IN THE SUPREME COURT OF THE STATE OF ALASKA

In Re 2021 Redistricting Cases.	)	Supreme Ct. No. S-18332
	)	Superior Court Case Nos.
	)	3AN-21-08869 CI
	)	1JU-21-00944 CI

MUNICIPALITY OF SKAGWAY BOROUGH AND BRAD RYAN'S PETITION FOR REVIEW

March 2, 2022

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TABLE OF CONTENTS

I. QUESTIONS PRESENTED FOR REVIEW 1
II. STATEMENT OF GROUNDS FOR GRANTING REVIEW 2
III. INTRODUCTION 2
A. Socio-Economic Integration. 2
B. Splitting the Mendenhall Valley Neighborhood. 10
C. Fair and Effective Representation. 11
D. *Hickel* Process. 12
IV. STANDARD OF REVIEW 13
V. STATEMENT OF FACTS 18
A. The Trial Court's Findings. 22
B. Integration via Common Major Economic Activity. 24
C. Integration via Land Management and Historical Links. 31
D. Integration via Transportation. 34
E. Consideration of Skagway Alternative Maps. 36
VI. ARGUMENT 39
A. The Trial Court Erred in Concluding the Kenai Case Excuses the Board from Considering the Requirement to Maximize Relative Socio-Economic Integration Merely Because Juneau Is a Borough. 40
B. The Trial Court Erred in Allowing the Board to Inconsistently and Perfunctorily Apply the Requirement to Maximize Relative Socio-Economic Integration Throughout Its Proclamation Plan. 46
C. The Trial Court Erred in Concluding That Respect for Neighborhood Boundaries Is Irrelevant When Precedent Has Established It as an Admirable Goal Where Consistent with Other Legal Requirements. 49
D. The Trial Court Erred in Failing to Consider Skagway's Fair and Effective Representation. 51
E. The Trial Court Erred in Concluding the Board Followed the Hickel Process Because the Board Actively Considered VRA Related Issues from the Beginning of Its Mapping. 54
VII. CONCLUSION 55

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The Municipality of Skagway Borough and Brad Ryan ("Skagway"), through their counsel, Brena, Bell & Walker, P.C., hereby seek appellate review of the trial court's Findings of Fact and Conclusions of Law and Order ("Order"), issued February 15, 2022.

I. QUESTIONS PRESENTED FOR REVIEW

1. Whether the trial court erred in holding evidence of socio-economic integration was not relevant when considering whether to district Haines, Skagway, and Gustavus in District 4 with Downtown Juneau or in District 3 with the upper portion of the Mendenhall Valley. [1]

2. Whether the trial court erred in not holding the Alaska Redistricting Board ("Board") has a duty to maximize socio-economic integration when determining whether to district Haines, Skagway, and Gustavus in District 4 with Downtown Juneau or in District 3 with the upper portion of the Mendenhall Valley.

3. Whether the trial court erred in holding the Board's splitting of the Mendenhall Valley neighborhood in order to district Haines, Skagway, and Gustavus in District 3 with the upper portion of the Mendenhall Valley and the remainder of the Mendenhall Valley with Downtown Juneau was of no consequence. [2]

4. Whether the trial court erred in not addressing Skagway's argument regarding fair and effective representation. [3]

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1 Order at 121 [Exc. 902].

2 Order at 123 [Exc. 904].

3 Order at 122 n.736 [Exc. 903].

5. Whether the trial court erred in holding the Board sufficiently followed the *Hickel*[4] process despite finding that "transcripts and videos of public Board meetings make it abundantly clear that Board members were actively considering [Voting Rights Act (VRA)]-related issues since the beginning of the process."[5]

II. STATEMENT OF GROUNDS FOR GRANTING REVIEW

Review of the questions presented should be granted for the reasons set forth in Appellate Rule 402(b)(1) and (2). In light of the extremely expedited timeline for disposition of appeals related to the trial court's order, all appeals related to the Order should be decided in advance of any remand to the Board. Delay in deciding all appeals related to the Order will likely result in 2022 elections being determined under a redistricting plan that has not been fully litigated. Thus, absent immediate review of the Order, Plaintiffs' legal rights will be impaired. Additionally, the trial court's ruling regarding Skagway involves important questions of law on which there is substantial grounds for differences of opinion, and immediate review by this Court will "materially advance the ultimate termination of the litigation" per Appellate Rule 402(b)(2).

III. INTRODUCTION

A. Socio-Economic Integration.

The constitutional guidance for establishing house districts is set forth in article VI, section 6, which provides the Board "shall" establish districts "subject to the limitations of

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[4] *Hickel v. Southeast Conference*, 846 P.2d 38 (Alaska 1992).

[5] Order at 128 [Exc. 909].

this article." Importantly, article VI, section 6 specifically and expressly sets forth the limitations on the Board's discretion. The primary limitation to the Board's discretion at issue in this appeal is the constitutional requirement in article VI, section 6 that *"[e]ach house district shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area."*

This Court's guidance as to this constitutional requirement is sorely needed. The trial court adopted the Board's argument that evidence of relative socio-economic integration is legally irrelevant when considering whether to district Haines, Skagway, and Gustavus with Downtown Juneau in District 4 or to district them with the upper portion of the Mendenhall Valley in District 3. Skagway disagrees.

Skagway believes this Court's prior cases require a fact-specific inquiry when applying the article VI, section 6 constitutional requirement for relative socio-economic integration.[6] Moreover, Skagway believes this Court's prior cases also make clear that the Board should seek to maximize socio-economic integration to the degree practicable, particularly when doing so does not diminish any of the other constitutional requirements for establishing a district.[7] In this case, however, the Board has done neither. Instead, the Board simply asserted, and the trial court agreed, that because the upper Mendenhall Valley and Downtown Juneau are in the same borough, evidence demonstrating that Haines, Skagway, and Gustavus are highly socio-economically integrated with Downtown Juneau

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6 *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1362-63 (Alaska 1987).

7 *Hickel*, 846 P.2d at 73.

and not socio-economically integrated with the upper portion of the Mendenhall Valley is not legally relevant.[8] Again, Skagway disagrees.

The Board's position fails for several reasons. First, the Board, and the trial court, ignore the plain reading of article VI, section 6 that requires the Board to establish districts "containing as nearly as practicable a relatively integrated socio-economic area." There is no exception to this clear language that allows this constitutional requirement to be ignored or diminished when boroughs are joined together. In fact, there is no constitutional requirement that borough boundaries even be considered when establishing districts, much less considered in a fashion that would ignore or diminish the constitutional requirement to establish districts which are maximally socio-economically integrated to the degree practicable.

Second, the Board and the trial court ignore the constitutional framers' intended meaning for these words. The framers stated, "[W]here people live together and work together and earn their living together, where people do that, they should be logically grouped that way."[9] These words may not be ignored. The people of Haines, Skagway, and Gustavus live and work together with the people of Downtown Juneau, and not with the people from the upper portion of the Mendenhall Valley.

Third, the Board and the trial court interpret the holding in *Kenai* so broadly that the constitutional requirement to ensure relative socio-economic integration to the degree

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[8] Order at 122-23 [Exc. 903-904].

[9] *Hickel*, 846 P.2d at 46.

practicable would no longer has significant meaning as a limitation on the Board's discretion. Instead, the Board's interpretation would set aside this constitutional requirement without even the benefit of a fact-specific inquiry whenever a district is formed that connects at any point to a borough. Such an overbroad reading simply ignores the context of *Kenai*. *Kenai* did not concern or address the constitutional obligation to maximize socio-economic integration to the degree practicable. This was because in *Kenai* (unlike in this case) there was only one possible district and no constitutionally viable alternative,[10] so the constitutional obligation to maximize socio-economic integration among alternatives was not before the Court in *Kenai*. Here, the Board's constitutional obligation to maximize socio-economic integration is squarely before this Court.

In *Kenai*, after conducting a fact-specific inquiry as to the interaction between the communities within the district *and* the communities outside the district but within the borough, the *Kenai* Court held there was "the requisite interconnectedness and interaction mandated by article VI, section 6."[11] *Kenai* may simply not reasonably be read to permit the constitutional requirement of relative socio-economic integration to be ignored or to be diminished when there are multiple viable alternatives, as in this case, some of which would maximize relative socio-economic integration and some of which would minimize relative socio-economic integration. The Board simply believes it may district Haines,

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[10] *Kenai,* 743 P.2d. at 1362.

[11] *Kenai,* 743 P.2d at 1363.

Skagway, and Gustavus with Juneau anyway it chooses without even considering socio-economic factors among the alternatives, and Skagway disagrees.

Fourth, the factual record in this case demonstrates that including Haines, Skagway, and Gustavus in District 4 with Downtown Juneau meets every constitutional requirement and maximizes relative socio-economic integration to the degree practicable. The factual record in this case also demonstrates that including Haines, Skagway, and Gustavus in District 3 with the upper portion of the Mendenhall Valley does not meet even the minimal requirements for relative social-economic integration much less maximize relative socio-economic integration to the degree practical. The Board and the trial court would have this Court ignore this clear record simply because the upper portion of the Mendenhall Valley is in the same borough as Downtown Juneau.

The Board also relies upon an incorrect reading of *Hickel.* In *Hickel*, this Court held that two areas "wholly of land belonging to a single borough," may be considered "adequately integrated" when establishing a district.[12] In this case, however, the issue is not whether the upper portion of the Mendenhall Valley and Downtown Juneau are "adequately integrated" for forming a district because they are being placed in separate districts. Instead, the issue in this case is whether Haines, Skagway, and Gustavus should be "deemed" as a matter of law to be maximally socio-economically integrated with the

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[12] *Hickel*, 846 P.2d at 52 ("As noted above, a borough is by definition socio-economically integrated. It is axiomatic that a district composed wholly of land belonging to a single borough is adequately integrated.")

upper portion of the Mendenhall Valley simply because the Mendenhall Valley is in the same borough with Downtown Juneau.

In practical effect, the Board's use of a chain of proxy concepts from prior cases which arose in quite different factual contexts simply ignores the actual record evidence of relative socio-economic integration. Such an approach expands the meaning of relative socio-economic integration so broadly that it no longer operates as a constraint to the Board's unfettered discretion. Such an approach also may not be fairly reconciled with the fact-specific approach this Court has taken in the past when evaluating the relative socio-economic integration among viable alternatives.[13] Socio-economic integration is a constitutional requirement that the Board should respect and address directly based on socio-economic evidence, and not with proxy concepts from prior, unrelated cases.

The Board's approach is particularly troubling in this case because it inconsistently applies the constitutional requirements for establishing districts based on whether a particular district met the extra-constitutional goals. For example, the Board chose to create a Doyon District (District 36) and join all of the Doyon and Ahtna villages in a single district.[14] In order to do so, the Board ignored any reasonable concept of compactness, applied ANCSA[15] boundaries inconsistently, ignored borough boundaries, favored the Native voters over the non-Native voters who were greater than 70 percent of the voting

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13 *Kenai,* 743 P.2d at 1362-63.

14 *See* Board Meeting Tr. 253:20-25 (Nov. 5, 2021) ("the Board has – with District 36, it's really sought to create a Doyon district.") [ARB008110] [Exc. 85].

15 Alaska Native Claims Settlement Act.

population, and ignored the complete lack of socio-economic integration between the rural communities on the lower Yukon and the Richardson Highway communities.[16] Perhaps most revealing to the Board's position that socio-economic evidence should be disregarded when boroughs are involved is the Board's completely inconsistent approach. In placing Haines, Skagway, and Gustavus in District 3 with the upper portion of the Mendenhall Valley, the Board made some attempt to justify their action based on relative socio-economic integration.[17] As it became obvious that any fair comparison of relative socio-economic integration among the Board's alternatives would not support the Board's action, then it adopted the position it now holds before this Court that relative socio-economic integration is legally irrelevant. Such an approach is disingenuous, at best.

The Board's inconsistency in applying the constitutional requirement for relative socio-economic integration is also on full display in the Board's treatment of Cantwell. At the last minute, a member of the Board solicited socio-economic information from Ahtna to support the Board's taking Cantwell from the Matanuska-Susitna ("Mat-Su") Borough and placing it in what the Board members referred to as the "Doyon District" (District 36).[18] The November 3, 2021, Ahtna letter was received just two days before the final map was approved, and it suggested homogeneity of traditions and lifestyles as well as some integration through family ties between the 30 Ahtna shareholders in Cantwell and

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[16] Order at 88-96 (generally focusing on the integration between Doyon and Ahtna villages and not the rest of District 36) [Exc. 869-877].

[17] Board Meeting Tr. 121:11 – 123:25 (Nov. 2, 2021) [ARB008818-20] [Exc. 4-6].

[18] Ahtna letter to Board (Nov. 3, 2021) ARB001795-96 [Exc. 7-8].

the other Ahtna villages.[19] Based primarily on this last-minute letter, the Board disregarded entirely the legal assumption of relative socio-economic integration within a borough, disregarded both the Denali and Mat-Su Borough boundaries, split the upper Denali Borough by road, and ignored a request by the Mat-Su Borough to keep Cantwell with the Mat-Su District.[20] To be fair to all concerned, either all parts of a borough are socio-economically integrated to the degree that socio-economic information is legally irrelevant or it is not. In the case of Cantwell, when a member of the Board solicited socio-economic information at the last moment, the Board seized upon that information to justify ignoring borough boundaries entirely; while in the case of Haines, Skagway, and Gustavus, the Board's position to this Court is that it is legally irrelevant to even be considered. The Board cannot have it both ways.

Similarly, the Board's position that socio-economic factors are irrelevant to the point of interconnection with a borough is directly contradicted by the Board's own efforts to completely rework the point and manner of interconnection between the Fairbanks North Star Borough and District 36.[21] It would seem the Board's position is that whether factors denoting socio-economic integration are legally relevant depends on whether it is in furtherance of a nonconstitutional goal established by the Board. This Court should ensure that the constitutional requirement for districts based on the relative socio-economic

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[19] The Ahtna letter does not address the 170 non-Native people living in Cantwell.

[20] Board Meeting Tr. 72:7 – 80:7 (Nov. 4, 2021) [ARB009242-50] [Exc. 74-82].

[21] Board Meeting Tr. 242:8 – 271:8 (Nov. 3, 2021) [ARB007602-31] [Exc. 11-40].

integration to the degree practicable not be ignored, diminished, inconsistently applied, or so broadly construed that it no longer represents a constitutional constraint on the Board's discretion to establish districts based on the biases of its members.

B. Splitting the Mendenhall Valley Neighborhood.

With Haines, Skagway, and Gustavus in District 4 with Downtown Juneau, the population count as between District 3 and District 4 is balanced so that the Mendenhall Valley and Downtown Juneau could both be kept whole and in separate districts, as requested by every commenter that addressed this issue.[22] When the Board ignored the overwhelming public comment to the contrary and put Haines, Skagway, and Gustavus in District 3 with the Mendenhall Valley, the Mendenhall Valley became overpopulated by roughly 4,300 people.[23] As a result, the Mendenhall Valley could not be kept whole or separate from Downtown Juneau. Instead, the Mendenhall Valley neighborhood had to be split with roughly 4,300 people severed from the Mendenhall Valley and put in District 4 with Downtown Juneau.

This action by the Board minimized the relative socio-economic integration of both District 3 and District 4. It also ignored the high degree of socio-economic integration within the Mendenhall Valley neighborhood that was lost when it was split, and roughly 4,300 people from that neighborhood were placed in District 4 with Downtown Juneau. It also ignored the geographic separation between the population center of the Mendenhall

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[22] Order at 144 [Exc. 925].

[23] Trial Tr. 1798:10 – 1799:10 (Simpson) (agreeing he could have kept the Mendenhall Valley whole if he had kept Skagway and Haines with Downtown Juneau) [Exc. 188-189].

Valley which is roughly 10 miles away from the population center of Downtown Juneau and represents a natural boundary.

The Board and the trial court simply disregard all of these consequences and suggested splitting neighborhoods to join communities in the least socio-economic manner possible is of no constitutional or other consequence.[24] Skagway disagrees. Consideration of neighborhoods has been supported by this Court when it does not otherwise diminish a constitutional requirement.[25] As noted in *Hickel*, "[l]ogical and natural boundaries cannot be ignored without raising the specter of gerrymandering."[26] This Court should not permit such logical and natural boundaries to simply be ignored.

C. Fair and Effective Representation.

The Board's failure to consider socio-economic factors when districting Haines, Skagway, and Gustavus with the upper portion of the Mendenhall Valley also raises the specter of denying Haines, Skagway, and Gustavus voters their equal protection right to "an equally powerful vote."[27] The record in this case demonstrates that the voters in the upper portions of the Mendenhall Valley do not share the same or even similar concerns as the voters in Haines, Skagway, and Gustavus. In fact, on the single issue of greatest consequence to Skagway and perhaps to all three of these communities—the construction

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[24] Order at 122-23 [Exc. 903-904].

[25] *In Re 2001 Redistricting Cases,* 47 P.3d 1089, 1090-91 (Alaska 2002) (citations omitted).

[26] *Hickel*, 846 P.2d at 51.

[27] *Hickel*, 846 P.2d at 46.

of a road from Juneau --the voters in the Mendenhall Valley (and Board member Simpson and his wife) strongly support the road,[28] while the voters of Skagway strongly oppose the road as an existential threat to their very livelihood based on the cruise ship industry.[29]

Placing over 4,000 voters from Haines, Skagway, and Gustavus with over 14,000 voters from the upper Mendenhall Valley who do not share the same or similar concerns and, in fact, disagree on major ongoing issues of concern, simply denies fair and effective representation for the voters of Haines, Skagway, and Gustavus. The trial court simply did not separately consider this issue.[30] This Court should separately consider this issue.

D. *Hickel* Process.

The record demonstrates the Board did not follow the *Hickel* process and drew the initial map taking into consideration VRA implications. In doing so, the Board locked in the VRA districts early and varied them very little.[31] This resulted in limiting the Board's consideration of the full range of alternative mapping options that would otherwise comply with the constitutional requirements set forth in the Alaska Constitution. The trial court

[28] Trial Tr. 1752:17 – 1760:4 (Simpson) [Exc. 173-181].

[29] Ex. SGY-2014 [Exc. 767]; Trial Tr. 1752:23 – 1761:4 (Simpson) [Exc. 173-182]; *see also* Ex. SGY-2016 (2005 letter from Skagway Mayor Bourcy regarding Skagway's position on Juneau Access) [Exc. 769]; *see also,* Trial Tr. 1901:7 – 1902:2 (Wrentmore) (discussing decreased cruise activity in Sitka and the industry's focus on optimizing profit) [Exc. 204-205]; Trial Tr. 1878:22 – 1880:16 (Ryan) (discussing risks of a Juneau road for Skagway's port potential for freight and ore) [Exc. 193-195].

[30] Order at 122 n.736 [Exc. 903].

[31] Order at 126 [Exc. 907].

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acknowledged as much but was unwilling to enforce the *Hickel* process.[32] This Court should enforce it.

IV. STANDARD OF REVIEW

Review of the Board's Proclamation Plan is *de novo*,[33] and this Court has a duty to independently measure each district in the Plan against constitutional standards.[34] This Court has established the general standard of review to be applied by the courts when exercising jurisdiction under article VI, section 11:

> We view a plan promulgated under the constitutional authorization of the governor to reapportion the legislature in the same light as we would a regulation adopted under a delegation of authority from the legislature to an administrative agency to formulate policy and promulgate regulations. We have stated that we shall review such regulations first to insure [sic] that the agency has not exceeded the power delegated to it, and second to determine whether the regulation is reasonable and not arbitrary.[35]

In determining whether a regulation (or plan) is reasonable and not arbitrary, a court must examine not policy but process and must ask whether the agency (or Board) "has failed to consider an important factor or whether it has not really taken a 'hard look' at the salient problems and has not generally engaged in reasoned decision making."[36]

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[32] Order at 124-30 [Exc. 905-911].

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

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

[35] *Carpenter v. Hammond*, 667 P.2d 1204, 1214 (Alaska 1983) (quoting *Groh v. Egan,*526 P.2d 863, 866 (Alaska 1974); s*ee also In re 2001 Redistricting Cases*, 2002 WL 34119573 at 19 (Alaska Super. Ct. (Feb. 1, 2002)) (citing *Carpenter,* 667 P.2d at 1214).

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

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The U.S. Supreme Court noted as follows with respect to "reasoned decision-making" in the context of administrative appeals:

> Not only must an agency's decreed result be within the scope of its lawful authority, but the process by which it reaches that result must be logical and rational. Courts enforce this principle with regularity when they set aside agency regulations which, though well within the agencies' scope of authority, are not supported by the reasons that the agencies adduce.[37]

The U.S. Supreme Court has also found "reasoned decision-making" when an agency weighed competing views, selected a formula (or plan) with adequate support in the record, provided a detailed explanation of its choice, and responded at length to contrary views.[38]

The D.C. Circuit, which regularly makes determinations with respect to "reasoned decision-making" in the extensive administrative appeals that come before it, has indicated that "reasoned decision-making" includes "an examination of the relevant data and a reasoned explanation supported by a stated connection between the facts found and the choice made."[39] The D.C. Circuit has also identified four principles to guide the inquiry regarding "reasoned decision-making," deliberation, transparency, rationality, and evidentiary propriety.[40] Regarding deliberation, "the agency must 'engage the arguments

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[37] *Allentown Mack Sales and Service, Inc. v. N.L.R.B.*, 522 U.S. 359, 374 (1998).

[38] *Fed. Energy Regulatory Comm'n v. Elec. Power Supply Ass'n*, 577 U.S. 260, 289-95 (2016).

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

[40] *Sierra Club v. Salazar*, 177 F.Supp. 3d 512, 532 (D.C. Cir. 2016) (internal citations omitted).

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raised before it.' . . . It follows that an agency's decision is not deliberative if it fails to 'respond meaningfully to objections raised by a party.'"[41]

Regarding transparency, "the agency 'must, of course, reveal the reasoning that underlies its conclusion.'"[42] Regarding rationality, "if an agency's interpretation of a regulation [or constitutional provision] shifts such that the agency is treating like situations differently without sufficient reason, the court may reject the agency's interpretation as arbitrary."[43] And regarding evidentiary propriety, "[r]easoned decision-making also precludes the agency from offering 'an explanation . . . that runs counter to the evidence before the agency.'"[44]

The D.C. Circuit has also explained that "[a]rbitrary and capricious review demands evidence of reasoned decision making *at the agency level*; agency rationales developed for the first time during litigation do not serve as adequate substitutes."[45] Courts regularly enforce the standard of "reasoned decision-making" when they remand cases because the agency fell short of "reasoned decision-making," which includes an adequate explanation of the agency's reasoning and adequate support in the record for the agency's decision. By

41 *Sierra Club v. Salazar*, 177 F.Supp. 3d at 532.

42 *Sierra Club v. Salazar*, 177 F.Supp. 3d at 532.

43 *Sierra Club v. Salazar*, 177 F.Supp. 3d at 532-33.

44 *Sierra Club v. Salazar*, 177 F.Supp. 3d at 533.

45 *Williams Gas Processing – Gulf Coast Co., L.P. v. Fed. Energy Regulatory Comm'n*, 475 F.3d 319, 326 (D.C. Cir. 2006).

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way of example, the U.S. Supreme Court regularly remands cases for failure to engage in "reasoned decision-making,"[46] as does the D.C. Circuit.[47]

With respect to judicial review in redistricting cases in particular, this Court has stated that "review is meant to ensure that the Board's Proclamation Plan is not unreasonable and is constitutional under article VI, section 6 of the Alaska Constitution."[48] The Board's redistricting process must also be constitutional under article VI, section 10. In applying this standard to the Board's Proclamation Plan, this Court considers the evidence before it to ascertain whether the Plan is both reasonable and constitutional. The inquiry is fact specific.

For example, the court in *Hickel* carefully considered facts specific to various regions and communities in Alaska in determining whether various districts passed

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[46] *See Motor Vehicle Mfrs. Ass'n of the U.S. v. State Farm Mutual Auto. Ins. Co*., 463 U.S. 29, 51-57 (1983) (remanded due to lack of reasoned decision-making, particularly a failure to offer a rational connection between facts and decision made); *Allentown Mack Sales and Service, Inc. v. Nat'l Labor Relations Bd*., 522 U.S. 359, 375-80 (1988) (remanded due to lack of record evidence and reasoned decision-making); *Judulang v. Holder*, 565 U.S. 42, 63-64 (2011) (remanded due to lack of reasoned decision-making, particularly inadequate rationale without support for decision); *Dep't of Commerce v. N.Y*., 139 S. Ct. 2551, 2575-76 (2019) (remanded due to lack of reasoned decision-making, particularly inadequate explanation for agency action).

[47] *See Elec. Consumers Res. Council*, 747 F.2d at 1518 (remanded due to lack of record evidence and reasoned decision-making); *Colo. Interstate Gas Co. v. Fed. Energy Regulatory Comm'n*, 850 F.2d 769, 773-75 (D.C. Cir. 1998) (remanded due to lack of reasoned decision-making); *Williams Gas,* 475 F.3d at 330 (remanded for lack of reasoned decision-making at the agency level); *Tarpon Transmission Co. v. Fed Energy Regulatory Comm'n*, 860 F.2d 439, 445-46 (D.C. Cir. 1988) (remanded for want of reasoned decision-making).

[48] *In re 2011 Redistricting Cases*, 294 P.3d at 1037 (2012).

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constitutional muster. In its analysis of districts in Southeast Alaska, the court concluded "[l]ogical and natural boundaries cannot be ignored without raising the specter of gerrymandering."[49] The court explained:

> The trial court agreed [that Districts, 1, 2, and 3 violated article VI, section 6], finding specifically that "The districts of Southeast are not socio-economically integrated and they easily could have been." We affirm this conclusion.
>
> . . . .
>
> These districts do not contain, as nearly as practicable, relatively integrated socio-economic areas, identified with due regard for local governmental and geographic boundaries.[50]

The court in *Hickel* went through a similar fact-based review for the Mat-Su Borough:

> District 6 merges Palmer with the Prince William Sound communities. Palmer is the governmental center of the Mat-Su Borough, an established agricultural area. In contrast, the Prince William Sound communities are oriented toward commercial fishing and maritime activities. The record does not establish any significant interaction or interconnectedness between these areas.
>
> . . . .
>
> District 28 also does not contain relatively socio-economically integrated areas. As above, the record simply does not establish significant social or economic interaction between the connected areas.[51]

The court then went through a fact-based review for Election District 35, which encompassed a vast part of interior and northern Alaska, and "[b]ased on the record"

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[49] *Hickel*, 846 P.2d at 51.

[50] *Hickel*, 846 P.2d at 50.

[51] *Hickel*, 846 P.2d at 52-53.

concluded that District 35 was unconstitutional.[52] The court even addressed the issue of the division of the Aleutian Islands into two districts *sua sponte* because the division was "so plainly erroneous."[53]

Reviewing courts "always have authority to review the constitutionality of the action taken."[54] For judicial review to be meaningful, the court must be able to discern from the evidence whether the requirements of the Alaska Constitution were actually met.[55] This is not a deferential standard of review, nor should it be, when the issues before the Court are issues of constitutional compliance.

This Court has noted the difficulties in the redistricting process and added: "But these difficulties do not limit the Board's responsibility to create a constitutionally compliant redistricting plan, nor do they '*absolve this court of its duty to independently measure each district against constitutional standards*.'"[56]

V. STATEMENT OF FACTS

In addition to the facts set forth in the Order, the following facts are relevant to this Court's *de novo* review of the Plan. Downtown Juneau and the Mendenhall Valley are

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[52] *Hickel*, 846 P.2d at 52-53.

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

[54] *Carpenter*, 667 P.2d at 1214; s*ee also In re 2001 Redistricting Cases*, 2002 WL 34119573 at 19 (citing *Carpenter,* 667 P.2d at 1214).

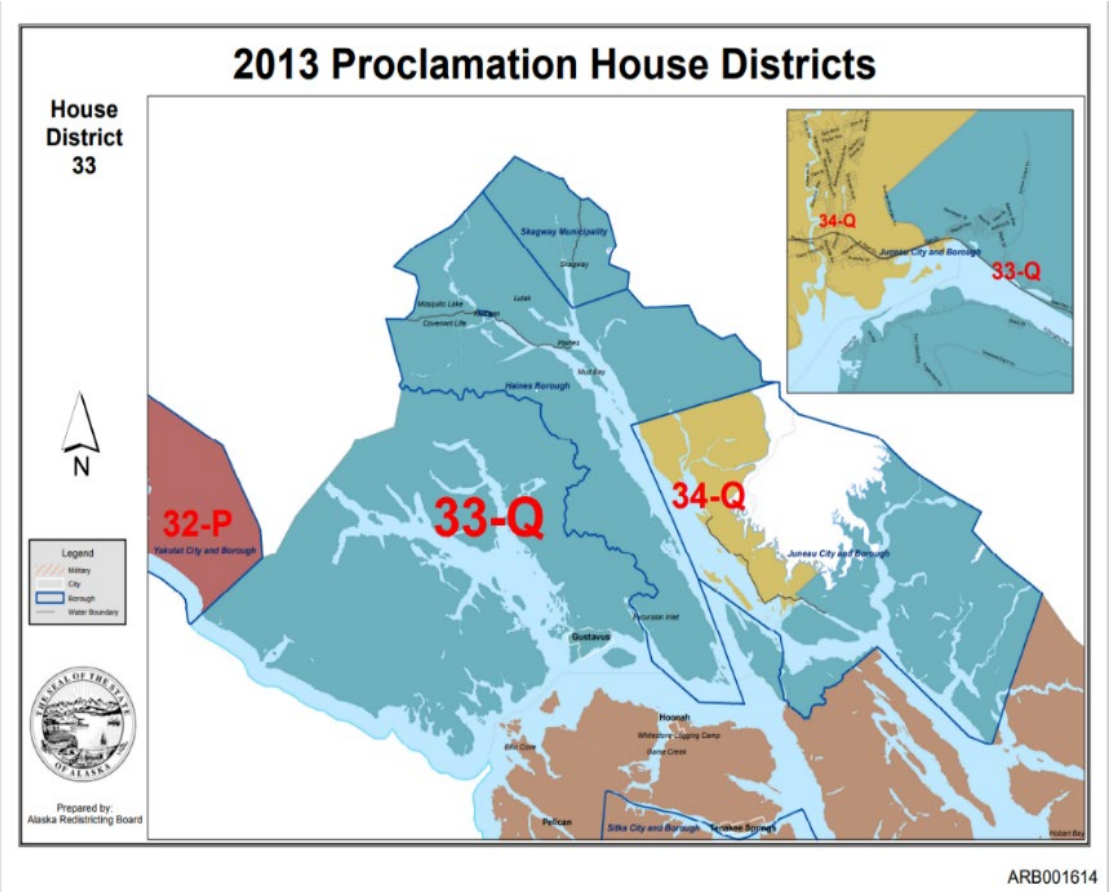
[55] *In re 2011 Redistricting Cases*, 294 P.3d at 1034 (citing *In re 2011 Redistricting Cases*, 274 P.3d at 467-68).

[56] *In re 2011 Redistricting Cases*, 294 P.3d at 1035 (quoting *In re 2001 Redistricting Cases*, 44 P.3d at 147) (emphasis added).

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approximately 10 miles apart.[57] The overwhelming majority of people that commented asked for Downtown Juneau and the Mendenhall Valley to be kept whole and districted into two separate districts.[58]

Haines, Skagway, and Gustavus are highly socio-economically integrated with Downtown Juneau, and are not socio-economically integrated with the upper portion of the Mendenhall Valley. Reflecting this reality, for the past decade, Haines, Skagway, and Gustavus have been districted with Downtown Juneau since the last redistricting cycle:[59]



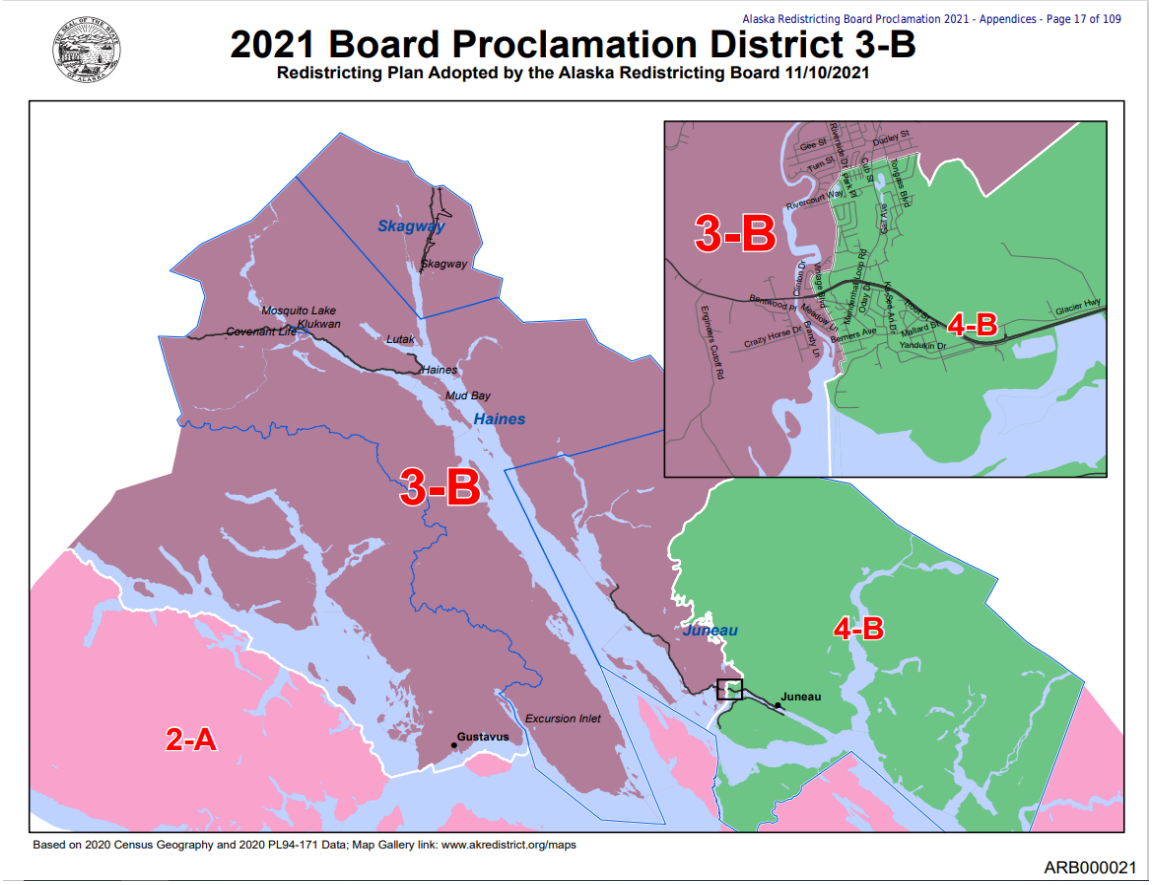
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57 *See* maps.google.com (directions from Juneau, AK to Mendenhall Valley, AK).

58 Order at 120, 144-146 [Exc. 901, 925-927].

59 2013 Proclamation Map for Districts 33 and 34 [ARB001614] [Exc. 86].

The Board's Proclamation Plan places Haines, Skagway, and Gustavus in District 3 with the upper portion of the Mendenhall Valley, and separates them from Downtown Juneau:[60]

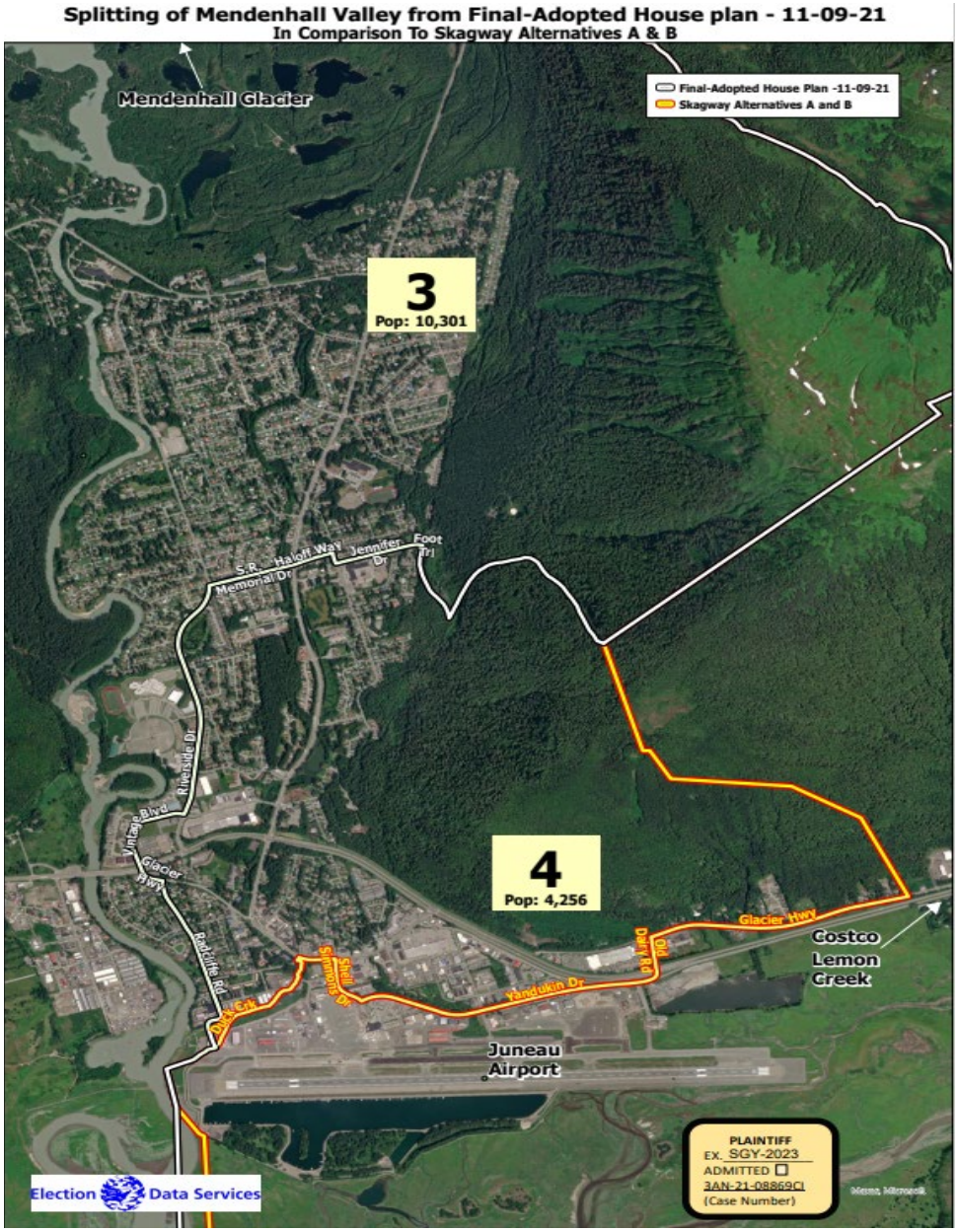


Districting Haines, Skagway, and Gustavus into District 3 with the upper portion of the Mendenhall Valley results in the overpopulation of the Mendenhall Valley by roughly 4,300 people. As a result, the Proclamation Plan then splits the Mendenhall Valley neighborhood so that roughly 4,300 people from the lower portion of the Mendenhall Valley must be districted with Downtown Juneau.

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[60] 2021 Proclamation Map for Districts 3 and 4 [ARB000021] [Exc. 1].

The trial exhibit below shows the Board's district line in white, cutting through the Mendenhall Valley and dividing 4,256 of its residents into District 4, while the orange line shows the Skagway alternative boundary allowing those people to remain with the rest of their community in District 3:[61]



[61] Ex. SGY-2023 [Exc. 770].

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A. The Trial Court's Findings.

The trial court acknowledged the presented evidence that "Skagway's reliance on the tourism industry creates a logical connection with Downtown Juneau," that there was "overwhelming public testimony contrary to the Board's final plan," that "Mendenhall Valley residents might actually favor policies contrary to Skagway's interests," and that Skagway's proposed maps "would satisfy the constitutional criteria while at the same time respecting the wishes of the majority of Skagway and Juneau residents . . . without affecting the boundaries for any other districts."[62]

While the trial court gave weight to this testimony in its due process analysis,[63] the court erred in concluding that such testimony was irrelevant as to the constitutional requirement to maximize relative socio-economic integration to the degree practicable.[64] Due to its perception that the caselaw obviated any need to discuss the evidence in detail, the trial court devoted only a few paragraphs of its decision to the issue; but the evidence at trial regarding the relative socio-economic integration of Skagway was substantial.

The trial court noted that Board Member Simpson "took the lead"[65] in drafting the Southeast districts and received deference from the other Board members, finding it was "somewhat troubled by this practice of assigning each member a region and ultimately

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62 Order at 120 [Exc. 901].

63 Order at 146-47 [Exc. 927-928].

64 Order at 122-23 [Exc. 903-904].

65 Order at 144 [Exc. 925].

deferring to those Members' judgment on their assigned regions."[66] In its findings, however, the court glossed over Board Member Simpson's lack of personal knowledge with regard to Skagway. Board Member Simpson expressed unawareness of the socio-economic factors that shape Skagway and integrate it so closely with Downtown Juneau, as detailed below.

Board Member Simpson has spent only one night in the Skagway area since the 1980s, and that was at the lodge of the Republican Chairman for District 3, Kathy Hosford, who is the only Skagway resident to share any of his redistricting views in public testimony.[67] Despite Chairman Hosford's public comment that the Board's District 3 reflected the "Lynn Canal transportation corridor," Board Member Simpson agreed in his testimony that neither Auke Bay nor the Mendenhall drainage directly connects to Lynn Canal.[68] Board Member Simpson was unaware of the largest employer in Skagway,[69] the potential catastrophic impact to Skagway from the road from Juneau to Skagway he and his wife strongly support,[70] or the potential negative impact to Skagway's fair and effective representation if it is actually in a district dominated by residents of the upper Mendenhall Valley that support the road from Juneau to Skagway and lack understanding of the major industry or common concerns that dominate a port city like Skagway.[71]

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66 Order at 145 [Exc. 926].

67 Trial Tr. 1736:1-19 [Exc. 166], 1785:16 – 1786:1 (Simpson) [Exc. 186-187].

68 Trial Tr. 1764:5 – 1766:5 (Simpson) [Exc. 183-185].

69 Trial Tr. 1731:23 – 1732:5 (Simpson) [Exc. 164-165].

70 Trial Tr. 1752:17 – 1760:4 (Simpson) [Exc. 173-181].

71 Trial Tr. 1764:5 – 1766:5 (Simpson) [Exc. 183-185].

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Regardless of Board Member Simpson's lack of knowledge, the longstanding socio-economic links between Skagway, Haines, and Downtown Juneau were recognized in the 1974 case *Groh v. Egan*:

> There are close transportation ties between Juneau, Haines and Skagway by daily scheduled air flights and frequent ferry service; a Juneau-Haines highway connection has been planned. The district is quite distinct from the rest of the Southeast region by virtue of the nature of its development and the fact that it is almost entirely composed of portions of the mainland, rather than the islands of the archipelago; historically the three communities have always been closely linked, with Juneau serving as an economic hub for Haines and Skagway.[72]

Since the time of *Groh*, the relative socio-economic integration between Skagway, Haines, Gustavus, and Downtown Juneau has increased with regard to the specific factual characteristics evidenced at trial, including common major economic activity, land management, historical links, and transportation, as detailed in the following sections. Conversely, these characteristics demonstrate the almost complete lack of socio-economic integration between Skagway and the Mendenhall Valley, which did not exist in its current form at the time of *Groh.*[73]

B. Integration via Common Major Economic Activity.

Downtown Juneau and Skagway are socio-economically integrated by their common major economic activity in the cruise ship industry.[74] In 1983, Skagway's arrivals

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[72] *Groh,* 526 P.2d at 879.

[73] Trial Tr. 1687:22 – 1688:9 (Walsh) [Exc. 159-160].

[74] Ex. SGY-2000 at 5-9 (Ryan) [Exc. 225-229]; Ex. SGY-2001 at 6-11 (Cremata) [Exc. 649-654]; Ex. SGY-2002 at 8-13 (Wrentmore) [Exc. 669-674]; Ex. SGY-2003 at 6-11 (Walsh) [Exc. 687-692].

included 48,066 via cruise ship; 25,288 via ferry; and 72,384 via highway. By 2019, these numbers had shifted to 983,917 via cruise ship, or up 1,947 percent; 9,640 via ferry, or down 2 percent; and 113,253 via highway, or up 56 percent.[75] Further demonstrating the central importance of the cruise ship industry in Skagway, Carnival Corporation recently purchased the White Pass & Yukon Route Railway, Skagway's largest single employer, for $290 million.[76]

Downtown Juneau and especially Skagway depend upon the cruise ship industry and were harmed by the recent pandemic-caused shutdown of cruises. As shown in the State of Alaska report issued in April 2021 entitled "Impacts to Alaska from 2020/2021 Cruise Ship Season Cancellation,"[77] Juneau lost $33,706,844 for a single year under a no-sail order, while Skagway lost $13,233,250, an amount exceeding 100 percent of Skagway's annual operating budget.[78] These impacts demonstrate the common socio-economic interests of Skagway and Downtown Juneau with regard to their common major economic activity.

With Juneau as Alaska's most-visited port and Skagway as the third-most visited port, the two communities also share an interest in receiving funding from the State of Alaska based on the Commercial Passenger Vessel ("CPV") excise tax that is distributed

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75 Ex. SGY-2000 at 30 [Exc. 250].
76 Ex. SGY-2000 at 40-43 [Exc. 260-263].
77 Ex. SGY-2000 at 31-39 [Exc. 251-259].
78 Ex. SGY-2000 at 34-35 [Exc. 254-255].

to the top seven ports of call.[79] At approximately $5 million annually, this funding is integral to Skagway's community and further shows its political interest in coordinating with Downtown Juneau on legislation and port-related policy. The CPV funding to Juneau and Skagway reflects the seasonal infrastructure impacts of this common major economic activity, as shown in a 2019 study of cruise ship presence in Skagway.[80]

The cruise ships bring many shared opportunities and challenges to Downtown Juneau and Skagway. A prime example of this cooperation is when Skagway joined Ketchikan in pledging $100,000 in support of Juneau's litigation against the cruise ship industry regarding the use of head taxes and passenger fees.[81] Skagway businesswoman Jan Wrentmore testified to the need for the local governments and businesses to support each other as much as possible when dealing with the global corporations of the industry.[82]

Skagway officials often look to the regulations, taxes, tariffs, and personnel of the Juneau port in determining Skagway's port policies, especially now that Skagway is assuming control of its port and establishing its own structure that should be consistent and congruent with other Alaska ports.[83] Particular projects and policies that tie Skagway to the Juneau port include port electrification, a possible electrical intertie, a cruise ship excise tax, and cruise ship scheduling.[84] Skagway officials often travel to Downtown Juneau to

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79 Ex. SGY-2000 at 50-52 [Exc. 270-272].
80 Ex. SGY-2000 at 98 [Exc. 318].
81 Ex. SGY-2000 at 373 [Exc. 593].
82 Trial Tr. 1896:13 – 1897:18 (Wrentmore) [Exc. 199-200].
83 Ex. SGY-2000 at 7 (Ryan) [Exc. 227].
84 Ex. SGY-2000 at 7 (Ryan) [Exc. 227]; Trial Tr. 1637:18–1638:9 (Ryan) [Exc. 147148].

confer with State and local officials on these topics and other matters.[85] Skagway Borough Manager Brad Ryan testified to his experience of many of the same socio-economic links between Haines and Downtown Juneau during his time there.[86]

Skagway Mayor Andrew Cremata testified about his good relationship with the Juneau City Manager and how important that dynamic will be as Skagway looks to take control of its port while learning from and cooperating with Juneau on their shared port issues related to infrastructure and traffic.[87]

Beyond the cruise ship industry and port management connections, tourist-related businesses operate in both Skagway and Downtown Juneau as reflected by the more than 20 businesses with Skagway business licenses that list their principal address in Juneau.[88] It is common for tour operators to offer combination booking of activities in both communities; for example, whale watching in Juneau combined with riding the train in Skagway.[89]

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[85] Ex. SGY-2000 at 7 (Ryan) [Exc. 227].

[86] Trial Tr. 1640:5–1641:5 (Ryan) [Exc. 149-150].

[87] Trial Tr. 1603:13 – 1605:3 (Cremata) [Exc. 139-141]; *see also,* Trial Tr. 1619:3 – 1620:3 (Cremata) ("Q: Is part of the–is part of the policy and infrastructure challenges that Skagway faces in taking over its own dock, its desire to expand its dock capacity so it can stay in sync with downtown Juneau? A: Absolutely. And it's critical. Because what the cruise ship industry has done is, they don't just continue to bring the same ships year after year. They bring in larger ships . . . exact same issues that downtown Juneau has to go through[.]") [Exc.145-146].

[88] Ex. SGY-2000 at 375 [Exc. 595].

[89] Ex. SGY-2000 at 383-89 [Exc. 603-609].

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The COVID-19 pandemic and its severe economic impact on Skagway further joined it with Downtown Juneau as both communities sought federal assistance to mitigate the loss of the cruise ships with federal Coronavirus Aid, Relief, and Economic Security ("CARES") and American Rescue Plan Act ("ARPA") funds. Skagway suffered a 99.68 percent reduction of arrival numbers in 2020 due to the COVID-19 pandemic, with total losses estimated at over $300 million in revenue within the borough and $26.6 million in taxes.[90] Like Downtown Juneau, Skagway received millions of dollars in federal aid as a major cruise ship industry port of call, but Skagway remains under a declaration of financial emergency due to the economic impacts of the COVID-19 pandemic.[91]

The economic ties between Skagway, Juneau, and the cruise ship industry were further underscored when Norwegian Cruise Line announced a $10 million donation to six Alaska port cities, including Juneau and Skagway, to assist with the loss of tourism.[92] The unprecedented strain and uncertainty of the COVID-19 pandemic demonstrates the shared interests of Skagway and Downtown Juneau as socio-economic partners through their common major economic activity of attracting and managing cruise ship tourism.

Working to mitigate the impacts of the COVID-19 pandemic has required constant coordination with Skagway's state and federal legislators on cruise ship issues; for example, supporting the federal exemption for certain cruise ships sailing to Alaska from

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90 Ex. SGY-2000 at 391-94 [Exc. 611-614].
91 Ex. SGY-2000 at 401-03 [Exc. 621-623].
92 Ex. SGY-2000 at 404-05 [Exc. 624-625].

the provisions in the Passenger Vessel Services Act ("PVSA").[93] Mayor Cremata testified to the coordination necessary between Alaska port communities, their state representatives, and their federal delegation to create a moratorium for the PVSA that was preventing cruise ships from reaching Alaska.[94]

The Mendenhall Valley has not faced the same economic impacts from the COVID-19 pandemic as Skagway has. Just as the presence of a cruise ship port with common major economic activity makes Downtown Juneau critically relevant to Skagway, the absence of such a port in the Mendenhall Valley make it largely irrelevant to Skagway from a socio-economic standpoint. At worst, such differently interested areas seem more likely to support local efforts to limit cruise ship activity such as the recent "Cruise Control" initiatives.[95] While Skagway officials are regularly in contact with all levels of government in Downtown Juneau, they have no cause to travel to or otherwise confer with the Mendenhall Valley on any substantial policy matters.[96]

Mayor Cremata emphasized his concern with being redistricted away from Downtown Juneau and instead placed with more than 10,000 residents of the upper Mendenhall Valley.[97] Mr. John Walsh, Skagway's lobbyist for the last 20 years, also

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93 Ex. SGY-2000 at 413 [Exc. 633].
94 Trial Tr. 1614:17 – 1615:6 (Cremata) [Exc. 143-144].
95 Ex. SGY-2000 at 23-27 [Exc. 243-247].
96 Ex. SGY-2000 at 9 (Ryan) [Exc. 229].
97 Trial Tr. 1607:3-23 (Cremata) [Exc. 142].

described this unnecessary risk in representation in response to the trial court's questions at trial.[98]

When asked about the facts regarding Skagway and Juneau's cruise ship integration, in his deposition Board Member Simpson was unaware of many of them but did not dispute them, acknowledging it was the primary reason for the testimony he received for maintaining the current district connection.[99] Board Member Borromeo was also unaware of many of Skagway's socio-economic facts but agreed that "the vast majority of commercial economic activity between Skagway and Haines is . . . with Downtown Juneau and that district[.]"[100]

Board Member Simpson also asserted that the government presence in Downtown Juneau was somehow contrary to socio-economic integration with Skagway: "Seasonally, cruise ships moor in Downtown Juneau, but the primary economic and employment drivers for the district are government entities."[101] In his deposition, however, Board Member Simpson acknowledged that such government presence only indicates further socio-economic integration between Downtown Juneau and Skagway.[102] Board Member Simpson appeared to confuse the similarity or homogeneity of the communities rather than their actual interaction and integration. To satisfy the constitutional requirement of

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98 Trial Tr. 1703:1-21 (Walsh) [Exc. 161].
99 Simpson Depo. Tr. 68:6 - 70:7 [Exc. 106-108].
100 Borromeo Depo. Tr. 72:3-7 [Exc. 116].
101 Simpson Aff. at 9, ¶ 19 [Exc. 128].
102 Simpson Depo. Tr. 81:20 – 84:1 [Exc. 109-112].

socio-economic integration, there must be "sufficient evidence of socio-economic integration of the communities linked by the redistricting, proof of actual interaction, and interconnectedness rather than mere homogeneity."[103]

Board Member Borromeo also recognized that the government presence in Downtown Juneau furthered its socio-economic links to Skagway.[104] She agreed that the presence of blue-collar or white-collar workers goes to similarity or homogeneity, not integration, and that Board Member Simpson's line between Districts 3 and 4 is in an unnatural place for those familiar with the Mendenhall Valley.[105] Board Member Borromeo next agreed that dividing the Valley was necessary in terms of population if Skagway and Haines were to be included in District 3.[106]

C. Integration via Land Management and Historical Links.

Skagway and Downtown Juneau feature small, densely-populated business districts centered around their cruise ports with a socio-economic culture concentrated on historic tourist attractions, entertainment, restaurants, and the performing arts with small unique storefronts and individually owned businesses catering to visitors. Along with these obvious common features and activities, the communities are linked by the same public safety concerns regarding terrain and weather events, as well as managing the street

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[103] *Hickel*, 846 P.2d at 46 (citing *Kenai*, 743 P.2d at 1363).
[104] Borromeo Depo. Tr. 86:6-10 [Exc. 118].
[105] Borromeo Depo. Tr. 87:7 – 90:21 (emphasis added) [Exc. 119-122].
[106] Borromeo Depo. Tr. 92:22-24 [Exc. 123].

crowding that comes with the cruise ships they share.[107] Board Member Simpson acknowledged at trial that Skagway and Downtown Juneau have more than 100 years of shared history, and the preservation of that history is the basis for their current status as tourist destinations.[108]

Unlike Downtown Juneau, the Mendenhall Valley is a newly developed suburb residential area lacking the historical foundation, longstanding businesses, and tourism focus that links Downtown Juneau with Skagway.[109] The factual characteristics supporting the socio-economic integration of Skagway and Downtown Juneau and continuing their shared representation in the Legislature are also reasons against joining Skagway with the Mendenhall Valley. A representative trying to represent the majority interest of the new District 3 would likely have reason to give Skagway's interests lower priority if they ran counter to the different interests of the Mendenhall Valley where the majority of constituents would reside.

Evidence was presented that the residents of the Mendenhall Valley have demonstrated contrary interests to those of Skagway. During the Board's deliberations, Board Member Simpson referred to the possibility of a future road up the Lynn Canal,[110]

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[107] Ex. SGY-2000 at 9 (Ryan) [Exc. 229]; Ex. SGY-2001 at 11 (Cremata) [Exc. 654]; Ex. SGY-2002 at 2-3 (Wrentmore) [Exc. 663-664]; Ex. SGY-2003 at 11 (Walsh) [Exc. 692].

[108] Trial Tr. 1809:9-18 (Simpson) [Exc. 190].

[109] Ex. SGY-2000 at 10 (Ryan) [Exc. 230]; Ex. SGY-2001 at 12-13 (Cremata) [Exc. 655-656]; Ex. SGY-2002 at 3-4 (Wrentmore) [Exc. 664-665]; Ex. SGY-2003 at 12 (Walsh) [Exc. 693].

[110] Board Meeting Tr. 121:19-25 (Nov. 2, 2021) ("BOARD MEMBER SIMPSON: Important to me is that the main transportation links there are lengthen our ferry routes –

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which his wife has been a long-time advocate for developing,[111] and which he also personally supports.[112] In an advisory vote taken in the year 2000, Juneau voters narrowly chose improving access to Juneau via expanded ferry service over a road, with voters in the Downtown area more in favor of a ferry, and voters in the Mendenhall Valley the most in favor of a road.[113] In an identical advisory vote taken in 2004, Skagway voters chose improved ferry service over a Juneau Road by 62 percent to 37 percent.[114]

When asked about the Skagway vote at trial, Board Member Simpson answered, "It's pretty much beyond me why anybody would oppose that."[115] He was unaware of a Skagway resolution in 2003 that stated multiple concerns including job losses in transportation and small local businesses, the end of freight shipment and ferry service, and diminished cruise ship arrivals.[116] Skagway businesswoman Jan Wrentmore testified that when she expressed such concerns to an Anchorage representative, he told her he would

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. . . that go out of the north end of Auke Bay. So that, you know, if there was a road --") [ARB008818] [Exc. 4].

[111] Trial Tr. 1745:13 – 1750:3 (Simpson) [Exc. 167-172]; Ex. SGY-2026 [Exc. 771]; Ex. SGY-2027 [Exc. 776].

[112] Trial Tr. 1748:1-9 (Simpson) [Exc. 170].

[113] Ex. SGY-2013 at 2, 7 [Exc. 748, 753].

[114] Ex. SGY-2015 [Exc. 768].

[115] Trial Tr. 1752:20-21 (Simpson) [Exc. 173].

[116] Ex. SGY-2014 [Exc. 767]; Trial Tr. 1752:23 – 1761:4 (Simpson) [Exc. 173-182]; *see also* Ex. SGY-2016 (2005 letter from Skagway Mayor Bourcy regarding Skagway's position on Juneau Access) [Exc. 769]; *see also,* Trial Tr. 1901:7 – 1902:2 (Wrentmore) (discussing decreased cruise activity in Sitka and the industry's focus on optimizing profit) [Exc. 204-205]; Trial Tr. 1878:22 – 1880:16 (Ryan) (discussing risks of a Juneau road for Skagway's port potential for freight and ore) [Exc. 193-195].

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not interfere with capital projects in other legislators' districts as a matter of courtesy,[117] suggesting that Skagway cannot rely on legislators outside its district to represent its socio-economic interests.

Skagway expert witness Mr. Kimball Brace analyzed the Juneau election results and presented a map showing the concentration of support for the road in the Mendenhall Valley,[118] describing it as a "classic case of taking those voters and dividing them between two districts, District 3 and District 4, so that . . . you can take two pieces of the Valley and basically control both of these seats by using this technique."[119]

D. Integration via Transportation.

According to the Skagway witnesses, when they travel to Juneau via plane or ferry, their destination is Downtown Juneau. The primary shopping and hospitality options are present in what the Board has drawn as District 4, which also contains Bartlett Regional Hospital that serves as the local hospital for the people of Skagway.[120]

Mayor Cremata of Skagway testified to his experience that the ferry system integrates Skagway with District 4 and not District 3: "In 27 years of traveling to Juneau, I have only ever been in what's being designated as area 3 one time."[121] Downtown Juneau

[117] Trial Tr. 1898:14 – 1900:1 (Wrentmore) [Exc. 201-203].

[118] Ex. SGY-2028 [Exc. 777].

[119] Trial Tr. 1937:10 – 1938:15 (Brace) [Exc. 210-211].

[120] Ex. SGY-2000 at 10-11 (Ryan) [Exc. 230-231]; Ex. SGY-2001 at 12-13 (Cremata) [Exc. 655-656]; Ex. SGY-2002 at 14-16 (Wrentmore) [Exc. 675-677]; Ex. SGY-2003 at 12-13 (Walsh) [Exc. 693-694].

[121] Trial Tr. 1598:10-12 (Cremata) [Exc.134].

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is "where the stores are . . . where the government seats are . . . where the cruise ship industry has the major impacts, so that's the destination."[122] In addition to the hospital, doctors' offices, dentists, shopping, and legislative offices, he also noted that several businesses operate in both Downtown Juneau and in Skagway and that all the hotels are in the downtown district, as is the only commercial airport.[123]

The ferry terminal at Auke Bay is not a meaningful socio-economic connection between Skagway and the Mendenhall Valley because passengers from Skagway travel the few miles out of District 3 toward Downtown Juneau in District 4. The ferry system has become increasingly unreliable and was essentially shut down during the month of January 2022.[124] When comparing the sailing schedule and passenger numbers of the ferry to those of the scheduled cruise ship visits in 2022, the overwhelming importance of the cruise ships to Skagway is readily apparent, particularly when ferry arrivals have decreased nearly 62 percent while cruise arrivals have increased nearly 2,500 percent.[125]

Despite these facts, Board Member Simpson placed primary emphasis on the ferry connection between Auke Bay and Skagway: "Of particular importance to me was that District 3 contains the Alaska Marine Highway terminals for all four of these communities,

[122] Trial Tr. 1599:24 – 1600:2 (Cremata) [Exc. 135-136].

[123] Trial Tr. 1601:11 – 1603:2 (Cremata) [Exc. 137-139]; *see also,* Trial Tr. 1664:6 – 1671:13 (Walsh) (discussing healthcare facilities, Costco, professional services, the convention center, music festivals, the capitol building, the maritime business community, businesses that operate in both communities, sports events, and the airport) [Exc. 151-158].

[124] Ex. SGY-2000 at 414-416 [Exc. 634-636].

[125] Ex. SGY-2000 at 30, 419-22 [Exc. 250, 639-642].

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as the ferry system is the primary transportation link between each of the communities in District 3."[126] However, Board Member Simpson also acknowledged the location of the terminal "isn't really the key feature," and its transportation link is at least as connected to District 4.[127] Board Member Borromeo also agreed that ferry service supported connection with Downtown Juneau.[128]

The specific evidence of relative socio-economic integration presented at trial regarding the socio-economic characteristics of common major economic activity, land management, historical links, and transportation strongly supports districting Skagway with Downtown Juneau and not with the Mendenhall Valley.

E. Consideration of Skagway Alternative Maps.

During his trial testimony, Board Member Simpson stated he had not reviewed the alternative maps presented by Skagway in its case.[129] Having not been cross-examined on his direct testimony, Skagway expert witness Mr. Brace presented his alternative maps[130] during rebuttal testimony at trial, demonstrating both maps keep Haines, Skagway, and Gustavus with Downtown Juneau while maintaining sufficient compactness, contiguity, and population deviations.[131] Skagway Alternatives A and B permit Skagway and Haines to be in the same district as downtown Juneau to which they are most highly

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[126] Simpson Aff. at 7, ¶ 17 [Exc. 127].
[127] Simpson Depo. Tr. 60:23 – 62:21 (emphasis added) [Exc. 103-105].
[128] Borromeo Depo. Tr. 81:5-11 [Exc. 1117].
[129] Trial Tr. 1824:17 – 1825:5 (Simpson) [Exc. 191-192].
[130] Ex. SGY-2004 at 2690, 2698 [Exc. 745-746].
[131] Trial Tr. 1948:23 – 1953:15 (Brace) [Exc. 215-220].

socio-economically integrated. Both alternatives permit Downtown Juneau to be separated from the Mendenhall Valley and permit the Mendenhall Valley community to be maintained as a whole community, rather than divided between the districts. The trial court agreed that the Skagway alternative maps "would satisfy the constitutional criteria while at the same time respecting the wishes of the majority of Skagway and Juneau residents . . . without affecting the boundaries for any other districts."[132]

Alternative A (the donut hole) creates new districts in the same area as close as possible in population, balancing a more compact District 3 against a larger District 4:[133]

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[132] Order at 120 [Exc. 901].

[133] SGY-2004 at 43, 2690 [Exc. 742, 745].

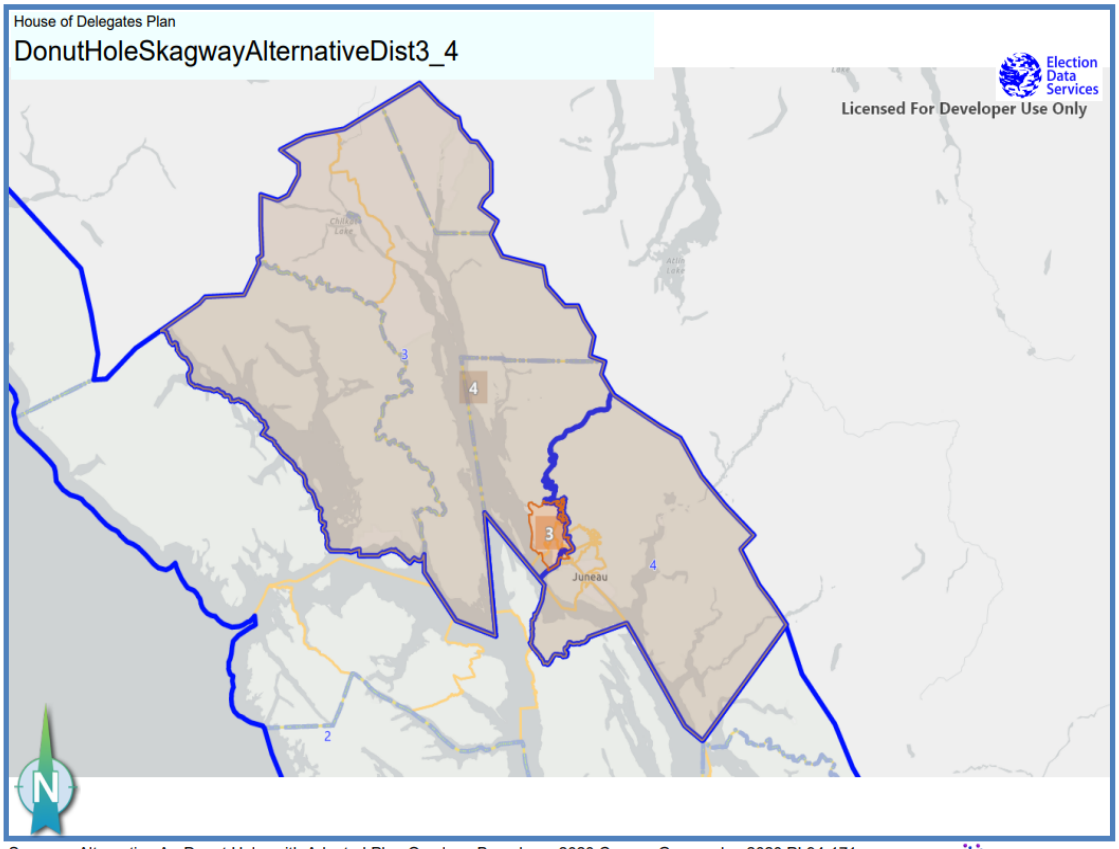


Exhibit AA
Page 5 of 12

SGY-2004, Page 2690 of 2703

Skagway Alternative B extends the new District 3 farther up the coast to include the Kensington Mine:[134]

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[134] SGY-2004 at 43, 2698 [Exc. 742, 746].

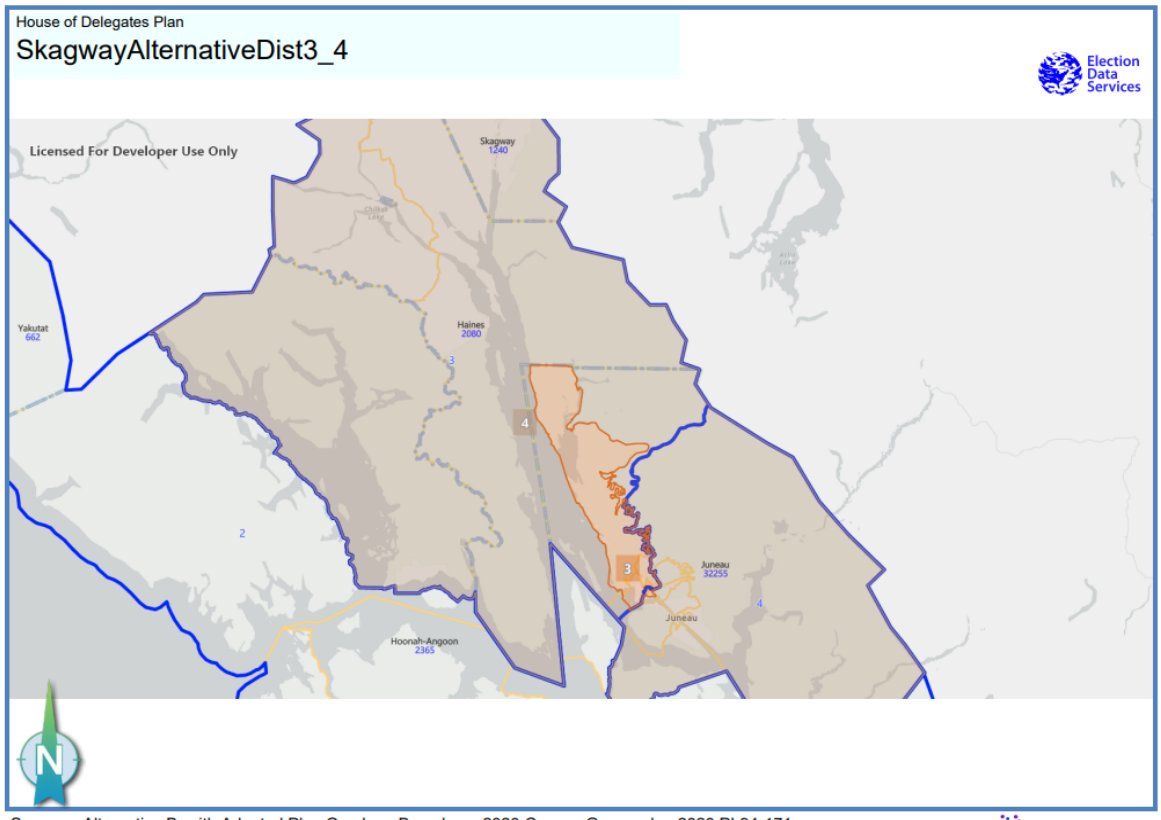


Exhibit BB
Page 1 of 6

SGY-2004, Page 2698 of 2703

VI. ARGUMENT

The trial court's Order is erroneous for the following reasons: (1) the trial court erred in regarding socio-economic evidence as irrelevant and not requiring the Board to maximize socio-economic integration; (2) the trial court erred in allowing the Board to inconsistently and perfunctorily apply the requirement to maximize relative socio-economic integration, (3) the trial court erred in regarding the division of the Mendenhall Valley as irrelevant and not requiring the Board to respect neighborhood boundaries where possible, (4) the trial court erred in declining to address Skagway's

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argument regarding fair and effective representation, and (5) the trial court erred in concluding that the Board sufficiently followed the *Hickel* process.

A. The Trial Court Erred in Concluding the Kenai Case Excuses the Board from Considering the Requirement to Maximize Relative Socio-Economic Integration Merely Because Juneau Is a Borough.

The delegates to the Constitutional Convention explained the "socio-economic principle" as follows:

> [W]here people live together and work together and earn their living together, where people do that, they should be logically grouped that way.[135] [In addition,] the delegates define 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 economic pursuits."[136]

This description supports the concept that election districts were intended to be comprised of socially and economically interactive people in a common geographic area.[137]

Article VI, section 6 does not require that districts be drawn along municipal boundaries, but "local boundaries are significant in determining whether an area is relatively socio-economically integrated."[138] A borough is by definition socio-economically integrated,[139] but some areas within a borough may be more

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[135] *Hickel*, 846 P.2d at 46.

[136] *Hickel*, 846 P.2d at 46.

[137] *Carpenter*, 667 P.2d at 1215.

[138] *Hickel*, 846 P.2d at 51.

[139] *Hickel*, 846 P.2d at 52.

socio-economically integrated than others particularly where they are in close geographic proximity with one another.

To satisfy the constitutional requirement of socio-economic integration, there must be "sufficient evidence of socio-economic integration of the communities linked by the redistricting, proof of actual interaction, and interconnectedness rather than mere homogeneity."[140] In his concurring opinion in *Carpenter*, Justice Matthews explained that "[i]ntegration connotes interaction and connectedness, while homogeneity refers to similarity or uniformity."[141] In previous decisions, this Court has identified specific characteristics of socio-economic integration. For example, in *Kenai* the court found that service by the state ferry system, daily local air taxi service, a common major economic activity, shared fishing areas, and historical links evidenced socio-economic integration of Hoonah and Metlakatla with several other southeastern communities.[142]

The Board must seek to maximize socio-economic integration within districts.[143] Consistent with the Court's approach of maximizing socio-economic integration to the degree practicable in *Hickel*,[144] the superior court in *Hickel* noted the supreme court's agreement with its holding that "the Alaska constitution requires maximizing

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[140] *Hickel*, 846 P.2d at 46 (citing *Kenai*, 743 P.2d at 1363).

[141] *Carpenter*, 667 P.2d at 1218.

[142] *Hickel*, 846 P.2d at 46 (citing *Kenai*, 743 P.2d at 1361).

[143] *Hickel*, 846 P.2d at 73.

[144] *Hickel*, 846 P.2d at 50-52 & 58.

socio-economic integration" within districts.[145] Redistricting decisions that reduce socio-economic integration may not be made except for purposes of maximizing the other constitutional requirements and contiguity and compactness.[146] The [Board] "is not permitted to diminish the degree of socio-economic integration in order to achieve other policy goals."[147]

This Court has commented on the significance of the constitutional requirement for socio-economic integration:

> In addition to preventing gerrymandering, the requirement that districts be composed of relatively integrated socio-economic areas helps to ensure that a voter is not denied his or her right to an equally powerful vote.[148]
>
> [W]e should not lose sight of the fundamental principle involved in reapportionment – truly representative government where the interests of the people are reflected in their elected legislators. Inherent in the concept of geographical legislative districts is a recognition that areas of a state differ economically, socially and culturally and that a truly representative government exists only when those areas of the state which share significant common interests are able to elect legislators representing those interests. Thus, the goal of reapportionment should not only be to achieve numerical equality but also to assure that representation of those areas of the state having common interests.[149]

Article VI, section 6 does not require that districts be drawn along municipal boundaries, but "local boundaries are significant in determining whether an area is

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[145] *Hickel*, 846 P.2d at 70.

[146] *Hickel*, 846 P.2d at 45 n.10.

[147] *Hickel*, 846 P.2d at 45, n.10.

[148] *Hickel*, 846 P.2d at 46.

[149] *Hickel*, 846 P.2d at 46 (citing *Groh v. Egan*, 526 P.2d at 890).

relatively socio-economically integrated."[150] In addition, the court in *Hickel* ruled that "relatively" in this context "means that we compare proposed districts to other previously existing and proposed districts as well as principal alternative districts to determine if socio-economic links are sufficient."[151] The court added that "relatively" does not mean "minimally," and it does not weaken the constitutional requirement of socio-economic integration.[152] This comparative analysis is inherently fact-based and dependent on the socio-economic evidence in the record. But in the Board's view of the law, accepted by the trial court, no analysis is needed.

The legal proposition the Board and trial court rely upon—to effectively abdicate the duty to consider relative socio-economic integration between alternatives—has its origin in *Kenai Peninsula Borough*,[153] where the Court held that "interaction between the communities comprising House District 7 and communities outside the district but within a common region sufficiently demonstrates the requisite interconnectedness and interaction mandated by article VI, section 6."[154] Specifically, the Court decided:

> The sufficiency of the contacts between the communities involved here can be determined by way of comparison with districts which we have previously upheld. Unlike the district linking Cordova and the Southeast which we invalidated in *Carpenter*, the communities of North Kenai and South Anchorage are relatively close geographically. Like the Juneau District upheld in *Groh*, which included Skagway and Haines, the communities here

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[150] *Hickel*, 846 P.3d at 51.

[151] *Id.* at 47.

[152] *Id.* at 47.

[153] *Kenai*, 743 P.2d 1352.

[154] *Id.* at 1363.

> are connected by daily airline flights (and by highway transportation, whereas the Juneau communities used ferry service); both are linked to the hub of Anchorage, although North Kenai obviously has greater links to Kenai. We think Kenai draws too fine a distinction between the interaction of North Kenai with Anchorage and that of North Kenai with South Anchorage. We find no error in the superior court's decision to uphold House District 7.[155]

The Board and the trial court have simply substituted Skagway for North Kenai and the Mendenhall Valley for South Anchorage, reasoning that Skagway's integration with any part of Juneau is sufficient to district it with any other part of Juneau. But this mechanistic approach is a gross oversimplification of the precedent, ignoring the context in which the North Kenai linkage to South Anchorage was upheld:

> The state argues *that no constitutionally permissible alternative* to joining North Kenai with South Anchorage existed. Based on its calculation that the Kenai Peninsula Borough alone supports approximately two and three-quarters house seats and the Prince William Sound communities of Cordova, Valdez, and Seward together cannot support a single seat, and that the two areas combined are too populated to support three seats but not sufficiently populated to support four seats, the state asserts that it could not form districts of nearly equal population without linking some portion of the Kenai Peninsula with South Anchorage. Furthermore, the state contends that including Nikiski in the Kenai district or in a three-seat regional district would result in overrepresentation of the district by 10.2% and a total (statewide) deviation in excess of the 16.4% maximum deviation permitted under the Federal Constitution. According to the state, the other alternative considered by the Board, a three-member regional district excluding Valdez and Cordova, would have required those communities' inclusion in District 17 and thereby triggered a domino effect, causing strained district configurations throughout rural Alaska. The state contends that the Board could not both maintain a unified Juneau District and establish a three-member district composed of the Kenai Peninsula and Prince William Sound.[156]

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[155] *Kenai*, 743 P.2d at 1363.

[156] *Kenai,* 743 P.2d. at 1362 (emphasis added).

This Court accepted the socio-economic integration of North Kenai and South Anchorage as sufficient in the context of the state demonstrating *it had no alternative* due to population constraints. That is far from the case of Skagway and Juneau before this Court now; indeed, the status quo map could be maintained with minimal adjustment for population shifts, and there were several permissible alternatives available to the Board that would better reflect the socio-economic reality of these communities than the districts the Board adopted.

In *Kenai*, the State invited the Court to consider South Anchorage and Anchorage "an indivisible area for the purpose for determining North Kenai's socio-economic ties with South Anchorage."[157] Instead of accepting the State's invitation to consider Anchorage "indivisible," the Court thoroughly evaluated multiple socio-economic factors (interaction, economic, social, transportation, and geographic factors) for North Kenai and South Anchorage both as hub communities of broader communities and as separate communities.[158] Ultimately, the Court compared the level of socio-economic integration to other cases in which it has rejected or accepted the integration as sufficient and held, "Kenai draws too fine a distinction between the interaction of North Kenai with Anchorage *and* that of North Kenai with South Anchorage."[159]

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[157] *Kenai,* 743 P.2d. at 1362.

[158] *Kenai*, 743 P.2d at 1362-63.

[159] *Kenai*, 743 P.2d at 1363 (emphasis added).

The holding of *Kenai* should not be stretched so far as to permit the dismissal of any considerations of socio-economic integration. Unlike the "too fine a distinction" found in that case, here the distinction between Downtown Juneau and the Mendenhall Valley is not fine at all for Skagway. On the contrary, it is a fundamental distinction that goes to the heart of Skagway's socio-economic activity, as the Board was told over and over again by the public and the evidence at trial demonstrated.

B. The Trial Court Erred in Allowing the Board to Inconsistently and Perfunctorily Apply the Requirement to Maximize Relative Socio-Economic Integration Throughout Its Proclamation Plan.

The Board "must consistently enforce the constitutional article VI, section 6 requirements of contiguity, compactness, and relative integration of socio-economic areas in its redistricting."[160] While the Board relied entirely upon Juneau's borough boundary to entirely avoid considering socio-economic characteristics for Districts 3 and 4, it inconsistently *emphasized* socio-economic integration when breaking two borough boundaries to create the so-called "Cantwell cutout" in District 36.[161] The trial court erred in allowing the Board to inconsistently point to Juneau's status as a borough to ignore its relative socio-economic integration with Skagway, while at the same time pointing to the relative socio-economic integration of Cantwell and other Ahtna villages in District 36 to decrease the district's compactness and break the boundaries of the Denali and Mat-Su boroughs.

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[160] *Kenai*, 743 P.2d at 1360.

[161] Order at 90-94 [Exc. 871-875].

Another example of inconsistent application is the Board's belated decision to break the boundary of the Fairbanks North Star Borough, after Chairman Binkley finally conceded on November 3, 2021 (two days before the adoption of the final house district plan), that his personal priority of protecting that boundary should be given up.[162] Chairman Binkley then undertook an effort to create a new map that shed FNSB population into District 36 and redrew boundaries within the FNSB, presenting a new map to the Board during the November 4 meeting, and the Board then spent significant time discussing where to shed population from the FNSB into District 36.[163] But under the legal theory it applied to Skagway and Juneau it should not have mattered where the borough was connected with District 36. Again, the use of and respect for borough boundaries depended entirely upon the Board members' personal priorities and negotiations during their mapping.

Elsewhere on the map, the districting of the City of Valdez and Mat-Su Borough also demonstrates the error of the Board and the trial court in misapplying *Kenai* to find "regional integration" as evidence of relative socio-economic integration. The trial court stated:

> This Court's conclusion about socioeconomic integration between Valdez and Mat-Su is greatly influenced by the Supreme Court's determination in

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[162] Board Meeting Tr. 252:8-21 (Nov. 3, 2021) [ARB007612] ("CHAIR BINKLEY: Well, I think, just my opinion, that -- you know, and the way I look at it if I want to respect what the borough assembly did then I think it would be best, in my opinion, to respect what they're saying and take the 4,000 people out of the borough and put into District 36.") [Exc. 21-].

[163] Board Meeting Tr. 41:13 – 72:5 (Nov. 4, 2021) [ARB009211-009242] [Exc. 43-74].

> *Kenai*. If the Court had not taken such a broad view of the issue and held that regional integration was enough, this Court might have reached a different conclusion on the issue. But *Kenai* is the established law on this issue.[164]

The trial court has allowed the Board to expand the analysis in *Kenai* to find socio-economic integration of communities outside of Anchorage by virtue of socio-economic ties with Anchorage. *Kenai* does not stand for the proposition that "regional integration" supports a finding of socio-economic integration between communities that share purported socio-economic ties to a municipality outside of their district. The Court in *Kenai* did not state that two municipalities *outside* of Anchorage with socio-economic ties to Anchorage are, therefore, socio-economically integrated with one another. Instead, after a fact-specific inquiry, *Kenai* held that comparing socio-economic integration with specific areas within Anchorage and Anchorage as a whole was too fine a distinction, in the context of the Board having no other constitutional options.

The trial court has effectively rendered the requirement for relative socio-economic integration meaningless by expanding *Kenai* to find two disparate communities such as Valdez and the Palmer and Wasilla areas share socio-economic ties with Anchorage even though they were not placed in a District with any portion of Anchorage.[165] Under the trial court's interpretation of *Kenai,* any community with socio-economic ties to Anchorage is

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[164] Order at 82 n. 475 [Exc. 863].

[165] Order at 82-83 ("Valdez and the Mat-Su Borough are also relatively socio-economically integrated for the purposes of Article VI, § 6 because both communities are socio-economically integrated with Anchorage.") [Exc. 863-864].

socio-economically integrated with any other community that likewise has socio-economic ties with Anchorage. This dilutes relative socio-economic integration from the fact-specific inquiry the *Kenai* court conducted into an empty requirement with minimal analysis needed.

This Court should correct this severe distortion of *Kenai*, uphold the requirement to maximize relative socio-economic integration, and enforce the requirement for consistent enforcement of the constitutional requirements for all districts.

C. The Trial Court Erred in Concluding That Respect for Neighborhood Boundaries Is Irrelevant When Precedent Has Established It as an Admirable Goal Where Consistent with Other Legal Requirements.

This Court has held:

> The Luper appellants also argue that the natural and local government boundaries of the Eagle River-Chugiak area should have been "recognized." But the plain language of the Alaska Constitution indicates that respecting local government boundaries is discretionary. Further, the appellants have not demonstrated that any failure by the board to follow natural boundaries violates article VI, section 6. As Judge Rindner observed, "respect for neighborhood boundaries is an admirable goal," but "it is not constitutionally required and must give way to other legal requirements." Therefore, the districts containing the Eagle River area are not unconstitutional in any respect.[166]

This holding also demonstrates the error of the Board and the trial court in ignoring the socio-economic realities of the Mendenhall Valley. Although respect for natural and neighborhood boundaries is discretionary, it remains at minimum an admirable goal, and if there are no other legal requirements that must be given way—the alternatives before the

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[166] *In Re 2001 Redistricting Cases,* 47 P.3d at 1090-91.

Board are sufficiently contiguous, compact, and within acceptable population deviations—the Board should not then wield unfettered fiat to draw whatever line it likes without regard to any socio-economic characteristics. Board Member Simpson was quite candid that he was going to draw his line his way from the outset no matter what was presented to him: "from the beginning . . . . it had always been my intention to make the district more compact and put Skagway and Haines with the north end."[167]

Board Member Borromeo agreed that the pieces of the Mendenhall Valley that District 3 divides are more integrated with each other than with Skagway and Haines.[168] She also stated her personal belief that Skagway and Haines have greater socio-economic integration with District 4 than with the rest of District 3.[169] But Board Member Simpson stated his belief that the Mendenhall Valley "isn't a thing" because it is part of the Juneau borough.[170] He acknowledged he could have drawn the line between Districts 3 and 4 to keep the Mendenhall Valley whole in accord with public sentiment if he had not disconnected Skagway, Haines, and Gustavus from Downtown Juneau,[171] which was demonstrated by the line used in the Skagway Alternatives presented by Mr. Brace.[172] Borough Manager Ryan noted that based on the public sentiments from Skagway,

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[167] Simpson Depo. Tr. 51:22 – 52:6 [Exc. 101-102].
[168] Borromeo Depo. Tr. 101:6-12 [Exc. 124].
[169] Borromeo Depo. Tr. 107:5-13 [Exc. 125].
[170] Simpson Depo. Tr. 101:18-19 [Exc. 113].
[171] Trial Tr. 1798:10 – 1799:10 (Simpson) [Exc. 188-189].
[172] Ex. SGY-2023 [Exc. 770]; Trial Tr. 1941:6 – 1943:10 (Brace) [Exc. 212-214].

Downtown Juneau, and the Mendenhall Valley, "everybody wins and nobody loses" if either of Skagway's alternative maps is used.[173]

By applying an overbroad interpretation of the caselaw regarding the socio-economic integration of a borough and by deferring to Board Member Simpson's preconception of how the districts should be designed, the Board focused only on his view of compactness and simply assumed relative socio-economic integration to the degree practicable, without due regard to the weight of testimony and facts. By looking instead to due process and allowing this analysis to stand, the trial court has substantially vitiated the constitutional requirement for maximizing relative socio-economic integration in Alaska's redistricting process, and this Court must reverse and provide clear guidance on this point that socio-economic realities are to be reflected as much as practicable, rather than ignored, in Alaska's political districts.

D. The Trial Court Erred in Failing to Consider Skagway's Fair and Effective Representation.

The Board's failure to satisfy the socio-economic integration requirement implicates fair and effective representation for the citizens residing within Districts 3 and 4. "In addition to preventing gerrymandering, the requirement that districts be composed of relatively integrated socio-economic areas helps to ensure that a voter is not denied his or her right to an equally powerful vote."[174] The State equal protection clause guarantees

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[173] Trial Tr. 1882:21 – 1884:23 (Ryan) [Exc. 196-198]; Trial Tr. 1912:17 – 1913:13 (Wrentmore) [Exc. 206-207].

[174] *Hickel*, 846 P.2d at 46.

the right to proportional geographic representation.[175] This Court "consider[s] a voter's right to an equally geographically effective or powerful vote, while not a fundamental right, to represent a significant constitutional interest."[176]

In the context of reapportionment, this Court has held that "upon a showing that the Board acted intentionally to discriminate against the voters of geographic area, the Board must demonstrate that its plan will lead to greater proportionality of representation."[177] This Court does not require a showing of a pattern of discrimination, nor does the Court consider any effect of disproportionality *de minimis* when determining the legitimacy of the Board's purpose.[178] Based upon the principle for fair and effective representation, "certain mathematically palatable apportionment schemes will be overturned because they systematically circumscribe the voting impact of specific population groups."[179] The question is whether a particular group has been unconstitutionally denied its chance to effectively influence the political process.[180]

District 3 in the Board's Proclamation Plan fails to provide fair and effective representation for the citizens of Skagway. Citizens of the Mendenhall Valley, with which Skagway lacks sufficient socio-economic integration and have had direct conflicting issues

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[175] *Hickel*, 846 P.2d at 52.

[176] *Kenai*, 743 P.2d at 1372.

[177] *Hickel*, 846 P.2d at 49 (citing *Kenai*, 743 P.2d at 1372).

[178] *Hickel*, 846 P.2d at 49 (citing *Kenai*, 743 P.2d at 1372).

[179] *Hickel*, 846 P.2d at 49.

[180] *Kenai*, 743 P.2d at 1368.

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on fundamental issues such as a Skagway-Juneau road,[181] dominate the population of the district. District 3 thus ensures that Skagway will receive diminished representation in the House purely on the basis of its geographic location and how the Board chose to draw its Juneau districts while ignoring other viable options that reflected the socio-economic characteristics of these communities. Placing Skagway in a district that is utterly dominated by citizens residing in the Mendenhall Valley will deprive citizens of Skagway of an equally geographically powerful vote and violate the fundamental goal of assuring "representation of those areas of the state having common interests.[182] In *Hickel*, this Court discussed proportional geographic representation alongside socio-economic integration with regard to the division of the Mat-Su Borough, including the potentially adverse interests between Palmer and Prince William Sound communities.[183]

The Board's actions with regard to Districts 3 and 4 violate not only article VI, section 6 of the Alaska Constitution with regard to the requirement of relative socio-economic integration, but, by disregarding this requirement, they also violate the equal protection requirement of fair and effective representation by redistricting Skagway away from its common interests with Downtown Juneau, endangering Skagway's fair and effective representation when there was no need to do so.

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[181] *See* pp. 32-34, *supra.*

[182] *Hickel*, 846 P.2d at 46 (citing *Groh,* 526 P.2d at 890).

[183] *Hickel*, 846 P.2d at 52-53.

E. The Trial Court Erred in Concluding the Board Followed the Hickel Process Because the Board Actively Considered VRA Related Issues from the Beginning of Its Mapping.

The trial court thoroughly described the Board's consideration of VRA-related issues from the outset of its mapping effort, finding that "[i]f the *Hickel* process means that the Board can never consider VRA implications prior to the adoption of the final house plan, then the Board is clearly in violation."[184] In the last redistricting cycle, this Court repeatedly reversed and remanded with the instruction that "the initial map drawn by the Board should not be affected by VRA considerations *in any way*."[185] The trial court applied a vague "primary consideration" analysis and thus concluded "although Board members initially may not have understood exactly what the *Hickel* process requires, the Board made a good-faith attempt and took steps to further ensure compliance."[186]

Avoidance of any VRA considerations for its initial map was a simple requirement for the Board to satisfy, yet it did not avoid such considerations despite the clear command of this Court's most recent precedent. While the trial court acknowledged that VRA preclearance no longer exists and "there is very little need to even conduct a VRA analysis post-*Shelby County*,"[187] it chose to apply a less stringent standard of compliance to the Board despite concluding that "[i]f anything, *Shelby County v. Holder* heightens the

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[184] Order at 126 [Exc. 907].

[185] *In re 2011*, 294 P.3d at 1037 (emphasis added).

[186] Order at 128-130 [Exc. 909-911].

[187] Order at 127 (citing *Shelby County* v. *Holder,* 570 U. S. 529 (2013) [Exc. 908].

necessity for strict adherence to the *Hickel* process."[188] The trial court erred in regarding this violation as *de minimis*[189] and not remanding for compliance with the *Hickel* process.

VII. CONCLUSION

The extremely compressed nature of these expedited proceedings afforded the trial court only four days following closing arguments to render its decision, thus this Court should review its Order and the Proclamation Plan with particular scrutiny. While the trial court correctly rejected Districts 3 and 4 on due process grounds, it should have first rejected them based on the constitutional redistricting requirements. This Court's decisions do not permit the Board to disregard all evidence of relative socio-economic integration merely because Juneau is a borough, but on the contrary direct it to maximize socio-economic integration as much as practicable and acknowledge the respect of neighborhood boundaries as an admirable goal. The weight of evidence at trial demonstrating Skagway's integration with Downtown Juneau, and not the Mendenhall Valley, is overwhelming.

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[188] Order at 127 [Exc. 908].

[189] Similarly, the trial court permitted the Board to adopt six proposed plans beyond the 30-day deadline under article VI, section 10. Order at 149-52 [Exc. 930-933]. Unlike the plans before Judge Rindner in 2002, these plans were not merely revisions of timely-adopted plans, but new proposed plans adopted outside the constitutional timeframe for doing so, and the trial court's decision therefore deprives that timeframe of effective meaning. Skagway asks this Court to make clear that the Board is not permitted to adopt proposed plans outside the express 30-day timeframe for adopting proposed plans under article VI, section 10.

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Skagway has presented two alternative plans for these districts that can be embedded into the Board's existing plan.[190] Both alternatives comply with all constitutional standards and offer superior alternatives to the Board's existing Districts 3 and 4. Both alternatives permit Skagway and Haines to be in the same district as Downtown Juneau to which they are most highly socio-economically integrated. Both alternatives permit Downtown Juneau to be separated from the Mendenhall Valley and permit the Mendenhall Valley community to be maintained as a whole community, rather than split in half. Both alternatives are also consistent with the vast majority of the public comment to the Board from both the Juneau and Skagway public meetings, the unanimous opinion of the elected representatives of Skagway, the opinions of the former elected legislators, the map proposed by the coalition in which Sealaska (the ANCSA regional corporation for Southeastern Alaska) joined, the Borough Manager of Skagway, and the unanimous resolution of Skagway.

Based on all the above, either of the Skagway alternative maps presents a viable constitutional alternative to the Board's Districts 3 and 4, which were drawn without regard to the evidence presented on socio-economic integration or on fair and effective representation by the people of Skagway and Juneau. This Court should reverse the trial court's decision allowing the Board to ignore the requirement to maximize relative socio-economic integration in these districts. The Board's Proclamation Plan should also

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[190] Ex. SGY-2004 at 2690, 2698 [Exc. 745-746].

be remanded because the Board chose not to adhere to the *Hickel* process as required by repeated rulings of this Court.

RESPECTFULLY SUBMITTED this 2nd day of March, 2022.

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IN THE SUPREME COURT OF THE STATE OF ALASKA

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

CERTIFICATE OF SERVICE AND TYPEFACE

I hereby certify that on March 2, 2022, I served by e-mail, upon counsel listed below, the Municipality of Skagway Borough and Brad Ryan's Petition for Review, Excerpt of Record, Motion for Leave to File Overlength Petition for Review, Affidavit of Jon S. Wakeland in Support of Motion for Leave to File Overlength Petition for Review, and proposed Order and this Certificate and Typeface:

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

DATED this 2nd day of March, 2022.

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