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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of the  
2021 Redistricting Plan

Case No. 3AN-21-08869 CI  
(Consolidated)

Non-Anchorage Case No: 3PA-21-02397 CI

**PLAINTIFF MATANUSKA-SUSITNA BOROUGH AND MICHAEL BROWN'S  
TRIAL BRIEF**

Plaintiffs Matanuska-Susitna Borough and Michael Brown (collectively hereinafter referred to as “MSB”), by and through their counsel of record, Holmes Weddle & Barcott, P.C., hereby submit this trial brief pursuant to the Fourth Pretrial Order dated January 4, 2020.

**I. OPENING STATEMENT**

The Matanuska-Susitna Borough is a second-class borough within the State of Alaska. Matanuska-Susitna Borough with Michael Brown, its Manager and resident, brought this action to compel the Alaska Redistricting Board to correct errors it made in the redistricting plan. MSB are public interest litigants, as MSB asserts that the Alaska Redistricting Board failed to comport with its directives under the Alaska Constitution, and thereby failed to protect the rights of the people under the Alaska Constitution.

MSB expects the evidence in this matter to demonstrate that the Alaska Redistricting Board (“the Board”) received the official reporting of the 2020 United States Census data on August 12,

2021. As the Board is required to reapportion the House and Senate immediately following the official reporting of the Census, the Board must adopt one or more proposed redistricting plans within 30 days of receipt.<sup>1</sup>

Between September 7, 2021 and September 9, 2021, the Board met in a series of public work sessions to develop proposed maps for all forty Alaska House Districts. At the end of the September 9, 2021 work session, the Board adopted two proposed maps, which the Board identified as V.1 and V.2. These are the only two maps adopted by the Board within the 30-day constitutional requirement.

The Board continued its work, and in a public meeting on September 17, 2021, the Board introduced maps V.3 and V.4, with the intent of effectively replacing V.1 and V.2, respectively. On September 20, 2021, outside the constitutional 30-day window, the Board adopted V.3 and V.4, along with several third-party maps they intended to display in their travels around the state. Between September 27, 2021 and November 2, 2021, the Board (or various members of the Board depending upon location) travelled the state visiting, presenting and discussing the proposed maps.

From November 2, 2021 to November 5, 2021, the Board gathered once again in public meetings to draft a final map for the Alaska House Districts. On November 5, 2021, the Board adopted its final map, which differed significantly from any of the proposed maps. Between November 8, 2021 and November 10, 2021, the Board again held a series of public work session to determine the appropriate Senate pairings among the House seats. On November 10, 2021, the Board adopted its Final Plan and Proclamation of Redistricting (“Final Plan”).

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<sup>1</sup> Alaska Constitution, Art. VI, § 3, 10.

Under the Alaska Constitution, reapportioned districts must be contiguous, compact, socio-economically integrated, and as equal in population as near as practicable to the quotient obtained by dividing the population of the State of Alaska by forty.<sup>2</sup> According to the 2020 United States Census, Alaska had a population of 733,391 residents. The quotient for each House District based upon the 2020 United States census, consists of 18,335 Alaska residents.<sup>3</sup>

The Board failed to meet with its constitutional obligations. The Board failed to consider the Alaska Constitution first, failed to shape House Districts that are contiguous, compact and socioeconomically integrated, the Board failed to keep the House Districts as equal in population as near as practicable, and the Board failed to afford due process to the public in the course of its work. Particularly with regard to the MSB, the Board failed in any regard to address or create House Districts that comport with the Alaska Constitution, requiring districts that are contiguous, compact, socioeconomically integrated, with as equal population as practicable considering the quotient.

## II. STANDARD OF REVIEW

Alaska Const., Art. VI, § 11 provides for jurisdiction of the superior court to remand a plan to the Board to perform its constitutional duties or correct any error. The Court has recognized the hybrid nature of the Board, and developed a hybrid standard of review, both utilizing the reasonable basis test and reviewing certain items *de novo*.<sup>4</sup> This concept was highlighted by the Court in finding, “review is meant to ensure that the reapportionment plan is not unreasonable and is constitutional under article VI, section 6 of Alaska’s constitution.”<sup>5</sup>

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<sup>2</sup> Alaska Constitution, Art. VI, § 6.

<sup>3</sup> *Id.*

<sup>4</sup> *Groh v. Egan*, 526 P.2d 863, 866-67 (Alaska 1974).

<sup>5</sup> *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1358 (Alaska 1987).

### III. EVIDENCE

Alaska R. Civ. P. 90.8 establishes the content of the record before the superior court in any Redistricting matter. Pursuant to the same, the record 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.”

Pursuant to Alaska R. Civ. P. 90.8, the court’s Fourth Pretrial Order dated January 4, 2020, and the courts oral orders issued on January 14 and 16, 2022, significant evidence has already been presented to the court. Evidence already presented includes the record at ARB000001 – ARB007232, as supplemented by ARB007233-ARB010821, the depositions of Bethany Marcum, Melanie Bahnke, Budd Simpson, Nicole Borromeo, John Binkley, and Peter Torkelson with the corresponding exhibits,<sup>6</sup> along with the direct testimony submitted by the parties to the instant litigation.<sup>7</sup> In addition to the foregoing, MSB intends to rely on all testimony and evidence presented during the course of trial. Pursuant to the court’s Fourth Pretrial Order, MSB anticipates a full recitation of all relevant facts presented in evidence shall be set forth in the MSB proposed findings of fact and conclusions of law at the conclusion of trial.

In addition to the foregoing, the MSB specifically sets forth the following direct evidence.

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<sup>6</sup> Given the agreement to cancel the deposition of TJ Presley scheduled for January 17, 2022, MSB has served the notice of deposition upon written questions to TJ Presley and reserves the right to supplement the record with the same.

<sup>7</sup> MSB recognizes that the court is not yet in possession of all videotapes of depositions, deposition transcripts and exhibits but considers this part of the record pursuant to the court’s order directing the same be filed with the court.

The United States census data demonstrates that over the past 30 years, the population in the MSB has steadily increased.<sup>8</sup> In 1990, Alaska had a population of 550,043 residents with 39,683 residents residing in the MSB. In 2000, Alaska had a population of 626,932 residents, with 59,332 residents residing in the MSB, representing 26 percent of the statewide population growth. In 2010, Alaska had a population of 710,231 residents, with 88,995 residents residing in the MSB, representing 36 percent of the statewide population growth. In 2020, Alaska had a population of 733,391 residents, with 107,081 residents residing in the MSB, representing 78 percent of the statewide population growth.

On September 7, 2021, the MSB Assembly authorized submittal of a proposed plan to the Board.<sup>9</sup> Therein, the MSB Assembly recognized the Borough population of 107,081, the target district population based on the 2020 Census, and that based on such Census, the Borough is entitled to 5.84 house seats.<sup>10</sup> As a result of such authorization, Manager Michael Brown was directed to present a proposed plan that allocated the MSB six House Districts, partnering with the Denali Borough to minimize districts that cross other Borough boundaries.<sup>11</sup> Like its neighbors to the north in the Denali Borough, the MSB borders on the Parks Highway.<sup>12</sup> Recreation and tourism interests are shared between the two Boroughs.<sup>13</sup> Being coupled with the Denali Borough provides for districts that are contiguous and compact, and because each

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<sup>8</sup> Affidavit of Michael Brown, para. 14. *See also*, Answer of the Board paragraphs 10-13 admit the changes to MSB over last three decades.

<sup>9</sup> Brown Affidavit, para. 4; R. at ARB005973-ARB005974 and ARB005969.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at para. 13.

<sup>13</sup> *Id.*

Borough is socio-economically integrated, the resulting districts are socio-economically integrated.<sup>14</sup>

On September 14, 2021, Manager Brown submitted his written testimony to the Board.<sup>15</sup> This testimony proposed six districts for the MSB: an Eastern MSB district, a Goose Bay/Big Lake district, a Houston/NW district (paired with Denali Borough), a Wasilla district, a Palmer district, and a Southern district in the core area between Palmer and Wasilla.<sup>16</sup> Given the population and the continued population increase, the MSB requested that the districts within the MSB be written with a negative deviation, or in the alternative, that they be paired east to Glenallen.<sup>17</sup> This was reflected in the plan proposed by the MSB that provided for six House Districts which incorporated the entirety of the MSB, the Denali Borough, reaching only just outside the two boroughs to create an eastern House District along the Glenn Highway.<sup>18</sup>

Manager Brown provided further verbal testimony to the Board on October 25, 2021, stating the desire of the MSB to be paired with the Denali Borough.<sup>19</sup> In his testimony, Manager Brown highlighted to the Board that partnering the MSB with Valdez would not meet with the constitutional requirements for redistricting, as it would only be taking from the MSB to make another district whole, not considering the interests of the individuals residing in the MSB.<sup>20</sup>

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<sup>14</sup>*Id.* See also Affidavit of Edna DeVries at para. 12.

<sup>15</sup> *Id.* at para. 5; R. at ARB005969.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at para. 6; R. at ARB005969.

<sup>18</sup> *Id.* at para. 8; R. at ARB005973-ARB005974.

<sup>19</sup> *Id.* at para. 7; R. at ARB002011.

<sup>20</sup> *Id.* at para. 9.

Residents of the MSB, like Manager Brown, who reside in District 29 under the Final Plan are included with Valdez.<sup>21</sup> Manager Brown is treated differently than his neighbors in Final Plan House District 25 who get to vote with their fellow Palmer residents.<sup>22</sup> Instead, Manager Brown is painfully aware that he is paired with residents from Valdez which have entirely different socio-economics and priorities, ultimately diluting his vote.<sup>23</sup> The MSB is the railbelt.<sup>24</sup> The MSB is on the road system and does not serve as a coastline community.<sup>25</sup> Valdez is a coastline community and relies heavily on their maritime economics and infrastructure.<sup>26</sup> For instance, where Valdez has a significant interest in the marine highway system, the MSB has little to none.<sup>27</sup> Further, while the MSB borders the Denali Borough, the MSB is separated geographically by a mountain range from the City of Valdez.<sup>28</sup>

Valdez has been included with the MSB for its representation in the past.<sup>29</sup> The needs and desires of the communities are vastly different.<sup>30</sup> While MSB is concerned about its access to Anchorage on the Glenn Highway and north on the Parks Highway, Valdez is concerned with the Alaska Marine Highway and the Richardson Highway.<sup>31</sup> In addition, Valdez is particularly focused on its export duties as home to the end of the Trans-Alaska Pipeline.<sup>32</sup>

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<sup>21</sup> *Id.* at para. 10.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at para. 12.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> DeVries Affidavit at para. 8.

<sup>29</sup> *Id.* at para. 10.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at para. 11.

The Board’s Final Plan creates seven House districts statewide that are overpopulated by over 2% deviation over the ideal quotient, and five of the seven districts are in the MSB.<sup>33</sup> Furthermore, the districts in the MSB in total have a nearly 14% aggregate overpopulation for an area that accounted for 78% of the State’s total population growth in the past decade, whereas Anchorage was underpopulated by an aggregate 10% deviation for a community that lost population over the past decade.<sup>34</sup> The Mat-Su Borough has consistently grown for over 40 years and this growth will very likely continue into the foreseeable future.<sup>35</sup>

Steve Colligan and his company E-Terra were retained by the MSB as an expert, both to assist with the pre-Census data work that the MSB engaged in, to assist with the presentation to the Board, and to address the work of the Board and the Final Plan.<sup>36</sup> Mr. Colligan has over 30 years of experience related to geographic information systems (“GIS”), data analysis and geomatics.<sup>37</sup> Mr. Colligan has particular experience working with government entities and digital map based systems.<sup>38</sup> This includes specific experience working with clients participating in the Alaska redistricting process, to assist clients in presenting proposed plans that draw meaningful boundaries that follow easily identifiable lines and geographic features that also protect communities, regional interests and legal rights of individuals.<sup>39</sup>

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<sup>33</sup> Brown Affidavit at para. 15; R. at ARB000117.

<sup>34</sup> *Id.*

<sup>35</sup> Brown Affidavit at para. 15.

<sup>36</sup> *See generally*, Affidavit of Steve Colligan.

<sup>37</sup> *Id.* at para 8.

<sup>38</sup> *Id.* at para 9-18.

<sup>39</sup> *Id.*



For the past two Census cycles the Alaska Redistricting Board has used the application AutoBound, by CityGate GIS. CityGate GIS is a third-party analysis platform written on top of an industry standard geographic information platform from ESRI called ARCGIS.<sup>40</sup> Mr. Colligan is well versed in these programs, as his company, E-Terra uses full enterprise licenses of ARCGIS as well as other open-source GIS tools for processing and analyzing geospatial data. The full enterprise version of ARCGIS was used to create additional independent overlays to be used during operation of AutoBound.<sup>41</sup> Autbound/CityGate GIS, provided all of its customers nationwide with baseline US Census Bureau datasets.<sup>42</sup> These were indexed and preprocessed for use in their application as part of the software license fee within 48 hours of the Census data release.<sup>43</sup> E-Terra, the Alaska Redistricting Board, and other entities across the nation all utilize the same geospatial dataset.<sup>44</sup> The pre-processed data allows for the immediate use of the Autbound “EDGE tool”. The dataset also contains all of the original and raw census data from the US Census Bureau distribution.<sup>45</sup>

Using Autbound EDGE, by itself with its standard configuration, allows the user to create and develop boundaries quickly but shelters the user from the underlying data.<sup>46</sup> Achieving boundaries that follow natural geographic features and meaningful associations is difficult without seeing that underlying building block data below the surface of the tool.<sup>47</sup> This data set along with

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<sup>40</sup> *Id.* at para 26.

<sup>41</sup> *Id.* at para 27.

<sup>42</sup> *Id.* at para 28.

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

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at para 29.

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

other photos, spherical video (street view) are critical when trying to create district deviations in urban areas below 1%, while also following meaningful natural boundaries.<sup>48</sup>

Mr. Colligan recognized that in the most recent Census, the MSB demonstrated the fastest growing population in the State of Alaska, with a population of 107,081, an increase of 18,086 residents, representing 78 percent of the statewide population growth.<sup>49</sup> As noted previously, based on the population of 107,081, and the quotient of 18,335, the MSB is entitled to 5.84 House Districts.<sup>50</sup> Based on that information, E-Terra used the Autobound software, the same software utilized by the Board, to develop maps in coordination with the MSB.<sup>51</sup> The MSB submission of proposed districts took into consideration the socio-economics of the region to create compact and contiguous districts that also reflect the huge population growth observed in the Census data.<sup>52</sup> The proposal more fully aligned with the principles of “one person, one vote” with deviations of -0.08 across all six districts.<sup>53</sup> Those maps were submitted by the MSB to the Board.<sup>54</sup>

Given the choice between adopted ARB v. 1 and ARB v. 2, MSB provided public comment that ARB v. 2 was the closer of the two to addressing the MSB goals of having 6 districts within MSB, which included the Denali Borough, did not encompass the areas to the South in Anchorage, and did not include Valdez.<sup>55</sup> This map includes Valdez with the Pipeline corridor along with

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<sup>48</sup> *Id.* In his work, Mr. Colligan also used several other sources for his analysis as included at para 30.

<sup>49</sup> *Id.* at para 31.

<sup>50</sup> *Id.* at para 32.

<sup>51</sup> *Id.* at para 33.

<sup>52</sup> *Id.* at para 37.

<sup>53</sup> *Id.* at para 38.

<sup>54</sup> *Id.* at para 33.

<sup>55</sup> *Id.* at para 73.

Glennallen and the Richardson Highway communities.<sup>56</sup> The Board's Final Plan is completely different.<sup>57</sup> It severely overpopulates the MSB districts and includes Valdez, while eliminating Glennallen and the other communities in between the MSB and Valdez on the Richardson Highway.<sup>58</sup> In the core area of the MSB it also significantly changes the Greater Palmer, Wasilla, and Houston areas.<sup>59</sup> All of which was decided without further public comment or consideration of the changes to the area and subsequent statewide impacts.<sup>60</sup>

Based on his knowledge, education, expertise, information and review, Mr. Colligan opined that the final map for the MSB adopted in the Board's Final Plan contained districts that are not compact or contiguous, and have unconstitutional population deviations.<sup>61</sup> This particularly compared to other regions, which were entirely avoidable as observed in earlier versions of the maps.<sup>62</sup> As a basis for his comparison, Mr. Colligan looked to Anchorage as an example.<sup>63</sup> Anchorage has the largest concentration of districts but was drawn with overall negative deviations, rather than neutral or positive deviations, in comparison to the MSB which had the fastest growing population in the State but was drawn with positive deviations in every district.<sup>64</sup>

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<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at para 74.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at para 34.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at para 35.

<sup>64</sup> *Id.*

Mr. Colligan found the Final Plan overpopulated the MSB by almost 14% across all six districts, or 2.5% in each of the six House Districts.<sup>65</sup> The Board's resulted in the overpopulation of MSB by 2,520 people.<sup>66</sup> The acceptable total population in urban MSB should have been within the range of plus or minus 500 persons Borough-wide, or 60-90 persons in each district, given the mapping technology in use and the other plans reviewed by Board, which demonstrated that this level of deviation was achievable with all other constitutional criteria for redistricting properly considered.<sup>67</sup> This was further demonstrated by at least four other plans reviewed by the ARB that show that 1% deviation is possible.<sup>68</sup> Mr. Colligan pointed out that this overpopulation problem is only further compounded, as each of the related Senate seats is then overpopulated, particularly in urban Wasilla where it is over 5%.<sup>69</sup>

Mr. Colligan determined that MSB did not receive the same consideration as other areas of the State.<sup>70</sup> This is demonstrated by the Board's failure to consider and incorporate the proposal by MSB into the Final Plan.<sup>71</sup> The first obvious issue that jumps out when doing a cursory review of the maps is that the outer areas of the City of Palmer have been cut into 4 districts in the Final Plan.<sup>72</sup> Specifically, into Board Districts 25, 26, 28, and 29.<sup>73</sup> Comparatively, MSB's plan for that region, numbered District 15, draws that boundary to follow from the S. Glenn Highway up

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<sup>65</sup> *Id.* at para 36.

<sup>66</sup> *Id.* at para 75.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at para 39.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at para 40.

<sup>73</sup> *Id.*

to the west side of Trunk Road and around the affiliated northern communities.<sup>74</sup> This distinction is important because it is generally understood that the Palmer community follow the Trunk Road/S. Glenn Highway boundary as it runs South to North, stopping after the Bogard Road area.<sup>75</sup> Generally the area East of Trunk Road and East of the S. Glenn Highway is serviced by the City of Palmer, and therefore included in MSB's proposed map of District 15.<sup>76</sup> The area to the West is serviced by the City of Wasilla.<sup>77</sup>

As further example of their failure to consider the constitutional factors in redistricting, Mr. Colligan noted that the Board's inclusion of the areas around the S. Glenn Highway with Board District 26 has placed Palmer's hospital, the Mat-Su Regional Medical Center, into a Wasilla district.<sup>78</sup> This hospital has a Palmer zip code and receives its utility services by the City of Palmer.<sup>79</sup> Another example is illustrated by the eastern most boundary of the Board's District 28, which was created by following its top boundary along Bogard Road across Trunk Road to N. 49<sup>th</sup> State Street, and then South to the E. Palmer Wasilla Highway.<sup>80</sup> The result of creating this notched out area of the Board's District 28, is that Colony Middle/High School, a school located in and serviced by the City of Palmer, is now located in a Wasilla voting district.<sup>81</sup> The Trunk Road/S. Glenn Highway boundary needs to be respected to ensure that the residents of this greater Palmer area, which receive services from the City of Palmer, send their children to Palmer schools,

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<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at para 41.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at para 42.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at para 43.

<sup>81</sup> *Id.*

and are citizens of the City of Palmer, be represented by a voting district for the City of Palmer, not the City of Wasilla.<sup>82</sup> In turn, the Board created District 25, which includes Butte, and the areas of Lazy Mountain and Knik, into the same district that holds the main population center of the City of Palmer.<sup>83</sup> Residents from these areas submitted testimony to the Board that they have more in common with Sutton and those communities headed out the Glenn Highway, than with the urban center of Palmer.<sup>84</sup> MSB proposed District 15 respects those concerns.<sup>85</sup>

Board District 29 runs from the northern outer City of Wasilla area, North until the Cantwell area, and then its southern border encompasses the area South of the Glenn and Richardson Highways to include Valdez.<sup>86</sup> While District 29 appears to be contiguous with Valdez, it is not.<sup>87</sup> The Board drew the land area for District 29 south, or below, the portion of the Glenn Highway that runs approximately from Nelchina to Glennallen and south/southwest or below the portion of the Richardson highway that runs from Glennallen to a road in the area after Tosina described as 8-APL-2 Road.<sup>88</sup> In doing so, it carved out a portion of both the Glenn and Richardson Highways from the Board's District 29 and completely included these areas in District 36.<sup>89</sup> As a result of the errant action of the Board, District 29 is neither compact nor contiguous.<sup>90</sup> MSB residents of the Board's District 29 are not joined with Valdez by the road system.<sup>91</sup>

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<sup>82</sup> *Id.* at para 44.

<sup>83</sup> *Id.* at para 45.

<sup>84</sup> *Id.* at para 46.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at para 47.

<sup>87</sup> *Id.* at para 48.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at para 49.

<sup>91</sup> *Id.*

Mr. Colligan pointed out that Board members have testified that District 29 is drawn substantially similar to District 9 from the 2013 Redistricting Proclamation, with respect to its treatment of Valdez.<sup>92</sup> That is incorrect.<sup>93</sup> District 9 was drawn to include all of the communities along the Glenn Highway to Glennallen, and some communities along the Richardson Highway while incorporating Valdez.<sup>94</sup> Meaning that District 9 did not carve out the road system to leave Valdez orphaned at the southernmost end of the district like District 29 has done.<sup>95</sup>

Further evidence that District 29 is neither compact nor contiguous is demonstrated by the large swath of land between Valdez and Sutton.<sup>96</sup> This area is an unpassable area of mountains, ice fields, and glaciers.<sup>97</sup> Despite a geocoding anomaly in this area that incorrectly shows four people live in this unpassable area, there is no actual population there to connect Valdez to those Glenn Highway communities on the opposite side of the expanse.<sup>98</sup> It is more likely that this anomaly is picking up population from the South Glenn Highway area or North of the Richardson Highway.<sup>99</sup> Most problematic is that Board District 29, creates a huge geographical disconnect between the residents and the offices of their elected official.<sup>100</sup> For instance, if residents of District 29 elect a representative from Valdez, MSB residents who live outside the Wasilla/Palmer area just north of District 28 would have to cross Board District 36 in order to reach their

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<sup>92</sup> *Id.* at 50.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* at para 51.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at para 53.

representative in Valdez if traveling by car.<sup>101</sup> Alternatively, MSB residents could drive to Anchorage and take a commercial flight to Valdez because the Wasilla/Palmer area does not have a commercial air service to Valdez.<sup>102</sup> The opposite is true if residents of Valdez elect a representative from the greater Wasilla/Palmer area.<sup>103</sup> Mr. Colligan testified that the foregoing is an obvious indication of a district not being either compact or contiguous, to require its voters leave their district and traverse through a different district in order to reach their representatives.<sup>104</sup> This is a prime example of the lack of understanding of what it means to create a district that is both compact and contiguous.<sup>105</sup>

Mr. Colligan opined that Board District 28 is significantly different from what was proposed by the MSB, and specifically cuts across proposed MSB Districts of 13 and 14.<sup>106</sup> MSB drafted these districts recognizing the core areas and economic zones, and respecting historical connections within the community.<sup>107</sup> For example, proposed MSB District 13 includes the City of Wasilla and the immediate area to the North called Tanaina.<sup>108</sup> Tanaina is considered an extension of the City of Wasilla and has been treated as such for redistricting purposes for the last two decades.<sup>109</sup> It stretches from the top boundary of the City of Wasilla limits to Shrock Road, which is the northernmost boundary of proposed MSB District 13.<sup>110</sup> District 28 cuts this region

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<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at para 54.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.* at para 55.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* at para 56.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*



away from the City of Wasilla and pairs it with the area North of the Parks Highway all the way into the westernmost region of Palmer.<sup>111</sup> This creates an unnecessarily irregularly shaped, sideways district which does not reflect the best option for the region in terms of contiguity and compactness.<sup>112</sup>

Along with the foregoing, the Board also included the area of Meadow Lakes in the same district as the City of Wasilla, Board District 27, instead of including it with the City of Houston as proposed in MSB District 11 where it is more socioeconomically integrated.<sup>113</sup> Meadow Lakes is the area located North of the Parks Highway between the western city limits of Wasilla and the eastern city limits of Houston.<sup>114</sup> This area is largely residential and recreational and is therefore more socioeconomically integrated with the City of Houston than the considerably more urban City of Wasilla.<sup>115</sup> Mr. Colligan noted for example, residents of Meadow Lakes are not serviced by city water/sewer utility and instead rely on private septic systems like the residents in the City of Houston area.<sup>116</sup> Meadow Lakes' rural location also means that it is more difficult for residents to easily travel to the city center in Wasilla.<sup>117</sup>

Mr. Colligan testified that the configuration of Board District 30 raises a number of issues.<sup>118</sup> District 30 includes the City of Houston, the most southern neighborhoods in the Knik/Goose Bay area, not including Big Lake, and stretches North along the Parks Highway to

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<sup>111</sup> *Id.* at para 57.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* at para 58.

<sup>114</sup> *Id.* at para 59.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.* at para 60.

encompass the entirety of the Denali Borough except Cantwell.<sup>119</sup> The way District 30 was drawn caused District 26 to be drawn to include Big Lake, almost the entire Knik Goose Bay Road, and Fairview areas.<sup>120</sup> Combining all of these areas is not proper because there are other, more practical pairings that provide for greater socio-economic integration.<sup>121</sup> The Palmer-Wasilla Highway and the Parks Highway corridor are considered the economic center of MSB.<sup>122</sup> The Fairview area, located just to the West of the S. Glenn Highway and South of the Parks Highway, is associated with this core area of Parks Highway before becoming more residential as Fairview Loop follows its South-Western trajectory and eventually links to S. Knik Goose Bay Road.<sup>123</sup> Proposed MSB District 14 kept that economic core area together and then created MSB District 12 to combine the more residential areas of Knik Goose Bay Road and Big Lake.<sup>124</sup>

Another issue the Board created in drawing Board District 30 is that it disregarded and cut both the Denali and Mat-Su Borough boundary lines in order to allocate the residents of Cantwell into the rural Board District 36.<sup>125</sup> This was done in such a way that it shows an obvious effort to make this appendage of District 36 less harsh and more geographically acceptable, in terms of contiguity and compactness, by allocating Census blocks from the MSB into the Cantwell area to create the final appendage.<sup>126</sup> By removing Cantwell, the Board also removed the road system

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<sup>119</sup> *Id.*

<sup>120</sup> *Id.* at para 61.

<sup>121</sup> *Id.* at para 62.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at para 63.

<sup>126</sup> *Id.*

and some residents from the northernmost MSB boundary.<sup>127</sup> This creates similar situation to the Valdez issue described previously, where a voter would have to leave their district to cross into District 36 before reentering their district to reach their representative.<sup>128</sup> Further, Cantwell has been historically paired with the Denali Borough due to its socioeconomic integration with the communities along the Parks Highway.<sup>129</sup> Breaking the Borough boundaries and removing the area to a rural interior district is not proper.<sup>130</sup>

Mr. Colligan ultimately found that the Final Plan improperly split boundaries making House Districts that were not compact or contiguous, failed to account for socio-economic integration, and created the egregious underrepresentation of the MSB, which is the State of Alaska's fastest growing region.<sup>131</sup> Mr. Colligan concluded that the Board has no defensible justification for overpopulating in the MSB, especially given the strength of the technology used to draw boundaries today which allows for more practicable review and lesser deviations.<sup>132</sup> He reasoned that the Board is charged with looking at the State as a whole, and not favoring one area over another.<sup>133</sup> Particularly as something may seem fair in a singular House District but not be equitable Statewide.<sup>134</sup> Mr. Colligan testified that the Board failed to treat the State in an even-handed manner.<sup>135</sup> In coming to his conclusion, Mr. Colligan testified specifically that the Board

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<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* at para 65.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.* at para 68.

<sup>132</sup> *Id.* at para 66.

<sup>133</sup> *Id.* at para 69.

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

<sup>135</sup> *Id.*

considered the Voting Rights Act first and then turned to the necessary factors in Alaska, turning the process on its head.<sup>136</sup> In addition, the Board admittedly went to great lengths to maintain the boundaries of the Fairbanks North Star Borough.<sup>137</sup> The Board Chairman established early on that that he would not support a plan where the Fairbanks boundary would be broken.<sup>138</sup> This was asserted before any meaningful analysis and process was considered by Board.<sup>139</sup> It established a discussion based around wants, not the actual population gains and losses of each census area.<sup>140</sup> This one continuous action delayed the consideration of real alternatives and ultimately resulted in the last-minute stuffing of population into the MSB districts.<sup>141</sup> This limited discussion amongst board members, and allowed for boundary definitions and manipulation of districts based around preserving rural special interests.<sup>142</sup>

The MSB was the last region considered in the Board's final process in a hasty fashion, when it probably should have been the first considering its huge population growth.<sup>143</sup> The Board should be forced to reconsider the previous submittal from the MSB which was the result of significant work conducted over the last five years by the MSB in preparation for the 2020 census and subsequent redistricting process.<sup>144</sup> The MSB proposed districts demonstrate a consensus of how its residents live, work, and recreate.<sup>145</sup> The net result of the Board member's individual

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<sup>136</sup> *Id.* at para 71.

<sup>137</sup> *Id.* at para 72.

<sup>138</sup> *Id.* at para 77.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

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

<sup>143</sup> *Id.* at para 78.

<sup>144</sup> *Id.* at para 67.

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

agendas, and late negotiations amongst them to allow the opening of the rural portions of Fairbanks in exchange for a bizarrely shaped Rural district with odd appendages, was disastrous for the residents of the MSB.<sup>146</sup>

#### **IV. CLAIMS**

MSB has asserted three claims in the instant litigation, violation of equal protection, violation of due process, and failure by the Board to comply with constitutional provisions relating to legislative apportionment.

##### **A. Equal Protection**

MSB asserts that the actions of the Board violated the equal protection clause of the Alaska Constitution. The Board failed to treat government subdivisions in an equal and similar fashion. In doing so, the Final Plan overpopulates each of the six House Districts within the MSB in an excessive amount, and out of proportion with the remainder of the State, without due consideration for such deviation. The Final Plan unnecessarily divides the excess population of the MSB in a way that dilutes the effective strength of municipal voters, including by placing them in districts centered elsewhere and that have different social and political concerns; ignoring traditional senate configurations; and, failing to respect political subdivision boundaries and communities of interest, thereby depriving its citizens the right to be an equally powerful and geographically effective vote.

Alaska Const., Art. I, § 1 provides that all persons are equal and entitled to equal rights and protection under the law. The quantitative analysis under both federal and state analyses are largely the same, such that a State must “make an honest and good faith effort to construct districts . . . as nearly of equal population as is practicable.” *Hickel*, 846 P.2d at 47. Initially, at the time

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<sup>146</sup> *Id.* at para 78.

*Hickel* was decided, both federal and state analyses viewed maximum population deviations under 10% as a “minor deviation” that required no justification by the State absent other factors such as evidence of discriminatory intent. *Id.*; *Braun v. Borough*, 193 P.3d 719, 729 (2008). However, Article VI, Section 6 of the Alaska Constitution was amended in 1998, changing the requirement to make equality of population “as near as practicable,” requiring the State to justify any failure to reduce population deviance. *In re 2001 redistricting Cases*, 44 P.3d 141, 146 (2002).

The Court analyzed this issue when reviewing the Redistricting Board’s proposed redistricting plan in 2001.<sup>147</sup> When the board proposed its initial plan, it was rejected, because the board (under a mistaken belief that any maximum deviation under 10% automatically satisfied constitutional requirements) made no effort to reduce deviations below 10%.<sup>148</sup> Its failure to do so shifted the burden to the board to “demonstrate that further minimizing the deviations would have been impracticable in light of competing requirements imposed under either federal or state law.”<sup>149</sup> In so finding, the Court noted that the board’s rationale for rejecting other plans with significantly lower maximum deviations stemmed from the board’s intention to maintain neighborhood patterns, but held that such patterns cannot justify “substantial disparities” in population equality, particularly in boroughs such as Anchorage that are by definition socio-economically integrated, allowing multiple combinations of compact, contiguous districts with minimal population deviations.<sup>150</sup> Only after the board restructured its plan and made the requisite good faith effort to reduce population deviations in anchorage, ultimately reducing the maximum

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<sup>147</sup> *In re 2001 redistricting Cases*, 44 P.3d 141 (Alaska 2002).

<sup>148</sup> *Id.* 44 P.3d at 146.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

deviation from 9.5% to 1.35%,<sup>151</sup> was the board’s plan approved by the Court.<sup>152</sup> In doing so, the Court recognized the ease at which districts formed within an urban, individual borough may be structured to more closely comply with smaller population deviations, and the implied higher standard attendant to forming such districts.<sup>153</sup>

The qualitative prong under an equal protection analysis finds a violation “where the electoral system substantially disadvantages certain voters in their opportunity to influence the political process effectively.”<sup>154</sup> The inquiry under the Alaska Constitution is stricter and more demanding than that of the federal inquiry, requiring the State to demonstrate that its plan leads to a greater proportionality of representation if there is evidence of intentional discrimination.<sup>155</sup> An inference of intentional discrimination is raised “when a reapportionment plan unnecessarily divides a municipality in a way that dilutes the effective strength of municipal voters.”<sup>156</sup> While a federal inquiry requires that any violation be demonstrated by proof of both (a) purposeful discrimination, and (b) a group’s consistent and substantial exclusion from the political process and denial of political effectiveness over a period of more than one election, under the State’s equal protection clause, no pattern of discrimination must be shown, and no effect of disproportionality is considered *de minimis*.<sup>157</sup>

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<sup>151</sup> *In re 2001 Redistricting Cases*, 47 P.3d 1089, 1095 n.4 (2002).

<sup>152</sup> *In re 2001 Redistricting Cases*, 47 P.3d 1089, 1092 (2002).

<sup>153</sup> *In re 2001 Redistricting Cases*, 47 P.3d 1089, 1094-1095 (2002).

<sup>154</sup> *Braun v. Borough*, 193 P.3d 719, 729 (2008).

<sup>155</sup> *Hickel*, 846 P.2d at 49.

<sup>156</sup> *In re 2001 Redistricting Cases*, 44 P.3d 141, 144 (2002).

<sup>157</sup> Compare *Hickel*, 846 P.2d at 49 (describing the inquiry under the Alaska Constitution), with *Braun v. Borough*, 193 P.3d at 729 (describing the federal inquiry).

## **B. Due Process**

Alaska Const., Art. VI, § 10 provides that the Board shall adopt one or more redistricting plans within 30 days after the official reporting of the Census. The Board is required to hold public hearings on the proposed plan or all proposed plans by the Board.<sup>158</sup> This will be a matter of first impression for the court to review. The court will need to review if the Board circumvented the public process, and therefore, violated the fundamentals of due process, notice and an opportunity to be heard, by failing to consider the testimony from the public and creating the Final Plan in an arbitrary and capacious manner.<sup>159</sup> Furthermore, the court may find that by allotting differing testimony from differing areas of the State different weight, there was a further violation of the guarantee of equal protection.

## **C. Failure to Comply with Constitutional Law Relating to Legislative Apportionment**

MSB asserts that the actions of the Board failed to comply with constitutional law relating to legislative apportionment. Alaska Const., Art. VI, § 6 requires any redistricting to follow three mandates: (1) contiguity; (2) compactness; and (3) relative socio-economic integration. Each District must also contain a population as near as practicable to the quotient.<sup>160</sup> House Districts 29, 30 and 36, as included in the Final Plan, are not compact, contiguous, do not contain as nearly as practicable a relatively integrated socioeconomic area, nor do they consider local government boundaries. The Final Plan overpopulates each of the six House Districts within the MSB in an

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<sup>158</sup> Alaska Const., Art. VI, § 10.

<sup>159</sup> MSB does not waive any right to argue due process issues related to failure to comply with the Open Meetings Act or Public Records Act as additional information becomes available at trial.

<sup>160</sup> The issues relating to whether the Board properly consider population of each district arise twice in this case as there is both a violation of equal protection and legislative apportionment. Therefore, there are essentially two failures by the Board under the Constitution in that regard, as is set forth above, the Board failed to consider the population and deviation in the MSB.



excessive amount and out of proportion with the remainder of the State of Alaska, demonstrating that the Board failed to apply the quotient in a practicable fashion.<sup>161</sup> Finally, MSB asserts that the record demonstrates that the Board failed to properly apply the *Hickel* process, by prioritizing the VRA and certain districts implicated by the VRA over the priorities set forth in the Alaska Constitution.<sup>162</sup>

The following three mandates have been applied by the court as follows:

1. Contiguity

Contiguity requires contiguous territory which is bordering or touching. This factor was addressed in *Hickel sua sponte* when the board's plan attempted to divide the Aleutian Islands between two districts in violation of the contiguity requirement.<sup>163</sup>

2. Compactness

Compactness requires that any proposed district have a small perimeter in relation to the area encompassed. However, "neither size nor lack of direct road access makes a district unconstitutionally non-compact, and population distributions are largely irrelevant to the compactness inquiry."<sup>164</sup> Compactness has found to be violated when, for example, (i) a district contained a "bizarrely-shaped appendage" that was unnecessary to further any other requirement of Article VI, Section 6. *In re 2001 Redistricting Cases*, 44 P.3d 141, 143 (2002); (ii) a district including Cordova was drawn to extend beyond Baranof Island to the southern

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<sup>161</sup> As previously set forth, the Board failed to properly consider the population and deviation, particularly with regard to the MSB, but the Board also failed in its legislative charge to consider such population.

<sup>162</sup> See generally, *In re 2011 Redistricting Cases*, 274 P.3d 466 (Alaska 2012)(this case went into extensive discussion about the process that must be employed by the Board relying on *Hickel*, 846 P.2d 38).

<sup>163</sup> *Hickel*, 846 P.2d at 54.

<sup>164</sup> *In re 2001 Redistricting Cases*, 47 P.3d 1089, 1092 (2002).

boundary of the State (extending the compactness too far to justify any population equality considerations that otherwise justified such reach). *Id.* However, it has also been held that additional areas do not need to be added to districts to remedy odd appendages where doing so would substantially increase the population.<sup>165</sup>

### 3. Socio-economic Integration

Socio-economic integration requires that districts be composed of relatively integrated socio-economic areas so that a voter is not denied his or her right to an equally powerful vote, including “sufficient evidence of socio-economic integration of the communities linked by the redistricting, proof of actual interaction and interconnectedness rather than mere homogeneity.”<sup>166</sup> Socio-economic integration has been found present in cases where: (i) two locations share service by the state ferry system, daily local air tax service, a common major economic activity, fishing areas, management of state lands, the predominately Native character of the populace, and historical links.<sup>167</sup> Socio-economic integration has been found to be a problem where (A) a district sought to integrate small rural communities with urban areas that share different social concerns and political needs.<sup>168</sup>

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<sup>165</sup> *In re 2001 Redistricting Cases*, 47 P.3d 1089, 1092 (2002).

<sup>166</sup> *Hickel*, 846 P.2d at 46 (quoting *Kenai Peninsula Borough*, 743 P.2d at 1363).

<sup>167</sup> *Hickel*, 846 P.2d at 46 (citing *Kenai Peninsula Borough*, 743 P.2d at 1361) (finding integration between Hoonah and Metlakatla with several other southeastern island communities), and (ii) two locations share a mutual membership in the Southwest Alaska Municipal Conference and share involvement in the commercial fishing industry (*In re 2001 redistricting Cases*, 44 P.3d 141, 145 (2002) (finding integration between the Upper Lakes region with the Kodiak Island Borough).

<sup>168</sup> *Hickel*, 846 P.2d at 51 (reviewing the attempted integration of rural Native communities with the urban areas of Ketchikan and Sitka); (B) a district combined an established agricultural area with communities oriented toward commercial fishing and maritime activities. *Hickel*, 846 P.2d at 52-53 (reviewing the attempted integration of Palmer and Prince William Sound); (C) a district combined rural and suburban communities with almost no social or economic interaction. *Hickel*, 846 P.2d at 53 (reviewing the attempted integration of rural Mat-Su Borough communities with Fairbanks and military areas of the Fairbanks North Star Borough); and (D) there was no testimony in favor of linking two proposed areas, while there existed testimony regarding the physical separation of the two cultures and the historical, linguistic and economic differences between the cultures. *Hickel*, 846 P.2d at 53-54 (reviewing the attempted integration of the North Slope Inupiaq and the Interior Athabaskan areas, calling it a “worst case scenario”).

The Court recognized in *Hickel*, “[l]egislative apportionment is subject to a variety of legal requirements.<sup>169</sup> In that case, the court outlined the priorities for the redistricting process, which has since become known as the *Hickel* process.<sup>170</sup> With regard to the *Hickel* process, when the Board proposes a plan for redistricting, the Court has required that the Board first look towards designing the plan by focusing on compliance with Article VI, Section 6 of the Alaska Constitution.<sup>171</sup> Only after this is done should the Board determine whether its proposed plan complies with the Voting Rights Act.<sup>172</sup> In this way, although violation of the Voting Rights Act is of higher importance than and will invalidate any conflicting implementation made pursuant to the Alaska Constitution, the Alaska Constitution is of a higher priority to the extent that the Voting Rights Act has been satisfied.<sup>173</sup> In other words, the Voting Rights Act, to the extent inconsistent with the Alaska Constitution, should be followed only to the extent necessary to not be violated, then given respect and buttressed only to the extent in line with modifications made to supplement the requirements under the Alaska Constitution.

## V. RELIEF REQUESTED

Given the record and the additional evidence MSB expects to be presented at trial, MSB respectfully requests that this court remand to the Alaska Redistricting Board to correct the errors it made in redistricting in a fashion consistent with the *Hickel* process.

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<sup>169</sup> 846 p.2d at 44.

<sup>170</sup> *In re 2011 Redistricting Cases*, 274 P.3d 466.

<sup>171</sup> *Id.*

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

<sup>173</sup> *Id.*

DATED this 18<sup>th</sup> day of January, 2022, at Anchorage, Alaska.

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on this 18<sup>th</sup> day of January, 2022, a true and correct copy of the foregoing document was served via Email to:

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