neighborhoods of a municipality or borough in determining socio-economic integration.

The fact that House Districts 3 and 4 split the Mendenhall Valley of the City and Borough of Juneau is of no constitutional moment. While this Court has stated that respecting neighborhood boundaries within a borough or municipality is an “admirable goal,”<sup>230</sup> it has no bearing on Section 6 criteria. That is why in *In re 2001 Redistricting Cases*, this Court invalidated the sixteen Anchorage house districts that respected neighborhood boundaries and ordered them redrawn, without regard to neighborhood boundaries, to achieve smaller population deviations.<sup>231</sup> The fact that House Districts 3 and 4 split the Mendenhall Valley neighborhood of the City and Borough of Juneau into two districts has no bearing on the socio-economic integration of those districts.

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<sup>229</sup> *Id.* at 1363 n.18 (“Kenai argues that the Board unnecessarily followed the superior court’s order to make the fewest changes possible in its redistricting plan and thus failed to consider other available alternatives. The record shows that the Board did consciously abide by this constraint, and thus suggests that other alternatives may have been available if all of Alaska were reapportioned. At issue here, however, is the validity of the districts which the Board actually created, not the districts which were possible or preferable.”).

<sup>230</sup> *In re 2001 Redistricting Cases*, 47 P.3d 1089, 1090-91 (Alaska 2002).

<sup>231</sup> *Id.*

Next, the Skagway Plaintiffs complain that the Board’s placement of Cantwell in House District 36 shows that it was inconsistently applying Section 6 criteria.<sup>232</sup> That is not so. As discussed elsewhere,<sup>233</sup> Cantwell was placed in House District 36 because of public testimony that it was more connected to the rural Copper River Valley communities than the other communities of the Denali Borough. The roughly 200 persons from Cantwell placed in House District 36 only slightly changed the shape of the largest house district in Alaska. The small appendage is barely a blip on the House District 36 map. Conversely, Skagway seeks to materially change the shape and composition of two house districts—House Districts 3 and 4—to accommodate its preferred, less compact house district.

This Court should uphold *Groh, Kenai Peninsula Borough*, and *In re 2001 Redistricting Cases*, and reject Skagway’s attempts to have Alaska courts wade into the murky waters of determining socio-economics within a municipality or borough on a neighborhood-by-neighborhood basis. It should affirm that Skagway’s integration with the City and Borough of Juneau means it may be districted with the portion of the borough that results in a more-compact district, just as House District 3 accomplishes.

## **2. District 29 Complies with Section 6**

The superior court found that District 29 is contiguous, compact, relatively socio-

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<sup>232</sup> Skagway Pet. Rev. 45-48.

<sup>233</sup> *See infra* Section IV.C.4.

economically integrated, and as near as practicable to 1/40th of the state’s population.<sup>234</sup> Mat-Su challenges the superior court’s holding on each of these Section 6 requirements, while Valdez challenges that the requirement of socio-economic integration has been satisfied.<sup>235</sup>

House District 29 is contiguous as a matter of law. District 29 is a single land mass in which all portions of the district are “bordering or touching,” and “the district is not divided into two or more discrete pieces.”<sup>236</sup> Mat-Su’s suggestion that there must be “transportation contiguity” within a district<sup>237</sup> is not supported in Alaska law, and has been rejected by courts when Valdez raised it in the past.<sup>238</sup> As Judge Rindner explained:

Both the Valdez plaintiffs and the Fairbanks North Star Borough urge this court to adopt a definition of contiguity such that a district could be found not to be contiguous if existing transportation systems required residents of the district to cross other districts in order to transverse the district in question. There is no support under Alaska law for such a definition of contiguity and this court rejects this approach. Contiguity is not dependent on the vagaries of existing transportation systems. Rather, the concept is a visual one designed to assure that no district contains two or more discrete or unconnected parts.<sup>239</sup>

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<sup>234</sup> ARB Exc. 841 (“But based on all of the evidence, this court concludes that District 29 pairing Valdez with the Mat-Su Borough communities of Palmer and Wasilla is ‘as nearly as practicable a relatively integrated socio-economic area.’”).

<sup>235</sup> Valdez appears to only challenge that District 29 is socio-economically integrated. *See* Valdez Pet. Rev. 50.

<sup>236</sup> *Hickel v. Southeast Conference*, 846 P.2d 38, 45 (Alaska 1992) (citation omitted).

<sup>237</sup> *See, e.g.*, Jan. 24, 2022 Trial Tr. 381:23-388:21.

<sup>238</sup> ARB Exc. 827.

<sup>239</sup> ARB Exc. 827-28 (quoting *In re 2001 Redistricting Cases*, No. 3AN-01-8914CI, 2002 WL 34119573, at \*59 (Alaska Super. Feb. 01, 2002), *aff’d in relevant part*, 44 P.3d 141, 143 (Alaska 2002)).

Below, the superior court properly rejected Mat-Su’s and Valdez’s “transportation contiguity” argument that House District 29 was not contiguous because a person cannot drive from Valdez to Mat-Su without leaving the district.<sup>240</sup>

District 29 is also adequately compact. Notably, House District 29 is significantly more compact than the district in which Valdez found itself under the 2013 Proclamation (District 9).<sup>241</sup> House District 29’s compactness is not diminished merely because it contains a large area of mountain, ice fields, and glaciers, because such “is the natural result of Alaska’s landscape and irregular features.”<sup>242</sup> Mat-Su again raises the issue that the inability to drive from Valdez to Mat-Su without leaving the district means House District 29 is not compact.<sup>243</sup> There is no support for this in Alaska law.

In defining its role in evaluating socio-economic integration, the superior court correctly recognized, and Mat-Su concedes on appeal,<sup>244</sup> that “Alaska law is abundantly

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<sup>240</sup> ARB Exc. 828 ( “This Court agrees with Judge Rindner’s analysis. The fact that the road connection between Mat-Su and Valdez meanders in and out of two districts as it traverses around the Chugach mountains does not take away from the fact that every part of the district is physically connected. District 29 is contiguous.”).

<sup>241</sup> Compare ARB Exc. 350 (District 29 in 2021 Proclamation) with ARB Exc. 942 (District 9 in 2013 Proclamation); see also ARB Exc. 554-55 (Borromeo Aff. ¶ 22). It is also more compact than the other options the Board considered that would have placed Valdez with Anchorage. See, e.g., ARB Exc. 1029 (Nov. 4 Meeting Tr. 37:2-7); ARB Exc. 1059-60 (Nov. 4. Meeting Tr. 163:24-164:5).

<sup>242</sup> ARB Exc. 829.

<sup>243</sup> Mat-Su Pet. Rev. 9.

<sup>244</sup> Mat-Su Pet. Rev. 10 (noting when discussing Cantwell, “Finally, there is nothing in case law that provides for a right to be placed together with other socioeconomic areas, even areas in which a location may be more socioeconomically integrated, so long as the other area the location is placed with is also socioeconomically integrated.”).

clear that no community is entitled to be districted with the communities it is *most* closely linked to: the Alaska Constitution requires the Board to create districts that are ‘relatively’ socio-economically integrated in light of the other constitutional factors and balancing the needs of the whole state.”<sup>245</sup> The superior court found sufficient socio-economic links between Valdez and Mat-Su in the form of “geographic proximity and connection via the road system, shared interests in the outdoor recreation industry, and common hunting and fishing areas in the region around Lake Louise, Klutina Lake, and Eureka,” as well as shared ties to the oil industry, a hospital, and commercial retail establishments.<sup>246</sup> The two communities also have shared interests in maintenance and development of the state highway system, home-rule school funding, and debt reimbursement from the legislature.<sup>247</sup> The communities’ school sports teams also compete against each other.<sup>248</sup>

The superior court further concluded that House District 29 shared substantial similarities with previously existing districts,<sup>249</sup> which Valdez’s own expert witness

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<sup>245</sup> ARB Exc. 832 (quoting *Hickel v .Southeast Conference*, 846 P.2d 38, 46 (Alaska 1992)). *See also In re: 2011 Redistricting Cases*, No. 4FA-11-2209CI, 2013 WL 6074059, at \*27 (Alaska Super. Nov. 18, 2013) (“[J]ust because [certain communities] . . . could be more socio-economically integrated, does not mean that they are not socio-economically integrated enough where they are for constitutional purposes.”).

<sup>246</sup> ARB Exc. 832-33.

<sup>247</sup> ARB Exc. 833.

<sup>248</sup> ARB Exc. 833 (citing ARB Exc. 630 (Torkelson Aff. ¶ 53); Jan. 24, 2022 Trial Tr. 260:15-20, 261:12-262:14 (Scheidt Cross)).

<sup>249</sup> ARB Exc. 833 (“Looking at ‘previously existing’ districts as a guide to relative socio-economic integration, as instructed by the Supreme Court, the record evidence demonstrates substantial similarities between District 29 in the 2021 Proclamation and both District 9 in the 2013 Proclamation and District 12 in the 2002 Proclamation.”); *see also* ARB Exc. 1089 (House core constituency report); ARB Exc. 629-30 (Torkelson Aff. ¶ 52).

testified supported the conclusion that the Mat-Su Borough and Valdez are integrated.<sup>250</sup> Contrary to Valdez’s and Mat-Su’s contentions that House District 29’s removal of some Richardson Highway communities from the 2013 District 9 map made it materially different, “on the whole the evidence demonstrates that the two districts are substantially similar.”<sup>251</sup> Below, Valdez was unable to point to “any significant change in circumstances that would suggest that Valdez and the Mat-Su Borough are any less integrated than they were in the past.”<sup>252</sup> Mat-Su asserts that the population growth throughout the Mat-Su since the past redistricting “alone changes the dynamic between the regions,” but there is no more than that bare assertion contained in the record.<sup>253</sup> The pairing of Valdez and the Mat-Su Borough in prior districts is strong evidence that these communities are “relatively integrated” for present constitutional purposes.<sup>254</sup>

Valdez and Mat-Su are also integrated by their connections to the regional hub of

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<sup>250</sup> ARB Exc. 834.

<sup>251</sup> ARB Exc. 834 (“Valdez has emphasized that District 29 removed several Richardson Highway communities such that it is not possible to drive from Valdez to the other parts of District 29 without leaving the district. But transportation connectivity is not a constitutional requirement . . . the Mayor of Valdez testified—and a review of the maps confirms—that both the 2013 and 2002 districts also omitted a portion of the road connection so that it was not possible to drive from one end to the other without leaving the district.”).

<sup>252</sup> ARB Exc. 834-35.

<sup>253</sup> Mat-Su Pet. Rev. 8 (citing its expert’s testimony, “Mat-Su Borough, number one, has grown since the last census by – by over 18,000 people. And that, alone, changes the dynamic between the regions. And it’s not just comparing one area to another, you also have to take under consideration and the real job is looking at the new data and then reassessing what those associations are, . . . .” (Jan. 24, 2022 Trial Tr. 346:19-25 (Colligan cross [Brena examination]))).

<sup>254</sup> ARB Exc. 844.

Anchorage.<sup>255</sup> Despite unpersuasive attempts to limit the holding or application of *Kenai Peninsula Borough v. State*,<sup>256</sup> the superior court correctly reasoned that it was instructive to the socio-economic analysis that these two communities share Anchorage as a hub.<sup>257</sup> These shared ties to Anchorage strengthen their socio-economic integration.

The superior court walked through the extensive analysis the Board went through in determining the best placement for Valdez for a forty district map.<sup>258</sup> While Valdez argues that the Board left Valdez until the end, by which time the Board had boxed itself into a corner, Judge Matthews recognized the opposite was true.<sup>259</sup> The Board explored

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<sup>255</sup> ARB Exc. 835-36; *see Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1363 (Alaska 1987).

<sup>256</sup> Mat-Su Pet. Rev. 15.

<sup>257</sup> Relying on *In re 2001 Redistricting Cases*, 2002 WL 34119573 (Alaska Super. Feb. 1, 2002), the trial court properly recognized that “[t]he courts have expressly held that Valdez and Anchorage are socio-economically integrated for purposes of redistricting, and the testimony at trial confirms this link.” *See* ARB Exc. 836.

It is undisputed that the Mat-Su Borough and Anchorage are socio-economically integrated, and the testimony amply confirms that connection. Jan. 24, 2022 Trial Tr. 178:23-179:9 (DeVries Cross); 224:3-225:1 (Brown cross discussing ties between Mat-Su and Anchorage to include: air travel, restaurants, concerts and entertainment, commuting to work, shopping, the Alaska Railroad, and the Glenn Highway). This Court also expressly held in the 2001 redistricting litigation that the Matanuska-Susitna Borough and Anchorage could be treated as one and the same for purposes of socio-economic integration, and that there existed sufficient socio-economic integration to the north, south, and east of the Mat-Su-Anchorage area.

<sup>258</sup> ARB Exc. 837-41 (discussing limitations and different placements considered for Valdez). *See also* ARB Exc. 1201-16 (ARB [Proposed] Findings of Fact and Conclusions of Law, at ¶¶ 237-259) (walking through each of the placement options and complications posed by each option).

<sup>259</sup> ARB Exc. 830-31 (“The Board apparently recognized the difficulty in placing Valdez early in the process. Indeed, the decision where to place Valdez has been hotly debated in earlier redistricting cases.”).



placing Valdez with a district of Richardson Highway communities and explored placing it with Richardson Highway communities plus Cordova. Both of these plans resulted in having to fracture the excess population of the Fairbanks North Star Borough into multiple house districts outside the borough. The Board explored placing Valdez in a district with Kodiak, but this resulted in not having room in that district for Cordova, leaving Cordova to be districted with rural Interior communities such as Arctic Village and Tok with which Cordova, an ocean-side fishing community, lacks socio-economic integration. Board members also explored districting Valdez with South Anchorage, as has been done in the past, but that district overpopulated Anchorage and resulted in a less compact district than House District 29. The Mat-Su/Valdez district was the best option that did not fracture the Fairbanks North Star Borough's excess population into multiple districts while still having a compact district.

The Board made all of its final decisions regarding house districts during the first few days in November after reconvening as a Board following its public hearing tour. The Board's determination of where to place Valdez was not foreclosed until this time because the Board aimed *not* to constrain itself so it could "try different variations"<sup>260</sup> and "explore all of the Valdez possibilities"<sup>261</sup> before reaching a final decision.<sup>262</sup> Chair Binkley testified that "as we were putting our various maps together, we were continually working

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<sup>260</sup> ARB Exc. 1001 (Nov. 3 Meeting Tr. at 271:9-24).

<sup>261</sup> ARB Exc. 1049 (Nov. 4 Meeting Tr. at 105:19-20).

<sup>262</sup> Jan. 27 Trial Tr. 1172:6-22 (Binkley response to question from the Court).

with where Valdez was going to go in each of those different scenarios.”<sup>263</sup> The meeting transcript confirms this testimony; during the meetings when the Board deliberated and created its final map, the placement of Valdez was discussed numerous times, and the Board repeatedly discussed Valdez and how different options for Valdez impacted it and districts statewide.<sup>264</sup> Board members testified that, throughout this process, no district was finalized until the entire map was completed,<sup>265</sup> and this testimony is confirmed by the

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<sup>263</sup> Jan. 27 Trial Tr. 1172:7-10 (Binkley response to question from the Court).

<sup>264</sup> *E.g.*, ARB Exc. 994 (Nov. 2 Meeting Tr. at 69:10-25) (discussing options for placement of Valdez, and population challenges with the various combinations of Prince William Sound/Gulf communities); ARB Exc. 995 (Nov. 3 Meeting Tr. at 113:9-16) (discussing possible placement of Valdez in Interior district and the limitations it imposed on other districts); ARB Exc. 996-98 (Nov. 3 Meeting Tr. at 239:22-241:22) (discussing interplay between FNSB population and Valdez, and Valdez’s stated preferences); ARB Exc. 999-1000 (Nov. 3 Meeting Tr. at 260:13-261:21 (similar); ARB Exc. 1002-09 (Nov. 3 Meeting Tr. at 279:20-286:1) (extensive discussion of population dynamics of FNSB, Richardson Highway, and Valdez); ARB Exc. 1010-1011 (Nov. 3 Meeting Tr. at 307:24-308:6 (discussion of potential Mat-Su option without Valdez)); ARB Exc. 1012-13 (Nov. 3 Meeting Tr. at 330:12-331:18) (discussion of “binary choice” between options for mapping the Mat-Su Borough “based on what we do with Valdez”); ARB Exc. 1014-16 (Nov. 3 Meeting Tr. at 334:13-336:20) (considering options that would place Valdez with Prince William Sound and the Gulf); ARB Exc. 1017-18 (Nov. 4 Meeting Tr. at 10:15-11:2) (stating that the western Alaska districts will not be finalized “until we solve that problem on the Fairbanks North Star Borough [and] Valdez”); ARB Exc. 1024-31 (Nov. 4 Meeting Tr. at 32:4 -39:12) (discussing various options for including Mat-Su with Valdez, but holding off on final decision until related issues were addressed); ARB Exc. 1032-46 (Nov. 4 Meeting Tr. at 40:2-54:17) (discussing breaking FNSB boundary, including implications for Valdez and other districts); ARB Exc. 1048-57 (Nov. 4 Meeting Tr. at 104:4-113:3) (exploring the possibility of combining Valdez with Anchorage); ARB Exc. 1062-65 (Nov. 4 Meeting Tr. at 173:12-176:9) (similar); ARB Exc. 1077 (Nov. 5 meeting Tr. at 5:2-22) (discussing challenge of mapping Valdez with Anchorage in a manner consistent with other constitutional parameters); ARB Exc. 1078-88 (Nov. 5 meeting Tr. at 186:21-196:13) (discussion and decisions on Mat-Su districts including Valdez).

<sup>265</sup> Jan. 27 Trial Tr. 1018:13-17 (Marcum Cross) (“I don’t think anything’s final until it’s final. . . . I knew there was still a possibility of me convincing them otherwise, which is why I volunteered to try to do other maps.”).

meeting transcripts.<sup>266</sup>

In adopting House District 29, the Board carefully considered and weighed the available options. It did not take lightly the decision about whether to maintain a house district with Valdez and Mat-Su. It understood the interplay between the decisions it was making, and it made conscious, reasoned decisions in an effort to harmonize the constitutional criteria across the entire map. Valdez’s concoction that the Board simply learned about precedent that paired Valdez with Mat-Su on November 3, and then decided to leave well enough alone,<sup>267</sup> is in stark contrast with the meeting minutes of the following day. On November 4, the Board engaged in continued, opposing debates concerning how best to place Valdez.<sup>268</sup> Board members’ minds were not cemented by prior maps, and the Board certainly did not cease looking at the most constitutional option for Valdez and the entire state simply because they received additional support for one of the options being considered. Several Board members testified that none of the other maps offered were constitutionally better than the map drawn by the Board, and the evidence bears out this conclusion.

Chair Binkley’s initial desire to maintain the FNSB boundaries in no way precluded the remainder of the Board’s map considerations. Five of the six Board-adopted proposed

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<sup>266</sup> *E.g.*, ARB Exc. 1066 (Nov. 4 Meeting Tr. at 177:12-18) (“nothing is locked in . . . until this board votes . . . [a]nd there’s three votes to say this is the final proclamation”).

<sup>267</sup> Valdez Pet. Rev. 29.

<sup>268</sup> MSB Exc. 49; MSB Exc. 54; ARB Exc. 1058; ARB Exc.1059.

plans broke the FNSB boundary.<sup>269</sup> Board member testimony confirmed that Chair Binkley’s initial preference of keeping the FNSB intact did not inhibit their consideration of options that broke the FNSB boundary.<sup>270</sup> Similarly, Chair Binkley testified to this reality, stating that the other Board members could “count to three”—meaning they knew there were enough votes to adopt a map that broke the FNSB boundary even if Chair Binkley opposed it.<sup>271</sup>

Valdez misstates and mixes and matches this Court’s prior cases in constructing a strawman argument that the Board misapplied what Valdez labels “the Proportionality Doctrine.”<sup>272</sup> What Valdez wanted in this redistricting cycle was a house district that placed it with small communities along the Richardson Highway, such that it would be the biggest fish in the pond. One of the many problems with Valdez’s preference is that it required splitting the excess population of the Fairbanks North Star Borough into multiple rural districts, whereas every other option managed to avoid such a consequence for Fairbanks voters.

This Court provided the Board direction in *Hickel* as to how to approach the excess populations of incorporated boroughs:

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<sup>269</sup> Jan. 27 Trial Tr. 1133:23-1134:5.

<sup>270</sup> Jan. 26 Trial Tr. 868:6-23 (Borromeo Redirect); Jan. 27 Trial Tr. 1133:10-23 (Binkley Cross).

<sup>271</sup> Jan. 27 Trial Tr. 1133:14-17, 1135:5-17 (Binkley Cross) (“Q: And did your thoughts about that issue preclude anyone else on the board from considering those options? A: No, not at all. Not at all. Q: And you also considered those options; is that correct? A: Most definitely, yeah.”).

<sup>272</sup> Valdez Pet. Rev. 44-47.

We recognize that it may be necessary to divide a borough so that its excess population is allocated to a district situated elsewhere. However, where possible, all of a municipality's excess population should go to one other district in order to maximize effective representation of the excess group. This result is compelled not only by the article VI, section 6 requirements, but also by the state equal protection clause which guarantees the right to proportional geographic representation.<sup>273</sup>

The clear rule from *Hickel* is that where possible, the Board should include all of a borough's excess population in one other district. The Fairbanks North Star Borough had the population for 5.2 house districts, meaning it had approximately 4,000 "excess population."<sup>274</sup> Because every single plan submitted to the Board, except for Valdez's plan, managed to place the 4,000 extra voters in Fairbanks into a single rural district, it was plainly "possible" to follow this Court's instructions from *Hickel*.

Valdez cites to *In re 2001 Redistricting Cases*, wherein this Court held that the Board erred in concluding that it could not combine the excess population of Mat-Su with excess population from Anchorage because it would impair each borough's right to proportional control of a certain number of districts.<sup>275</sup> Valdez claims that the 2001 case modified the *Hickel* case. To the contrary, the *Hickel* case and *In re 2001 Redistricting Cases* simply answer different questions:

- *Hickel* directs the Board that excess population from a borough should generally be placed in one other district;

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<sup>273</sup> *Hickel v. Southeast Conference*, 846 P.2d 28, 52 (Alaska 1992) (citing *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1369, 1372-73 (Alaska 1987) (stating that a primary indication of intentional discrimination against a geographic region was a lack of adherence to established political subdivision boundaries)).

<sup>274</sup> Jan. 27 Trial Tr. 1131:24-1132:11 (Binkley Redirect).

<sup>275</sup> *In re 2001 Redistricting Cases*, 44 P.3d 141, 144 (Alaska 2002).

- *In re 2001 Redistricting Cases* directs the Board as to whether it can combine excess population from two adjoining boroughs.

While Valdez complains that its vote is “diluted” because it is placed in a house district with Mat-Su, what *Hickel* expressly recognized is that actual dilution occurs if the Board does what Valdez wishes with regard to the excess population of Fairbanks:

Dividing the municipality’s excess population among a number of districts would tend to dilute the effectiveness of the votes of those in the excess population group. Their collective votes in a single district would speak with a stronger voice than if distributed among several districts.<sup>276</sup>

Thus, Valdez contends that the Board should dilute the voting effectiveness of Fairbanks voters in order to give Valdez an outsized voting strength in a district of Valdez’s preference. This Court’s cases do not require the Board to give a “hard look” at violating the rights of some voters to do the bidding of others. *In re 2001 Redistricting Cases* does not suggest otherwise.

For all of those reasons, the superior court correctly concluded that “the Board made a reasonable choice in creating a Valdez/Mat-Su district that is sufficiently integrated to satisfy § 6 and also allows the Board to meet constitutional standards elsewhere.”<sup>277</sup>

### **3. District 30 Complies with Section 6**

The superior court determined that District 30 was sufficiently compact for purposes of Section 6, relying primarily on its analysis surrounding Cantwell’s inclusion in District 36: “If District 36 is compact with the addition of the Cantwell appendage, then District 30

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<sup>276</sup> See *Hickel*, 846 P.2d at 52 n.26.

<sup>277</sup> ARB Exc. 836.

is similarly compact with the area cutout.”<sup>278</sup> Mat-Su devotes two sentences to its District 30 challenge, claiming that the removal of a small, remote corner of the Mat-Su Borough and a small southerly piece of the Denali Borough to place Cantwell into District 36—where it is more socio-economically integrated and also serves to reduce the overpopulation of District 30<sup>279</sup>—violates Section 6’s compactness requirement.<sup>280</sup> No other party challenges District 30 in this appeal. Moreover, the Denali Borough, of which Cantwell is a part, never raised an objection to District 30.

As to Mat-Su’s census block argument, the record reflects that the large size and odd shapes of many census blocks within the Mat-Su Borough made it a challenge to draw perfectly compact districts in that region.<sup>281</sup> Because census blocks are the smallest mapping-unit in the districting process (the smallest building block for creating maps is the census block), the Board was forced to work with the shapes and populations of the existing census blocks.<sup>282</sup> Mat-Su Borough officials engaged with the Census Bureau to refine and redraw some census blocks within the Borough.<sup>283</sup> But regardless of whether the Borough

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<sup>278</sup> ARB Exc. 851.

<sup>279</sup> *See infra* p. 67.

<sup>280</sup> *See* Mat-Su Pet. Rev. 10; Mat-Su’s expert conceded District 30 is socio-economically integrated, and it does not appear that requirement is challenged on appeal. Jan. 24, 2022 Trial Tr. 377:16-380:3 (Colligan Cross); *see also* Jan. 24, 2022 Trial Tr. 185:3-11 (DeVries Cross) (“Q: And then, as I understand your testimony from your affidavit, you believe all of the Mat-Su Borough is socioeconomically integrated?” A: “Yes.”).

<sup>281</sup> *See* ARB Exc. 558-59 (Borromeo Aff. ¶ 27).

<sup>282</sup> *See* Alaska Stat. § 15.10.200.

<sup>283</sup> Jan. 24 Trial Tr. 429:18-23 (Colligan Redirect).

likes its census blocks, the fact is that the Board was tasked with drawing districts made up of these census blocks.<sup>284</sup> There is substantial evidence in the record that the shape and size of many census blocks limited compactness in the Mat-Su Borough.<sup>285</sup>

District 30 does not result in a bizarre design or otherwise create a reaching appendage that extends a corridor of land “to include a populated area, but not the less-populated land around it.”<sup>286</sup> As apparent from Mat-Su’s contention, the Board was cognizant of maximizing compactness without sacrificing the remaining Section 6 requirements and intentionally included a remote corner of the Mat-Su Borough, far removed from any municipalities, villages or population centers, adjacent to Cantwell. The superior court correctly held that District 30 satisfies the compactness requirement of Section 6.

#### **4. District 36 Complies with Section 6<sup>287</sup>**

The superior court correctly found that the record supports that District 36 is

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<sup>284</sup> See Alaska Const. art. VI, sec. 10 (requiring use of U.S. Census data); Alaska Stat. § 15.10.200; *In re 2011 Redistricting Cases*, 294 P.3d 1032, 1033-34 (Alaska 2012) (discussing process of Board’s receipt of U.S. Census data and drafting proposed plans).

<sup>285</sup> Jan. 26 Trial Tr. 866:2-21 (Borromeo Redirect); ARB Exc. 1088 (Nov. 5 Meeting Tr. at 196:3-11) (explaining that mapping the Mat-Su districts was time-consuming because “the census blocks in the Knik and Fairview area were very hard to smooth out and to comply with what the borough had requested.”); ARB Exc. 606-10 (Torkelson Aff. ¶¶ 23-28) (discussing unalterable format of census blocks and their odd shapes).

<sup>286</sup> See *Hickel v. Southeast Conference*, 846 P.2d 38, 45-46 (Alaska 1992) (determining that “Odd-shaped districts may well be the natural result of Alaska’s irregular geometry. However, ‘corridors’ of land that extend to include a populated area, *but not the less-populated land around it, may* run afoul of the compactness requirement.”) (emphasis added).

<sup>287</sup> Valdez and Mat-Su concede that District 36 is contiguous. See ARB Exc. 842. And a review of the map demonstrates that the district is contiguous. ARB Exc. 357.



contiguous, compact, and socio-economically integrated.<sup>288</sup>

Valdez suggests that District 36 is non-compact because of its sheer size, but this argument only shows the dangers of trying to apply an Outside framework to Alaska. Alaska courts “look[] to the *shape* of a district,” not its size.<sup>289</sup> “Given Alaska’s unique geography and relatively low population, which is spread unevenly across a state that is larger than most States and many countries, neither size nor lack of direct road access makes a district unconstitutionally non-compact.”<sup>290</sup> Applying these legal authorities, the superior court declined to find District 36 non-compact due to its sheer size.<sup>291</sup>

Valdez also argues that District 36’s “horseshoe” shape is non-compact. House District 36 is very similar to the rural Interior district (House District 6) in the 2002 Proclamation that was approved by the courts,<sup>292</sup> and House District 36 from the 1994 Plan. The shape of District 36 was influenced by the realities of this sparsely populated area of Alaska, as shown by districts for this area from previous redistricting cycles.

Valdez and Mat-Su argue that the addition of Cantwell makes District 36 non-

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<sup>288</sup> ARB Exc. 849. No party specifically challenged the contiguity of District 36 in the superior court, and a review of the map demonstrates that the district is contiguous. *See* ARB Exc. 357.

<sup>289</sup> *Hickel v. Southeast Conference*, 846 P.2d 38, 45 (Alaska 1992) (emphasis added). In other words, the inquiry looks at the district’s “perimeter *in relation to* the area encompassed.” *Id.* (emphasis added). The area itself is not useful as a stand-alone metric.

<sup>290</sup> ARB Exc. 842-43.

<sup>291</sup> ARB Exc. 843.

<sup>292</sup> *Compare* ARB Exc. 357 (District 36 in 2021 Proclamation); *with* ARB Exc. 6 (2002 Proclamation map); *see* Jan. 26 Trial Tr. 895:11-12 (Otte Cross) (testimony by Chair of 2001-2002 Redistricting Board that with respect to the Interior district, “[i]t’s a similar map to what I believe we produced in 2002”).

compact.<sup>293</sup> The superior court rejected this argument because Cantwell’s inclusion in District 36 increased socio-economic integration across the rural Interior district:

The evidence in general shows the board viewed District 36 as a “rural” district, and concluded that rural communities generally share socio-economic ties. The record contains significant evidence of the social, economic, and cultural ties across the district. District 36 is made up of Interior towns and villages, largely small communities in rural regions. These communities share many characteristics of rural life. There are also specific historic and present cultural ties across District 36, as it broadly spans the region inhabited by Interior Athabaskan peoples. There was considerable testimony, both in the public comment period and at trial, of the significant cultural similarities across Athabaskan peoples. This testimony showed numerous socio-economic links across the region, including (but not limited to) common language and culture across all Athabaskan speaking people, a dependence on similar subsistence foods, including moose and caribou, reliance on shared rural healthcare and social services systems, and shared concerns about the quality of rural schools.<sup>294</sup>

Moreover, Cantwell’s placement in House District 36, as opposed to House District 30, helps alleviate the overpopulation of House District 30. The approximately 200 residents of Cantwell correspond to around 1.1% of a district.<sup>295</sup> Mat-Su argues that District 30 is already unconstitutionally overpopulated at 1.1% above the ideal population; moving Cantwell into District 30 would increase that overpopulation.

To be clear, nothing in the Constitution requires that the Board retain borough boundaries reflexively: the Constitution provides that local government boundaries “may”

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<sup>293</sup> ARB Exc. 828 (“There is a small appendage between Districts 29 and 36 along the Glenn Highway. Nonetheless, it does not appear ‘bizarre.’”).

<sup>294</sup> ARB Exc. 847 (internal quotations and citations omitted).

<sup>295</sup> ARB Exc. 1092 (Board website showing Cantwell population of 196 in 2020 census).

be considered,<sup>296</sup> and they are often used by the courts as an indicator of socio-economic integration.<sup>297</sup> But where public testimony indicates that socio-economic integration will actually be *improved* by breaking a borough boundary, there is no reason to hold the borough boundaries sacrosanct.

Valdez alleges that the Board “improperly and inconsistently relied upon ANCSA boundaries.”<sup>298</sup> This argument overlooks the record evidence of socio-economic integration between Cantwell and the Copper River Valley. The superior court correctly followed precedent that recognizes “ANCSA regions are indicative of socio-economic integration and may be used to guide redistricting decisions, and they may even justify some degree of population deviation.”<sup>299</sup>

First, the border that Valdez primarily takes issue with—the boundary between District 36 and the coastal District 39 (which coincides with the boundary between Doyon and the Bering Strait region)—is in an area where the communities are predominantly Alaska Native. It is both logical and reasonable to use an ANCSA boundary to guide the drawing of district lines in this area of the state. Second, there is evidence that ANCSA boundaries are significant for non-Native residents too, particularly in rural areas. ANCSA regions coincide with the regions served by non-profit “sister organizations,” which in many rural communities provide healthcare for Native and non-Native residents alike. Finally, the evidence shows that the western border of District 36 is also a boundary between school districts, and that school districts are a primary form of local government in that region of the state. Given the constitution’s explicit provision that local government boundaries may be taken into consideration, there is no reason the Board

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<sup>296</sup> Alaska Const. art. VI, sec. 6.

<sup>297</sup> *E.g., Hickel*, 846 P.2d at 51-52.

<sup>298</sup> Valdez Pet. Rev. 36.

<sup>299</sup> ARB Exc. 847-48.

should disregard such a boundary just because it happens to coincide with an ANCSA boundary.<sup>300</sup>

Further, despite Valdez's claim that the ANCSA boundaries were applied inconsistently, in fact ten of the twelve ANCSA regions were kept largely intact. For the remaining two, Calista and Cook Inlet Region, Inc., maintaining all the respective villages within a single district was not possible because of the large population in those regions (significantly exceeding the size for a single district).<sup>301</sup>

In sum, the evidence supports the conclusion that District 36 was created with a legitimate goal of achieving socio-economic integration across a large, sparsely populated district, and the Board achieved that goal. The superior court did not err in holding that District 36 is constitutional in all respects.<sup>302</sup>

#### **5. Districts 25-30 are as Near as Practicable to 1/40th of the State's Population**

Finally, the population deviations in Districts 25-30, ranging from 1.1% to 2.66%, do not violate the requirement that each district be "as near as practicable" to the ideal district size. Because of the overlap between the Section 6 population requirement and the one-person, one-vote element of equal protection, the Mat-Su Borough's claims regarding over-population of these districts are discussed as part of the equal protection analysis below.

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<sup>300</sup> ARB Ex. 848.

<sup>301</sup> ARB Exc. 517 (Binkley Aff. ¶ 36). Fairbanks is also within the Doyon ANCSA region, so the region is actually spread across six districts, but the northern, western, and southwestern borders of District 36 generally align with the borders of the Doyon region.

<sup>302</sup> ARB Exc. 849.

## D. ALASKA EQUAL PROTECTION

Article I, Section 1 of the Alaska Constitution provides “that all persons are equal and entitled to equal rights, opportunities, and protection under the law.”<sup>303</sup> “In the context of voting rights in redistricting and reapportionment litigation, there are two basic principles of equal protection, namely that of ‘one person, one vote’—the right to an equally weighted vote—and of ‘fair and effective representation’—the right to group effectiveness or an equally powerful vote.”<sup>304</sup>

Article VI, Section 6’s substantive requirements protect both the “one person, one vote” and “fair and effective representation” principles of equal protection.<sup>305</sup> Section 6’s requirement that districts be populated “as near as practicable” with 1/40th of the State’s population protects the “one person, one vote” principle.<sup>306</sup> Section 6’s requirement that districts be populated with people who are relatively socio-economically integrated ensures voters in a district have enough in common to protect the “fair and effective representation” principle.<sup>307</sup>

### 1. One Person, One Vote

Under Article VI, Section 6, the ideal quotient for the forty house districts in the

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<sup>303</sup> Alaska Const. art. I, sec. 1.

<sup>304</sup> *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1366 (Alaska 1987)

<sup>305</sup> *See Hickel v. Southeast Conference*, 846 P.2d 38, 46 (Alaska 1992).

<sup>306</sup> *See id.* at 46.

<sup>307</sup> *Id.* at 46 (“In addition to preventing gerrymandering, the requirement that districts be composed of relatively integrated socio-economic areas helps to ensure that a voter is not denied his or her right to an equally powerful vote.”).

2021 redistricting cycle is 18,335. Under Alaska law, “minor deviations from mathematical equality” do not implicate equal protection.<sup>308</sup> The Alaska courts evaluate deviations by measuring the maximum deviation across districts (either in a particular region or statewide)—meaning “the sum of the absolute values of the two . . . districts with the greatest positive and negative deviations[.]”<sup>309</sup>

Although deviations of up to 10% were historically permissible without any justification, Alaska courts have recognized after the constitutional amendment to add “as nearly as practicable” to Section 6 and “newly available technological advances,” it is possible to achieve lower deviations, particularly in urban areas, without unduly sacrificing compactness or socio-economic integration.<sup>310</sup> Conversely, populations in excess of (or below) the ideal may be justified if they result from preservation of ANCSA boundaries.<sup>311</sup>

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<sup>308</sup> *Id.* at 47 (quoting *Kenai Peninsula Borough*, 743 P.2d at 1366).

<sup>309</sup> *In re 2001 Redistricting Cases*, 44 P.3d 141, 145 (Alaska 2002).

<sup>310</sup> *In re: 2011 Redistricting Cases*, 2013 WL 6074059, at \*5 (Alaska Super. Nov. 18, 2013) (citing *In re 2001 Redistricting Cases*, 44 P.3d at 145-46).

<sup>311</sup> *See Groh v. Egan*, 526 P.2d 863, 877 (Alaska 1974); ARB Exc. 517 (Binkley Aff. ¶ 36) (“We heard compelling testimony from Alaskans about the important connections among communities within ANCSA regions, and there was wide support on our board for honoring ANCSA boundaries to the best of our abilities in light of our constitutional mandate. Sealaska, Ahtna, Doyon, Arctic Slope Regional Corporation, NANA, Bering Strait, Chugach, Bristol Bay, Koniag, and Aleut are all either intact or largely intact within single house districts wrapping around much of the state. Only Calista and CIRI are substantially divided up, and this is because the large populations in those regions preclude the creation of house districts that unify Calista and CIRI regions without placing some of the population of their regions in other districts or including population from other regions in their districts.”). Sealaska Corporation’s regional boundaries coincide exactly with House Districts 1-4, the Southeast districts. *See* 43 U.S.C. § 1606(a)(10) (Sealaska covers the Southeast region, including Metlakatla). The Sealaska region is split into four districts.

In the *In re 2001 Redistricting Cases*, the Alaska Supreme Court suggested a couple options to address the issue of excess Anchorage and Mat-Su Borough populations.<sup>312</sup> One potential option offered by the Court was to overpopulate each of the house districts by about 2%.<sup>313</sup> The Court's other proffered solution was to pair the excess population with another socio-economically integrated neighbor, and "that any neighboring areas north, east [such as Valdez], or south of the combined [Anchorage and Mat-Su] municipalities would meet the constitutional requirement of relative socio-economic integration."<sup>314</sup> In offering these options, the Court concluded that "this need to accommodate excess population would be sufficient justification to depart from the antidilution rule."<sup>315</sup>

## 2. Fair and Effective Representation

The second component of equal protection, the right to fair and effective representation, addresses whether "the Board acted intentionally to discriminate against the voters of a geographic area."<sup>316</sup> The right to fair and effective representation may be implicated if members of a particular group are "fenced out of the political process and their voting strength invidiously minimized."<sup>317</sup>

Claims based on the right to fair and effective representation are often referred to as

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<sup>312</sup> *In re 2001 Redistricting Cases*, 44 P.3d 141 (Alaska 2002).

<sup>313</sup> *See id.*

<sup>314</sup> *See id.* at 144, n.7.

<sup>315</sup> *See id.*

<sup>316</sup> *In re: 2011 Redistricting Cases*, 2013 WL 6074059, at \*11 (Alaska Super. Nov. 18, 2013) (citing *Kenai Peninsula Borough v. State*, 743 P.2d at 1352, 1371 (Alaska 1987)).

<sup>317</sup> *Hickel v. Southeast Conference*, 846 P.2d 38, 49 (Alaska 1992) (quoting *Gaffney v. Cummings*, 412 U.S. 735, 754 (1973)).

vote-dilution claims. In regard to vote-dilution claims, the Board “cannot intentionally discriminate against a borough or any other ‘politically salient class’ of voters by invidiously minimizing that class’s right to an equally effective vote.”<sup>318</sup>

Residents within a municipality<sup>319</sup> and borough<sup>320</sup> are “politically salient classes.”<sup>321</sup> To adjudicate an equal protection claim based on vote dilution, the trial court must “make findings on the elements . . . including whether a politically salient class of voters existed and whether the Board intentionally discriminated against that class.”<sup>322</sup>

Mat-Su asserts that the superior court erred in failing to rule that the overpopulation of House Districts 25-30 violates the “one person, one vote” principle, and that House District 29 violates the “fair and effective representation” principle of equal protection. Skagway asserts that the superior court erred in failing to rule that its placement in House District 3 with the northern portion of the City and Borough of Juneau, violated the fair and effective representation principle of equal protection.

### **3. House Districts 25-30 Do Not Deny “One Person, One Vote” or “Fair and Effective Representation” to Mat-Su Voters**

The goal of “one person, one vote” is “substantial equality of population among the

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<sup>318</sup> *In re 2001 Redistricting Cases*, 44 P.3d 141, 144 (Alaska 2002).

<sup>319</sup> *Kenai Peninsula Borough*, 743 P.2d at 1372-73 (voters within the Municipality of Anchorage).

<sup>320</sup> *Hickel*, 846 P.3d at 52-53 (residents within the Matanuska-Susitna Borough).

<sup>321</sup> *See In re 2011 Redistricting Cases*, 274 P.3d 466, 469 (Alaska 2012) (reversing superior court’s dismissal of equal protection challenge/anti-dilution challenge to senate districts that split the residents of the City of Fairbanks into different senate districts).

<sup>322</sup> *In re 2011 Redistricting Cases*, 274 P.3d at 469 (citing *In re 2001 Redistricting Cases*, 44 P.3d at 144).



various districts.”<sup>323</sup> This principle is also reflected in Article VI, Section 6, in the requirement that House districts be “as near as practicable to the quotient obtained by dividing the population of the state by forty.”<sup>324</sup> Under Alaska law, “minor deviations from mathematical equality” do not implicate equal protection.<sup>325</sup> Alaska courts evaluate deviations by measuring the maximum deviation across districts (either in a particular region or statewide)—meaning “the sum of the absolute values of the two . . . districts with the greatest positive and negative deviations.”<sup>326</sup>

This Court has issued numerical guideposts for what population deviations are allowable under Section 6’s requirement that house districts be populated “as near as practicable” to 18,335 people. These decisions hold that house district populations that deviate from the 18,335 ideal number by 2% or less are *de minimus*, and deviations up to 5% are presumptively constitutional.<sup>327</sup> Maximum deviation—the sum of the deviations of the most populated and least populated districts of an incorporated area or state as a whole<sup>328</sup>—of 9.5% is not acceptable if the Board has not made any effort to reduce the

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<sup>323</sup> *In re 2011 Redistricting Cases*, 2013 WL 6074059 [pin cite] (Alaska Super. Nov. 18, 2013) (quoting *Reynolds v. Sims*, 377 U.S. 533, 577 (1964)).

<sup>324</sup> *See In re 2001 Redistricting Cases*, 44 P.3d 141, 145-46 (Alaska 2002) (discussing the article VI, section 6 “as near as practicable” standard).

<sup>325</sup> *Hickel v. Southeast Conference*, 846 P.2d 38, 47 (Alaska 1992) (quoting *Kenai Peninsula Borough*, 743 P.2d at 1366).

<sup>326</sup> *In re 2001 Redistricting Cases*, 44 P.3d at 145.

<sup>327</sup> *Id.* at 145-46.

<sup>328</sup> For example, if the least populated (most overrepresented) district has -6.89% deviation, and the most populated (most underrepresented) district has a +5.06% deviation, the total maximum deviation would be 11.95%. *See In re 2001 Redistricting Cases*, 44 P.3d at 151-52 n.22 (using real numbers from case).

deviations in the relevant area.<sup>329</sup>

*In re 2001 Redistricting Cases* quoted Section 6’s constitutional language and invalidated the sixteen house districts within the Municipality of Anchorage because they had a maximum deviation of 9.5%, and the Board had made no efforts to reduce those deviations because it sought to respect neighborhood boundaries.<sup>330</sup> Notably, *In re 2001 Redistricting Cases* “upheld deviations of up to 5%” in other regions.<sup>331</sup> The Board in the 2011-2013 cycle focused on achieving extremely small deviations across the state, resulting in a statewide total maximum deviation of just 4.2%.<sup>332</sup> The superior court found that those deviations were “very low, lower than necessary to pass constitutional muster”<sup>333</sup> and noted that the goal of achieving low deviations “must live in harmony with the other constitutional requirements.”<sup>334</sup>

Here, Mat-Su challenges House Districts 25-30 as violating the “one person, one vote” standard. The population of those districts is as follows:

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<sup>329</sup> *In re 2001 Redistricting Cases*, 44 P.3d at 145-46 (invalidating all Anchorage house districts because of a 9.5% maximum deviation across Anchorage and the Board admitted it made no efforts to reduce those deviations because it wanted to follow neighborhood boundaries).

<sup>330</sup> *In re 2001 Redistricting Cases*, 44 P.3d at 145-46; *In re: 2011 Redistricting Cases*, 2013 WL 6074059, at \*5 (Alaska Super. Nov. 18, 2013) (citing *In re 2001 Redistricting Cases*, 44 P.3d at 145-46).

<sup>331</sup> *In re 2011 Redistricting Cases*, 2013 WL 6074059, at 5 (citing *In re 2001 Redistricting Cases*, 44 P.3d at 145-46).

<sup>332</sup> *Id.*

<sup>333</sup> *Id.* at \*7.

<sup>334</sup> *Id.* at \*6. Even a quick eyeballing of the 2013 and 2021 maps shows that the low deviations in the 2013 map often came at the expense of compactness.

| House District | Population | Ideal Population | Deviation |
|----------------|------------|------------------|-----------|
| 25             | 18,822     | 18,335           | +2.66%    |
| 26             | 18,807     | 18,335           | +2.58%    |
| 27             | 18,799     | 18,335           | +2.53%    |
| 28             | 18,793     | 18,335           | +2.50%    |
| 29             | 18,773     | 18,335           | +2.39%    |
| 30             | 18,536     | 18,335           | +1.10%    |

The superior court correctly concluded that these “population deviations challenged by Mat-Su fall within the range of deviations that previous courts have accepted as ‘minor’ and requiring no special justification.”<sup>335</sup> The highest deviation of the districts challenged by the Mat-Su Plaintiffs—House District 25—is 2.66%.<sup>336</sup> Among the Mat-Su region districts, the difference between the most-populated Mat-Su district (District 25, at 2.66%) and the least-populated Mat-Su district (District 30, at 1.10%) is 1.56%.<sup>337</sup>

Moreover, Mat-Su obtained largely what it requested the Board provide in the 2021 redistricting plan.<sup>338</sup> Based on the results of the 2020 U.S. Census, Mat-Su had a population of 107,081 people,<sup>339</sup> or enough for 5.84 ideally populated districts of 18,335 people. Mat-Su asked the Board to place its population in six house districts over which its population had proportional control to elect representatives of their choosing.<sup>340</sup> That

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<sup>335</sup> ARB Exc. 856.

<sup>336</sup> ARB Exc. 426 (Population tabulation for 2021 Proclamation).

<sup>337</sup> *Id.*

<sup>338</sup> ARB Exc. 858.

<sup>339</sup> MSB Exc. 56-72.

<sup>340</sup> ARB Exc. 858.

is what Mat-Su received in House Districts 25-30: six house districts in which its population proportionally controls who is elected. The superior court correctly concluded that House Districts 25-30 do not violate Mat-Su’s right to “one person, one vote.”

The Mat-Su Plaintiffs have also suggested that their equal protection rights are implicated by the fact that the Borough has seen higher rates of population growth than other parts of the state, and thus the Borough’s districts may hold additional population by the end of the 10-year redistricting cycle. This argument is wrong as a matter of law. The Board is constitutionally charged with drawing districts “based upon the population within each house and senate district as reported by the official decennial census of the United States.”<sup>341</sup> The Board is not permitted to make adjustments to those numbers.<sup>342</sup> Any anticipated future population growth—which may or may not actually occur—is not a proper consideration for redistricting.

As to the second component of equal protection, Mat-Su’s claim fails for the same reason as its claim under “one person, one vote”: the Mat-Su Borough has enough population to proportionally control 5.84 house districts, and under House Districts 25-30 it has received proportional control over six house districts. The Mat-Su Borough’s equal protection rights are not violated by receiving the proportional control of the Alaska House of Representatives to which its population entitles it: six.

Mat-Su argues that the overpopulation of House Districts 25-30 raises the inference

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<sup>341</sup> Alaska Const. art. VI, sec. 3.

<sup>342</sup> *Id.*; *see also* Alaska Stat. § 15.10.200.

of discrimination against Mat-Su residents.<sup>343</sup> They point out that “five of the seven districts within the State that have a deviation of 2% or greater are within the [Mat-Su Borough].”<sup>344</sup> But there is nothing about House Districts 25-30 that disproportionately dilutes the power of Mat-Su voters. The borough is entitled to proportionally control six house districts, and that is what the Mat-Su received with House Districts 25-30.

Mat-Su also alleges it was treated disparately from Anchorage. But when compared to the Anchorage districts that Mat-Su points to as evidence of unequal voting power, the evidence in the record shows that the deviation between the highest-population Mat-Su district and the lowest-population Anchorage district (District 23, at -1.70%) is just 4.36%.<sup>345</sup> As a measure of total deviation across different regions, this is well within the range of constitutional permissibility.

#### **4. House District 3 Does Not Deny Skagway “Fair and Effective Representation”**

Skagway argues that its placement in House District 3 with the northern portion of the City and Borough of Juneau violates its right to “fair and effective representation” because its voice will be drowned out in that house district by the northern Juneau

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<sup>343</sup> Mat-Su Pet. Rev. 23 (“The Board purposefully discriminated against the MSB. The inference of intentional discrimination is raised in this case, as the effective strength of the MSB voters is diluted by the fact that five of the seven districts within the State that have a deviation of 2% or greater are within the MSB.”).

<sup>344</sup> Mat-Su Pet. Rev. 23.

<sup>345</sup> *Id.*

residents.<sup>346</sup> Skagway asserts that they should not be districted with residents of the Mendenhall Valley and Auke Bay who did not, 18 years ago in an advisory vote, sufficiently oppose a proposed road between Skagway and Juneau that was never built.<sup>347</sup>

Skagway's fair representation claim flounders because it is socio-economically integrated with the entirety of the City and Borough of Juneau.<sup>348</sup> If Skagway and Juneau residents are sufficiently integrated to be in a house district, it is not a violation of the "fair and effective representation" prong of equal protection to place them in the same house district.<sup>349</sup>

More fundamentally, Skagway's self-serving arguments about tourism, cruise ships, and a non-existent road should be insufficient to show a violation of equal protection. As Board members testified, all areas of the City and Borough of Juneau, including the Mendenhall Valley and Auke Bay neighborhoods, understand and appreciate the importance of tourism and cruise ships.<sup>350</sup> As Member Binkley, the founder of the Alaska Cruise Association, explained:

I understand the City of Skagway Borough and a resident of Skagway would

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<sup>346</sup> Skagway's fair and effective representation claim can only logically apply to its house district because it will be represented by Senate District B whether it is in a house district with the northern *or* southern portion of the City and Borough of Juneau.

<sup>347</sup> Skagway Pet. Rev. 32-34.

<sup>348</sup> ARB Exc. 875-76.

<sup>349</sup> *Hickel v. Southeast Conference*, 846 P.2d 38, 46 (Alaska 1992) ("In addition to preventing gerrymandering, the requirement that districts be composed of relatively integrated socio-economic areas helps to ensure that a voter is not denied his or her right to an equally powerful vote.").

<sup>350</sup> ARB Exc. 511 (Binkley Aff. ¶ 20); ARB Exc. 633 (Torkelson Aff. ¶¶ 59-60); SGY Exc. 3-4.

prefer to be paired with downtown Juneau because of the cruise ship industry. To me, that reasoning does not resonate. While the cruise ships dock in downtown Juneau, the economic and social impact of that industry is by no means limited to downtown, but instead has an impact throughout the entire City and Borough of Juneau and beyond. For example, popular whale watching tours depart from Auke Bay[.]<sup>351</sup>

Moreover, as to the Skagway-Juneau road that was never built, Member Simpson credibly testified that this non-existent road did not influence how he drew House Districts 3 and 4.<sup>352</sup> The Board adopted these house districts because Skagway is integrated with the entire City and Borough of Juneau and Skagway's preferred district was less compact.

In arguing that it should be districted with voters that agree with it, Skagway also misstates the legal standard for socio-economic integration. The point of socio-economic integration is to assure that people are placed into districts with others who live in a similar manner, not to assure homogeneous thought within house districts. People can “live, work, and play” together, and also disagree on hot button political issues. Just as socio-economically integrated residents of Anchorage<sup>353</sup> and Fairbanks<sup>354</sup> have wide-ranging opinions about proposed roadways, the opinions of Skagway residents on a specific legislative proposal do not diminish its socio-economic integration with the City and

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<sup>351</sup> ARB Exc. 511 (Binkley Aff., ¶ 20).

<sup>352</sup> Feb. 3, 2022 Trial Tr. 1840:10-19.

<sup>353</sup> See e.g. Kavitha George, *UAA Says it Supports the Controversial Bragaw-Elmore Extension*, ALASKA PUBLIC MEDIA (Mar. 1, 2022) (describing different views within Municipality of Anchorage over road project).

<sup>354</sup> See e.g. Sam Friedman, *DOT to Proceed with Controversial Steese/CHSR Roundabouts*, FAIRBANKS DAILY NEWS-MINER (Jun 12, 2019) (describing differing views on road project in Fairbanks North Star Borough).

Borough of Juneau. Skagway’s attempts to create an “us vs. them” dichotomy with the Mendenhall Valley simply misses the mark, as potentially differing views on a particular issue do not negate the fact that Skagway and the City and Borough of Juneau share significant socio-economic ties.

**E. The Superior Court Correctly Held that Any Technical Violations of the Open Meetings Act Did Not Warrant Voiding the 2021 Redistricting Plan and Having the Board Start Over**

As an initial matter, the Mat-Su Plaintiffs did not raise Open Meetings Act violations at trial, through their proffered witnesses, or in their trial brief, and thus waived any argument that the Board’s November 3 meeting violated the Act.<sup>355</sup> The Mat-Su Plaintiffs only raised this argument in their proposed findings of facts and conclusions of law *after* trial concluded.<sup>356</sup> Mat-Su’s trial brief made no mention of the Board’s November 3 or 4 meetings.<sup>357</sup> Nor does it discuss the Open Meetings Act. And the testimony of its witnesses—Michael Brown,<sup>358</sup> Edna DeVries,<sup>359</sup> and Steve Colligan<sup>360</sup>—

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<sup>355</sup> See *Revels v. Muni. of Anchorage*, No. S-14373, 2013 Alas. LEXIS 55, at \*15 (Alaska 2013) (“In order for an issue to be considered on appeal, it must have been raised and argued before the trial court. This rule is based on the belief that permitting a party to claim error regarding a claim not raised and litigated below ‘is both unfair to the trial court and unjust to the opposing litigant.’ . . . If a claim is not raised in the superior court, the superior court obviously does not err by failing to consider it.”).

<sup>356</sup> Compare ARB Exc. 1116 (MSB Trial Br. at 24 n.159) (articulating MSB retained the right to argue due process issues for failure to comply with Open Meetings Act at trial, but devoid of discussion of November 3 or 4 meetings or Open Meetings Act), with MSB Exc. 488-91.

<sup>357</sup> ARB Exc. 1093-1121 (Mat-Su Trial Br.).

<sup>358</sup> MSB Exc. 66-70.

<sup>359</sup> MSB Exc. 73-75.

<sup>360</sup> MSB Exc. 186-203.



made no mention of Open Meetings Act violations either. Mat-Su did not raise the issue in its trial brief, did not put on any evidence in support of an Open Meetings Act claim, and accordingly has waived the issue. It is unsurprising that Judge Matthews did not specifically make findings on the propriety of a meeting Mat-Su did not challenge until trial was over.

Regardless of waiver, there is no evidence in the record to support Mat-Su’s Open Meetings Act claim regarding the November 3 meeting. Mat-Su relies on mere suspicion and inferences, asking this Court to sift out a claim that Mat-Su could not be bothered to make itself: “If the court cannot discern after review of volumes of the record and significant testimony at trial as to whether or not the Board properly convened to executive session, and what was discussed that likely should have been discussed in public, then there undoubtedly must be material that was improperly hidden from the public eye by the misuse of executive session.”<sup>361</sup>

In addressing the Open Meetings Act allegations properly before it, the superior court correctly recognized that actions taken in violation of the Act—such as action taken during an improperly called executive session—are voidable only upon a finding that “considering all of the circumstances,<sup>362</sup> the public interest in compliance with [the Act]

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<sup>361</sup> MSB Pet. Rev. 28.

<sup>362</sup> The factors to be considered are set out in Alaska Stat. § 44.62.310(f)(1)-(9) and include: “(1) the expense that may be incurred by the public entity, other governmental bodies, and individuals if the action is voided; (2) the disruption that may be caused to the affairs of the public entity, other governmental bodies, and individuals if the action is voided; (3) the degree to which the public entity, other governmental bodies, and individuals may be exposed to additional litigation if the action is voided; (4) the extent to which the governing body, in meetings held in compliance with this section, has previously

outweighs the harm that would be caused to the public interest and to the public entity by voiding the action.”<sup>363</sup> The superior court determined that no procedural violation of the OMA warranted invalidating the Board’s plan.<sup>364</sup> And for good reason. There was no evidence in the record to support that the executive session on November 3 was for an improper purpose, or that the Board made any decision during that meeting.

Moreover, Mat-Su and Valdez chose not to elicit testimony at trial from any of the Board members to try to support OMA claims. Neither asked any Board member whether the Board debated the placement of Valdez outside of public meetings, or more specifically, in executive session on November 3. Instead, they strategically chose not to cross-examine the Board members in order to keep the trial court from hearing directly from Board members as to what was—and what was not—actually done in executive session. Such a strategy decision cannot now permit them to rely solely on inferences alone to prove an OMA violation.

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considered the subject; (5) the amount of time that has passed since the action was taken; (6) the degree to which the public entity, other governmental bodies, or individuals have come to rely on the action; (7) whether and to what extent the governmental body has, before or after the lawsuit was filed to void the action, engaged in or attempted to engage in the public reconsideration of matters originally considered in violation of this section; (8) the degree to which violations of this section were willful, flagrant, or obvious; (9) the degree to which the governing body failed to adhere to the policy under AS 44.62.312(a).” *See* ARB Exc. 909-10.

<sup>363</sup> ARB Exc. 790 (quoting Alaska Stat. 44.62.310(f)).

<sup>364</sup> ARB Exc. 915 (“While the Court does find a violation, it declines to void any specific action on that basis alone, recognizing that is the remedy permitted by the Act.”); ARB Exc. 917 (“The specific action to be voided—the vote on senate pairings—did not occur during Executive Session. Thus, the Court declines to void that action because it may have violated the Open Meetings Act.”).

On November 4, the Board engaged in substantial public debate on the most constitutional house district for Valdez, considering statewide impacts.<sup>365</sup> The Board discussed placing Valdez with Mat-Su,<sup>366</sup> with Anchorage,<sup>367</sup> with the Richardson Highway,<sup>368</sup> and Prince William Sound.<sup>369</sup> A review of the complete transcript from the November 4 meeting exposes the falsity of Mat-Su’s allegations. The Board vigorously debated Valdez’s placement throughout that meeting—a curious thing to do if they had secretly decided its placement the day before in executive session. Even after a number of Board members thought they reached consensus on Valdez, Member Marcum insisted the

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<sup>365</sup> ARB Exc. 1019-31; ARB Exc. 1059-60.

<sup>366</sup> MSB Exc. 51 (Member Bahnke: “Valdez has been established to have some socioeconomic ties with the Mat-Su area compared to the other option, which would push villages from District 36 into District 39, where there are no socioeconomic connections.”); ARB Exc. 1019 (Members discussing various Valdez options with Mat-Su maps); ARB Exc. 1049-55 (discussing Valdez with Anchorage and Mat-Su, resulting overpopulation, which is more compact).

<sup>367</sup> MSB Exc. 49 (Member Bahnke: “And I think it’s already been established that Valdez is socioeconomically compatible with the Mat-Su or with Anchorage, and geographically for compactness sake, I believe it makes more sense to connect [Valdez] to the Mat-Su than it would to connect [Valdez] to Anchorage.”); MSB Exc. 53 (Member Marcum: “So put it with Anchorage.”).

<sup>368</sup> MSB Exc. 49 (Member Simpson: “we start to go up the Richardson Highway, which I think we’ve all identified as a place that is relevant to Valdez, as well.”); MSB Exc. 54 (Member Marcum: “I had certainly not closed off the possibility of including Valdez into their primary socioeconomic tie to the Richardson Highway, and I have multiple versions of putting Valdez in with District 36 that allows us to still break parts of the Fairbanks North Star Borough.”); ARB Exc. 1058 (not wanting to rule out pairing Valdez with Richardson Highway communities); ARB Exc. 1059 (Member Simpson recognizing problem with Valdez and Richardson Highway communities is that Fairbanks is overpopulated and would force excess population into the large rural district).

<sup>369</sup> ARB Exc. 1047 (discussing removing Valdez from draft Prince William Sound district).

Board again consider each possible placement before making a final decision.<sup>370</sup>

The newly raised assertion by Mat-Su—that the Board entered executive session the day prior, on November 3, to debate the placement of Valdez, as opposed to receive legal advice from counsel—is simply inconsistent with the record. As described above, the Board vigorously debated Valdez’s placement in a house district during numerous meetings, and the reason it was placed in House District 29 was stated on the record: it was the best fit for a forty-district map that balanced the needs of all Alaskans, including Valdez residents. If the Board members had debated the placement of Valdez during the November 3 executive session, surely they could have reached consensus more efficiently on November 4, but the transcript of the meeting shows the Board engaged in considerable debate about where to district Valdez. The fact that the members discussed applicable case law during the November 4 meeting supports that the Board was receiving legal advice during the executive session the prior afternoon. The record simply does not support Mat-Su’s Open Meetings Act allegations, and mere speculation and unsupported assumptions are legally insufficient evidence.<sup>371</sup>

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<sup>370</sup> ARB Exc. 1061 (Member Marcum: “But that can determine where Valdez ends up going. We can’t default to the Mat-Su. The portion of the state that has had the most population increase, we can’t default into dumping 4,000 voters into that area to overpopulate them, where they will be underrepresented, without clearly examining all the other options.”).

<sup>371</sup> See *Peterson v. State, Dept. of Natural Resources*, 236 P.3d 355, 367 (Alaska 2010) (stating that even at the reduced summary judgment evidentiary stage, “A claimant must offer something more than unsupported assumptions and speculations,” to support the allegations); *State v. Zepeda*, 274 Ore. App. 401, 405 (Or. App. Ct. 2015) (“There is a difference between inferences that may be drawn from circumstantial evidence and mere speculation[;]. . . [r]easonable inferences are permissible; speculation and guesswork are not. The line between a reasonable inference and an impermissible speculation is drawn

Nor does a Board member bringing case law to the attention of counsel somehow detract from the provision of legal advice that may surround that case or litigation avoidance advice of counsel premised thereon. And the Mat-Su Borough certainly does not articulate how a text message requesting case law to discuss with the Board's attorney would remove the discussion with the attorney from the scope of the attorney-client privilege.

Judge Matthews' refusal to void the Board's plan is consistent with every court before him. These courts reasoned that OMA violations did not warrant voiding a redistricting plan because of the harm to the public interest such a drastic remedy would cause.<sup>372</sup> Significantly, the Board did not vote on any of the house or senate districts in executive session. Every vote by the Board approving a proposed plan or the final plan was conducted during properly noticed public meetings.<sup>373</sup> Thus, even had some

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by the laws of logic. [W]e have held evidence insufficient to support an inference when the conclusion to be drawn from it requires too great an inferential leap—that is, when the logic is too strained. Likewise, evidence is insufficient if it requires the stacking of inferences to the point of speculation.”) (cleaned up).

<sup>372</sup> See *In re 2001 Redistricting Cases*, 44 P.3d 141, 147 (Alaska 2002) (“We hold that the superior court properly concluded that, based on the factors set out in AS 44.62.310(f), the public interest[ ] in requiring compliance with the Open Meetings Act does not outweigh the harm that would be caused to the public interest by voiding the entire Redistricting Plan on this basis. Because we hold that the superior court permissibly refused to grant any remedy for the particular e-mail exchanges it found to violate the Open Meetings Act, we need not address whether these email exchanges actually violated the Act. We further conclude that the superior court did not err by failing to find additional violations of the Act.”). See also *Hickel v. Southeast Conference*, 846 P.2d 38, 56-57 (Alaska 1992).

<sup>373</sup> ARB Exc. 953-54 (adoption of proposed plans); ARB Exc. 148-50 (Board's adoption of plans to take on public outreach tour); ARB Exc. 1075-76 (Board's adoption of final house district map); ARB Exc. 225 (Board's adoption of senate pairings).

discussion of house district boundaries occurred in executive session separate from discussion on litigation, which there is no evidence of, there is no action to void because the Board took no action in executive session.

Finally, without citing any legal authority, Mat-Su asserts that violations of the OMA waive any claim of attorney-client privilege.<sup>374</sup> There is no legal support for that contention, and it mirrors the issue addressed by the Board in its petition for review. Accordingly, to save the Court from repetitive briefing, the Board incorporates by reference pages 68-71 of its petition for review, dated March 2, 2022.

## V. CONCLUSION

For the foregoing reasons, this Court should affirm the superior court's rulings that House Districts 3-4, 25-30, and 36 comply with Article VI, Section 6 and do not violate the equal protection clause of the Alaska Constitution. Further, this Court should affirm the superior court's rulings that the Board's Final Plan should not be voided under Alaska Statute § 44.62.310(f).

DATED at Anchorage, Alaska this 10th day of March, 2022.

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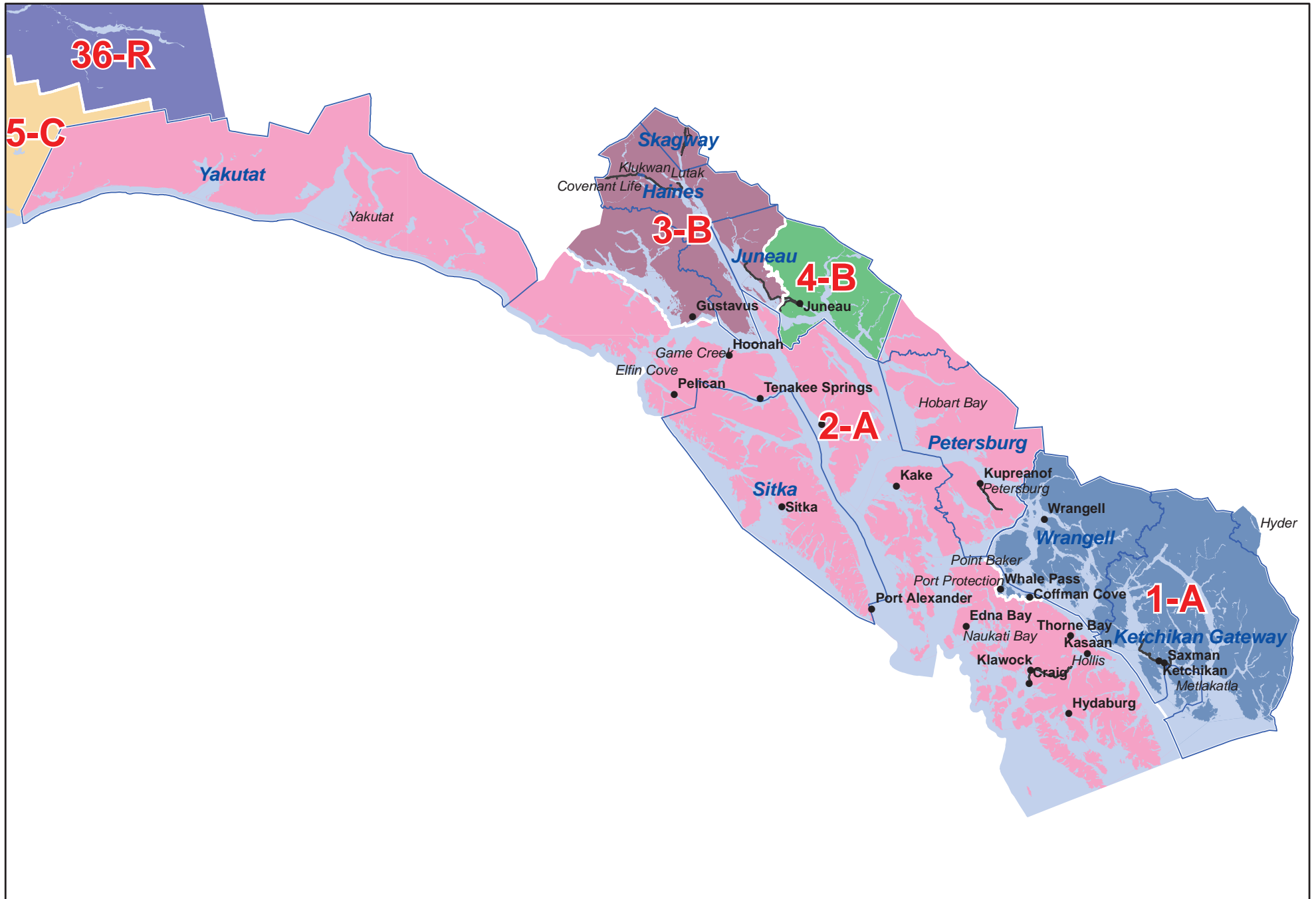
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<sup>374</sup> Mat-Su Pet. Rev. 32.



# 2021 Board Proclamation Southeast

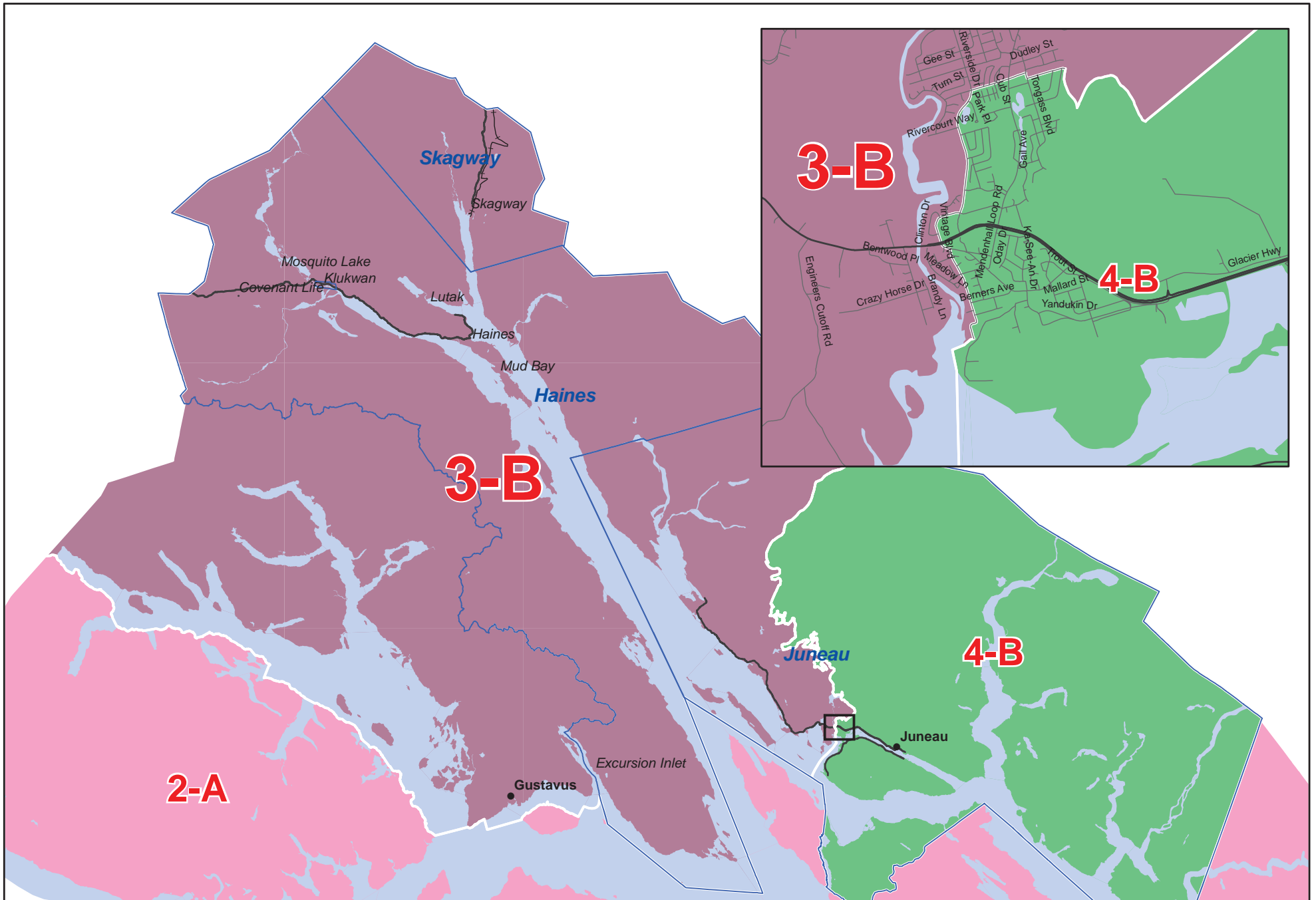
Redistricting Plan Adopted by the Alaska Redistricting Board 11/10/2021





# 2021 Board Proclamation District 3-B

Redistricting Plan Adopted by the Alaska Redistricting Board 11/10/2021



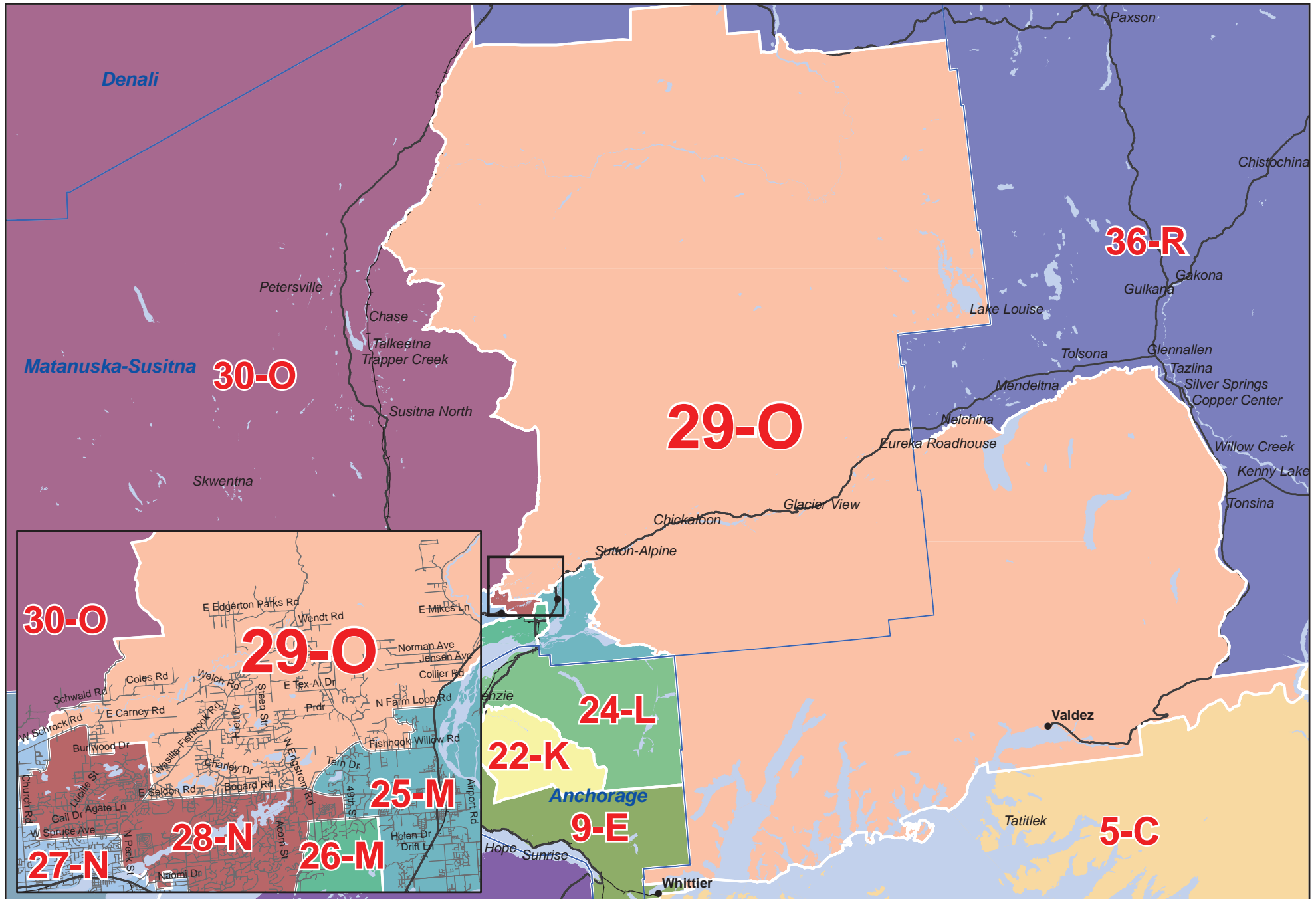
Based on 2020 Census Geography and 2020 PL94-171 Data; Map Gallery link: [www.akredistrict.org/maps](http://www.akredistrict.org/maps)





# 2021 Board Proclamation District 29-O

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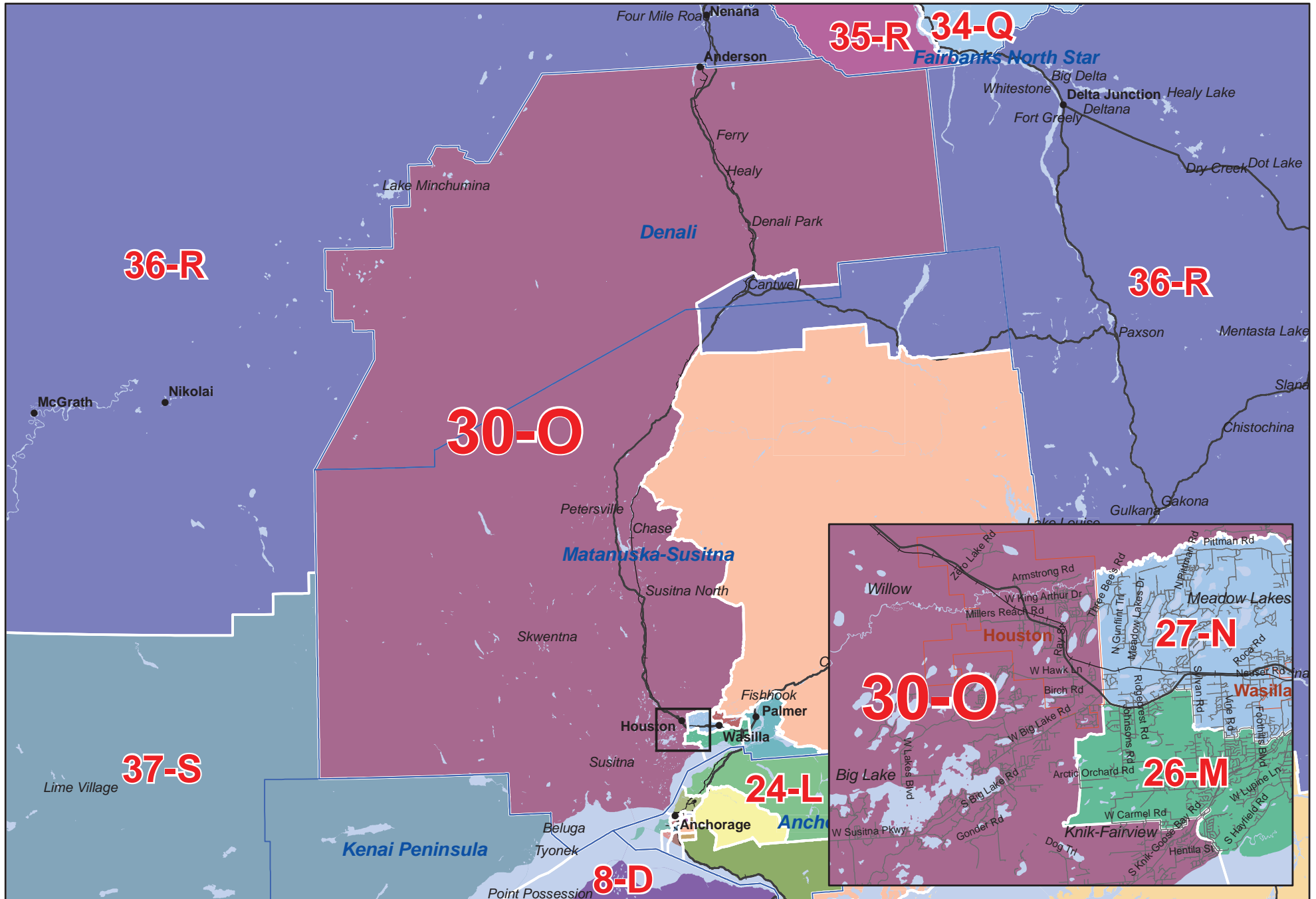


Based on 2020 Census Geography and 2020 PL94-171 Data; Map Gallery link: [www.akredistrict.org/maps](http://www.akredistrict.org/maps)



# 2021 Board Proclamation District 30-O

Redistricting Plan Adopted by the Alaska Redistricting Board 11/10/2021

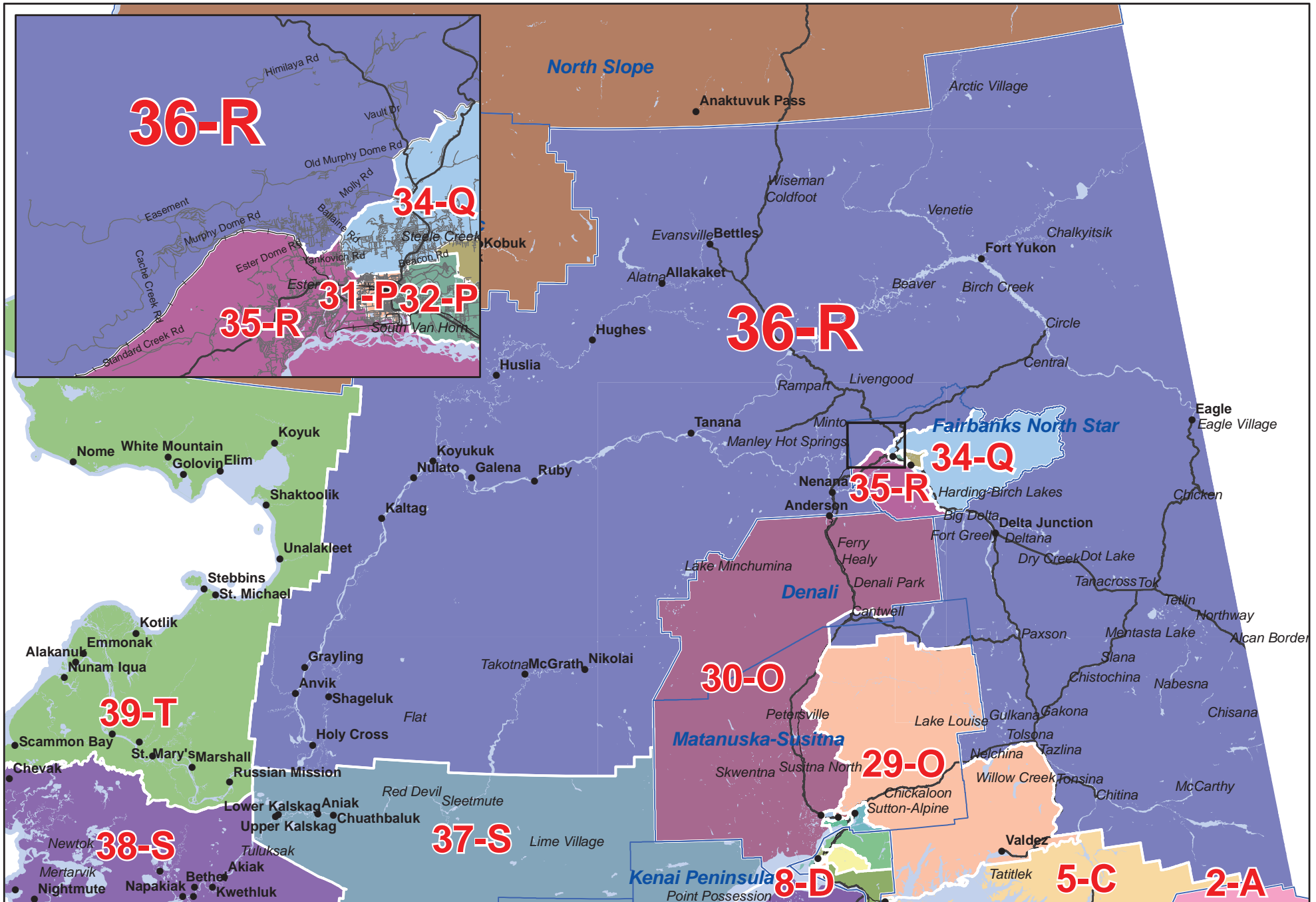


Based on 2020 Census Geography and 2020 PL94-171 Data; Map Gallery link: [www.akredistrict.org/maps](http://www.akredistrict.org/maps)



# 2021 Board Proclamation District 36-R

Redistricting Plan Adopted by the Alaska Redistricting Board 11/10/2021



Based on 2020 Census Geography and 2020 PL94-171 Data; Map Gallery link: [www.akredistrict.org/maps](http://www.akredistrict.org/maps)

# 2013 Proclamation House Districts

Statewide

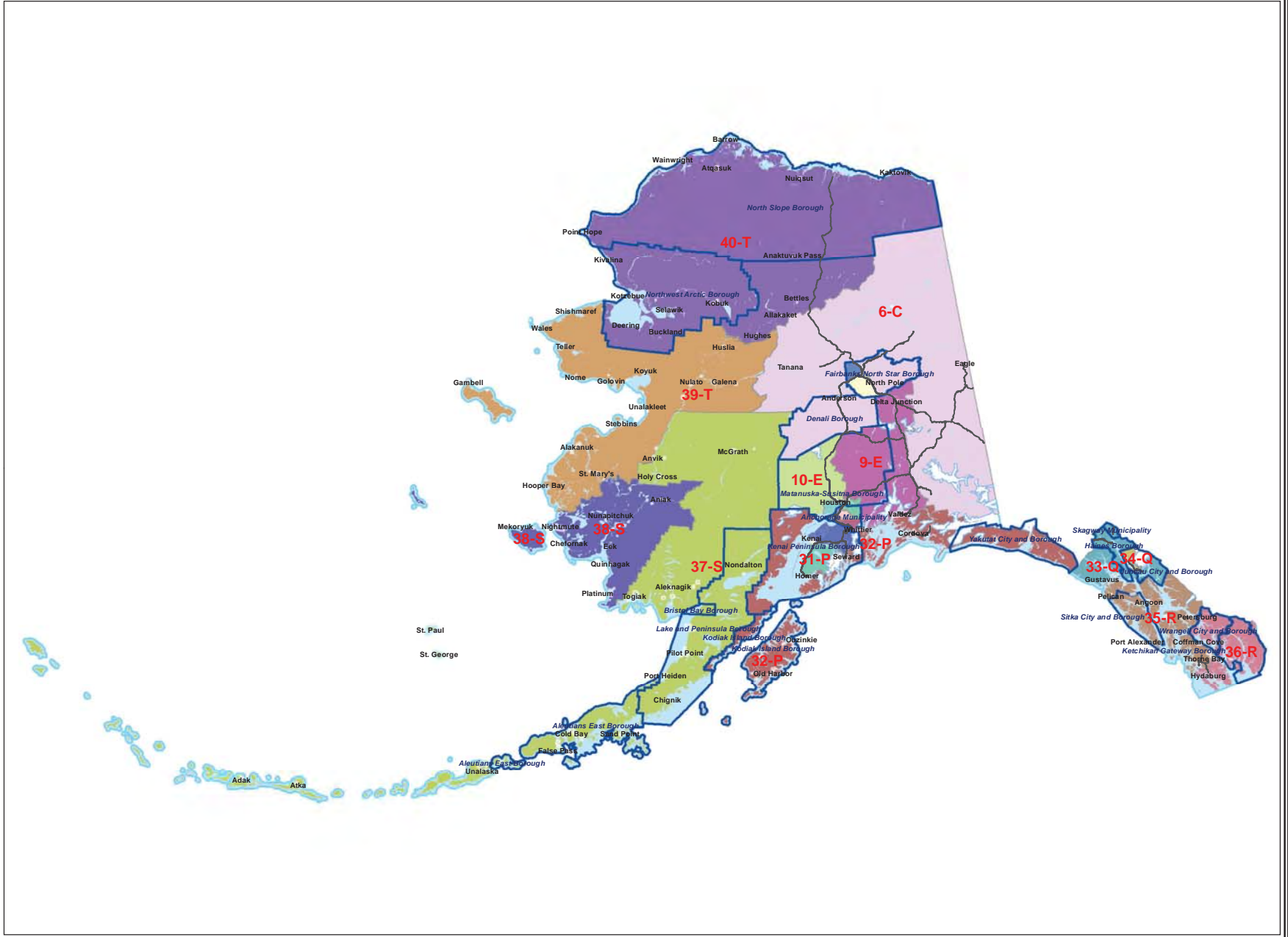


**Legend**

- City
- Borough
- Water Boundary



Prepared by:  
Alaska Redistricting Board



# 2013 Proclamation House Districts

House District 9

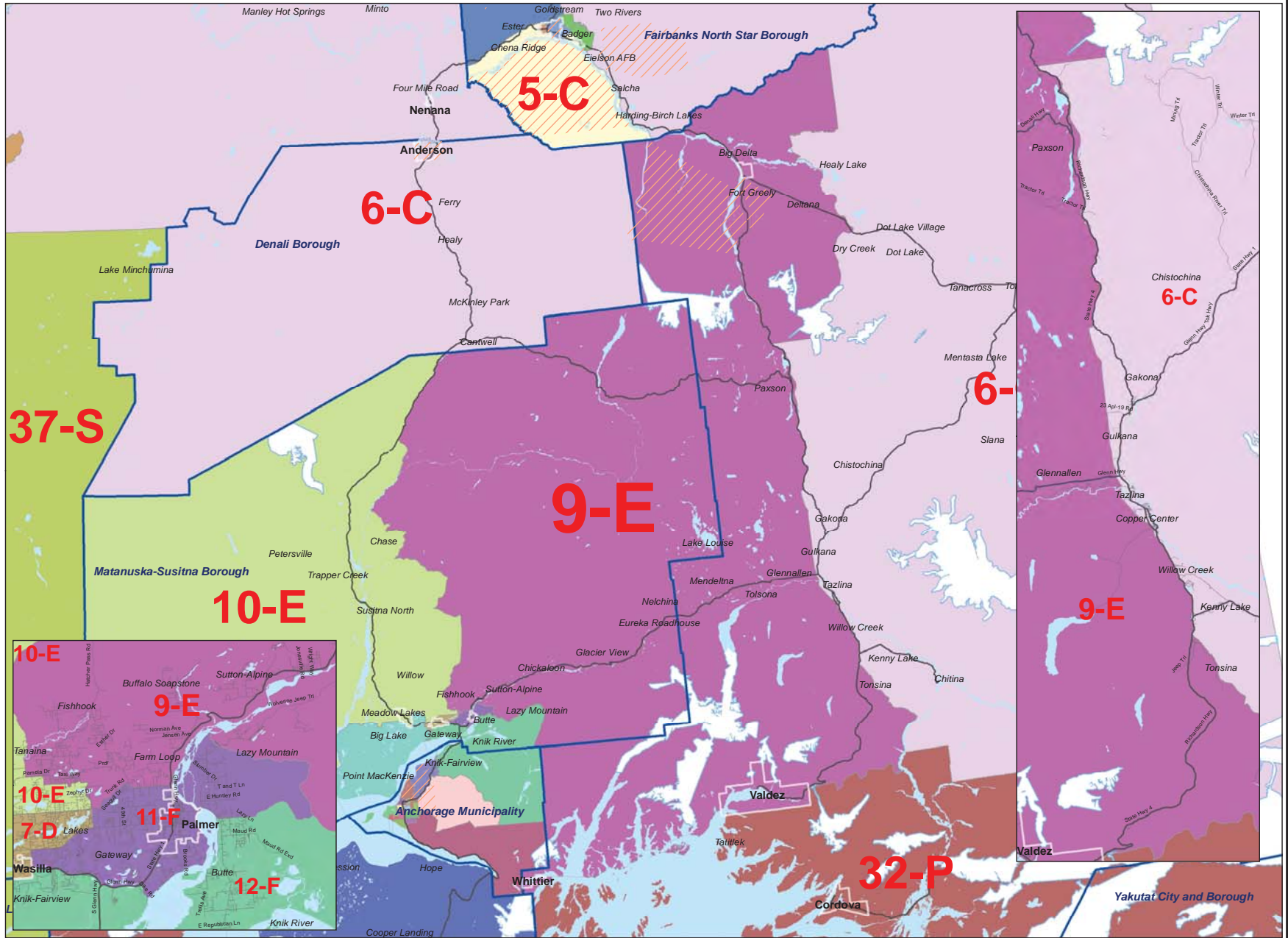


**Legend**

- Military
- City
- Borough
- Water Boundary

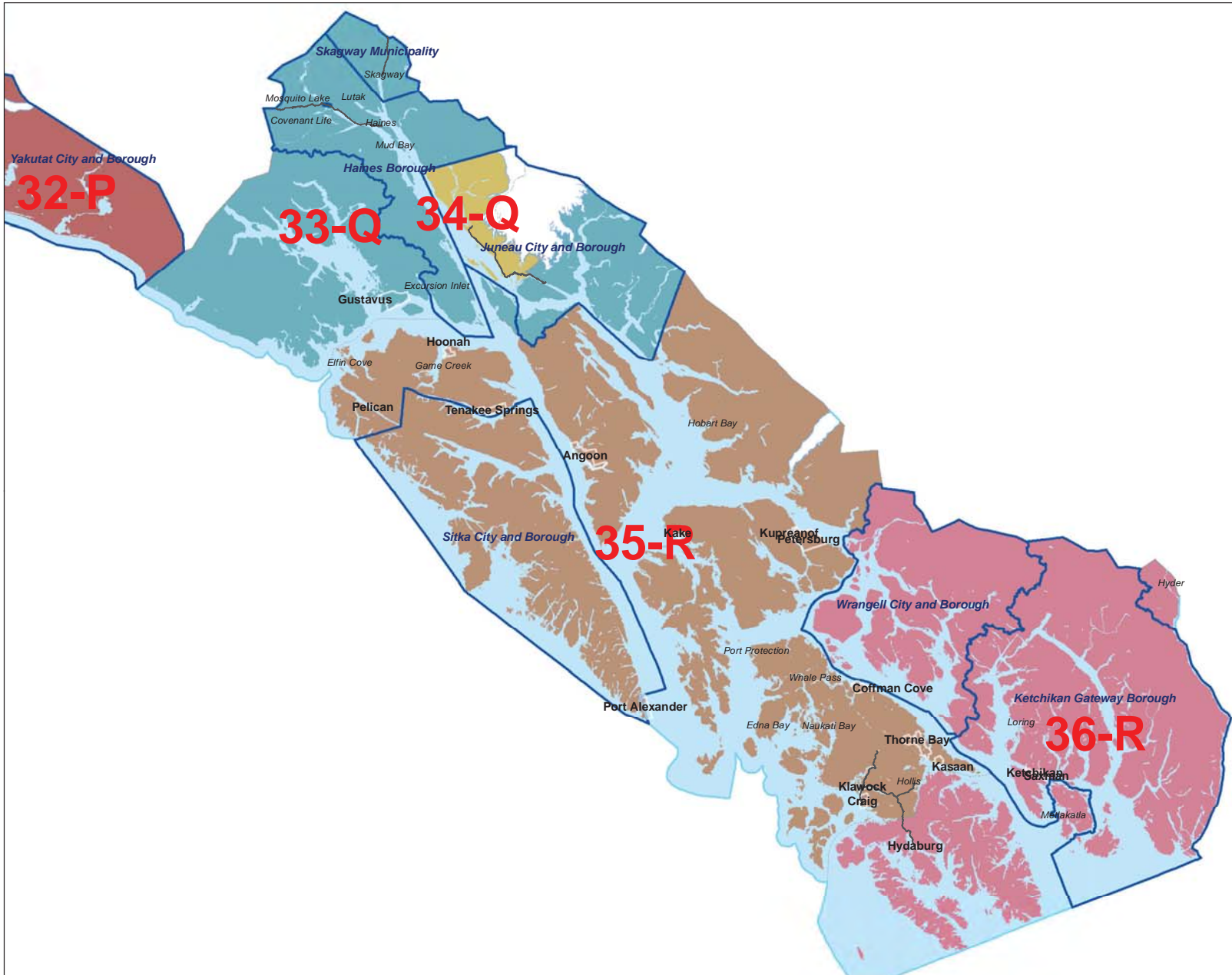


Prepared by:  
Alaska Redistricting Board



# 2013 Proclamation House Districts

Southeast



**Legend**

- Military (diagonal lines)
- City (white box)
- Borough (blue outline)
- Water Boundary (dashed line)



Prepared by:  
Alaska Redistricting Board

# 2013 Proclamation House Districts

House District  
33

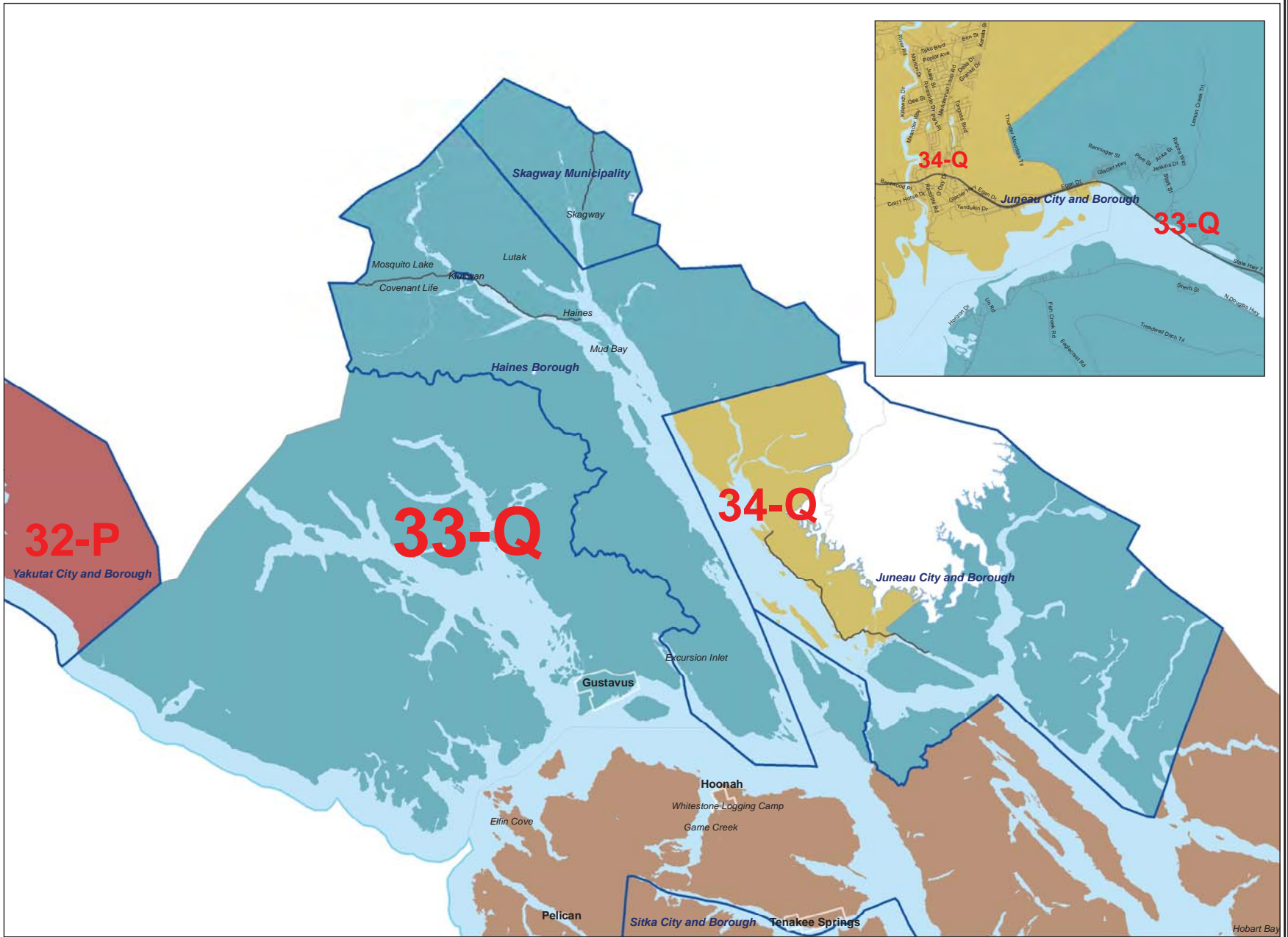


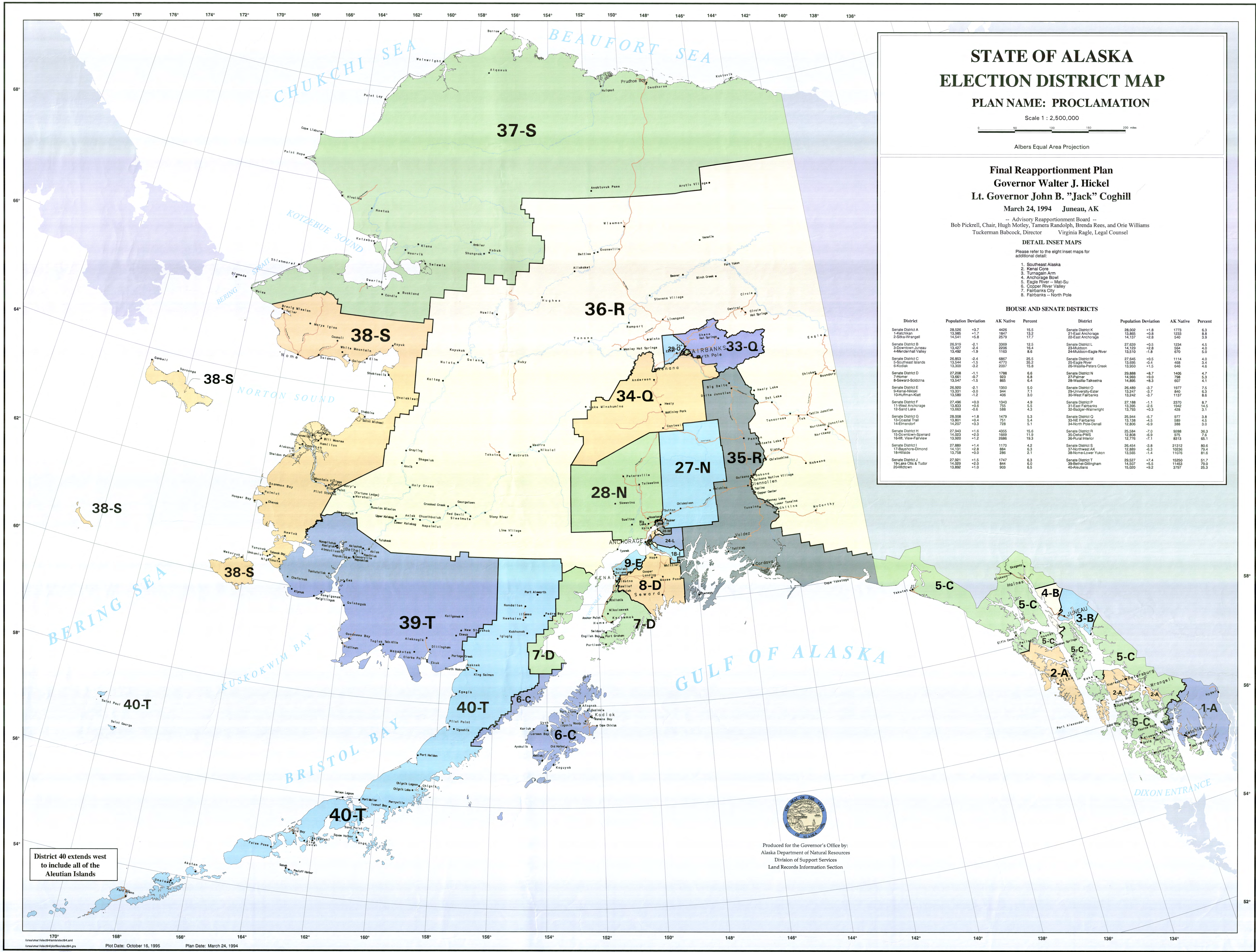
**Legend**

- Military
- City
- Borough
- Water Boundary



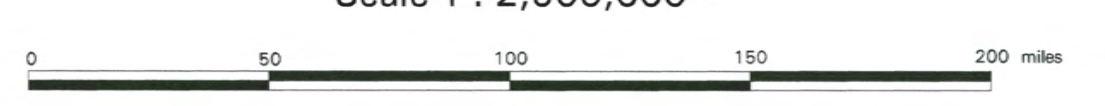
Prepared by:  
Alaska Redistricting Board





# STATE OF ALASKA ELECTION DISTRICT MAP

**PLAN NAME: PROCLAMATION**

Scale 1 : 2,500,000  
  
 Albers Equal Area Projection

**Final Reapportionment Plan**  
**Governor Walter J. Hickel**  
**Lt. Governor John B. "Jack" Coghill**  
 March 24, 1994 Juneau, AK  
 -- Advisory Reapportionment Board --  
 Bob Pickrell, Chair, Hugh Motley, Tamara Randolph, Brenda Rees, and Orin Williams  
 Tuckerman Babcock, Director Virginia Ragle, Legal Counsel

**DETAIL INSET MAPS**

Please refer to the eight inset maps for additional detail:

**HOUSE AND SENATE DISTRICTS**

| District             | Population Deviation | AK Native | Percent | District | Population Deviation    | AK Native | Percent |       |      |
|----------------------|----------------------|-----------|---------|----------|-------------------------|-----------|---------|-------|------|
| Senate District A    | 28,528               | +3.7      | 426     | 15.5     | Senate District K       | 28,002    | +1.8    | 1773  | 6.3  |
| 1-Kotzebue           | 13,985               | +1.7      | 1847    | 13.2     | 21-East Anchorage       | 13,865    | +0.8    | 1253  | 8.8  |
| 2-Sitka-Wrangell     | 14,541               | +5.8      | 2579    | 17.7     | 22-East Anchorage       | 14,117    | +2.8    | 540   | 3.8  |
| Senate District B    | 26,919               | -2.1      | 3389    | 12.5     | Senate District L       | 27,639    | +0.5    | 1234  | 4.5  |
| 3-Centennial-Juneau  | 13,427               | -2.4      | 3266    | 16.4     | 23-Mudrook              | 14,139    | +2.8    | 554   | 4.0  |
| 4-Mendenhall Valley  | 13,482               | -1.9      | 1103    | 8.0      | 24-Mudrook-Eagle River  | 13,510    | -1.8    | 670   | 5.0  |
| Senate District C    | 26,863               | -2.4      | 6887    | 25.5     | Senate District M       | 27,545    | +0.5    | 1114  | 4.0  |
| 5-Southeast Alaska   | 13,544               | +1.5      | 4770    | 35.2     | 25-Eagle River          | 13,686    | -0.4    | 468   | 3.4  |
| 6-Kodiak             | 13,309               | -3.2      | 2027    | 15.6     | 26-Wasilla-Peters Creek | 13,590    | +1.5    | 646   | 4.6  |
| Senate District D    | 27,208               | -1.1      | 1788    | 6.6      | Senate District N       | 29,888    | +8.7    | 1406  | 4.7  |
| 7-Peters             | 13,951               | -0.7      | 923     | 6.8      | 27-Palmer               | 14,953    | +9.0    | 798   | 5.3  |
| 8-Seward-Soldona     | 13,547               | -1.5      | 865     | 6.4      | 28-Wasilla-Takeena      | 14,895    | +8.3    | 607   | 4.1  |
| Senate District E    | 26,920               | -2.1      | 1300    | 5.0      | Senate District O       | 26,489    | -3.7    | 1077  | 7.5  |
| 9-Seward-Noyah       | 13,331               | -1.2      | 944     | 7.1      | 29-University-Estac     | 13,247    | -1.7    | 840   | 6.3  |
| 10-Hullman-Watt      | 13,389               | -1.2      | 406     | 3.0      | 30-West Fairbanks       | 13,242    | -3.7    | 1137  | 8.6  |
| Senate District F    | 27,496               | +0.9      | 1343    | 4.8      | Senate District P       | 27,188    | +1.1    | 2370  | 8.7  |
| 11-West Anchorage    | 13,833               | +0.6      | 755     | 5.5      | 31-East Fairbanks       | 13,285    | -2.6    | 1842  | 14.6 |
| 12-Sand Lake         | 13,953               | -0.5      | 585     | 4.2      | 32-Idage-Warmeght       | 13,793    | +0.3    | 428   | 3.1  |
| Senate District G    | 26,008               | +1.8      | 1479    | 5.3      | Senate District Q       | 25,544    | -5.7    | 977   | 3.8  |
| 13-Central Trail     | 13,801               | -0.4      | 791     | 5.4      | 33-NE Fairbanks         | 13,138    | -4.5    | 589   | 4.5  |
| 14-Sitkaport         | 14,007               | +3.3      | 798     | 5.1      | 34-North Pole-Denali    | 12,805    | -6.9    | 388   | 3.0  |
| Senate District H    | 27,943               | +1.6      | 4355    | 15.6     | Senate District R       | 25,584    | -7.0    | 9288  | 36.3 |
| 15-Centennial-Seward | 14,023               | -2.0      | 1689    | 11.9     | 35-Delta-PWS            | 12,958    | -3.9    | 870   | 7.6  |
| 16-Ida-View-Parview  | 13,920               | +1.2      | 2686    | 19.3     | 36-Rural Interior       | 12,719    | -7.1    | 813   | 6.1  |
| Senate District I    | 27,889               | -1.4      | 1170    | 4.2      | Senate District S       | 26,454    | -3.8    | 2132  | 8.0  |
| 17-Bayshore-Diamond  | 14,131               | +2.8      | 884     | 6.3      | 37-Northwest AK         | 12,880    | -4.3    | 1026  | 7.4  |
| 18-Hillside          | 13,758               | -0.0      | 286     | 2.1      | 38-Nome-Lower Yukon     | 13,565    | -1.4    | 11076 | 81.6 |
| Senate District J    | 27,821               | +1.6      | 1747    | 6.3      | Senate District T       | 29,527    | +7.4    | 15250 | 51.7 |
| 19-Lake Otis & Tudor | 14,029               | +2.0      | 844     | 6.0      | 39-Bethel-Dillingham    | 14,507    | -6.5    | 11453 | 79.0 |
| 20-Midtown           | 13,892               | -1.0      | 903     | 6.5      | 40-Aleutians            | 15,020    | +9.2    | 3797  | 25.3 |

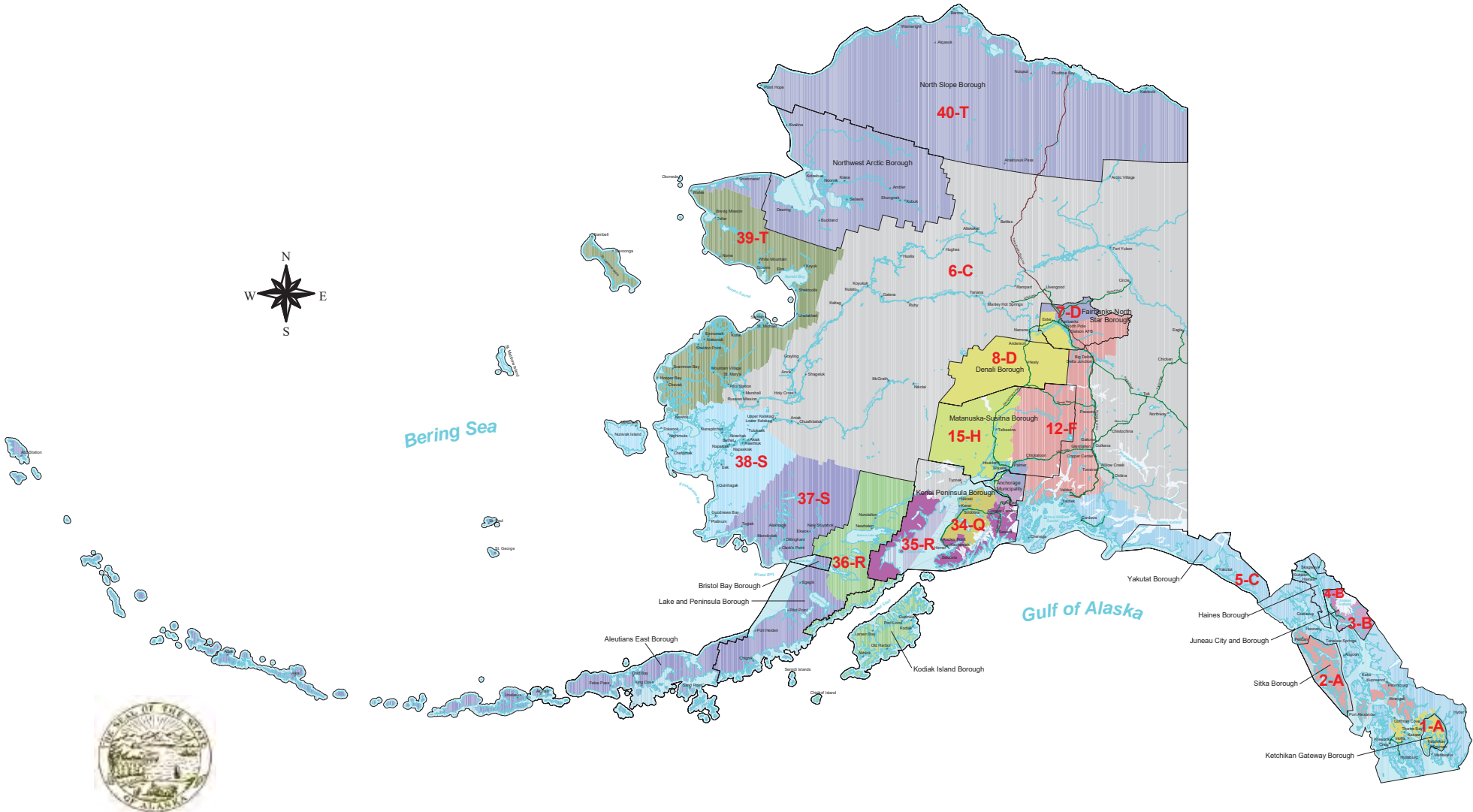
District 40 extends west to include all of the Aleutian Islands



Produced for the Governor's Office by:  
 Alaska Department of Natural Resources  
 Division of Support Services  
 Land Records Information Section



# Amended Final Redistricting Plan



Amendments adopted by Alaska Redistricting Board  
April 13 as modified on April 18, 2002

Prepared by Alaska Redistricting Board  
April 25, 2002

1 IN THE SUPREME COURT OF THE STATE OF ALASKA

2 )  
3 In the Matter of the 2021 )  
4 Redistricting Cases )  
5 (Matanuska-Susitna, S-18328) )  
6 (City of Valdez, S-18329) ) Supreme Court No. S-18332  
7 (Municipality of Skagway, S-18330) )  
8 (Alaska Redistricting Board, S-18332) ) (S-18328, S-18329, S-18330,  
 ) S-18332 consolidated)  
 )  
 Trial Court Case No. 3AN-21-08869CI

9 **CERTIFICATE OF SERVICE AND TYPEFACE**

10 I hereby certify that on March 10, 2022, a true and correct copy of the (1) Alaska  
11 Redistricting Board’s Motion for Leave to File Over-Length Response Brief,  
12 Declaration of Matthew Singer and [Proposed] Order; (2) Alaska Redistricting Board’s  
13 Response to Petitions for Review; (3) Alaska Redistricting Board’s Supplemental  
14 Excerpt of Record, Volume 1 of 1; and (4) this Certificate of Service and Typeface were  
15 served by email upon the following parties:  
16  
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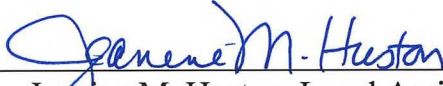
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12 I further certify that pursuant to Appellate Rule 513.5(c)(2), the typeface used in  
13 this these pleadings is Times New Roman, 13-point, proportionally spaced.

14 DATED at Anchorage, Alaska, this 10th day of March, 2022.

15 SCHWABE, WILLIAMSON & WYATT, P.C.  
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