

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	STANDARD OF REVIEW	2
III.	ARGUMENT	6
	A. Procedural Flaws.....	7
	1. Late Start, Lack of Preparation, and Minimal Time Spent Mapping Together.....	7
	2. Article VI, Section 10.	14
	3. OMA Violations.....	18
	4. <i>Hickel</i> Process Violations.	18
	B. Advancement of Individual Priorities.	21
	C. Misapplication or Inconsistent Application of Redistricting Criteria.....	30
	1. Compactness.	30
	2. Socio-Economic Integration.	32
	3. Historical Districts.	35
	4. Local Government Boundaries.	38
	5. ANCSA Boundaries.....	41
	6. Public Comments.	41
	7. Drainages, Geographic Features, and Transportation Corridors.	44
IV.	CONCLUSION	46

The City of Valdez and Mark Detter, through their counsel, Brena, Bell & Walker, P.C., hereby file their response to the Alaska Redistricting Board’s (“Board”) March 2, 2022, Petition for Review of the superior court’s Findings of Fact and Conclusions of Law and Order (“Order”), issued February 15, 2022.

I. INTRODUCTION

The Board maintains it is entitled to deference¹ as a result of its “robust, transparent public process”² and purported compliance with the Alaska Constitution and applicable case law.³ The record reflects that the Board’s process was substantially flawed from the outset and failed to comply with article VI, section 10 of the Alaska Constitution; due process; the Open Meetings Act (“OMA”);⁴ and the *Hickel*⁵ process. Moreover, the Board misunderstood or misapplied Alaska law, inconsistently applied redistricting criteria, and advanced individual policy goals to the detriment of constitutional redistricting criteria.

¹ Board Petition at 2 (“Judge Matthews ignored decades of this Court’s precedent regarding the proper deference courts are to afford decisions of the Board.”); Board Petition at 18 (“Judge Matthews drastically overstepped the judiciary’s limited scope of review and usurped the Board’s proper role by refusing to grant the Board any deference.”); Board Petition at 19 (“This Court’s deference to the Board is consistent with other courts that acknowledge that it is improper for the judiciary to substitute its judgment for the body entrusted to redistrict.”); Board Petition at 20 (“Judge Matthews ignored this standard of review and afforded the Board’s decision and process no deference.”).

² Board Petition at 5.

³ Board Petition at 1.

⁴ Open Meetings Act, AS 44.62.310 - .312.

⁵ *Hickel v. S.E. Conf.*, 846 P.2d 38 (Alaska 1992), *as modified on denial of reh’g* (Mar. 12, 1993).

In light of the Board’s “practice of assigning each member a region and ultimately deferring to those Members’ judgment on their assigned regions,”⁶ the Board’s position that it should be afforded deference as a decision making body actually seeks deference to the decisions of individual Board members. The Board is entitled to no deference when its process was flawed and the outcome of that process is a 2021 Proclamation Plan (“Final Plan”) that fails to comply with article VI, section 6 of the Alaska Constitution. This Court should remand the Final Plan back to the Board and provide clarification regarding the proper redistricting process and the Board’s duty to maximize the constitutional redistricting criteria.

II. STANDARD OF REVIEW

The Board fails to acknowledge that deference to the Board does not extend to redistricting plans that fall outside the limitations on the Board’s authority expressly set forth in the Alaska Constitution at article VI, section 6. That section specifically enumerates “limitations” on the Board’s discretion by requiring house districts to “be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area.”⁷ This Court has articulated the Board’s duty to maximize the constitutional redistricting criteria⁸ by creating plans that satisfy the constitutional

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⁶ Order at 145 [EXC.2030].

⁷ Alaska Const. art. VI, § 6.

⁸ *Hickel*, 846 P.2d at 70.

criteria to the “greatest extent possible.”⁹ The only flexibility afforded to the Board is with regard to the socio-economic integration factor, but that flexibility is limited to circumstances that maximize compactness and contiguity.¹⁰ The Board “is not permitted to diminish the degree of socio-economic integration in order to achieve other policy goals.”¹¹ The Board must “consistently enforce the constitutional article VI, section 6 requirements of contiguity, compactness, and relative integration of socio-economic areas in [the Board’s] redistricting,”¹² and any district “lacking any one of these characteristics may not be constitutional under the Alaska Constitution.”¹³ The Board is not entitled to deference when it has failed to engage in reasoned decision making by properly and consistently applying constitutional redistricting criteria to give them maximum effect.

In addition to this Court’s mandate that the Board’s redistricting plan maximize the constitutional criteria, Alaska courts have declined to give any deference to the Board’s redistricting decisions when the Board’s process is flawed.¹⁴ As the U.S. Supreme Court has held in the context of administrative appeals, “[n]ot only must an agency’s decreed

⁹ *In re 2011 Redistricting Cases*, 294 P.3d 1032, 1035 (Alaska 2012) (quoting *In re 2011 Redistricting Cases*, 274 P.3d 466, 468 (Alaska 2012)) (“The *Hickel* process assures compliance with the Alaska Constitution’s requirements concerning redistricting to the greatest extent possible.”).

¹⁰ *Id.* at 45 n.10.

¹¹ *Id.*

¹² *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1360-61 (Alaska 1987).

¹³ *Hickel*, 846 P.2d at 45.

¹⁴ *Id.* at 72 (“Giving deference to that process would be giving deference to violations of the Open Meetings Act, violations of the Public Records Act and violations of constitutional requirements produced by this skewed political process.”).

result be within the scope of its lawful authority, but *the process by which it reaches its decision must be logical and rational.*”¹⁵ In determining whether a regulation (or plan) is reasonable and not arbitrary, a court must examine not policy but process and must ask whether the agency (or Board) “has failed to consider an important factor or whether it has not really taken a ‘hard look’ at the salient problems and has not generally engaged in reasoned decision making.”¹⁶

The D.C. Circuit, which regularly makes determinations with respect to “reasoned decision-making” in the extensive administrative appeals that come before it, has indicated that “reasoned decision-making” includes “an examination of the relevant data and a reasoned explanation supported by a stated connection between the facts found and the choice made.”¹⁷ The D.C. Circuit has also identified four principles related to “reasoned

¹⁵ *Allentown Mack Sales and Service, Inc. v. N.L.R.B.*, 522 U.S. 359, 374 (1998) (emphasis added).

¹⁶ *Interior Alaska Airboat Ass’n, Inc. v. State*, 18 P.3d 686, 693 (Alaska 2001). *See also In re 2001 Redistricting Cases*, 2002 WL 34119573 at 19 (citing *Interior Alaska Airboat*, 18 P.3d at 693).

¹⁷ *Elec. Consumers Res. Council v. Fed. Energy Regulatory Comm’n*, 747 F.2d 1511, 1513 (D.C. Cir. 1984).

decision-making:” deliberation,¹⁸ transparency,¹⁹ rationality,²⁰ and evidentiary propriety,²¹ and explained that “[a]rbitrary and capricious review demands evidence of reasoned decision making *at the agency level*; agency rationales developed for the first time during litigation do not serve as adequate substitutes.”²²

This Court’s review of the Board’s Plan is *de novo* based upon the record developed in the superior court,²³ and this Court has a duty to independently measure each district in the Plan against constitutional standards.²⁴ This is not a deferential standard of review, nor should it be, when the issues before the Court are issues of constitutional compliance. Indeed, this standard of review suggests that no deference should be given to the Board’s own determinations that a redistricting plan satisfies the constitutional redistricting criteria. While the redistricting process is a difficult one, this Court has noted “these difficulties do

¹⁸ *Sierra Club v. Salazar*, 177 F. Supp. 3d 512, 532 (D.C. Cir. 2016) (internal citations omitted) (“[T]he agency must ‘engage the arguments raised before it.’ . . . It follows that an agency’s decision is not deliberative if it fails to ‘respond meaningfully to objections raised by a party.’”).

¹⁹ *Id.* (“[T]he agency ‘must, of course, reveal the reasoning that underlies its conclusion.’”).

²⁰ *Id.* at 532-33 (“If an agency’s interpretation of a regulation [or constitutional provision] shifts such that the agency is treating like situations differently without sufficient reason, the court may reject the agency’s interpretation as arbitrary.”)

²¹ *Id.* at 533 (“[R]easoned decision-making also precludes the agency from offering ‘an explanation . . . that runs counter to the evidence before the agency.’”).

²² *Williams Gas Processing – Gulf Coast Co., L.P. v. Fed. Energy Regulatory Comm’n*, 475 F.3d 319, 327 (D.C. Cir. 2006) (emphasis added).

²³ *Groh v. Egan*, 526 P.2d 863, 867 (Alaska 1974).

²⁴ *In re 2001 Redistricting Cases*, 44 P.3d 141, 147 (Alaska 2002) (citations omitted).

not limit the Board’s responsibility to create a constitutionally compliant redistricting plan, nor do they ‘*absolve this court of its duty to independently measure each district against constitutional standards.*’²⁵ Where, as here, the Board has engaged in a flawed process and diminished socio-economic integration and compactness in order to advance other policy goals, the Board has failed to fulfill its constitutional duty and is entitled to no deference during this Court’s *de novo* review.²⁶

III. ARGUMENT

The record establishes widespread procedural flaws that permeated the entirety of the redistricting process, which unsurprisingly resulted in outcomes that fail to satisfy the constitutional redistricting criteria. These procedural deficiencies undermined proper and consistent application of constitutional redistricting criteria and facilitated the ability of individual Board members to advance their own priorities over constitutional requirements. It is this Court’s duty to correct the harm caused by the Board’s failure to engage in reasoned decision making within the constitutional limitations on their authority applied consistently.

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²⁵ *In re 2011 Redistricting Cases* at 1035 (quoting *In re 2001 Redistricting Cases*, 44 P.3d at 147) (emphasis added).

²⁶ *Hickel*, 846 P.2d at 72 (“Giving deference to that process would be giving deference to violations of the Open Meetings Act, violations of the Public Records Act and violations of constitutional requirements produced by this skewed political process.”).

A. Procedural Flaws.

1. Late Start, Lack of Preparation, and Minimal Time Spent Mapping Together.

The Board waited eleven days after receiving the census data to meet and review the data as a Board. Thereafter, the Board sporadically met and spent very limited time mapping together for the duration of the redistricting process. Although the delivery of the 2020 census data was delayed by approximately four months, the Board’s deadlines begin to run from the date the data is delivered or the date the Board is appointed, whichever is later.²⁷ Accordingly, the Board’s delay in beginning joint mapping exercises and minimal time spent mapping together is not attributable to the delay in the delivery of the census data. Every redistricting Board appointed since 1998 has faced the same procedural deadlines. A summary of the Board’s meetings is provided below:

<u>Date</u>	<u>Nature of Event or Meeting</u>	<u>Duration</u>
8/12/2021	The Board received the 2020 census data on Aug. 12, 2021, ²⁸ and had 30 days from that date to prepare and adopt proposed redistricting plans and 90 days to adopt a final plan. ²⁹	NA
8/23/2021	The Board met for the first time after receiving census data.	6:38 ³⁰
8/24/2021	The Board began mapping within regions established during Aug. 23, 2021 meeting. ³¹	7:08 ³²

²⁷ Alaska Const. art. VI, § 10.

²⁸ Torkelson Aff. at 5, ¶ 18 [ARB EXC.0604]; [ARB000007] [EXC.1128].

²⁹ Alaska Const. art. VI, § 10.

³⁰ ARB000153-000157 [ARB EXC.0009-13].

³¹ ARB000158 [ARB EXC.0014].

³² ARB000157-000158 [ARB EXC.0013-14].

9/7/2021	The Board met and explored Board drawn maps and engaged in its first group map-drawing work session. ³³	6:10 ³⁴
9/8/2021	The Board engaged in a map-drawing work session and heard brief public comment.	5:33 ³⁵
9/9/2021	The Board discussed and adopted proposed plans identified as Board Composite Version 1 (V.1) and Version 2 (V.2). ³⁶	5:52 ³⁷
9/11/2021	The thirty-day period for adopting proposed plans expired. ³⁸	NA
Subtotal		31:21
9/17/2021	The Board received public comment for two hours, and received presentations from the following third-party groups: (1) Doyon Coalition, (2) Alaska Democratic Party, (3) Alaskan for Fair and Equitable Redistricting (“AFFER”), (4) Alaskans for Fair Redistricting (“AFFR”), and (5) the Senate Minority Caucus. ³⁹	6:12
9/20/2021	The Board met and introduced Version 3 (V.3) and Version 4 (V.4) and moved to replace V.1 with V.3 and V.2 with V.4 without taking any public comment on V.3 and V.4. ⁴⁰ The Board also adopted all five third-party plans before rescinding its adoption of the Alaska Democratic Party Plan. ⁴¹	6:06 ⁴²
Subtotal		43:39
9/27/2021– 11/1/2021	The Board engaged in a public hearing tour but did not convene in public meeting for map-drawing purposes or otherwise.	NA
11/2/2021	The Board met for the first time after Sept. 20, 2021, to take public testimony, spent two hours and twenty-three minutes in	7:55 ⁴⁵

³³ ARB000161 [EXC.2105].

³⁴ ARB000159-000162 [EXC.2103-06].

³⁵ ARB000162 [EXC.2106].

³⁶ Order at 12 [EXC.1897].

³⁷ ARB000162-000165. [EXC.2106-09].

³⁸ Order at 12-13 [EXC.1897-98].

³⁹ Order at 13 [EXC.1898].

⁴⁰ Redistricting Process Report at 3 (Nov. 10, 2021) [ARB000007] [EXC.1128].

⁴¹ ARB000190-000192 [ARB EXC.0148-49].

⁴² ARB 000175 [ARB EXC.0133]; ARB000192 [ARB EXC.0149].

⁴⁵ ARB000193 [EXC.2259]; ARB000199 [EXC.2265].

	executive session, ⁴³ and two hours and forty-eight minutes in a mapping work session. ⁴⁴	
11/3/2021	The Board met for a total of seven hours, during which it entered a mapping work session.	7:00 ⁴⁶
11/4/2021	The Board met for a total of seven hours, during which it entered a mapping work session.	7:00 ⁴⁷
11/5/2021	The Board met for a total of ten hours and nine minutes. During that time, the Board entered executive session twice for a total of two hours and thirty-nine minutes with public comment between the two executive sessions. ⁴⁸ The Board adopted a plan substantially similar to V.4, as the “final redistricting map with the allowance that staff may make minor changes to facilitate metes and bounds, and will return a report with recommended changes to the Board for review prior to final proclamation adoption.” ⁴⁹	10:09 ⁵⁰
Total		75:43

Considering the Board’s time spent together in the context of an eight-hour work day is useful in evaluating whether the Board afforded itself sufficient time to fulfill its constitutional duties. During the thirty-day period for drawing and adopting proposed plans, the Board met for less than five full eight-hour days to map together. During the first eighty days of the ninety-day redistricting process, the Board met for under six full eight-hour days to map together. After the public hearing tour, the Board held only four meetings (Nov. 2-5) totaling thirty-two hours and four minutes to incorporate public

⁴³ ARB000196 [EXC.2262].

⁴⁴ ARB000199 [EXC.2265].

⁴⁶ ARB000200 [EXC.2266].

⁴⁷ ARB000200 [EXC.2266].

⁴⁸ ARB000202-000208 [EXC.2276-82].

⁴⁹ ARB000208 [EXC.2282].

⁵⁰ ARB00201 [EXC.2275]; ARB000209 [EXC.2283].

comment and finalize a house plan. Thus, *during the entirety of the ninety-day redistricting period, the Board spent less than ten full eight-hour days in public meetings* for purposes of mapping together or otherwise.

Much of the Board's meeting time was spent taking public comment, receiving presentations from staff, or in executive session. The minimal amount of time actually meeting together for purposes of mapping militates against any finding that the Board spent adequate time to take a hard look at redistricting alternatives and undermines the Board's position that it is entitled to deference.

The Board's failure to spend adequate time mapping together was exacerbated by general lack of preparation for the redistricting process. The Board staff had no expertise in the redistricting process and did not take preliminary steps required to facilitate the process prior to receiving the census data.⁵¹ For example, the geography for the 2020 census blocks was available months before delivery of the actual census data. Specifically, the Topologically Integrated Geographic Encoding and Reference system (TIGER) file, which contains the geography for the census blocks, was available in February 2020.⁵² Board staff should have configured its redistricting program, AutoBound Edge

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⁵¹ Order at 153 (“Prior to receipt of the census data the Board certainly could have familiarized itself further with the districting software and the geographic data.”) [EXC.2038].

⁵² Trial Tr. 593:18 – 594:3 (Brace) [EXC.2338-39].

(“AutoBound”), with the available geography data and incorporated existing district boundaries into AutoBound prior to receipt of the census data.⁵³

The Board and its staff appear to have been generally unfamiliar with AutoBound. For example, the Executive Director, Peter Torkelson, did not realize that AutoBound was restricted to using census blocks, precincts, or census areas for assigning population to a particular district.⁵⁴ Mr. Torkelson also did not understand that the census blocks for Alaska’s geography were reduced between 2010 and 2020 until he became frustrated over the size and odd shape of some census blocks and reached out to the Department of Labor.⁵⁵ Mr. Torkelson also agreed that one of the key mapping challenges was his learning about the way that these census blocks worked for mapping purposes.⁵⁶

At the time the census data was received, Board staff was underprepared and failed to understand basic elements of the nature of the redistricting process and the functionality

⁵³ Trial Tr. 596:16 – 597:14 (Brace) [EXC.2341-42].

⁵⁴ Torkelson Depo. Tr. 51:5 – 52:24 [EXC.2327-28].

⁵⁵ Torkelson Depo. Tr. 45:9-25 (“Q: Okay. And one of the key mapping challenges was your learning about the way that these census blocks worked for mapping purposes, is that fair? A: Yeah, that’s -- that’s fair. And I – I don’t know if you’ve read all my e-mail or not, but here are certainly -- I had exchanges with -- how do I say this? The census block shapes were a severe limitation on our ability to draw districts that were -- appeared compact, that didn’t appear to have bizarre protrusions or odd shapes to them. So when we kept hitting these problems, I naturally thought, well, are we bound to census blocks? Like, could we draw another line? And I chased that one down with the Department of Labor, you know, saying, hey, I know autoBound just lets us pick blocks, but you guys have GIS software. You can draw a shapefile any shape you want, right? Yes. You know, could we do that? And the answer was just no”) [EXC.2326].

⁵⁶ Torkelson Depo. Tr. 51:2-20 [EXC.2327].

of AutoBound. As a result, the map-drawing process was impeded as issues that could have been explored and resolved prior to receiving the census data were instead resolved during the limited time period for mapping.

The Board was also making fundamental decisions regarding the mapping process during the September 7-9 meetings that should have been decided well in advance. For example, by September 9, 2021, just two days before the September 11 deadline for adopting proposed plans, the Board had not decided whether it should control the mapping efforts or whether staff should take policy direction from the Board and do the mapping.⁵⁷

The Board was also debating whether to draw maps jointly or individually. Member Nicole Borromeo stated on September 9:

There's also been -- my third point is, you know, several comments disparaging the group process as being tedious or taking too long or not efficient or not effective and a waste of time even, it's been said. If that's the case, Mr. Chairman, there's no need to convene this board.⁵⁸

Despite this concern that the mapping process should be an effort by the Board as a whole, V.4, which was largely adopted as the Final Plan, was the result of Member Borromeo's individual mapping efforts and was never shared with any other Board member prior to the map's introduction and adoption without public comment during the September 20 meeting.⁵⁹ While Member Borromeo advocated for joint map-

⁵⁷ Board Meeting Tr. 117:2-21 (Sept. 9, 2021) [ARB009941] [EXC.2101].

⁵⁸ Board Meeting Tr. 117:2 – 118:21 (Sept. 9, 2021) [ARB009941-009942] (emphasis added) [EXC.2101-02].

⁵⁹ Borromeo Depo. Tr. 165:11-16 (“Q: Is it fair to say that you spent considerable time with staff and other board members building out maps that were presented to the Board?”)

drawing efforts among all Board members during public meetings, in practice she drafted the redistricting plan that was adopted by the Board on her own.

The Board's function is to draw a redistricting plan as a Board. However, most of the mapping that occurred during the ninety-day window for adopting a final redistricting plan occurred outside of public meetings by Board members working individually or in small groups. Proposed plans were drawn and adopted hastily and with little joint participation among the Board members. For example, V.2 was the result of Member Borrromeo's working through a single lunch break lunch to show that "that we didn't have to cherry-pick which boundaries were more important than others."⁶⁰

The Board's lack of preparation prior to receipt of the 2020 census data, general unfamiliarity with basic redistricting concepts and the functionality of AutoBound, and the limited time spent jointly preparing redistricting maps constrained the range of options considered by the Board and facilitated the advancement of individual Board member policies. The Board's failure to spend time mapping together commensurate with the "Herculean task" with which the Board was faced,⁶¹ resulted in decisions made under circumstances that unnecessarily constrained the Board's ability to consider viable

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A: No. I think it would be fair to say that I spent considerable time with staff, not necessarily with my colleagues on the Board, building out maps.") [EXC.1325]; Borrromeo Depo. Tr. 50:8-16 (Borrromeo testifying that she was the creator of Version 4, that Version 4 was presented to the Board on September 20, and that no other Board member had seen Version 4 prior to September 20.) [EXC.1308].

⁶⁰ Borrromeo Depo. Tr. 117:6-11 [EXC.1315].

⁶¹ Order at 39 [EXC.1924].

alternatives. The Board should not be afforded deference when it failed to properly prepare for or dedicate sufficient time to fulfilling its duty to consider viable alternatives.

2. Article VI, Section 10.

Alaska's redistricting process is set forth in article VI, section 10 of the Alaska Constitution. Section 10 provides: (1) the Board shall adopt one or more proposed plans within thirty days of the Board's appointment or receipt of the census data, whichever is later; (2) the Board shall hold public hearings on the proposed plans adopted within the thirty-day period; and (3) the Board shall adopt a final plan within ninety days of the Board's appointment or receipt of the census data, whichever is later.⁶²

Historically, the Board has complied with the clear meaning of article VI, section 10 and avoided the confusion associated with replacing proposed plans or adopting new proposed plans after the thirty-day period.

During the 2001 redistricting process, the Board received census data on March 19, 2001,⁶³ adopted two Board created proposed plans, a proposed plan submitted by AFFR, and a proposed plan submitted by Calista on April 18, 2001, within the thirty-day deadline after receipt of the census data, and held public hearings on the four proposed plans between May 4 and May 15, 2001.⁶⁴ The Board did not adopt any proposed plans after the thirty-day period.⁶⁵ During the 2001 redistricting process the Board received census data

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⁶² Alaska Const. art. VI, § 10.

⁶³ *In re 2001 Redistricting Cases*, 2002 WL 34119573 at 3.

⁶⁴ *In re 2001 Redistricting Cases*, 2002 WL 34119573 at 10.

⁶⁵ *In re 2001 Redistricting Cases*, 2002 WL 34119573 at 10-15.

on March 13, 2011, adopted Board drawn proposed plans within the thirty-day period and did not adopt any third-party proposed plans or board proposed plans after the thirty-day period.⁶⁶

In this case, the Board failed to satisfy the requirements of article VI, section 10. The Board's joint drafting efforts within the thirty-day period for adopting proposed plans was limited to five meetings, most of which were not spent mapping. V.1 and V.2 were the only two plans adopted by the Board within the thirty-day constitutionally mandated period for adopting proposed plans.⁶⁷ Both were subsequently abandoned by the Board a mere eleven days later, on September 20, 2021. The agenda for the September 20 Board meeting included an agenda item for "Review of Improvements to Board Proposed Plans v1 and v2."⁶⁸ This agenda item cannot be reasonably interpreted as providing public notice that the Board would adopt entirely new proposed plans with substantially different districts after the constitutional deadline for adopting proposed plans.

After presentation of V.3 and V.4, the Board voted to adopt those proposed plans without receiving public comment on them.⁶⁹ V.4, which was created by Member Borromeo, was entirely new and was not even made available to other Board

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⁶⁶ Trial Tr. 1456:16 – 1460:25 [EXC.2350-2354].

⁶⁷ Order at 13 [EXC.1898].

⁶⁸ ARB000856 [EXC.2110].

⁶⁹ Board Meeting Tr. 147:2 – 196:22 (Sept. 20, 2021) [ARB10290-010339] [EXC.0036-86].

members until the end of the September 20 meeting.⁷⁰ The Board also adopted five third-party plans and then promptly rescinded one it had just adopted.⁷¹ By adopting V.3, V.4, and four third-party plans on September 20, nine days after the end of the thirty-day period, the Board truncated the sixty-day period for public comment on those plans. Not a single redistricting plan was available for public comment for the full sixty-day period. Instead, all six of the proposed plans that framed public comment for the redistricting process were adopted after the constitutional deadline for adopting proposed plans.

Apparently, the Board's position is that it may adopt proposed plans after the constitutionally mandated thirty-day period regardless of whether it believes those plans are unconstitutional on their face.⁷² Member Simpson testified that under article VI, section 10 the Board may adopt as many proposed plans as it desires at any time prior to

⁷⁰ Borrromeo Depo. Tr. 50:2-21 (“Q: Ms. Borrromeo, you were just referring to Version 4. We were just talking about -- I think one of the things that you just said was if you compare your Version 4 with the final map that was adopted, they’re very similar; is that -- is that a fair statement? A: Yes. Q: Okay. Now, the Version 4, you were the creator of Version 4? That’s was your -- A: Yes. Q: Okay. And that was presented to the Board and adopted by the Board on September 20th; is that correct? A: Yes. Q: Okay. And had you shared it, what members of the Board had you shared your Version 4 with prior to September 20th? A: None. Q: Okay. And so you had -- you had just created it before and presented it at the September 20th meeting and hadn’t shared it with any other member of the Board? A: Yes.”) [EXC.1308].

⁷¹ Redistricting Process Report at 3-4 (Nov.10, 2021) [ARB000007-000008] [EXC.1128-29].

⁷² Borrromeo Depo. Tr. 227:3 – 228:12 [EXC.2312-13].

adoption of the final plan⁷³ despite recognizing the challenges of providing public comment on a moving target.⁷⁴ As the superior court held:

[T]he Board asserts that it satisfied Section 10 by adopting two proposed “draft” maps within the 30-day deadline-Board v.1 and v.2-and then by holding two public hearings on September 17 and 20, 2021. The Board conveniently ignores that it “replaced” both Board v.1 and v.2 on September 20. The Board’s preferred interpretation would thus effectively render the “public hearings” requirement superfluous. If the Board could hold public hearings but with no intent to ever listen to or incorporate public comments in the first place, then what purpose would those public hearings serve?⁷⁵

The public’s ability to comment on a stable set of adopted plans by the Board was compromised as a result of the Board’s failure to comply with article VI, section 10. Indeed, Valdez refrained from developing and presenting an alternative redistricting plan by the Board’s deadline for presentation of third-party plans as a result of the Board’s adoption of V.1 and V.2, which included Valdez with Richardson Highway communities. If the Board could simply develop and adopt radically new plans outside the thirty-day period, thereby avoiding the constitutional requirement for public hearings on plans it developed and adopted within the thirty-day period, the public process envisioned by the legislature and enshrined in article VI, section 10 would cease to exist. The Board’s violation of article VI, section 10 does not warrant deference from this Court.

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⁷³ Simpson Depo. Tr. 36:5 – 37:7 [EXC.2296-97].

⁷⁴ Simpson Depo. Tr. 43:20 – 44:2 (“Q: Mr. Simpson, you appreciate that the concept of a moving target, if you're permitting public comment on a moving target, the challenges that that represents? A. You’re asking if I appreciate the concept of public comment on a moving target? Yes, I do. We lived it.”) [EXC.2299-2300].

⁷⁵ Order at 141-142 [EXC.2026-27].

3. OMA Violations.

The superior court determined that the Board violated the OMA,⁷⁶ which calls into question the propriety of the Board’s decision-making process and “harms the public confidence in public entities generally and more importantly in the highly visible and consequential redistricting process.”⁷⁷ The Board routinely entered executive session without properly identifying the subject matter of executive session or reason for entering executive session under the OMA.⁷⁸ While neither the parties nor the superior court could discern what precisely took place in executive session, the Board clearly appears to have improperly reached consensus on substantive redistricting decisions outside of the public eye. Redistricting decisions made in violation of the OMA are not entitled to deference from this Court,⁷⁹ rather, this Court should review them with particular scrutiny.

4. *Hickel* Process Violations.

The Board failed to comply with the *Hickel* process because it considered Voting Rights Act (“VRA”) compliance from the outset of the redistricting process, and VRA considerations resulted in the Board’s creating Districts 37-40 (“VRA Districts”) first, gaining consensus on those districts early in the process, and declining to consider

⁷⁶ Order at 165 [EXC.2050].

⁷⁷ Order at 161 [EXC.2046].

⁷⁸ Order at 158 (“Board members typically moved for executive session only by identifying the specific section of the Open Meetings Act which the meeting purportedly fell under.”) [EXC.2043].

⁷⁹ *Hickel*, 846 P.2d at 73 (“Giving deference to that process would be giving deference to violations of the Open Meetings Act, violations of the Public Records Act and violations of constitutional requirements produced by this skewed political process.”).

redistricting options that required any substantial modification to those VRA Districts. The *Hickel* process “assures compliance with the Alaska Constitution’s requirements concerning redistricting to the greatest extent possible” and “diminishes the potential for partisan gerrymandering and promotes trust in government.”⁸⁰ When the Board fails to draw an initial map “not affected by VRA considerations in any way,”⁸¹ this Court has invalidated redistricting plans in their entirety for violation of the *Hickel* process without any deference to the Board.⁸²

The superior court found that the Board did not scrupulously adhere to the *Hickel* process and articulated numerous facts supporting a holding that the Board violated the *Hickel* process.⁸³ Executive Director Peter Torkelson testified that the Board was fully aware of the historic VRA Districts when it began the redistricting process and took steps to avoid retrogression in Districts 37-40 prior to developing a constitutionally compliant plan.⁸⁴

⁸⁰ *In re 2011 Redistricting Cases* at 1035 (quoting *In re 2011 Redistricting Cases*, 274 P.3d 466, 468 (Alaska 2012)).

⁸¹ *Id.* at 1036.

⁸² *Id.* at 466-69.

⁸³ Order at 125-26 [EXC.2010-11].

⁸⁴ Torkelson Depo. Tr. 124:13 – 125:5 (“Q: Now, what were the VRA protected districts? A: So in the 2013 cycle and for the last decade, effectively, Districts 37, 38, 39, and 40 of the 2013 plan, and we retained those numbers in the 2021 plan because we started numbering at the south, so it was natural to end in District 40 in the north. So 37, 38, 39, 40 have successfully elected candidates of the minority’s choice for the last election cycles, and my understanding was that those needed to be -- retrogression to those districts would be something we had to look very closely at. Q: Okay. And there’s no -- there’s no secret that 37, 38, 39, and 40 are VRA protected districts for the last decade, is there? A: Oh, no.

Based upon the record, the superior court held that “Board actions to move certain communities around to help with ‘VRA considerations’ when not actually required by the VRA, as well as advice from counsel suggesting the Board avoid ‘drastic changes from ... [the] six board-adopted plans,’ particularly in the districts ‘labeled 37 through 40 and potentially districts in Anchorage,’ *may have unnecessarily limited the Board’s options.*”⁸⁵

The court further held that:

Member Bankhe’s statements throughout the redistricting process evidence a strong preoccupation with both VRA requirements and the percentage of Alaska Natives in rural areas. She was also in charge of drawing the so-called VRA districts. *The transcripts and videos of public Board meetings make it abundantly clear that Board Members were actively considering VRA-related issues since the beginning of the process. And the fact that all four of the Board’s proposed plans contained identical versions of Districts 37, 38, 39, and 40 also creates a strong inference that the Board never truly considered available alternatives.*⁸⁶

Constraining the options considered during the redistricting process by focusing on the VRA is precisely what the *Hickel* process was intended to avoid. By improperly focusing on racial data and VRA considerations from the outset of the redistricting process, the Board did not comply with the *Hickel* process and unnecessarily compromised the requirements of the Alaska Constitution.⁸⁷ Accordingly, neither the Board’s flawed

I mean, it’s widely known and, you know, we were all certainly aware from the beginning that those previous districts had been under the protection of the VRA.”) [EXC.2335-36].

⁸⁵ Order at 125-129 (emphasis added) [EXC.2010-14].

⁸⁶ Order at 127-128 (emphasis added) [EXC.2012-13].

⁸⁷ *Hickel* 846 P. 2d at 51 n. 22 (“[t]he Board shall ensure that the requirements of article VI, section 6 of the Alaska Constitution are not unnecessarily compromised by the Voting Rights Act.”).

process nor the plan developed through that process should be afforded deference during this Court's *de novo* review.

B. Advancement of Individual Priorities.

Every member of the Board advanced special interests during the redistricting process, and not one Board member had an individual priority that was not achieved. Mr. Schechter, arguing on behalf of Calista, summarized the Board's biases in closing argument as follows:

The board had no rules, policy, or process regarding the special treatment resulting from board members' conflicts of interest. The Calista region didn't have an advocate on the board, but a neighboring region that wanted more population did.

The board argued that board members acted as statesmen and stateswomen and acted in the interest of all Alaskans. But when you consider each board member's special interests and look at the board's plan, you can see that not one board member had a special interest that was not honored in the 2021 maps: Member Bahnke in District 39, Member Simpson in Southeast, Member Borrromeo in the Doyon district, Member Marcum in the Senate pairings between Eagle River and East Anchorage, and Member Binkley in Fairbanks.⁸⁸

The record fully supports this summary of the Board's biases. The Board did not take any specific cautions to address conflicts of interest or the appearance of conflicts of interest.⁸⁹ Instead, individual Board members drove decision making for the districts that implicated their personal interests and received deference from other Board members with

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⁸⁸ Trial Tr. 2235:6-22 [EXC.2360].

⁸⁹ Borrromeo Depo. Tr. 269:20 – 270:10 [EXC.2316-17].

regard to those decisions.⁹⁰ The Board’s practice of deferring to members from a particular region is based upon a flawed interpretation of the requirement that members be appointed from different regions.⁹¹

As a result, voters with the luxury of having affiliated Board members from their communities on the Board received preferential treatment over voters who did not have affiliated members on the Board. The superior court noted that the Board’s practice was “assigning each member a region and ultimately deferring to those Members’ judgment on their assigned regions,”⁹² which facilitated individual Board members’ ability to advance their special interests.

Chairman John Binkley was born and raised in Fairbanks, is currently a Fairbanks resident,⁹³ was a former representative and senator in the Alaska legislature, and was a former Republican gubernatorial candidate.⁹⁴ Chairman Binkley sought to preserve FNSB’s boundaries for nearly the entire redistricting process while simultaneously

⁹⁰ Order at 145 (“This Court is somewhat troubled by this practice of assigning each member a region and ultimately deferring to those Members’ judgment on their assigned regions.”) [EXC.2030]; Simpson Depo. Tr. 47:12-15 (“I think, in many cases, the member from a particular region received deference from the other members as to that region.”) [EXC.2301].

⁹¹ Simpson Depo. Tr. 47:5-10 (“The constitutional establishment of a redistricting board requires members to be appointed from different regions. And I assume the purpose of that is to bring local expertise, somehow, to the process.”) [EXC.2301].

⁹² Order at 145 [EXC.2030].

⁹³ Order at 4 [EXC.1889]; Binkley Depo. Tr. 17:12-22 (“Q: Fairbanks boy through and through; right? A: Well, they say that you can take the boy out of Fairbanks but not Fairbanks out of the boy.”) [EXC.1327].

⁹⁴ Binkley Depo. Tr. 24:19 – 26:4 [EXC.2319-21].

breaking other borough boundaries without concern.⁹⁵ This priority was readily apparent to other Board members who perceived Chairman Binkley as negotiating to advance his priorities as late as November 3, just two days before adoption of the final house plan.⁹⁶ Only after receiving a resolution from the FNSB Assembly, which was not unanimous and was procured by a member of the Doyon Coalition,⁹⁷ did Chairman Binkley concede that FNSB should shed excess population.⁹⁸ Chairman Binkley plainly prioritized satisfying the desires of his hometown and spent a tremendous amount of time determining how to satisfy the FNSB Assembly’s request at the end of the redistricting process when the Board

⁹⁵ Borrromeo Depo. Tr. 116:18 – 117:5 (“[Chairman Binkley] wanted to preserve some borough boundaries but not all. And for his borough, his home borough to be overpopulated by 20 percent, Mat-Su to be underpopulated by 20 percent, Anchorage to be underpopulated by 20 percent, it didn’t make sense to me then and it doesn’t make sense to me now, that you would not break the borough boundary for Fairbanks North Star but you would break the borough boundary between the Mat-Su Borough and the Municipality of Anchorage.”) [EXC.1314].

⁹⁶ Board Meeting Tr. 187:8-14 (Nov. 3, 2021) [ARB007547] (Binkley: “Well, if you agree that the Fairbanks North Star Borough should be whole, then we won’t have that problem of trying to take population out of the Fairbanks North Star Borough.” Bahnke: “I feel like you’re trying to negotiate with me to keep Fairbanks North Star Borough whole.”) [EXC.0506]; Ex. VDZ-3010 at 117 [ARB00155146] (“JB is negotiating FNSB. MB called him out.”) [EXC.1706].

⁹⁷ Ex. VDZ-3010 [ARB00155141] (Text messages between Ms. Sanford who is a Doyon Coalition representative and was an FNSB assembly member at the time and Member Borrromeo regarding their involvement in procuring the resolution from FNSB that changed Chairman Binkley’s position on shedding excess population from FNSB) [EXC.1701].

⁹⁸ Board Meeting Tr. 40:2 – 41:22 (Nov. 4, 2021) [ARB009210-9211] (“You know, the premise that I looked at for Fairbanks was keeping the borough whole . . . But then we had the borough assembly that weighed in on that. . . . And that’s significant. *And I gave that a lot of weight. Even though it wasn’t a unanimous decision on the part of the borough, it was significant that the elected body from the entire borough said you should push out people from the borough.*”) (emphasis added) [EXC.0833].

was under time constraints that limited their ability to engage in substantive discussions and consider viable alternatives.⁹⁹ The Board deferred to Chairman Binkley with regard to FNSB,¹⁰⁰ which allowed him to satisfy FNSB’s desires in the Final Plan without adequate consideration of alternatives that did not achieve his goal.

Member Melanie Bahnke was born in Nome and raised in Savoonga on St. Lawrence Island,¹⁰¹ is currently a resident of Nome,¹⁰² is a shareholder of her village corporation within the Bering Straits region,¹⁰³ and is President of Kawerak, Inc., a non-profit corporation organized by Bering Straits Native Corporation.¹⁰⁴ Through her role as President of Kawerak, Member Bahnke works “hand in hand with for-profit Native

⁹⁹ Board Meeting Tr. 6:18-19 (Nov. 4, 2021) [ARB009176] (Simpson: “there’s a time pressure on us which is going to impact the amount of deliberations we’re able to do”) [EXC.0799]; Board Meeting Tr. 177:1-5 (Nov. 4, 2021) [ARB009176] (Borromeo: “And we are down to the last day. If – it’s 2:00 in the afternoon. If we adjourn right now and don’t use every bit of this time, we’re going to be making rash decisions tomorrow that are not intelligent.”) [EXC.0799].

¹⁰⁰ Borromeo Depo. Tr. 241:25 (“Extreme deference was given to John.”) [EXC.2314]; Board Meeting Tr. 5:1-14 (Nov. 10, 2021) [ARB007176] (Bahnke: “there was evidence of naked partisan gerrymandering, and that calls into question, to me, the integrity of the whole plan, including the Fairbanks area, where I think I gave too much deference to your lived experience there.”) [EXC.2268].

¹⁰¹ Order at 4 [EXC.1889].

¹⁰² Trial Tr. 974:13-14 [EXC.1633].

¹⁰³ Order at 4 (“Member Melanie Bahnke was born in Nome and raised in Savoonga on St. Lawrence Island. She has lived in Nome since 1995, and among other things, is President of Kawerak, Inc., a nonprofit corporation that the Bering Straits Native Association organized.”) [EXC.1889].

¹⁰⁴ Order at 4 [EXC.1889].

corporation entities” including Bering Straits Native Corporation.¹⁰⁵ Member Bahnke adamantly advocated against redistricting alternatives that did not maintain Bering Straits’ eastern boundary with Doyon and stated that as the head of Kawerak she did not want any interior villages in her district, District 39.¹⁰⁶ Member Bahnke insisted on advancing the “the preferences in Nome,” which were to not include “any Athabascan communities in their district”¹⁰⁷ and even took off her “redistricting Board hat” to provide testimony against combining any Doyon villages with any Bering Straits villages as “a regional tribal leader for the Kawerak Region.”¹⁰⁸ The Board deferred to Ms. Bahnke with regard to District 39,¹⁰⁹ and the Final Plan achieves the preferences of Nome, Kawerak, and Member Bahnke by maintaining the boundary between Bering Straits and Doyon even though it resulted in District 39 being the most underpopulated District in the entire plan.

¹⁰⁵ Bahnke Depo. Tr. 13:4-17 [EXC.2290].

¹⁰⁶ Board Meeting Tr. 175:2-16 (Nov. 3, 2021) [ARB007335] [EXC.2256].

¹⁰⁷ Board Meeting Tr. 177:9-25 (Nov. 3, 2021) [ARB007337] [EXC.2258].

¹⁰⁸ Board Meeting Video at 3:12:00 (Nov. 3, 2021) [EXC.2075]; Board Meeting Tr. 167:25 – 174:13 (Nov. 3, 2021) [ARB007534-007535] [EXC.0576-77]; Bahnke Depo. Tr. 51:20 – 52:1 (“I’m authorized to speak on behalf of Alaska Natives in my region in my role as the president of Kawerak. My board of directors is the tribal council presidents of the 20 federally recognized tribes in the region. And based on them continuing to employ me in this position as a president, I’m authorized to speak on their behalf.”) [EXC.2291-92].

¹⁰⁹ Bahnke Depo. Tr. 52:2-5 (“I’m not just a member. I have multiple hats that I wear. And *I felt like I wasn’t being given enough deference in terms of that authority that I’ve been granted.*”) (emphasis added) [EXC.2292]; Simpson Depo. Tr. 14:1-5 (“I think most of the board gave quite a bit of deference to Melanie Bahnke, who was from Nome, and kind of took the lead as far as, you know, the socioeconomic issues for those western Alaska districts.”) [EXC.1299].

District 39 is underpopulated by 4.81 percent or 882 people,¹¹⁰ and therefore the voters within the District receive disproportionate representation in the legislature. The Board voted for this outcome despite the fact that the most overpopulated District, District 40,¹¹¹ and District 36, which is also overpopulated, are directly adjacent to District 39.

Member Nicole Borromeo¹¹² was born and raised in McGrath, is Executive Vice President and General Counsel of the Alaska Federation of Natives, serves as the chairman of the board of directors of MTNT, Limited, the ANCSA¹¹³ Village Corporation for McGrath, Takotna, Nikolai, and Telida,¹¹⁴ and is a Doyon shareholder.¹¹⁵ Member Borromeo shared the goal of maintaining the boundary between Bering Straits and Doyon with Member Bahnke in order to accomplish her goal of combining all Doyon and Ahtna villages in one district. Member Borromeo advocated for the creation of a Doyon-Ahtna district without Valdez throughout the redistricting process and actively communicated with members of the Doyon Coalition regarding how to achieve this goal.¹¹⁶ The Board

¹¹⁰ Trial Tr. 1294:15 – 1295:1 (Brace) [EXC.1637].

¹¹¹ Trial Tr. 1294:15 – 1295:1 (Brace) (District 40 is the most overpopulated district at 2.67 percent or 489 people) [EXC.1637].

¹¹² Order at 4 (citations omitted) [EXC.1889].

¹¹³ Alaska Native Claims Settlement Act, codified at 43 U.S.C. § 1601 *et seq.*

¹¹⁴ Order at 4 [EXC.1889].

¹¹⁵ Borromeo Depo. Tr. 268:2-5 [EXC.2315].

¹¹⁶ Ex. VDZ-3010 [ARB00155140-00155159] [EXC.1700-19].

deferred to Member Borromeo,¹¹⁷ sought to create a “Doyon District” in District 36,¹¹⁸ and achieved that goal in the Final Plan thereby satisfying the preferences of the Doyon Coalition¹¹⁹ and Member Borromeo.

Member Bethany Marcum has been an Anchorage resident for twenty-six years and is a Republican party officer.¹²⁰ By the time the Board began evaluating senate pairings, the other Board members had already achieved their personal goals with regard to the house districts, and Chairman Binkley informed Ms. Borromeo that she had “won too much” and that it was time to allow others to get some wins.¹²¹ In order to allow Member Marcum to get a win with regard to the senate pairings, Chairman Binkley and Member Simpson voted for her proposed senate pairings despite “overwhelming public testimony against splitting and combining Eagle River with Muldoon”¹²² and Member Marcum openly acknowledging that her pairing of South Muldoon with Eagle River was intended to

¹¹⁷ Simpson Depo. Tr. 172:15-22 (“in terms of the big rural districts, in northern -- well, like the big horseshoe district . . . there was deference, I think, given to board members who did have that knowledge.”) [EXC.1302].

¹¹⁸ *See, e.g.* Board Meeting Tr. 253:20-25 (Nov. 5, 2021) [ARB008110] (“the Board has - - with District 36, it’s really sought to create a Doyon district. So it’s -- it’s consistent, and I think it’s within your discretion.”) [EXC.1122].

¹¹⁹ Board Meeting Tr. 161:14-25 (Nov. 4, 2021) [ARB009331] (Bahnke: “We’ve also heard perspective from Doyon. The whole reason they formed their coalition was to preserve the socioeconomic integrity of those rural Interior communities.”) [EXC.0954].

¹²⁰ Marcum Depo. Tr. 179:13-15 [EXC.2288].

¹²¹ Board Meeting Tr. 19:4-5 (Nov. 10, 2021) [ARB007190] [EXC.2286].

¹²² Order at 65 [EXC.1950].

“extend the electoral influence of [Eagle River] resulting in more representation.”¹²³ A majority of the Board, thus, deferred to Member Marcum with regard to the senate pairings within Anchorage, and she achieved her individual prerogative of extending the electoral influence of Eagle River voters, which are firmly Republican.¹²⁴

Member Budd Simpson has lived in the City and Borough of Juneau since 1977, serves as counsel for Sealaska, and is a lifelong Republican.¹²⁵ Member Simpson was appointed to the Board because “they were looking for a Republican from Southeast,” which he described as a “short list,”¹²⁶ and came into the redistricting process with the position that pairing Skagway with Downtown Juneau “never made sense.”¹²⁷ Member Simpson “took the lead” for drawing districts in Southeast Alaska,¹²⁸ and “the Board ultimately deferred to Member Simpson’s personal opinions” regarding districting Skagway and Haines with the Mendenhall Valley as opposed to Downtown Juneau.¹²⁹ Thus, Member Simpson achieved his personal goal of pairing Skagway and Haines with the Mendenhall Valley.

¹²³ Board Meeting Tr. 19:19-21 (Nov. 10, 2021) [ARB007190] [EXC.2286].

¹²⁴ Order at 68-69 [EXC.1953-1954].

¹²⁵ Simpson Depo. Tr. 209:5-210:12 [EXC.2302].

¹²⁶ Order at 145 [EXC.2030] (citing Trial Tr. 1725:15-1727:16 [EXC.2356]; Simpson Depo. Tr. 210:9-12 [EXC.2303]).

¹²⁷ Order at 121 [EXC.2006].

¹²⁸ Order at 144 [EXC.2029].

¹²⁹ Order at 145 [EXC.2030].

In addition to the special interests of Board Members, the Board’s counsel Mr. Singer also has an apparent conflict of interest by virtue of his representation of Ahtna.¹³⁰ Mr. Singer provided legal advice that supported pairing Valdez with Mat-Su and maintaining Ahtna’s ANCSA boundaries. For example, when the Board was considering adding Cantwell to District 36, Mr. Singer stated “you’ve heard testimony, and a specific request from the ANCSA Regional Corporation to include Cantwell with the other Ahtna villages, and the Board has -- with District 36, it’s really sought to create a Doyon district. So it’s – it’s consistent, and I think it’s within your discretion.”¹³¹ The Final Plan achieves the goals of Ahtna, Mr. Singer’s client, by keeping all Ahtna villages together.

As the superior court held, a Board member’s “personal views and opinions are entitled to no additional constitutional deference.”¹³² Similarly, the Board should not be afforded any deference for decisions based upon preferential treatment of specific constituencies. The superior court properly held the Board “must seek to rise above any ‘selfish desires’”¹³³ and “[r]ather than drawing districts based on individual prerogatives, the Board must make a good-faith effort to harmonize both ‘the greater good of the State’ and the desires of each community ‘to the greatest extent possible.’”¹³⁴ In light of the

¹³⁰ Ex. VDZ- 3007 [EXC.2361-63].

¹³¹ Board Meeting Tr. 253:14-25 (Nov. 5, 2021) [ARB008110] [EXC.1122].

¹³² *Id.* [EXC.2030].

¹³³ Order at 132 (quoting PACC 1862 (Jan. 11, 1956) (statement of Del. Hellenthal)) [EXC.2017].

¹³⁴ Order at 133 [EXC.2018].

Board's readily apparent advancement of individual prerogatives, this Court should not afford the Board any deference in its review of the 2021 Proclamation Plan.

C. Misapplication or Inconsistent Application of Redistricting Criteria.

This Court has held that the Board “must consistently enforce the constitutional requirements of contiguity, compactness, and relative integration of socio-economic areas in its redistricting.”¹³⁵ Rather than endeavor to draw districts utilizing consistent application of redistricting criteria, the Board selectively applied criteria when doing so facilitated achieving individual Board member prerogatives and ignored or minimized the same criteria when they did not. The Board applied redistricting criteria in a wholly inconsistent manner, which constitutes a failure to engage in reasoned decision making within the constitutional limitations set forth in article VI, section 6. Accordingly, far from deferring to the Board's discretion, this Court's duty is to require the Board to correct errors in its redistricting plan caused by the inconsistent or misapplication of redistricting criteria.

1. Compactness.

The Board inconsistently defined and applied the compactness requirement during the redistricting process and gave compactness varying degrees of weight depending upon whether compactness advanced or justified other underlying personal priorities.

In District 36, for example, the Board paid virtually no regard to compactness and made decisions that negatively impacted compactness for the sake of creating a Doyon-

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¹³⁵ *Kenai*, 743 P.2d at 1360.

Ahtna district.¹³⁶ During the course of this litigation, the Board used compactness as justification for ignoring redistricting alternatives that included Valdez with Prince William Sound and Richardson Highway communities, which could improve overall compactness of the plan as a whole.¹³⁷ The Board’s reliance on compactness as a justification for districting Valdez exclusively with the Matanuska-Susitna (“Mat-Su”) Borough reflects an inconsistent application of the compactness requirement.

In District 39, compactness was used as justification for maintaining the Bering Straits Regional Corporation boundary even though it necessitated drawing District 36 in a much less compact manner than would otherwise be possible.¹³⁸ However, the Board paid no regard to the odd shape or strange appendages extending from District 36 into Cantwell or the appendage extending into Glennallen and neighboring communities along the Glenn Highway.

¹³⁶ Board Meeting Tr. 198:9-12 (Nov. 3, 2021) [ARB007558] [EXC.0607] (“if you want to talk about compact, look at the Doyon region in version 3 and 4. That wouldn’t be compact by any stretch of the imagination.”); Board Meeting Tr. 253:8-10 (Nov. 5, 2021) [ARB008110] (“in the light of the fact that we have noted the socioeconomic reasons for taking Cantwell out. Obviously it is not a compact change, right, so do you have any concerns about the compactness.”) [EXC.1122]; Board Meeting Tr. 253:15-17 (Nov. 5, 2021) [ARB008110] (“36 becomes a little less compact as a result of putting Cantwell in, and it’s sort of a coin toss as to whether that makes sense.”) [EXC.1122].

¹³⁷ Torkelson Aff. at 32, ¶ 55 [EXC.1346] (“In my opinion, the Board’s adopted District 29 in the Final Proclamation Plan is substantially more compact than Valdez’s Option 1 district.”); Bahnke Aff. at 15-16, ¶ 24 [EXC.1343-44].

¹³⁸ Board Meeting Tr. 194:16 – 199:2 (Nov. 3, 2021) [ARB007554-007559] [EXC.0604-09].

2. Socio-Economic Integration.

The Board misapplied the concept of socio-economic integration by relying on evidence of homogeneity rather than actual socio-economic integration and inconsistently defined and applied socio-economic integration to justify underlying redistricting goals. In his concurring opinion in *Carpenter*, Justice Matthews explained socio-economic integration and socio-economic homogeneity “are by no means synonymous” because “[i]ntegration connotes interaction and connectedness, while homogeneity refers to similarity or uniformity.”¹³⁹

The Board initially implemented what it described as the “Fred Meyer test” and relied on “hub communities”¹⁴⁰ based upon the advice of counsel that “we should be putting people with whom they work, live, and play . . . in some cases that will include cultural alignment, but its more important about where they’re actually conducting activities.”¹⁴¹ However, the Board entirely ignored this concept in order to create a Doyon-Ahtna district in District 36 and pair Valdez exclusively with the Mat-Su Borough in District 29.¹⁴² In order to create a Doyon District, the Board combined communities hubbed in Fairbanks

¹³⁹ *Carpenter*, 667 P.2d at 1218.

¹⁴⁰ *See, e.g.*, Board Meeting Tr. 331:12-16 (Aug. 24, 2021) [ARB011602] (Borromeo: “You know what would be so helpful, if you guys could put together a chart or a matrix using hub communities. So for Southeast, you know, who’s going to Ketchikan, who’s going to Juneau, who’s going to Sitka.”) [EXC.2089].

¹⁴¹ Board Meeting Tr. 332:13-19 (Aug. 24, 2021) [ARB011603] [EXC.2090].

¹⁴² Trial Tr. 836:8 – 838:24 (Board Member Borromeo testifying that residents of Glennallen do not live with residents of Holy Cross, that they potentially work together, although she was not personally aware of any people that do, and that they do not play together.) [EXC.1617].

with communities hubbed in Anchorage.¹⁴³ At the same time, the Board relied heavily on the hub concept in arguing against combining Doyon villages with Bering Straits villages.¹⁴⁴

As the superior court noted, “the Board took a very broad view of socioeconomic integration when it came to District 36”¹⁴⁵ by relying on evidence of socio-economic integration applicable to all communities in Alaska such as reliance on the oil and gas industry.¹⁴⁶ Board members took a much narrower view of socio-economic integration where it supported their personal prerogatives. For example, the record establishes greater socio-economic integration among lower Yukon communities and neighboring Bering Straits and Calista communities than exists among the Richardson Highway communities and lower Yukon communities included in District 36.¹⁴⁷ However, the Board refused to

¹⁴³ Board Meeting Tr. 211:7-10 (Aug. 24, 2021) [ARB011482] (Borromeo: “Why don’t we, for exercises sake, get into Doyon region. And I say this because this is my subregion, and we use Anchorage as a hub. We don’t go to Fairbanks Fred Meyer”) [EXC.2088]; Board Meeting Tr. 168:8-11 (Nov. 3, 2021) (Binkley: “the hub for McGrath is Anchorage, not Fairbanks.”) [EXC.2255]; Trial Tr. 903:5-15 (Otte testifying that the hub for McGrath is Anchorage and that she would travel through Anchorage to reach activities in Fairbanks) [EXC.2344].

¹⁴⁴ Board Meeting Tr. 167:17-20 (Aug. 24, 2021) (Bahnke: “And there really is no socioeconomic integration between coastal Western Alaska and rural Interior Fairbanks hubbed communities.”) [EXC.2087].

¹⁴⁵ Order at 92 [EXC.1977].

¹⁴⁶ Order at 92 (“when questioned whether Glennallen is socio-economically integrated with the native villages in the western part of the state, she said: If we go back to my earlier premise that the whole entire state is connected through the oil and gas industry, I would say “yes.”) [EXC.1977].

¹⁴⁷ Trial Tr. 1164:1-9 (“Q: Do you think St. Mary’s or Glennallen is more socioeconomically integrated with Anvik? Which one? A: I mean, I would say St. Mary’s

consider redistricting alternatives that did not maintain the boundary between Doyon and Bering Straits. The Board's intransigence with regard to maintaining this boundary is reflected in Ms. Bahnke's position that neighboring communities along the lower Yukon such as Russian Mission and Holy Cross, which are less than 60 miles apart, were not sufficiently socio-economically integrated to be districted together while Glennallen and Holy Cross, which are over 460 miles apart, were.¹⁴⁸

With regard to socio-economic integration in Districts 29, the Board again took a very broad view of socio-economic integration. The Board did not discuss a single factor establishing socio-economic integration in District 29 during the redistricting process. At trial, after the opportunity to gather additional evidence, the Board proffered evidence exclusively related to homogeneity rather than actual integration. District 29 is also the only district in which the Board relied on historical house districts and the Board's novel theory of regional integration with a shared hub community outside the district as evidence of socio-economic integration. The record establishes that the Board formed District 29

and Anvik probably have more in common. They're both on the Yukon River. One is primarily Yup'ik and in the AVCP region. Anvik is in the Tanana Chiefs region and Athabascan, but, you know, they are certainly geographically closer.") (Binkley); Board Meeting Tr. (Sept. 20, 2021) 22:10 – 23:20 [ARB010165-010166].

¹⁴⁸ Trial Tr. 998:6-17 (Bahnke) ("It's your position that Holy Cross and Anvik and Russian Mission and Marshall and St. Mary's, all along the Yukon waterway, major corridor, are not sufficiently socioeconomically integrated to be within the same district, correct? A: Correct. Q: Okay. It's also your testimony or your position, is it not, that Holy Cross and Anvik are sufficiently socioeconomically integrated with Glennallen to be included in the same district, correct? A: Yes.") [EXC.2347].

without considering socio-economic integration and later searched for some justification for their decision.

The Board’s misapplication or inconsistent application of the socio-economic integration requirement is readily apparent from the record. Particularly concerning is the Board’s selective application of various socio-economic integration standards in order to advance individual Board Member priorities. By failing to consistently define and apply the socio-economic integration requirement, the Board failed to comply with Alaska law and is not entitled to deference upon this Court’s review of whether the Final Plan contains socio-economically integrated areas to the greatest extent possible.

3. Historical Districts.

The Board members used historical house district boundaries as support for their priorities while ignoring historical boundaries that did not advance their goals. For example, the historical districting of Skagway and Haines with downtown Juneau was entirely ignored while the sole justification for pairing Valdez with the Mat-Su Borough in District 29 was historical districts and case law analyzing those districts.¹⁴⁹ Rather than

¹⁴⁹ See e.g., Borrromeo Aff. 12, ¶ 22 [ARB EXC.0555] (“House District 29 of the Board’s Final Plan is substantially similar to the 2013 House District 9.”); Binkley Aff. 10, ¶ 28 [ARB EXC.0514] (“I also found it persuasive that House District 29 of the Final Plan is largely similar to the current Valdez house district.”); Board Meeting Tr. 161:14-25 (Nov. 4, 2021) [ARB009331] (“MEMBER BAHNKE: We’ve also heard perspective from Doyon. The whole reason they formed their coalition was to preserve the socioeconomic integrity of those rural Interior communities. So everyone’s got their preference, but what litmus test -- which -- which of the two pairings of Valdez, either in that rural Interior District versus where it has already been established by the courts that it has socioeconomic ties to the Mat-Su Valley. In my mind we’ve got court precedence.”) [EXC.0954].

engage in any substantive analysis of socio-economic integration within District 29, the record establishes that the Board relied exclusively on historical districts that paired Valdez with some Mat-Su Borough communities in the past.

In relying on historical districts as evidence of socio-economic integration in District 29, the Board ignored the fact that the 1994, 2002, and 2013 redistricting plans, which included Valdez with a portion of the Mat-Su Borough created Richardson Highway districts.¹⁵⁰ Similarly, the Board ignored the reasoning behind adoption of those historical districts. In the 2013 Proclamation, the Board “chose to take population from the east side of the Mat-Su Borough and combine it with ‘the most strongly integrated economic corridor in the state, the pipeline corridor, the Richardson Highway corridor from the south region of the North Star Borough to Valdez.’”¹⁵¹ In the 2002 Proclamation, District 12 paired Valdez with Richardson Highway communities as well as Eielson. The Board explained in its Proclamation Report that District 12 was adopted to create a Richardson Highway district.¹⁵² Thus, the historical districts relied upon by the Board were established

¹⁵⁰ Ex. VDZ-3005 [EXC.1684-1692].

¹⁵¹ *In re 2011 Redistricting Cases*, 2013 WL 6074059 at *13 (Alaska Super. Ct. (Feb. 3, 2012)) (emphasis added).

¹⁵² Ex. VDZ-3013 at 3-4 (“District 12 represents an effort to reconstruct a Richardson Highway district (District 35 in the 1994 plan) within the severe population constraints created by the 2000 census numbers. The district reaches from the Eielson precinct in the [FNSB] to the City of Valdez. The population of Valdez (4036) is essential to the viability of this district . . . There is insufficient population for a highway district solely along the Richardson Highway between Eielson and Valdez, so additional population (approximately 2700) was obtained from the Mat-Su Borough along the Glenn Highway.”) [EXC.1722-23].

for purposes of keeping Valdez and Richardson Highway communities together. The Final Plan does the exact opposite by separating Valdez from all Richardson Highway communities.

The Board selectively relied upon historical districts in order to advance desired outcomes and either ignored or failed to consider the nature of the historical plans relied upon. For example, the Board was unaware that Valdez had been placed in a district with FNSB in the past.¹⁵³ Similarly, the Board ignored the fact that Bering Straits communities and Doyon communities are included together in District 39 under the 2013 Proclamation¹⁵⁴ and refused to combine these communities even though it would have joined Chevak, Scammon Bay, and Hooper Bay with Bethel as requested by Calista.

The Board was unclear on whether it was even permitted to rely on historical districts during the redistricting process until just two days before adoption of the final house plan.¹⁵⁵ The Board was under the impression that consideration of historical districts was not appropriate as of November 3, 2021.¹⁵⁶ During the November 3 meeting,

¹⁵³ Borromeo Depo. Tr. 137:2-9 (“Q: Okay. You could have -- you realize that Valdez has been linked with Fairbanks in the past? A: Can you define what you mean by “linked”? Q: House district has gone from Valdez to Fairbanks. A: I don’t of any personal knowledge of that, but I’m willing to stipulate to it if you say so and can prove it.”) [EXC.2307].

¹⁵⁴ Ex. VDZ-3005 at 3 [EXC.1686].

¹⁵⁵ Board Meeting Tr. 292:1 – 293:22 (Nov. 3, 2021) [ARB007652-007653] [EXC.0701-02].

¹⁵⁶ Board Meeting Tr. 293:9-16 (Nov. 3, 2021) [ARB007653] (Chairman Binkley stating “we’re not supposed to look at the current map,” and Member Bahnke expressing her desire to be consistent in not considering historical districts.) [EXC.0701].

Mr. Singer advised the Board for the first time that consideration of historical districts was appropriate in some circumstances: “if you’re looking how to solve for socioeconomic integration you can look at . . . what did we do last time.”¹⁵⁷ The Board relied upon historical districts only once during the redistricting process – to justify District 29. Thus, the Board inconsistently applied historical districts as a redistricting criterion during the 2021 redistricting process and failed to fully evaluate the historical redistricting plans it relied upon. On these facts, the Board is not entitled to deference regarding its reliance on historical districts.

4. Local Government Boundaries.

The Board, and Chairman Binkley in particular, focused heavily on maintaining borough boundaries for the FNSB but ignored maintaining borough boundaries for other boroughs including the Mat-Su Borough, Denali Borough, Kodiak Island Borough, and Kenai Peninsula Borough. Member Borrromeo testified that “[i]t would be fundamentally wrong to task of the Board to protect the boundaries of Fairbanks to a greater degree than the borough boundaries for other boroughs,”¹⁵⁸ yet the Board prioritized which borough boundaries it should focus on maintaining.

This Court has held that “the retention of political boundaries is a legitimate justification for a deviation from ideal district population size in excess of ten percent, but

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¹⁵⁷ Board Meeting Tr. 292:12 – 293:4 (Nov. 3, 2021) [ARB007652-007653] [EXC.0700-01].

¹⁵⁸ Borrromeo Depo. Tr. 117:12-16 [EXC.1315].

*this policy must be consistently applied to the state as a whole.*¹⁵⁹ From the outset of the redistricting process, the Board inconsistently relied on borough boundaries.¹⁶⁰ Therefore, borough boundaries cannot properly be used as justification for failing to maximize the constitutionally mandated redistricting criteria of compactness, contiguity, and socio-economic integration .

District 36 reflects the Board’s disregard for borough boundaries for the sake of protecting Ahtna and Doyon ANCSA boundaries. In order to create District 36, the Final Plan breaks borough boundaries four times. First, the Board added an appendage to include Cantwell in District 36 that broke the boundaries of both the Denali Borough and the Mat-Su Borough. Second, the Board took population from the Goldstream area of the FNSB. Third, the Board combined Valdez, which is outside of the Mat-Su Borough, exclusively with population from within the Mat-Su Borough. Similarly, in District 37, the Board decided to cross Cook Inlet and break the Kenai Peninsula Borough in order to add 623 people from the Native communities of Port Graham and Nanwalek. The Board refused to consider alternative redistricting plans that included FNSB population in more than one

¹⁵⁹ *Kenai*, 743 P.2d at 1360.

¹⁶⁰ Borrromeo Depo. Tr. 116:18 – 117:5 (“Well, within an hour or two we were already considering breaking the Mat-Su Borough and the Municipality of Anchorage. And that’s when his exercise, in my mind, ended, because he wanted to preserve some borough boundaries but not all. And for his borough, his home borough to be overpopulated by 20 percent, Mat-Su to be underpopulated by 20 percent, Anchorage to be underpopulated by 20 percent, it didn’t make sense to me then and it doesn’t make sense to me now, that you would not break the borough boundary for Fairbanks North Star but you would break the borough boundary between the Mat-Su Borough and the Municipality of Anchorage.”) [EXC.1314-15].

district with population outside the FNSB while simultaneously breaking borough boundaries in order to maintain the integrity of ANCSA regions or advance other board priorities.

The Board and superior court also erroneously treated school district boundaries as local government boundaries.¹⁶¹ School districts are not local government boundaries. Cities and boroughs are the only two types of local governments authorized under article X, section 2 of the Alaska Constitution. The boundaries of these two local-government types are established by the Local Boundary Commission under article X, section 12 of the Alaska Constitution. AS 14.12.010 establishes the districts of the state public school system as follows: (1) each home rule and first-class city in the unorganized borough is a city school district; (2) each organized borough is a borough school district; (3) the area outside organized boroughs and outside home rule and first-class cities is divided into regional educational attendance areas [REAs]. By restricting the designation of “local governments” to boroughs and cities, the framer of the Alaska Constitution clearly did not intend that REAs to be considered local governments whose boundaries may be considered under article VI, section 6.

The record establishes that the Board failed to consistently consider local government boundaries as a criterion for redistricting and used the maintenance of borough

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¹⁶¹ Order at 95 (“the evidence shows that the western border of District 36 is also a boundary between school districts, and that school districts are a primary form of local government in that region of the state.”) [EXC.1980].

boundaries as justification for redistricting decisions only when doing so advanced other underlying priorities of the Board.

5. ANCSA Boundaries.

As set forth in Plaintiffs’ Petition for Review, the Board did not properly or consistently use ANCSA boundaries as criteria for redistricting.¹⁶² ANCSA boundaries do not justify deviations from the constitutional redistricting criteria when inconsistently applied;¹⁶³ and, thus, the Board’s use of ANCSA boundaries during the redistricting process should not be afforded deference.

6. Public Comments.

Board members selectively relied on public testimony to support their redistricting priorities and in some cases solicited or even provided testimony to support their goals. The overwhelming public testimony Valdez’s and the Mat-Su Borough’s opposition to being paired in a District was ignored.¹⁶⁴ Both of these communities provided unanimous public comment from their respective governing bodies opposing pairing Valdez and the Mat-Su Borough in a district. The Board ignored this public comment and did the exact opposite of what the citizens and governing bodies of Valdez and the Mat-Su Borough requested and paired Valdez in a district exclusively with the Mat-Su Borough.

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¹⁶² Plaintiffs’ Petition at 36-41.

¹⁶³ *Hickel*, 846 P.2d at 48 (citing *Groh*, 526 P.2d at 877-78).

¹⁶⁴ Order at 78 (“Public testimony strongly supported keeping Valdez in its traditional corridor. Indeed, there was no public testimony from either the Valdez side or the Mat-Su side which favored placement of Valdez with the communities of Palmer and Wasilla.”) [EXC.1963].

By contrast, the Board gave much greater weight to public comments that aligned with their underlying priorities and solicited public comment that advanced those priorities. For example, the Board prioritized the creation of a Doyon-Ahtna district and, based upon a letter from Ahtna solicited by Member Borromeo,¹⁶⁵ decided to break both the Mat-Su and Denali Boroughs to include Ahtna in District 36.¹⁶⁶ The Board made this decision despite the fact that it recognized that adding the Cantwell appendage to District 36 was detrimental to compactness¹⁶⁷ and that it was contrary to the request of the Denali Borough, within which Cantwell is located.¹⁶⁸ Mr. Singer advised the Board that, in light of the specific request from the ANCSA regional corporation, the decision to add Cantwell to District 36 was within the Board’s discretion.¹⁶⁹ Thus, the Board gave more weight to testimony from Ahtna than testimony from the Denali Borough, and based upon Ahtna’s request, ignored borough boundaries and compactness in order to satisfy that request.

¹⁶⁵ ARB001795-001796 (Ahtna letter to Binkley (Nov. 3, 2021)) [EXC.0791-92].

¹⁶⁶ Board Meeting Tr. 188:15-20 (Nov. 5, 2021) [ARB008045] (“I will say for the record that we should all probably just acknowledge the fact that the Denali Borough has weighed in, and they were not in favor of having Cantwell carved out of the Denali Borough, so I just want to make sure we recognize that that is a concern that they had.”) [EXC.1120].

¹⁶⁷ Board Meeting Tr. 253:6-13 (Nov. 5, 2021) [ARB008110] (“Obviously it is not a compact change, right, so do you have any concerns about the compactness, or do you believe that in this instance, for socioeconomic reasons that we took Cantwell out of the borough probably are sufficient to overcome the compact -- the loss of compactness with that removal?”) [EXC.1122].

¹⁶⁸ Board Meeting Tr. 79:16 – 80:7 (Nov. 4, 2021) [ARB009249-009250] [EXC.872-73].

¹⁶⁹ Board Meeting Tr. 253:14-25 (Nov. 5, 2021) [ARB008110] [EXC.1122].

In support of maintaining Bering Straits’ eastern boundary, Member Bahnke relied heavily on “what I heard in Nome”¹⁷⁰ even though no such public testimony was provided on the record.¹⁷¹ Member Bahnke even provided testimony that she did not want any Athabascan villages in her district¹⁷² after taking off her “redistricting board hat” to “speak as a regional tribal leader for the Kawerak region.”¹⁷³ Because Valdez did not have any affiliated Member on the Board, Valdez’s testimony was given no such weight, nor did any Board member personally testify to advance the interests of Valdez.

The Board also gave much more weight to the resolution of the FNSB, which was not unanimous, than to the public comments it received from Valdez and the Mat-Su Borough communities and the unanimous resolutions passed by their respective local governments.¹⁷⁴ Chairman Binkley stated that he gave the FNSB resolution “a lot of weight . . . [e]ven though it wasn’t unanimous.”¹⁷⁵ The resolution was given so much weight by Member Binkley that he changed his position regarding maintaining FNSB’s

¹⁷⁰ Board Meeting Tr. 58:7-17 (Nov. 2, 2021) [ARB008988] [EXC.0145].

¹⁷¹ Trial Tr. 995:10-13 (Bahnke testifying that no verbal testimony was given or recorded in Nome) [EXC.2346].

¹⁷² Board Meeting Tr. 175:7-16 (Nov. 3, 2021) [ARB007535] [EXC.0584]; 177:14-25 (Nov. 3, 2021) [ARB00007537] [EXC.0588].

¹⁷³ Board Meeting Video at 3:12:00 (Nov. 3, 2021) [EXC.2075]; Board Meeting Tr. 167:25 – 174:13 (Nov. 3, 2021) [ARB007534-007535] [EXC.0576-77].

¹⁷⁴ ARB002011 [EXC.2253]; ARB004074-4212 [EXC.2114-2252]; Binkley Depo. Tr. 139:14-18 (“it was significant that the elected body from the entire borough said you should push out people from the borough to the broader District 36; correct? A: Correct.”) [EXC.2324].

¹⁷⁵ Binkley Depo. Tr. 40:22 – 41:2 [EXC.2322-23].

boundaries, which he had held since the outset of the redistricting process. The Board gave no such weight to the resolutions passed by the Mat-Su Borough and Valdez and should not be afforded deference based on inconsistent reliance upon public comment.

7. Drainages, Geographic Features, and Transportation Corridors.

As set forth in article VI, section 6, “[d]rainage and other geographic features shall be used in describing boundaries whenever possible.” The Board purportedly looked at geographic features while drawing District 36¹⁷⁶ and in determining to add Cantwell to District 36.¹⁷⁷ Examination of the Board’s plan reveals numerous instances in which major geographic features were entirely ignored. Mr. Singer advised the Board “given three choices, if one choice is to follow the Yukon River, for example, given the -- you know, the constitutional calls out geographic features, it’s certainly [rational].”¹⁷⁸ However, the Board elected to split the lower Yukon River into three different districts in order to maintain the boundary between Doyon and Bering Straits. The Board relied on geographic features to support Board member priorities while ignoring them when they did not.

¹⁷⁶ Borrromeo Depo. Tr. 120:6-12 (“we looked at the district – district’s water tributaries, mountain ranges, regions from an Alaska Native perspective. Those were the type of things that I remember considering.”) [EXC.1316].

¹⁷⁷ Bahnke Depo. Tr. 163:1-7 (“I believe there was a resolution from Cantwell indicating that they were more socioeconomically integrated or something to that effect. But a lot of it was based on looking at, you know, geography, compactness, are we contiguous, are we socioeconomically integrated.”) [EXC.2293].

¹⁷⁸ Board Meeting Tr. 35:11-14 (Aug. 24, 2021) [ARB011306] While the transcript reads “irrational” review of the video recording of this Board Meeting at 39:15 – 39:35 confirms that Mr. Singer said “rational.” [EXC.2086].

The Board also purportedly considered transportation corridors in the context of geographic features during the redistricting process¹⁷⁹ and expressed significant concern over South Muldoon’s senate pairing with Eagle River to the extent that Member Borromeo and Member Bahnke refused to sign the 2021 Proclamation. One of the primary objections to this pairing was the fact that residents in District 21 would “have to drive almost four miles down Muldoon Road, through District 20, before even reaching the Glenn Highway and then drive another 12 miles north before they can exit into Eagle River.”¹⁸⁰ The Board entirely disregarded a much more extreme example of this issue with regard to District 29.

As Mr. Nathan Duval testified:

Under District 29, when making my drives to Fairbanks, I would leave my house district approximately 45 miles from Valdez’s city center and drive through District 36 for approximately 300 miles before reaching the FNSB boundary. When making a drive to Anchorage, I would leave District 29 and have to drive approximately 120 road miles on the Richardson and Glenn Highways through District 36 before re-entering District 29 near Glacier View.¹⁸¹

Member Borromeo’s deep concern about pairing house districts that required a citizen from South Muldoon to drive 16 miles through other districts before reaching Eagle River was nonexistent when she drew District 29 so that 120 miles of the only road linking Valdez with the Palmer and Wasilla suburbs is outside the district.

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¹⁷⁹ Bahnke Depo. Tr. 164:16-24 (Explaining the Board considered geography by “[l]ooking at things like transportation corridors, rivers, mountains.”) [EXC.2294].

¹⁸⁰ Borromeo Depo. Tr. 40:25 – 41:4 [EXC.2305-06].

¹⁸¹ Duval Aff. at 6, ¶ 28 [EXC.1276].

IV. CONCLUSION

The Board is not entitled to deference in this case. The Board's decisions must be result of reasoned decision making based upon the proper and consistent application of the constitutional requirements for redistricting. This Court and not the Board determines whether the Board has met these marks. From Valdez's perspective, the Board's decisions fall far short.

The Board's process was fundamentally flawed. Rather than simply engage in reasoned decision making based upon the constitutional requirements set forth in the Alaska Constitution, individual Board members advanced personal agendas for their home regions that, by clear understanding, the other Board members would defer to in exchange for the same deference for their home regions. This process of swapping favors was to the obvious detriment of reasoned decision making and consistent application of the constitutional requirements for redistricting. As a result, the Final Plan sacrifices reasoned decision making and the consistent application of the constitutional requirements for redistricting, but fully satisfies the personal agendas of every single Board Member.

Member Bahnke insisted upon using an using Bering Straits' ANCSA boundary as the eastern boundary of District 39, the Final Plan uses the boundary. Member Simpson insisted upon separating Haines, Skagway, and Gustavus from Downtown Juneau, the Final Plan separates them. Member Borromeo insisted upon the creation of a Doyon-Ahtna district, the Final Plan creates one. Member Marcum insisted upon Senate pairings between Eagle River and East Anchorage, the Final Plan has those pairings. Chairman Binkley first insisted on keeping Fairbanks intact and it was kept intact until he changed

his mind and wanted excess population from Goldstream to join District 36, which the Final Plan does. None of these personal priorities concern reasoned decision making based upon the consistent application of the constitutional requirements – they are just personal agendas given priority over constitutional requirements. The result of this constitutionally flawed process was to take away the flexibility necessary for non-favored regions to have constitutionally compliant districts.

The Board’s lack of preparation and minimal time mapping together further compromised the process. What is intended to be a transparent and collaborative public map-drawing process was largely conducted outside of the public eye by Board members working on redistricting plans without the input of their colleagues. Indeed, Member Borrromeo drafted V.4, which was the basis for the Final Plan, out of the public eye without the participation of her colleagues entirely. Making matters worse, the Board adopted V.4 outside of the thirty-day period for adopting proposed plans set forth in article VI, section 10 and without affording an opportunity for public comment.

The process was also rife with confusion regarding the constitutional limitations on the Board’s redistricting authority, the requirements of the OMA, and the nature of the *Hickel* process. As a result, the Board seriously erred by repeatedly violating the OMA and focusing on race and VRA related issues from the outset of the process. These violations undermine both the credibility of the Board’s process and the outcome of that process. The Board’s violations of the OMA and the *Hickel* process should not go uncorrected and the Board certainly should not be granted deference in light of these violations.

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In addition, the Board’s shifting interpretations of the constitutional redistricting requirements resulted in misapplication or inconsistent application of fundamental redistricting concepts. These errors generally undermine the credibility of the Board’s process and created an environment that facilitated individual Board member’s ability to advance their personal interests. Far from consistently applying redistricting criteria in furtherance of maximizing compactness, contiguity, and socio-economic integration within districts, Board members selectively interpreted and applied redistricting criteria to support their individual priorities.

Particularly concerning is the Boards “practice of assigning each member a region and ultimately deferring to those Members’ judgment on their assigned regions.”¹⁸² This practice entirely undermines the purpose of the Board, which is to draft a redistricting plan in a manner that is most fair to all Alaskans. Allowing Board members to bestow advantages on their constituents or region is gerrymandering and is directly contradictory to the intent of article VI, section 6.

Deference is never due to the Board on interpreting the constitutional requirements for redistricting. That is the special competency of this Court. Moreover, Deference may not be given absent rational decision making based the consistent and correct interpretation of those constitutional requirement. On the facts of this case, the Board should not be afforded deference during this Courts *de novo* review. Instead, this Court should provide

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¹⁸² Order at 145 [EXC.2030].

clarity as to the interpretation of the appropriate process and constitutional requirements, and require the Board to revisit redistricting alternatives with clear and consistent constitutional interpretations in mind.

RESPECTFULLY SUBMITTED this 10th day of March, 2022.

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IN THE SUPREME COURT OF THE STATE OF ALASKA

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

CERTIFICATE OF SERVICE AND TYPEFACE

I hereby certify that on March 10, 2022, I served by email, upon counsel listed below, the City of Valdez and Mark Detter’s Petition for Review, Supplemental Excerpt of Record, and this Certificate and Typeface:

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I further certify that pursuant to Appellate Rule 513.5(c)(2), the typeface used in these pleadings is Times New Roman, 13-point, proportionally spaced.

DATED this 10th day of March, 2022.

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