

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  
 ) 4BE-21-00372 CI  
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**CALISTA PLAINTIFFS' PROPOSED FINDINGS**  
**OF FACT & CONCLUSIONS OF LAW**

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## **I. PROCEDURAL HISTORY**

1. On November 10, 2021, Defendant the Alaska Redistricting Board (“Board”) issued its 2021 Proclamation, which adopted new legislative district maps for the State of Alaska (“Proclamation Plan”). On December 10, 2021, Calista Corporation, William Naneng, and Harley Sundown (“Calista Plaintiffs”) filed a Complaint and Expedited Application to Compel Correction of Errors in Redistricting in Bethel Superior Court. The Complaint named the Board as the defendant and brought timely challenges to the 2021 Proclamation Plan. The Calista Plaintiffs amended their pleading on December 20, 2021. The amended pleading asserted two claims: violation of the Alaska Constitution’s redistricting criteria and violation of the Alaska Constitution’s equal protection clause.
2. Four other plaintiff groups filed their own timely challenges to the Proclamation Plan, referred to herein as the Matanuska-Susitna Borough (“MSB”), the City of Valdez, the Municipality of Skagway, and the East Anchorage Plaintiffs. A group of entities including Doyon, Limited., Ahtna, Inc., and Sealaska (“Doyon Coalition”) moved to intervene as a defendant in the MSB suit. On December 14, 2021, the Presiding Judge of the Third Judicial District consolidated all of the pending challenges into one case and on December 28, 2021, he granted the Doyon Coalition’s motion to intervene.
3. This case is subject to the strict timeframes provided in Alaska Rule of Civil Procedure 90.8, which aim to resolve all redistricting challenges in advance of certain election filing deadlines. In a typical redistricting cycle, the superior court

proceeding would be allotted approximately six months from complaint to decision. In this case, because of pandemic-related delays in delivery of the census data, the Proclamation Plan was issued approximately four and a half months later than usual, which compressed the time available for the superior court proceeding. On December 23, 2021, the Calista Plaintiffs, the Municipality of Skagway, and Valdez filed an unopposed application with the Alaska Supreme Court seeking an extension of the superior court decision deadline. The Supreme Court granted it the same day, setting a new deadline of February 15, 2022 for this Court's decision.

4. Even so, this case proceeded on an extraordinarily compressed timeframe, with a mere 67 days from the constitutional deadline for complaints to be filed until the deadline for this Court's decision. In those 67 days, the seven party groups conducted written discovery, held numerous depositions, completed motion practice, attended seven status hearings, and participated in an eleven-day bench trial. In managing this proceeding, the Court was therefore forced to adjust the Civil Rules to suit the timeline of the case, but made every effort to respect the substance and spirit of the rules. It strove to balance the urgency of the case with the parties' rights to thoroughly prepare and present their cases.
5. Trial began on January 21, 2022 and ended on February 4, 2022, with written proposed findings due on February 9, 2022 and oral closing arguments on February 11, 2022. Because of the number of parties involved, the complexity of the issues, and the time constraints, trial followed a nontraditional format: all direct

testimony was pre-filed in written affidavits, and live trial time was reserved for cross-examination, redirect questioning, and rebuttal cases. Pursuant to a pretrial order, the Court admitted the full transcripts of the pretrial depositions that had been taken. The full administrative record that was filed by the Board was also admitted in its entirety.

6. Trial took place entirely by Zoom because of the ongoing coronavirus pandemic and a record surge in case rates caused by the Omicron variant. The parties had an opportunity to request in-person appearances, but none took advantage of that opportunity.
7. Although all parties participated in the full trial and had the opportunity to cross-examine each other's witnesses, the individual cases were presented sequentially to aid the Court in understanding the discrete facts and claims at issue in each one.
8. The Calista Plaintiffs presented affidavit testimony from five lay witnesses: Andrew Guy, Calista Corporation President and CEO; Thom Leonard, Calista Corporation Director of Corporate Communications and Shareholder Services; Plaintiff William Naneng, a resident of Hooper Bay; Plaintiff Harley Sundown, a resident of Scammon Bay; and Myron Naneng, a resident of Bethel who is from and works in Hooper Bay. The Calista Plaintiffs also presented affidavit testimony from their expert Randy Ruedrich.

9. In response, the Board presented affidavit testimony from Board Members Nicole Borromeo, Melanie Bahnke, and John Binkley.

10. The Board conducted limited cross of the Calista Plaintiffs' witnesses at trial, and the Calista Plaintiffs declined to cross the Board Members, choosing to rely instead on the deposition transcripts.

## II. APPLICABLE CONSTITUTIONAL PROVISIONS

11. The redistricting process in Alaska is governed by article VI of the Alaska Constitution.<sup>1</sup> This Article sets out the legislative redistricting process and specifies how the Board should be organized, how and when it should develop its maps, what factors and criteria it must consider, as well as the timeline for submitting legal challenges. The Calista Plaintiffs' first claim is governed by this article, specifically section 6, which provides:

The Redistricting Board shall establish the size and area of house districts, subject to the limitations of this article. Each house district shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area. Each shall contain a population as near as practicable to the quotient obtained by dividing the population of the state by forty. Each senate district shall be composed as near as practicable of two contiguous house districts. Consideration may be given to local government boundaries. Drainage and other geographic features shall be used in describing boundaries wherever possible.<sup>2</sup>

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<sup>1</sup> Alaska Const. art. VI, § 3.

<sup>2</sup> Alaska Const. art. VI, § 6.

12. Their second claim is governed by article I, section 1 of the Alaska Constitution, which sets out the rights inherent to all people in Alaska. It provides that all persons are equal and entitled to equal rights, opportunities, and protection under the law:

This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.

13. Although this case has, at various points, been characterized as a type of administrative appeal, it is its own unique category of action. This Court has original jurisdiction over redistricting challenges under article VI, section 11 of the Alaska Constitution. While this Court cannot substitute its judgment regarding the wisdom of a particular redistricting plan, it reviews the facts and the law directly to determine if the Proclamation Plan is unreasonable or unconstitutional.<sup>3</sup>

### III. FINDINGS OF FACT

#### A. The Calista Plaintiffs and Their Claims

14. Calista Corporation is an Alaska Native Regional Corporation (“ANC”) organized under the Alaska Native Claims Settlement Act (“ANCSA”). Its area (“Calista Region”) includes the rural Yukon-Kuskokwim Delta (“YK Delta”) region of Western Alaska.

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



15. William Naneng and Harley Sundown both live in the Calista Region, in Hooper Bay and Scammon Bay, respectively, two rural coastal villages that form a tight-knit trio with the nearby village Chevak and share Bethel as their hub community.
16. In this suit, the Calista Plaintiffs challenge the Board's drawing of Districts 37, 38, and 39 in the Proclamation Plan. They assert that the Board's creation of these districts improperly fractured the socio-economically integrated Calista Region into more house and senate districts than is proper, and divided Hooper Bay and Scammon Bay from their sister city of Chevak and their hub community of Bethel. The Calista Plaintiffs claim that this violated the constitutional criteria for district creation as well as the Constitution's equal protection clause.

### **B. The Alaska Redistricting Board and Its Process**

17. The Alaska Redistricting Board is an entity created under Article VI of the Alaska Constitution. Because redistricting occurs only once every decade, the Board is disbanded after each proclamation, and reconstituted from scratch the next time around. In 2021, the Board consisted of Melanie Bahnke, John Binkley, Nicole Borromeo, Bethany Marcum, and Budd Simpson. Member Binkley served as the chair. Peter Torkelson served as the Board's executive director, assisted by a few staff members. Board members joined the Board in late 2020 and completed certain trainings in the spring and summer.
18. The U.S. census data was received on August 12, 2021 and started the 90-day period for issuance of a statewide district map provided in Article VI. The

Board scheduled public meetings around the state (known as the “road show”) and received oral and written testimony on several maps—maps that they had created, as well as maps created by third parties for Board consideration.

*i. Board Conflicts*

19. Unlike other plaintiffs, the Calista Plaintiffs have not asserted standalone challenges to the Board’s process, such as violations of the Open Meetings Act. However, certain aspects of the Board’s process go to the integrity of its decision-making and are therefore relevant to the Calista Plaintiffs’ claims.
20. The point of the redistricting process is to achieve fair representation for Alaskans. The Board is thus charged with a task of monumental importance to the people of Alaska: to draw a statewide district map that ensures, to the extent practicable, that each person’s vote truly counts. Gerrymandering districts to privilege certain populations over others, or bending district lines to satisfy special interests, is incompatible with this goal.
21. Board members have exclusive authority over the district maps. While they must participate in public meetings and accept public testimony, they are the final word on where the lines are drawn. The testimony at trial and the evidence in the record demonstrate, as a general matter, that special interest groups regularly seek to influence the Board’s work.
22. Despite this, the Board failed to adopt any protocol, policy, or procedure to guard against undue or improper influence. At his deposition, Chair Binkley testified that the Board had no code of conduct, no ethical rules, and no conflict-

of-interest policy for its members.<sup>4</sup> Members were not required to disclose financial interests or conflicts in areas under discussion.<sup>5</sup> Rather, the Board relied solely on its members’ reputations as “respected individuals in their communities.”<sup>6</sup>

23. Multiple Board members had actual conflicts of interest. Member Bahnke is the President and CEO of Kawerak, Inc., the nonprofit arm of Bering Straits Native Corporation, which has an interest in District 39.<sup>7</sup> Member Borrromeo is a Doyon shareholder and the evidence at trial demonstrated that she was in close communication with the Doyon Coalition’s attorney about District 36 throughout the redistricting process.<sup>8</sup> Member Simpson is outside counsel to Sealaska, an ANC in the Doyon Coalition, and testified that he receives six figures in billings from Sealaska annually and communicated with Sealaska about District 36 while working on the maps.<sup>9</sup>

24. While it is not surprising that community leaders from around the state would have ties to their regions, employers, or clients, it is something that matters to this Court’s analysis because no mechanism was put in place to mitigate these conflicts of interest. And while the Constitution does not require the Board to adopt

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<sup>4</sup> Binkley Dep. at 199–204.

<sup>5</sup> Binkley Dep. at 202:17–25.

<sup>6</sup> Binkley Dep. at 201:8–18.

<sup>7</sup> Bahnke Aff. at ¶4; ARB007527–7530.

<sup>8</sup> Borrromeo Dep. at 268:2-5; VDZ-3010 at 127–130.

<sup>9</sup> Trial Tr. 1737:22–1740:23.

ethical rules or a conflict-of-interest policy, this omission is nevertheless relevant to the Calista Plaintiffs’ claims, as a member’s conflict of interest in the districts at issue could result in Board action that is based on the member’s personal interest, rather than the evidence, and thus susceptible to challenge as error.

ii. Testimony Presented to the Board on the Calista Region

25. Calista participated in the redistricting process through its own testimony—presented by Andrew Guy and Thom Leonard—as well as the testimony of its expert Randy Ruedrich of Alaskans for Fair and Equitable Redistricting (“AFFER”), a consulting company that assists clients achieve desired outcomes in the redistricting process.<sup>10</sup> Calista’s goal was to achieve more effective representation for its region by consolidating more of its population into fewer districts, specifically by having Hooper Bay, Scammon Bay, and Chevak—which were historically in a district with Nome (District 39)—moved into the Bethel district (District 38), and shifting other Calista villages into the district to the south (District 37). While the Calista Region would still be split across three house districts and two senate districts, this would concentrate more of the region’s population into two house districts and one senate district in a manner that would have a meaningful effect on future election outcomes.

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<sup>10</sup> Ruedrich Aff. at 1–2, 3–4.

26. Calista retained AFFER to help increase the Calista Region’s representation and bring it in line with its actual population.<sup>11</sup> AFFER presented a statewide map that sought to harmonize the goals of all of its clients.<sup>12</sup> In this lawsuit, the Calista Plaintiffs have made clear that they not advocating for the statewide AFFER map; they retained Mr. Ruedrich as a litigation expert to support their specific claims, which are focused on the districts covering their own region, Districts 37, 38, and 39.

27. Mr. Guy, a witness in this case and the President and CEO of Calista, testified before the Board twice, once by letter and once by phone.<sup>13</sup> His testimony was that the Calista Region has been split into various districts since the 1980s because its population has been “borrowed” by other districts to round out their population requirements rather than placed in the two house districts and one senate district that its population would naturally support.<sup>14</sup> Mr. Guy testified that it was Calista’s position that Scammon Bay, Hooper Bay, and Chevak should be placed in District 38, and that Kwigillingok, Kongiganak, Quinhagak, Goodnews Bay, and Platinum should be placed in District 37.<sup>15</sup> His testimony was that taking those steps would improve socio-economic integration in the 2021 Plan by districting more northwestern Calista villages with their hub community of Bethel,

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<sup>11</sup> Ruedrich Aff. at 4–5.

<sup>12</sup> Ruedrich Aff. at 4–5.

<sup>13</sup> ARB 5408–09

<sup>14</sup> Guy Aff. 3.

<sup>15</sup> Guy Aff. 4.

and that it would further unify the Calista Region’s senate representation within Senate District S.<sup>16</sup>

28. Mr. Leonard, also a witness in this case and the Director of Corporate Communications and Shareholder Services for Calista, testified as well, explaining that the Board could accommodate Calista’s request to place Hooper Bay, Scammon Bay, and Chevak in District 38 by placing the Calista villages of Kwigillingok, Kongiganak, Quinhahak, Goodnews Bay, and Platinum into District 37 and shifting some communities into District 39 to balance the population.<sup>17</sup>

29. The City of Hooper Bay, the Native Village of Hooper Bay, and Sea Lion Corporation (Hooper Bay’s ANCSA village corporation) also participated in the process by sending in a joint letter (“Hooper Bay Letter”) asking to be districted with Bethel.<sup>18</sup> The text of the letter is reproduced below:

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<sup>16</sup> Guy Aff. 4.

<sup>17</sup> ARB 6146. Mr. Leonard also presented the same testimony by phone.

<sup>18</sup> ARB 6145.

This is a joint community letter of Hooper Bay: City, Native Village, and Sea Lion Corporation (Alaska Native village corporation) supporting that Hooper Bay be part of the Bethel region in 2021 Redistricting.

Bethel is main hub for Y-K Delta villages like Hooper Bay, therefore much of its commerce, health, employment, social and other dealings are within this geographic region.

Much of Hooper Bay's funding for health, housing, social services and programs are usually lumped together with other villages served by Bethel-based businesses and organizations (AVCP, YKHC, AVCP Regional Housing, Community Development Quota- CVRF, etc.)

Commercial airlines that bring passengers and freight are nearly 100% from Bethel and USPO mail and other packages delivery services to Hooper Bay are funneled through Bethel.

From Bethel, the political, semi-political groups, and state & federal agencies and their already affect Hooper Bay (e.g., AVCP Convention, YKHC Tribal Gathering, Y-K Regional Subsistence Board, ADFG, USFWS, etc.)

The Kusilvak Census district is considered part of and always counted with or aligned with the Y-K Delta and least common with Seward Peninsula region, therefore Hooper Bay considers itself as part of the Y-K Delta.

This is an important issue of the people of this region, please consider our concerns.

*ARB 6145 (excerpt)*

30. Other individuals provided similar testimony, including Myron Naneng, who also testified in the present litigation. Mr. Naneng testified to the strong connections between Hooper Bay and Bethel, the lack of connections with Nome and Kotzebue and the difficulties in representation that had resulted from being in districts with those cities in the past, and asked the Board to place Hooper Bay in the same district as Bethel. Mr. Naneng explained that historically the senator from Bethel was the one who addressed Hooper Bay's concerns, not the senator from their actual senate district.

31. The testimony presented to the Board on the Calista Region was not disputed, and demonstrated that the Calista Region was intensely socio-

economically integrated and that the region's 2020 U.S. Census population of 27,034 was equivalent to 1.47 ideal house districts, or 0.73 ideal senate districts.

32. Despite this testimony, the Board failed to recognize the socio-economic integration of Hooper Bay, Scammon Bay, Bethel, and Chevak in its Proclamation Plan.

iii. *The Calista Region and the Board's Districts 37, 38, and 39*

33. The Calista Region is a socio-economically integrated area of 56 villages in southwest Alaska as shown on Exhibit 5000.<sup>19</sup> The borders of the region reflect the boundaries established for the Calista Corporation, an Alaska Native Corporation (also known as an Alaska Native Region Corporation, ANC, or ANRC) under the Alaska Native Claims Settlement Act in 1971.<sup>20</sup> The Calista Corporation has approximately 34,500 shareholders and roughly 60% of them live in the Calista Region.<sup>21</sup>

34. The villages of the Calista Region share the city of Bethel as a hub for commerce, economic development, transportation, social services, health services, and social and cultural life.<sup>22</sup> Local governance and services throughout the region are provided by 56 federally recognized tribes, cities, Calista Corporation, and

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<sup>19</sup> Guy Aff. at 2–3; *see also* Binkley Dep. at 243:3–4; Bahnke Dep. at 56:6–18; Borromeo Dep. at 194:23–195:8; Trial tr. 941:8–14 (testimony of Ahtna President Michelle Anderson); Ruedrich Aff. at 14–15.

<sup>20</sup> 43 U.S.C. § 1606.

<sup>21</sup> Guy Aff. at 2.

<sup>22</sup> Leonard Aff. at 2–3; Myron Naneng Aff. at 6; Sundown Aff. at 2, 6–9; Binkley Dep. at 224–25; Exhibit 5003.



several large regional non-profit organizations including the Association of Village Council Presidents (AVCP) and the Yukon Kuskokwim Health Corporation (YKHC).<sup>23</sup>

35. More specifically, virtually all passenger and freight transportation throughout the entire Calista Region is routed through Bethel. Health services for nearly every village in the Calista Region is coordinated through or provided in Bethel. The Calista Corporation is a significant economic driving force for the Calista Region, providing shareholder dividends, employment opportunities, and support for the regional non-profit corporations like AVCP. The membership and service area for AVCP is the Calista Region. AVCP provides a broad spectrum of social services to the Calista Region.<sup>24</sup>

36. The predominant Alaska native language in the Calista Region is Central Yup'ik, which is the first or only language of many Calista Region people.<sup>25</sup> Many Calista Region elders are among those who only speak Central Yup'ik.<sup>26</sup> The Calista Region is perhaps the area of Alaska where the native language has been most strongly retained.<sup>27</sup>

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<sup>23</sup> Exhibit 5003 at 3.

<sup>24</sup> Leonard Aff. at 2–9; Guy Aff. at 5; Myron Naneng Aff. at 2–4; Binkley Dep. at 226:8–13;

<sup>25</sup> Exhibit 5001; Guy Aff. at 6; Myron Naneng Aff. at 6.

<sup>26</sup> Bahnke Dep. at 175:18–24.

<sup>27</sup> Bahnke Dep. at 175:18–24.

37. Social and cultural ties among the Calista Region’s villages are strong. The Calista communities often gather in Bethel for festivals and regional sports tournaments. One particular example is the Cama-i Festival, a large culture and dance festival held in Bethel annually to gather the Yukon-Kuskokwim villages each year.<sup>28</sup>

38. Hooper Bay, Scammon Bay, and Chevak are three Calista villages northwest of Bethel that are highly socio-economically integrated with each other and with the hub city of Bethel. The residents of these three villages engage in frequent, subsistence, familial, and social activities with each other on a frequent basis.<sup>29</sup>

39. The Calista Region encompasses two census areas: Bethel and Kisulvak. The population of the Calista Region in the 2020 census is 27,034 people. While Alaska’s population grew by 3.3% between the 2010 and 2020 censuses, the Bethel Census Area grew by 9.71% and the Kusilvak Census Area grew 12.18%.<sup>30</sup> The Calista Region as a whole added 2,562 people, an increase of 10.5% over the last decade.<sup>31</sup>

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<sup>28</sup> Sundown Aff. at 7–8; Leonard Aff. at 10–11.

<sup>29</sup> Binkley Dep. at 226–228; Simpson Dep. at 179:14–20; Marcum Dep. at 146:11–22; *see generally* William Naneng Aff.; Myron Naneng Aff.; Sundown Aff..

<sup>30</sup> Guy Aff. at 3.

<sup>31</sup> Ruedrich Aff. at 9.

40. Based on the 2021 ideal house district population of 18,335, the Calista Region population is equal to 1.474 Alaska state house districts and .737 of an Alaska senate district.<sup>32</sup>
41. The Board did not adopt draft or final proclamation maps that kept the Calista Region in two house districts and one senate district consistent with its population and with due regard for the socio-economic integration of the Calista Region.<sup>33</sup>
42. At the conclusion of the redistricting process, the Board divided the Calista Region into three House Districts: 37, 38, and 39; and two Senate Districts S (comprised of D37 and D38) and T (comprised of D39 and D40).<sup>34</sup>
43. House District 37 stretches from the Kenai Peninsula to the Aleutian Islands and from the Alaska Peninsula to the Calista villages along the middle/upper Kuskokwim River.<sup>35</sup> The Donlin Gold mine project is being developed in the northern part of District 37, within the Calista Region, on subsurface lands owned by the Calista Corporation.<sup>36</sup> The Board used Alaska Native Corporation regions as portions of the boundaries of District 37.<sup>37</sup>

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<sup>32</sup> Guy Aff. at 3; Ruedrich Aff. at 9.

<sup>33</sup> ARB000055–57 (Board Proclamation District Maps 37–39); ARB001290–92, 1337–39, 1384–86, 1431–33, 1478–80, 1525–27 (Board and Third-Party Maps of Calista Region).

<sup>34</sup> ARB000012, 55–57 (proclamation maps).

<sup>35</sup> ARB 55 (proclamation map).

<sup>36</sup> Leonard Aff. at 9; ARB 55.

<sup>37</sup> ARB 75–76 (metes and bounds descriptions utilizing Doyon, Calista, and Bristol Bay ANC boundaries).

44. As adopted by the Board, District 37 is underpopulated by .59% at 18,226 people.<sup>38</sup> The 11 Calista villages in District 37 are home to 1,774 people.<sup>39</sup> District 37 includes several Kenai Peninsula Borough (KPB) voting precincts, including Tyonek, Nanwalek, and Port Graham. The Board also placed excess population from the KPB in District 5; i.e. the Board broke the KPB boundary twice.

45. House District 38 is comprised solely of Calista villages and includes the hub city of Bethel as well as other villages on the lower Kuskokwim River.<sup>40</sup> As adopted by the Board, District 38 is underpopulated by 2.63% at 17,853 people.<sup>41</sup> The Board used Alaska Native Corporation regions as portions of the boundaries of District 38.<sup>42</sup>

46. House District 39 has two distinct areas. The southern portion of the district from Hooper Bay north to Kotlik is a part of the Calista Region and home to 7,407 people in Calista villages.<sup>43</sup> As with all of the other Calista villages, the District 39 Calista villages are highly socio-economically integrated with each other and

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<sup>38</sup> ARB 7234 (corrected population tabulation).

<sup>39</sup> Ruedrich Aff. at 8.

<sup>40</sup> ARB 56 (proclamation map).

<sup>41</sup> ARB 7234 (corrected population tabulation); *see* Trial Tr. 1082:24–1083:3 (Board exec. director acknowledging population table was published with errors in 24 districts, resulting in inaccurate deviations for 440,000 people); Trial Tr. 1084:21–1085:5 (population table incorrect until well after deadline for filing court challenges); Trial Tr. 1091:12–17 (Board exec. director admitting that error may never have been disclosed to court, parties, or public absent questioning by Mr. Brena at his deposition).

<sup>42</sup> ARB 76 (metes and bounds descriptions utilizing Bristol Bay ANC boundaries).

<sup>43</sup> ARB 56 (proclamation map); Ruedrich Aff. at 8.

with Bethel.<sup>44</sup> The remainder of District 39 contains 10,046 people living in the Bering Straits Native Corporation (BSNC) Region.<sup>45</sup> The people living in the BSNC Region have minimal socio-economic ties with the Calista Region: the BSNC Region has Nome as its hub for transportation, economic development, and health care.<sup>46</sup> The BSNC Region is largely Inupiaq speaking and does not share a school district with the Calista Region part of District 39.<sup>47</sup>

47. As adopted by the Board, District 39 is underpopulated by 4.81% at 17,453 people.<sup>48</sup> The Board used Alaska Native Corporation regions as portions of the boundaries of District 39.<sup>49</sup>

### C. Evidence Presented at Trial

48. The Court held trial in this case to supplement the administrative record pursuant to Civil Rule 90.8(d). The Calista Plaintiffs presented the pre-filed affidavit testimony of six witnesses, five lay witnesses: (1) Andrew Guy; (2) Thomas Aparuk Leonard; (3) Myron Naneng; (4) William Naneng; and (5) Harley

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<sup>44</sup> Borromeo Dep. at 216–232; *see generally* Myron Naneng Aff.; William Naneng Aff.; Test. of Harley Sundown.

<sup>45</sup> *See* ARB 7234 (corrected population tabulation); Ruedrich Aff. at 8.

<sup>46</sup> Borromeo Dep. at 216–232.

<sup>47</sup> Exhibit 5001; Trial Tr. 1355:24–1356:16.

<sup>48</sup> ARB 7234 (corrected population tabulation); *see* Trial Tr. 1082:24–1083:3 (Board exec. director acknowledging population table was published with errors in 24 districts, resulting in inaccurate deviations for 440,000 people); Trial Tr. 1084:21–1085:5 (population table incorrect until well after deadline for filing court challenges); Trial Tr. 1091:12–17 (Board exec. director admitting that error may never have been disclosed to court, parties, or public absent questioning by Mr. Brena at his deposition).

<sup>49</sup> ARB 76 (metes and bounds descriptions utilizing Bering Straits ANC boundaries).

Sundown, and one expert witness: (6) Randy Ruedrich. At trial, the Board cross-examined Mr. Guy, Mr. Leonard, Mr. Myron Naneng, and Mr. Ruedrich. The Calista Plaintiffs opted not to cross-examine the Board Members at trial, instead relying on the transcripts of their depositions, but they did ask a limited number of questions of other witnesses during the other plaintiffs' trials.

*i. Testimony of Andrew Guy*

49. Andrew Guy is the President and Chief Executive Officer of Calista Corporation. He presented his testimony on behalf of Calista and the Calista Region as a whole, explaining that Calista, as an ANCSA regional corporation, has a congressional mandate to improve opportunity and quality of life for people within its region.<sup>50</sup>

50. Mr. Guy is Yup'ik.<sup>51</sup> He was born in Napaskiak near Bethel and speaks Central Yup'ik as his first language.<sup>52</sup> His extended family continues to live in the Calista Region.<sup>53</sup> Mr. Guy holds a degree in business administration from the University of Alaska Fairbanks and a J.D. from the University of Colorado School of Law.<sup>54</sup> He worked his way up at Calista—he began as an intern in 1984 and accepted the role of President/CEO in 2010.<sup>55</sup>

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<sup>50</sup> Guy Aff. 1, 2–3; Trial Tr. 1341:6–14.

<sup>51</sup> Guy Aff. 1.

<sup>52</sup> Guy Aff. 1.

<sup>53</sup> Guy Aff. 1.

<sup>54</sup> Guy Aff. 1.

<sup>55</sup> Guy Aff. 2.

51. The Court finds that Mr. Guy has deep personal knowledge of the Calista Region, gained from his own life experience as well as his professional roles within Calista. The Court found him a credible, candid, and helpful witness.

52. Mr. Guy testified that the total population of the Calista Region, comprised of the Bethel and Kusilvak Census Areas, is 27,034 persons.<sup>56</sup> Approximately 60% of Calista's 34,500 shareholders live within the Calista Region.<sup>57</sup>

53. Putting these numbers together, Calista shareholders make up approximately 77% of the region's population. The Court is not aware of any other ANC whose shareholder population makes up such a high percentage of its geographic region.

54. Mr. Guy testified that Calista exists to serve its shareholders by providing benefits and opportunities within its region.<sup>58</sup> It provides support for culture, education, leadership, and economic opportunity deriving from ANCSA's mandate to improve the socio-economic conditions of its shareholders and communities.<sup>59</sup> Mr. Guy testified that Calista is committed to improving quality of life and increasing opportunity for everyone in the Calista Region, not just its shareholders.<sup>60</sup>

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<sup>56</sup> Guy Aff. 3.

<sup>57</sup> Guy Aff. 2.

<sup>58</sup> Guy Aff. 2.

<sup>59</sup> Guy Aff. 2.

<sup>60</sup> Guy Aff. 2.

55. The population of the Calista Region experienced significant growth over the past decade: Whereas the population of the State of Alaska grew 3.3%, adding 23,160 people, the Bethel Census Area grew 9.71%, and the Kusilvak Census Area grew 12.18%.<sup>61</sup>

56. Mr. Guy testified that the Calista Region’s political representation in the Alaska Legislature has never matched its population. Although there has always been sufficient population in the Calista Region to support nearly two house seats and one senate seat, the Redistricting Board has always “borrowed” the Calista Region’s population to round out the population of other, which splinters the population of the Calista Region into more house and senate districts than its population would support.<sup>62</sup>

57. Mr. Guy testified about the many challenges facing the Calista Region, which is home to some of the most economically depressed areas in the state.<sup>63</sup> There are critical infrastructure needs in communities around the region, including such basic needs as running water and sewer systems; and the schools in the region are chronically underfunded.<sup>64</sup> Mr. Guy’s testimony was that when it comes to final allocation of funding, both operating and capital, Calista’s villages always get the short end of the stick: effective representation translates into funding, and

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<sup>61</sup> Guy Aff. 3.

<sup>62</sup> Guy Aff. 3.

<sup>63</sup> Guy Aff. 3.

<sup>64</sup> Guy Aff. 3–4.



the Calista Region’s lack of adequate representation for its population size has had negative long-term effects on many facets of daily life for the people who live within the region.<sup>65</sup>

58. Mr. Guy proposed the following partial solution to the underrepresentation problem in the Calista Region: place Scammon Bay, Hooper Bay, and Chevak in District 38, and include Kwigillingok, Kongiganak, Quinhagak, Goodnews Bay, and Platinum in District 37.<sup>66</sup> This would allow Scammon Bay and Hooper Bay to be in a district with their socio-economically integrated hub community of Bethel and sister city of Chevak, and would increase Calista’s representation in Senate District S.<sup>67</sup>

59. Mr. Guy testified to the links between Hooper Bay, Scammon Bay, and Chevak, and to the links between those villages and their hub community of Bethel.<sup>68</sup> Mr. Guy provided the example of healthcare: Hooper Bay and Scammon Bay residents must travel to Bethel to the Yukon-Kuskokwim Health Corporation’s hospital and clinics.<sup>69</sup> Moreover, Mr. Guy testified that all travel and all air cargo to Hooper Bay and Scammon Bay is routed through Bethel; and state-provided services such as the Alaska State Troopers, the Office of Children’s

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<sup>65</sup> Guy Aff. 3–4.

<sup>66</sup> Guy Aff. 4–5.

<sup>67</sup> Guy Aff. 4.

<sup>68</sup> Guy Aff. 5.

<sup>69</sup> Guy Aff. 5.

Services, and the Alaska Court System that serve Hooper Bay and Scammon Bay are based out of Bethel.<sup>70</sup>

60. Mr. Guy testified that Hooper Bay and Scammon Bay are in a different linguistic region than Nome—the dominant language in Nome is Inupiaq, the dominant language in the Calista Region, including Hooper Bay and Scammon Bay, is Central Yup'ik.<sup>71</sup> Mr. Guy testified that Nome is the hub community for an entirely different region and that he knows of no socio-economic connections between Nome and Hooper Bay or Scammon Bay.<sup>72</sup>

61. Mr. Guy testified that the Board disregarded the close socio-economic integration between Hooper Bay and Scammon Bay, Bethel, and the broader Calista Region—and the lack thereof with Nome—as well as Calista's request that those villages be districted with Bethel in District 38.<sup>73</sup> Mr. Guy testified that the Board additionally disregarded Calista's request to district Kongiganak, Kwigillingok, and Quinhagak in District 37.<sup>74</sup> Mr. Guy testified that the consequence of the Board's failure to place those communities in the districts that Calista advocated for is the perpetuation of the dilution of the voting power of persons in the Calista Region.<sup>75</sup>

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<sup>70</sup> Guy Aff. 6.

<sup>71</sup> Guy Aff. 6.

<sup>72</sup> Guy Aff. 7.

<sup>73</sup> Guy Aff. 6–7.

<sup>74</sup> Guy Aff. 7.

<sup>75</sup> Guy Aff. 7.

62. On cross-examination at trial, Mr. Guy readily acknowledged that the Calista Region has too much population to fit into one district, and that while they may all want to be in the same district as Bethel, it was mathematically impossible.<sup>76</sup> He also acknowledged that deciding which communities to place with Bethel is not an easy choice, but that it can be accomplished with reference to the actual connections within the region.<sup>77</sup> He emphasized that historically, the Calista Region has always been split up more than it should be—while other ANC regions were kept whole, or in as few districts as possible.<sup>78</sup> He also explained that while other parts of the state have municipal and borough governments to advocate for them, the Calista Region—with its unorganized villages—lacked such an advocate, making Calista’s role as an advocate and the region’s representation in the Legislature all the more crucial.<sup>79</sup>

63. The Board pressed Mr. Guy on why it made sense to move Scammon Bay and Hooper Bay out of District 39 and into District 38, just to move three other Central Yup’ik-speaking Calista villages located closer to Bethel on the Kuskokwim—Kwigillingok, Kongiganak, and Quinhagak—out of District 38 and into District 37.<sup>80</sup> Mr. Guy explained that the entire Calista Region was closely

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<sup>76</sup> Trial Tr. 1341:21–1342:5.

<sup>77</sup> Trial Tr. 1342:6–12.

<sup>78</sup> Trial Tr. 1343:1–4.

<sup>79</sup> Trial Tr. 1343:5–10, 1374:10–18.

<sup>80</sup> Trial Tr. 1352:20.

linked to Bethel,<sup>81</sup> and that consolidating as much of its population as possible into fewer house and senate districts would be beneficial to the region.<sup>82</sup> He also noted that the optimal outcome would be to create a Yupiit Eskimo district encompassing Kodiak, Chevak, Bristol Bay Yup'ik, Calista Central Yup'ik, and the Bering Strait Yup'ik and Cup'ik, as those communities and regions are all closely tied together.<sup>83</sup> However, he testified that in this redistricting cycle, that goal did not seem attainable in light of the experience Calista had with the Board in every cycle since the 1980s, so Calista adopted a compromise position.<sup>84</sup>

64. Mr. Guy acknowledge on cross that Senator Hoffman was a Calista shareholder who had been representing the Calista Region, including portions of it outside his district. However, he testified on redirect that Senator Hoffman would not serve forever, and it was unfair for Hooper Bay and Scammon Bay to have to rely on the personality of an individual legislator for fair representation, rather than their actual voting power.<sup>85</sup>

65. Finally, Mr. Guy testified on redirect that there were strong connections between the Calista Region and the rest of District 37. Specifically, District 37 is predominantly Yup'ik, there are a lot of family connections between the Calista

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<sup>81</sup> Trial Tr. 1352:19–25.

<sup>82</sup> Trial Tr. 1374:5–22.

<sup>83</sup> Trial Tr. 1372:16–23.

<sup>84</sup> Trial Tr. 1373:5–18.

<sup>85</sup> Trial Tr. 1377:22–1378:1.

Region and District 37, and Calista’s coastal villages have significant economic connections with District 37 through their participation in the Bristol Bay fishery.<sup>86</sup>

ii. Testimony of Thomas Aparuk Leonard

66. Thomas Aparuk Leonard is Director of Corporate Communications and Shareholder Services for Calista. His mother is from Chevak and he was born in Bethel, so he has spent significant time in the Calista Region. The Court finds that Mr. Leonard, like Mr. Guy, has substantial personal and professional experience in the Calista Region and that his testimony was both credible and helpful.

67. Mr. Leonard testified that the Calista Region is in Southwest Alaska in the area shown on the map marked as CAL-1.<sup>87</sup> Calista Corporation’s land entitlement comprises 6.5 million acres in the Yukon-Kuskokwim River Delta and the Kuskokwim Mountains.<sup>88</sup> Most of this land is split estate where the village corporation owns the surface estate and Calista owns the subsurface.<sup>89</sup> The region’s 56 villages selected the bulk of these lands near their villages based primarily on subsistence needs.<sup>90</sup> Culturally, the region is diverse including Yupiaq, Yup’ik, Cup’ik, Cup’ig, and Athabascan peoples.<sup>91</sup>

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<sup>86</sup> Trial Tr. at 1378:2–1379:2.

<sup>87</sup> Leonard Aff. 2; *see also* Exh. 5000.

<sup>88</sup> Leonard Aff. 2.

<sup>89</sup> Leonard Aff. 2.

<sup>90</sup> Leonard Aff. 2.

<sup>91</sup> Leonard Aff. 2.

68. The region is about 10 percent of the area of Alaska and is roughly the same size as Oregon or New York state.<sup>92</sup> Despite this size, there are no roads, rail, or ferry service into the region, as acknowledged by the State in its recent Yukon-Kuskokwim Delta Transportation Plan.<sup>93</sup> The only form of mass transit is via air.<sup>94</sup> A majority of flights from outside the region are through Bethel.<sup>95</sup> According to the State Department of Transportation reports, Bethel is one of the busiest passenger and cargo airports in Alaska.<sup>96</sup>

69. Mr. Leonard testified that while most corporations' relationship to their shareholders is limited to maximizing profits and subsequently dividends to shareholders, Calista Corporation, as an Alaska Native Corporation, looks after its shareholders in considerably more ways.<sup>97</sup> Calista Corporation is a creature of federal law, created when Congress passed ANCSA in 1971.<sup>98</sup> ANCSA represented a new approach to Native American policy, as it extinguished Alaskan Natives' aboriginal land title and divided Alaska into 12 cultural and geographic regions, one of which being the Calista Region.<sup>99</sup> Unlike Lower 48 tribes that engaged in a reservation-based system, ANCSA represented a significant

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<sup>92</sup> Leonard Aff. 3.

<sup>93</sup> Leonard Aff. 3.

<sup>94</sup> Leonard Aff. 3.

<sup>95</sup> Leonard Aff. 3.

<sup>96</sup> Leonard Aff. 3.

<sup>97</sup> Leonard Aff. 3.

<sup>98</sup> Leonard Aff. 3.

<sup>99</sup> Leonard Aff. 3.

departure by creating Native American owned companies.<sup>100</sup> Calista, as with other Alaska Native Corporations, invests in various industries in behalf of its shareholders, many of whom live in the Calista Region located along the southwest coast of Alaska and encompassing villages in the Bethel area, the Lower Yukon River, and Lower Kuskokwim River.<sup>101</sup>

70. Mr. Leonard testified that there are important distinctions between Calista’s relationship with its shareholders and typical corporations.<sup>102</sup> Calista acts as a steward for the immense land and natural resources within its boundaries, while also preserving the economic prosperity for the shareholders and 56 tribes within its boundaries by creating jobs for its shareholders, retaining the use of Central Yup’ik languages, and caring for their communities’ youth and elders.<sup>103</sup> Calista and all regional Alaska Native corporations enjoy close cultural and economic relationships with the communities within their regions.<sup>104</sup>

71. Mr. Leonard’s testimony was that while Calista’s efforts are generally directed to benefit shareholders, Calista makes considerable efforts to improve the economy of the tribes and communities within its territory.<sup>105</sup> This in turn creates

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<sup>100</sup> Leonard Aff. 3.

<sup>101</sup> Leonard Aff. 3–4.

<sup>102</sup> Leonard Aff. 4.

<sup>103</sup> Leonard Aff. 4.

<sup>104</sup> Leonard Aff. 4–5.

<sup>105</sup> Leonard Aff. 5.

opportunities for non-shareholders in the community.<sup>106</sup> Calista's efforts in infrastructure and community-based programs, including but not limited to ice road construction, broadband infrastructure, clean water and sewer access, and energy corridors will benefit all residents in the Yukon-Kuskokwim Delta as well as strengthen the communities therein.<sup>107</sup>

72. Mr. Leonard testified that there are strong connections between the communities and people of the Calista Region, bound together as they are by common culture and language. But he also testified to the very serious challenges that the region faces, many of which stem from impoverishment. Mr. Leonard discussed the critical infrastructure needs of the region, widespread health and social issues, declining stocks of salmon, caribou, and moose that are integral to the subsistence lifestyle that many of the people who live in the Calista Region lead, as well as a lack of good jobs and the long-term negative consequences of colonization and Western influence, including the existential threat of climate change.

73. Mr. Leonard testified that Calista does what it can to ameliorate the issues facing the people of the Calista Region by investing substantially in physical infrastructure and in the people of the region. But despite those major positive efforts, Mr. Leonard testified that the problems facing the Calista Region were

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<sup>106</sup> Leonard Aff. 5.

<sup>107</sup> Leonard Aff. 5.



generations in the making and finding answers has proved challenging. There is only so much Calista can do, and despite Calista's best efforts, many of the Calista Region's needs remain unmet.

74. Mr. Leonard testified that, had the Board honored the districting requests of the Calista Region and placed Scammon Bay and Hooper Bay with Bethel in District 38, along with Chevak, and placed Kwigillingok, Kongiganak, and Quinhagak in District 37, there would have been greater socio-economic integration in District 38, and Calista's representation in the senate would have been strengthened with a higher percentage of Calista Region population in Senate District S. Mr. Leonard testified to the strong socio-economic integration between Hooper Bay, Scammon Bay, and Chevak, including familial connections, and to their connections with their hub community of Bethel. Mr. Leonard provided the example of the Cama-i Festival, which brings people together in Bethel from throughout the Calista Region—including Hooper Bay, Scammon Bay, and Chevak—to illustrate the deep socio-cultural connections within the region.

75. Mr. Leonard's testimony was that the Board made a mistake when it failed to keep Hooper Bay and Scammon Bay where they belong: with Chevak and Bethel and District 38; and that the Board made a mistake when it failed to district Kwigillingok, Kongiganak, and Quinhagak in District 37 to mitigate the dilution of the Calista population's voting power in Senate District S.

iii. Testimony of Myron Naneng<sup>108</sup>

76. Myron Naneng testified that he lives in Bethel and is Chief Operating Officer of Sea Lion Corporation, which is the Alaska Native Village Corporation for Hooper Bay. He grew up in Hooper Bay speaking Central Yup'ik and English. His family lives in Hooper Bay and throughout the Calista Region.

77. Mr. Naneng has extensive experience working on issues facing the Calista Region through his past employment at Calista and his past roles at the Association of Village Council Presidents (AVCP), in the Office of the Governor in Bethel, with the State of Alaska's Department of Community and Regional Affairs (DCRA), and the Bureau of Indian Affairs. For two examples, Mr. Naneng testified to his experience working on housing issues through his time with DCRA, and his work obtaining funding for the Village Police Officer Safety Program. He also currently works for the Tribal and city government of Hooper Bay to bring in infrastructure that will benefit the Village of Hooper Bay. The Calista Region has been Mr. Naneng's home for all of his life, and he has experience through his professional roles working with legislators from both Nome and Bethel.

78. The Court finds that Mr. Naneng is a credible and reliable witness with knowledge of Hooper Bay and the Calista Region as a whole.

79. Mr. Naneng testified regarding a common theme among the Calista Plaintiffs' witnesses: that the legislators from Bethel were historically more

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<sup>108</sup> M. Naneng Aff.

familiar with the issues facing the Calista Region, and that it was easier to communicate with them regarding the region’s needs because of that familiarity. By contrast, the legislators from the Nome region are disconnected from the Calista Region’s needs, and difficult to communicate with.

80. Mr. Naneng testified to the central role that Bethel plays in the villages of the Calista Region as their hub community—it is the hub for air transportation and freight movement throughout the region, as well as the seat of entities such as AVCP that provide essential services to the region. AVCP is a regional nonprofit corporation that provides social services, community development, and culturally relevant programs, among other services, throughout the Calista Region. Mr. Naneng testified that the Yukon-Kuskokwim Health Corporation (YKHC) provides healthcare to the Calista Region from its main clinic located in Bethel. YKHC operates five sub-regional clinics in the Calista Region, including one in Hooper Bay, and that those clinics are staffed by medical providers based out of the YKHC clinic in Bethel who fly out and provide necessary healthcare. Persons who live in villages that lack a clinic must travel to Bethel for healthcare or fly to Anchorage through Bethel.

81. Mr. Naneng testified specifically that two Bethel legislators, Representative Tiffany Zulkosky and Senator Lyman Hoffman, regularly visit Hooper Bay and interact with its residents. By contrast, he testified that the Nome district

legislators are never in town unless they are campaigning during election season, and do not actively work to promote the needs of Calista Region communities.

82. Mr. Naneng testified that the Calista Region has many needs and that Hooper Bay is not alone in needing upgraded sewer and water service. Mr. Naneng testified that there is a real need for more safety in the region and that the Village Public Safety Officer program is in need of funding and support.

83. Mr. Naneng testified to the chronic underrepresentation in the Calista Region; to the strong socio-economic integration of the region, particularly between Scammon Bay, Hooper Bay, Chevak, and Bethel; and to the lack of socio-economic integration between Nome, Hooper Bay, and Scammon Bay. Mr. Naneng believes that Hooper Bay and Scammon Bay would be better served by their legislators if the Board had placed them with Bethel in District 38.

84. The Court notes that Mr. Naneng appeared by Zoom from the Calista office in Bethel, but his testimony was delayed because he experienced technological difficulties. This inadvertently emphasized his point that effective communication with the Calista Region's communities depends on in-person visits to the communities. The Court further notes that Mr. Naneng, like most of the Calista Plaintiffs' witnesses, speaks English as his second language. Placing Hooper Bay in a district that speaks predominantly Yup'ik (such as District 38), rather than one that speaks Inupiaq (such as District 39), is important because it increases the

chances that a legislator will be able to communicate effectively with Hooper Bay residents.

iv. Testimony of William Naneng<sup>109</sup>

85. William Naneng testified as a resident of Hooper Bay. He is the General Manager of the Sea Lion Corporation, which is the Alaska Native Village Corporation for Hooper Bay. Mr. Naneng was born and raised in Hooper Bay and grew up speaking Yup'ik. Mr. Naneng testified that it is critical to the people of Hooper Bay that their political representatives are engaged in the legislative branch processes of the state government to address the lack of public infrastructure, poverty, and high unemployment issues facing the Calista Region. It was Mr. Naneng's testimony that the people of Hooper Bay turn to the Bethel legislators when they want to get something done.

86. Mr. Naneng attended college within the University of Alaska Fairbanks and then returned home to Hooper Bay where he has lived ever since. Mr. Naneng testified that he has served Hooper Bay as its Mayor, twice, and that he was twice a Magistrate for the State of Alaska.

87. The Court finds that Mr. Naneng is a reliable and credible source of information regarding Hooper Bay.

88. Mr. Naneng testified to Hooper Bay's critical infrastructure needs, which he described in detail. He also testified to the funding needs for the schools in

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<sup>109</sup> W. Naneng Aff.

Hooper Bay; he discussed having to intensively lobby out-of-area representatives to improve school infrastructure. It wasn't until Georgianna Lincoln, a former state representative and senator who never represented Hooper Bay, organized a tour of Hooper Bay for five or more urban legislators that Hooper Bay received the funding needed for school infrastructure improvements.

89. Mr. Naneng testified that there is regular contact with legislators from Bethel from Senate District S and District 38—Representative Zulkosky and Senator Hoffman—because of the connections between Hooper Bay and Bethel, but infrequent contact with the legislators from Senate District T and District 39 who represent Hooper Bay because of transportation barriers.

90. Mr. Naneng testified to the strong ties between Hooper Bay and its hub community of Bethel—for two examples, Mr. Naneng owns a grocery store and all of its stock comes from Bethel, and the state offices providing services to Hooper Bay are in Bethel. It was Mr. Naneng's testimony that there are very few connections between Hooper Bay and Nome. Mr. Naneng testified that given the strong cultural and economic ties between Hooper Bay and Bethel, and the lack thereof with Nome, Hooper Bay's interests are more aligned with Bethel.

91. Mr. Naneng testified that Hooper Bay's residents should not be used merely as population numbers to meet the requirements of District 39. Rather, the Board should have looked at who actually lives in Hooper Bay, and who they are, and recognized that the people of Hooper Bay are connected to Scammon Bay,

Chevak, and Bethel. Hooper Bay should be with Bethel where it has a much stronger natural connection.

v. Testimony of Harley Sundown

92. Harley Sundown is a resident of Scammon Bay and a plaintiff in this lawsuit.<sup>110</sup> Scammon Bay is within the Calista Region and many Scammon Bay residents are Calista shareholders, including Mr. Sundown.<sup>111</sup> He testified that he grew up speaking Central Yup'ik and has lived in Scammon Bay all his life, save when he left for school.<sup>112</sup> He received his undergraduate degree in education from the University of Alaska Fairbanks and his master's degree from the University of Alaska Anchorage.<sup>113</sup> He is a former Calista Board member and currently serves as the Assistant Principal for the Scammon Bay school.<sup>114</sup> The Court finds that Mr. Sundown's personal experience makes him a reliable and credible witness regarding life in Scammon Bay and the Calista Region.

93. Mr. Sundown testified to some of Scammon Bay's many social and physical infrastructure needs: education funding, affordable housing, a good barge landing, erosion-proof barrier on the ocean side of the village, water and sewer.<sup>115</sup> He explained that the lack of funding for the schools has a negative impact on the

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<sup>110</sup> Sundown Aff. 1.

<sup>111</sup> Sundown Aff. 1.

<sup>112</sup> Sundown Aff. 1.

<sup>113</sup> Sundown Aff. 2.

<sup>114</sup> Sundown Aff. 2.

<sup>115</sup> Sundown Aff. 3.

preservation of Yup'ik identity in that there is inadequate delivery of education regarding the Yup'ik language itself.<sup>116</sup>

94. Mr. Sundown testified that Scammon Bay's legislators in District 39 and Senate District T have not seen the problems in the community or taken action to get funding for the community's largest needs: neither Scammon Bay's representative or senator are personally engaged with the community, and seeing things firsthand is important to communicating the urgency of the community's needs.<sup>117</sup> By contrast, he has much greater contact with the legislators from the Bethel district, even though those legislators do not represent Scammon Bay.<sup>118</sup> Mr. Sundown testified regarding the recent salmon run collapse on the Yukon, which shut down fishing for Scammon Bay even though it does not fish the Yukon, and how if Scammon Bay had representation that understood Scammon Bay, the situation might have been different.<sup>119</sup>

95. Mr. Sundown testified that Scammon Bay works closely with Kuskokwim area communities and that the interests of villages in the Calista Region are tied together through three main organizations: Calista Corporation; AVCP; and YKHC.<sup>120</sup> Mr. Sundown testified that those three entities work together with the legislators from Bethel on the health and welfare needs of the people in the Calista

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<sup>116</sup> Sundown Aff. 3–4.

<sup>117</sup> Sundown Aff. 4.

<sup>118</sup> Sundown Aff. 5.

<sup>119</sup> Sundown Aff. 4–5.

<sup>120</sup> Sundown Aff. 6.



Region.<sup>121</sup> The groups and boards for those three organizations are intertwined and cohesive, and they include Scammon Bay, Hooper Bay, and Chevak.<sup>122</sup> Mr. Sundown testified that AVCP and Calista represent Scammon Bay locally and advocate for Scammon Bay’s interests with the Alaska Federation of Natives.<sup>123</sup>

96. Mr. Sundown testified to the strong transportation, freight, and economic connections between Scammon Bay and their hub community of Bethel.<sup>124</sup> Mr. Sundown testified that there are strong socio-economic connections between Hooper Bay, Scammon Bay, and Chevak, and between those villages and Bethel.<sup>125</sup> His testimony was that there are no significant connections with Nome, where a different language is spoken.<sup>126</sup> Mr. Sundown testified that he has been to Nome once in his life when he visited as a tourist for the Iditarod.

97. Mr. Sundown testified that because of strong links between the people of Scammon Bay and the City of Bethel, and the lack thereof between Scammon Bay and Nome, Scammon Bay should be districted with Bethel.<sup>127</sup>

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<sup>121</sup> Sundown Aff. 6.

<sup>122</sup> Sundown Aff. 6.

<sup>123</sup> Sundown Aff. 6.

<sup>124</sup> Sundown Aff. 6.

<sup>125</sup> Sundown Aff. 7–8.

<sup>126</sup> Sundown Aff. 8–9.

<sup>127</sup> Sundown Aff. 9.

vi. Testimony of Randy Ruedrich.

98. Randy Ruedrich testified as an expert witness for Calista Plaintiffs. Mr. Ruedrich testified that he has provided independent redistricting guidance to the clients of Alaskans for Fair and Equitable Redistricting (AFFER) in the 2011, 2013, and 2021 redistricting cycles.<sup>128</sup> Mr. Ruedrich’s testimony is that AFFER’s goal is to draw meaningful boundaries that follow easily identifiable lines and geographic features that also protect communities, regional interests, and legal rights of individuals.<sup>129</sup>

99. Mr. Ruedrich testified that he became involved in this case through his long-standing relationship with Calista dating back to the 1980s, which led him to reach out to Andrew Guy, Calista’s CEO, regarding creating a constitutional map that would result in less underrepresentation for the people of the Calista Region than had been the case in prior redistricting cycles.<sup>130</sup> Calista contracted with Mr. Ruedrich to work towards that goal.<sup>131</sup> Mr. Ruedrich testified that because the Board failed properly weigh the criteria required by article VI, section 6 when it drew House Districts 37, 38, and 39—the districts covering the Calista Region—Calista filed this lawsuit and engaged Mr. Ruedrich to explain why they Board

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<sup>128</sup> Ruedrich Aff. 1.

<sup>129</sup> Ruedrich Aff. 1–2.

<sup>130</sup> Ruedrich Aff. 3–4.

<sup>131</sup> Ruedrich Aff. 4.

inappropriately prioritized certain redistricting criteria over others contrary to the Alaska Constitution.<sup>132</sup>

100. Mr. Ruedrich testified that in 2021, just as it had done in 2011, the Board used Calista Region population to round out two house districts, District 37 and District 39, in addition to the population that was assigned to District 38, which is comprised exclusively of population from the Calista Region.<sup>133</sup> Mr. Ruedrich’s testimony was that dispersing Calista’s population across three house districts and two senate districts dilutes the voting power of the people within the Calista Region—the Calista Region population in the other two districts with less than 50% Calista Region population become diluted minority populations.<sup>134</sup>

101. The crux of Mr. Ruedrich’s testimony was that the Board split the socio-economically integrated Calista Region and diluted the population’s voting power.<sup>135</sup> Mr. Ruedrich testified that it appeared that Calista was the only Alaska Native Corporation whose region’s population was divided into more house districts than numerically necessary, i.e. other than the Calista Region, the Board respected the bounds of every other ANCSA region.<sup>136</sup>

102. Mr. Ruedrich testified that the Board should, and could, have mitigated the vote dilution inherent in spreading the Calista Region’s population across three

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<sup>132</sup> Ruedrich Aff. 4.

<sup>133</sup> Ruedrich Aff. 10.

<sup>134</sup> Ruedrich Aff. 11.

<sup>135</sup> Ruedrich Aff. 11–12.

<sup>136</sup> Ruedrich Aff. 16.

house and two senate districts by assigning more Calista villages to District 37 and fewer Calista villages to District 39.<sup>137</sup> This would have bolstered the percentage of Calista Region voters in Senate District S, and it would have placed more northwestern Calista Region villages—specifically Hooper Bay and Scammon Bay—in District 38 with Bethel where they are socio-economically integrated.<sup>138</sup>

103. Mr. Ruedrich testified that under the Calista Plaintiffs’ proposal in this litigation, the Calista Region would still be divided into three house districts and two senate districts, but the people of the Calista Region would have stronger and fairer representation because putting more of the Calista Region population together in Senate District S optimizes their voting power within the limits dictated by the constraints that the Board must operate under.<sup>139</sup>

**D. Board Reasons for Excluding Hooper Bay and Scammon Bay from District 38**

104. According to the transcript of the Board meeting on November 3, 2021, the final date the Board considered the Calista Region, the only voice urging the Board *not* to place Hooper Bay and Scammon Bay in District 38 with Chevak and Bethel was Member Bahnke’s. The record is clear that her opinion was given significant weight.

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<sup>137</sup> Ruedrich Aff. 19.

<sup>138</sup> Ruedrich Aff. 19.

<sup>139</sup> Ruedrich Aff. 4.

105. Member Bahnke testified at her deposition that she took personal ownership of the Western Alaska districts during the redistricting process. Later, in her prefiled affidavit, she explained that because of her “residence in Nome and familiarity with the geography of the area and Alaska Native regions and issues,” she “took the lead in drawing the new house districts for Northern, Northwest, West, and Southwest Alaska. Specifically, [she] led the drawing of House Districts 37-40 of the Final Plan.”<sup>140</sup>

106. Member Simpson confirmed that Member Bahnke had outside influence on those districts, stating that the Board “gave quite a bit of deference to Melanie Bahnke” in Western Alaska.<sup>141</sup> Member Borrromeo corroborated this, testifying that Member Bahnke played the largest role in mapping Western Alaska.<sup>142</sup>

107. However, as noted above, Member Bahnke is the President and CEO of Kawerak, Inc., the nonprofit arm of Bering Straits Native Corporation, which has an interest in District 39.<sup>143</sup> This conflict of interest was on full display at the November 3, 2021 Board meeting.

108. At the meeting, the Board discussed mapping possibilities regarding what they termed the “VRA districts”—Districts 37, 38, 39, and 40.<sup>144</sup> As part of that discussion, the Board considered placing Hooper Bay, Scammon Bay, and Chevak

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<sup>140</sup> Bahnke Aff. at 10.

<sup>141</sup> Simpson Dep. at 183:23–184:5.

<sup>142</sup> Borrromeo Dep. at 173:15–24.

<sup>143</sup> Bahnke Aff. ¶4.

<sup>144</sup> See ARB 7519:15–ARB 7527:24.

in District 38 consistent with the public testimony from those communities and Calista.<sup>145</sup> The Board explored various mapping possibilities that would have facilitated placing Hooper Bay, Scammon Bay, and Chevak with Bethel.<sup>146</sup> During those discussions, it became clear that one effect of placing those three villages in a district with Bethel would be the need to add additional population to District 39.<sup>147</sup>

109. Member Bahnke objected to one possible solution that would have required adding Interior villages to District 39 on the basis that “[y]ou’re trading one socioeconomic benefit for the other. And there really is no socioeconomic integration between coastal Western Alaska and rural Interior Fairbanks hubbed communities.”<sup>148</sup> Chairman Binkley responded that “I think we would be respecting the wishes of the ANCSA -- regional ANCSA corporation to bring Hooper, Scammon, and Chevak into that Bethel district.”<sup>149</sup>

110. Member Bahnke then said, “I mean, I can take off my redistricting board hat and speak as a regional tribal leader for the Kawerak Region and let you know that there is no socioeconomic integration between western coastal rural Alaska and Interior Fairbanks hub communities.”<sup>150</sup> There was then extensive debate

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<sup>145</sup> See ARB 7524–ARB 7527.

<sup>146</sup> See ARB 7524–174.

<sup>147</sup> ARB 7526:24–ARB 7527:2.

<sup>148</sup> ARB 7527:16–20.

<sup>149</sup> ARB 7527:21–24.

<sup>150</sup> ARB 7527:25–ARB 7528:2.

between Chairman Binkley and Board Member Bahnke, with contributions from other Board members as well, regarding the viability of districting Hooper Bay, Scammon Bay, and Chevak with Bethel in consideration of the impacts on District 39.<sup>151</sup>

111. Member Bahnke framed the question as: “What iteration can you come up with that satisfies both the Kawerak preferences and the Calista preferences?”<sup>152</sup> Chairman Binkley questioned the premise of the question insofar as there was no record of any preferences from the Kawerak Region—apart from Member Bahnke’s just-made representations—whereas Calista’s preferences were clear.<sup>153</sup> Member Bahnke stated that she “just gave testimony on Kawerak.”<sup>154</sup> Ultimately, Member Bahnke agreed to district Chevak with Bethel, which did not require any changes to District 39 that she found objectionable, but opposed adding Hooper Bay and Scammon Bay to District 38. Chevak was placed with Bethel in District 38, and Hooper Bay and Scammon Bay were placed with Nome in District 39.
112. The Court finds, as a factual matter, that Ms. Bahnke’s conflict of interest arising from her role at Kawerak affects the credibility of the Board’s reasons for drawing Districts 37, 38, and 39 the way it did.

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<sup>151</sup> See ARB 7527–ARB 7530.

<sup>152</sup> ARB 7534:13–15.

<sup>153</sup> ARB 7534:16–20.

<sup>154</sup> ARB 7534:21–22.

113. Moreover, despite Member Bahnke’s “ownership” of and intense involvement in drawing Districts 37, 38, and 39, she appears to be unfamiliar with the details of those districts and to have drawn the boundaries solely based on her own preferences, in disregard of actual socio-economically integrated areas. At her deposition, she expressed uncertainty about where Scammon Bay ended up.<sup>155</sup> Similarly, her prefiled direct testimony contained inaccuracies. For example, she testified that the Calista Plaintiffs wanted to place “Upper Kalsag, Aniak, and Chuathbaluk in 37” and that they ended up in District 39 in the Proclamation Plan.<sup>156</sup> This is incorrect on two levels. First, the Calista Plaintiffs have not expressed an opinion on those communities in this litigation. Second, in the Proclamation Plan, those communities are actually in District 37—not District 39. These inaccuracies further undermine Member Bahnke’s credibility as it relates to the districts containing the Calista Region.

#### **E. Socio-Economic Integration of the Calista Region**

114. Based on the evidence presented, the Court finds that the Calista Plaintiffs successfully demonstrated that the Calista Region is intensely socio-economically integrated and that Hooper Bay and Scammon Bay are more integrated with Chevak and Bethel than with Nome and the majority of District 39.

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<sup>155</sup> Bahnke Dep. 192:1–3.

<sup>156</sup> Bahnke Aff. 16.



115. As the evidence developed, it became clear that the socio-economic integration of the region and the close ties between Hooper Bay, Scammon Bay, Chevak, and Bethel were not actually in dispute: these facts were readily acknowledged by all Board members in their testimony.<sup>157</sup>

116. In addition, Chair Binkley's testimony at his deposition corroborated certain facts central to the Calista Plaintiffs' understanding of their own region. For example, he testified that even in the 1980s, when he served as the senator for the Bethel district, he provided representation for Hooper Bay, Scammon Bay, and Chevak—even though they were outside his district.<sup>158</sup> This confirms both that the representation issues of these communities are longstanding and that Hooper Bay and Scammon Bay are so closely connected with Bethel that their interests are tied together in a legislative sense.

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<sup>157</sup> Binkley Dep. 79:25–80:5 (ANCSA regions are a legitimate measure of socio-economic integration), 226:8–13 (Hooper Bay, Scammon Bay, and Chevak are closely connected), 227:16–228:2 (Bethel is the hub community of Hooper Bay, Scammon Bay, and Chevak), 237:14–25 (explaining that he understood why Hooper Bay, Scammon Bay, and Chevak want to be districted with Bethel), 243:3–4 (Calista Region is socioeconomically integrated); Simpson Dep. 179:14–20 (Bethel is Scammon Bay's and Hooper Bay's hub community); Bahnke Dep. 56:6–18 (ANCSA regions are socio-economically integrated), 192:5–22 (socio-economic connections between Hooper Bay, Scammon Bay, and Chevak and Bethel are stronger than those with Nome), 196:15–23 (the Bering Straits Region and the Calista Region are internally socio-economically integrated); Borromeo Dep. 194:23–195:3 (ANCSA regions are socio-economically integrated), 276:9–15 (the Doyon Region is no more socio-economically integrated than the Calista Region), 231:1–232:2 (discussion of there being comparable socio-economic connections between Calista villages and Bethel and Bering Straits villages and Nome); Marcum Dep. 144:5–18 (ANCSA regions are socio-economically integrated), 146:11–22 (Hooper Bay, Scammon Bay, and Chevak are socio-economically integrated with each other and with Bethel).

<sup>158</sup> Binkley Dep. 232:5–9.

117. The Court also finds that there is little socio-economic integration between the Calista villages in District 39—including Hooper Bay and Scammon Bay—and the remainder of that district. The Board was unable to articulate any meaningful integration between the Calista Villages and the remainder of District 39: the languages and cultures are different (Central Yup’ik vs. Inupiaq and St. Lawrence Island Yupik), there are no family or community ties, there are no transportation connections, there are no social service or healthcare connections, there are no government connections, and there are no ANC or other ANCSA-based connections. The only piece of evidence in the record regarding integration appears to be Member Bahnke’s cursory statement in her affidavit that Hooper Bay and Scammon Bay share a language, ceremonies, and traditions with unspecified “villages further up the coast” and that they had “*similar* subsistence economies” as these other villages.<sup>159</sup>

118. Based on the record presented, it appears that the only reason any Calista villages were placed in District 39 was to satisfy Member Bahnke’s desire to have them there, and to achieve a closer-to-ideal population for that district. This prioritized a member’s personal interest and numerical population over socio-economic integration.

119. Finally, the Court finds that there is meaningful socio-economic integration between the Calista villages in District 37 and the rest of District 37. Adding

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<sup>159</sup> Bahnke Aff. 22 (emphasis supplied).

Kwigillingok, Kongiganak, and Quinhagak to District 37 would join them with the nearby Calista villages of Platinum and Goodnews Bay as well as ten other Calista villages on the middle/upper Kuskokwim River. these areas are all socio-economically integrated through their connections with Bethel and the Donlin Gold mine. As Mr. Guy testified, Kwigillingok, Kongiganak, and Quinhagak share Yup'ik cultural and familial ties with District 37 communities, as well as economic ties through participation in the Bristol Bay fisheries.<sup>160</sup> Mr. Guy's specific testimony on this point overcomes Member Bahnke's cursory assertion that she did "not see how" these villages "have any substantial cultural or economic connection to Dillingham or the rest of the Aleutians and Lake and Peninsula district." This is especially true in light of the Court's findings regarding each witness's credibility and knowledge of the Calista Region.<sup>161</sup>

#### **F. Inconsistent Treatment of Other ANCs**

120. Notably, the Calista Region was one of only two ANCSA regions in the entire state that the Board split into more districts than necessary based on population. The other ANC whose region was significantly divided (Chugach) did not participate in the redistricting process and the Board heard no testimony asking to keep its area together.<sup>162</sup> All other ANC regional boundaries were all preserved

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<sup>160</sup> Trial Tr. 1378:2–20.

<sup>161</sup> Bahnke Aff. at 22.

<sup>162</sup> Borromeo Dep. 247–49.

by the Board in the Proclamation Plan and placed in as few districts as possible for their population.<sup>163</sup> Member Borrromeo confirmed this at her deposition.<sup>164</sup>

121. Based on Mr. Guy’s testimony, approximately 76.5% of the Calista Region’s population is made up of Calista shareholders. This represents an unusually high degree of socio-economic integration.

122. The Court finds that the Board’s action in fracturing the Calista Region into three house districts, despite the fact that it had population for 1.47 house districts, despite its extraordinarily high degree of socio-economic integration, and despite the Board’s action in keeping ten other ANC regions together, was not reasonable.

123. In addition, the Court finds that this action suggests that the Calista Region was improperly singled out and treated differently from other ANCs.

### **G. Practicability of Calista Plaintiffs’ Proposal**

124. The Board has asserted that it was not possible to create a constitutional statewide map that placed Hooper Bay and Scammon Bay in District 38 with Bethel and Chevak. Member Borrromeo testified at her deposition that accommodating this request “would have destroyed the deviations.”<sup>165</sup> Similarly, in her prefiled affidavit, she testified that “The Calista Plaintiffs’ proposed House

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<sup>163</sup> Borrromeo Dep. at 244–49. A table showing the populations of various ANC regions is in the record in multiple locations, including at ARB 6143. ANCSA created 13 Alaska Native Regional Corporations (ANCs), but one of those corporations was formed for the benefit of Alaska Natives living outside of Alaska and was not granted land under ANCSA. Thus, there are 12 ANC regions in Alaska.

<sup>164</sup> Borrromeo Dep. at 244–49.

<sup>165</sup> Borrromeo Dep. at 255:9–15.

Districts 37-39, as presented in the AFFER map, result in constitutional problems elsewhere in the state.”<sup>166</sup>

125. The Court is not convinced that Member Borromeo’s statements are correct.

126. First, as a preliminary matter, Member Borromeo inaccurately conflates the AFFER map with the Calista Plaintiffs’ proposal. The AFFER map is a red herring in this litigation, a straw man that the Board repeatedly sets up and tears down. The AFFER map was proposed by AFFER, an entity that had to balance multiple different client needs on one map. In this litigation, the Calista Plaintiffs are focused, appropriately, on their own claims and districts, and have not once attempted to propose or defend the AFFER statewide map.

127. To the extent the Board contends that the Calista Plaintiffs must demonstrate how their proposal can work on a statewide basis, that contention is meritless. The Calista Plaintiffs may succeed in this action if they can demonstrate errors in redistricting, but it is not their constitutional burden to propose a fully-formed map for the entire state. That is why the remedy for a successful challenge is a remand to the Board to correct the errors. Moreover, it would be impossible for any plaintiff to predict which other plaintiff in this consolidated action may be successful in its challenge. Proposing a statewide map at this stage of litigation would thus be unlikely to be of assistance to either the Court or the Board, as the

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<sup>166</sup> Borromeo Aff. at 37.

requirements imposed by this Court or the Supreme Court on remand would dictate how other parts of the state were districted.

128. Second, Ms. Borromeo’s statement—to the extent it implies it was not possible for the Board to make a map that reflected the Calista Plaintiffs’ proposal—is *directly contradicted* by the testimony of Board Chair John Binkley.

129. Chair Binkley lived in Bethel for many years and served in the Legislature for the Bethel district, both in the House and in the Senate.<sup>167</sup> He is knowledgeable about the region and, as Chair of the Board, familiar with the Board’s actions in drawing districts around the state. As evidence of this, the Board offered him as one of only three witnesses with knowledge about the districts in the Calista Region. At his deposition and at trial, Chair Binkley was able to discuss Districts 37, 38, and 39 fluidly, with excellent recall of facts, testimony, population numbers, and the Board’s process in drawing each district. The Court found his testimony credible, candid, and helpful.

130. Chair Binkley expressly testified at his deposition that it was possible to create a constitutional map using the Calista Plaintiffs’ proposal:

- 5· . . . . ·Q· ·So is it your testimony that it was
- 6· ·impossible -- or that it is impossible to create
- 7· ·a constitutional map that has Scammon Bay,
- 8· ·Hooper Bay, and Chevak in the same district as
- 9· ·Bethel?
- 10· . . . . ·A· ·That's not impossible, no.<sup>168</sup>

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<sup>167</sup> Binkley Aff. at 5.

<sup>168</sup> Binkley Dep. at 243:5–10.

131. This admission from the Chair directly contradicts Ms. Borromeo’s assertion that placing Hooper Bay and Scammon Bay in District 38 would create unsolvable constitutional problems around the state.
132. Faced with conflicting testimony on this question, the Court accepts Chair Binkley’s testimony over Member Borromeo’s. The evidence suggests that Member Borromeo was focused on other areas of the state, including areas that affected her own ANC, Doyon, rather than the Calista Region, and accordingly may have been unable to see alternative district formulations in Western Alaska. By contrast, Chair Binkley had no demonstrated preoccupation or bias and appeared better able to maintain an open mind about different possibilities.
133. The Court accordingly finds that it is possible to create a constitutional statewide map that places Hooper Bay and Scammon Bay in District 38.
134. The Court also finds, contrary to the Board’s contention, that it would be meaningful to the region to adopt the Calista Plaintiffs’ proposal. In her prefiled affidavit, Member Borromeo stated “The Calista Plaintiffs’ request to shift Calista villages around House Districts 37-39 does not make sense because it does not result in the consolidation of Calista Region villages in less house districts than the Board’s Final Plan.”<sup>169</sup> This misses the point of the Calista Plaintiffs’ claim. It is true that the Calista Plaintiffs’ request to move Hooper Bay and Scammon Bay into District 38 would still result in Calista villages across three districts. The

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<sup>169</sup> Borromeo Aff. at 36.

Court finds that it would, however, make a meaningful difference to those two villages, which would then be in a district with their sister city of Chevak and their hub community of Bethel. They would have representation from the Bethel district, someone who understood their communities and culture and someone likely to speak their language, who could easily travel to their communities to meet with local residents and elders who may not have access to phone or internet communication. They would, in short, finally have effective representation of their interests in a district of their community members—instead of being (as Ms. Anderson of Ahtna put it in another context) the “forgotten stepchildren” in a district where they do not belong.<sup>170</sup>

135. In addition, the Court finds that there would be a meaningful improvement in the Calista Region’s representation if its population were more concentrated into a single senate district. Although the Calista Plaintiffs are not seeking to have the entire region placed in one senate district, they are seeking to have more of their population in the same district—in other words, to minimize their population that is in District 39 and Senate District T, where their votes will matter much less because the Calista population is eclipsed. As Member Borromeo herself acknowledged, Calista villages “comprise a meaningful population of House District 37” and “will have significant influence on the outcome of elections in

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<sup>170</sup> See Trial Tr. 955:2.



Senate District S.”<sup>171</sup> The Court finds that seeking to consolidate the region’s population into Senate District S whthaere the Calista Region has more population, and reduce the number of Calista Region residents stranded in Senate District T, is a legitimate cause that would lead to meaningful improvement in the region’s representation. The relief requested by the Calista Plaintiffs would thus have a measurable effect on representation within the Calista Region.

136. The Court next turns to evaluating whether the Calista Plaintiffs’ claims have legal merit.

#### **IV. CONCLUSIONS OF LAW**

##### **A. The Calista Plaintiffs Have Standing to Bring This Suit.**

137. Article VI, section 11 of the Alaska Constitution provides that “Any qualified voter may apply to the superior court to compel the Redistricting Board, by mandamus or otherwise, to perform its duties under this article or to correct any error in redistricting.”

138. Calista, as a corporation, is not itself a “qualified voter,” but it appeared in this action on behalf of qualified voters within its region, and was joined in its complaint by two individual plaintiffs who are eligible voters, William Naneng and Harley Sundown.

139. Throughout its testimony and trial, the Board persisted in either misunderstanding or misrepresenting the Calista Plaintiffs’ claims. For example,

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<sup>171</sup> Borromeo Aff. at 35.

Board Member Borromeo testified that Calista itself has no voting rights, and cannot claim any protection on behalf of its shareholders.<sup>172</sup> This testimony ignores that Calista representatives testified that they were participating in the litigation out of a mission-driven desire to further the interests of the region (pursuant to their congressional mandate under ANCSA), and that the Calista Plaintiff group included two individual residents of the region as parties and a third as a witness.

140. The Board, however, took no issue with the Intervenors' similar testimony, from representatives of Doyon and Ahtna, regarding their corporations' interest in participating in this litigation and keeping their regions together.<sup>173</sup> Michelle Anderson, the President of Intervenor Ahtna, Inc., an ANC, testified that ANCSA regional corporations are not regular for-profit corporations, and as such, making a profit is important, but taking care of Ahtna's people, and the people within the Ahtna Region, is more important.<sup>174</sup> Ms. Anderson testified that Ahtna is not unique and all ANCSA regional corporations are similarly concerned with their people's welfare.<sup>175</sup> Ms. Anderson explained that there are non-profit entities that operate parallel to Ahtna and provide essential services throughout the Ahtna

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<sup>172</sup> Borromeo Direct Aff. ¶¶ 33, 35.

<sup>173</sup> Early in trial, the Board's attorney stated that "lawyers all have two sides of their mouths and get to use both and that's one of the joys of our profession." This comment is not well-taken, as hypocrisy should not be something that brings an officer of the court joy. Trial Tr. 627:14.

<sup>174</sup> Tr. 951:25–952:1.

<sup>175</sup> Tr. 952:2–6.

Region, such as the Copper River Native Association, which provides healthcare.<sup>176</sup> Ms. Anderson agreed that there are analogues between the Ahtna Region and the Calista Region insofar as the Calista Region is woven together by Calista and the parallel non-profit entities that provide services to the people within the region.<sup>177</sup> Ms. Anderson's testimony was that Ahtna's participation in the redistricting process was consistent with its goal of representing the rights of its people: In Ahtna's view, its people are strongest when they are unified in one district.<sup>178</sup>

141. The Court has allowed numerous ANCs to intervene as Defendants and sees no reason to allow those parties to participate, but disallow Calista's participation, especially where Calista's claims are being brought forth by individual voters as well.

142. This Court accordingly concludes that the Calista Plaintiffs, collectively, have standing to bring this suit.

### **B. Constitutional Redistricting Criteria**

143. The Calista Plaintiffs' first claim is violation of the redistricting criteria laid out in the Constitution. The Alaska Constitution seeks to achieve fair representation by specifying certain criteria the Board should use in drawing Alaska's legislative districts. These criteria are set forth in Article VI, section 6:

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<sup>176</sup> Tr. 952:7–25.

<sup>177</sup> Tr. 953:1–9.

<sup>178</sup> Tr. 953:24–954:5, 20–23.

The Redistricting Board shall establish the size and area of house districts, subject to the limitations of this article. Each house district shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area. Each shall contain a population as near as practicable to the quotient obtained by dividing the population of the state by forty. Each senate district shall be composed as near as practicable of two contiguous house districts. Consideration may be given to local government boundaries. Drainage and other geographic features shall be used in describing boundaries wherever possible.<sup>179</sup>

144. House districts must be contiguous, compact, relatively socio-economically integrated, and with a population close to 1/40 of the state population. Senate districts must be comprised of two contiguous house districts. When creating both types of districts—house and senate—local government boundaries are relevant considerations.

145. Since Article VI was enacted, every redistricting map adopted by the Board has been subject to litigation. Accordingly, there is a defined body of case law from the Alaska Supreme Court addressing the proper interpretation of these section 6 criteria. The Court addresses each one in turn below.

*i. Contiguity*

146. House districts must be contiguous, and senate districts must be composed of two contiguous house districts. The Alaska Supreme Court has explained that “[c]ontiguous territory is territory which is bordering or touching.”<sup>180</sup> Because

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<sup>179</sup> Alaska Const. art. VI, § 6.

<sup>180</sup> *Hickel v. Se. Conf.*, 846 P.2d 38, 45 (Alaska 1992), *as modified on reh'g* (Mar. 12, 1993).

“[a]bsolute contiguity of land masses is impossible in Alaska, . . . a contiguous district may contain some amount of open sea.”<sup>181</sup> However, the amount of open sea that is permissible within districts is constrained by the constitutional requirements of compactness and relative socio-economic integration.<sup>182</sup>

147. Overall, contiguity is the most straightforward of the constitutional criteria, as it merely means that a house or senate district cannot be divided by another district. Contiguity can be assessed with a simple glance at a map.

148. The Calista Plaintiffs have not challenged Districts 37, 38, and 39 on the basis of contiguity; this element is therefore not at issue in this suit.

ii. Compactness

149. The basic definition of “compact” in the redistricting context “means having a small perimeter in relation to the area encompassed.”<sup>183</sup> As a general rule, “compact districting should not yield bizarre designs.”<sup>184</sup> While compactness is somewhat more nuanced than contiguity, it is also something that can be assessed by looking at a map.

150. The Calista Plaintiffs have not challenged Districts 37, 38, and 39 on the basis of compactness, so this element is also not at issue here.

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<sup>181</sup> *Hickel*, 846 P.2d at 45.

<sup>182</sup> *See Hickel*, 846 P.2d at 45.

<sup>183</sup> *Hickel*, 846 P.2d at 45 (quoting *Carpenter v. Hammond*, 667 P.2d 1204, 1218 (Alaska 1983) (Matthews, J., concurring)).

<sup>184</sup> *Hickel*, 846 P.2d at 45 (quotation omitted).

iii. Socio-Economic Integration

151. The requirement that house districts “contain[] as nearly as practicable a relatively integrated socio-economic area” is a significantly more complex factor. Likely for this reason, it has received the most attention in the case law. Much of a Redistricting Board’s work involves exploring this factor.

152. Although the analysis is fact-bound and case-specific, the Court has established indicia of socio-economic integration consistent with “the requirement that districts be composed of relatively integrated socio-economic areas . . . to ensure that a voter is not denied his or her right to an equally powerful vote.”<sup>185</sup>

153. The Court has referred to the Minutes of the Constitutional Convention when discussing the contours of a “relatively integrated socio-economic area.”<sup>186</sup> The *Hickel* court adopted the delegates’ articulation of the socio-economic principle as “[w]here people live together and work together and earn their living together, where people do that, they should be logically grouped that way,”<sup>187</sup> as well as the delegates’ definition of an integrated socio-economic unit as:

an economic unit inhabited by people. In other words, the stress is placed on the canton idea, a group of people living within a geographic unit, socio-economic, following if possible, similar

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<sup>185</sup> *Hickel*, 846 P.2d at 46 (Alaska 1992); see also *Braun v. Borough*, 193 P.3d 719, 730 (Alaska 2008) (discussing that constitutional challenges to reapportionment plans are “fact-intensive” in the context of a challenge to a challenge to an intra-borough reapportionment plan).

<sup>186</sup> *Hickel*, 846 P.2d at 46 (quotation omitted) (citing *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1360 n.11 (Alaska 1987); *Carpenter v. Hammond*, 667 P.2d 1204, 1215 (Alaska 1983); *Groh v. Egan*, 526 P.2d 863, 878 (Alaska 1974)).

<sup>187</sup> *Hickel*, 846 P.2d at 46 (quoting 3 PACC 1836 (January 11, 1956)).

economic pursuits.<sup>188</sup>

iv. Local Government Boundaries

154. Section 6 directs that the Board “may” give consideration to local government boundaries when drawing both house and senate districts. The plain language of article VI, section 6 makes clear that local boundaries are relevant to senate districts as well, as the reference to such boundaries occurs near the end of the section, not in a sentence that is limited to house districts. The Alaska Supreme Court has held that these boundaries “are significant in determining whether an area is relatively socio-economically integrated.”<sup>189</sup>

155. Section 6’s reference to local government boundaries in the context of senate districts thus, as a matter of constitutional interpretation, imports socio-economic integration into the senate district analysis. This is contrary to the Board’s assertion in this litigation that the *only* criterion for senate districts is that they be formed of two contiguous house districts.

156. *Hickel* established that boroughs are, by definition, socio-economically integrated under AS 29.05.031, which provides that “a borough must have a population which ‘is interrelated and integrated as to its social, cultural, and economic activities.’”<sup>190</sup> Because boroughs are definitionally socio-economically

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<sup>188</sup> *Hickel*, 846 P.2d at 46 (Alaska 1992), (quoting 3 PACC 1873 (January 12, 1956)).

<sup>189</sup> *Hickel*, 846 P.2d at 51 (Alaska 1992).

<sup>190</sup> *Hickel*, 846 P.2d at 51 (Alaska 1992) (quoting AS 29.05.031).

integrated, the Alaska Supreme Court has directed the Board to avoid breaking borough boundaries when drawing house district maps.<sup>191</sup>

v. Alaska Native Corporation Boundaries

157. The Alaska Supreme Court has never explicitly held that the Board must afford Alaska Native Claims Settlement Act (“ANCSA”) regional boundaries the same deference as borough boundaries. It has, however, commented on the importance of ANCSA regional boundaries, even going so far as to hold that preserving ANC boundaries is justification for significant population deviations.

158. In *Groh v. Egan*, “[f]ollowing corporate boundaries was stated as a reason for the composition of House districts 22 (Nome), which was 15 percent overrepresented, 16 (Bristol Bay), which was 10.9 percent overrepresented, and 17 (Bethel), which was 6.3 percent overrepresented.”<sup>192</sup> The *Groh* court accepted the Board’s rationale for the large deviations in the at-issue districts insofar as the Board sought to preserve “the boundaries of regional corporations established under the Alaska Native Claims Settlement Act.”<sup>193</sup> The districts proposed by the

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<sup>191</sup> *Hickel*, 846 P.2d at 57 (holding that breaking the Mat-Su Borough’s boundaries more times than necessary “unfairly dilute[d] the proportional representation guaranteed to the Mat-Su Borough’s residents”); cf. *In re 2001 Redistricting Cases*, 44 P.3d 141, 144–45 (Alaska 2002) (discussing that “dividing an unorganized area such as the Delta Junction area does not, *without more*, constitute sufficient evidence of an equal protection violation such that the board must justify its action” (emphasis added)). It is notable that the Court ordered the Board on remand to “take a hard look” at constitutional alternatives that would preserve socio-economically integrated areas, even though it declined to order that Delta Junction should not be divided. *In re 2001 Redistricting Cases*, 44 P.3d 141, 144–45 (Alaska 2002).

<sup>192</sup> *Groh v. Egan* 526 P.2d 863, 877 (Alaska 1974).

<sup>193</sup> *Groh*, 526 P.2d at 877.



Board under consideration in *Groh* were rejected because of the Court’s finding that the at-issue district lines in Western Alaska were not, in fact, coterminous with ANCSA regional boundaries. But the *Groh* court intimated that overrepresentation in a house district could be justified for the sake of preserving ANCSA regional boundaries:

Under [ANCSA], the state was divided into 12 regions, and separate corporations were established for each region. By the division it was sought to establish homogenous groupings of Native peoples having a common heritage and sharing common interests. The use of such corporate boundaries in districting might constitute justification for some population deviation.<sup>194</sup>

159. The *Groh* court’s discussion regarding the preservation of ANCSA boundaries as a possible justification for population deviations was affirmed in *Hickel*.<sup>195</sup> The *Hickel* court compared the preservation of political boundaries to the preservation of ANCSA boundaries and stated that either could justify population deviations greater than 10 percent so long as the policy was consistently applied and, in the case of ANCSA regions, “the boundaries were consistently adhered to.”<sup>196</sup>

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<sup>194</sup> *Groh*, 526 P.2d at 877.

<sup>195</sup> *Hickel v. Se. Conf.*, 846 P.2d 38, 48 (Alaska 1992), *as modified on reh'g* (Mar. 12, 1993).

<sup>196</sup> *Hickel*, 846 P.2d at 48 (citing *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1360 (Alaska 1987); *Groh*, 526 P.2d at 877–78 (characterizing the holding in *Groh* as “the utilization of a portion of the Calista corporate boundary as a district boundary was not an adequate justification [for large deviations in house districts in Western Alaska] where the Calista region was otherwise fractionated by the reapportionment plan”)).

160. Just as boroughs are socio-economically integrated by statute under AS 29.05.031, ANCSA regions are socio-economically integrated under 43 U.S.C. § 1606.<sup>197</sup> And in the unorganized borough, such as in the Calista Region, where there are no borough lines to rely upon, the ANCSA boundaries take on an additional measure of importance.

### C. Requirements of Equal Protection

161. “[T]he right to vote is fundamental.”<sup>198</sup> In *Kenai Peninsula Borough v. State*, the Alaska Supreme Court adopted the principle under the equal protection clause of the federal constitution that “the achieving of fair and effective representation for all citizens is concededly the basic aim of legislative

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<sup>197</sup> The United States Supreme Court explained in *Yellen v. Confederated Tribes of Chehalis Rsrv.*, 141 S. Ct. 2434, 2439, 210 L. Ed. 2d 517 (2021) that “ANCs come in two varieties: regional ANCs and village ANCs. To form the regional ANCs, the Act directed the Secretary of the Interior to divide Alaska into 12 geographic regions. [85 Stat. 688, 43 U.S.C.] § 1606(a). Within each region, Alaska Natives were instructed to ‘incorporate under the laws of Alaska a Regional Corporation to conduct business for profit.’ § 1606(d). To form the village ANCs, the Act identified approximately 200 Alaska ‘Native villages’ . . . . For each Alaska Native village, ANCSA ordered the ‘Native residents’ to create an accompanying village corporation to ‘hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf’ of the village §§ 1602(j), 1607 (a). ANCSA then directed the Secretary to prepare a roll showing the region and, if applicable, village to which each living Alaska Native belonged. § 1604. Enrolled Alaska Natives then received shares in their respective ANCs. §§ 1606(g), 1607.” Thus, like boroughs, ANCs are socio-economically integrated by statute; ANC regions share a common economic purpose that contributes to the political alignment of the Native populations within their borders. Moreover, the social and cultural connections within and between Alaska Native villages within the subregions delineated by ANC boundaries predate the political entities that they now exist within by centuries.

<sup>198</sup> *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1371 (Alaska 1987) (citing *Vogler v. Miller*, 651 P.2d 1, 3 (Alaska 1982)).

apportionment.”<sup>199</sup> Consistent with that principle, “it is implicit in our constitutional structure that similarly situated communities be treated in a similar manner.”<sup>200</sup> Accordingly, “a voter’s right to an equally geographically effective or powerful vote, while not a fundamental right, [is] a significant constitutional interest.”<sup>201</sup> This reflects the principle of “one person, one vote,” which is the basis for the Calista Plaintiffs’ equal protection claim.

162. But merely having the ability to go to a polling place and drop a ballot in a box does not satisfy “one person, one vote.” The way districts are drawn matters.

163. “The equal protection clause of the Alaska Constitution imposes a more strict standard than its federal counterpart.”<sup>202</sup> “[I]t is implicit in [Alaska’s] constitutional structure that similarly situated communities be treated in a similar manner.”<sup>203</sup> A showing that the Board has treated similarly situated communities dissimilarly serves as prima facie evidence that the Board has acted with discriminatory intent against those communities that have been deprived of fair representation because of the Board’s inconsistent application of a particular

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<sup>199</sup> *Kenai Peninsula Borough*, 743 P.2d at 1367 (discussing “[t]hat the equal protection clause protects the rights of voters to an equally meaningful vote”) (quotation omitted).

<sup>200</sup> *Kenai Peninsula Borough*, 743 P.2d at 1371–72 (citing Alaska Const. art II, § 19; *Abrams v. State*, 534 P.2d 91, 94 (Alaska 1975)).

<sup>201</sup> *Kenai Peninsula Borough*, 743 P.2d at 1372.

<sup>202</sup> *Hickel v. Se. Conf.*, 846 P.2d 38, 49 (Alaska 1992), *as modified on reh'g* (Mar. 12, 1993) (citing *Kenai Peninsula Borough*, 743 P.2d at 1371; *Isakson v. Rickey*, 550 P.2d 359, 362–63 (Alaska 1976)).

<sup>203</sup> *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1371 (Alaska 1987) (citing Alaska Const. art II, § 19; *Abrams v. State*, 534 P.2d 91, 94 (Alaska 1975)).

policy resulting in dissimilar treatment.<sup>204</sup> Such evidence of discrimination—whether the discrimination is facially apparent or there is evidence of discrimination under a totality of the circumstances analysis—shifts the burden to the Board to show that its reapportionment plan “will lead to more proportional representation.”<sup>205</sup> When the Board cannot show that its reapportionment plan leads to “more proportional representation,” the plan in question is unconstitutional under article I, section 1 of the Alaska Constitution.<sup>206</sup>

164. Equal protection “does not entitle political subdivisions to control a particular number of seats based upon their populations[,] . . . [but] the board cannot intentionally discriminate against a borough or any other ‘politically salient

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<sup>204</sup> See *Hickel*, 846 P.2d at 49 (citing *Kenai Peninsula Borough*, 743 P.2d at 1372 (establishing that systematically reducing the senate representation of a legally cognizable political group “below their relative strength in the state’s population” is illegitimate vis-à-vis equal protection under the Alaska Constitution); see also *In re 2001 Redistricting Cases*, 44 P.3d 141, 144 (Alaska 2002) (stating “that when a reapportionment plan unnecessarily divides a [politically salient class of voters] in a way that dilutes the effective strength of [voters in that class], the plan’s provisions will raise an inference of intentional discrimination”).

<sup>205</sup> *Kenai Peninsula Borough*, 743 P.2d at 1372.

<sup>206</sup> *Kenai Peninsula Borough*, 743 P.2d at 1373 (holding that the Board’s reapportionment plan which resulted in 2.6% underrepresentation in the senate for Anchorage voters was more disproportionate than the alternative, which would have resulted in 2.4% overrepresentation in the senate for the same voters, and thus the plan was unconstitutional under the Alaska Constitution). Unlike an equal protection challenging a particular reapportionment plan under the Federal Constitution, a claim under the Alaska Constitution does “not require a showing of a pattern of discrimination.” *Hickel*, 846 P.2d at 49. The Court affirmed in *In re 2011 Redistricting Cases* that a voter dilution claim is cognizable even where the group bringing the claim does not have sufficient population to support a senate district on its own. *In re 2011 Redistricting Cases* 274 P.3d 466, 469 (Alaska 2012) (discussing that when a reapportionment plan tends towards disproportionate representation for a particular group, the trial court must make findings regarding whether the group is “a politically salient class of voters,” and if so, whether the Board intentionally discriminated against that class).

class' of voters by invidiously minimizing that class's right to an equally effective vote."<sup>207</sup>

165. The Alaska Supreme Court has explained that when dealing with political boundaries, "where possible, all of a municipality's excess population should go to one other district in order to maximize effective representation of the excess group."<sup>208</sup> This is because dividing the "excess population among a number of districts would tend to dilute the effectiveness of the votes of those in the excess population group. Their collective votes in a single district would speak with a stronger voice than if distributed among several districts."<sup>209</sup>

166. The principle that political boundaries, including the political boundaries demarcated by ANCSA regions, must be treated consistently across the state is grounded in the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and article I, section 1 of the Alaska Constitution. In other words, failing to treat one ANCSA region in a manner consistent with how other ANCSA regions have been treated can constitute a violation of equal protection.

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<sup>207</sup> *In re 2001 Redistricting Cases*, 44 P.3d at 144 (citing *Kenai Peninsula Borough*, 743 P.2d at 1370–73).

<sup>208</sup> *Hickel v. Se. Conf.*, 846 P.2d 38, 52 (Alaska 1992).

<sup>209</sup> *Hickel*, 846 P.2d at 52 at n.26.

**D. The Board Drew Districts 37, 38, and 39 In Violation of the Constitutional Requirement of Relative Socio-Economic Integration**

167. In this case, the Court has found that the Calista Region is intensely socio-economically integrated. It has also found minimal integration between Calista villages (including Scammon Bay and Hooper Bay) and the rest of the District 39; and significant integration between Calista villages (including Quinhagak, Kwigillingok, and Kongiganak) and the rest of District 37.

168. As the Alaska Supreme Court held in *Hickel*, “‘relatively’ does not mean ‘minimally’ and it does not weaken the constitutional requirement of integration.”<sup>210</sup>

169. The Court concludes that the inclusion of Hooper Bay and Scammon Bay in District 39 violates the constitutional requirement of relative socio-economic integration.

170. The Court further concludes that inclusion of Hooper Bay and Scammon Bay in District 38, and Quinhagak, Kwigillingok, and Kongiganak in District 37, would satisfy the requirement, as those communities are socio-economically integrated with those districts.

171. The Court additionally concludes that the division of the Calista Region population into two Senate districts, when it could have largely been consolidated into one, violates the constitution’s directive to consider local government

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<sup>210</sup> *Hickel*, 846 P.2d at 47.

boundaries—as interpreted by the Alaska Supreme Court—because Calista’s ANC boundary is legally equivalent to a local government boundary.

172. Finally, according to Member Borromeo’s testimony, the Board *did not even consider* a map that placed Hooper Bay and Scammon Bay into District 38, much less a map that placed the Calista Region into two house districts and one senate district as its population warranted.<sup>211</sup> Instead, she explained that the Board ruled out that possibility before it was even addressed, on the assumption that placing Calista into two house districts could dilute the Native vote in District 37 in a manner that would run afoul of the federal Voting Rights Act.<sup>212</sup> This is contrary to the process laid out by the Alaska Supreme Court in *Hickel*, which requires a Board to consider Alaska’s constitutional factors—including socio-economic integration and local boundaries—before turning to compliance with the VRA.

173. The Court therefore also concludes that the Board’s process improperly prioritized the VRA over Alaska’s constitutional criteria, in violation of the Alaska Supreme Court’s *Hickel* process.

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<sup>211</sup> Borromeo Dep. 224:15–225:4

<sup>212</sup> Borromeo Dep. 251:8–18. This is confirmed by her affidavit testimony as well, which stated that Tyonek, Beluga, Nanwalek, and Port Graham, three communities within the KPB, were added to House District 37 for two reasons: (1) to preserve the Alaska Native voting majority in the district for federal Voting Rights Act purposes, and (2) to achieve a district population closer to the ideal number. This testimony establishes that the Board considered District 37 solely from a VRA perspective and from the perspective of population numbers—both of which are secondary, not primary, considerations under Alaska law.

**E. The Board Treated the Calista Region Inconsistently in Violation of Equal Protection.**

174. Here, the Board gave nearly all other ANCSA boundaries the same weight as borough and municipal boundaries. Chair Binkley testified that in the absence of municipal or borough boundaries, the Board used ANCSA boundaries.<sup>213</sup> Member Bahnke likewise testified that ANCSA boundaries are the closest thing to borough boundaries in regions where there are no borough boundaries, and explained that ANCSA boundaries were in fact originally set to follow pre-existing socio-economic integration.<sup>214</sup> Member Borromeo testified that the Board considered ANCSA boundaries when it drew District 36,<sup>215</sup> which broke three borough boundaries but kept the ANCSA regions intact.<sup>216</sup>

175. The weight the Board gave ANCSA boundaries is evident in the Proclamation Plan, which placed nearly all other ANCs into as few districts as their population could support. Notably, the Board's metes and bounds descriptions of house districts throughout the state frequently use ANC boundaries as the official borders for the redistricting plan.

176. As Member Borromeo confirmed at her deposition, the Board preserved the boundaries of ten out of twelve regional ANCs. The only two exceptions were the Calista and Chugach Corp. regions. Chugach did not participate in the redistricting

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<sup>213</sup> Binkley Dep. 217:8–15.

<sup>214</sup> Bahnke Dep. 57:13–25.

<sup>215</sup> Borromeo Dep. 131:25–132:11.

<sup>216</sup> Borromeo Dep. 136:13–137:1.



process and the Board heard no testimony asking it to keep the region in as few districts as possible. Thus, the only ANC that asked to have its population consolidated, but was split into more districts than its population warranted, was Calista—an ANC that happens to be in an unorganized area of the state, with no borough or municipal boundaries.

177. The only reason provided for the division of Calista’s population was the Board’s need to balance the populations of Districts 37 and 39. But this reason falls flat in the face of the Alaska Supreme Court’s holding that preserving ANC boundaries is adequate justification for significant population deviation, in proclamation plans where ANC boundaries were consistently adhered to.<sup>217</sup>

178. Based on the above, the Court concludes that the Board’s inconsistent treatment of the Calista Region, in the absence of adequate or really any justification for doing so, violates the Alaska Constitution’s equal protection clause. It is not consistent with the precepts of equal protection to preserve the borders of ten other ANC regions, and maximize the proportional representation of persons within those boundaries, at the expense of the socio-economically integrated Calista Region’s population’s voting power.

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<sup>217</sup> *Hickel v. Se. Conf.*, 846 P.2d 38, 48 (Alaska 1992), *as modified on reh'g* (Mar. 12, 1993) (citing *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1360 (Alaska 1987); *Groh*, 526 P.2d at 877–78 (characterizing the holding in *Groh* as “the utilization of a portion of the Calista corporate boundary as a district boundary was not an adequate justification [for large deviations in house districts in Western Alaska] where the Calista region was otherwise fractionated by the reapportionment plan”)).

## CONCLUSION AND ORDER

Based on the above, the Court rules as follows:

1. The Proclamation Plan contains errors in redistricting with regard to Districts 37, 38, and 39 and is therefore invalid;
2. The Proclamation Plan is remanded to the Board;
3. On remand, the Board is directed to treat the Calista Region as a socio-economically integrated unit akin to a local government unit, and at minimum place Hooper Bay and Scammon Bay in District 38, and Quinhagak, Kwigillingok, and Kongiganak in District 37.

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