IN THE SUPREME COURT OF THE STATE OF ALASKA

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

INTERVENORS' RESPONSE TO VALDEZ AND MATANUSKA-SUSITNA BOROUGH PETITIONS FOR REVIEW

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

Nathaniel H. Amdur-Clark
Alaska Bar No. 1411111
nathaniel@sonosky.net
Sonosky, Chambers, Sachse,
Miller & Monkman, LLP
725 East Fireweed Lane, Suite 420
Anchorage, AK 99503
Telephone: 907-258-6377
Fax: 907-272-8332

Whitney A. Leonard
Alaska Bar No. 1711064
whitney@sonosky.net
Sonosky, Chambers, Sachse,
Miller & Monkman, LLP
725 East Fireweed Lane, Suite 420
Anchorage, AK 99503
Telephone: 907-258-6377
Fax: 907-272-8332

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this _______ day of March, 2022.

MEREDITH MONTGOMERY, CLERK
Appellate Courts

By:_________________________________
Deputy Clerk

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INTRODUCTION

The Petitions for Review filed by the City of Valdez and Mark Detter (collectively, "Valdez") and the Matanuska-Susitna Borough and Michael Brown (collectively, "Mat-Su") paint a picture of the 2021 Alaska Redistricting process that would be entirely unrecognizable to any neutral observer of the Board's process or the trial conducted by the superior court. Valdez goes so far as to twist the Board's—and especially its Alaska Native members'—words and opinions to recast the Board's efforts to create socio-economically integrated districts as seeking to achieve a nefarious "nonconstitutional goal[]."[1] In reality, the Alaska Redistricting Board ("Board") chose to put the City of Valdez into a House district with a portion of the Matanuska-Susitna Borough precisely because it was focused on ensuring constitutional compliance statewide: "*None* of the other options available to the Board created greater socio-economic integration for the district that includes Valdez without sacrificing constitutional compliance elsewhere."[2]

Valdez's narrative entirely ignores the fact that the necessity of districting Valdez with the Mat-Su Borough had more to do with the population realities of Southcentral Alaska—specifically, the interaction between Cordova, Valdez, Kodiak, and the excess population of the Fairbanks North Star Borough—than it did with the communities of the rural Interior and western Alaska that Valdez repeatedly takes aim at. Contrary to Valdez and Mat-Su's assertions, the record establishes that the Board was motivated by the constitutional

[1] Valdez Petition at 66.

[2] VDZ Exc. 1969, Findings of Fact and Conclusions of Law ("FFCL") at 84 (emphasis added). The excerpts of record are cited as follows: "VDZ Exc." for Valdez's excerpts; "ARB Exc." for the Board's excerpts, and "INT Exc." for the Intervenors' excerpts filed herewith.

requirement to balance the often-competing factors of compactness, contiguity, relative socio-economic integration, and equal population for all 40 districts statewide. Although Valdez and Mat-Su would have preferred that the Board make different choices regarding the districts they dispute, each of those requested changes would have had far-reaching effects that tip the constitutional balance elsewhere in the State. The Board weighed these tradeoffs, understood their implications, and carefully considered them in reaching a final House map that satisfies the constitutional requirements statewide.

With respect to the Valdez and Mat-Su challenges, therefore, the superior court correctly determined that the Board properly weighed and applied the constitutional requirements in arriving at a final House Map that integrates the many pieces of the complex redistricting puzzle. If review is granted, this Court should affirm that decision.

GROUNDS FOR REVIEW

The Intervenors do not oppose review of the superior court's decision, recognizing the importance of a ruling from this Court on redistricting issues that hold importance for the entire State. However, the Intervenors oppose the arguments raised by Valdez's and Mat-Su's Petitions for Review on the merits.[3] The superior court properly rejected all of Valdez's and Mat-Su's claims, and if review is granted, this Court should affirm the superior court's decision with respect to the Valdez and Mat-Su cases.

STATEMENT OF FACTS

The superior court's Findings of Fact provide a clear and thorough description of the

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[3] As directed by this Court's Order of February 22, 2022, the Intervenors' response focuses on the merits of the petitioners' arguments rather than whether review should be granted.

applicable facts. To the extent that additional facts are relevant here, they are discussed in the context of the argument.

STANDARD OF REVIEW

Article VI, § 6 of the Alaska Constitution sets the substantive standards for the districts drawn by the Board. Section 6 provides, in full:

> 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.

Given the challenges posed by Alaska's vast size and unique geography, this Court has 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."[4]

Review of the Board's Map is deferential, in recognition of the authority expressly delegated to the Board under the Alaska Constitution:[5]

> We review redistricting plans in the same light as we would a regulation adopted under a delegation of authority from the legislature to an administrative agency to formulate policy and promulgate regulations. 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. We may not substitute our judgment as to the sagacity of a redistricting plan for that of the Board, as the wisdom of the plan is not a subject for review. Our review is meant to ensure that the Board's Proclamation Plan is not unreasonable and is constitutional under article VI,

[4] *Hickel v. Se. Conf.*, 846 P.2d 38, 50 (Alaska 1992), *as modified on reh'g* (Mar. 12, 1993).
[5] *See* Alaska Const. art. VI, §§ 8, 10.

section 6 of the Alaska Constitution.[6]

Importantly, "[a]nother factor that must be considered . . . , especially when analyzing claims concerning the process by which the Board conducted its business and formulated its Final Plan is the limited time in which the Board was required to conduct its business."[7] The "constitutional requirements placed extraordinary time constraints upon the Board's ability to work and required 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."[8]

And finally, "the Board does not need to make specific findings about each individual district relating to the requirements of the Alaska Constitution."[9]

ARGUMENT

I. DISTRICT 29 IS COMPACT, CONTIGUOUS, AND RELATIVELY SOCIO-ECONOMICALLY INTEGRATED.

A. District 29 is Compact and Contiguous.

Under Article VI, § 6, "[c]ontiguous territory is territory which is bordering or touching."[10] Thus, as the superior court properly recognized, "[a] district may be defined as contiguous if every part of the district is reachable from every other part without crossing the district boundary (i.e., the district is not divided into two or more discrete pieces)."[11] It is a

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[6] *In re 2011 Redistricting Cases*, 294 P.3d 1032, 1037 (Alaska 2012) (cleaned up).
[7] *In re 2001 Redistricting Cases*, No. 3AN-01-8914CI, 2002 WL 34119573, at 27 (Alaska Super. Feb. 01, 2002), *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.").
[8] *Id.*
[9] *In re 2011 Redistricting Cases*, 294 P.3d at 1038 (capitalization altered).
[10] *Hickel*, 846 P.2d at 45.
[11] *Id.* (alteration in original) (citation omitted); *see* VDZ Exc. 1912-1913, FFCL at 27-28.

visual concept.[12]

Given Alaska's "numerous archipelagos," "a contiguous district may contain some amount of open sea," within the limits imposed by the compactness and socio-economic integration requirements.[13] By the same principle, a district that comprises a single land mass on a map is contiguous for constitutional purposes, even if transportation barriers such as mountains or waterways preclude travel between some parts of the district.[14] "Contiguity is not dependent on the vagaries of existing transportation systems,"[15] and indeed in Alaska it will often be the case that convenient transportation connections are necessarily absent.

"The compactness inquiry . . . looks to the shape of a district."[16] As the superior court recognized, "[c]ompact" in the redistricting context "means having a small perimeter in relation to the area encompassed."[17] Compact districts generally "should not yield 'bizarre designs.'"[18] However, this Court has recognized that the Article VI, § 6 factors will often be in tension with each other, and thus some reduction in compactness may be justified to "further . . . [an]other requirement of article VI, section 6."[19]

Recognizing the realities of Alaska's geography, "[w]hen analyzing compactness, the court should 'look to the relative compactness of proposed and possible districts in

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[12] *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 59.
[13] *Id.* at 17.
[14]*Id.* at 59.
[15] *Id.*
[16] *Hickel*, 846 P.2d at 45.
[17] *Id.* (citation omitted); *see* VDZ Exc. 1913, FFCL at 28.
[18] *Hickel*, 846 P.2d at 45 (citation omitted).
[19] *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 *not* necessary to further any of the other § 6 requirements. *Id.*

determining whether a district is sufficiently compact.'"[20]

By the same token, given that parts of Alaska include large, sparsely populated areas and vast roadless regions, "neither size nor lack of direct road access makes a district unconstitutionally non-compact."[21] Indeed, "[d]istricts within Alaska have often been the size of several States in the Lower 48," and their size alone does not make them noncompact.[22]

Here, the superior court properly found that District 29 is both compact and contiguous.[23] As an initial matter, the superior court correctly found that "it is undisputed that District 29 is a single land mass in which all portions of the district are 'bordering or touching' another portion, and 'the district is not divided into two or more discrete pieces.'"[24] In arguing that District 29 is not compact or contiguous, Mat-Su asserts that District 29 "connects" Valdez to the rest of the district "with corridors of land"[25]— exactly the definition of contiguity. There is no serious dispute that District 29 is contiguous.

The superior court also correctly found that District 29 is compact. On appeal, much as it did below, Mat-Su primarily argues that the inability to drive from one portion of District 29 to another without leaving the district makes the district non-compact.[26] Just as there is no

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[20] *In re 2011 Redistricting Cases*, No. 4FA-11-2209CI, 2013 WL 6074059, at *19 (Alaska Super. Nov. 18, 2013), *pet. for review denied*, No. S-15422 (Jan. 23, 2014) (quoting *Hickel*, 846 P.2d at 45).

[21] *In re 2001 Redistricting Cases*, 47 P.3d 1089, 1092 (Alaska 2002).

[22] *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 60-61.

[23] VDZ Exc. 1958-1961, FFCL at 73-76.

[24] VDZ Ex. 1959, FFCL at 74 (quoting *Hickel*, 846 P.2d at 45).

[25] Mat-Su Petition at 8.

[26] Mat-Su Petition at 9. In addition, Mat-Su's assertion that under the 2013 Redistricting Proclamation's "District 9[,] the transportation connection between [the Mat-Su Borough] and Valdez was included all the way along the Richardson Highway and the Glenn Highway," *id.*, is factually wrong. It is not possible to drive from Valdez to the portions of the 2013 District 9 without leaving the district because portions of the Richardson Highway are included in

support for "transportation contiguity" in Alaska law,[27] there is no such thing as "transportation compactness." Instead, as the superior court reasonably found, the shape of District 29 stems from "the very nature of Alaska's natural landscape."[28]

Valdez does not challenge the compactness or contiguity of District 29—and with good reason; there is no serious dispute on these issues.[29] Mat-Su's challenges to the compactness and contiguity of District 29 have no merit.

B. District 29 is Relatively Socio-Economically Integrated within the Meaning of § 6.

Article VI, § 6 requires each district to contain "as nearly as practicable a relatively integrated socio-economic area." Socio-economic integration reflects the idea that "where people live together and work together and earn their living together, where people do that, they should be logically grouped that way."[30] This principle must be applied within the realities of Alaska's geography, both physical and demographic. The word "relatively" preceding the words "integrated socio-economic area," "means that [the courts] compare proposed districts to other previously existing and proposed districts as well as principal alternative districts to determine if socio-economic links are sufficient."[31]

To determine whether communities within a district are adequately linked for

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District 6, not 9. *See* Jan. 24 Trial Tr. 294:9-23 (Scheidt Cross); *see* VDZ Exc. 1, ARB001590 (District 9 in 2013 Proclamation).

[27] *See* VDZ Exc. 1959-1960, FFCL 74-75 (analyzing *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 59.).

[28] VDZ Exc. 1961, FFCL at 76.

[29] Consistent with prior precedent on contiguity, the superior court properly rejected Valdez's "transportation contiguity" theory. VDZ Exc. 1959–1960, FFCL at 74-75; *see In re 2001 Redistricting Cases*, 2002 WL 34119573, at 59.

[30] *Hickel*, 846 P.2d at 46 (cleaned up).

[31] *Id.* at 47.

constitutional purposes, this Court has looked at a variety of factors, 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, linkage "by daily airline flights," and dependence on a common hub or city "for transportation, entertainment, news and professional services."[32] Within a borough, all communities 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.'"[33]

As the superior court correctly noted, Alaska courts have also recognized that regional boundaries as defined under the Alaska Native Claims Settlement Act ("ANCSA") "are indicative of socio-economic integration and may be used to guide redistricting decisions, and they may even justify some degree of population deviation."[34]

The degree and manner of socio-economic integration may, by necessity, differ in different regions of the state. Thus, "[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."[35] Finally, socioeconomic integration "is given some flexibility by the constitution" though "the flexibility that this clause provides should be used

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[32] *Hickel*, 846 P.2d at 46-47; *see also In re 2001 Redistricting Cases*, 2002 WL 34119573, at 19 (citing *Hickel*, 846 P.2d at 46).
[33] *Hickel*, 846 P.2d at 51 (quoting AS 29.05.031).
[34] VDZ Exc. 1979-1980, FFCL at 94-95 (citing *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1359 n.10 (Alaska 1987); *Hickel*, 846 P.2d at 48); *see also Groh v. Egan*, 526 P.2d 863, 877 (Alaska 1974).
[35] *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 60; *see* VDZ Exc. 1981, FFCL at 96.

only to maximize the other constitutional requirements of contiguity and compactness."[36]

Applying those standards here, the superior court properly found that District 29 is relatively socio-economically integrated for constitutional purposes. Valdez's and Mat-Su's challenge to the socio-economic integration of District 29 was a major focus of their argument before the superior court, where they introduced evidence from several witnesses that Valdez may be *more* socio-economically integrated with the Richardson Highway corridor than with the Mat-Su Borough. As the superior court noted, neither the Board nor the Intervenors challenge the premise that Valdez is socio-economically integrated with the Richardson Highway or with Prince William Sound.[37] However, the court explained:

> Alaska law is abundantly 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. Specifically, courts will find a district unconstitutionally lacking in relative socio-economic integration if "[t]he record is simply devoid of significant social and economic interaction among the communities within an election district."[38]

In other words, an adequate level of socio-economic integration must exist, but beyond that, there is no requirement that integration be *maximized*, as Valdez would have it. And Valdez points to no case law supporting such a requirement. For its part, Mat-Su directly acknowledges that there is "nothing in case law that provides for a right to be placed together with . . . areas in which a location may be *more* socioeconomically integrated," as long as a

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[36] *Hickel*, 846 P.2d at 45 n.10; *see* VDZ Exc. 1962, FFCL at 77.
[37] VDZ Exc. 1964, FFCL at 79.
[38] VDZ Exc. 1964, FFCL at 79 (first citing *In re: 2011 Redistricting Cases*, 2013 WL 6074059, at *27; then quoting *Hickel*, 846 P.2d at 46).

community "is also socioeconomically integrated" with the district in which it is placed.[39] If adequate ties exist, a district is relatively socio-economically integrated for constitutional purposes. And those ties exist here.

The Petitioners continue to argue that Valdez does not share any socio-economic ties to the Mat-Su Borough, but—as the superior court correctly found—that argument ignores the evidence. The superior court pointed to numerous socio-economic links between the Mat-Su Borough and Valdez, including "geographic proximity and connection via the road system,"[40] "shared interests in the outdoor recreation industry" based on testimony from Valdez's own witnesses,[41] and "common hunting and fishing areas in the region around Lake Louise, Klutina Lake, and Eureka,"[42] in addition to the fact that "Mat-Su residents also fish in Valdez,"[43] again based on testimony from Mat-Su's and Valdez's witnesses. The superior court also found it significant that from Valdez, the nearest hospital, car dealerships, and big-box stores are all located in the Mat-Su Borough.[44] The court correctly noted Valdez and the

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[39] Mat-Su Petition at 10.

[40] VDZ Exc. 1964-1965, FFCL at 79-80 (citing ARB Exc. 513, Binkley Aff. ¶ 26; Jan. 24, 2022 Trial Tr. 215:2-8 (Brown cross Q: "[T]here's a road that connects Eastern Mat-Su to Valdez, correct?" A: "Yes, sir.")).

[41] VDZ Exc. 1965, FFCL at 80 (citing Jan. 24, 2022 Trial Tr. 179:19-180:15, 184:25-185:2 (DeVries cross); 263:14-17 (Scheidt cross); 283:10-12 (Scheidt cross discussing helicopter skiing)).

[42] VDZ Exc. 1965, FFCL at 80 (citing Jan. 24, 2022 Trial Tr. 180:16-20 (DeVries cross); 219:5-13 (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. 481:5-20 (Duval hunting in Eureka and recreating at Klutina Lake)).

[43] VDZ Exc. 1965, FFCL at 80 n.454 (citing Jan. 24, 2022 Trial Tr. 218:24-219:4 (Brown cross)).

[44] VDZ Exc. 1965, FFCL at 80 (citing Jan. 24, 2022 Trial Tr. 183:5-18 (Devries cross discussing Palmer amenities as the closest to Valdez)).

Mat-Su Borough's "shared ties to the oil industry,"[45] and the fact that sports teams from Valdez also "compete against sports teams in the Mat-Su Borough."[46]

In addition to these indicators of frequent economic and social interaction, the superior court also correctly found the evidence established that Valdez and Mat-Su have shared interests on key issues. For instance, "Valdez and Mat-Su . . . share an interest in maintenance and development of the state highway system,"[47] and because "[t]he communities in District 29" have school districts that are funded "in part from a local tax base," they "have a shared interest in debt reimbursement from the legislature."[48]

Although Valdez and Mat-Su dispute the significance of this evidence, these are precisely the types of connections that this Court has relied upon in evaluating socio-economic integration in the past.[49] Based on the extensive evidence presented at trial, which the superior court carefully considered, it cannot be said that "the record is simply devoid of significant social and economic interaction among the communities within" District 29.[50] Accordingly, the superior court was correct in finding that the ties between Valdez and the Mat-Su Borough "are constitutionally sufficient to establish *relative* socio-economic integration."[51] Given that

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[45] VDZ Exc. 1965, FFCL at 80 (citing Jan. 24, 2022 Trial Tr. 178:7-13 (DeVries cross); Jan. 24, 2022 Trial Tr. 218:9-19 (Brown cross)).
[46] VDZ Exc. 1965, FFCL at 80 (citing ARB Exc. 630, Torkelson Aff. ¶ 53; Jan. 24, 2022 Trial Tr. 260:15-20, 261:12-262:14 (Scheidt cross)).
[47] VDZ Exc. 1965, FFCL at 80 (citing ARB Exc. 513, Binkley Aff. ¶ 26; Jan. 24, 2022 Trial Tr. 182:10-14 (DeVries cross); 283:6-9 (Scheidt cross)).
[48] VDZ Exc. 1965, FFCL at 80 (citing ARB Exc. 513-14, Binkley Aff. ¶ 27; Jan. 24, 2022 Trial Tr. 182:15-24 (DeVries cross discussing Mat-Su Borough home rule school district); 258:6-10 (Scheidt cross)).
[49] *See Hickel*, 846 P.2d at 46-47; *see also In re 2001 Redistricting Cases*, 2002 WL 34119573, at 19 (citing *Hickel*, 846 P.2d at 46).
[50] *Hickel*, 846 P.2d at 46 (cleaned up) (citation omitted).
[51] VDZ Exc. 1965, FFCL at 80.

the Court "may not substitute [its] judgment as to the sagacity of a redistricting plan for that of the Board,"[52] the Court must uphold a district if it satisfies the constitutional standards. And that is the case here.

It was also proper for both the Board and the superior court to rely on the configuration of "previously existing" districts in assessing relative socio-economic integration, as specifically instructed by this Court in *Hickel*.[53] As the superior court found, "Valdez and the Mat-Su Borough have been districted together in the past two redistricting cycles, and the courts have upheld those districts."[54] Valdez now argues that District 29 is different from prior districts because Valdez is no longer paired with other communities on the Richardson Highway.[55] But the point is that it *remains* paired with the eastern portion of the Mat-Su Borough, a region with which it shared sufficient socio-economic ties to be joined in a shared district during the past two redistricting cycles.[56] The evidence shows that "the majority of the residents of District 9 under the 2013 Proclamation will be represented by District 29 under the 2021 Proclamation."[57] And, as the superior court again correctly noted, the former District 9 combining Valdez and the Mat-Su Borough was challenged and upheld.[58]

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[52] *In re 2011 Redistricting Cases*, 294 P.3d at 1037 (citing *Kenai Peninsula Borough*, 743 P.2d at 1357-58).
[53] *Hickel*, 846 P.2d at 47.
[54] VDZ Exc. 1965-1966, FFCL at 80-81 (citing *In re: 2011 Redistricting Cases*, 2013 WL 6074059, at *12-17; *In re 2001 Redistricting Cases*, 47 P.3d 1089).
[55] Valdez Petition at 52-55.
[56] *Compare* VDZ Exc. 1168, ARB000047 (2021 Proclamation, District 29) *with* ARB001590 (2013 Proclamation, District 9) *and with* INT Exc. 114, Scheidt Aff. Ex. C at 2 (2002 Proclamation, District 12).
[57] VDZ Exc. 1966, FFCL at 81 (citing INT Exc. 059, ARB000116 (House core constituency report); ARB Exc. 629-30, Torkelson Aff. ¶ 52).
[58] VDZ Exc. 1965-1966, FFCL at 80-81; *see In re 2011 Redistricting Cases*, 2013 WL 6074059, at *12-17 (Alaska Super. Nov. 18, 2013). Valdez seems to suggest that it was somehow improper

The Board properly relied on that fact when making the difficult decision to retain the configuration of Valdez and portions of the Mat-Su Borough in a district together, noting that "it's already been established that Valdez is socioeconomically compatible with the Mat-Su" and "there is preceden[t] for including Valdez in the Mat-Su."[59]

The superior court also correctly found that Valdez and the Mat-Su Borough are further linked "because both communities are socio-economically integrated with Anchorage,"[60] as the courts have held[61] and as trial testimony confirmed.[62] As the superior court explained, this Court's decision in the 2001 litigation concluded that the Mat-Su Borough and Anchorage "could be treated as one and the same for purposes of socio-economic integration," and that there also existed "sufficient socio-economic integration to the north, south, and east of the *Mat-Su-Anchorage area*."[63] Valdez is directly east of Mat-Su and Anchorage; thus the 2001 decision effectively acknowledged Valdez's sufficient social and economic ties to the urban populations of southcentral Alaska. Although the superior court's

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for counsel for the Intervenors to share publicly available case law with Member Borromeo, Valdez Petition at 26, 28, which is facially absurd. As discussed further at 38-39, *infra*, there is no statute, case law, or any other precedent limiting Board members' communication with members of the public. In fact, the constitutional redistricting process requires that the Board seek out and receive input from the public. Moreover, that a Board member sought clarification about specific case citations raised in public testimony simply cannot diminish the precedential value of that case law or undermine the undisputed fact that the courts have upheld Valdez's pairing with the Mat-Su Borough.

[59] VDZ Exc. 830, ARB009207 (Nov. 4 Tr. at 37:2-9); *see* VDZ Exc. 954, ARB009331 (Nov. 4 Tr. at 161:19-25); ARB Exc. 514, Binkley Aff. ¶ 28; ARB Exc. 554, Borromeo Aff. ¶ 22.

[60] VDZ Exc. 1967-1968, FFCL at 82-83 (citing *Kenai Peninsula Borough*, 743 P.2d at 1363).

[61] *See, e.g.*, *In Re 2001 Redistricting Cases*, 2002 WL 34119573, at 72-77.

[62] VDZ Exc. 1968, FFCL at 83 (citing Jan. 24, 2022 Trial Tr. 255:4-10, 266:22-24 (Scheidt cross); *id.* at 178:23-179: 9 (DeVries cross); *id.* at 224:3-225:1 (Brown cross).

[63] VDZ Exc. 1968, FFCL at 83 (emphasis added) (citing *In re 2001 Redistricting Cases*, 44 P.3d at 144 n.7).

decision did not rest heavily on this point, it was reasonable for the court to conclude that their "shared ties to Anchorage further strengthen the socio-economic integration of Valdez and the Mat-Su Borough."[64]

Valdez next argues that only the Board's "on-the-record" discussions in public meetings matter for determining whether the Board considered constitutional factors or alternatives for particular districts, and that the Board did not specifically discuss the socio-economic links between Valdez and the Mat-Su Borough in such a meeting. But the Board need not make specific findings with regard to the constitutionality of each district, let alone each constitutional factor for each district.[65] The practical reality of completing the redistricting task under the "extraordinary time constraints"[66] imposed by the Alaska Constitution is that the Board's deliberative process will include conversations among Board members (and conversations between Board members and members of the public) that will not be reflected in the transcripts of public meetings. Moreover, the Board members *did* discuss these factors and connections.[67] Given the ample evidence of socio-economic links between Valdez and the Mat-Su Borough, the superior court correctly found the evidence supports its conclusion that District 29 is relatively integrated, regardless of whether that

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[64] VDZ Exc. at 1968, FFCL at 83.
[65] *In re 2011 Redistricting Cases*, 294 P.3d at 1038.
[66] *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 27.
[67] Jan. 26 Trial Tr. 840:14 (Borromeo cross) ("We had those discussions as a board."); Jan. 27 Trial Tr. 1019:5-17 (Marcum cross) ("We discussed many socioeconomic factors of Valdez and the Interior and with the Mat-Su. . . . I don't recall which of these discussions necessarily happened when we were sitting at the board table versus when we were, you know, sitting in work sessions versus when we were sitting in a public testimony hearing."); Jan. 27 Trial Tr. 1138:10-1140:1 (Binkley redirect) (describing links he considered); Torkelson Depo Tr. 135:2-10 (recalling Board members discussing Valdez).

evidence is found in the Board's record or the trial record.[68]

Finally, the superior court correctly found that the Board acted reasonably in "determin[ing] that placement of Valdez with the Mat-Su Borough was the best of the available options *in the context of the entire 40-district map*"[69]—which is the standard against which the Board's decisions must be judged in its effort to "balanc[e] the 'constitutional troika of compactness, contiguity, and socio-economic integration.'"[70] At trial, the Board members described the difficulty of "weigh[ing] all of the different factors that go into a 40-district map" to harmonize the § 6 requirements to the maximum extent practicable statewide.[71] This Court has recognized as much, noting "[t]he challenge of creating a statewide plan that balances multiple and conflicting constitutional requirements," a task that "is made even more difficult by the very short time-frame mandated by article VI, section 10 of the Alaska Constitution."[72] As much as Valdez would have liked to have been districted with the other communities on the Richardson Highway, the superior court correctly concluded that "none of the other options available to the Board created greater socio-economic integration for the district that includes Valdez without sacrificing constitutional compliance elsewhere."[73] Thus, looking to these "principal alternative districts to determine if socio-economic links are sufficient,"[74] the

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[68] Indeed, the relevance of facts presented at trial is confirmed by the court rule governing the redistricting litigation, which allows the superior court to consider "such additional evidence as the court, in its discretion, may permit." Alaska R. Civ. P. 90.8(d).
[69] VDZ Exc. 1968, FFCL at 83.
[70] VDZ Exc. 1968, FFCL at 83 (quoting *In re: 2011 Redistricting Cases*, 2013 WL 6074059, at *7).
[71] Jan. 26 Trial Tr. at 818:12-14 (Borromeo cross); *see also id.* at 873:13-22 ("[O]nly when you map a full 40 do you realize how difficult the process is.").
[72] *In re 2001 Redistricting Cases*, 44 P.3d at 147.
[73] VDZ Exc. 1969, FFCL at 84.
[74] *Hickel*, 846 P.2d at 47.

superior court properly concluded that the Board had chosen reasonably.

In reaching that conclusion, the superior court carefully analyzed each of the options before the Board, as the Board itself had done.[75] The court correctly recognized that the realities of the population dynamics in the 2021 redistricting cycle significantly limited the range of available options for the Board, particularly the fact that it is "not mathematically possible" to combine Valdez, Cordova, and the Kodiak Borough into a district together because they had too much population for a single district,[76] and that the Fairbanks North Star Borough ("FNSB") "would either need to be significantly over-populated or . . . would need to shed approximately 4,000 people into an adjacent district" given that the Borough's population was equivalent to 5.2 House districts.[77]

The proposed maps considered by the Board—and in turn considered by the superior court—showed essentially all of the available permutations for dealing with these two challenges. The first option is to combine Valdez and Kodiak, as both the AFFER/Calista

[75] As described by the superior court, "The primary options considered by the Board are represented by the six proposed maps the Board took on its public hearing 'road show,' including "'Board Composite v.3,' 'Board Composite v.4,' and the third-party maps prepared by Alaskans for Fair Redistricting ("AFFR"), Alaskans for Fair and Equitable Redistricting/Calista Corporation ("AFFER/Calista"), the Senate Minority Caucus ("SMC"), and the Coalition of Doyon, Limited; Tanana Chiefs Conference; Fairbanks Native Association; Ahtna, Inc.; and Sealaska ("Doyon Coalition")." VDZ Exc. 1969, FFCL at 84 (footnotes omitted). The superior court also considered the partial map that Valdez itself submitted for the Board's consideration on October 19th, part-way through the redistricting process. VDZ Exc. 1969-1970, FFCL at 84-85.

[76] VDZ Exc. 1970, FFCL at 85 (quoting Jan. 26 Trial Tr. 799:7-25; and citing ARB008409 (Sept. 17 Meeting Tr. 107:18-24)).

[77] VDZ Exc. 1970, FFCL at 85 (citing Jan. 27 Trial Tr. 1131:24-1132:11 (Binkley redirect)). When combined with "Valdez's remote location and the realities of geography, including an ocean border to its south," the superior court aptly noted that the Board's available options were "further constrain[ed]." VDZ Exc. 1970, FFCL at 85.

and SMC maps did.[78] As the superior court recognized, this choice necessarily leaves Cordova in a rural Interior district with which it shares no socioeconomic ties whatsoever.[79] When discussing AFFER's proposed district that combined Cordova, Arctic Village, and Kaltag, Mat-Su's own witness described these communities as "very different."[80] The superior court correctly concluded that "[w]hen faced with the option of combining Cordova with Arctic Village or Valdez with the Mat-Su Borough, the Board concluded that the Mat-Su/Valdez pairing was the better alternative."[81] That is the very essence of the Constitution's "relative" socio-economic integration requirement.

The second option is combining Cordova and Valdez, which was proposed by the "Option 1" map that Valdez presented.[82] The superior court correctly concluded that this

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[78] *See* INT Exc. 011, ARB001289 (AFFER/Calista Proposed District 36); INT Exc. 012, ARB001520 (SMC Proposed District 32).

[79] *See* INT Exc. 010, ARB001258 (AFFER/Calista Proposed District 5); INT Exc. 023, ARB001494 (SMC Proposed District 6). Valdez now suggests that the Board should also have considered combining Cordova with a Southeast Alaska district. Valdez Petition at 9, 12, 68-69. But Valdez waived this argument by failing to raise it in the superior court. And in any event, it is not a constitutionally viable option here, because it "would require significantly overpopulating Southeast." VDZ Exc. 1970, FFCL at 85 n.495. As the superior court explained, this Court's precedent makes clear that combining Cordova with Southeast is permissible only if it is necessary "to avoid unconstitutionally high population deviations," whereas here (with the 2021 population numbers) such a combination would have *increased* population deviations. VDZ Exc. 1970, FFCL at 85 n.495 (first citing *Groh*, 526 P.2d at 879; then citing *Carpenter v. Hammond*, 667 P.2d 1204, 1215 (Alaska 1983); and then citing *In re 2001 Redistricting Cases*, 44 P.3d at 143).

[80] Jan. 24 Trial Tr. 395:11-396:1 (Colligan cross).

[81] VDZ Exc. 1971, FFCL at 86 (citing Jan. 26 Trial Tr. 801:24-802:2 (Borromeo cross) ("Q: . . . what do you think is more socioeconomically integrated, Valdez and the Mat-Su or Cordova and Arctic Village? A: Valdez and the Mat-Su.").

[82] *See* INT Exc. 013-014, ARB004104-ARB004105 (Valdez Option 1 map). The "Valdez Alternative 3" map that Valdez's expert prepared for this litigation also used this option, but that map had significant constitutional flaws and Valdez does not rely on it on appeal. *See* VDZ Exc. 1969, FFCL at 84 n.490.

map "creates constitutional issues across several regions" and thus it was not a viable—and certainly not a constitutionally preferable—option for the Board.[83] This map places Valdez and Cordova in a district running up the Richardson Highway and into the southern portion of the FNSB. Due to the population in those communities (including the Richardson Highway corridor), this district can accommodate only half of the FNSB's excess population. Valdez Option 1 therefore puts the remainder of FNSB's excess population into a separate district.[84] The superior court correctly concluded that "[t]his runs counter to the Alaska Supreme Court's instruction in *Hickel* that 'where possible, all of a municipality's [or borough's] excess population should go to one other district,'" and that it was therefore "reasonable for the Board to determine that Valdez Option 1 was not a viable option in this respect."[85]

Valdez now argues that the Board misinterpreted this precedent and unreasonably constrained its options by failing to consider options that split FNSB's excess population into multiple districts. Valdez interprets this precedent through the lens of proportionality, such that (in Valdez's view) splitting excess population into multiple districts is permissible so long as the borough or municipality still controls the number of seats that it is entitled to control.[86] But this Court's instructions are exceedingly clear: "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."[87] The *Hickel* Court went on to explain that "[d]ividing the municipality's

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[83] VDZ Exc. 1971-1972, FFCL at 86-87.
[84] VDZ Exc. 1971, FFCL at 86.
[85] VDZ Exc. 1971-1972, FFCL at 86-87 (second alteration in original) (quoting *Hickel*, 846 P.2d at 52).
[86] Valdez Petition at 44-47.
[87] *Hickel*, 846 P.2d at 52.

[or borough'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."[88] Thus, this Court's holding on this point is not just about the number of districts that a borough or municipality is entitled to control; it is speaking to the strength of a group's voice within a district even if they do *not* control the district. Under this precedent, properly understood, the excess population of the FNSB must be kept together if possible—the Board is not free to do whatever it wants with that population so long as it maintains five House seats for FNSB, as Valdez has suggested. Multiple other maps, including the Board's final map, succeeded in placing FNSB's excess population into a single district, demonstrating that it is clearly possible. Accordingly, it was entirely reasonable for the Board to reject options that split the FNSB's excess population into multiple other districts as Valdez Option 1 did.

The superior court was also correct in concluding that "Valdez Option 1 also created problems for the socio-economic integration of several districts."[89] Valdez's map placed Cordova (a coastal, non-road system Prince William Sound community whose "hub" is Anchorage) in a district composed primarily of road system communities along the Richardson Highway and Eielson Air Force Base within the FNSB,[90] rather than with its current pairing with Kodiak and other coastal communities in Southcentral Alaska. But the record in this case provides "no evidence of socio-economic integration between" Cordova and Fairbanks.[91]

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[88] *Id.* at 52 n.26.
[89] VDZ Exc. 1972, FFCL at 87.
[90] INT Exc. 013, ARB004104.
[91] VDZ Exc. 1972, FFCL at 87.

Rather, the evidence before the Board (and the Court) points in the exact opposite direction: the people of Cordova found the idea of being districted with Fairbanks "unfathomable."[92]

Valdez's preferred district also would have necessitated a wholesale departure from socio-economic integration in western Alaska, including a district stretching from the Cup'ik communities of Nunivak Island in Southwest Alaska all the way to the Brooks Range and the communities of the northern Interior.[93] At trial, Valdez was not able to present *any* evidence to support the socio-economic integration of that district.[94] By any measure, Mekoryuk is less socio-economically integrated with the villages of the northern Interior than Valdez is with the Mat-Su Borough. It was therefore reasonable for the Board to conclude "that Valdez Option 1 was not a viable or preferable alternative."[95]

As the superior court correctly explained, the final option "for the Valdez-Cordova-Kodiak triangle" would be to combine Cordova and Kodiak.[96] The court continued:

> That in turn would mean that Valdez is districted either with the Richardson Highway *and* the Interior [as proposed by AFFR] or with the Mat-Su Borough [as proposed in Board Composite v.4]. The Board considered maps that used both of these approaches, and ultimately it reasonably determined that the Valdez/Mat-Su combination was the best available option. Faced with the question of whether Valdez was more socio-economically integrated with the Mat-Su Borough or with Arctic Village and other communities deep in the

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[92] VDZ Exc. 1972, FFCL at 87 (first quoting Jan. 26 Trial Tr. 809:12-16 (Borromeo cross) (summarizing public comment from the Cordova hearing); and then citing INT Exc. 042, ARB001937 (Cordova resident testifying that being districted with the Interior had been "nightmare-ish" for Cordova, "as there were no socio-economic ties with the Delta Junction and Tok."); INT Exc. 043, ARB003003 (Cordova Mayor testifying that Cordova is best placed in a coastal district with Kodiak)).
[93] *See* INT Exc. 013, ARB004104.
[94] Jan. 25 Trial Tr. at 534:10-19 (Pierce cross).
[95] VDZ Exc. 1972, FFCL at 87 (citing ARB Exc. 540-42, Bahnke Aff. ¶¶ 23-25 (explaining constitutional problems with Valdez Option 1); ARB Exc. 516, Binkley Aff. ¶ 34 (similar); ARB Exc. 568-69, Borromeo Aff. ¶¶ 39-40 (similar)).
[96] VDZ Exc. 1972, FFCL at 87 n.505.

Interior, the Board chose to place Valdez and Mat-Su together. That conclusion was not unreasonable.[97]

There is ample evidence supporting the superior court's conclusion that the Mat-Su/Valdez pairing was reasonable. As noted, there are long-established ties between the Mat-Su Borough and Valdez, and the two communities have shared a House district for decades. On the other hand, the AFFR map proposed placing Valdez in a district containing some of the Richardson highway communities, Eielson Airforce Base, other population from the FNSB, and a vast swath of the northern Interior.[98] "The record is simply devoid of significant social and economic interaction"[99] between Valdez and the rural communities of the northern Interior.

And, as the superior court found, "AFFR's Valdez-to-Arctic Village district also created ripple effects elsewhere"[100] that would have *reduced* the overall socio-economic integration of the statewide map. As noted, "the only district that could accommodate the rest of the rural Interior villages was [AFFR's] proposed District 39, which would stretch from St. Lawrence Island to the border of the FNSB in the Interior."[101] But the record before the Board and the Court is replete with evidence regarding the havoc such a district would bring to the socio-economic integration of the western Alaska and Interior districts.[102]

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[97] VDZ Exc. 1972, FFCL at 87 n.505.
[98] *See* INT Exc. 021, ARB001336 (AFFR Proposed District 36).
[99] *Hickel*, 846 P.2d at 46 (quoting *Carpenter*, 667 P.2d at 1215 (cleaned up)).
[100] VDZ Exc. 1972, FFCL at 87 n.506.
[101] VDZ Exc. 1972, FFCL at 87 n.506.
[102] INT Exc. 030, ARB003346 (testimony from McGrath resident that "I support the redistricting board map 4 because it gets us away from the coastal villages that have different priorities than the interior villages. It makes sense to group the interior villages together."); INT Exc. 028, ARB003998 (testimony from Tanana Chiefs Conference chairman that "his people live on the river and must be represented on the river separate from the coast"); INT

The Board determined that its proposed v.3 map was not a preferable option because (a) it combined Valdez into the rural Interior district but there was no evidence of socio-economic integration between Valdez and the rural northern and western Interior villages,[103] and (b) it significantly overpopulated the FNSB districts.[104] The FNSB has enough population for 5.2 House districts, meaning it could fill five districts and then would have approximately 4,000 "excess" residents left over. In the v.3 map, the five Fairbanks districts were each over-populated by between 4 and 5% in an effort to accommodate this excess population without

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Exc. 008, ARB003354 (testimony from Nulato Tribal Council stating that "it is not fair to lump all Alaska Natives together" and urging the Board to adopt a map that "give[s] deference to ANCSA regions, river systems, and local government boundaries while maintaining our cultural and familial connections"); VDZ Exc. 145-146, ARB008988-8989 (Nov. 2 Meeting Tr. at 58:7-17, 59:17-24) (Members Bahnke and Borromeo discussing public comment at the Nome public hearing, reflecting that the communities on the coast are not integrated with the Interior); INT Exc. 065-066, Wright Aff. ¶ 18 ("The economic conditions and subsistence livelihoods within these western Interior villages differs significantly from the areas on the coast and lower Yukon."); INT Exc. 078, Otte Aff. ¶ 27 ("[t]he art, food, and other cultural traditions of the Doyon/TCC region and Ahtna regions are very similar. They are very different, on the other hand, from those of the coastal regions of the State."); Jan. 26 Trial Tr. at 914:25-915: 9 (Wright cross) ("We still have a lot of cultural connections you know, we're all Athabascan speaking people, and . . . we have an overarching kinship structure that unites us."); *id.* at 916:10-917:8 (discussing "the reliance on the marine mammals along the coast" whereas "our interior villages don't have that same . . . diet"); INT Exc. 078, Otte Aff. ¶ 27 ("For example, the Doyon/TCC and Ahtna communities subsist on similar diets of freshwater-caught fish, moose and caribou. Southwest and western Alaska subsists on a diet of seal, fish, sea otter and whale."); *see also*, INT Exc. 016-017, ARB001793-ARB001794; VDZ Exc. 16-17, ARB002086-ARB002087; VDZ Exc. 4-7, ARB002257-ARB002260; VDZ Exc. 8-15, ARB002261-ARB002268; INT Exc. 040-041, ARB002269-ARB002270; INT Exc. 025-026, ARB002330-ARB002331; INT Exc. 037-039, ARB003650-ARB003652; VDZ Exc. 21, ARB004041 (additional public testimony discussing the integration of the Interior as distinct from the coast).

[103] INT Exc. 045, ARB009330 (Nov. 4 Tr. at 160:5-11) (Board member discussion of serious concerns about the socio-economic integration of a proposed district combining coastal Valdez with rural villages in the heart of the Interior like Holy Cross, Allakaket, and McGrath.)

[104] Neither Valdez nor Mat-Su argue that the Board should have adopted Board Version 3's proposed District 36.

breaking the borough boundary.[105] But based on public testimony,[106] the Board ultimately believed that these deviations were too high, which necessitated breaking the borough boundary.[107]

Mat-Su now also suggests that the Board should have considered whether a smaller number of people could be moved out of the FNSB, which might have allowed for different configurations elsewhere. But none of the Board's maps or the third-party maps had proposed such an option, and Mat-Su has provided no evidence that such an option would have been possible or practicable while also maintaining compliance with the other constitutional factors.

Taken together, the evidence demonstrates that the Board carefully considered and weighed the available options. It did not take lightly the decision about whether to maintain the pairing of Valdez with the Mat-Su. As discussed further below, the Board 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. As the superior court noted, "Board members testified that none of the other proposed maps were *constitutionally better* than the map drawn by the Board, and the evidence supports this conclusion."[108] In Member Borromeo's words, Valdez "couldn't tell us how they would populate their own district, let alone the other 39, in a way that was better than the option that the board ultimately

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[105] INT Exc. 009, ARB001341 (Districts 31-35 in Population tabulation for Board Composite v.3); ARB Exc. 058-062, ARB010749-ARB010753 (Districts 31-35 in Board Composite v.1).
[106] *See, e.g.*, INT Exc. 033-034, ARB002333-ARB002334 (FNSB Resolution opposing over-population of FNSB districts); INT Exc. 040-041, ARB002269-ARB002270, INT Exc. 036, ARB002306, INT Exc. 029, ARB004296, INT Exc. 024, ARB004297, INT Exc. 044, ARB004304 (public testimony opposing over-population of FNSB districts).
[107] VDZ Exc. 1000-1001, ARB009377-ARB009378 (Nov. 4 Tr. at 207:11-208:21); ARB Exc. 514-16, Binkley Aff. ¶¶ 30-33.
[108] VDZ Exc. 1973, FFCL at 88.

adopted."[109] Nor can Valdez do so now. The superior court therefore correctly determined that, judged against the spectrum of available options before the Board, District 29 is relatively socio-economically integrated sufficient to satisfy Article VI, § 6.

C. The Board Took a Hard Look at the Placement of Valdez with the Mat-Su Borough.

Unable to present a constitutionally viable option encompassing the Richardson Highway district it would have liked to see, Valdez resorts to attacking the Board's districts by creating the fiction that the Board "locked in" districts across the State and then painted itself into a corner with respect to Valdez. This is simply not supported by the record, which shows that the Board carefully considered the implications of its choices *each time* it made a decision that would impact Valdez, and it permissibly chose among its options to create a statewide map that satisfied the § 6 factors to the maximum extent practicable *across the entire State*.

Valdez takes issue with the process and timing of the Board's decision, arguing that the Board left Valdez until the end, by which time it had left itself few options. This argument ignores the record: if anything, it appears the Board left the determination of the Valdez question open because they were trying *not* to constrain themselves and wanted to make sure they had explored all options, "tr[ied] different variations,"[110] and "explore[d] all of the Valdez possibilities"[111] before reaching a final decision.[112] Chair Binkley testified that "as we were putting our various maps together, we were continually working with where Valdez was going

[109] Jan. 26 Trial Tr. 873:5-8; *see* VDZ Exc. 1973, FFCL at 88.
[110] VDZ Exc. 680, ARB007631 (Nov. 3 Meeting Tr. at 271:9-24).
[111] VDZ Exc.898, ARB009275 (Nov. 4 Meeting Tr. at 105:19-20).
[112] Jan. 27 Trial Tr. 1172:6-22 (Binkley response to question from the Court).

to go in each of those different scenarios."[113]

The meeting transcripts confirm this testimony; during the four days of meetings in which the Board deliberated and created its final map, the placement of Valdez was discussed numerous times, and the Board repeatedly discussed and deliberated on the implications of other decisions for Valdez, as well as the implications of Valdez's placement on other districts. For instance, on November 2 the Board discussed various options for placement of Valdez and the population challenges inherent in the possible combinations of the Prince William Sound and Gulf of Alaska communities.[114] On November 3 the Board discussed Valdez extensively, including the possible placement of Valdez in the Interior district and the limitations it would impose on other districts,[115] the interplay between FNSB's excess population and the placement of Valdez, including specific discussion of Valdez's stated preferences,[116] the contours of potential Mat-Su region districts that did not include Valdez,[117] and the possibility of re-drawing Prince William Sound to include Valdez.[118] On November 4 the Board again discussed Valdez at length, grappling with interconnected population issues

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[113] Jan. 27 Trial Tr. 1172:7-10 (Binkley response to question from the Court).
[114] VDZ Exc. 301, ARB008766 (Nov. 2 Meeting Tr. at 69:10-25).
[115] VDZ Exc. 522, ARB007473 (Nov. 3 Meeting Tr. at 113:9-16).
[116] VDZ Exc. 648-650, ARB007599-ARB007601 (Nov. 3 Meeting Tr. at 239:22-241:22); VDZ Exc. 669-670, ARB007620-ARB007621 (Nov. 3 Meeting Tr. at 260:13 – 261:21); VDZ Exc. 688-695, ARB007639-ARB007646 (Nov. 3 Meeting Tr. at 279:20 – 286:1) (extensive discussion of population dynamics of FNSB, Richardson Highway, and Valdez).
[117] VDZ Exc. 716-717, ARB007667-ARB007668 (Nov. 3 Meeting Tr. at 307:24 – 308:6); VDZ Exc. 739-740, ARB007690-ARB007691 (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").
[118] VDZ Exc. 743-745, ARB007694-ARB007696 (Nov. 3 Meeting Tr. at 334:13-336:20). Although Mat-Su and Valdez suggest that the decision against this option was made in executive session, there is no evidence to support that contention.

and choosing to hold off on a final decision regarding Valdez in light of the related issues still under consideration.[119] The Board discussed breaking the FNSB boundary, including its implications for Valdez and other districts,[120] and also explored the possibility of combining Valdez with Anchorage.[121] Finally, on November 5, the Board discussed the challenge of mapping Valdez with Anchorage in a manner that would be consistent with other constitutional parameters[122] and ultimately, after additional deliberation, it reached a final decision to combine Valdez with the Mat-Su Borough.[123] The idea that Valdez was an afterthought is simply not borne out by the evidence.

Board members testified that throughout this process, no district was finalized until the entire map was completed,[124] and the meeting transcripts reflect that same understanding.[125] Moreover, the evidence establishes that the Board was fully aware of the general options before it during the full course of the public comment and Board mapping period, and once the decision was confirmed regarding the need to break the FNSB boundary in order to avoid unreasonably overpopulating the FNSB districts, the Board understood that Valdez would likely need to be combined with a major population center (either the Mat-Su Borough, or the Municipality of Anchorage). This numerical fact was true whether the FNSB

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[119] VDZ Exc. 825-832, ARB009202-ARB009209 (Nov. 4 Meeting Tr. at 32:4 -39:12).
[120] VDZ Exc. 833-847, ARB009210-ARB009224 (Nov. 4 Meeting Tr. at 40:2-54:17).
[121] VDZ Exc. 897-906, ARB009274-ARB009283 (Nov. 4 Meeting Tr. at 104:4-113:3); VDZ Exc. 966-969, ARB009343-ARB009346 (Nov. 4 Meeting Tr. at 173:12-176:9).
[122] VDZ Exc. 1076, ARB007862 (Nov. 5 meeting Tr. at 5:2-22).
[123] INT Exc. 047-057, ARB008043-ARB008053 (Nov. 5 meeting Tr. at 186:21-196:13).
[124] Jan. 27 Trial Tr. at 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.").
[125] *E.g.*, VDZ Exc. 970, ARB009347 (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").

decision was the first or last decision made by the Board. Member Marcum worked extensively to determine whether a pairing with Anchorage would be possible for Valdez, and she determined that it was not.[126] This meant that maintaining the Valdez/Mat-Su pairing was the best available option that satisfied the constitutional criteria.

Valdez's argument that Chair Binkley's desire to maintain the FNSB boundaries intact somehow precluded the Board from duly considering the options before it[127] similarly ignores the record. Of the primary maps that the Board considered, the six "road show" maps, *all* broke the FNSB boundary except for Board Composite v.3.[128] Similarly, Board members testified that Chair Binkley's initial idea of keeping the FNSB intact, reflected in Board Composite v.3, did not prevent other Board members from considering options that broke the FNSB boundary.[129] Chair Binkley himself testified that other Board members considered options that broke the boundary, and that 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 did not change his mind on that issue.[130]

Finally, Valdez cries foul that the Board left Valdez and the Mat-Su Borough districted together even though public testimony from those communities largely favored splitting them.

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[126] VDZ Exc. 966-969, ARB009343-ARB009346 (Nov. 4 Meeting Tr. at 173:12 – 176:9); VDZ Exc. 1076, ARB007862 (Nov. 5 meeting Tr. at 5:2-22)
[127] Valdez Petition at 41-43.
[128] Jan. 27 Trial Tr. 1133:23-1134:5.
[129] Jan. 26 Trial Tr. 868:6-23 (Borromeo redirect); Jan. 27 Trial Tr. at 1133:10-23 (Binkley cross).
[130] Jan. 27 Trial Tr. 1133:14-17, 1135:5-17 (Binkley cross) ("Q: [A]nd 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.").

But there are two sides to that coin. Valdez's preferred Richardson Highway district would necessarily push Interior villages into a coastal district, and public testimony from Nome and the western Interior was clear and unanimous in its opposition to that idea.[131] The Board did not ignore any of this testimony, as Valdez suggests; rather, it considered *all* of this public testimony and chose the option that balanced constitutional factors statewide.

Valdez's arguments make clear—and the Board fully understood—that Valdez wished it could be placed elsewhere. But those arguments do not indicate that the district in which Valdez *was* placed violates the Constitution. The superior court correctly concluded that the Board acted reasonably in weighing its options and drawing District 29 in a manner that best satisfied the constitutional requirements for that district while harmonizing equally important constitutional concerns across the State.

II. DISTRICT 36 IS COMPACT, CONTIGUOUS, AND RELATIVELY SOCIO-ECONOMICALLY INTEGRATED.

A. District 36 is Compact and Contiguous.

Valdez and Mat-Su do not dispute that District 36 is contiguous, but they argue it is non-compact for several reasons. None of these constitute a constitutional violation.

Valdez persists in arguing that District 36 is non-compact because of its sheer size, which Valdez asserts would make it "the third largest state in our nation."[132] But, as the superior court correctly explained, "Alaska courts 'look[] to the *shape* of a district,' not its size,"[133] as in the context of Alaska's "unique geography," "neither size nor lack of direct road

[131] See note 104, *supra*.
[132] Valdez Petition at 64.
[133] VDZ Exc. 1974, FFCL at 89 (quoting *Hickel*, 846 P.2d at 45) (emphasis in FFCL). "In other words, the inquiry looks at the district's 'perimeter *in relation to* the area encompassed.'"

access makes a district unconstitutionally non-compact."[134] To the extent that any more need be said on the issue, the superior court's thoughtful analysis aptly explains why large districts "are inherent in Alaska redistricting, and they do not make a district unconstitutional."[135]

Valdez also challenges the shape of District 36, arguing that its "horseshoe" shape is non-compact, but "[b]oth the 2002 Plan and the 1994 Plan contained a similarly large interior district with the same characteristic horseshoe shape."[136] District 36 is also roughly similar in shape to District 6 under the 2013 Proclamation. Moreover, the evidence demonstrates that the shape of District 36 was influenced by the need to achieve a relatively socio-economically integrated district. This was a permissible consideration, as the Board may accept some reduction in compactness to "further . . . [an]other requirement of article VI, section 6."[137]

None of the principal alternative maps presented a more compact way of drawing Interior Alaska without significantly sacrificing socio-economic integration, and they all have a large horseshoe-shaped Interior district.[138] Petitioners' repeated description of the shape of District 36 as "bizarre" does not make it so. Rather, as the superior court explained, this shape comes naturally as "a result of the geography and the population in that region."[139]

The inclusion of Cantwell in District 36, which comes at the cost of slightly reduced

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FFCL at 89 n.510 (emphasis in FFCL).

[134] VDZ Exc. 1974, FFCL at 89 (quoting *In re 2001 Redistricting Cases*, 47 P.3d 1089, 1092 (Alaska 2002)).

[135] VDZ Exc. 1975, FFCL at 90.

[136] VDZ Exc. 1974, FFCL at 89 (citing Exhibit VDZ-3005 at 1 (1994 Map), 4 (2002 Map)).

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

[138] *Compare* VDZ Exc. 1175, ARB000054 (District 36 in Final Proclamation); *with* INT Exc. 010, ARB001258 (AFFER District 5); INT Exc. 021, ARB001336 (AFFR District 36); VDZ Exc. 28, ARB001383 (v.3 District 36); VDZ Exc. 29, ARB001430 (v.4 District 36); INT Exc. 022, ARB001477 (Doyon Coalition District 36); INT Exc. 023, ARB001494 (SMC District 6).

[139] VDZ Exc. 1975, FFCL at 90 (quotations omitted).

compactness,[140] is justified for the same reason. As the superior court explained, the Board received public testimony on multiple occasions, from multiple members of the public—not, as Mat-Su incorrectly suggests, just from Ahtna, Inc.[141]—testifying that Cantwell is socio-economically integrated with the rest of the Ahtna region in the rural Interior district.[142]

Faced with the undisputed evidence that Cantwell is, in fact, socio-economically integrated with the rest of the Ahtna communities in District 36, along with the rest of the rural Interior, Mat-Su argues that the Board is somehow constrained from including population from inside a borough in another district, even if the Board finds that doing so would *improve* socio-economic integration. In *Hickel*, this Court explained that "[t]he division of a borough which otherwise has enough population to support an election district will be an indication of gerrymandering."[143] But, like the Lake and Peninsula Borough at issue in the

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[140] Because compactness under Alaska law roughly compares the length of the perimeter of a district to its geographic area, *Hickel*, 846 P.2d 3at 45, and District 36 contains a large geographic area, the additional perimeter needed to include Cantwell does not significantly change the overall compactness of the district.
[141] Mat-Su Petition at 9-10.
[142] The superior court's discussion of this issue includes ample reference to the Record to support its finding. *See* VDZ Exc. 1975-1976, FFCL at 90-91 (citing INT Exc. 016-017, ARB001793-ARB001794 (testimony of Michelle Anderson that "villages within [the] Ahtna region have strong and extensive family ties, customary and traditional Ahtna practices and thousands of years of familial, cultural & traditional, land use, and economic connection"); INT Exc. 027, ARB002873 (testimony supporting inclusion of Cantwell in Interior district, as done in the Doyon Coalition map); INT Exc. 032, ARB003418 (testimony that the Ahtna villages "share all the customary and traditional values, are related to the Cantwell residents, share the same values, and speak the same language"), INT Exc. 028, ARB003998, INT Exc. 058, ARB004220 (testimony that "Cantwell is a part of the Ahtna region and should be represented as such. Cantwell is compacted with 5 other Ahtna Villages to comprise the Copper River Native Association"); *see* VDZ Exc. 865, ARB009242 (Nov. 4 Tr. at 72:7-22) (Board discussion of the public testimony); *see also* INT Exc. 015, ARB000639, VDZ Exc. 791-792, ARB001795-ARB001796, INT Exc. 031, ARB001822 (additional public testimony supporting inclusion of Cantwell in rural Interior district)).
[143] 846 P.2d at 51 n.20.

2001 cycle, the Denali Borough does not have enough population to support a district, and the Board "offered . . . uncontroverted, non-discriminatory motivation[s] for its action,"[144] including (a) improving the socio-economic integration of Cantwell and District 36,[145] and (b) reducing the overpopulation of District 30.[146]

Valdez's argument with respect to Cantwell is more insidious. Valdez suggests that, because the population of Cantwell is not predominantly Alaska Native, and because the President of Ahtna, Inc. could only think of around 30 Ahtna shareholders who live there when asked at trial, the Board was not entitled to rely on the testimony from the people of Cantwell with respect to their ties to the other villages in the region.[147] Not only does Valdez attempt to boil down socio-economic integration to a matter of Alaska Native versus non-Native (entirely ignoring the fact that families or households are often made up of a combination of shareholders and non-shareholders, yet they retain ties to the Ahtna culture and the Ahtna region all the same[148]), but it completely ignores the fact that the Ahtna region's non-profit "sister organization," the Copper River Native Association, provides healthcare and social services for both the Alaska Native and non-Native people of Cantwell, along with the remaining seven Ahtna region villages, all of which are also in District 36.[149]

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144 *In re 2001 Redistricting Cases*, 44 P.3d at 145.
145 VDZ Exc. 865-873, ARB009242-ARB009250 (Nov. 4 Tr. at 72:7-80:3) (Board discussion of public testimony establishing Cantwell's integration with the rest of District 36).
146 The approximately 200 residents of Cantwell correspond to around 1.1% of a district. INT Exc. 060, ARB004354 (Board website showing Cantwell population of 196 in 2020 census). Mat-Su argues that District 30 is already unconstitutionally overpopulated at 1.1% above the ideal, but moving Cantwell into District 30 would double the overpopulation of that District.
147 Valdez Petition at 41.
148 Jan. 26 Trial Tr. 955:18-956:7 (Anderson redirect).
149 Jan. 26 Trial Tr. 952:7-953:23 (Anderson cross); *id.* at 956:8-25 (Anderson redirect); *see also* VDZ Exc. 1980, FFCL at 95 (finding that "ANCSA regions coincide with the regions served

The superior court correctly found the Board was reasonable in determining that the small reduction in compactness caused by including Cantwell in District 36, rather than District 30, was justified by the improvement in socio-economic integration.

B. District 36 is Relatively Socio-Economically Integrated.

The superior court correctly found that District 36 is relatively socio-economically integrated. The record contains extensive evidence of the social, economic, and cultural ties throughout District 36. The Board properly relied on those links in drawing the district.

As an initial matter, the superior court was correct in finding that the "Interior towns and villages" comprising District 36 "share many characteristics of rural life."[150] Moreover, the superior court noted the testimony establishing "numerous socio-economic links across the region, including (but not limited to) common language and culture across 'all Athabascan 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."[151]

In noting that "District 36 generally (though not perfectly) encompasses the Doyon and Ahtna ANCSA regions," the superior court correctly explained that "[t]he courts have acknowledged that 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

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by non-profit "sister organizations," which in many rural communities provide healthcare for Native and non-Native residents alike").

[150] VDZ Exc. 1979, FFCL at 94.

[151] VDZ Exc. 1979, FFCL at 94 (quoting Jan. 26 Trial Tr. 914:25-915:9 (Wright cross); and citing Jan. 26 Trial Tr. 916:10-20 (Wright cross); *id.* at 886:11-14, 888:6-889:6, 906:14-23 (Otte cross); *id.* at 943:19–944:3, 952:10-25 (Anderson cross)).

deviation."[152] Valdez's argument that the ANCSA boundaries were applied inconsistently[153] does not hold up to any scrutiny—in fact 10 of the 12 ANCSA regions were kept largely intact. The other two ANCSA Regional corporations (Calista and Cook Inlet Region, Inc.) were necessarily split up due to their populations.[154] And none of the maps submitted for consideration by the Board split the Calista region into fewer than three districts—even Calista's own map submitted by AFFER splits the region into three districts.[155]

The superior court properly rejected Valdez's argument "that it is inappropriate to use ANCSA boundaries to guide the drawing of districts that are not predominantly Alaska Native."[156] Valdez reiterates that argument here,[157] ignoring the superior court's finding that "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."[158] Thus, even accepting *arguendo* the premise of Valdez's argument, it is both logical and reasonable to

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[152] VDZ Exc. 1979-1980, FFCL at 94-95 (citing *Kenai Peninsula Borough*, 743 P.2d at 1359 n.10; *Hickel*, 846 P.2d at 48). As the superior court also noted, "ANCSA regions were drawn with the specific statutory intent that 'each region [be] composed as far as practicable of Natives having a common heritage and sharing common interests.'" VDZ Exc. 1980, FFCL at 95 n.540 (quoting 43 U.S.C. § 1606(a); and citing Jan. 26 Trial Tr. 941:10-14 (Anderson cross) (testifying that ANCSA "boundaries were drawn based on the characteristics and similarities between peoples . . . for instance, culture, language, connection to the land, traditional foods, to name a few things")); *see also* INT Exc. 070, Anderson Aff. ¶ 7.
[153] Valdez Petition at 36-41.
[154] ARB Exc. 517, Binkley Aff. ¶ 36.
[155] INT Exc. 018, ARB001290-ARB001292 (proposed Districts 37, 38, and 39 in AFFER/Calista map).
[156] VDZ Exc. 1980, FFCL at 95.
[157] *E.g.*, Valdez Petition at 61, 68.
[158] VDZ Exc. 1980, FFCL at 95 (emphasis in original) (citing Jan. 26 Trial Tr. at 921:1-922:13 (Wright cross) (affirming that the residents of Nulato, Galena, Ruby, Kaltag, Grayling, Anvik, Shageluk, and Holy Cross are all "predominantly Alaska Native")).

use an ANCSA boundary to guide the drawing of district lines in this area of the State.

Valdez's attempt to recast Congress' reference to "homogeneous grouping of peoples" in ANCSA as "not concerning" socio-economic integration under the Alaska constitution ignores both the purpose of ANCSA regional corporations and their *sui generis* place in the socio-economic landscape of Alaska.[159] ANCSA regional corporations are not run-of-the-mill for-profit corporations; they allow Alaska Native people from a particular region to share in the economic benefits of the management of vast lands within that region. And, as the United States Supreme Court has explained, ANCSA corporations take on a quasi-governmental role in delivering "federally funded economic, infrastructure, health, or education benefits" pursuant to the Indian Self Determination and Educational Assistance Act.[160]

Valdez similarly ignores the superior court's amply supported finding "that ANCSA boundaries are significant for non-Native residents too, particularly in rural areas."[161] This is in part because "ANCSA regions coincide with the regions served by non-profit 'sister organizations,' which in many rural communities provide healthcare for Native and non-

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[159] *See* Valdez Petition at 38-40. In addition, Valdez's reliance on Cook Inlet Region, Inc.'s (CIRI's) self-description, *see* Valdez Petition at 38-39, is inapposite. CIRI is the ANCSA regional corporation for the Anchorage area and is, in many ways, the "exception that proves the rule." The Board did not use CIRI's ANCSA borders to draw any district, given that—unlike the border between Districts 36 and 39 to which Valdez objects—much of its territory is located in parts of the state that are incorporated into boroughs and CIRI's boundaries do not align with those borough boundaries. Unlike Anchorage, neither the communities of the Bering Straits region (which are predominantly either Inupiaq or Yupik) or the rural areas of the Doyon region (which are predominantly interior Athabascan) can be fairly described as a "melting pot."

[160] *Yellen v. Confederated Tribes of Chehalis Rsrv.*, 141 S. Ct. 2434, 2439 (2021) (referring to 25 U.S.C. §§ 5304(e) and 5321(a)(1)).

[161] VDZ Exc. 1980, FFCL at 95.

Native residents alike."[162] The very act of grouping together Native villages into non-profit intertribal organizations across a particular region to pool federal funding and provide much-needed healthcare and social services across that region is clear evidence of socio-economic integration, not mere homogeneity.

Finally, the superior court correctly found "that the western border of District 36 is also a boundary between school districts, and that school districts are the primary form of local government in that region of the state."[163] Valdez has attempted to limit the "local government boundaries" language in § 6 to exclude school districts, but there is nothing in the text of the provision or prior case law that would require such a limitation. In a region of the State with limited local government boundaries, and where school districts often play a significant role in the routine interactions between families in a region,[164] it was reasonable for the Board to consider school district boundaries in drawing the contours of District 36.

The superior court also properly rejected Valdez's argument "that District 36 lacks socio-economic integration because the residents of every community do not necessarily 'live, work, and play' with the residents of every other community within the district."[165] The superior court recognized that such interaction may not necessarily be present between every community in a large, sparsely populated district, but "this fact does not defeat the socio-economic integration of the district as a whole." Rather:

> Often the communities within such large districts are geographically isolated and small in population. They are not interconnected by road systems or by

[162] FFCL at 95 (citing Jan. 26 Trial Tr. 952:7-953:23 (Anderson cross); *id.* at 956:8-25 (Anderson redirect)).
[163] FFCL at 95 (citing Jan. 28 Trial Tr. 1318:2–1321:25 (Brace cross on rebuttal)).
[164] *See* Jan. 28 Trial Tr. 1320:11-16 (Brace cross on rebuttal).
[165] VDZ Exc. 1980-1981, FFCL at 95-96.

> other convenient means of transportation. Such communities are not integrated as a result of repeated and systematic face to face interaction. Rather they are linked by common culture, values, and needs. The constitutional requirement of socio-economic integration does not depend on repeated and systematic interaction among each and every community within a district. 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-economically integrated without regard to whether each community within the "area" directly and repeatedly interacts with every other community in the area.[166]

This is precisely the case with District 36, and Valdez gains no ground by seeking to pinpoint specific interactions between the most far-flung corners of the district.[167] As the superior court correctly concluded, District 36 comprises a relatively integrated socio-economic area and thus satisfies § 6.

C. District 36 is Not the Result of Improper Motivations.

Contrary to Valdez's suggestion, there is no evidence that District 36 was the result of bias or favoritism. What Valdez attempts to cast as improper variation in the application of the § 6 criteria is in fact the permissible—indeed necessary—result of balancing the often-conflicting constitutional factors to create a plan that satisfies those criteria as nearly as practicable throughout the entire state. This Court has never held that the Alaska Constitution requires rote application of hard-and-fast rules, as Valdez would have it; if that were the case, there would be no need for a Redistricting Board. Rather, the Board's core task (indeed its

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[166] VDZ Exc. 1981, FFCL at 96 (quoting *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 61).

[167] *See, e.g.*, Jan. 26 Trial Tr. at 838:16-24 (Borromeo cross) (testifying that the "rural interior villages . . . don't also have enough numbers, in and of themselves, to be in their own district. So they need to be coupled with other communities that are as close to socioeconomically integrated as possible, and because these are all rural interior villages the board thought it was best to group them together into one district.").

entire *raison d'être*) is to "create[e] a statewide plan that balances multiple and conflicting constitutional requirements."[168] As part of this balance, the push-and-pull of constitutional factors in one region of the state might require the Board to make different trade-offs than those it might make in another region with different demographic and geographic dynamics. This is not favoritism; it is a necessity of the redistricting process.

In particular, Valdez seeks to recast the decisions of the Alaska Redistricting Board and its members—and especially its two Alaska Native women members—as suggesting "improper motivation[s]."[169] But Valdez seems to conflate "improper motivation" with any goal other than maximizing the political clout of the City of Valdez. For example, Valdez criticizes the Board for using the ANCSA boundary between the Doyon Region and the Bering Straits Region to draw the border between District 36 and District 39, but fails to mention that the Board drew that border where it did precisely *because* doing so maximizes socio-economic integration in the area.[170] The Board received voluminous testimony from the people of both the Bering Straits Region and the western Interior concerning the lack of socio-economic integration between the Interior Athabascan communities that comprise the western part of District 36 and the Coastal Inupiaq and Yupik communities that make up District 39.[171] It is telling that, in the thousands of pages and hours of public testimony

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[168] *In re 2001 Redistricting Cases*, 44 P.3d at 147.
[169] Valdez Petition at 34; *see id.* at 34-35.
[170] *See, e.g.*, Jan. 27 Trial Tr. at 981:22-982:12 (Bahnke cross) (describing the decision to draw western Alaska districts recognizing the intersect between coastal Iñupiaq and Yup'ik communities in terms of "language, culture, lifestyle, customs, traditions, [and] reliance on various subsistence animals," as distinct from the "rural Interior Athabascan communities").
[171] *See, e.g.,* VDZ Exc. 145, ARB008988 (Nov. 2 Meeting Tr. at 58:7-17) (Member Bahnke discussing public comment provided at the Nome public hearing, "which was [that] it makes no sense to pair rural Doyon Athabascan communities with Inupiaq and Yupik coastal

received by the Board, not a single person in either of those areas suggested that the Board should place Interior communities in the Nome district as Valdez suggests.

And Valdez's suggestion that districting the Interior Athabascan villages of the western Interior Region with Nome and its surrounding coastal Inupiaq and Yupik communities would somehow *increase* socio-economic integration also ignores this Court's instructions. In *Hickel*, this Court described combining coastal Inupiaq communities and interior Athabascan villages as a "worst case scenario" and "probably the single worst combination that could be selected if a board were trying to maximize socio-economic integration in Alaska."[172]

Nor is there any merit to the Petitioners' assertion that communications from the Coalition improperly influenced the Board's decisions. Plaintiffs made similar accusations during the 2001 redistricting cycle, alleging that representatives of AFFR had improper communications with individual Board members near the end of the redistricting process (and unlike the situation here, the 2001 Board in fact adopted a map nearly identical to AFFR's). In addressing those allegations, the superior court in 2001 explained:

> There is nothing improper with individual Board members discussing the redistricting plans with members of the public, because the concept of *ex parte* communications does not apply to the Board. This concept is discussed in *Sierra Club v. Costle*, 657 F.2d 298, 400 n.501 (D.C. Cir. 1981):

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communities that rely on primarily the . . . sea and live subsistence lifestyles in that area."); *see also* Note 102, *supra* (collecting testimony). Under the 2013 Proclamation map, some of the Interior Yukon River communities (but not the Kuskokwim villages or villages on other river systems) were included with the Nome district. *See* INT Exc. 001, ARB001620. But the inclusion of these Interior villages was an artifact of the population math for that cycle; just as the Board was forced in 2002 to district Cordova with Southeast Alaska, despite the lack of socio-economic integration within the resulting district, the 2013 Board was forced to put interior Athabascan villages into districts 40 and 39 by the population numbers of that cycle. As the 2021 Proclamation Map shows, the 2020 census did not impose that same limitation.

[172] *Hickel*, 846 P.2d at 53-54.

> In ordinary rulemaking proceedings the parties are not identified in advance. Neither are conflicting interests established in advance among those subject to the proposed regulations. . . . In such a situation the very concept of ex parte communications is strikingly out of place; there are no parties to begin with, and it is not known what parties will develop and what their conflicting interests will be.
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> Virtually every Board member met individually with members of the public. Indeed the Board considered this a useful process to gather information and receive public input. The Open Meetings Act is not violated by such individual lobbying of Board members and there is nothing improper about this.[173]

In light of this precedent, it is not improper for individual members of the public—including representatives of an organization that is advocating to the Board for a particular outcome—to have contact with individual Board members. This may include any type of communications, including spoken conversations, emails, and text messages.

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 correctly determined that District 36 is constitutional in all respects.

III. THE BOARD DID NOT VIOLATE THE *HICKEL* PROCESS.

Both Valdez and Mat-Su argue that the Board violated the "*Hickel* process" set out by this Court's precedent, but that argument misunderstands the relevant caselaw and largely ignores the material facts. The Petitioners' argument boils down to the suggestion that, because the Board members discussed race and occasionally looked at racial data during some early mapping sessions, the Board violated the *Hickel* process and its work must be thrown

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[173] *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 41-42, *aff'd in relevant part*, 44 P.3d 141, 143 (Alaska 2002) (citing *Brookwood Area Homeowner's Ass'n v. Anchorage*, 702 P.2d 1317, 1323 n.7 (Alaska 1985)).

out in its entirety. Under any reasonable reading of this Court's precedent, that is not what the *Hickel* process requires.

The *Hickel* decision held that "while compliance with the Voting Rights Act takes precedence over compliance with the Alaska Constitution, '[t]he Voting Rights Act need not be elevated in stature so that the requirements of the Alaska Constitution are unnecessarily compromised.'"[174] To ensure that the principles of the Alaska Constitution are "adhered to as closely as possible,"[175] the Court explained what is now known as the *Hickel* process:

> 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 VI, section 6 requirements when minimization is the only means available to satisfy Voting Rights Act requirements.[176]

The context of the Court's decision is just as important as this oft-quoted language. "In *Hickel v. Southeast Conference*, [this Court] considered a Proclamation Plan that, like the Plan in [the 2011] case, 'accorded minority voting strength priority above other factors, including the requirements of article VI, section 6 of the Alaska Constitution.'"[177] In the 2011 Proclamation Plan, which was also struck down for violation of the *Hickel* process, it was "undisputed that the Board began redistricting . . . by focusing on complying with the Voting Rights Act" to create "five effective Native house districts, one 'influence' house district, and three effective Native senate districts."[178] In holding that this process violated the *Hickel*

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[174] *In re 2011 Redistricting Cases*, 274 P.3d 466, 467 (Alaska 2012) (quoting *Hickel*, 846 P.2d at 51 n.22).
[175] *Id.*
[176] *Hickel*, 846 P.2d at 51 n.22.
[177] In *re 2011 Redistricting Cases*, 274 P.3d at 467 (quoting *Hickel*, 846 P.2d at 51 n.22).
[178] *Id.*

Court's instruction, this Court explained that "a jurisdiction cannot unnecessarily depart from traditional redistricting principles to draw districts using race as 'the predominant, overriding factor.'"[179] The *Hickel* process, the Court explained, "assures compliance with the Alaska Constitution's requirements concerning redistricting to the greatest extent possible" and "facilitate[s] compliance with federal constitutional law by ensuring that traditional redistricting principles are not 'subordinated to race.'"[180]

Following remand, the Court again held that the Board had violated the *Hickel* process because it retained 22 districts from the original map, essentially starting its process at the half-way point and building off the original map that had undisputedly been drawn "by focusing exclusively on race and creating the correct number of effective Native districts."[181] The Court held that this procedure violated the *Hickel* process because it essentially carried over the VRA considerations from the earlier map: "By adopting districts affected by the Board's initial VRA considerations, the Board's [template for its second map] limited its available options."[182] Even then, two Justices dissented, believing that "the Board's approach was practical and reasonable" given the time constraints and the enormity of the task of drawing a 40-district map that complies with both the Alaska Constitution and the VRA.[183]

The factual context of these cases is entirely distinct from the current case, in which the Board was well aware of its *Hickel* obligations and specifically chose *not* to consider racial data throughout almost all of its process. Board members testified that they "mapp[ed] all 40

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[179] *Id.* at 468 (quoting *Miller v. Johnson*, 515 U.S. 900, 920 (1995)).
[180] *Id.* (quoting *Bush v. Vera*, 517 U.S. 952, 959 (1996)).
[181] *In re 2011 Redistricting Cases*, 294 P.3d at 1037.
[182] *Id.* at 1038.
[183] *Id.* at 1040 (Matthews, J., dissenting).

house districts without consideration of racial data for any of the areas of Alaska,"[184] and that "[t]he Board drew forty house districts by focusing on the Alaska Constitution's requirement to adopt compact, contiguous, and relatively socio-economically integrated districts" and "without considering data about race."[185] Similarly, the results of the VRA analysis "were not shared with Board members until November 2, 2021," eighty-two days into the Board's ninety-day process.[186] These facts are a far cry from cases in which the Court found violations of the *Hickel* process, where the Board began drawing House districts "by focusing exclusively on race and creating the correct number of effective Native districts."[187]

As Mat-Su emphasizes, the superior court noted evidence that the Board looked at the racial data from the Census package during some of the Board's early mapping sessions, and that it occasionally discussed the process for complying with the VRA.[188] But that cannot constitute a violation of the *Hickel* process under any reasonable interpretation of this Court's prior decisions. In fact, in early September the Board made the decision to remove racial data from the visible dataset in the Board's mapping tool, such that for the majority of their mapping process, the Board members had no access to racial data at all.[189] The Board then proceeded through its deliberative process to create House districts that were drawn

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[184] INT Exc. 090, Supp. Aff. of Nicole Borromeo, ¶ 6; *see also id.* ("The Board did not look at VRA information when it mapped its election districts.").
[185] INT Exc. 085-086, Supp. Aff. of Melanie Bahnke, ¶ 8.
[186] INT Exc. 104, Supp. Aff. of Peter Torkelson, ¶ 23; *see id.* ¶ 4 (confirming August 12 start date).
[187] *In re 2011 Redistricting Cases*, 294 P.3d at 1037.
[188] VDZ Exc. 2010-2011, FFCL at 125-26; *see* Mat-Su Petition at 4-5.
[189] *See* INT Exc. 002, ARB010505 (Sept. 8 meeting Tr. at 10:11-13) (Director Torkelson stating that staff would make the "active matrix" in the mapping software "blind to" the racial data embedded in the Census dataset).

exclusively by focusing on the Alaska Constitution's requirements of contiguity, compactness, socio-economic integration, and population as near as practicable to 18,335.[190] The evidence thus does not support the Petitioners' suggestion that the Board improperly "elevated" VRA considerations or "accorded minority voting strength priority above other factors" as prohibited by *Hickel*.[191] As the superior court correctly found, "there is no indication that [the Board's] initial maps, *i.e.*, Board v.1-4, were crafted with the VRA as the 'primary consideration,'" and instead the evidence shows "[t]he Board properly remained focused on the constitutional criteria."[192]

The superior court also correctly concluded that the mere mention of race, or the discussion of race as an indicator of cultural factors, cannot constitute a violation of the *Hickel* process. Indeed, the *Hickel* Court itself noted that "the predominately native character" of a region is one factor that may be considered in assessing the socio-economic integration of a proposed district.[193] Similarly, the fact that the Board sometimes referred to Districts 37 through 40 as "VRA districts" does not amount to a violation of the *Hickel* process. The retrogression analysis under the VRA looks at whether minority voting strength in a district has been reduced *as compared to the prior district*, meaning that current districts will necessarily be compared to the districts from the prior cycle.[194] In this context it is evident that the Board's

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[190] *E.g.*, INT Exc. 085-086, Supp. Aff. of Melanie Bahnke, ¶ 8; Jan. 26 Trial Tr. at 816:24-818:24 (Borromeo cross).
[191] *See Hickel*, 846 P.2d at 51 n.22.
[192] VDZ Exc. 2013, FFCL at 128.
[193] *See Hickel*, 846 P.2d at 46 (citing *Kenai Peninsula Borough*, 743 P.2d at 1361); VDZ Exc. 2013, FFCL at 128 ("There is always some overlap between race and socio-economic integration, so that by itself is not enough to create an inference of improper purpose.").
[194] *See Hickel*, 846 P.2d at 49 ("[A] reapportionment plan is invalid if it 'would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the

shorthand reference to the "VRA districts" simply indicates that the Board members knew the districts in this region of the State had been protected by the VRA in the last redistricting cycle, and thus *these* were the districts that would have to be assessed when the time came to analyze VRA compliance during the current cycle. The term reflects the iterative nature of the retrogression analysis, not a violation of the *Hickel* process.

The Petitioners are also factually incorrect that the Board "locked in" these VRA districts early in its process.[195] As the superior court found, the evidence showed that the Board was continuing to make changes to these districts until the last day of the mapping process, and the districts were not "locked in" until November 5, the day the Board adopted its final House map.[196] This finding is directly supported by the meeting transcripts showing the Board members understood that "nothing is locked in . . . until this board votes . . . [a]nd there's three votes to say this is the final proclamation"[197] as well as trial testimony reiterating that the borders on these districts were finalized only during the Board's final mapping meetings "the week of November 4th."[198] Valdez's argument that these final districts bear similarities to the districts drawn in August, when the Board still had the Census's race data loaded in its mapping software, again primarily takes issue with the Board's decision about where to draw the boundary between Districts 36 and 39. But as already discussed, the Board's

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electoral franchise.'" (citation omitted)). While *Hickel* discussed retrogression in the context of section 5 of the VRA, section 2 of the VRA (which continues to apply) similarly protects the ability of protected groups "to elect representatives of their choice." 52 U.S.C § 10301(b).

[195] Mat-Su Petition at 6; Valdez Petition at 29.

[196] VDZ Exc. 2013, FFCL at 128.

[197] VDZ Exc. 970, ARB009347 (Nov. 4 Meeting Tr. at 177:12-18).

[198] Jan. 26 Trial Tr. at 818:18-24 (Borromeo cross); *see also* VDZ Exc. 803-804, ARB009180-ARB009181 (Nov. 4 Meeting Tr. at 10:15-11:2) (the western Alaska districts will not be finalized "until we solve that problem on the Fairbanks North Star Borough [and] Valdez").

decision was amply justified by socio-economic considerations and the school district boundary that defines the line between the districts.[199]

The superior court ultimately adopted a logical and pragmatic interpretation of this Court's precedent on the *Hickel* process, which requires the Board to focus on drawing districts guided by the § 6 factors but does not somehow banish any mention of race or the VRA until the very end of the process.[200] The Petitioners' unduly narrow reading of the *Hickel* process is inconsistent with this Court's prior decisions, and as a practical matter would not realistically allow the Board to complete its work. The superior court correctly concluded that the Board's process in drawing the House map complied with the *Hickel* process, and this Court should affirm that decision.[201]

IV. THERE WAS NO EQUAL PROTECTION VIOLATION, AND THE DISTRICTS SATISFY THE POPULATION REQUIREMENTS OF § 6.

A. The Board's Map Does Not Violate "One Person, One Vote."

The superior court properly rejected the Mat-Su Borough's argument that the small

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[199] *See supra* at 32-35.

[200] The superior court was incorrect as to one minor point, in stating that there is "very little need to even conduct a VRA analysis post-*Shelby County*." VDZ Exc. 2012, FFCL at 127 (citing *Shelby County v. Holder*, 570 U.S. 529 (2013)). Rather, as Judge McConahy correctly held in the last round of redistricting litigation, "[t]he fundamental rights set out in Section 2 of the VRA that apply to all jurisdictions remain intact" following *Shelby County*, even though preclearance is no longer required under Section 5 of the VRA. *In re: 2011 Redistricting Cases*, 2013 WL 6074059, at *1. Thus, even without preclearance, the Board must still comply with the VRA—and it would potentially be subject to litigation if it failed to do so. Accordingly, the Board must continue to grapple with the realities of harmonizing the Alaska Constitution with the Voting Rights Act, and the *Hickel* process must be interpreted in that light.

[201] The superior court also properly rejected the Petitioners' other procedural challenges. For the reasons stated in the superior court's decision, the Board did not violate Valdez or Mat-Su's due process rights. The Intervenors do not agree that the Board violated the Open Meetings Act, but even if it did, the superior court correctly determined that any minor violations do not warrant a remedy here.

amount of excess population in House Districts 25-30 violates residents' right to an equally weighted vote under the equal protection clause and Article VI, § 6.

The equal protection principle of "one person, one vote" reflects the goal of "substantial equality of population among the various districts."[202] Article VI, § 6 reflects a similar principle in requiring House districts to be "as near as practicable to the quotient obtained by dividing the population of the state by forty."[203] As the superior court correctly explained, "[u]nder Alaska law, 'minor deviations from mathematical equality' do not implicate equal protection."[204] Such deviations are measured by "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.'"[205]

The Alaska courts have declined to draw a bright-line rule specifying deviations that pass constitutional muster, perhaps recognizing that the constitution's "as near as practicable" language provides some flexibility depending on the context and competing constitutional concerns. In the 2001 redistricting cycle, this Court struck down a 9.5% deviation across districts within Anchorage but "upheld deviations of up to 5%" in other regions.[206] On the other hand, in the 2011 cycle a statewide plan with a total deviation of just 4.2%[207] reflected

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[202] *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 20 (quoting *Reynolds v. Sims*, 377 U.S. 533, 579 (1964)); *see* VDZ Exc. 1986, FFCL at 101.
[203] *See In re 2001 Redistricting Cases*, 44 P.3d at 145-46 (discussing the Article VI, § 6 "as near as practicable" standard).
[204] VDZ Exc. 1986, FFCL at 101 (quoting *Hickel*, 846 P.2d at 47).
[205] VDZ Exc. 1986-1987, FFCL at 101-02 (quoting *In re 2001 Redistricting Cases*, 44 P.3d at 145).
[206] *In re 2011 Redistricting Cases*, 2013 WL 6074059, at *5 (citing *In re 2001 Redistricting Cases*, 44 P.3d at 145-46).
[207] *Id.*

deviations that were "lower than necessary to pass constitutional muster,"[208] given that the goal of low deviations "must live in harmony with the other constitutional requirements."[209]

Under this precedent, as the superior court concluded, the population deviations challenged by the Mat-Su Borough "do not come close to making out a claim for violation of the 'one person, one vote' principle."[210] The highest deviation of all the Mat-Su districts is just 2.66%.[211] "*No* court decision in Alaska has ever struck down a district with a deviation of 2.66% or smaller."[212] All of the Mat-Su districts "fall within the range of deviations that previous courts have accepted as 'minor,'"[213] and as the superior aptly noted, Mat-Su has provided no "reason to depart from past precedent here."[214]

The superior court also correctly found that the deviation among the Mat-Su Region districts (considering them against each other) is merely 1.56%.[215] Even when compared to the Anchorage districts that Mat-Su takes issue with, "the deviation between the highest-population Mat-Su district and the lowest-population Anchorage district . . . is just 4.31%.[216] Here again, this is well within the range of deviations that the courts have upheld.

Mat-Su now argues that it was practicable to reduce deviations in the Mat-Su districts simply because some of the other proposed maps had lower deviations in that region.[217] But

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[208] *Id.* at *7.
[209] *Id.* at *6; *see* FFCL at 103. 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.
[210] VDZ Exc. 1986, FFCL at 101.
[211] VDZ Exc. 1480, ARB007234 (Population tabulation for 2021 Proclamation).
[212] VDZ Exc. 1986, FFCL at 101 (emphasis added).
[213] VDZ Exc. 1988, FFCL at 103.
[214] VDZ Exc. 1986, FFCL at 101.
[215] VDZ Exc. 1988, FFCL at 103.
[216] VDZ Exc. 1988, FFCL at 103.
[217] Mat-Su Petition at 21.

those maps accomplished those low deviations by sacrificing constitutional compliance elsewhere. No factor is simply practicable or impracticable in isolation; the Board's task is to determine what is practicable when all of the constitutional factors are applied together.[218]

Mat-Su also misreads this Court's cases from the 2001 redistricting cycle. In those decisions, this Court was concerned with high deviations *among the Anchorage districts*, considered as a group, which resulted from the Board's attempt to preserve neighborhood boundaries within Anchorage.[219] "On remand the board reduced the maximum deviation in the Anchorage Bowl area from 9.5% to 1.35%," and the Court found those deviations to be constitutional.[220] Properly understood, this precedent instructs the Board to smooth out variations across an urban region, and that is precisely what the Board did here—indeed, the 1.56% deviation *among the Mat-Su districts* is nearly identical to that upheld by this Court for Anchorage in the 2001 cycle.

Finally, the superior court properly rejected the Mat-Su Borough's argument that its high rates of population growth should have been considered by the Board. As the superior court explained, "[t]he 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,'"[221] and it is not permitted to make adjustments to those numbers or consider population data beyond the scope of the Census numbers.[222] Mat-Su's continued

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[218] *In re 2011 Redistricting Cases*, 2013 WL 6074059, at *6.
[219] *In re 2001 Redistricting Cases*, 44 P.3d at 145 ("[T]he maximum population deviation in Anchorage—i.e., the sum of the absolute values of the two Anchorage districts with the greatest positive and negative deviations—is 9.5%.").
[220] *In re 2001 Redistricting Cases*, 47 P.3d at 1090 n.4.
[221] FFCL at 103 n.580 (quoting Alaska Const. art. VI, § 3).
[222] Alaska Const. art. VI, § 3; *see also* AS 15.10.200.

suggestion to the contrary is incorrect as a matter of law.

B. The Map Does Not Violate Mat-Su Residents' Right to Fair and Effective Representation.

The second component of equal protection, the right to fair and effective representation, "recognizes the danger that racial and political groups will be 'fenced out of the political process and their voting strength invidiously minimized.'"[223] No such discrimination occurred here.[224]

"[W]hen a reapportionment plan unnecessarily divides a municipality in a way that dilutes the effective strength of municipal voters, the plan's provisions will raise an inference of intentional discrimination."[225] But such an inference "may be negated by a demonstration that the challenged aspects of a plan resulted from legitimate nondiscriminatory policies such as the article VI, section 6 requirements of compactness, contiguity, and socio-economic integration."[226] Here, the House districts drawn by the Board do not give rise to an inference of intentional discrimination because they do not unnecessarily dilute either Valdez or Mat-Su Borough residents' votes. And even if such an inference could be drawn, it is amply rebutted by evidence in the record showing the legitimate, non-discriminatory reasons for the Board's decisions in drawing the disputed districts. As the superior court found, the districts in the House map result from the "balancing of constitutional criteria, not any sort of intentional

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[223] *Hickel*, 846 P.2d at 49 (quoting *Gaffney v. Cummings*, 412 U.S. 735, 754 (1973)).
[224] Valdez has not sought review of the superior court's rejection of its equal protection claim. The superior court's decision on that point was correct in all respects. *See* VDZ Exc. 1990-1993, FFCL at 105-08.
[225] *In re 2001 Redistricting Cases*, 44 P.3d at 144 (emphasis added).
[226] *Id.*

discrimination."[227]

More specifically, "the slight over-population of the Mat-Su districts results from bringing the 4,000 residents of Valdez into District 29 with the eastern portion of the Mat-Su Borough," which "was constitutionally permissible in light of competing § 6 factors elsewhere."[228] A possible pairing of Valdez with Anchorage, which "would have reversed the population ratios that the Mat-Su Borough complains about," was ultimately rejected because it was less compact and "was not feasible within other constitutional parameters, not because of any intent to discriminate against the Mat-Su Borough."[229] The superior court properly concluded that the Board that the House districts do not reflect discrimination against the Borough and do not violate its residents' equal protection rights.

CONCLUSION

House Districts 25-30 and 36 meet the requirements of the Alaska Constitution in all respects. Therefore, this Court should affirm the superior court's rulings with respect to the claims brought by Valdez and Mat-Su.

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

SONOSKY, CHAMBERS, SACHSE
MILLER & MONKMAN, LLP

By: /s/ Nathaniel Amdur-Clark
Nathaniel Amdur-Clark
Alaska Bar No. 1411111
Whitney A. Leonard
Alaska Bar No. 1711064

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[227] VDZ Exc. 1988-1989, FFCL at 103-04.
[228] VDZ Exc. 1989, FFCL at 104 (citing VDZ Exc. 833-847, ARB009210-ARB009224 (Nov. 4 Tr. at 40:2–54:17)).
[229] VDZ Exc. 1989, FFCL at 104 (citing VDZ Exc. 830, ARB009207 (Nov. 4 Tr. at 37:3-7); VDZ Exc. 956-957, ARB009333-ARB009334 (Nov. 4. Tr. at 163:24-164:5); VDZ Exc. 1076, ARB007862 (Nov. 5 Tr. at 5:1-22)).

IN THE SUPREME COURT OF THE STATE OF ALASKA

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

CERTIFICATE OF SERVICE AND TYPEFACE

I certify that on March 10, 2022 I served the Intervenors' Response to Valdez and Matanuska-Susitna Borough Petitions for Review, Excerpts of Record, and this Certificate of Service and Typeface on counsel listed below:

Schwabe Williamson & Wyatt
Matthew Singer–msinger@schwabe.com
Lee C. Baxter–Lbaxter@schwabe.com
Kayla J. F. Tanner–ktanner@schwabe.com

Holmes Weddle & Barcott, PC
Stacey C. Stone–sstone@hwb-law.com
Gregory Stein–gstein@hwb-law.com

Birch Horton Bittner & Cherot
Holly Wells–hwells@bhb.com
Mara Michaletz–mmichaletz@bhb.com
Zoe A. Danner–zdanner@bhb.com

Ashburn & Mason
Eva Gardner–eva@anchorlaw.com
Michael Schechter–mike@anchorlaw.com
Benjamin J. Farkash–ben@anchorlaw.com

Brena Bell & Walker, PC
Robin Brena–rbrena@brenalaw.com
Laura Gould–lgould@brenalaw.com
Jake Staser–jstaser@brenalaw.com
Jon S. Wakeland–jwakeland@brenalaw.com

ACLU of Alaska Foundation
Susan Orlansky–susano@reevesamodio.com
Richard Curtner–richcurtner13@gmail.com

State of Alaska
Laura Fox – laura.fox@alaska.gov

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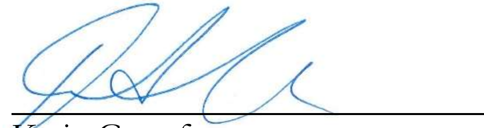

Karin Gustafson
Legal Assistant
SONOSKY, CHAMBERS, SACHSE,
MILLER & MONKMAN, LLP