IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

IN RE 2001 REDISTRICTING CASES,)

)

)

Plaintiffs,)

)

vs.)

) Consolidated Case No. 3AN-01-8914 CI

REDISTRICTING BOARD, et al.,)

)

Defendant.

) **MEMORANDUM AND ORDER**

_____)

I. INTRODUCTION

In accordance with Article VI of the Alaska Constitution, the Alaska Redistricting Board (the "Board") is required to reapportion Alaska's House of Representatives and the Senate immediately following the official reporting of each decennial census of the United States. Under Article VI, Section 8 of the Alaska Constitution, the Board consists of five members, two of whom are appointed by the Governor, one of whom is appointed by the Speaker of the House of Representatives, one of whom is appointed by the Senate President, and one of whom is appointed by the Chief Justice of the Alaska Supreme

Court. At least one Board member must be a resident of each of the four judicial districts.

Article VI, Section 10 of the Alaska Constitution, requires the Board to adopt one or more proposed redistricting plans thirty days after the reporting of the decennial census. Thereafter the Board must hold public hearings to obtain comments on the draft plan(s). The Board then must adopt a final plan and proclamation no later than ninety days after the reporting of the census.

Under Article VI, Section 11, any qualified voter may apply to the superior court to compel the Board to correct any errors in redistricting. Original jurisdiction in these matters is vested in the superior court. On appeal from the superior court, this matter is reviewed by the Alaska Supreme Court *de novo.* Since statehood, every single redistricting plan has been the subject of such legal challenge.

II. HISTORY OF THE BOARD'S WORK

A. The Board's Practical Preparations

Anticipating the time restraints that would be placed upon the Board, the legislature in 1999 created the Redistricting Planning Committee. This five member committee was created in the fall of 1999, and members were appointed by the same authorities that would appoint the Board. The committee set up the Board's office in Juneau, leased the necessary office equipment, and contracted with consulting firms that would provide the data and analysis necessary for review of a redistricting plan by the U.S. Department of Justice under section 5 of the federal Voting Rights Act.

A technical committee, headed by Kathryn Lizik, was created prior to the formation of the Board. This committee identified and purchased the necessary redistricting software and hardware. The redistricting software required a fairly lengthy technical setup to create an environment in which the actual redistricting work could occur. The committee verified that the census data received from the United States Census Bureau ("Census Bureau") was accurate and ready to be used for the redistricting process. This committee also contracted with the vendor who was providing the voting precinct results data to another contractor, Dr. Handley. Dr. Handley performed the Voting Rights Act analysis. In addition, the committee created a series of maps and put items of interest on the Board's website.

The Census Bureau released two different types of data files containing census data. The first type of file was a geographic file referred to as "TIGRE," or Topologically Integrated and Geographic Referencing and Encoding System. The second file type included population data, with statistics for all existing race combinations, the new race combinations for the year 2000, and statistics for those persons who are eighteen years of age or older. The population data was a very large file because it contained data for every possible category of geography in the state. There were population data summary tables for the entire state, and for all boroughs, all cities, all Alaska Native Regional Corporations, and any other grouping of population.

In Ms. Lizik's experience, the census data received from the Census Bureau needed to be verified. This verification was performed by creating a series of "summing tables" that verified each individual piece of population data added up correctly on

different summary levels. An extensive series of checks were performed for each population category.

The technical committee encountered some problems with the software because Alaska does not fit into an easy-to-use geographic file for most of the geographical-based software. For example, the Aleutian Islands chain falls into a latitude and longitude across the International Dateline. A special projection had to be performed in order for the island chain to display within the entire state. Other modifications with the software had to be made to make the files more user-friendly for the Board. This included such items as explaining the terminology used on the spreadsheets, and explaining how the race data was formulated.

In addition, "census blocks" were created. A census block is the smallest unit of data available for population. In urban areas, a block is about four streets. In more rural areas of the state, the Census Bureau allowed more flexibility. A census block group is a statistical summary area that may closely relate to neighborhoods of cities and towns, created by the Census Bureau as an effort to assist the states in the redistricting process. From a statistical standpoint, census block groups identify groups of blocks that have a similar social and economic makeup on a small local level. Census blocks were used for district formation.

The Board received the population file from the Census Bureau on March 19, 2001. The technical committee provided a presentation to the Board on March 26, 2001, and created the first redistricting scenario by April 10, 2001.

B. The Work of the Board

The Board was appointed in August 2000 and began its work shortly thereafter. At Board meetings, the Board would schedule its next meeting, and give public notice. After initial planning and housekeeping meetings, the Board began to conduct meetings by teleconference, allowing members of the public to attend throughout the state. At Board meetings, particularly earlier ones, various administrative issues were also discussed, including leasing of office space, acquiring computer and office equipment,

compensation and travel reimbursement, hiring office staff, and hiring contractors. Other relevant topics addressed at Board meetings are discussed below.

September 12, 2000

The Board heard a presentation by the Redistricting Planning Committee members regarding preparations made by them and upcoming decisions the Board would need to address.

September 22, 2000

The Board elected Vicki Otte as Chair Person and voted that the Chair have the authority to sign on behalf of the Board. James Baldwin, from the Department of Law, provided an overview of the Open Meetings Act.

The Board developed a staffing plan and Board members submitted names of potential employees. The Board also discussed who should act as independent counsel. Additionally, the Board discussed the budget, reviewed vendor contracts, including Dr. Lisa Handley's contract, approved the lease of the office in Juneau, and discussed their compensation and per diem arrangements.

October 11, 2000

The Board interviewed three candidates for the Executive Director position Gordon Harrison, John Hartle, and Kevin Jardell, and voted to retain Harrison. The Board voted to hire Phillip Volland as its independent counsel.

November 3, 2000

Harrison reported to the Board regarding his activities since assuming the job of Executive Director on October 25, 2000. These activities were administrative in nature and included: obtaining a phone number and mailing address for the Board; notifying various government agencies and contractors of this information; setting up the office, including computer systems and other office equipment and furniture; and assessing further office staffing needs. Harrison also asked the Board to begin to think about other issues such as holding public hearings prior to the ninety-day redistricting process.

The Board discussed how nonresident military personnel should be treated and whether the federal census data would need adjustment for possible undercount. Baldwin explained that a recent bill adopted by the legislature, Senate Bill 99, specified that the Board may not attempt to distinguish between resident and nonresident components of population groups, and that the Board must use the non-adjusted census data. Baldwin pointed out that this legislation was not precleared by the U.S. Department of Justice.

In addition, the Board discussed such items as the maintenance of a website, travel reimbursement rules, and the issue of an Anchorage office.

November 29, 2000

The Board heard reports from: 1) Resource Data Inc., a firm who provided historical voting data; 2) Kathryn Lizik of the Alaska Department of Labor, who described the procedures used by the Census Bureau, and 3) Gordon Harrison, who gave updates on administrative issues such as the status of the Juneau office and the website. Harrison also reported that he was contacting interest groups to inform them that redistricting was scheduled for the Spring of 2001, and that they should begin planning for it and thinking about how they wanted to interact with the Board.

Counsel for the Board also discussed legal issues the Board should be aware of, such as the necessity for a formal policy governing communications between the public and Board members, public notice of Board meetings, and changes in redistricting law.

Board member Mason proposed a motion concerning census data, and emphasized that the Board needed to establish that it had taken a "hard look" at the question of eliminating nonresident military personnel from the population base, for compliance with the Hickel decision.

December 8, 2000

The Board received public comment from non-Board members attending the meeting. The Alaska Department of Labor and Workforce Development addressed the Board on the possibility of adjusting the Census Bureau data and current information concerning nonresident military personnel.

In executive session, the Board and its counsel discussed options for preclearance and the risks of litigation associated with these options.

A member of the public, Vic Fischer, addressed the Board about the desire of an organization, Alaska Common Ground, to hold a public forum on the topic of redistricting. The Board had no objections to cooperating with this proposed forum.

January 16, 2001

David Becker, an attorney with the U.S. Department of Justice addressed the Board. Becker described the responsibilities of the U.S. Department of Justice under Sections 2 and 5 of the federal Voting Rights Act. Specifically, Alaska is covered under Section 5 of the Act, and therefore any changes in redistricting must be precleared, either by a Washington district federal court or by the Civil Rights Section of the Department of Justice.

The Board also heard remarks from Lt. Governor Fran Ulmer, and public comments from April Ferguson of the Bristol Bay Native Corporation. Ferguson urged the Board to transcribe the minutes of its meetings and post the transcriptions on the internet. Gordon Harrison indicated that he had been working with the Alaska Municipal League to encourage local governments to address local redistricting issues and communicate their position to the Board. Susan McNabb from the North Slope Borough addressed the Board and stated that call-in radio shows are an effective means of gathering and disseminating information.

Board member Mason moved that the Board arrange to have a transcript made of each of its meetings. The motion was approved.

Each of the Board members , except Mason, planned on attending an upcoming National Conference of State Legislatures in Dallas. Counsel advised Board members on appropriate conduct while at this conference to avoid violating the Open Meetings Act.

February 9, 2001

Members of the public made general comments to the Board. The Board also discussed the logistics involved with procurement of the census data and mapping concerns.

February 26, 2001

A member of the public asked questions about the exclusion of nonresident military from the population base. Gordon Harrison presented a draft list of guidelines for the Board to consider for drawing and evaluating new election districts.

March 14, 2001

Members of the public, including the assistant city manager of the City of Unalaska, a city council member from Valdez, and an attorney for the Tanana Chiefs Conference, addressed the Board. Dr. Handley gave an overview presentation on racial bloc voting. Volland discussed the issue of including or excluding nonresident military personnel, and recommended that the Board take a "hard look" at the issue. Volland also discussed the new requirement that senate districts be composed of contiguous house districts as near as practicable and discussed whether or not senate terms may be truncated.

March 26, 2001

Harrison discussed the scheduling of pre-plan hearings between March 30 and April 6, 2001. Hearings were scheduled for March 30 in Anchorage, March 31 in Palmer, April 2 in Fairbanks, April 3 in Juneau, April 4 in Ketchikan and April 6 in Bethel. The Board discussed these hearings, public notice, and ways to ensure good participation. Counsel for the Board also presented a draft set of instructions for the staff to begin preparing district scenarios.

March 30, 2001

The Board received a draft statewide plan from a group called Alaskans for Fair Redistricting ("AFFR"). This was the first complete statewide draft plan presented to the Board. AFFR representatives testified at the March 30, 2001 public hearing and explained the plan's rationale. AFFR also submitted a statewide map as well as other maps, and a 65-page report that explained the legal criteria AFFR applied to the development of its plan. [Exhibit 24] The report highlighted trouble or controversial areas in the plan and indicated that the plan was not a final product but rather a starting point for the solicitation of public comment.

April 2, 2001

The Board received a presentation from Tanana Chiefs Conference ("TCC") regarding the Fairbanks area.

April 10, 2001

The Board received a second presentation from TCC regarding statewide rural districts. The presentation compared districts proposed by TCC to the AFFR plan. Testimony was received from citizens throughout the state.

James Baldwin, Alaska Assistant Attorney General, reported to the Board on the progress of the Department of Law on preparing a submission to the U.S. Department of Justice for preclearance of portions of HJR 44 and Senate Bill 99. Gordon Harrison presented several draft redistricting scenarios. He prefaced these scenarios with a

description of the three primary factors that influenced them: 1) the problem of finding enough people for then existing House District 40; 2) the necessity of maintaining then existing House District 36 as a Native majority district; and 3) the necessity of adding a district to the Mat-Su Borough, and therefore eliminating an existing district.

Scenarios presented were named Yupik Nation, Interior East, and Interior West. Scenarios presented also included Southeast Alaska. After a discussion of these draft scenarios, the five Board members and Harrison split up into three groups of two to work further on the draft scenarios. Each group took a specific scenario. The groups used the same guidelines given to the staff for the development of scenarios, specifically adhering to federal and state law.

April 11, 2001

The Board members discussed the draft scenarios each prepared. Board member Mason discussed scenarios for Southwest Alaska that he and Board member Okakok had prepared. Board member Sharp discussed a plan for the Interior that he had prepared. Gordon Harrison explained differences between the staff scenario Interior East and Board member Sharp's scenario. Board member Lessmeier and Chairperson Otte described scenarios for Southeast Alaska.

April 12, 2001

The Board discussed the draft scenarios previously worked on by Board members and staff. Scenarios were discussed for the following areas: Southeast Alaska, the Fairbanks area, and Southwest Alaska. The Board then discussed at length alternative

scenarios that combined regional scenarios into statewide scenarios. These included two alternative scenarios for Anchorage: one that sought to conform to existing district boundaries, and another that sought to follow Community Council boundary lines.

Volland advised that the scenarios troubled him because they failed to give sufficiently close proportional representation to the major urban areas. The scenarios considered gave the Municipality of Anchorage sixteen House districts, whereas its population was entitled to 16.6. The scenarios gave the Mat-Su area four districts, whereas its population entitled it to only 3.8. The scenarios gave the Fairbanks North Star Borough effective control of six districts, whereas its population was entitled to only 5.2. The Board agreed that the scenarios should be reworked to give Anchorage sixteen districts and a fraction of another; the Mat-Su Borough should have three districts and an appropriate fraction of a fourth; and Fairbanks should have five seats and a fraction of a sixth.

April 13, 2001

Board member Mason was not present. Board member Sharp described his revision of an Interior scenario that included the Denali Borough, the North Star Borough, and parts of the Richardson Highway. Gordon Harrison briefly described a plan he created called Interior East 1.

The Board discussed matters relating to the production of its draft report, and the schedule of hearings after draft plans were adopted. The consensus of the Board was that the staff would return at the next meeting with two statewide plans, one worked on by

Board member Sharp, the other by Board member Lessmeier, and two alternative Anchorage scenarios. The statewide plans would be able to accommodate regional scenarios for Southeast Alaska already discussed by the Board, and a three district scenario for the Kenai Peninsula.

April 16, 2001

The Board viewed and discussed at length several draft scenarios. These scenarios included one for the Interior developed by Board member Sharp, and staff scenarios referred to as Interior West 2, Interior East 3, Anchorage "Community Council," and Anchorage "status quo." The Board also discussed a statewide plan submitted by a group called "Concerned Citizens for Redistricting Equity" ("CARE").

The Board adopted Interior West 1 as one of its draft plans, and also adopted both the "Community Council" and "Status Quo" alternatives for Anchorage. The Board also adopted the plan submitted by AFFR as one of its draft plans. Board members Lessmeier and Sharp voted against adopting the AFFR plan.

April 17, 2001

The Board adopted Board member Sharp's draft scenario called Interior United. The Board discussed the adoption of the AFFR plan. Specifically, Board member Lessmeier asked the Board to reconsider its action in adopting the AFFR plan. His motion failed, with Board members Sharp and Lessmeier voting in favor of reconsidering the adoption of the AFFR plan. Board member Lessmeier then moved that the Board publish a statement identifying who had prepared the AFFR plan, and

declaring that the plan was not prepared by the Board or the Board's staff, that the Board had not collectively analyzed the plan in any significant detail, and that the AFFR plan was included as an alternative for discussion purposes only. This motion failed by a two to three vote, with Board members Lessmeier and Sharp voting yes.

The Board then discussed the issue of Senate pairings. After discussion, the Board adopted Senate pairings prepared by staff. The Board also adopted the Anchorage/ Mat-Su Status Quo Senate pairings. Board member Lessmeier moved that the Board adopt a plan presented by the Calista Regional Native Corporation. This motion was tabled until the following day to allow review of this plan.

April 18, 2001

Representatives from the Calista Regional Native Corporation discussed their draft plan. The Board then adopted the Calista plan as a draft plan. This brought to four the number of statewide draft plans adopted by the Board as required by the Alaska Constitution. The AFFR Plan; the Calista Plan; and Board Plans 1 and 2.

May 4 – May 19, 2001

Between May 4 and May 19, 2001, the Board held public hearings regarding the four draft plans pursuant to Section 6, Article 10 of the Alaska Constitution. These hearings were held in Anchorage on two different days, and in Fairbanks, Healy, Dillingham, Delta Junction, Glennallen, Valdez, Cordova, Wasilla, Kenai, Homer, Galena, Bethel, Juneau, Sitka, Wrangell, Petersburg, Ketchikan, Angoon, and Hoonah. [Exhibit 520] Executive Director Harrison addressed a meeting of the Southwest Alaska Municipal Conference in Unalaska on May 11, 2001. One day of the Anchorage hearings

and the Juneau hearing were held by teleconference, in order to give people from the entire state the opportunity to testify. The entire Board attended the hearings conducted by teleconference. At least two Board members were present at all of the other hearings. The hearings were recorded, and the public was given access to transcripts and audio tapes. Although testimony at many locations tended to focus on one or the other of the proposed plans, residents in all parts of the state who attended a hearing were made aware that there were four alternate plans under consideration. The public was also made aware that these plans were draft plans and that the final plan could, and likely would, differ from the proposed plans. Approximately 370 people testified at these hearings. Residents in a particular locale generally favored one of the plans over the others, but there was no uniformity throughout the State as to which plan was preferable.

May 21, 2001

Dr. Handley presented the preliminary results of her racial bloc voting analysis. She analyzed elections in which there was a discernable Native-preferred candidate for legislative office in 1994, 1996, 1998, and 2000. She found evidence of legally significant racial polarized voting only for elections in former District 36.

Board members had traveled to public hearings around the state in groups of two or three in order to maximize the number of communities they could visit. Board members summarized public testimony they received at these locations for the benefit of non-attending Board members, which included the following locations: Fairbanks, Healy, Delta Junction, Glennallen, Valdez, Dillingham, Cordova, Wasilla, Homer, Kenai, Bethel, and Galena.

The Board also received a revised plan from AFFR (referred to in this litigation as AFFR Plan B) that had been electronically transmitted the evening of May 18, 2001. AFFR's counsel, Myra Munson, explained Plan B to the Board and presented a letter to the Board and the public that explained each change made to Plan A by Plan B. [R2641-53].

May 22, 2001

The Board began to review plans submitted by outside groups and individuals. Myra Munson, a representative from AFFR, gave an overview of the revisions of her group's plan and answered questions from Board members and staff. The Board also looked at a statewide plan submitted by the TCC. The Board examined plans of the Anchorage areas, one submitted by two Anchorage Assembly members (the "neighborhood plan," which had been incorporated into the AFFR plan), and one submitted by the Anchorage Mayor ("Option B"). In addition, the Board examined a plan submitted by the Mat-Su Borough. These plans were compared with the Board's two Anchorage plans.

The Board discussed districts on which a tentative agreement could be reached. It was agreed that House Districts 37 and 38 would probably remain as shown in the Board's Plans 1 and 2. The Board examined several plans for Southeast Alaska. Counsel for the Board discussed legal issues associated with extending the current House District 5 to include Cordova, as proposed in the AFFR plan. The Board adopted this approach, and also adopted a tentative pairing of House Districts 39 with 40, and 36 with 6.

Shismaref and Pilot Station would be included in House District 38. Trial testimony referred to this process as putting a district "on the shelf."

The Board also examined the Kenai scenarios, including those presented in Board's Plans 1 and 2, AFFR's Kenai plan, and a status quo scenario previously prepared by staff but not adopted as a draft plan.

The plan submitted by the Mat-Su assembly was tentatively agreed upon. The Board examined several scenarios for Fairbanks, including one submitted by an individual at the Fairbanks public hearing.

May 23, 2001

Board member Sharp described his scenario that included the Denali Borough in a Richardson Highway district that extended to Valdez and included Glennallen. A member of the public, Brian Rogers, described his plan for Fairbanks, which had been incorporated into the revised statewide AFFR plan. The differences of these two plans were discussed.

Anchorage Mayor George Weurch and Susan Fison, Director of the Planning Department of the Municipality of Anchorage, described to the Board their plan referred to as Option B. Two Anchorage residents who were connected by teleconference, Melinda Taylor and Doug Van Etten, both Anchorage Assembly members, described an Anchorage plan that had been incorporated into the revised AFFR statewide plan.

The Board also discussed the Kenai Peninsula districts.

May 24, 2001

Gene Soldani presented a new "status quo" scenario for the Kenai Peninsula that was drawn around current house district lines. The Board also reviewed Board member Sharp's Fairbanks scenario.

June 6, 2001

Counsel for the Board recommended that the Board address the content of their final report. Gordon Harrison recommended that the Board present the final report in a proclamation format.

June 7, 2001

The Board determined that it would wait until the final plan was adopted before addressing the issue of setting terms of senators not otherwise standing for reelection in 2002. In addition, the Board discussed the question of including nonresident military in the population base. The consensus was that the including nonresident military personnel would not materially affect the redistricting plan adopted by the Board.

The Board also discussed the contents of the proclamation that would be issued with the final plan.

Gordon Harrison informed the Board that he had received two statewide plans from the Kenai Native Association. He also received a revision of the Anchorage Mayor's plan. Each Board member was to be provided with copies of these plans.

The Board discussed whether it was willing to include an overall population deviation of 10% in its final plan. Counsel for the Board opined that a larger deviation than 10% could be justified on several grounds. The Board decided it would accept a larger deviation if necessary.

Board member Mason discussed revisions he had made to the most recent AFFR plan. He referred to this as the "Full Representation Plan." The Board discussed the inclusion of Valdez in a South Anchorage district. Board member Lessmeier compared districts in the Full Representation Plan with comparable districts in the Anchorage Mayor's Option B plan. The Board passed a motion that Valdez would not be included with an Anchorage house district, with Chair Otte voting no.

June 8, 2001

Board member Mason moved the Board to reconsider its vote regarding a Valdez/South Anchorage district. Board member Mason indicated that he was not committed to this pairing, but wanted to keep the option open. The motion passed by a three to two vote, with Board members Lessmeier and Sharp voting against it.

The Board then discussed at length how a seat shared between the Municipality of Anchorage and the Mat-Su Borough could be divided to give each side its correct proportion. The Board reviewed a partial draft plan prepared by its staff that divided a shared district on the basis of a 57% (Mat-Su) to 43% (Anchorage) split.

June 9, 2001

The Board viewed a revised plan submitted by the Anchorage Planning Department that divided the shared district with the Mat-Su Borough on a roughly 60-40 basis in favor of Mat-Su. Tom Begich, an Anchorage consultant on contract to the Alaska Department of Law, described Anchorage neighborhoods to the Board.

Board member Mason moved that the Board adopt the Full Representation Plan as its final plan. Board member Okakok seconded the motion.

The Board voted against removal of the five Fairbanks districts and House District 35 (the Richardson Highway District) from inclusion in the plan. The Board also voted against incorporating into the plan a south Anchorage-Valdez district proposed by Kevin Jardell. The Board unanimously voted to change the plan so that the two Juneau house districts remain identical to the existing Juneau house districts.

After some discussion, it was concluded that Chair Otte need not recuse herself from a vote on the Full Representation Plan. In addition, the Board voted against including a plan submitted to the Board by the Mat-Su Borough.

The Board voted three to two to adopt the Full Representation Plan as amended by the motion by Board member Lessmeier, including senate pairings, as the Board's final plan. Board members Lessmeier and Sharp dissented.

The Board also decided that a map titled "Full Representation," dated June 6, 2001, would be available in commercial copy shops for the public, with a disclaimer that the final maps issued might include minor differences from this map.

The Board directed its staff to make technical corrections, and on June 18, 2001, the Board released the final Proclamation of Redistricting (the "Proclamation"). The two minority members of the Board issued a Report of Minority Redistricting Board Members, criticizing the final plan and the process by which the plan was adopted.

The plan set forth in the Proclamation (the "Final Plan") described each of the election districts. According to Article VI, Section 6 of the Alaska Constitution, each district is to contain a population "as near as practicable to the quotient obtained by dividing the population of the state by forty." The 2000 census showed a total statewide population of 626,932 people, resulting in an ideal house district size of 15,673 people.

Under the Final Plan, there is an overall deviation of 12 percent. This overall deviation is the lowest in state history. The overall deviation would not exceed ten percent but for the deviation in one district (District 40). Seven districts have a majority of Native population (House Districts 6, 37, 38, 39, 40, and Senate Districts S and T). Two districts have a Native population of greater than 37 percent (House District 5 and Senate District C).

Under the criteria set forth in Egan v. Hammond, 502 P.2d 856 (Alaska 1972), the Board identified the terms of seven sitting senators that must be truncated. The Proclamation identified those districts with two-year senate terms versus those districts with four-year terms. Accordingly, a new election is required in 2002 for some senate districts.

In the Report to Accompany the Proclamation, the Board identified certain critical problems created by demographic changes that influenced the Board's ultimate decision. Problems include the shortfall of population in southeast Alaska (the region had population for 4.6 house seats); the shortfall of population in the Alaska Peninsula-Aleutian Islands district; the Municipality of Anchorage's population equivalent to 16.6 house seats; the underpopulation of the previous Richardson Highway district; and the need to maintain effective representation by Alaska Natives in a certain number of house and senate districts in order to comply with the federal Voting Rights Act. The solutions chosen by the Board to these problems have been challenged in every aspect of this litigation.

III. LEGAL PROCEEDINGS

The Alaska Constitution allows challenges to the Final Plan. Article VI, section 11 states, "[a]ny qualified voter may apply to the superior court to compel the Redistricting Board, by mandamus or otherwise, to perform its duties under this article or to correct any error in redistricting..." In accordance with Article VI, section 11, nine lawsuits were filed in superior courts throughout the State, and were consolidated under the caption, In Re 2001 Redistricting Cases v. Redistricting Board, et al., Consolidated Case No. 3AN-01-8914CI. All of these lawsuits named the Board as a Defendant. Some cases also named the individual Board members as defendants. Plaintiffs all have standing to bring these lawsuits and this court has original jurisdiction under the Alaska Constitution.

The State moved and was allowed to participate as a Defendant-Intervenor. In addition, the court granted a motion to intervene submitted by several Alaska Native individuals and two Alaska Native organizations (the "Native-Intervenors"). The Alaska Legislature (the "Legislature") also was permitted to intervene as a plaintiff. The Legislature's Complaint in Intervention was later dismissed because it had not been filed within the thirty day time limit imposed by Article VI, Section 11 of the Alaska Constitution. The Legislature was allowed participation as *amicus curiae*, as was AFFR, the Mat-Su Borough and the Fairbanks North Star Borough.

This court issued a Scheduling Order on August 28, 2001, which set a fifteen-day trial to begin on January 14, 2002, and conclude on February 4, 2002. On November 15, 2001, the Alaska Supreme Court adopted a new civil rule, 90.8, which required this court to issue its opinion by February 1, 2002. Accordingly, this court modified the original Scheduling Order and a three-week trial began on January 7, 2002 and concluded on January 25, 2002.

The court held regular status conferences with the parties every other week beginning on September 7, 2001, with minor deviations to accommodate the court's schedule. As issues arose, the court held additional hearings as needed. During the course of this litigation, many motions were filed and decisions made. A comprehensive list is attached to this opinion as Appendix B. The parties began extensive discovery and multi-track depositions were taken of the approximately 160 witnesses initially identified.

After briefing and argument, the court decided numerous summary judgment motions. Some of these were granted while most were denied or deferred.

The Plaintiffs as a group assert that the Board's plan is unconstitutional in a number of respects. Before ruling on the specific issues, it is necessary to discuss the substantive law.

IV. APPLICABLE LAW

As discussed earlier, litigation arises systemically with the announcement of the new redistricting plans. As a result, this court is guided by a series of Alaska case law and must recognize the practices established by the Alaska Supreme Court in prior redistricting cases. In addition to state requirements, federal law also applies. A discussion of applicable state and federal law follows.

A. Article VI, Section 6 of the Alaska Constitution

The mandate for redistricting of election districts is set forth in Article VI, Section 6 of the Alaska Constitution, which states:

> 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.

As the Hickel court ruled, "[c]ontinguity, compactness, and relative socio-economic integration are constitutional *requirements*." Hickel, 846 P.2d at 44. In order

to be constitutional, a house district may not lack any of these characteristics. See Id. at 45.

These requirements prevent gerrymandering, or intentional vote dilution. See Id. "Gerrymandering is 'the deliberate and arbitrary distortion of district boundaries and populations for partisan or personal political purposes. The term 'gerrymandering,' however, is also used loosely to describe the common practice of the party in power to choose the redistricting plan that gives it an advantage at the polls.'" Kenai Peninsula Borough, 743 P.2d at 1367 n. 28 (quoting Davis v. Bandemer, 478 U.S. 109, 164 (1986)) (citations omitted). The court will discuss each characteristic below.

1. Contiguity

"Contiguous territory is territory which is bordering or touching." Hickel, 846 P.2d at 45. As one commentator has noted, "[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)." Id. (quoting Grofman, Criteria for Districting: A Social Science Perspective, 33 U.C.L.A. L.Rev. 77, 84 (1985). Because of Alaska's large size and numerous archipelagos, absolute contiguity is impossible. See Hickel, 846 P.2d at 45. To accommodate Alaska's unusual shape, a contiguous district may contain some amount of open sea. See id.

"However, the potential to include open sea in an election district is not without limits. If it were, then any part of coastal Alaska could be considered contiguous with

any other part of the Pacific Rim." Id. Accordingly, the Alaska Constitution provides for the additional requirements of compactness and socio-economic integration. See id.

2. Compactness

The term "compact" as used in the Alaska Constitution means "...having a small perimeter in relation to the area encompassed." Id. (quoting Carpenter, 667 P.2d at 1218 (Matthews, J., concurring)). " 'Compact' districting should not yield 'bizarre designs.' " Id. (quoting Davenport v. Apportionment Comm'n of New Jersey, 124 N.J. Super 30, 304 A.2d 736, 743 (N.J.Super.Ct.App.Div. 1973)). The compactness inquiry looks to the shape of a district. As the Hickel court ruled:

> Odd- shaped districts may well be the natural result of Alaska's irregular geometry. However, "corridors" of land that extend to include a populated area, but not the less-populated land around it, may run afoul of the compactness requirement. Likewise, appendages attached to otherwise compact areas may violate the requirement of compact districting.

Hickel, 846 P.2d at 45-46. When analyzing compactness, the court should "look to the relative compactness of proposed and possible districts in determining whether a district is sufficiently compact." Id. (quoting Carpenter, 667 P.2d at 1218 (Matthews, J., concurring.)).

3. Relative Socio-Economic Integration

Election districts must be composed of relatively socio-economically integrated areas according to Article VI, Section 6 of the Alaska Constitution. The term socio-

economic integration was explained by delegates of the Alaska Constitutional Convention as:

> Where people live together and work together and earn their living together, where people do that, they should be logically grouped that way.
> ....
> It cannot be defined with mathematical precision, but it is a definite term, and is susceptible of a definite interpretation. What it means is an economic unit inhabited by people. In other words, the stress is placed on the canton idea, a group of people living within a geographic unit, socio-economic, following if possible, similar economic pursuits. It has, as I say, no mathematically precise definition, but it has a definite meaning.

Carpenter, 667 P.2d at 1215 (quoting Groh, 526 P.2d at 878, quoting Minutes, Constitutional Convention 1836, 1873)). This description supports the view that election districts were intended to be composed of economically and socially interactive people in a common geographic region. See Carpenter, 667 P.2d at 1215.

In order to satisfy this constitutional requirement, the Board must provide "sufficient evidence of socio-economic integration of the communities linked by the redistricting, proof of actual interaction and interconnectedness rather than mere homogeneity." Hickel, 846 P.2d at 46 (quoting Kenai Peninsula Borough, 743 P.2d at 1363).

The requirement of relatively integrated socio-economic areas "helps to ensure that a voter is not denied his or her right to an equally powerful vote." Hickel, 846 P.2d at 46. Furthermore, the Alaska Supreme Court has commented on this requirement as follows:

> [W]e should not lose sight of the fundamental principle involved in reapportionment—truly representative government where the interests of the people are reflected in their elected legislators. Inherent in the concept of geographical legislative districts is a recognition that areas of a state differ economically, socially and culturally and that a truly representative government exists only when those areas of the state which share significant common interests are able to elect legislators representing those interests. Thus the goal of reapportionment should not only be to achieve numerical equality but also to assure representation of those areas of the state having common interests.

Id. (quoting Groh v. Egan, 526 P.2d 863, 890 (Alaska 1974)(Erwin, J., dissenting)).

The term "relatively" means that the court will "compare proposed districts to other previously existing and proposed districts as well as principal alternative districts to determine if socio-economic links are sufficient." Hickel, 846 P.2d at 47. The term "relatively" does not mean "minimally," nor does its use intend to weaken the constitutional requirement of integration. See Id.

The Alaska Supreme Court has noted, however, that this requirement is given "some flexibility by the constitution since districts need be integrated only 'as nearly as practicable.'" Hickel, 846 P.2d at 45, n.10. The Alaska Supreme Court has further noted that, "the flexibility that this clause provides should be used only to maximize the other constitutional requirements of contiguity and compactness." Id.

In the previous redistricting cases, the Alaska Supreme Court has identified several specific characteristics of socio-economic integration. These include: 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 predominantly Native character of the populace, and historical links. See Hickel, 846 P.2d at 46, discussing Kenai Peninsula Borough, 743 P.2d at 1361. When examining

socio-economic integration, the Alaska Supreme Court also has been persuaded by other factors, including: geographic proximity, link by daily airline flights, shared recreational and commercial fishing areas, and dependence on a community (Anchorage) for transportation, entertainment, news and professional services. See Hickel, 846 P.2d at 46, discussing Kenai Peninsula Borough, 743 P.2d at 1362-63.

In Groh, the court stated that "patterns of housing, income levels and minority residences" in an urban area "may form a basis for districting, [although] they lack the necessary significance to justify" large population variances. Hickel, 846 P.2d at 47, quoting Groh, 526 P.2d at 879. The court also identified transportation ties (ferry and daily air service), geographical similarities, and historical economic links as more significant factors. Id.

B. Equal Protection/Population Variances

In Kenai Peninsula Borough, the court established that, "[i]n the context of voting rights in redistricting and reapportionment litigation, there are two basic principles of equal protection, namely that of 'one person, one vote'--the right to an equally weighted vote--and of 'fair and effective representation'--the right to group effectiveness or an equally powerful vote." Kenai Peninsula Borough, 743 P.2d at 1366.

1. One Person, One Vote

The principle of "one person, one vote" is quantitative in nature. Hickel, 846 P.2d at 47. "[A] State [must] make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable." Reynolds

v. Sims, 377 U.S. 533, 577 (1964), quoted in Kenai Peninsula Borough, 743 P.2d at 1358; and Hickel, 846 P.2d at 47. "Whatever the means of accomplishment, the overriding objective must be substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the state." Reynolds v. Sims, 377 U.S. 533, 579 (1964), quoted in Kenai Peninsula Borough, 743 P.2d at 1358; and Hickel, 846 P.2d at 47.

"[A]s a general matter an apportionment plan containing a maximum population deviation under 10% falls within a category of minor deviations. The state must provide justification for any greater deviation." Kenai Peninsula Borough, 743 P.2d at 1366, quoted in Hickel, 846 P.2d at 48.

The Alaska Supreme Court has recognized "several other state policies which may also justify a population deviation greater than 10 percent." Hickel, 846 P.2d at 48. In Kenai Peninsula Borough, the court noted that the state's desire to maintain political boundaries is sufficient justification, provided that this principle is applied consistently. See Kenai Peninsula Borough, 743 P.2d at 1360; Hickel, 846 P.2d at 48. The Alaska Supreme Court has also rejected other policies as inadequate justifications for population deviation. In Groh, the court held that the:

> ...mining potential in the [Nome] area and the need for a 'common port facility' did not justify a 15 percent overrepresentation where 'the makeup of the population both to the north and the east [did] not vary significantly from that of the adjoining villages within the Nome [election district] boundaries.'

Hickel, 846 P.2d at 48 (quoting Groh, 526 P.2d at 877).

2. Fair and Effective Representation

The principle of "fair and effective representation" is qualitative in nature. Hickel, 846 P.2d at 47. The Alaska Supreme Court has stated, "[t]hat the equal protection clause protects the rights of voters to an equally meaningful vote has been inferred from Reynolds in which the Supreme Court said that 'the achieving of fair and effective representation for all citizens is concededly the basic aim of legislative apportionment.'" Kenai Peninsula Borough, 743 P.2d at 1367 (quoting Reynolds, 377 at 565-66).

Fair and effective representation issues arise in the use of multi member and single member districts. The Alaska Supreme Court has ruled that:

> Employing a multi-member district to achieve "a rough sort of proportional representation" for rural areas in the legislature would thus be permissible under the equal protection clause in light of Gaffney. If, however, the creation of such a district instead was purposefully used to exclude a certain group from political participation, it is more suspect.

Kenai Peninsula Borough, 743 P.2d at 1368. However, the Alaska Supreme Court has noted that, "[i]n cases where the excluded group is a racial minority, such gerrymandering would be unconstitutional." Id., at n.30 (citations omitted). Furthermore, "[o]nly where there is evidence that excluded groups have 'less opportunity to participate in the political processes and to elect candidates of their choice' have we refused to approve the use of multi-member districts." Id. (quoting Davis v. Bandemer, 478 U.S. 109 (1986)).

The Alaska Supreme Court has ruled that regarding single member districts:

> As with individual districts, where unconstitutional vote dilution is alleged in the form of statewide political gerrymandering, the mere lack of proportional representation will not be sufficient to prove unconstitutional discrimination. Again, without specific supporting evidence, a court cannot presume in such a case that those who are elected will disregard the disproportionately underrepresented group. Rather, *unconstitutional discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade a voter's or a group of voters' influence on the political process as a whole.*
> ...
> And, as in individual district cases, *an equal protection violation may be found only where the electoral system substantially disadvantages certain voters in their opportunity to influence the political process effectively. In this context, such a finding of unconstitutionality must be supported by evidence of continued frustration of the will of a majority of the voters or effective denial to a minority of voters of a fair chance to influence the political process.*

Id. at 1368-69 (emphasis in original).

Alaska's equal protection clause imposes a stricter standard than its federal counterpart. See Hickel, 846 P.2d at 49; Kenai Peninsula Borough, 743 P.2d at 1371. The Alaska Supreme Court has ruled:

> In the context of reapportionment, we have held that upon a showing that the Board acted intentionally to discriminate against the voters of a geographic area, the Board must demonstrate that its plan will lead to greater proportionality of representation...Because of the more strict standard, we do not require a showing of a pattern of discrimination, and do not consider any effect of disproportionality de minimis when determining the legitimacy of the Board's purpose.

Hickel, 846 P.2d at 49; see also Kenai Peninsula Borough, 743 P.2d at 1372.

3. Voting Rights Act

In addition to the state requirements, the Federal Voting Rights Act, 42 U.S.C. § 1973 (1988) governs redistricting of state election districts. This Act protects the voting power of racial minorities. See Hickel, 846 P.2d at 49. "Under section 5 of the Act, a reapportionment plan is invalid if it 'would lead to a retrogression in the position of racial of racial minorities with respect to their effective exercise of the electoral franchise.'" Hickel, 846 P.2d at 49 (quoting Kenai Peninsula Borough, 743 P.2d at 1361, quoting Beer v. United States, 425 U.S. 130, 141 (1976)).

Furthermore, in order to comply with section 5 of the Act, the Alaska Supreme Court has ruled that a "state may constitutionally reapportion districts to enhance the voting strength of minorities in order to facilitate compliance with the Voting Rights Act." Kenai Peninsula Borough, 743 P.2d at 1361; quoted in Hickel, 846 P.2d at 49-50.

Section 2 of the Federal Voting Rights Act, as amended in 1986, "creates a cause of action to remedy the use of certain electoral laws or practices which, when interacting with social and historical conditions, create an inequality in the opportunities enjoyed by voters to elect their preferred representatives." Hickel, 846 P.2d at 50; citing Thornburg v. Gingles, 478 U.S. 30, 47 (1986). Plaintiffs may have a redistricting plan invalidated if: (1) under the totality of the circumstances, the redistricting results in unequal access to the electoral process; and (2) racially polarized bloc voting exists. Id.

C. Senate Districts

By its terms, all the requirements of Article VI, section 6 do not apply to senate districts. The Alaska Supreme Court previously has ruled, "the provisions of article VI, section 6 which set forth socio-economic integration, compactness and contiguity requirements are inapplicable to redistricting and reapportionment of senate districts." Kenai Peninsula Borough, 743 P.2d at 1365. Under the 1998 Amendment, Article VI, Section 6 now mandates that "[e]ach senate district shall be composed as near as practicable of two contiguous house districts." The other Article VI, Section 6 requirements of compactness and socio-economic integration were not added, nor made applicable to Senate districts by the 1998 Amendment. Thus, these requirements do not apply to Senate districts.

Furthermore, it is well established that redistricting may require truncation of senate terms. As the Alaska Supreme Court ruled in Egan v. Hammond:

> A need to truncate the terms of incumbents may arise when reapportionment results in a permanent change in district lines which either excludes substantial numbers of constituents previously represented by the incumbent or includes numerous other voters who did not have a voice in the selection of that incumbent. The discretionary authority to require mid-term elections when necessary is well established.

502 P.2d at 873-74 (citations omitted).

D. The Board's Process/Open Meetings Act

In addition to reviewing the Final Plan for constitutionality, another critical issue that this court must examine is the Board's process itself. The Board's creation and process is governed by Article VI of the Alaska Constitution. As discussed earlier, in August 2000, the Board was constituted and began preparations for the redistricting

process. The census results were reported to the State on March 19, 2001, and draft plans were adopted by April 18, 2001. The Board held public hearings throughout the state and gathered comments on the draft plans. By a three to two vote, the Plan was approved and released by Proclamation dated June 18, 2001.

Article VI, Section 10, of the Alaska Constitution specify the manner in which the Redistricting Board must proceed. That provision states:

> **Section 10. Redistricting Plan and Proclamation.** (a) Within thirty days after the official reporting of the decennial census of the United States or thirty days after being duly appointed, whichever occurs last, the board shall adopt one or more proposed redistricting plans. The board shall hold public hearings on the proposed plan, or, if no single proposed plan is agreed on, on all plans proposed by the board. No later than ninety days after the board has been appointed and the official reporting of the decennial census of the United States, the board shall adopt a final redistricting plan and issue a proclamation of redistricting. The final plan shall set out boundaries of house and senate districts and shall be effective for the election of members of the legislature until after the official reporting of the next decennial census of the United States.
>
> (b) Adoption of a final redistricting plan shall require the affirmative votes of three members of the Redistricting Board.

The Alaska Supreme Court has also ruled that the Open Meetings Act and the Public Records Act apply generally to the activities of the Board. The requirements of the Open Meeting Act are set forth in AS 44.62.310-.312 (the "Open Meeting Act"). Additional requirements that the Board must follow also are set forth in the Public Records Act.

The Open Meetings Act states, "[a]ll meetings of a government body of a public entity of the state are open to the public except as otherwise provided by this section or another provision of law" It further requires that reasonable public notice be given. In

addition, a “meeting” is defined as “a gathering of members of a governmental body when...more than three members or a majority of the members, whichever is less, are present”

The Public Records Act allows, unless specifically provided otherwise, that “the public records of all public agencies are open to inspection by the public under reasonable rules during regular office hours.”

Violations of the Open Meetings Act or the Public Records Act do not automatically void the Final Plan, if this court determines that public interest serves otherwise.

E. Record Before The Court

Under new Civil Rule 90.8 (d), the record before the court consists of:

The record in the superior court proceeding consists of the record from the Redistricting Board (original papers and exhibits filed before the board and the electronic record or transcript, if any, of the board’s proceedings), as supplemented by such additional evidence as the court, in its discretion, may permit. If the court permits the record to be supplemented by the testimony of one or more witnesses, such testimony may be presented by deposition without regard to the limitations contained in Civil Rule 32(a)(3)(B). A paginated copy of the record from the Redistricting Board shall be filed in the Supreme Court at the same time it is filed in the superior court.

The parties disputed what the record from the Redistricting Board would be, and this issue was resolved by the court. On January 7, 2002 the Record from the Redistricting Board, consisting of 13 volumes and 6359 pages, was filed with this court. The record was later supplemented during trial by the Board to add another volume

consisting of pages 6360-6524. Numerous witnesses testified both live at trial and by way of designated deposition testimony. A list of all such witnesses is attached as Appendixes C and D to this opinion. Numerous exhibits were also received into evidence during the course of the trial as indicated on the record.

F. Standard of Review

Groh v. Egan, 526 P.2d 863 (Alaska 1974) established the general standard of review to be applied by the courts when exercising jurisdiction under Article VI, Section 11. In Groh, the Alaska Supreme Court ruled:

> It cannot be said that what we may deem to be an unwise choice of any particular provision of a reapportionment plan from among several reasonable and constitutional alternatives constitutes "error" which would invoke the jurisdiction of the courts. We view a plan promulgated under the constitutional authorization of the governor to reapportion the legislature 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 have stated that we shall review such regulations first to insure that the agency has not exceeded the power delegated to it, and second to determine whether the regulation is reasonable and not arbitrary. Of course, additionally, we always have authority to review the constitutionality of the action taken, but we have stated that a court may not substitute its judgment as to the sagacity of a regulation for that of the administrative agency, and that the wisdom of a given regulation is not a subject for review.

Carpenter v. Hammond, 667 P.2d 1204, 1214 (Alaska 1983)(quoting Groh v. Egan, 526 P.2d 863, 866-67 (Alaska 1974)). see also Kenai Peninsula Borough v. State, 743 P.2d

1352, 1357-58 (Alaska 1987); Hickel v. Southeast Conference, 846 P.2d 38 (Alaska 1992).

Furthermore, the Alaska Supreme Court has ruled that, "[i]n short, our review is meant to ensure that the reapportionment plan is not unreasonable and is constitutional under article VI, section 6 of Alaska's constitution." Kenai Peninsula Borough, 743 P.2d at 1358 (quoting Carpenter, 667 P.2d at 1214, quoting Groh, 526 P.2d at 866-67).

The Alaska Supreme Court has never struck down an otherwise constitutional legislative district on the grounds that such a district is "unreasonable." Nor has the court discussed the legal standards by which the concept of "unreasonableness" should be measured. The court's comparison in Groh of the reapportionment process to an agency's promulgation of regulations suggest that the proper standard of review is the one used in Interior Alaska Airboat Association, Inc. v. State, 18 P.3d 686, 690 (Alaska 2001). Under this test, "in determining whether a regulation is reasonable and not arbitrary courts are not to substitute their judgment for the judgment of the agency. Therefore, review consists primarily of ensuring that the agency has taken a hard look at the salient problems and has generally engaged in reasoned decision making." A court must examine not policy but process and must ask whether the agency, here the Board, has failed to consider an important factor or whether the agency has not really taken a "hard look" at the salient problems or has not generally engaged in reasoned decision making. Id. at 693.

Accordingly, this court's role is a limited one. The court cannot pick a plan it likes, nor can it impose a plan it prefers. Rather, the court's role is to measure the plan

against constitutional standards; the choice among alternative plans that are otherwise constitutional is for the Board, not the Court. Cf. Gaffney v. Cummings, 412 U.S. 735, 750-51, 93 S.Ct. 2321, 2330, 37 L.Ed. 298 (1973) (redistricting plan not rendered unconstitutional simply because some "resourceful mind" has come up with a better one.)

G. Practical Applications

In addition to the legal principles discussed, the court notes the practical problems connected with redistricting in Alaska. The Alaska Supreme Court, in virtually every redistricting case, has recognized the following general principles:

> At the outset we recognize the difficulty of creating districts of equal population while also conforming to the Alaska constitutional mandate that the districts 'be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area.'
> When Alaska's geographical, climatical, ethnic, cultural and socio-economic differences are contemplated the task assumes Herculean proportions commensurate with Alaska's enormous land area. The problems are multiplied by Alaska's sparse and widely scattered population and the relative inaccessibility of portions of the state…
> …
> Despite the possibility of belaboring this opinion we feel obliged to set forth a few of the facts which make it difficult to fit Alaska's reapportionment plan into standards established for the 48 contiguous states which preceded it into the Union. Alaska has a total land area of 586,400 square miles-as large as the entire Louisiana Purchase, and one-fifth the total area of the continental United States. Its boundaries embrace four time zones. The state contains the highest mountain on the North American continent, glaciers that exceed the size of the State of Rhode Island, and a coastline longer than the total coastline along the remainder of the continental United States. Mountain ranges which equal or exceed the length and height of the Rockies divide Alaska into five relatively isolated regions which in turn

> are subdivided by river systems and other geographic factors such as broad expanses of frozen tundra challenging the most advanced roadway engineering.
> …
> When confronted with conditions so different from those of any other single state in the continental United States, it is readily apparent that it becomes well nigh impossible to achieve the mathematical precision of equal proportions which is feasible in those other states.

Egan, 502 P.2d at 865-66 (footnotes omitted) (quoted in Groh, 526 P.2d at 875; Kenai Peninsula Borough, 743 P.2d at 1359; and Hickel, 846 P.2d at 50).

Another factor that must be considered by this court, 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. As amended in 1998, Article VI, Section 10 of the Alaska Constitution required the Board to adopt a proposed plan or plans within thirty days of receiving the official census reports, to then hold hearings on these proposed plans, and to adopt a final plan within ninety days of receiving the census reports. Former Article VI, Section 10 required the Board to adopt a proposed plan and submit it to the governor within ninety days of receiving census data; the governor then had an additional ninety days during which he could notify the Board's proposal and issue the final proclamation of redistricting. No public hearings were required. These new 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.

With these legal and practical principles in mind the court will address the legal issues raised by the parties in light of the evidence submitted by the parties both at trial and in pretrial proceedings. This decision is intended as the findings of fact and conclusions of law required by Civil Rule 52 and is intended to be the decision required by Civil Rule 90.8(c).

V. DUE PROCESS ISSUES

The Plaintiffs have challenged the means by which the Board conducted its business in a number of respects. Each of these issues is discussed below.

A. Due Process

Plaintiffs contend that the following actions violated due process: 1) adopting a Final Plan that was not provided to the public during the public hearing process; 2) adopting a Final Plan that was not prepared by the Board or Board staff and was not developed in accordance with the guidelines adopted by the Board for the development of a Final Plan; 3) adopting a Final Plan that was not reviewed by the Board, the Executive Director, the Board's attorney, or the Board's consultants under the guidelines adopted by the Board before it was approved by the Board as the Final Plan; 4) adopting a Final Plan in which the public did not have access to view the corresponding map; 5) adopting a Final Plan without any notice to the public on the meeting agenda that the Board would be voting to adopt a plan; and 6) adopting a Final Plan that was not one of the plans published by the Board for public comment and testimony.

The question of whether there has been a violation of due process depends upon what process is required to be afforded Plaintiffs under state and federal constitutions as well as Alaska statutes.

The concept of due process stems from the American ideal of fairness. See Bolling v. Sharpe, 347 U.S. 497 (1954). The Alaska Supreme Court has repeatedly stated that, "[w]hat procedural due process may require under any particular set of circumstances depends on the nature of the governmental function involved and the private interest affected by the governmental action." In the Matter of K.L.J., 813 P.2d 276, 278 (Alaska 1991) (citations omitted). Furthermore, the due process clause of the Alaska Constitution is "flexible, and the concept should be applied in a manner which is appropriate in the terms of the nature of the proceedings." Id. (citations omitted). In addition, "[t]he crux of due process is opportunity to be heard and the right to adequately represent one's interests." Id., 813 P.2d at 279 (citation omitted).

The Alaska Supreme Court has adopted the balancing test from Mathews v. Eldridge, 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18 (1976) to determine what process is due, which states:

> Identification of the specific dictates of due process generally involves consideration of three distinct factors: the private interest affected by the official action; the risk of an erroneous deprivation of such interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the fiscal and administrative burdens that additional or substitute procedural requirements would entail.

In the Matter of K.L.J., 813 P.2d at 279 (citations omitted).

When considering due process issues arising from redistricting, the matter at hand is analogous to an administrative agency adopting a new regulation, or administrative rule making. "When an agency is considering promulgation of a rule or regulation, it is required by law to give notice and an opportunity to comment to those who potentially will be affected by a regulation." State of Alaska v. Hebert, 743 P.2d 392 (Alaska Ct. App. 1987), aff'd, 803 P.2d 863 (Alaska 1990).

The United States Supreme Court has held that before adoption of the Administrative Procedure Act ("APA"), "the formulation of procedures was basically to be left within the discretion of the agencies to which Congress had confided the responsibility for substantive judgments." Vermont Yankee Nuclear Power Corporation v. Natural Resources Defense Council, Inc., 435 U.S. 519, 524 (1978). The United States Supreme Court described this principle as:

> ...an outgrowth of the congressional determination that administrative agencies and administrators will be familiar with the industries which they regulate and will be in a better position than federal courts or Congress itself to design procedural rules adapted to the peculiarities of the industry and the tasks of the agency involved.

Vermont Yankee, 435 U.S. at 525 (quoting FCC v. Schreiber, 381 U.S. 279, 290 (1965)).

In addition, the United States Supreme Court has ruled, "[b]ut this much is absolutely clear. Absent constitutional constraints or extremely compelling circumstances the 'administrative agencies 'should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties.'' Vermont Yankee, 435 U.S. at 543 (quoting FCC v. Schreiber, 381 U.S. at 290, quoting FCC v. Pottsville Broadcasting Co., 309 U.S. 134, 143 (1940)).

While the Board is free to adopt its own procedures, it is not afforded unfettered discretion during the redistricting process. The Board must comply with the Open Meetings Act, the Public Records Act, and Article VI, Section 10 of the Alaska Constitution. Beyond that, the Board has freedom to conduct its proceedings in a manner that it believes best facilitates the formulation of a final redistricting plan. We thus turn first to the Open Meetings Act and examine the Board's compliance with such.

1. Open Meetings Act/Public Records Act

The Plaintiffs contend that the Board's adoption of the Plan violated the Open Meetings Act and the Public Records Act for numerous reasons. They argue that the Board members improperly: 1) took "straw" votes by e-mail or phone; 2) met with Alaskans For Fair Redistricting ("AFFR") representatives and legal counsel in meetings closed to the public and to any non-AFFR member and any person not aligned by political party with the Board members involved in these meeting and the AFFR representatives; 3) communicated amongst themselves in numbers of three or more via e-mail or telephone with regards to issues that are specific constitutional duties of the Board and should have been done in a public meeting; and 4) communicated amongst themselves in number of three or more via members of the Governor's Office, Department of Law, or members of the Board's staff regarding specific issues that were required to be addressed in a public meeting.

The Alaska Supreme Court has ruled that the Board must comply with the Open Meetings Act. As previously discussed, the Open Meetings Act requires that all meetings of a governmental body of a public entity of the state are open to the public, unless

provided otherwise. Reasonable public notice of meetings must be given. "Meetings" are defined as when three or more Board members are present, or the gathering is prearranged for the purpose of considering a matter upon which the governmental body is empowered to act and the governmental body has only authority to advise or make recommendations for a public entity but has no authority to establish policies or make decisions for the public entity.

The Open Meetings Act specifically allows attendance and participation at meetings by members of the public or by members of a governmental body by teleconference. If practicable, agency materials that are to be considered at the meeting shall be made available at the teleconference locations.

The Public Records Act requires that unless specifically provided otherwise, the public records of all public agencies are open to inspection by the public under reasonable rules during regular office hours. In addition, the public agency "is encouraged to make information available in usable electronic formats to the greatest extent possible."

Action taken to the contrary of the Open Meetings Act is voidable. However, according to AS 44.62.310(f), this court is not required to void the Final Plan simply because of Open Meeting Act violations:

> A court may hold that an action taken at a meeting held in violation of [the Open Meetings Act] is void only if the court finds that, considering all of the circumstances, the public interest in compliance with [the Open Meetings Act] outweighs the harm that would be caused to the public interest and to the public entity by voiding the action.

In making this determination, the court must consider the following: 1) the expense that may be incurred by the public entity, other governmental bodies, and individuals if the action is voided; 2) the disruption that may be caused to the affairs of the public entity, other governmental bodies, and individuals if the action is voided; 3) the degree to which the public entity, other governmental bodies, or individuals may be exposed to additional litigation if the action is voided; 4) the extent to which the governing body, in meetings held in compliance with the Open Meetings Act, has previously considered the subject; 5) the amount of time that has passed since the action was taken; 6) the degree to which the public entity, other governmental bodies, or individuals have come to rely on the action; 7) whether and to what extent the governmental body has, before or after the lawsuit was filed to void the action, engaged in or attempted to engage in the public reconsideration of matters originally considered in violation of the Open Meetings Act; 8) the degree to which violations of the Open Meetings Act were willful, flagrant, or obvious; and 9) the degree to which the governing body failed to adhere to the policy under AS 44.62.312(a).

This court has previously ruled that the Board violated the Open Meetings Act by using e-mail among three or more Board members to discuss Board business. See Order of January 3, 2002. These e-mails primarily concerned discussions regarding the locations of the public hearings that were to be held regarding the proposed plans initially adopted by the Board. Additional e-mails among Board members concerning other procedural matters on administrative topics also appear to have been sent. There is no evidence that the Board utilized such group e-mail to discuss the actual redistricting itself. There is no indication that there was any serial communication among Board

members either by e-mail or by other forms of communication to discuss Board business among three or more Board members.

The Board decided in the process that Board members could meet individually with members of the public to discuss the redistricting process. All members of the Board did this with a wide variety of public and private individuals. This is not a violation of the Open Meetings Act. There is also some indication that on a few occasions two Board members may have met to discuss matters regarding redistricting. Indeed, Board members often worked in groups of two as they sought to develop redistricting plans or to improve on those plans. Again, this is not a violation of the Open Meetings Act.

Each of the Board members testified that they individually did not violate the requirements of the Open Meetings Act. They further testified that they did not observe any violation of the Open Meetings Act by other members of the Redistricting Board. The court finds the testimony of each of the Board members to be credible.

Upon considering the facts and evidence and the factors set forth in AS 44.62.310(f), discussed previously, the court finds that the Board's violations of the Open Meetings Act through the use of e-mail is insufficient to void the final redistricting plan and does not require any sanction be imposed. The use of the group e-mails in question was for planning and administrative purposes rather than a substantive discussion of the Redistricting Plans themselves. This court recognizes that the Board was under great time constraints through the redistricting process. The use of e-mails appears designed to save time and only appears to involve planning issues rather than a substantive discussion

of the Redistricting Plans themselves. While even such planning decisions, particularly regarding where the Board would hold its public hearings, are covered by the Open Meetings Act, this court concludes that considering all of the circumstances the public interests in requiring compliance with the Open Meetings Act does not outweigh the harm that would be caused to the public interest by voiding the entire Redistricting Plan on this basis. See Hickel, 846 P.2d at 56-57.

2. Article VI, Section 10

Plaintiffs contend that the Board violated Article 6, Section 10 of the Alaska Constitution, contending that the Board violated the constitutional requirement by accepting late filed plans and not holding public hearings on the late filed plans, including one that was eventually adopted by the Board. At argument held on December 20, 2001, this court granted, on the record, a motion for summary judgment filed by the Native-Intervenors on this issue.

Article VI, Section 10 requires the Board to adopt one or more proposed redistricting plans within thirty days after the official reporting on the decennial census. The evidence indicates that the Board complied with this requirement and adopted four such proposed plans in a timely fashion. The Board is then required to hold public hearings on "all plans proposed by the board." The Board did so holding twenty-one hearings around the state from May 4 through May 19. Two of the hearings were state-wide teleconferences.

During this period, and in the period thereafter, several new regional plans were presented by individuals and groups. AFFR submitted a revised statewide plan on May 18, 2001. Other plans or proposals were submitted by the Mayor of Anchorage, by two members of the Anchorage Assembly, by the Mat-Su Borough, and by Native organizations. On June 7, 2001, during a public meeting, Board member Mason presented what he termed the "Full Representation Plan."

The evidence indicates the Full Representation Plan is a revision of the second AFFR plan which itself is a revision of the initial AFFR plan adopted by the Board as one of the four proposed plans that were the subject of the public hearings. The Full Representation Plan was discussed by the Board at its public meetings on June 7th and June 8th. Some minor modifications to Juneau districts were made to this plan while other modifications to Anchorage districts were discussed and rejected. On June 9th the Board voted to adopt the Full Representation Plan with the modifications that had been approved earlier.

Defendants contend, and this court agrees, that Article VI, Section 10 requires that public hearings be held only on the plan or plans adopted by the Board within thirty days of the reporting of the census. Indeed, given the extraordinary time constraints imposed by Article VI, Section 10 on the work of the Board, any other requirement would likely discourage the Board's consideration of plans submitted after the initial thirty day time period. Likewise, if the Board were required to hold additional public hearings on any significant or substantial modifications made after public comment was received on the original proposed plans, the Board might be discouraged because of lack

of time to hold hearings, from making such modifications based on public input. The evidence indicates that many of the Board members were trying to modify parts of the various plans virtually until a final vote was taken. The Board's work would also likely be hindered by the uncertainty of whether a modification to a plan was significant enough to warrant additional public hearings.

The Aleutian East Plaintiffs also seem to complain that no public hearings were held in their region, despite a request to do so. There is no requirement that such hearings be held in every part of the state. As previously indicated, at least two of the public hearings were statewide teleconferences. Likewise, the complaint of the Aleutians East Plaintiffs that the Board held a hearing in Dillingham when area municipal officials were at a conference in Unalaska is not a constitutional violation.

This court concludes that the Board fully complied with the requirements of Article VI, Section 10 of the Alaska Constitution.

3. Other Due Process Issues

The plaintiffs raise a number of issues concerning the due process that they were afforded. For example, they claim that the final plan was submitted by AFFR, a private interest group, with little or no input from the public. AFFR Plan B, which was submitted to the Board on May 21 was never published on the Board's web site so that the public did not have easy access to the AFFR Plan B Map. The Full Representation Plan that ultimately was adopted by the Board was initially presented on June 6, 2001 and

also was not published on the Board's web site or widely distributed to the public. Plaintiffs also complain that the Board considered plans after public hearings had been completed, contending that the Board should have had further public hearings on any new plans that the Board was considering or any final plan that the Board intended to adopt. Plaintiffs also contend that by allowing private groups to contact and influence individual Board members also deprived them of due process asserting that AFFR was able to orchestrate the final outcome of the redistricting process with the majority Board members. While any of these assertions might not individually suffice to establish a violation of due process, plaintiffs assert that the overall effect of all of these violations denied them a meaningful opportunity to participate in the redistricting process or to be heard.

a. AFFR

AFFR admittedly played a central role in the 2001 redistricting process by drafting and promoting a statewide redistricting plan. The plan ultimately adopted by the Board is substantially similar, but not identical, to the proposed AFFR plan.

AFFR was a statewide coalition of citizens and groups, who self-organized in early 2001 for the purpose of participating in the redistricting process. Scott Sterling and April Ferguson were the most instrumental in organizing AFFR. Myra Munson was AFFR's legal counsel. Members and founders include Native organizations, labor groups, environmental groups, and Alaska state citizens. AFFR is an unincorporated association that issued bylaws and held formal meetings.

AFFR was concerned that the changes requiring the Board adopt a plan within ninety days of release of the census results would fundamentally disenfranchise people in rural Alaska, whether Native or non-Native. AFFR believes that the opportunities to

participate in the redistricting process are reduced in very remote places, and that shortening the timeframe would further reduce participation.

AFFR advocated for a plan that would elect a "more progressive" legislature, particularly on issues of acute concern to the Native community, such as subsistence. The term "more progressive" has been described by counsel for AFFR as not a partisan concept, but rather electing legislators who would represent the views of the general populous and more moderate Democratic or Republican members. AFFR had no formal affiliation with either the Republican or Democratic Parties, and did not received any funding from either.

AFFR contacted the Board's Executive Director to find out what redistricting software the Board planned to use. AFFR purchased "AutoBound," the same specialized redistricting software program used by the Board. It also retained Ecotrust, Inc., a technical consulting firm with expertise in mapmaking that could manage the sophisticated redistricting software.

AFFR's goal was to provide the Board with a draft statewide plan in time for the Board's first scheduled public hearing after the release of the census data in order to maximize the opportunity for public scrutiny and discussion of its plan. On March 19, 2001, AFFR downloaded the raw census data directly from the Census Bureau web site. Under its self-imposed deadline, AFFR had eleven days to draft its plan and submit it to the Board prior to the first public hearing scheduled for March 30, 2001.

AFFR members worked intensively round-the-clock and in consultation with dozens of people from around the state in preparation of its first draft plan ("Plan A"). AFFR asserts that the preferences of individuals from various parts of the state were given deference, provided that their preferences advanced the primary objectives of AFFR and were consistent with legal requirements. AFFR consulted with representatives of TCC and individuals from the Bristol Bay region and Southeast Alaska.

In addition to developing a statewide map, AFFR also prepared a 65-page report to accompany and explain that map. The report discussed the legal criteria AFFR applied to the development of its plan, and included a statewide map of the entire plan, a series of regional maps, a separate map and thorough description of each proposed district, and a textual explanation of the logic of each proposed district's construction. The report reiterated that Plan A was not a final product, but rather a starting point for the solicitation of public comment. The report also highlighted trouble areas. AFFR's report was given to the Board and made available to the press, and upon request, to any member of the public. Plan A maps were posted on the internet. AFFR representatives testified at

the Board's public hearing in Anchorage on March 30, 2001, to present the plan and explain its rationale.

During the period while the Board held public hearings, AFFR worked to develop a revised plan. AFFR designed its revised plan to incorporate many of the comments and criticisms that had been received concerning the original plan, as well as additional reflection and study by AFFR members. The AFFR revised plan was complete to the satisfaction of some key AFFR members by May 10, but those members continued to solicit feedback from others. Some people who had seen the revised AFFR plan commented on it during public testimony between May 10 and May 19. After sufficient AFFR members agreed to the new proposal, it took a significant amount of time to finalize an accurate detailed computerized map and plan. The revised AFFR plan was submitted to the Board in electronic format on Friday evening, May 18, the same day that the computer work on it was finished. Discussion on the plan commenced on Monday, May 21. Although plaintiffs suggest that AFFR delayed submission of Plan B to avoid public comment, this court concludes that there was no intent on anyone's part within AFFR to delay submission of the revised plan to the Board.

AFFR's counsel followed up the electronic submission of the plan with a detailed letter explaining the proposed changes. AFFR's counsel's letter was included in the Board's reading file. However, the electronic version of the AFFR Plan B was not added to the reading file or placed on the Board's web site because no electronically-submitted plans were included in the reading file or placed on the web site. The only plans placed on the web site were those formally adopted by the Board. It is noteworthy, however, that that Board, through its staff, was willing to provide a copy of AFFR's electronic

submission to anyone who requested it, in exactly the same manner that the Board staff was prepared to share other electronic submissions. AFFR would also have provided a copy of its revised plan had anyone requested it.

In the final days of the Board's deliberations, mapping of newly proposed plans was simply not possible. It required approximately two weeks for Board staff to prepare a final map of each Board plan, after the Board had voted to adopt the district lines. The final plan adopted by the Board was not able to be the subject of a public hearing due to the time frames imposed by the Constitution. It is noteworthy that the Final Plan incorporated portions of many aspects of other plans, including the original AFFR Plan, that had been the subject of public hearings, or which had been discussed by the Board following the public hearings throughout the State that took place in May. There simply is no meaningful aspect of the Final Plan that had not been the subject of some public discussion at some point in the process, even though the complete Final Plan may not have been discussed until the last two days before it was adopted by the Board.

Of the four final plans adopted before the public hearings, the AFFR Plan was most similar to the Final Plan. The Final Plan was also similar to the AFFR Plan B submitted on May 18, which AFFR had developed to incorporate criticisms it had heard through its own contacts and through the Board's public hearings. The AFFR Plan B was further modified by Julian Mason to incorporate other changes that had been suggested to him during the process. Mason developed the Full Representation Plan having consulted with a number of people, including AFFR representatives. He also received technical assistance from AFFR representatives.

While the evidence establishes that the process, particularly in the last few days in which the Board was reaching its decision, was not perfect and could be improved, the evidence does not indicate that the public was deprived of a meaningful opportunity to be heard or to be involved in the process. The Board went to extraordinary lengths to involve the public in the process. All Board members were genuinely committed to

making the redistricting process open and accessible to the public to the largest extent feasible. The Board created and maintained a web site that explained the redistricting process and encouraged public participation. The Board amassed a large e-mail "notice list," which grew throughout the process, to advise anyone who requested this information of important developments and deadlines in the redistricting process. Materials that individuals and groups submitted to the Board were made available for public review in the Board's "reading file." This reading file of materials submitted to the Board was over 5,000 pages. This included over 1,200 comments submitted to the Board's web site by e-mail. The reading file was available to any member of the public and copies could be obtained through commercial copy services in Juneau, Anchorage and Fairbanks. The Board also encouraged submission of plans from groups throughout the State and considered plans that were submitted by groups and individuals. Indeed Kevin Jardell, who was working for the legislature, submitted his own individual plan to the Board as late as June 9, 2001.

The software and census data used by the Board was available to purchase by any member of the public who cared to do so. Board members frequently reminded people that the final plan could differ from any of the proposed plans.

Certainly the Board's process can and should be improved. Rural areas, such as the City of Craig, were at a disadvantage due to their inability to directly attend Board hearings in person or to technological problems associated with placing information on the Board's web site or creating maps. Remote areas of the State are always at a disadvantage in this regard. Hopefully, future technological advances will cure some of

these problems. The Board may also wish, in the future, to consider adopting regulations concerning at what point the Board will stop considering new plans or proposals. The Board may also wish to assure that new plans or proposals submitted after the initial 30 day period or revisions to plans adopted by the Board are placed on the web.

Citizen involvement in the redistricting process is a two-way street however. The more actively involved any group is in the redistricting process, the better informed it will be. Due process is not violated when a party is not informed of information that others who were more actively involved in the process had available to them. The evidence establishes that, on balance, all members of the public were provided an opportunity to be heard and were able to adequately represent their interests throughout the redistricting process. AFFR did nothing improper in the redistricting process. They did nothing that any other organized group of citizens could have done. That AFFR was effective in their efforts did not deprive the plaintiffs of their own opportunity to participate in the process or to be heard. No actions of the Board or individual Board members denied plaintiffs a meaningful opportunity to participate in the redistricting process or to be heard. Indeed, if anything, the evidence indicates that the 2001 redistricting process was the most open process in this State's history and that public involvement in the process was continually emphasized and encouraged by the Board.

b. Undue Influence

Plaintiffs contend that their due process rights were violated due to improper contacts or undue influence on Board members. These claims focus primarily on two Board members who voted in favor of the Redistricting Plan - Vicki Otte, and Leona Okakok.

As to Otte, plaintiffs raise the concern that Otte was placed in fear of losing her job if she did not vote in favor of the AFFR Plans. Otte is Executive Director of the Association of ANCSA Regional Corporation Presidents and CEOs. Some of these regional corporations were contributors to AFFR and supported the AFFR Plans and the Boards final plans while other ANCSA Corporations opposed portions of the Final Plan effecting their own communities. The record indicates that the issue of a potential of conflict of interest regarding Otte was raised during the Board's deliberations and discussed in executive session with counsel for the Board who concluded that no conflict of interest exists. Otte specifically denied any conflict of interest and denied that she was influenced improperly by any person or organization or that she acted for any improper reason. The court finds Otte's testimony to be credible in all respects and finds there to be no evidence to the contrary.

A similar claim is raised regarding Leona Okakok. This allegation centers around a critical vote taken by the Board regarding whether or not the Board should consider a House District pairing the City of Valdez with a portion of South Anchorage.

This issue was first debated at the Board Meeting of June 7, 2001. Following extensive discussion and debate, primarily between Michael Lessmeier and Julian Mason the Board adopted a motion proposed by Bert Sharp to not pair Anchorage with Valdez in any final plan adopted by the Board. The vote in favor of the motion was four to one with Vicki Otte the dissenting vote. It is clear from his trial testimony, however, that Julian Mason was opposed to the motion and voted in favor of the motion only as a parliamentary procedure in order to seek reconsideration of the vote. During the debate

on the motion Leona Okakok indicated that she was uncomfortable with the pairing of Valdez and Anchorage because she considered Anchorage to have a different lifestyle than Valdez which she described as rural in nature.

This vote was a critical setback for the AFFR Plan and the Full Representation Plan then under consideration by the Board. Myra Munson, the attorney for AFFR, attempted to contact several persons who might speak with Okakok on the subject and make known their views regarding this issue. One of these people was David Crosby, a Juneau attorney whose clients included Arctic Slope Regional Corporation. ("Arctic Slope") Okakok works for an entity related to Arctic Slope although she does not work for Arctic Slope itself. Crosby attempted to contact the corporate officers of Arctic Slope to see if they would be willing to meet or speak with Okakok. He was unable to speak with these principles of Arctic Slope, however, because Arctic Slope was holding corporate meetings and these individuals were not available. Crosby spoke briefly himself with Okakok whom he did not know. Okakok clearly was uncomfortable speaking with Crosby on the subject and asked him to put anything he cared to say in writing. This apparently was Okakok's standard way of dealing with redistricting issues raised by persons with whom she did not have familiarity. Crosby then drafted a letter to Okakok [Exhibit 340]. In that letter Crosby indicated that Arctic Slope was concerned about piecemeal decisions being made including the vote to separate Anchorage and Valdez. He indicated that Arctic Slope strongly supported the current AFFR proposal and that it believed that an essential component of the AFFR proposal involved keeping Valdez in a district with Anchorage. He expressed Arctic Slope's support for the AFFR Plan or some variation of it.

Crosby dropped the letter off at the Goldbelt Hotel in Juneau where Okakok was staying. Okakok does not remember ever receiving that letter, reading it or being influenced by it. Following the conclusion of the Board meeting on June 7, Otte and Okakok walked back to the hotel together. Okakok indicated to Otte that she wished she had further information regarding Anchorage. Otte indicated that she knew somebody who might be able to explain Anchorage and its communities to her. A meeting took place that evening that lasted approximately one hour with Otte, Okakok, Jim Baldwin, an attorney for the State Attorney General's Office and Thomas Begich, a consultant with expertise in Anchorage neighborhoods. The meeting lasted approximately one hour. During that time Begich showed Okakok an aerial map and explained why certain areas were neighbors to other areas and why certain areas could not be neighbors to other areas. He answered her questions. After reviewing the map and after listening to Begich, Okakok concluded that South Anchorage was not an industrial urban area of Anchorage and that the Anchorage, Indian, Bird Creek, and Girdwood portions of the City and Borough of Anchorage were more suburban or even rural in character. Following the meeting with Begich all of the Board members attended a barbecue. There is no indication that any Board business was discussed at this barbecue.

The next day Mason moved to reconsider the Valdez vote. His motion was to rescind the prior vote so that the Board would be free if they chose to do so to pair Valdez with Anchorage. Mason's motion did not compel the Board to pair Anchorage with Valdez. Both Mason and Okakok changed their prior votes and the motion was passed by a 3 to 2 vote.

Plaintiffs contend that Okakok was improperly pressured or unduly influenced to change her vote. Okakok's testimony as well as anyone in a position to influence Okakok directly contradicts this assertion. Okakok specifically testified that she was not unduly or improperly influenced by any other Board member or any person or organization outside the Board. Nor was she motivated by any improper reason. She clearly indicated that her only motivation was to adopt a Redistricting Plan that was fair for the entire state. There is no indication that any Board member or any other person spoke with Okakok on the evening of June 7 following the Board meeting and attempted to influence her to change her vote on Valdez. The court finds that Okakok's testimony is fully

credible and that her testimony is the best evidence of what occurred regarding the Valdez vote.

Plaintiffs also complain of undue influence as a result of ex parte communication with Board members. This claim is directed principally at AFFR contacts with individual majority Board members, and particularly with Mason's contact with AFFR at the end of the redistricting process when the Full Representation Plan came into existence.

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):

> 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.

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. See Brookwood Area Homeowner's Ass'n v. Anchorage, 702 P.2d 1317, 1323 n.7. (Alaska 1985)

The court finds that all Board members were credible when they testified to facts they were told and descriptions of their own actions and motivations. No Board member was motivated by any improper reason. All Board members were open minded in the

sense that none began his or her involvement in the redistricting process with any preconceived idea of the final plan. Each Board member made a good faith effort to adopt a constitutional plan. Each Board member exercised his or her independent judgment and was not unduly or improperly influenced by any other Board member or any person or organization outside the Board. Although Board Member Michael Lessmeier believed that the majority Board members had a secret agenda and collaborated together outside of the Board's formal process, no evidence supports his belief and the direct evidence of the majority Board members directly contradicts that belief.

c. Board's effort to encourage public participation

The evidence indicates that the Board actively encouraged public participation in the redistricting process. Gordon Harrison and individual Board members participated in various forums and addressed community groups regarding redistricting. Public officials and representatives were informed of activities of the Redistricting Board and encouraged to participate in the process. The Board developed and maintained a computer web site that became operational early in the redistricting process. Included on the web sites were the Board approved plans, information concerning the Board's activities, meeting schedules, and transcripts of public hearings. The web site also allowed the public to communicate with the Board staff or Board members via e-mail. A contact list was

developed that eventually consisted of almost 600 individuals, legislative members and staff, organizations and media outlets were developed. Persons or organizations on this contact list were provided with public notice of upcoming meetings.

In addition to the Notice of Board Activities and Upcoming Meetings published on the web site, the Board published Notice of Meetings in newspapers in Juneau, Anchorage, and Fairbanks. Such notices were published three times prior to any meeting beginning at least five days before the meeting.

Additionally, the board maintained a reading file available to the public that contained all e-mail communications, letters or proposals that were submitted to the Board during the redistricting process. The reading file was periodically taken to a local copy shop that was available in Juneau, Fairbanks and in Anchorage.

Some of the public meetings held by the Board were also teleconferenced statewide. This included any of the regular Board meetings except for the meeting at which the Board determined which plans would be adopted prior to the public hearings and the meeting at which the Board adopted a final plan. These latter two meetings were in the nature of work sessions that did not easily lend themselves to teleconferencing. All of the meetings and hearings of the Board were open to the public and the public attended and participated in such meetings.

This is not to say that all information presented to the Board was available to the public. In particular, plans received by the Board after the adoption of the four draft plans and after the public hearings required by the Alaska Constitution were held were not easily obtainable by the public. In particular this includes AFFR Plan B and the Full Representation Plan. Such plans were not available on the web site because they were not adopted as official Board plans and due to the dictate of time. The Full Representation Plan in particular, was developed and introduced to the Board only shortly before its adoption by the Board, and there was little opportunity for the public to learn the particulars of this plan or to make any comment on it. Nor were any maps of this plan made available to the public until after the plan was finally adopted by the Board. While this made it harder for the public, particularly in rural areas, to obtain information during the critical last days of the work, this information was available. The

overall process was fair and open and the public was afforded a meaningful opportunity to take part in the process and be heard.

VI. EQUAL PROTECTION ISSUES

A. One Person One Vote Population Deviation - House District 40

House District 40 is the only reason that the total deviation in the plan for house and senate seats exceeds 10%. The District is the most northern district in the State. That district has an overall deviation of –6.9%. As such, the Board is required to justify the population deviation in House District 40. Both the size and the unavailability of easily moved population blocks make this deviation acceptable. The Board considered and rejected moving Shishmaref into District 40. This would have reduced the deviation in District 40 to within 5% of the ideal population but would have increased the deviation in adjoining House District 39 to -7.8%. The Board also considered moving Pilot Station out of House District 6 and into House District 39, but that would have affected the deviation in House District 6 and would have had voting rights act implications for District 6, a district that the Boards voting rights expert had warned them might impact the Voting Rights Act. The Board's record reflects that Pilot Station was moved into House District 6 specifically to increase native population in that district. Shishmaref was then moved into District 39 to decrease the population loss in that district. All Board members joined in the decision to approve the boundaries of House District 40, believing that this choice would result in the lowest population deviation. As previously noted the overall deviation in the plan of 12.0% for house districts and 10.6% for senate districts is the smallest overall deviations of any plan in Alaska since statehood. The only reasons these deviations exceed the 10% threshold is due to District 40. This court finds that these deviations are acceptable and justified.

B. Voting Rights Act

Alaska is subject to the provisions of Section 5 of the Federal Voting Rights Act, 42 U.S.C. § 1973c. This provision prohibits an Alaska Redistricting Plan from having a retrogressive effect on Native voting strength. Because Alaska is subject to Section 5 of the Voting Rights Act, no new Redistricting Plan may take effect without being "precleared" by the United States Department of Justice. The 2001 Plan has been precleared by the Department of Justice, and this court therefore presumes that the plan satisfies the Voting Rights Act.

Compliance with the Voting Rights Act was a legitimate and essential goal for the Redistricting Board. Under Section 5 of the Voting Rights Act, any proposed new plan is measured against the "benchmark" which is the last approved Final Plan with updated census information. Thus, the benchmark for the 2001 Final Plan was the 1994 proclamation districts using population from the 2000 census. [Exhibits 516-519] The benchmark plan has four majority Native House Districts two other effective Native House Districts, two majority Native Senate Districts and one other effective Native Senate District. An effective district in Alaska is a district with a minimum of 35% Native residents. This figure is determined empirically. Historically a district in Alaska with a minimum of 35% Native residents has elected the Native preferred candidate in each contested election. A Native preferred candidate is a candidate preferred by Native voters in the district; this does not necessarily imply that a Native preferred candidate will in fact be a Native. For Voting Rights Act analysis, the fact that a candidate or

representative is a Native is irrelevant unless that candidate is the Native preferred candidate.

The Native percentage required to achieve an effective Native District in the area covered by former House District 36 is larger than 35% because this area of the State has been shown to have racial block voting. The Board's expert, Dr. Handley, studied voting patterns in House District 6 in the proclamation plan and determined that the 56% Native population is sufficient to maintain an effective Native District. The Department of Justice was persuaded by her analysis.

Handley determined preliminarily (without full research) that a Senate District containing House District 6 needed to have a Native voting age population of approximately 43% in order to be an effective Native Senate seat. Her analysis was only preliminary and did not constitute a full determination as to whether or not a Senate District having a lessor percentage of Native voting age population would satisfy the Voting Rights Act. Determining the minimum number of Natives to establish an effective district would require specific analysis that was not done by Dr. Handley.

In conducting its preclearance analysis to determine whether or not a redistricting plan has a retrogressive effect on minority voting strength, the United States Department of Justice first considers whether the number of effective minority districts has declined between the benchmark plan and the proposed new plan. In addition, the Department of Justice considers other factors that are relevant to whether the plan will have a retrogressive effect on minority voting strength, including whether minority incumbents were paired against each other or paired against non-Native incumbents, whether the

percentage of minority voters in an effective Native District has declined significantly, whether minorities favor or disapprove of the plan, and whether minorities had inadequate opportunity to participate in development of and comment on the plan. Hickel, 846 P.2d at 97 (Appended Opinion of Judge Weeks) (citing Thornburg v. Jingles, 478 US 30, 60-62 (1986)). If the Final Plan had failed to preserve four Native majority House Districts and two Native majority Senate Districts, plus an additional two effective Native House seats and one effective Native Senate seats (as measured at minimum by the 35% Native threshold), there was a significant chance that the Department of Justice may not have approved the plan. Given the advice of its expert, Dr. Handley, the Board acted reasonably in using 35% as a minimum threshold for the effective Native Districts. The Board appropriately was concerned with the need to adopt a plan that was likely to be precleared by the Department of Justice. It was also reasonable for the Board to avoid a plan that paired Native incumbents against one another in an effective Native District, or that paired a Native incumbent against a non-Native incumbent in an effective Native District since the Department of Justice had objected to plans in other states that paired minority incumbents in these circumstances.

The Board did not give undue weight to Voting Rights Act considerations and did not compromise Alaska Constitutional Redistricting principles, except to the extent that the Board believed it was necessary to do so to comply with the Voting Rights Act. The Board's assessment of what was needed to satisfy the Voting Rights Act was reasonable. Whether other plans considered by the Board or whether alternatives suggested by the Plaintiffs would have satisfied the Voting Rights Act cannot be determined on the record before the court. What is important is whether the Board's plan satisfies the Voting

Rights Act and whether Voting Rights Act considerations and decisions made by the Board were reasonable.

C. Geographic Equal Protection

A number of Plaintiffs have asserted that the Board's Final Plan violates the equal protection clauses of the Federal and State Constitutions by not giving equal weight to voters in all parts of the State. This Geographic Equal Protection Claim turns upon interpretation of the Alaska Supreme Court's decision in Kenai Peninsula Borough v. State, 743 P.2d at 1352 (Alaska 1987).

In Kenai Peninsula Borough the Alaska Supreme Court was asked to consider the Constitutionality of Senate District E, a two member senate district composed of three house districts; Districts 6, 7 and 16. District E had been created to respond to public dissatisfaction with the former senate configuration and to retain the balance between regional and Anchorage senate representation. The Board had received testimony indicating that a single-member senate district made up of two of the house districts would become an "Anchorage" seat. By aligning House Districts 6, 7 and 16 into a two member senate district, the Board deliberately fashioned Senate District E to retain the balance between regional and Anchorage senate representation. The question raised in Kenai Peninsula Borough was whether this purpose was legitimate and whether Senate District E was constitutional.

Senate District E was challenged by certain voters who (as Plaintiffs have done in this case) argued that the Board had impermissible motives in designing Senate District E, contending that the Board included South Anchorage within the district in order to produce a rural constituency and to dilute the political power of Anchorage voters. These parties base their claim on the equal protection clauses of the Federal and State Constitutions, asserting that the dilution of the political power of Anchorage voters was invalid because it disfavored voters from a particular geographic area. In Kenai Peninsula Borough the Alaska Supreme Court established that, "[I]n the context of voting rights in redistricting and reapportionment litigation, there are two basic principles of equal protection, namely that of 'one person, one vote' – the right to an equally weighted vote – and of 'fair and effective representation' – the right to group effectiveness or an equally powerful vote." Id. at 1366. It is the concept of fair and effective representation that is raised by plaintiff's geographic equal protection claim.

The principle of "fair and effective representation" is qualitative in nature. Hickel, 846 P.2d at 47. The Alaska Supreme Court has stated, "[t]hat the equal protection clause protects the rights of voters to an equally meaningful vote has been inferred from Reynolds in which the Supreme Court said that 'the achieving of fair and effective representation for all citizens is concededly the basic arm of legislative apportionment.'" Kenai Peninsula Borough, 743 P.2d at 1367 (quoting Reynolds, 377 at 565-66).

Fair and effective representation issues arise in the use of multi-member and single member districts. The Alaska Supreme Court has ruled that:

> Employing a multi-member district to achieve "a rough sort of proportional representation" for rural areas in the legislature would thus be permissible under the equal protection clause in light of Gaffney. If, however, the creation of such a district instead was purposefully used to exclude a certain group from political participation, it is more suspect.

Kenai Peninsula Borough, 743 P.2d at 1368. However, the Alaska Supreme Court has noted that, "[i]n cases where the excluded group is a racial minority, such gerrymandering would be unconstitutional." Id. n.30 (citations omitted). Furthermore, "[o]nly where there is evidence that excluded groups have 'less opportunity to participate in the political processes and to elect candidates of their choice' have we refused to approve the use of multi-member districts." Id. (quoting Davis v. Bandemer, 478 U.S. 109 (1986)).

The Alaska Supreme Court has ruled that regarding single member districts:

As with individual districts, where unconstitutional vote dilution is alleged in the form of statewide political gerrymandering, the mere lack of proportional representation will not be sufficient to prove unconstitutional discrimination. Again, without specific support evidence, a court cannot presume in such a case that those who are elected will disregard the disproportionately underrepresented group. Rather, *unconstitutional discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade a voter's or a group of voters' influence on the political process as a whole.*

…

> And, as in individual district cases, *an equal protection violation may be found only where the electoral system substantially disadvantages certain voters in their opportunity to influence the political process effectively. In this context, such a finding of unconstitutionality must be supported by evidence of continued frustration of the will of a majority of the voters or effective denial to a minority of voters of a fair chance to influence the political process.*

Kenai Peninsula, 743 P.2d at 1368-69, quoting Bandemer, 106 S.Ct. at 2810 (emphasis in original). Alaska's equal protection clause imposes a stricter standard than its federal

counterpart. See Hickel, 846 P.2d at 49; Kenai Peninsula Borough, 743 P.2d at 1371. The Alaska Supreme Court has ruled:

> In the context of reapportionment, we have held that upon a showing that the Board acted intentionally to discriminate against the voters of a geographic area, the Board must demonstrate that its plan will lead to greater proportionality of representation…Because of the more strict standard, we do not require a showing of a pattern of discrimination, and do not consider any effect of disproportionality de minimis when determining the legitimacy of the Board's purpose.

Hickel, 846 P.2d at 49; see also Kenai Peninsula Borough.

At the outset, this court notes that the Kenai Peninsula Borough case appears to be the only case in which the concept of geographical equal protection was applied. When Kenai Peninsula Borough was decided there were few constraints on the redistricting of senate districts other than the analysis inherent in equal protection analysis. The Kenai Peninsula Borough court held that the provisions of Article VI, Section 6 of the Alaska Constitution which set forth socio-economic integration, compactness and contiguity requirements were inapplicable to redistricting and reapportionment of senate districts. Today, in contrast, senate districts must be composed as near as practicable of two contiguous house districts. Likewise, at the time Kenai Peninsula Borough was decided, multi-senate districts were constitutionally permissible. Today, they are not. See Article VI, Section 4. Thus at the time Kenai Peninsula Borough was decided there were few constraints on the manner by which the senate districts could be drawn and, as a result, the opportunity to gerrymander such districts was high. The equal protection analysis used in Kenai Peninsula Borough appears to be an effort by the Alaska Supreme Court to restrict the then nearly unfettered ability to draw senate districts. This problem has been reduced by the 1998 Amendment to the Alaska Constitution.

The Kenai Peninsula Borough court favorably cited a portion of Justice Powell's dissent in Davis v. Bandemer, 478 U.S. 109 (1986), in which Justice Powell suggested that the constitutionality of an apportionment plan be tested according to a number of neutral criteria. Several of these neutral factors are already embodied in the requirements for the drawing of House Districts under Article VI, Section 6, and the fair and open procedures under which the Redistricting Board must operate including the requirements of Article VI, Section 10, the Open Meetings Act and the Public Records Act. That such neutral factors are already required for House Districts further suggest that the Kenai Peninsula Borough court may have been concerned primarily with the then unfettered ability of the Redistricting Board to create multi-member Senate Districts without any constraint whatsoever.

Under federal law a plan will be invalidated on grounds of political gerrymandering only if there is evidence both of intent to discriminate against a political party and evidence of discriminatory effect. Davis v. Bandemer, 478 U.S. 109, 127 (1986); Hickel, 846 P.2d at 49. Federal courts further require that discriminatory effect "must be supported by evidence of continued frustration of the will of a majority of the voters or effective denial to a minority of voters of a fair chance to influence the political process." Bandemer, 478 U.S. at 133; Hickel, 846 P.2d at 49. Under the qualitative principle of federal equal protection, fair representation is denied only where there is "proof that the group has been consistently and substantially excluded from the political process [and] denied political effectiveness over a period of more than one election." Id. quoting Kenai Peninsula Borough, 743 P.2d at 1369.

This standard cannot be met by a party, such as the Republicans in this instance, that will (even by their own testimony) continue to hold more than a majority of the seats after any election that might occur under the 2001 Final Plan. The record in this case is devoid of evidence that the Board's Final Plan has any discriminatory effect against the Republican Party. According to Plaintiff Randy Ruederich's own testimony, the plan adopted by the Board preserves essentially the same number of seats for Republican legislators as the 1994 Plan under which Republicans hold a super-majority in both houses. Further, by Ruederich's own testimony the Board's Final Plan is more favorable to Republicans than the alternative plan (Board Plan 1) that was under consideration.

Plaintiff's attempt to establish discriminatory effect based on a showing of different population deviations also does not prove gerrymandering or a denial of fair and effective representation. Plaintiffs rely on the testimony of an expert, Dr. Kip Viscusi to support this allegation. Viscusi suggests the Districts where Democrats are likely to be elected have negative population deviations (i.e. are underpopulated) while Districts where Republicans are likely to be elected have positive deviations (i.e. are overpopulated). However, deviations within 10% are de minimus under Federal and State Law. Deviations that satisfy the one person, one vote requirement do not prove intentional or effective discrimination against a political party, particularly where in every district of the State over half the registered voters are not registered to any party and particularly where the evidence indicates that such deviations will have no effect on the number of Republicans that are elected.

Indeed, the testimony of Dr. Viscusi, which examines such deviations based on impressionistic and unscientific characterizations of whether a district is likely to elect a Republican or Democrat, is far less significant than the fact that such deviations are not likely to effect the number of Republicans or Democrats that are elected to the legislature. If the Board's Final Plan were discriminatory, as suggested by the Plaintiffs, it makes little sense that the Board would select a plan where fewer Democrats were elected than under other plans available to the Board. The court accepts the testimony of

Dr. McDonald and Dr. Kousser, who testified based on conventional and well accepted political science measures, that the Board's Final Plan is politically fair, and rejects the testimony of Dr. Viscusi for the reasons explained by Dr. McDonald and Dr. Kousser.

Plaintiffs also assert that the Board's intent to discriminate and deprive geographic areas of fair and effective representation is demonstrated by the fact that under the Board's Final Plan Republican incumbents are paired against other incumbents in the same district twenty times while no Democrat incumbents are paired in this way. The pairing of incumbents in an unequal manner or unusual population deviations are both factors that require a court to take a "hard look" at a Redistricting Plan. The court has done so in this instance. But the evidence does not support any finding of discriminatory intent by the Board. There are fewer Democrats in the legislature compared to Republicans, so as a statistical matter there is a much greater likelihood that Republican incumbents will be paired against one another compared to Democrats. Moreover, several of the Democratic legislators are Native and the testimony establishes that any pairing of Native incumbents might raise Voting Rights Act concerns.

The Board was not required to adopt a policy to protect incumbents wherever possible, although such a policy would have been constitutional. Nor was the Board required to treat all incumbents evenhandedly. To the extent that there is evidence that some Board members considered the effect of a particular proposal on specific incumbents and tried to protect those incumbent seats the evidence indicates that this primarily occurred with Native incumbents. This was entirely legal and constitutional permissible and most likely required to achieve preclearance by the Department of

Justice. Most significant to the court again is the fact that the evidence indicates that where Republican incumbents were removed from a district to create an open seat, the Republicans still are considered likely to win that seat. The best evidence of a discriminatory intent is the impact that the Board's action likely will have. If there is not evidence of any real impact on the political process then a claim that discriminatory intent may be inferred from a particular action carries little weight.

The testimony of each of the Board members establishes that neither the majority of the Board nor any individual member adopted a policy to target particular incumbents by altering their districts or pairing them against other incumbents. The testimony of the individual members further establishes that neither the majority of the Board nor any individual member sought to discriminate against any political party or geographic area of the State. None of the Board members had any agenda other than to try to create a Redistricting Plan that was fair to the entire State. To the extent that there is evidence that groups such as the AFFR, submitted plans for the Board's consideration that may have taken into account the likely effect of their proposal on incumbents, this was entirely legal and constitutionally permissible. Indeed, the evidence establishes that the Board received plans and proposals from groups of all political persuasions. The Board was not required to inquire into AFFR's motives (or the motives of any other group), nor was it required to reject a plan merely because some of the developers of the Plan might have had political motivations. The constitutionality of the Final Plan is not effected by the motivations of the citizen groups that advocated for or against the plan. Redistricting is an inherently political process. A plan is not invalid merely because districts are drawn

with a political agenda or with an awareness of the likely political consequences. Gaffney v. Cummings, 412 U.S. 735, 752-54 (1973).

Arguments also have been offered by various plaintiffs asserting that fair and effective representation cannot be obtained if a district is overly large. The pairing of House District 5 and House District 6 created Senate District C, which is acknowledged to be the largest Senate District in the United States. This court rejects the argument that fair and effective representation is impossible in a district that size. Senate districts in Alaska have historically been large due to the sheer size of our state and the population distribution within the state. An examination of Senate Districts R or Senate District S or T under the 1994 Plan reveals other Districts that pose the same geographical challenges as Senate District C does under the challenged plan. The so called "Iceworm" District under the 1994 Plan is another example. Senate Districts T and S under the 2001 Plan pose similar challenges for any Senator. Georgianna Lincoln is the Senator representing Senate District R under the 1994 Proclamation, which previously has been the largest legislative district in the United States. While recognizing the challenges of representing such a large district, Senator Lincoln testified that meaningful representation can be provided even in the largest districts in Alaska. The court accepts and finds Lincoln's testimony to be completely credible.

Certain plaintiffs also assert a denial of fair and effective representation contending that a representative cannot effectively represent either their proposed House or Senate District due to inbuilt conflicts among the citizens of the district. Thus, the Valdez residents of proposed House District 32 contend that there are conflicts and

competition between Anchorage and Valdez concerning the business of the two ports in these two communities and between the South Anchorage citizens who work for the oil companies and owners of the Trans-Alaska Pipeline compared to the citizens of Valdez whose tax base may depend upon taxing the pipeline or the tankers owned by the oil producers. Likewise, citizens of Craig contend that their interest in the Chum Salmon Fishery in Southeast Alaska may conflict with the concerns of the residents of the Yukon-Kuskokwim Delta where the Chum Salmon runs have seriously declined. They contend that this creates a problem in the pairing of House Districts 5 and 6 into Senate District C. A similar claim is brought by the Lake and Peninsula residents of House District 37 as well as the Aleutian East Borough residents of House District 37 who contend that the pairing of House District 37 with House District 38 denies them fair and effective representation because of conflicts between fishermen in these areas regarding the so-called Area M controversy regarding diminished runs of salmon in the Yukon-Kuskokwim Delta. Similar other claims are made throughout the State.

The court is not persuaded by these arguments. There is nothing in the Constitution that requires the voters within a legislative district share the same political goals or ideological viewpoint. Conflicts among citizens of legislative districts are an inevitable part of the political process. Competition is an essential part of our economic system. The allegations made by plaintiffs in this case are no different than the conflicts presented by sports fishing and commercial fishing interests in the House and Senate Districts on the Kenai Peninsula. The requirement that Senate Districts be comprised of two contiguous House Districts limits the options available to the Board to create Senate Districts. The court notes that Senator Lincoln believes that the Senate District C pairing

is a manageable one. The court also notes that while Representative Con Bunde, who represents the hillside area in South Anchorage, expressed his opposition to an Anchorage Valdez District, he apparently intends to run for a Senate Seat that would represent the communities of Anchorage and Valdez. The court assumes Representative Bunde believes he can fairly represent these areas if he is elected. This court also assumes that any potential Senator or Representative will run expecting to fairly represent the interests of his or her entire Legislative District.

The Alaska Constitution does not require that a legislative district consists only of people of common and not conflicting or competing interests. In fact to some degree every legislative district contains people with conflicting and competing interests. Areas that are the most socio-economically integrated are in many ways the most likely to have conflicts as well as common interests. For example, regions may have competing interests in where the proposed gas pipeline is located but they each share a common interest in development of gas on the North Slope. Likewise regions that compete with one another for fish share a common interest in that resource and both benefit from policies that enhance the fishery, even if they may compete with one another for a larger allocation of the fish.

These current political conflicts are of a different character than centuries-long traditions of warfare and cultural antagonisms that have caused the Alaska Supreme Court to reject pairings among different native cultures. See Hickel, 846 P.2d at 53-54 (describing the joining of the North Slope and Inupiaq and the interior Athabaskan areas into one district as a “worst case scenario”).

This court recognizes that the Hickel court struck down a district that merged Palmer with the Prince William Sound communities, noting that Palmer was part of an organized Borough whereas Prince William Sound was not, and indicating that because of this factor, the interests of Palmer residents might be adverse to those of residents of an unorganized Borough on issues such as property taxes and State funding of programs such as education. Hickel, 846 P.2d at 52-53. Given that many of the incorporated boroughs in the State do not contain enough population for a single legislative district it is invariably required that a organized borough be paired to some extent with an unorganized area. The conflict described by the Hickel court between residents of incorporated boroughs and unorganized boroughs on issues such as property taxes and State funding of programs such as education exist for many of the districts that have been historically created in the State and approved by the Alaska Supreme Court. This court believes that the Alaska Supreme Court struck down the district that merged Palmer with the Prince William Sound communities less based on any perceived conflict within such a borough and more significantly based on the fact that "the record does not establish any significant interaction or interconnectedness between these areas." Id. at 53.

Finally, both the Prince of Wales Island plaintiffs and the Lake and Peninsula Borough plaintiffs argue that because their communities are split into two House Districts and also into two separate Senate Districts they are being denied fair and effective representation. They argue that fair and effective representation requires that they be able to maximize their political influence by being placed together in a single house district or, failing that, that in two house districts paired into a single Senate District. Valdez makes a similar argument concerning its ability to effectively control the political process in

arguing that their placement in a district comprised largely of Anchorage residents deprives them of an opportunity for fair and effective representation. Again, this court is not persuaded by these arguments which require this court to make assumptions about political races that have not yet been run and which are contrary to the history of political races in Alaska. Representatives in Alaska often come from smaller communities within a district. Indeed, the single congressman for the state of Alaska, Representative Don Young, comes from the small rural community of Fort Yukon. Political races are also often decided by the slimmest of margins thus requiring those running for office to pay attention to even the smallest communities in their district. Further, communities such as those on Prince of Wales Island or in the Lake and Peninsula Borough may well be benefited by having their residents represented by two House Representatives or two Senators rather than one. Likewise the citizens of Valdez may obtain political benefit by having a representative linked to the other representatives from Anchorage whose support is necessary for the passage of virtually any legislation in the state. The assumption that these communities will be harmed by the manner in which the districts have been drawn or that these communities have been deprived of fair and effective representation as a result is not one that the court can make. Such "second-guessing" of the Board's decision on this basis is an inappropriate exercise for this court to undertake.

Ultimately, the quality of the fair and effective representation that any community receives is less dependant upon the concerns raised by the plaintiff in this lawsuit and more upon the quality of the representative elected by the citizens of the district and the willingness of those citizens to be actively involved in the political process. Indeed, no drawing of district lines or any redistricting of political boundaries can guarantee fair and

effective representation without the informed and active participation of the citizens of this State in the political process.

This court finds no evidence that the Board acted intentionally to discriminate against the voters of any geographic area of the State or that the Board intended to discriminate against any group of voters within the State. The Board did not act to deprive any group of voters or any area within the State of their right to fair and effective representation. The evidence is insufficient to show that the Board's plan denies any group of voters in the State their fair chance to influence the political process.

D. Proportionality

A critical decision for the Board was its determination to create a plan that would allow Anchorage to control 17 House Seats and to allow the Matanuska Susistna Borough to control 4 House Seats. The impact of this decision, given the available population, was that Anchorage and the Mat-Su could not share a seat in common. This meant that Anchorage had to be paired with communities to the south (in this case Valdez) while Mat-Su had to be paired with communities to the north in House District 12. The Board also attempted to ensure roughly proportional representation for residents in all parts of the State. The parties vigorously dispute whether this is Constitutionally required, if so to what extent, and whether the Board consistently applied this policy throughout the State. This issue again turns on the meaning of the Alaska Supreme Court's decision in Kenai Peninsula Borough.

In Kenai Peninsula Borough the Alaska Supreme Court reviewed the Constitutionality of Senate District E, a two-member district composed of House Districts 6, 7 and 16. The Board had created this district to respond to public dissatisfaction with the former Senate configuration linking House Districts 5, 6 and 7 and to retain the balance between regional and Anchorage Senate representation. Based on testimony the Board had received and the personal knowledge of Board members, the Board's view was that a single member Senate District made up of House Districts 6 and 7 would become an "Anchorage" seat. By creating a two-member Senate District the Board hoped to avoid this and to prevent another "Anchorage" Senate seat. 743 P.2d at 1356, 1370.

The 1980 census population of the Municipality of Anchorage was such that on a proportional basis Anchorage was entitled to 8.51 senators. Redistricting toward proportionality would have allowed Anchorage voters to win a ninth Senate seat. Id at 1373. Under the Board's Plan at issue in Kenai Peninsula Borough Anchorage had received only 8 Senate seats. The Kenai Peninsula Borough plaintiffs challenged this claiming that the Board had violated the Alaska Equal Protection Clause to an equally geographically and effectively powerful vote. Applying the equal protection analysis traditionally applied under the Alaska Constitution, see Alaska Pacific Assurance Company v. Brown, 687, P.2d, 264, 269-70 (Alaska 1984), the Kenai Peninsula Borough court found a voters' right to an equally geographically effective or powerful vote to be a significant constitutional interest but not a fundamental right under the Alaska Constitution. Kenai Peninsula Borough, 743 P.2d at 1372.

The court then went on to determine the purposes served by the Board's action. The Board had asserted that it had fashioned Senate District E to retain the balance between regional and Anchorage senate representation. The court analyzed the purpose served by the Board's action under criteria that are particularly significant to this case:

> The legitimacy of this purpose hinges on whether the Board intentionally sought to dilute the voting power of Anchorage voters disproportionately. *Thus, if the Board sought to denigrate the voting power of Anchorage voters systematically by reducing their senate representation below their relative strength in the State's population, then such a purpose would be illegitimate*.

Id. at 1372. The Kenai Peninsula Borough court noted that the requirements of equal protection under the Alaska Constitution are stricter than the requirements of the Federal Constitution. The court thus held:

> Because our Equal Protection Clause is more stringent than the Federal Equal Protection Clause, a showing of a consistent degradation of voting power in more than one election will not be required; rather once the Board's discriminatory intent is evident, its purpose in redistricting will be held illegitimate unless that redistricting effects a greater proportionality of representation. Moreover, because of our stricter constitutional standard, we will not consider any effect of disproportionality de minimus when determining the legitimacy of the Board's purpose.

Id. Because the Board sought to prevent another Anchorage Seat in the State Legislature the Kenai Peninsula Borough court found the Board's intent to be discriminatory on its face. Moreover, because the Board's action tended towards disproportionality in that Anchorage received only 8 seats and was under represented by .51 Senate seats rather than 9 Seats where it would be over represented by .49 Senate seats, the Kenai Peninsula Borough court found the Board's purpose in creating Senate District E was illegitimate and therefore held the district unconstitutional under the Equal Protection Clause of the Alaska Constitution. Id at 1373.

It is noteworthy that the trial court in Kenai Peninsula Borough had found that the plan was not the product of a discriminatory intent on the Board's part and the Alaska Supreme Court reversed this factual finding as clearly erroneous. Id at n.39. Yet while strictly analyzing the effect of disproportionality and using this lack of proportionality to conclude that the district was unconstitutional under the Equal Protection Clause of the Alaska Constitution, Id, the court noted in a footnote the following:

> If we were to rely on discriminatory effect alone, we would be establishing a proportional representation standard and also effectively selecting which of alternative reapportionment plans seem preferable, rather than determining whether the challenged plan is reasonable and thereby be encroaching on the governor's reapportionment power. [citation omitted] We thus will require a showing of proportionality only after intentional discrimination has been proven. We note that article VI, section 6 alone identifies the criteria governing reapportionment; if the framers had intended to make proportionality a criterion for the establishment of new districts, they presumably would have included it in this section or written a sister provision.

Id. at 1370 n.33. (emphasis added)

The statements contained in footnote 33 of Kenai Peninsula Borough appear to conflict with the analysis the court actually undertook in the case. More importantly this footnote appears to conflict with the Kenai Peninsula Borough court's description of the right to geographic equal protection as "the interests of individual members of a geographic group or community in having their votes protected from disproportionate dilution by the votes of another geographic group or community." Id at 1371. The Redistricting Board asserts, and this court has no doubt, that had the Board paired Anchorage and Mat-Su in a district controlled by Mat-Su (as originally proposed) so that Mat-Su controlled the four House seats to which it was entitled, but Anchorage only controlled sixteen House seats, the Board would have been sued by Anchorage citizens

contending that Anchorage did not receive its right to control the seventeen House seats to which it was entitled. It was to avoid this problem that the Board made several of the decisions challenged in this litigation, particularly District 32 and District 12.

This court believes that the seemingly contradictory statements in Kenai Peninsula Borough can be reconciled as follows. *Strict* proportionality is not a requirement of the Alaska Constitution. A community that is entitled to less than 8.5 seats may constitutionally receive anywhere from 7.51 seats to 8.49 seats for example. However geographic equal protection will be violated when evidence demonstrates a community is denied the right to control the proportionate number of seats it would be entitled to control measured by whole numbers because of an intent to discriminate against a geographic region. Thus, for example, if a community is entitled by population to control 8.51 Seats it should be given the right to control nine seats rather than eight seats. In analyzing the ability to control whole seats, de minimus impacts will not be disregarded, although such de minimus effects may not require a remedy. Thus, as in Kenai Peninsula Borough, a community that is entitled to control 8.51 seats and only receives 8.49 seats states a claim of geographic equal protection because that community has arguably been deprived of the right to control a whole seat.

Analyzing the Board's Plan under these principles, no discriminatory effect or intent is established. As demonstrated in Trial Exhibit 526 (Attached to this Opinion as Appendix E) each borough has the right to control the same number of House and Senate seats in whole numbers to which it is entitled on the basis of population. Further, each smaller organized area that has asserted an equal protection claim is districted in such a

way that its percentage of the population in a district closely approximates its ideal percentage if all residents were proportionately represented. Further, the claim of geographic equal protection also fails because of the complete absence of any evidence of any intent by the Board to discriminate against the residents of any geographic area. This is true both as to organized areas and as to unorganized areas. The Board's Final Plan fully complies with the requirements of equal protection under both the United States and Alaska Constitutions including the requirement of Geographic Equal Protection and the requirement of Fair and Effective Representation.

VII. ARTICLE VI, SECTION 6 ISSUES

A. Additional Legal Considerations

1. Contiguity

Every house district in the Board's plan is comprised of a single contiguous area as viewed on a map. No district contains two or more discrete or unconnected parts. Both the Valdez plaintiffs and the Fairbanks North Star Borough urge this court to adopt a definition of contiguity such that a district could be found not to be contiguous if existing transportation systems required residents of the district to cross other districts in order to transverse the district in question. There is no support under Alaska law for such a definition of contiguity and this court rejects this approach. Contiguity is not dependent on the vagaries of existing transportation systems. Rather, the concept is a visual one designed to assure that no district contains two or more discrete or unconnected parts. There is no indication that any district in the Board's Plan fails to satisfy this contiguity requirement.

2. Socio-Economic Integration

The parties dispute exactly what is necessary to demonstrate the requisite socio-economic integration necessary to satisfy the requirements of Article VI, Section 6. Plaintiff's expert, Professor Robert Deacon, suggests that representative government will be more effective if each legislative district includes populations that interact frequently with one another and have developed norms for achieving common goals. According to Deacon, in order for the trust needed for people to interact effectively to develop, repeated direct interaction and cooperation is necessary. Deacon would place emphasis on actual face to face interaction among people and the quality of such interaction.

On the other hand, Dr. Rosita Worl, a defense expert, testified that such trust does not necessarily depend on actual face to face interaction. Indeed, given the large geographic areas that comprise legislative districts, particularly in the more rural areas of the State, such direct interaction is not possible among all portions of a district. Nor is such interaction likely to be equal within the entire district. According to Worl, socio-economic integration can be achieved based on common cultures and values without the need for direct, repeated, face to face interaction among every community in a district. Worl also indicated people can develop a culture of trust and an ability to work together based on common cultures and values without the need for direct and constant interaction. Similar testimony was provided by Dr. Polly Wheeler.

The court observes that Deacon's and Worl's observations are not mutually exclusive. Socio-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. Indeed, given Alaska's significant Native populations, cultural and linguistic integration of a district may demonstrate that the district is significantly socio-economically integrated.

As a matter of constitutional requirement, however, there is nothing in the Alaska Constitution that requires that every community within a district have actual interaction with every other community within a district. Cf. Kenai Peninsula Borough, 743 P.2d at 1362-63 (finding significant socio-economic integration based on interaction between communities within district and communities outside of district but with common region even though interaction between actual communities within district was "minimal"). Indeed, a glance at many of the legislative districts that have historically been formed

within the State indicates that a requirement that every community within a district directly interact with every other community within that district would be virtually impossible to achieve. Districts within Alaska have often been the size of several States in the Lower 48. Often the communities within such large districts are geographically isolated and small in population. They are not interconnected by road systems or by 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.

B. Regional Applications

1. Southeast Alaska

Two lawsuits have been filed by cities and individual voters regarding the Redistricting Board's plan for Southeast Alaska. The City of Cordova, the Native Village of Eyak, and individual residents of those communities have challenged the Board's inclusion of the City of Cordova and the Native Village of Eyak in House District 5 under the Final Plan. District 5 extends from Cordova, a Prince William Sound community and other Prince William Sound communities of Tatitlek and Chenega down to the southern boundary between Alaska and Canada. It includes much of what was

known as the "Islands District" in Hickel. District 5 includes most of Prince of Wales Island including the City of Craig. However, Prince of Wales Island is divided between two districts, District 1 and District 5 under the Board's plan. The Prince of Wales Island communities of Hollis, Thorne Bay, and Coffman Cove are placed in District 1. The remaining communities on Prince of Wales Island are in District 5.

Both the City of Craig and Cordova contend that there is insufficient socio-economic integration between Prince William Sound communities included in District 5 with the southeastern Alaska communities in District 5. They also contend that House District 5 is not compact. The City of Craig also contends that, by intentionally fragmenting the community of Prince of Wales Island, the final plan deprives the voters of Prince of Wales Island and the City of Craig of an equally powerful and geographically effective vote. The City of Craig also challenges the Constitutionality of Senate District C in which the City of Craig is placed.

Efforts by previous Redistricting Boards to include the City of Cordova in a House District comprised of various communities in southeast Alaska have twice before been declared unconstitutional by the Alaska Supreme Court. In Carpenter v. Hammond, the court declared unconstitutional a district similar to the one before this court that included the Communities of Cordova, Yakutat, Haines, Skagway, Klukwan, Gustavus, Angoon, Kake, Thorne Bay, Klawok, Craig, and Hydaburg. Finding that Cordova was not socio-economically integrated with the Southeast Coastal Communities in the district, the Carpenter court noted that "the record is simply devoid of evidence of significant social and economic interaction between Cordova and the remaining communities

comprising House Election District 2." Carpenter, 667 P.2d at 1215. It is noteworthy, however, that while describing the record as being "simply devoid" of such evidence the court described the issue as "an extremely close one." Id.

Justice Matthews concurred separately in Carpenter to explain his understanding of the requirement of socio-economic integration and to state his belief that the proposed House District was also unconstitutional because it was not compact. Justice Matthews was the only member of the Carpenter court to reach this latter conclusion. Justice Compton, the only member of the court from Southeast Alaska, dissented, concluding that given the acknowledged closeness of the question the court should have deferred to the judgment of the Board.

In Egan v. Hammond, 502 P.2d 856 (Alaska 1972), the Master's report observed the following with respect to the possibility of the inclusion of Cordova in a Southeastern District in order to cure the over representation in the Ketchikan district:

> It is not feasible to reach beyond the Southeast Region because of the clear separation of the region from the balance of Alaska (the air miles from the northwestern-most population in the region at Yakutat to the nearest population in southcentral region, Cordova, is 225 miles).

Id at 892. The Alaska Supreme Court, in adopting the Master's plan, came to the same conclusion stating:

> The Ketchikan House and Senate districts vary from the norms by –22.5%. Within the time available the Court was unable to reduce substantially this variance and still meet the mandate of the Alaska Constitution requiring a district of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area.

Id at 928 n.2.

In Groh v. Egan, 526 P.2d 863 (Alaska 1974) the Alaska Supreme Court also concluded that the State also had justified a population deviation of a greater than 10% with respect to two southeastern Alaska districts on the grounds that only alternative thereto would be extending a Southeastern District to include Cordova. The court explained:

> With reference to the Juneau and Wrangell-Petersburg areas, the Board was confronted with the difficult problem of juggling the more contiguous, compact, relatively integrated socio-economic areas of Southeast Alaska without extending a substantial distance into an unrelated area separated by immense natural barriers. Yakutat, the northwestern-most settlement in Southeast Alaska, which is itself separated by greater distance from the other communities in the region, is 225 air miles from the nearest population center in the southcentral region, Cordova. There are valid considerations both historically and geographically for not endeavoring to span that gap.

Id at 879. Justice Matthews noted that in Carpenter that "*currently* there is no better reason than there was in 1972 or 1974 for including Cordova in a Southeastern Alaska District because as previously noted, Southeastern Alaska taken alone is entitled to its present six members in the House of Representatives. Carpenter, 667 P.2d at 1220. (emphasis added).

There are significant changes regarding redistricting in Southeast since these earlier cases were decided. Although Southeast Alaska supported six districts in 1983 when Carpenter was decided, population losses in Southeast Alaska reduced this number to five districts in the 1994 plan. Under the 2000 Census the area traditionally defined as "Southeast" (the area east of the 141st Longitude Line) contained only sufficient population for 4.6 seats. The 141st longitude line has also moved westward to the 144th longitude line due to the annexation of territory by the Borough of Yakutat, although much of this territory is scarcely populated.

To solve the one person, one vote problems created by this population loss, the Board considered several alternatives. The Board considered creating four seats in the Southeast District but each of those districts would have been greatly over populated with an average population deviation of +16.4%, which would have raised equal protection claims. If five districts were created in which the population deviation were equally spread among the districts the deviation for each district would have been approximately –7% . But that would have involved combining the rural areas in southeast with portions of urban areas in Juneau and Ketchikan in violation of the Alaska Supreme Court's decision in Hickel, 846 P.2d at 51. The population in Juneau was sufficient to create two House Districts with nearly ideal population and the Board did so creating District 3 with a population deviation of –3% and District 4 with a population deviation of –1.10%. Spreading the southeastern population deviation over the remaining three districts led to unacceptably high population deviation unless Cordova, the next population center, was added to a Southeastern District. Indeed former House District 5 (the "Island District") was approximately 15% below ideal population while former House District 1 (Ketchikan) was 9% below ideal population and former House District 2 (Sitka, Wrangell and Petersburg) was 6% below ideal population. A plan containing Cordova in a Southeast District was supported by all of the Southeast Legislators. [Board 2621] In order to deal with these population variations every single one of the draft plans adopted by the Board including Board Plans 1 and 2, the AFFR Plan, and the Calista Plan all included Cordova in a Southeast District.

2. House District 1

Because of a loss of population in the Ketchikan Gateway Borough, it was necessary to pair additional communities with Ketchikan to make up a district. The Board combined a portion of Prince of Wales Island, including the residents of Hollis, Thorne Bay and Coffman Cove in this district. While the residents of Prince of Wales Island are understandably upset about the fracturing of Prince of Wales Island into two house districts (and two Senate districts) there is no legal requirement mandating that the Prince of Wales communities be placed in a single House or Senate district. Rather each of the districts must be analyzed under the requirements of the Alaska Constitution.

It is clear that House District 1 satisfies these requirements. House District 1 is compact and contiguous. Counsel for the Prince of Wales Island plaintiffs conceded that the residents of Coffman Cove, Thorne Bay and Hollis are socio-economically integrated with Ketchikan. The evidence supports this as well. Residents of Hollis, Thorne Bay, and Coffman Cove indicated relationships and ties with Ketchikan. Prince of Wales Island is in the same recording district as Ketchikan and the same judicial district. There is regular air service between Ketchikan and Thorne Bay and Coffman Cove, and regular barge service from Ketchikan to Thorne Bay and Hollis. A new ferry service connects Hollis and Ketchikan on a daily basis. Ketchikan assisted in the financing of the ferry by guaranteeing a substantial loan. Private businesses on Prince of Wales Island rely on distributors in Ketchikan. The Southeast Islands School District hires a pilot who flies every day from Ketchikan to Thorne Bay and from there provides transportation to specialized teachers throughout the district. The school district obtains supplies and services from Ketchikan regularly. The people on Prince of Wales Island regularly shop in Ketchikan. They obtain essential services such as medical and dental from Ketchikan.

Prince of Wales Island residents regularly read the Ketchikan Daily Newspaper and go to the movies in Ketchikan. It is noteworthy as well that the communities placed in House District 1 are former logging communities like Ketchikan. These communities are generally non-Native, like Ketchikan, thus avoiding possible Voting Rights Act issues.

This court finds that House District 1 satisfies the requirements of Article VI, Section 6 of the Alaska Constitution and is not unreasonable.

3. House District 5

The testimony of Dr. Rosita Worl established the strong, historical and linguistic ties among Cordova and the southeast islands. Eyak, Tlingit and Haida are the traditional native inhabitants of southeast Alaska and Prince William Sound. These groups are all considered Northwest Coast Culture Indians. They all share important cultural characteristics, including similar social organizations in terms of moiety, clan and house structure. They share a system of matrilineal descent. Dr. Worl explained that the way a community organizes its social life unites people as a group throughout the geographic region of the southeast and Cordova. This means, for example, that people in Ketchikan have "relatives" in Yakutat, even though they are not biologically related. The same clans extend throughout the southeast into Cordova. People who are part of the same clan and same house share tangible and intangible property even though they live over an extended geographic range. This attitude toward shared ownership unites people throughout the area. Dr. Worl explained that the shared native culture, which includes a relationship to the land, ideology, and ceremonial life unites the people in the Southeast and Cordova Region and is very strong.

One indicator of integration throughout the region is the potlatch tradition. In the past year, approximately a dozen potlatches were held in the region and drew 200 people each, many of whom traveled to go to the potlatch. The potlatch tradition specifically unites Cordova and Yakutat residents who share potlatch ceremonies.

Additionally Eyak, Tlingit and Haida languages are part of the same language family. Historically, the Tlingit who are associated with Southeast Alaska lived in the

Cordova area and they traded with the Eyak and even with the Athabascans in the Copper River Valley. The trade relationships stretched throughout the Southeast and Cordova. The original Eyak were very similar to the northern Tlingit who with the same clan structure, ceremonies and some intermarriage. Over time the Eyak became "Tlingitized". The Eyak culture disintegrated and some of the survivors moved from Cordova to the Yakutat area. Specific interactions between the Cordova and Yakutat natives include familial relationships, sharing of traditional foods, school athletic exchanges, shared business activities, such as commercial fishing and sport hunting, shared hunting and fishing grounds, and shared setnet sites.

The Chugach Corporation (the ANCSA Corporation for the Cordova area) has selected lands within the Yakutat Borough, and conducts a timber business there and offers Yakutat tribe members the same hiring preferences it offers to its own members. The Chugach and SeaAlaska Corporations (the regional corporation for Southeast Alaska) share common interests and interact over management of forests in their area. Before the ANCSA Corporations were developed, the Alaska Native Brotherhood and Sisterhood had a political organization that united natives throughout Southeast. The Alaska Native Brotherhood had camps in a number of places, including Yakutat and Cordova, residents were involved in that camp.

The evidence indicates that subsistence remains very strong in Southeast. The relative importance of subsistence distinguishes the small rural communities from the more urban areas of Southeast. In rural areas residents participate in all aspects of subsistence (production, utilization and distribution) whereas in urban areas the natives

participate primarily by being the recipients of distribution. In addition to the native cultural ties throughout Southeast and Cordova there are a number of other economic ties. There is regular commercial plane service among Cordova, Yakutat, Juneau, and Ketchikan linking the region. SeaAlaska Corporation, formally operated a fish processing operation in Cordova and owned real estate in Cordova although those interests have been sold. There is a significant bottom fishing out of Cordova, which overlaps with the Southeast fishery. In particular, halibut area 3A is common to and utilized by permit holders both in Cordova and Southeast.

The communities at the extreme ends of the district, Cordova and Prince of Wales Island, have common interests in the regulation of commercial fishing. These communities also have common problems with economies based on fishing and timber, both of which are in decline. Formerly, Southeast fishermen from as far away as Craig fished regularly in Prince William Sound; this has stopped due to the advent of the limited entry permit system, which restricts fisherman to a single region. The Southeast Island economy, including Cordova at one end and Prince of Wales at the other end is based on forest and fishing. Hunting guides and charter operators use Cordova as a base for operations in the area of the Tsiu River between Cordova and Yakutat. There are ties between the village of Eyak and natives in the Yakutat are. Cordova plays Yakutat in school athletics and residents from the Yakutat area obtain medical care from Cordova. Indeed, "Yakutat" is an Eyak word.

Yakutat not only has significant relationships with Cordova to the west but to the Southeast communities to the south. The people of Hoonah have a centuries long

relationship with the people of the Yakutat area. The Tlingit-Haida Central Council represents people in 19 communities from Yakutat south. The Tlingit-Haida Regional Electrical Authority serves six communities. The Tlingit-Haida Regional Housing Authority has built homes in such communities as Klukwan, Hydaburg, and Saxman.

District 5 is essentially composed of the Islands District, which under the 1994 Plan extended from the Dickson Entrance to the 141st Meridian. New District 5 extends this district westward to include the communities of Cordova, Tatitlek and Chenga. Given that the Hickel court concluded that the question of whether or not the Cordova area communities were relatively socio-economically related to the Southeast communities of the Island District to be a "close question" even though their record then was "devoid of evidence of significant social and economic interaction between Cordova and the remaining communities comprising House Election District 2", this court concludes that the record now before it establishes sufficient evidence that the area comprising District 5 is nearly as practicable a relatively integrated socio-economic area, particularly in light of the population losses in Southeast Alaska that require that Cordova be included in a Southeastern District.

The Craig plaintiffs also challenge the district as not being sufficiently compact. In Hickel, 846 P.2d at 52, n.23, the court noted that the Island District that had been approved by the Alaska Supreme Court as part of its 1992 interim plan while non-compact, was permissible in order to comply with the Voting Rights Act. The 1994 plan ultimately validated a district that extended from the Dickson Entrance to the 141st Meridian. While the extension of the district northward and westward to include

Cordova increases the problem, this court notes that the problem is caused by population imbalance and by geography. This is similar to the Aleutians Island District which is even less compact and is similarly the result of population imbalance and geography. The Hickel court recognized that odd-shaped districts may well be the natural result of Alaska's irregular geometry. District 5 does not present the problem of appendages attached to otherwise compact areas or corridors of land that extend to include a populated area but not the less-populated land around it. There simply is little choice but extending the Southeast District into Cordova in order to pick up the population needed for Southeast.

The Craig plaintiffs have suggested that Board Plans 1 and 2, which also paired Cordova in a Southeastern District appears more compact in that it creates House District 2 that is comprised of the more southern communities in Southeast Alaska including Wrangell and Petersburg, but excluding Ketchikan. This proposed district also appears to be non-compact with an appendage reaching north to Klukwan. In rejecting this district, the Board also took into account the almost unanimous sentiment in Southeast from the small rural and mostly native communities who wanted to be combined in a district of similar communities and not joined with larger more urban areas. Board Plans 1 and 2 mixes some small towns and villages with Petersburg and Wrangell, and other small communities and villages with Sitka. Further, people from the more urbanized areas of Sitka, Petersburg and Wrangell all supported keeping intact their district under the 1994 plan, which, under the 2000 census, approximated an ideal district comprised of these three communities with some minor population adjustment.

In light of all the above considerations it does not appear that a more compact Southeast District including Cordova was feasible or necessary to comply with the Alaska Constitution. This court concludes that House District 5 complies with the requirements of Article VI, Section 6, of the Alaska Constitution.

4. House District 12

House District 12 includes the part of the Matanuska-Susitna Borough along the Parks Highway beginning just south of Talkeetna to the Borough's northern boundary and all of the Matanuska-Susitna Borough along the Glenn Highway east of the City of Palmer. District 12 also includes the entire Denali Borough, the Fort Wainwright Military Reservation and adjacent territory within the Fairbanks North Star Borough, and a portion of the unorganized borough that includes the Fort Greeley Military Reservation and the City of Delta Junction. Proposed House District 12 is similar in many respects to House District 34 in the Hickel Plan that was declared unconstitutional as combining areas with virtually no socio-economic integration. Hickel, 846 P.2d at 53. The geographic differences between proposed House District 12 and the House District 34 that was struck down by the Hickel court do not appear to have measurably increased socio-economic integration. Unlike House District 5 the evidence in the record does not appear to justify the need for this district based strictly on population deviation. Nor do changes since the Hickel decision indicate increased socio-economic links in this district.

The Alaska Range is a substantial physical barrier that divides the northern and southern portions of House District 12. As a result, the evidence indicates that the district

is divided in half. Those districts north of the boundary between the Denali Borough and the Matanuska Susitna Borough interact northward with Fairbanks. Those districts south of the border of the Denali Borough and the Matanuska-Susitna Borough relate southward towards Palmer, Wasilla and Anchorage. The areas of Big Delta, Delta Junction and Salcha and the Military Reservations included in District 12 are also oriented towards Fairbanks.

The interaction between these two halves of the district is minimal. Residents of the Denali Borough do not commute to work in the Matanuska-Susitna Borough and residents of the Matanuska-Susitna Borough do not commute to work in the Denali Borough. Northern Mat-Su Residents go to Wasilla or Anchorage to obtain goods and services that they cannot obtain locally. Denali Borough residents go to Fairbanks for shopping, banking and medical care. Electrical utility service is provided by different utilities in each of the parts of the district. The Matanuska-Susitna Borough and the Denali Borough each operate its own school districts. The Alaska Local Boundary Commission has described the context between the Denali Borough and the Matanuska-Susitna Borough as tenuous.

None of the Board members who testified provided any evidence of socio-economic integration within House District 12. Indeed, Bert Sharp, the Board member most familiar with the area indicated that in his opinion there was no such integration. Little evidence was introduced by the Board demonstrating that there was socio-economic integration in the district. Although the Board's expert, Dr. Tuck, opined that there was social and economic integration in District 12, the little evidence he introduced

does not support this opinion. Although many of the communities within District 12 are linked by the Parks Highway, there is little evidence that those communities north of the border between the Denali Borough and the Matanuska-Susitna Borough actually interact with each other. While there is some common linkage in the tourism industry directed that Denali National Park, much of this tourism either comes from Anchorage or from Fairbanks rather than from the communities within House District 12. There is a claim of some shared agricultural activity between the Delta Junction area and the Matanuska-Susitna Borough but the amount of such activity is unquantified and does not appear to be great. The Usibelli Coal Mine that principally operates within the Denali Borough has some undeveloped land holdings in the Matanuska-Susitna Borough. If these holdings within the Matanuska-Susitna Borough were developed, that might demonstrate some economic integration within the district. But these holdings are not developed and therefore do not demonstrate any such economic integration. The Board notes that all the communities within House District 12 are small isolated rural communities. But this merely demonstrates homogeneity rather than socio-economic integration. There are hunting areas within House District 12 utilized both by residents of the Matanuska-Susitna Borough and the Denali Borough. The best that can be said, however, is that there is some "minimal" socio-economic interaction within the district. This is insufficient under the Alaska Constitution. Hickel, 846 P.2d at 47.

The Board contends that its decisions concerning House District 12 were largely driven by population shifts in that district and surrounding districts. Unlike Southeast Alaska or the Aleutian Island Chain where population loss and geography left the Board with little or no other options, the problems the Board faced regarding House District 12

were to some extent the result of other choices made by the Board. This court is aware that the Board must develop a *statewide* plan and that decisions made in one part of the State as to any district have a ripple effect on other districts throughout the State that may limit the choices available to the Board as the plan is finally completed. But every district in the State has approximately the same 15,673 people and each of these people have the same constitutional rights. While the Board is free to create districts that have greater socio-economic integration than the Alaska Constitution requires, it is not free to create districts that have less socio-economic integration than the Constitution requires if this can be avoided. House District 12 is not sufficiently socio-economically integrated to satisfy the requirements of Article VI, Section 6 of the Alaska Constitution and is therefore declared unconstitutional.

5. Anchorage House Districts Excluding District 32

Districts 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31.

By Order dated December 31, 2001, this court concluded that House District 16 was not compact and therefore violated Article VI, Section 6 of the Alaska Constitution. Although the Board asks this court to reconsider its decision the court believes its December 31, 2001 order is correct and reaffirms it in this decision.

All of the other Anchorage districts are compact and satisfy the Alaska Constitution in this regard. All of the Anchorage districts also satisfy the constitutional requirement for contiguity. The Alaska Supreme Court has indicated that by definition

those districts composed wholly of a single borough are socio-economically integrated. Hickel, 846 P.2d at 51 - 52; AS 29.05.031. Thus, each of the Anchorage districts are socio-economically integrated in accordance with Article VI, Section 6 of the Alaska Constitution.

All of the Anchorage districts also satisfy the one person, one vote quantitative requirements. The maximum population variation within the Anchorage districts is less than 10%. Plaintiffs suggest that because issues of socio-economic integration do not exist for districts contained wholly within a borough, districts contained wholly within the Municipality of Anchorage can, and should be drawn as close to an ideal population. Although this may be true as a possibility, the Alaska Supreme Court has never imposed such a requirement as a matter of law. Rather, as previously discussed, maximum population deviations under 10% are considered to be minor deviations that do not require further justification. Hickel, 846 P.2d at 47-48; Groh, 526 P.2d at 877. Mathematical precision of the kind suggested by the plaintiffs is not required under either the United States or Alaska Constitution. Indeed, the evidence indicates that a requirement that population deviations for districts contained wholly within Municipal Boroughs would shift the impact of statewide deviations to those rural districts not wholly contained within borough boundaries and thus make the task of redistricting even more difficult than it currently is.

6. House District 32: Valdez to South Anchorage

Perhaps the most difficult decision for the Board and the most highly debated part of this litigation concerns House District 32, a district that extends from the City of

Valdez on the east to portions of the hillside area of South Anchorage on the west. The district includes the City of Whittier, the communities of Hope and Sunrise that are part of the Kenai Peninsula Borough along Turnagain Arm, and those communities within the City and Borough of Anchorage including Indian, Bird, and Girdwood also along the Turnagain Arm. This court has already ruled that this district satisfies the compactness and contiguity requirements of Article VI, Section 6 of the Alaska Constitution. The primary issue is whether the district is relatively socio-economically integrated.

Virtually all the public testimony before the Board from Valdez residents was opposed to any pairing of Valdez with Anchorage. Under the 1994 Proclamation Plan Valdez was placed in a district that principally contained districts along the Richardson Highway. Under both the Board's Draft Plan 1 and Draft Plan 2 Valdez would also have been paired with Richardson Highway Communities. Under both plans Valdez would have also been placed in a district with Whittier. The AFFR Plan had Valdez paired with a portion of South Anchorage as well as Whittier and Seward. The public testimony in Valdez was in favor of the Board's Draft Plan 1 or for a plan that would link the Prince William Sound communities together.

While the pairing of Valdez with its Richardson Highway Communities to the north has been referred to in this litigation as the "Historic Richardson Highway District" Valdez's inclusion in such a district is by no means historic. Valdez in the past has been paired with Prince William Sound Communities to the east and west. Under the 1984 Redistricting Plan Valdez was included in a district that included Cordova, extended eastward to the traditional boundary of Southeastern Alaska, and included communities of Whittier, Seward, Moose Pass, Copper Landing and Hope to the west. [Defendant Exhibit 602].

While Valdez is, in some respects, a rural community it is, in many respects, industrialized. It is the terminus of the Alyeska Trans-Alaskan Pipeline with the industrial oil storage and shipment facilities that that entails. There is a grain storage facility for the unsuccessful Delta Barley Project. Valdez operates a significant port facility and there is a significant small boat harbor located in Valdez. It is a regular stop for the Alaska Ferry System, which operates between Valdez and Whittier. Valdez also has an airport capable of handling the regular daily jet service between Anchorage and Valdez. In some respects Valdez, while located in a rural area, is one of the more industrial cities in the State.

There is significant evidence of socio-economic integration in House District 32. There is daily direct commercial jet service between Anchorage and Valdez several times a day although weather often influences the availability of this service. Regular ferry service links Valdez and Whittier five months of the year. Fuel is shipped regularly from Valdez to Anchorage. There are business relationships between Valdez and Anchorage including banking. Most of the food for Valdez is shipped there through Anchorage as well as a portion of other freight bound for Valdez. Valdez tourist operators solicit businesses in Anchorage and some Anchorage residents recreate in Valdez although the majority of their recreation tends to occur on the Kenai Peninsula.

Most professional services in Valdez are obtained through Anchorage, including major medical care, legal work and accounting services. Anchorage businesses advertise in the Valdez yellow pages. Residents of Valdez travel to Anchorage for business meetings and Anchorage residents have held conventions in Valdez. The Prince William Sound Community College in Valdez has about half of its business contracts with Anchorage. Valdez students attend the University of Alaska in Anchorage and a small amount of Anchorage students attend Prince William Sound Community College.

Long distance telephone service for the Valdez area is provided by an Anchorage based company, GCI, which is seeking to expand to offer local service there as well. There is an obvious strong connection in the oil industry between Valdez and Anchorage. While the Valdez plaintiffs characterize this relationship as one of conflict in which Valdez residents have an economic interest in taxing assets owned by the oil companies and the oil companies seek to decrease such taxes, this conflict is the kind that

invariably results from interaction among the residents of the district even though the ultimate outcomes sought as a result of this interaction may differ.

The people who live in Valdez also go to Anchorage to buy goods that are not available or are more expensive in Valdez including cars, major appliances, and other more expensive items. Both Valdez and Anchorage are in the Third Judicial District. There are a sizeable number of Anchorage based firms who employ Valdez residents. There is regular freight traffic by water from Valdez to Anchorage.

A sample issue of the Valdez newspaper [Plaintiff's Exhibit 264] reflects numerous social ties among the people of Valdez and the people of Anchorage including an obituary for an Anchorage resident, an ad for a charity cultural event in Anchorage, an advertisement by the Anchorage Convention and Visitors Bureau for New Years Eve events in Anchorage, an ad for an Anchorage restaurant and an ad for an Anchorage attorney soliciting business. The paper reports competition of Valdez youth in athletic events in Anchorage. The exhibit contains a column by a Valdez resident attending school at UAA. The paper itself is published in Anchorage. There is however some indication that other papers for small communities throughout Alaska are also published by the same Anchorage based company and that some of the advertisements in the Valdez Newspaper are published Statewide in other small community newspapers throughout the entire State.

There is significant evidence as well of social interaction between Anchorage and Valdez residents. Valdez residents frequently call Anchorage both for business and other reasons. Valdez residents travel to Anchorage to attend the symphony, theater, and other

cultural events. These residents have friends and family who reside in Anchorage and frequently interact with family and friends for this reason. While Valdez does not regularly play the larger Anchorage High Schools due to size constraints, Valdez does compete in high school sports against smaller Christian schools located in Anchorage. Anchorage residents fish in Valdez to a limited degree although such fishing activities are considerably less than those that occur among Anchorage residents in the Kenai Peninsula or the Matanuska-Susitna Borough. Most of the recreational skiing that takes place by Valdez residents occurs in Thompson Pass although there is a small amount of skiing occasionally done in Girdwood. Anchorage residents do not regularly appear to ski in Valdez although Valdez and Alyeska Ski Resort in Girdwood have organized extreme skiing events. Events at Girdwood are considered qualifiers for the World Extreme Championships that take place just outside of Valdez.

The parties both rely on polls to demonstrate the presence or lack of socio-economic integration between Valdez and Anchorage. Plaintiffs commissioned a poll by David Dittman [Appendix to Exhibit 254, Exhibit 342]. But the Dittman Survey asked Valdez residents about their interactions with South Anchorage and whether they felt "more connected" to various communities as compared to the Hillside/Rabbit Creek area of Anchorage. The focus on South Anchorage or the Hillside/Rabbit Creek area of Anchorage, rather than Anchorage as a whole, clearly is contrary to the decision of the Alaska Supreme Court in Kenai Peninsula Borough, 743 P.2d at 1362-1363. There the Alaska Supreme Court held it was too fine a distinction to compare the interaction of North Kenai with South Anchorage and held that it was appropriate to examine North

Kenai's interaction not just with South Anchorage but with Anchorage as a whole. Because the Dittman Poll does not follow this procedure its evidentiary value is limited.

Defendants rely on a poll conducted by Ivan Moore Research [Exhibit 565]. The Ivan Moore Report indicates significant Anchorage contacts between Valdez residents and Anchorage residents that demonstrate that there is economic and social interaction between Valdez and Anchorage.

This is not to say that there are not significant ways in which Anchorage and Valdez are not completely linked or that there are not other communities with which Anchorage or Valdez do not have greater socio-economic integration. The evidence clearly establishes that Anchorage has greater socio-economic links with communities such as Palmer or Wasilla in the Matanuska-Susitna Borough than it does with Valdez. Similarly, Valdez has greater links with other communities in Prince William Sound or even communities along the Richardson Highway than it does with Anchorage. The testimony of the Valdez witnesses establish that utility services for Valdez are generally oriented to communities along the Richardson Highway rather than to Anchorage. Shipments into and out of the Port of Valdez, while having some linkage with Anchorage, are primarily oriented towards the Richardson Highway. Marine transportation and commercial fishing activities are oriented towards Prince William Sound communities. Valdez residents clearly do not consider themselves oriented in their socio-economic relationships with Anchorage.

Population factors effected the pairing of Valdez. The population of Anchorage has grown since 1990 so that under the 2000 census Anchorage is entitled to 16.6 House

Seats. The Board desired to complete a 17th Seat for Anchorage but had limited possibilities to do so. The Mat-Su Borough's population had also increased such that the population of the Mat-Su Borough supported 3.78 Seats. The Kenai Peninsula Borough's population supported 3.17 seats. If each borough was to be fully represented, the approximately 6,000 people needed to complete the 17th Anchorage seat could not come from the Mat-Su Borough since that would deprive the Mat-Su Borough of the population it needed to control 4 House seats; and the population could not come from the Kenai Peninsula Borough, since that would deprive the Kenai Peninsula Borough of population it needed to control 3 seats. Moreover, the need to pair Cordova with Southeastern Alaska effectively eliminated the possibility of creating a Prince William Sound District. The Board's desire to allow Anchorage to effectively control 17 seats left the Board with few choices other than to look southward towards Valdez and to add population to Anchorage from the Valdez area in order to complete a seventeenth Anchorage seat.

Whittier also serves to provide integration of the District. Valdez has previously been placed in a District with Whittier and has links with Whittier including ferry service and Prince William Sound economic and recreational activities and groups. Anchorage is linked to Whittier by the Railroad and now a highway connection. Whittier serves as a place where Anchorage residents depart into Prince William Sound.

Defendant's expert Dr. Tuck stated his opinion that there is a fair amount of economic interaction and social economic integration between Anchorage and Valdez.

While some of the factual underpinnings of this opinion are in error and require adjustment, even with such adjustment Dr. Tuck's opinion is supported by the evidence.

Based on all of the evidence, this court concludes that District 32 contains as nearly as practicable a relatively integrated socio-economic area. This integration is not just minimal but significant. The court notes that many of the factors that the Alaska Supreme Court has indicated will demonstrate socio-economic integration are present in District 32. These include linkage of communities by ferry service, linkage of communities by daily airline flights, a common major economic activity in the Trans-Alaskan Pipeline and the oil activity related to the pipeline which is located in Valdez but controlled by owners in Anchorage. The linkage between Anchorage and Valdez is similar in many ways to the linkage between North Kenai and South Anchorage approved in Kenai Peninsula Borough. There the Alaska Supreme Court found it persuasive that North Kenai and South Anchorage were geographically proximate, were linked by daily airline flights, and were both strongly dependent on Anchorage for transportation, entertainment, news and professional services. Kenai Peninsula Borough, 743 P.2d at 1362-63; Hickel, 846 P.2d at 46-47. In this regard the court observes that in the 1981 Redistricting Plan North Kenai was linked to both Seward and Valdez while in the 1984 Plan the North Kenai South Anchorage District was upheld. The same type of links that demonstrate socio-economic integration between North Kenai and Valdez and between North Kenai and Anchorage are also present between Anchorage and Valdez.

District 32 satisfies the requirements of Article VI, Section 6 of the Alaska Constitution. It is clear that the Board gave careful consideration and extensive

deliberation to this district and took a hard look at the factors both in favor and against such a pairing. The Board was well aware of the issues regarding this district and had a reasonable basis for making the choice that it did.

7. Districts 36 and 37 The Aleutians East Borough, Lake and Peninsula Borough, and Kodiak Island Borough Problem.

Population deviations also caused significant problems in redistricting the southwestern portion of the State including the Aleutian Islands, the Aleutians East Borough, the Lake and Peninsula Borough and the Kodiak Island Borough. The population of former House District 40 was 28% below the 2000 ideal district population of 15,673 due to the closing of the Adak Naval Base. The Hickel court had indicated the need to keep the entire Aleutian Chain together and the Board was aware of this. Former District 6, which was a district comprised of the Kodiak Island Borough was 11% below ideal population. Thus it was necessary for the Board to find additional population for both old District 40 and old District 6.

These population changes made it inevitable that a Municipal Borough would have to be split. The Board could either add population from the Kodiak Island Borough to the Aleutians District; take population from the Kenai Peninsula Borough and add it to the Kodiak District and combine the Aleutian Islands and the Lake and Peninsula Borough into a single district; or split the Lake and Peninsula Borough adding the southwestern portion of the Lake and Peninsula Borough to an Aleutians District while adding the northern portion of the Lake and Peninsula Borough to a Kodiak District. Public sentiment throughout the State was mixed. There was strong public testimony for maintaining the communities in Kachemak Bay in a single district. The Lake and

Peninsula Borough did not wish to be split and Kodiak desired to maintain its identity as a separate house district.

The Board ultimately decided to split the Lake and Peninsula Borough in half, combining the southwestern portion of that Borough with the Aleutians East Borough and the Western Aleutian Chain to form House District 37 and combining the northeastern portion of the Lake and Peninsula Borough with the Kodiak Island Borough to form House District 36. Although any Borough is considered socio-economically integrated as a whole the upper Lake and Peninsula people form a district sub-area of the Bristol Bay Region of the Borough. The Borough is two distinct halves; the "Lake" half and the "Peninsula" half. If the Borough had to be split, a split along that line was not unreasonable.

The Lake and Peninsula Borough covers approximately 300 miles and is approximately 24,000 square miles in area. It was incorporated in April 1989. The population of the Borough is 1,823 persons. It is noteworthy that in each Redistricting Plan before 1984, the territory that now comprises the Lake and Peninsula Borough was divided between districts.

Although the evidence indicates that the socio-economic ties within the Lake and Peninsula Borough communities are greater than the socio-economic ties that exist between the Lake and Peninsula Borough communities within House District 36 and the Kodiak Island communities that comprise the rest of House District 36, or between the Lake and Peninsula communities in House District 37 and the other communities in House District 37, there is significant socio-economic integration among all of these

communities. The communities in this area all participate in the Southwest Alaska Municipal Conference. Residents of the Bristol Bay area share subsistence use areas with residents of the Alaska Peninsula. There are linguistic and historical cultural ties in these communities. There are significant transportation links in these areas. Fishing is a major economic activity. Indeed, paragraphs 16 and 17 of the First Amended Complaint of the Aleutians East Borough acknowledges the significant social and economic interaction of the community regions in Southwestern Alaska including the Bristol Bay Borough, Dillingham, Kodiak Island, the Alaska Peninsula, including the Lake and Peninsula Borough, the Western Aleutian Chain, the Pribiloff Islands, and the Aleutians East Borough. All of these communities share services by the State Ferry System, by commercial shipping companies, and by local air taxi service. The communities even use the same lobbyist, Mark Hickey.

The plaintiffs suggest, however, that despite this admitted socio-economic integration, that the fracturing of the Lake and Peninsula Borough into two districts is impermissible under Hickel. In Hickel, the Alaska Supreme Court recognized that "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." Hickel, 846 P.2d at 52. The court reasoned that;

> Dividing the Municipality's excess population among a number of districts would tend to dilute the effectiveness of the votes of those in the excess population group. Their collective votes in a single district would speak with a stronger voice than if distributed among several districts. Id at 52 n. 26

The Hickel court noted as well "that a primary indication of intentional discrimination against a geographic region was a lack of adherence to establish political subdivision boundaries." Id; See also, Kenai Peninsula Borough, 743 P.2d at 1372-73.

Defendants contend that the discussion in Hickel applies only to the division of a Municipality or Borough's excess population and that nothing in any of the cases prevents the dividing of a Borough's population between districts when the population of the Borough is insufficient to make up a single district. The language of both the cases and the Alaska Constitution suggest that the Board has the discretion to divide a Borough between two districts so long as such a division is not improperly motivated. Thus Hickel indicated that "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. Article VI, Section 6, specifies that "consideration *may* be given to local government boundaries." (Emphasis added). This suggests that the Board may consider local boundaries but is not constitutionally required to do so. Indeed the Hickel court specifically noted that "Article VI, Section 6 does not require that districts be drawn along municipal boundaries. Rather, the provision states only that "[c]onsideration may be given to local government boundaries." 846 P.2d at 51. The Hickel decision also suggests that division of municipalities would be permissible so long as the resulting districts evidence a pattern of relative socio-economic integration. Id.

Further support for this proposition is found in the legislative history of the Alaska Constitution. Article VI, Section 6 of the Alaska Constitution provides: "Consideration may be given to local government boundaries." The convention decided

to reject an amendment which would have replaced "may" with "shall" in the language above. This was done to provide future reapportionment boards with "a little flexibility." 3 Proceedings, Constitutional Convention, at 1900.

As indicated above the population losses in Kodiak and the Aleutian Chain left the Board with little choice but to divide some Borough boundaries. The districts that were created were socio-economically integrated. There is no indication that the Board's decision to split the Lake and Peninsula Borough between Districts 37 and 36 was improperly motivated. Rather this choice was dictated by diminished population in these areas. This court concludes that the division of the Lake and Peninsula Borough between two districts was not unreasonable or otherwise unlawful. This court further concludes that both Districts 37 and 36 are sufficiently socio-economically integrated to satisfy the requirements of Article VI, Section 6 of the Alaska Constitution.

8. Senate Seats

As previously indicated Article VI, Section 6 only requires that Senate Districts be composed as near as practicable to contiguous House Districts. Compactness and socio-economic integration are not requirements for Senate Districts. Each senate district in the Board Plan consists of two contiguous House Districts.

Senate Districts must also be "reasonable" and the Board must, therefore, have rational non-arbitrary reasons for the way it paired house districts to create senate seats. For those senate districts challenged in this litigation it is clear that the Board has taken a hard look at the salient problems and has generally engaged in reasoned decision making

and that the Board had rational, non-arbitrary reasons for the way it paired house districts to create senate seats.

Senate District C, although encompassing a vast area, was paired after considerable deliberation because House Districts 5 and 6 contain a relatively integrated native population. The Board had been warned to pay attention to House District 6 in any pairing due to potential voting rights problems. The testimony of Dr. Polly Wheeler, Dr. Worl, and Robert Loescher all establish commonalties in integration between the Tlingit Haida of the Southeast in District 5 and the Athabaskans of District 6.

Dr. Polly Wheeler, an anthropologist and expert in Alaska native cultures testified concerning the Final Plan's socio-economic integration of Alaskan natives. Wheeler explained that language is a critical element of socio-economic integration to a cultural anthropologist, particularly in Alaska. Wheeler testified that the two major language families for Alaska natives are those of the Eskimo Aleuts and the Tlingit Athabascans. Wheeler also testified that House District 5 (primarily a Southeast district), is a Tlingit area and has the same language area as the Athabascans, who reside in House District 6 (an Interior district). Wheeler further testified that based on the language families of the Dena'ina or Athabascans, Eyaks, and Tlingits, at one time they all had the same ancestors.

The requirement that Senate Districts be comprised of contiguous house districts meant that any pairing of House District 5 would encompass a large geographic area. The same requirement also meant that any other pairing for House District 6 that might satisfy the Voters Rights Acts would combine Athabaskans with Eskimos, two groups with whom there is little in common and who have historically been in conflict. Indeed such a pairing was described in the Hickel case as a "worst case scenario." The Board was aware of both the strengths and weaknesses of Senate District C, and made its determination to create this district in a rational and non-arbitrary way. The communities in both halves of Senate District C are small and no one community obviously

dominates. The communities in Senate District C share a strong interest in subsistence as well.

The Board also had a rational, non-arbitrary reason for the way it paired House Districts 37 and 38 into Senate District S even though this places portions of the Lake and Peninsula Borough into two separate Senate Districts. To satisfy the contiguity requirement there were only three possible options for pairing House District 37. It was rational for the Board to pair House Districts 40 and 39 into Senate District T since this Senate District is comprised of Inupiaq Eskimos who historically have shared a Senate Seat. If Districts 37 and 36 had been paired to avoid placing portions of the Lake and Peninsula Borough into two separate Senate Districts the only district that House District 38 could have been paired with to satisfy the contiguity requirement would have been House District 6. This would have paired Eskimos and Athabaskans again and would have possibly paired two native incumbents. Testimony indicated that the pairing of native incumbents would likely raise Voting Rights Act concerns. The Board was aware of the problems involved in these pairings and had rational non-arbitrary reasons for their actions.

The Senate Districting for the Mat-Su Borough is reasonable and not arbitrary as well. The configuration of Senate Districts for the Mat-Su Borough was largely determined by the odd number of House Districts for both Fairbanks and Anchorage. One of the Fairbanks Districts had to be paired outside of the Borough as did one of the House Districts. The Board paired both into Mat-Su. Had a Fairbanks District not been paired with a Mat-Su District, the fifth Fairbanks District would have to be paired with

House District 6. House District 6 was a problematic district under Dr. Hanley's Voting Rights Act analysis. It was reasonable and not arbitrary for the Board to avoid this pairing and to pair a Fairbanks District with a district comprised of a portion of the Mat-Su Borough (House District 12). The Mat-Su Borough continues to have majority control of two senate seats even though only one senate seat is composed entirely of Mat-Su residents. This court notes that while the pairing is a reasonable one, this court's finding that House District 12 is unconstitutional, will inevitably require an adjustment to Senate District F.

Finally, the Board's determination of which Senate terms of incumbents were to be truncated appears to fully comply with the rationale of Egan v. Hammond, 502 P.2d at 873-74, and is reasonable and not arbitrary.

VIII. CONCLUSION

THEREFORE, IT IS HEREBY ORDERED that for the reasons set forth above, House Districts 12, and 16 violate the principles of the Alaska Constitution and are declared unconstitutional. All other claims that the Board's Plan is unconstitutional or that the plan violates either state or federal equal protection requirements are denied. Likewise, all claims that the manner by which the Board created the plan was unconstitutional or violated statutory or other legal requirements are also rejected. In accordance with Article VI, Section 11, this matter is returned to the Board for correction and development of a new plan consistent with this decision. The court assumes that this

decision will be appealed by one or more parties and stays this decision pending further review by the Alaska Supreme Court.

DATED this 1st day of February 2002, in Anchorage, Alaska.

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Mark Rindner

Superior Court Judge

An Amendment to Article VI of the Alaska Constitution, effective January 3, 1999 (the "1998 Amendment"), changed the composition and responsibilities of the Board. Prior to the 1998 Amendment, the governor set the boundaries of election districts and senate districts with the advice of a board selected entirely by the governor. The 1998 Amendment created the Alaska Redistricting Board, and set forth procedures and other deadlines for the redistricting process. See 1998 Ballot Measure No. 3 (1998 Legislative Resolve 74; 20th Legislature's SCS CSHJR 44(JUD)). These changes are discussed in this opinion to the extent they are relevant to the legal challenges against the current Proclamation of Redistricting.

The current Board members were appointed in August 2000. Governor Tony Knowles, a Democrat, appointed Vicki Otte and Julian Mason, both of Anchorage. The Speaker of the House of Representatives Brian Porter, a Republican, appointed Michael Lessmeier of Juneau. Senate President Drue Pearce, also a Republican, appointed Bert Sharp of Fairbanks. Alaska Supreme Court Chief Justice Dana Fabe appointed Leona Okakok of Barrow.

Alaska case law regarding redistricting are as follow: Wade v. Nolan, 414 P.2d 698 (Alaska 1966); Egan v. Hammond, 502 P.2d 856 (Alaska 1972); Groh v. Egan, 526 P.2d 863 (Alaska 1974); Carpenter v. Hammond, 667 P.2d 1204 (Alaska 1983), appeal dismissed 464 U.S. 801 (1983); Kenai Peninsula Borough v. State, 743 P.2d 1352 (Alaska 1987); and Hickel v. Southeast Conference, 846 P.2d 38 (Alaska 1992).

See AS 15.10.300.

The court bases the findings discussed in this section primarily from the testimony of Kathryn Lizik, the Board's Director of Geographic Information System ("GIS") Technology.

Hardware included five Windows operating system work stations and a server upon which the data (both geographic and population) was stored. The software included

AutoBound, a program specifically designed for redistricting, and ArcView, a GIS program.

No transcripts appear to exist for these pre-plan meetings.

Prior to the 1998 Amendment, the language of this section substituted "as near as practicable" with "at least equal." No legislative history indicates that this language change was intended to substantively change prior Alaska case law interpreting this provision.

Pursuant to AS 15.10.200(b), adopted by the legislature in 1999 (Senate Bill 99), the statewide population *included* nonresident military. Prior redistricting plans had been adjusted by subtracting the estimated number of nonresident military personnel in Alaska at the time of the census enumeration. The legislation prohibiting against the adjustment of the census figures was not precleared by the U.S. Justice Department when the Board was doing its work.

This deviation is calculated by comparing the district with the greatest negative deviation (-6.9% in district 40) to the district with the greatest positive deviation (+ 5.1% in district 33).

The Proclamation contains a District Population Analysis that lists the population deviations for all house and senate districts, which is attached as Appendix A.

The Alaska Supreme Court has broadly interpreted the concept of standing, favoring the increased accessibility to judicial forums. Accordingly, "any qualified voter" is authorized to institute and maintain a reapportionment suit seeking to correct any errors in redistricting. Carpenter, 667 P.2d at 1209-10. In a pretrial decision, this court held that the right to bring such a suit was not limited to individuals but included governmental entities and certain organizations as well.

The consolidated lawsuits are: Aleutians East Borough v. Alaska Redistricting Board, Case No. 3AN-01-8914CI; Halvarson v. Alaska Redistricting Board, Case No. 4FA-01-1608CI; City of Valdez v. Alaska Redistricting Board, Case No. 3VA-01-0040CI; City of Craig v. Otte, Case No. 1KE-01-0316CI; City of Wasilla v. State of Alaska, Alaska Redistricting Board, Case No. 3AN-01-8995CI; Ruedrich v. Redistricting Board, Case No. 3AN-01-9026CI; Luper v. Alaska Redistricting Board, Case No. 3AN-01-8908CI; City of Cordova v. Alaska Redistricting Board, Case No. 3AN-01-8996CI; City of Delta Junction v. State of Alaska, Case No. 4FA-01-1592CI.

The Native-Intervenors are as follows: Walter Sobeloff, Sr., Robin Renfroe, Richard Glenn, Steve Ginnis, Walter Johnson, Dewey Skan, Teresa Nelson, Gail Schubert, Doyon, Limited, and Tanana Chiefs Conference, Inc.

At the same time the Alaska Supreme Court adopted Appellate Rule 216.5 governing any appeal in these cases.

See cases cited supra footnote 3.

The Alaska Supreme Court has ruled that a borough is, by definition, a socio-economically integrated area. See Hickel, 846 P.2d at 52.

Gaffney v. Cummings, 412 U.S. 735 (1973).

The Alaska Supreme Court, however, has "decline[d] to determine whether an independent constitutional basis exists for ensuring public access to the Board's meetings." Hickel, 846 P.2d at 57.

See AS 40.25.100-.220.

AS 44.62.310(a).

See AS 44.62.310(e).

AS 44.62.310(h)(2)(A).

AS 40.25.110.

See Hickel, 846 P.2d at 57. Since Hickel, the Open Meetings Act has been amended to specifically incorporate this concept. See 46-48 infra.

Article VI, Section 11 states, "...Original jurisdiction in these matters is vested in the superior court. On appeal from the superior court, the cause shall be reviewed by the supreme court on the law and the facts..."

Throughout the redistricting proceedings, this problem was analogized as a Rubik's cube, because making changes in one district to satisfy the constitutional requirements will inevitably impact another district's criteria. This court concludes this analogy is an apt one.

The Board actually had less time to complete its work due to the need to load the census data into the computer systems used to generate the proposed plan on the front end of the process and the need to do technical work on the Final Plan on the back end of the process.

See Hickel, 846 P.2d at 57.

See AS 44.62.310(a).

See AS 44.62.310(e).

See AS 44.62.310(h)(2)(A).

See AS 44.62.310(h)(2)(B).

See AS 44.62.310(a).

See AS 44.62.310(a).

See AS 40.25.110(a).

AS 40.25.115(a).

See AS 44.62.310(f).

AS 44.62.310(f)(1)-(9).

This case does not present the problem of the Board adopting an entirely new plan that has never been the subject of public hearings and which was a radical departure from plans that had been the subject of public comment. While some parts of the Full Representation Plan were unique and considered for the first time, this court finds that the Full Representation Plan was an evolution of various other plans including AFFR Plan B, suggestions for Fairbanks proposed by Brian Rogers and suggestions for Anchorage submitted by individual Anchorage Assembly members. The elements of the Full Representation Plan had been previously discussed by the Board or made available to the public although the entire Full Representation Plan was not made available to the public until June 6.

Sterling is currently serving as the Chair of the Democratic Party. Ferguson is the General Counsel for Bristol Bay Native Corporation.

Gaffney v. Cummings, 412 U.S. 735 (1973)

Kenai Peninsula Borough has been characterized by the parties and even some witnesses as a difficult to analyze decision and this court agrees. Both sides have found support in some of the language in Kenai Peninsula Borough for their competing arguments.

In such an instance, the Board of course may demonstrate that it did not intentionally discriminate against a geographic region by demonstrating that such disproportionality was required by other constitutional considerations.

It was not improper for the Board to attempt to provide each borough and municipality the opportunity to control the "right" number of seats based on population. Indeed, under this court's analysis, the Board was required to try to do so.

The court does not consider geographic equal protection claims brought by unorganized areas. By definition, residents of an unorganized area do not have any right to be represented together.

The court's analysis disposes of Wasilla's claim that the rights of Mat-Su Borough residents were violated in that Mat-Su controls 1.52 Senate seats under the plan even though by population Mat-Su should control 1.89 seats. Both the plan and population give Mat-Su the right to control 2 seats.

In addition to the draft plans proposed by the Board, other plans also included Cordova in a Southeast District. A coalition called Concerned Alaskans for Redistricting Equality (CARE) whose contact was a member of the Law Firm representing the Ruedrich plaintiffs, submitted a statewide redistricting proposal to the Board. [BR1994-2001]. The CARE proposal indicated that CARE had attempted to run a number of different scenarios in an attempt to keep Cordova with a more northern House District. However CARE was unable to justify any scenario that did not include Cordova in a southeast district given the constraints imposed by the United States and Alaska Constitutions. CARE also indicated that its research provided evidence of a stronger socio-economic tie of subsistence between Cordova, Skagway, Haines and other mixed-economies of southeast communities than with the market economy of Valdez and other more northern communities. CARE ended up placing Cordova in a Southeast Island, Prince William Sound District that consists solely of subsistence communities with strong and traditional direct ties to commercial fishing.

The Hickel court described District 34 as combining Willow, Talkeetna and a large portion of the rural northern part of the Mat-Su Borough with a majority of the Denali Borough and a part of the Fairbanks North Star Borough that includes the communities of North Pole, Salcha and Eielson Air Force Base. Hickel, 846 P.2d at 52.

While Anchorage and Valdez are less geographically proximate than North Kenai and South Anchorage, Valdez and Anchorage are far more geographically proximate than many of the communities in other districts.

The courts opinion in this regard also disposes of the claim of Delta Junction that the "Delta Junction area", an unincorporated area should not have been divided among two districts, although as previously discussed and for other reasons District 12, in which a portion of this area is located is declared unconstitutional and will have to be redrawn.

This court intends that this decision act as a final judgment that may be immediately appealed in accordance with new Appellate Rule 216.5. Any party who believes that a separate "Final Judgment" is necessary may submit one which incorporates the terms of this decision to the court for its signature.

This court recognizes that various parties are likely to move for attorneys fees in light of this decision. Given the time demands on the parties imposed by Appellate Rule 216.5 and given the practical reality that any determination of a "prevailing party" cannot be made until after this case is reviewed by the Alaska Supreme Court, all applications for attorneys fees are stayed until after the Alaska Supreme Court rules in this matter. Any such applications shall be filed within thirty days after ruling by the Alaska Supreme Court in this case.