SJR 21

<target><bill>SJR 21</bill><subject>SJR 21</subject><comm>SFIN26</comm></target>

ALASKA STATE LEGISLATURE

SENATOR DONALD C. OLSON, CHAIR

SENATOR ALBERT KOOKESH
SENATOR JOE THOMAS
SENATOR HOLLIS FRENCH
SENATOR LINDA MENARD

ALASKA STATE CAPITOL
ROOM 514
JUNEAU, ALASKA 99801-1182
907) 465-3877
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SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

SPONSOR STATEMENT
SJR 21 Const. Am: increase Number of Legislators

> " ....Each house district shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area...." Alaska Constitution Article VI, Section 6, titled Legislative Apportionment.

SJR 21 will put a constitutional amendment before the voters in the 2010 general election that would increase the size of the legislature to 48 representatives and 24 senators. Upon voter approval, the measure would apply to the 2012 determination of election district boundaries.

In 1913, Congress established the first territorial legislature with 8 senators and 16 representatives. The size of the legislature was increased to 12 senators and 24 representative in 1942. 17 years later a constitution for the state of Alaska was ratified further increasing the size of the legislature to the current 20 senator and 40 representative membership. A feature of that apportionment was that most of the senate membership was equally distributed among the 4 judicial districts in order that one region may not dominate the others. The U.S. Supreme Court decision requiring "one man, one vote" eliminated redistricting by this method.

In the first 50 years of statehood, Alaska has not changed the size of its legislative body, the smallest bicameral legislature in the nation. In this time span, the population of the state has more than tripled. Most significantly, the population increase is disproportionate, strongly favoring large urban areas over rural and small community areas. The task then of applying the Article VI, section 6 requirements for contiguous, compact areas with integrated socio-economic features has correspondingly become more difficult and contentious. Except for the 1960 reapportionment right after statehood, all subsequent reapportionments have faced successful legal challenges, requiring boundary adjustments and on several occasions, a court constructed reapportionment plan.

Federal protections in the U.S. Voter Rights Act of 1965 for large minority concentrations further complicate Alaska's reapportionment process. Indeed, they can act to counter the Section 6 requirements. Rural district distortions are evidence this conflict in the current plan. There is a probability that the new population distribution of the 2010 census cannot reconcile Section 6 and the Voter Rights Act without increasing the size of the legislature. Indeed, the Alaska Supreme Court has established redistricting priorities that place voter rights considerations before the compact, contiguous language of section 6.

Between 1960 and 2006, twenty nine states have changed the size of their legislative body. For the nine states with small populations similar to Alaska (509,000 to 1,429,000), the average size of their legislative bodies is 134 members.

Another measure of the effect of the state's growth and complexity on the work of the legislature is its budget responsibilities. Legislative expenditures for government programs and projects has risen from a figure of $104 million in FY 61 to somewhere in the neighborhood of $7 billion currently. This is an increase from $2700 per capita in 1961 nominal dollars to $10,000 per capita today.

For these reasons, I believe putting a proposal to increase the size of the legislature before the voters has merit and is timely.

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In the first 50 years of statehood, Alaska has not changed the 20 senator, 40 representative size of its legislative body, the smallest bicameral legislature in the nation. In this time span, the population of the state has more than tripled. Most significantly, the population increase is disproportionate, strongly favoring large urban areas over rural and small community areas. The task then of applying the proscriptions of Article VI, above, has correspondingly become more difficult and contentious. Except for the 1960 reapportionment, all subsequent reapportionments have faced successful legal challenges, requiring boundary adjustments and on several occasions, a court constructed plan.

Federal protections of the U.S. Voter Rights Act of 1965 for large minority concentrations further complicate Alaska's reapportionment process. Indeed, they can act to counter the Section 6 requirements. Rural election district distortions are evident in the current plan. There is a probability that the new population distribution of the 2010 census cannot reconcile Section 6 and the Voter Rights Act without increasing the size of the legislature.

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For these reasons, I believe putting a proposal to increase the size of the legislature before the voters has merit and is timely.

SENATE FINANCE COMMITTEE REPORT

DATE: 2/26/10

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Finance Committee considered SENATE JOINT RESOLUTION NO. 21

SJR 21 CONST. AM: INCREASE NUMBER OF LEGISLATORS

Proposing amendments to the Constitution of the State of Alaska relating to and increasing the number of members of the house of representatives to forty-eight and the number of members of the senate to twenty-four.

and recommends:

[ ] be **replaced** with [ ] **SCS** or [ ] **CS** _____ (_____)

[ ] adopt **previous** [ ] **SCS** or [ ] **CS** _____ (_____)

[ ] attached amendment(s)

[ ] adopt _____Letter of Intent

[ ] further referral to _____Committee

SENATE BILL:
[X] Same Title
[ ] New Title

HOUSE BILL:
[ ] Same Title
[ ] Technical Title Change
[ ] New Title w/ SCR #_____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
Leg	2/3/10	✓			1
GOV	2/3/10	✓			2

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Huggins			✓	
	Thomas	✓			
	Ecan	✓			
	Olson	✓			
	Ellis	✓			
CO-CHAIR:	Hoffman	✓			
CO-CHAIR:	Stevens	✓			

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FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: SJR 21
(S) Publish Date: 2/3/10

Identifier (file name): SJR021-OOG-DOE-1-29-10
Dept. Affected: OOG
Title: Constitutional amendment relating to and increasing the number of members of the house of representatives to....
RDU: Elections
Component: Elections
Sponsor: Senate Community and Regional Affairs Committee
Requester: Senate State Affairs
Component Number: 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual		1.5					
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**1.5**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF		1.5					
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**1.5**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*

The passage of this resolution would require the constitutional amendment to appear on the 2010 general election ballot. The cost of providing information about the constitutional amendment in the Official Election Pamphlet, as required by AS 15.58 is $1.5. Should the addition of this question require printing an 8-1/2 by 18 inch ballot, the cost will increase to $22.0.

Prepared by: Gail Fenumiai, Director — Phone 465-4611
Division: Division of Elections — Date/Time 1/29/10, 3:49pm
Approved by: Linda Perez, Director — Date
Division of Administrative Services

(Revised 10/13/2009 OMB)

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SJR 21
(S) Publish Date: 2/3/10

Identifier (file name): SJR21-LEG-COU-1-29-10
Dept. Affected: Legislature
Title "Proposing amendments to the Constitution of the State of Alaska relating to and increasing the number of members..."
RDU All
Component Various
Sponsor Senate Community and Regional Affairs
Requester Senate State Affairs
Component Number Various

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services				3,600.0	3,600.0	3,600.0	3,600.0
Travel				350.0	350.0	350.0	350.0
Contractual				520.0	520.0	520.0	520.0
Supplies				170.0	0.0	0.0	0.0
Equipment				1,500.0			
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**6,140.0**	**4,470.0**	**4,470.0**	**4,470.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF				6,140.0	4,470.0	4,470.0	4,470.0
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**6,140.0**	**4,470.0**	**4,470.0**	**4,470.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time				35	35	35	35
Part-time				16	16	16	16
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*

SJR 21 proposes amending the Constitution of the State of Alaska by ballot proposition in the next general election which would increase the membership of the Alaska Senate by four Senators and the Alaska House of Representatives by eight Representatives. If this resolution passes, the ballot proposition would be voted on in the November 2010 general election. If the ballot proposition passes, the Redistricting Board would create their redistricting plan using the new number of districts. For purposes of this fiscal note, it is assumed that the number of Legislators elected to office for the 28th Legislature would total 72. Please note the figure included for capital outlay is for the remodeling cost to accommodate the increased number of Legislators in the Capitol. If a decision were made to create an addition to the Capitol or to construct a new building the figure would be much higher and would likely be included in a capital appropriation.

Prepared by: Karla Schofield, Deputy Director
Phone 465-6626
Division Legislative Affairs Agency
Date/Time 1/29/10 12:43 PM
Approved by: Pamela Varni, Executive Director
Date 1/29/2010
Legislative Affairs Agency

FISCAL NOTE # 1

STATE OF ALASKA
2010 LEGISLATIVE SESSION

BILL NO. SJR 21

ANALYSIS CONTINUATION

Personal Services - 12 Additional Legislators - 963.0
Assume for staff allocation 1/2 Legislators are in the majority and 1/2 are in minority
34 staff to Legislators - $2,637.0 Support staff include full time - 1 attorney; session only - 2 LIO Officers,
1 Enroller or Help Desk Technician, 1 custodian. Total increase in Personal Service - 3,600.00.

Travel - Assume 1 Legislator from Juneau - Cost to move 11 Legislators and families - 60.0
Cost to relocate an additional 34 staff - 30.0; Cost of increased session per diem - 200.0;
Increase in Legislature's travel budget related to 12 new Legislators - 60.0; Total increase in Travel - 350.0.

Contractual - Allowance Accounts for 4 Senators at 10.0 and 8 Representatives at 8.0 = $104.0;
Connectivity for computers, phones, faxes, and printers - 66.0. Increase in office space for either expanding existing Legislative Information Offices or establishing new offices - 350.0. Total increase in contractual - 520.0.

Supplies - Cost to equip two offices per Legislator and their staff, one office in the district and one office in the Capitol. Items include desktop computers, one laptop per office, printers , hardware, software, which will be shipped to and from the Capital City each year, and one set of furniture for a district office and one set for the Capitol. Furniture items include desks, chairs, phones, file cabinets, fax machines - Total cost to equip offices - 170.0.

Capital Outlay - Cost to remodel the existing chambers in the Capitol and reconfigure space in the Capitol Complex to accommodate 12 new offices would likely, at a minimum, be at least 1,500.0. The cost could be much higher if the Legislature decided to build an addition to the Capitol or construct a new building.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SJR 21
(S) Publish Date: 2/3/10

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Dept. Affected: Legislature
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RDU All
Component Various
Sponsor Senate Community and Regional Affairs
Requester Senate State Affairs
Component Number Various

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
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Phone 465-6626
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Date/Time 1/29/10 12:43 PM
Approved by: Pamela Varni, Executive Director
Date 1/29/2010
Legislative Affairs Agency

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Requester: Senate State Affairs
Component Number: 21

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Prepared by: Gail Fenumiai, Director
Phone 465-4611
Division: Division of Elections
Date/Time 1/29/10, 3:49pm
Approved by: Linda Perez, Director
Date
Division of Administrative Services

(Revised 10/13/2009 OMB)

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Population trend for Election Districts in 2010

Election District	Pop. 2000	2010 Extrapolation	Diff. From Average	SJR 21 w/ 48 Eds Diff. From Average
1 Ket.	15,031	13,532	-3,777	-892
2 Sit-Wran-Pet	14,991	13,882	-3,427	-542
3-Jun	15,203	15,208	-2,101	784
4-Jun	15,508	15,148	-2,161	724
5 SE islands	15,048	12,948	-4,361	-1,476
6 Interior Bush	14,906	14,479	-2,830	55
7 Fbks	15,494	17,033	-276	2,609
8 Fbks	15,552	16,858	-451	2,434
9 Fbks	15,723	17,723	414	3,299
10 Fbks	15,599	17,372	63	2,948
11.N. Pole	15,904	17,435	126	3,011
12 Valdez-Hwys	16,303	17,756	447	3,332
13 Mat-Su	16,231	24,104	6,795	9,680
14 Mat-Su	16,119	23,950	6,641	9,526
15 Mat-Su	16,137	24,062	6,753	9,638
16 Mat-Su	16,104	20,993	3,684	6,569
17 Anch	15,819	17,509	200	3,085
18 Anch	15,639	17,380	71	2,956
19 Anch	15,841	17,782	473	3,358
20 Anch	15,837	17,703	394	3,279
21 Anch	15,850	17,689	380	3,265
22 Anch	15,831	17,734	425	3,310
23 Anch	15,847	18,127	818	3,703
24 Anch	15,812	17,816	507	3,392
25 Anch	15,836	17,871	562	3,447
26 Anch	15,823	17,848	539	3,424
27 Anch	15,820	17,621	312	3,197
28 Anch	15,839	17,639	330	3,215
29 Anch	15,846	17,691	382	3,267
30 Anch	15,839	17,577	268	3,153
31 Anch	15,811	17,567	258	3,143
32 Anch	15,839	16,937	-372	2,513
33 Kenai	16,466	17,744	435	3,320
34 Kenai	16,409	17,744	435	3,320
35 Kenai	16,436	17,907	598	3,483
36 Kodiak	14,928	14,068	-3,241	-356
37 Bristol B- Chain	15,150	13,241	-4,068	-1,183
38 Bethel-YK	14,921	16,011	-1,298	1,587
39 Nome	14,966	16,086	-1,223	1,662
40 Kotz-Barrow	15,155	14,578	-2,731	154
TOTAL	627,413	692,351		
Average Population	15,673	17,309		14,424

By Sen. Olson Office

NCSL **Changes in the Sizes of Legislatures 1960-2006**

State	Size in 1960	Size in 2006	Year(s) of Change(s)*
Alabama	141	140	1974
Alaska	60	60	No change
Arizona	108	90	1966
Arkansas	135	135	No change
California	120	120	No change
Colorado	100	100	No change
Connecticut	330	187	1966, 1972
Delaware	52	62	1964, 1968, 1972
Florida	133	160	1962, 1964, 1966, 1972
Georgia	259	236	1968, 1972
Hawaii	76	76	No change
Idaho	103	105	1962, 1964, 1966, 1984, 1992
Illinois	235	177	1972, 1982
Indiana	150	150	No change
Iowa	158	150	1964, 1966, 1970
Kansas	165	165	No change
Kentucky	138	138	No change
Louisiana	144	144	No change
Maine	184	186	1962, 1968, 1972, 1984
Maryland	152	188	1962, 1966, 1974
Massachusetts	280	200	1978
Michigan	144	148	1964
Minnesota	202	201	1972
Mississippi	189	174	1962
Missouri	191	197	1962
Montana	150	150	1966, 1972
Nebraska	43	49	1964
Nevada	64	63	1962, 1966, 1982
New Hampshire	424	424	No change
New Jersey	81	120	1966, 1968
New Mexico	98	112	1964, 1966
New York	208	212	1964, 1966, 1972, 1982, 2004
North Carolina	170	170	No change
North Dakota	164	141	1962, 1964, 1966, 1972, 1976, 1982, 1992, 2004
Ohio	177	132	1962, 1964, 1966
Oklahoma	165	149	1964, 1972
Oregon	90	90	No change
Pennsylvania	260	253	1964, 1966
Rhode Island	144	113	1962, 1966, 2004
South Carolina	170	170	No change
South Dakota	110	105	1972
Tennessee	132	132	No change
Texas	181	181	No change
Utah	89	104	1964, 1966, 1972
Vermont	276	180	1966
Virginia	140	140	No change
Washington	148	147	1972
West Virginia	132	134	1964
Wisconsin	133	132	1972
Wyoming	83	90	1964, 1966, 1972, 1982, 1992

* The year is the election year in which a change took effect, not necessarily the year that the change was adopted.

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State	2005 Population	Rank	Total Legislators	State Rank	Senate Size	State Rank	Approximate Senate District Size	Rank	House Size	State Rank	Approximate House District Size	State Rank
Alabama	4,557,808	23	140	24	35	16	130,223	19	105	16	43,408	21
Alaska	663,661	47	60	39	20	25	33,183	44	40	30	16,592	41
Arizona	5,939,292	17	90	35	30	20	197,976	10	60	26	98,988	8
Arkansas	2,779,154	32	135	26	35	16	79,404	30	100	18	27,792	32
California	36,132,147	1	120	29	40	12	903,304	1	80	22	451,652	1
Colorado	4,665,177	22	100	34	35	16	133,291	18	65	25	71,772	12
Connecticut	3,510,297	29	187	9	36	15	97,508	27	151	6	23,247	36
Delaware	843,524	45	62	38	21	24	40,168	41	41	29	20,574	38
Florida	17,789,864	4	160	17	40	12	444,747	3	120	13	148,249	3
Georgia	9,072,576	9	236	3	56	4	162,010	16	180	3	50,403	20
Hawaii	1,275,194	42	76	36	25	22	51,008	38	51	27	25,004	34
Idaho	1,429,096	39	105	32	35	16	40,831	40	70	24	20,416	39
Illinois	12,763,371	5	177	13	59	3	216,328	9	118	14	108,164	7
Indiana	6,271,973	15	150	18	50	6	125,439	21	100	18	62,720	14
Iowa	2,966,334	30	150	18	50	6	59,327	34	100	18	29,663	31
Kansas	2,744,687	33	165	16	40	12	68,617	33	125	10	21,957	37
Kentucky	4,173,405	26	138	25	38	14	109,826	26	100	18	41,734	23
Louisiana	4,523,628	24	144	22	39	13	115,990	24	105	16	43,082	22
Maine	1,321,505	40	186	10	35	16	37,757	42	151	6	8,752	45
Maryland	5,600,388	19	188	8	47	9	119,157	23	141	8	39,719	25
Massachusetts	6,398,743	13	200	6	40	12	159,969	17	160	5	39,992	24
Michigan	10,120,860	8	148	20	38	14	266,338	6	110	15	92,008	9
Minnesota	5,132,799	21	201	5	67	1	76,609	31	134	9	38,304	26
Mississippi	2,921,088	31	174	14	52	5	56,175	35	122	12	23,943	35
Missouri	5,800,310	18	197	7	34	17	170,597	14	163	4	35,585	27
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Nebraska	1,758,787	38	49	40	49	7	35,894	43	Unicameral		NA	NA
Nevada	2,414,807	35	63	37	21	24	114,991	25	42	28	57,495	18
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TOTAL	296,410,404		7,382		1,971				5,411			

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We started with an enlarged hour of 40 districts that fit the Alaska socio-economic map perfectly

- *Continued from previous page*

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The point is that the first statehood districts fit the socio-economic map perfectly. However, from that day on every decennial redistricting forced the outlying and coastal districts into contortions, struggling to fit constitutional criteria and then the mandates of the ethnic criteria imposed by the 1965 U.S. Voters Right Act and subsequent revisions. Further, almost simultaneously the U.S. Supreme Court Tennessee case brought down the traditional regional Senates across the country. This was a political shock in itself

With a 20 member Senate and 40-member House, and a landmass that imposes huge barriers, we are now about out-of-gas in being able to meet the mandates of the U.S. Voters Rights Act. The issue is! Might the U.S. Justice Department question the size of our legislative bodies, and due to their small fixed size, our ability to provide ethnic representation required under the U.S. Voters Rights Act.

- Ongoing series of back grounders

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SOUTHEAST ALASKA CONFERENCE OF MAYORS

RESOLUTION NO. 2010-02

A RESOLUTION OF THE SOUTHEAST ALASKA CONFERENCE OF MAYORS SUPPORTING THE EXPANSION OF THE ALASKA STATE LEGISLATURE PRIOR TO REAPPORIONMENT

WHEREAS, Southeast Alaska has enjoyed a long and proud tradition in helping shape Alaska's future; and

WHEREAS, Alaska's rural and coastal communities deserve a voice in the legislative process; and

WHEREAS, Alaska's unique cultural, geographic and demographic characteristics require representation that is understanding of and closely connected to our communities ; and

WHEREAS, population trends in our state will surely render a reapportionment process that vests greater legislative power in communities not well positioned to understand the unique characteristics of our region

NOW, THEREFORE, BE IT RESOLVED BY THE SOUTHEAST ALASKA CONFERENCE OF MAYORS supports legislation that increases the size of the Alaskan Legislature prior to the 2012 election.

ADOPTED Feb. 2, 2010

Scott McAdams, Chair

SJR 21

Southeast Conference

March 8, 2010

Dear Alaska Legislator;

As our state continues to grow and the population increasingly concentrates itself into relatively few urban areas, reapportionment will lead to even larger legislative majorities who call the Anchorage basin their home. Conversely, corresponding legislative districts will cover wider and wider swaths of sparsely populated areas having relatively little in common. Already senate districts C, S and T are each larger that most states in the Union. In order to assure that we continue to hear the voices from every corner of the state, not just the urban centers, we believe it is time to increase the size of the Alaska legislature.

Southeast Conference is a private membership organization that works to advance the collective interests of the people, communities, and businesses of Southeast Alaska. It is the Alaska Regional Development Organization (ARDOR), Federal Economic Development District (EDD), and USDA Resource Conservation and Development (RC&D) Council for the region. The Conference's Mission is to help develop strong economies, healthy communities, and a quality environment in Southeast Alaska. In keeping with that mission we feel it is of upmost importance we are all heard with an equal voice.

Southeast Conference respectfully asks for your support for HJR38 and SJR21.

Sincerely,

Shelly Wright

Shelly Wright
Executive Director

P.O. Box 21989 612 W. Willoughby Avenue, Suite B, Juneau Alaska 99802

(907) 523-4350 (907) 463-5670 Fax info@seconference.org

www.seconference.org

POPULATION TREND FOR ELECTION DISTRICTS IN 2010

Election District (ED)	Pop. 2000	2010 Extrapolation	Diff. From Average	SJR 21 w/ 48 EDs Diff. From Average	8 new ED ?
1 Ket.	15,031	13,532	-3,777	-892	
2 Sit-Wran-Pet	14,991	13,882	-3,427	-542	
3-Jun	15,203	15,208	-2,101	784	
4-Jun	15,508	15,148	-2,161	724	
5 SE islands	15,048	12,948	-4,361	-1,476	
6 Interior Bush	14,906	14,479	-2,830	55	
7 Fbks	15,494	17,033	-276	2,609	
8 Fbks	15,552	16,858	-451	2,434	
9 Fbks	15,723	17,723	414	3,299	1
10 Fbks	15,599	17,372	63	2,948	
11.N. Pole	15,904	17,435	126	3,011	
12 Valdez-Hwys	16,303	17,756	447	3,332	
13 Mat-Su	16,231	24,104	6,795	9,680	
14 Mat-Su	16,119	23,950	6,641	9,526	2 1/2
15 Mat-Su	16,137	24,062	6,753	9,638	
16 Mat-Su	16,104	20,993	3,684	6,569	
17 Anch	15,819	17,509	200	3,085	
18 Anch	15,639	17,380	71	2,956	
19 Anch	15,841	17,782	473	3,358	
20 Anch	15,837	17,703	394	3,279	
21 Anch	15,850	17,689	380	3,265	
22 Anch	15,831	17,734	425	3,310	
23 Anch	15,847	18,127	818	3,703	
24 Anch	15,812	17,816	507	3,392	3 1/2
25 Anch	15,836	17,871	562	3,447	
26 Anch	15,823	17,848	539	3,424	
27 Anch	15,820	17,621	312	3,197	
28 Anch	15,839	17,639	330	3,215	
29 Anch	15,846	17,691	382	3,267	
30 Anch	15,839	17,577	268	3,153	
31 Anch	15,811	17,567	258	3,143	
32 Anch	15,839	16,937	-372	2,513	
33 Kenai	16,466	17,744	435	3,320	
34 Kenai	16,409	17,744	435	3,320	1?
35 Kenai	16,436	17,907	598	3,483	
36 Kodiak	14,928	14,068	-3,241	-356	
37 Bristol B- Chain	15,150	13,241	-4,068	-1,183	
38 Bethel-YK	14,921	16,011	-1,298	1,587	
39 Nome	14,966	16,086	-1,223	1,662	
40 Kotz-Barrow	15,155	14,578	-2,731	154	
TOTAL	627,413	692,351			
Average Population	15,673	17,309	17,309	14,424	

By Sen. Olson Office

NCSL **Changes in the Sizes of Legislatures 1960-2006**

State	Size in 1960	Size in 2006	Year(s) of Change(s)*
Alabama	141	140	1974
Alaska	60	60	No change
Arizona	108	90	1966
Arkansas	135	135	No change
California	120	120	No change
Colorado	100	100	No change
Connecticut	330	187	1966, 1972
Delaware	52	62	1964, 1968, 1972
Florida	133	160	1962, 1964, 1966, 1972
Georgia	259	236	1968, 1972
Hawaii	76	76	No change
Idaho	103	105	1962, 1964, 1966, 1984, 1992
Illinois	235	177	1972, 1982
Indiana	150	150	No change
Iowa	158	150	1964, 1966, 1970
Kansas	165	165	No change
Kentucky	138	138	No change
Louisiana	144	144	No change
Maine	184	186	1962, 1968, 1972, 1984
Maryland	152	188	1962, 1966, 1974
Massachusetts	280	200	1978
Michigan	144	148	1964
Minnesota	202	201	1972
Mississippi	189	174	1962
Missouri	191	197	1962
Montana	150	150	1966, 1972
Nebraska	43	49	1964
Nevada	64	63	1962, 1966, 1982
New Hampshire	424	424	No change
New Jersey	81	120	1966, 1968
New Mexico	98	112	1964, 1966
New York	208	212	1964, 1966, 1972, 1982, 2004
North Carolina	170	170	No change
North Dakota	164	141	1962, 1964, 1966, 1972, 1976, 1982, 1992, 2004
Ohio	177	132	1962, 1964, 1966
Oklahoma	165	149	1964, 1972
Oregon	90	90	No change
Pennsylvania	260	253	1964, 1966
Rhode Island	144	113	1962, 1966, 2004
South Carolina	170	170	No change
South Dakota	110	105	1972
Tennessee	132	132	No change
Texas	181	181	No change
Utah	89	104	1964, 1966, 1972
Vermont	276	180	1966
Virginia	140	140	No change
Washington	148	147	1972
West Virginia	132	134	1964
Wisconsin	133	132	1972
Wyoming	83	90	1964, 1966, 1972, 1982, 1992

* The year is the election year in which a change took effect, not necessarily the year that the change was adopted.

State	2005 Population	Rank	Total Legislators	State Rank	Senate Size	State Rank	Approximate Senate District Size	Rank	House Size	State Rank	Approximate House District Size	State Rank
Alabama	4,557,808	23	140	24	35	16	130,223	19	105	16	43,408	21
Alaska	663,661	47	60	39	20	25	33,183	44	40	30	16,592	41
Arizona	5,939,292	17	90	35	30	20	197,976	10	60	26	98,988	8
Arkansas	2,779,154	32	135	26	35	16	79,404	30	100	18	27,792	32
California	36,132,147	1	120	29	40	12	903,304	1	80	22	451,652	1
Colorado	4,665,177	22	100	34	35	16	133,291	18	65	25	71,772	12
Connecticut	3,510,297	29	187	9	36	15	97,508	27	151	6	23,247	36
Delaware	843,524	45	62	38	21	24	40,168	41	41	29	20,574	38
Florida	17,789,864	4	160	17	40	12	444,747	3	120	13	148,249	3
Georgia	9,072,576	9	236	3	56	4	162,010	16	180	3	50,403	20
Hawaii	1,275,194	42	76	36	25	22	51,008	38	51	27	25,004	34
Idaho	1,429,096	39	105	32	35	16	40,831	40	70	24	20,416	39
Illinois	12,763,371	5	177	13	59	3	216,328	9	118	14	108,164	7
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Two legislative redistrictings - one in 2012 and perhaps another in 2014

Alaska could go through two legislative reapportionments after the 2010 census. The first would be the result of our own state districting process. Inclusive within this process will be contentious litigation that always results. And in Alaska, it has not been infrequent that the Court has taken control and redrawn the plan by appointed court masters.

Now comes the test! Any Alaska plan, or even election laws must be pre-cleared by the U.S. Justice Department civil rights division to ensure it complies with the requirements of the federal U.S. Voters Rights Act of 1965, and subsequent revisions. Alaska is in a special category with nine others states (*all in the Old South*). There were a number of reasons why we earned inclusion, but one was an "English language" test for voting in our state constitution. This was never implemented, and subsequently repealed. **Note:** In fact, Alaska did not even implement voter registration until the election of 1968.

Nevertheless, getting tangled up with U.S. Justice preclearance on the state 2012 plan could cause delay preventing resolution and implementation prior to the 2012 elections. The result of delay would be some kind of interim plan for 2012, i.e. use of the existing plan, the state proposed plan, or temporary court imposed plan.

The problem been with us since before statehood, and is built into the small size of our House and Senate

Alaska's increasingly skewered districting map is a natural result of a very small but fixed number of our 20 member Senate and 40 member House (*smallest in the nation*). The size of the House and Senate is fixed. However, the state's population has grown much faster in the urban areas, along the railbelt, and in coastal cities like Juneau, than in the smaller communities scattered along the extensive Alaska coastline and in the vast rural Interior of the state. This means districts in urban centers become more numerous and compact, but rural districts become fewer and must become huge and ungainly to gather sufficient population for a district, taking in regions completely unrelated and separated from each other.

For example, Sen. Johnny Ellis, D-Anchorage, can walk his downtown Anchorage district North and South, East and West, in just a few hours. Sen. Al Kookesh, D-Angoon, must catch a plane to Juneau (or ferry), catch Alaska Airlines to Anchorage, and then fly to Aniak of the Lower Kuskokwim or Holy Cross on the Lower Yukon. This district is half the size of Alaska.

- *Continued on next page*

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- *Continued from previous page*

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- Ongoing series of back grounders

In re 2001 REDISTRICTING CASES.

No. S–10504.

Supreme Court of Alaska.

March 21, 2002.

Petitions for review were filed as to superior court's orders regarding the Redistricting Board's proclamation plan. On consolidated petitions, the Supreme Court held that: (1) proposed House District 16 violated compactness requirement; (2) House District 5 was not constitutionally compact; (3) remand was required to permit Board to reconsider proposed House Districts 12 and 32; (4) unorganized geographic area had no constitutional right to be placed in a single house district; (5) dividing borough among two proposed house districts did not deny borough residents equal protection; (6) proposed Senate District S did not violate any group's equal protection rights; (7) provision of plan, under which the maximum population deviation in city was 9.5%, was unconstitutional; (8) Board failed to justify negative 6.9% deviation in House District 40; (9) Board did not violate the equal protection rights of military personnel by creating House District 18; and (10) assuming e-mail exchanges between some members of Redistricting Board violated Open Meetings Act, no remedy was appropriate.

Petitions for review granted; remanded with instructions.

Bryner, J., filed an opinion dissenting in part.

Carpeneti, J., filed a dissenting opinion.

1. States ⇐27(3)

Proposed House District 16, which contained a bizarrely-shaped appendage in the southwestern portion of the District, violated state constitution's compactness requirement; inclusion of appendage was unnecessary to further any other constitutional requirement and alternative plans considered by Redistricting Board contained more compact and otherwise constitutional versions of district. Const. Art. 6, § 6.

2. States ⇐27(3)

Absent finding that its current configuration was required by the Voting Rights Act, House District 5, which was substantially less compact than required by considerations of population equality and geography, would not be constitutionally compact. Voting Rights Act of 1965, § 2 et seq., 42 U.S.C.A. § 1973 et seq.; Const. Art. 6, § 6.

3. States ⇐27(10)

Redistricting Board was mistaken in its interpretation of doctrine of proportionality, such that Board's range of choices was unduly limited and remand was required to permit Board to reconsider proposed House Districts 12 and 32.

4. States ⇐27(4.1)

An inference of discriminatory intent may be negated by a demonstration that the challenged aspects of a redistricting plan resulted from legitimate nondiscriminatory policies, such as constitutional requirements of compactness, contiguity, and socio-economic integration. Const. Art. 6, § 6.

5. States ⇐27(4.1)

Doctrine of proportionality did not bar joinder of parts of municipality and borough in a single congressional district, but Redistricting Board had to take a hard look at options that it may have ignored based on its misinterpretation of the doctrine of proportionality.

6. Constitutional Law ⇐225.3(3)

States ⇐27(7)

Unorganized geographic area had no constitutional right to be placed in a single house district, as dividing area did not violate the constitutional requirement that districts be socio-economically integrated so long as each portion is integrated, as nearly as practicable, with the district in which it is placed, and dividing area did not, without more, constitute sufficient evidence of an equal protection violation such that Board was required to justify its action. Const. Art. 1, § 1; Art. 6, § 6.

7. Constitutional Law ⇨225.3(8)
States ⇨27(7)

Dividing borough among two proposed house districts did not deny borough residents equal protection or result in one house district not being socio-economically integrated; board offered an uncontroverted, non-discriminatory motivation for its action, given need for population to complete a district, and made a reasonable decision to favor dividing borough over further fragmenting another borough. Const. Art. 1, § 1; Art. 6, § 6.

8. Constitutional Law ⇨225.3(3)
States ⇨27(4.1)

Proposed Senate District S did not violate any group's equal protection rights; Redistricting Board combined two house districts to form Senate District S, in part, as a consequence of its decision to join two other house districts in another senate district to preserve an effective Native senate district to comply with the Voting Rights Act. Voting Rights Act of 1965, § 2 et seq., 42 U.S.C.A. § 1973 et seq.; Const. Art. 1, § 1.

9. Constitutional Law ⇨225.3(6)
States ⇨27(5)

Provision of Redistricting Board's plan, under which the maximum population deviation in city was 9.5%, violated constitutional standard of equality of population "as near as practicable;" although city was by definition socio-economically integrated, and its population was sufficiently dense and evenly spread to allow multiple combinations of compact, contiguous districts with minimal population deviations, Board failed to make any attempt to further minimize deviations. Const. Art. 6, § 6.

10. States ⇨27(5)

Redistricting Board failed to justify negative 6.9% deviation in House District 40 that resulted in a 12% statewide maximum population deviation in house districts; although House District 40 deviation was indirectly caused by Board's attempt to facilitate favorable review of its plan by the United States Department of Justice under the Voting Rights Act, Act did not require state to avoid retrogression of minority voting strength if doing so would create a maximum population deviation exceeding 10%. Voting Rights Act of 1965, § 2 et seq., 42 U.S.C.A. § 1973 et seq.

11. Constitutional Law ⇨225.3(8)
States ⇨27(7)

Redistricting Board did not violate the borough's geographic equal protection rights by failing to award it strictly proportional representation in the legislature; although failure to keep borough's house districts together when forming senate districts provided some evidence of discriminatory intent, Board had a valid non-discriminatory justification based on its forming an effective Native senate district to avoid retrogression under the Voting Rights Act. Voting Rights Act of 1965, § 2 et seq., 42 U.S.C.A. § 1973 et seq.; Const. Art. 1, § 1.

12. Constitutional Law ⇨225.3(3)
States ⇨27(6)

Redistricting Board did not violate the equal protection rights of military personnel by creating House District 18; neither military personnel nor members of any other group had any constitutional right to be divided among two or more districts to maximize their opportunity to influence multiple districts rather than control one. Const. Art. 1, § 1.

13. States ⇨67

Assuming e-mail exchanges between some members of Redistricting Board violated Open Meetings Act, public interest in requiring compliance with the Open Meetings Act did not outweigh the harm that would be caused to the public interest by voiding the entire Redistricting Plan on this basis and, thus, no remedy was appropriate. AS 44.62.310(f).

Before FABE, Chief Justice, MATTHEWS, EASTAUGH, BRYNER, and CARPENETI, Justices.

Order

In consideration of the consolidated petitions for review of the orders of the superior court, including its Memorandum and Order of February 1, 2002, and after hearing oral

argument on these petitions on March 15, 2002,

IT IS ORDERED:

1. All petitions for review of the superior court's orders regarding the Redistricting Board's Proclamation Plan of June 18, 2001, are GRANTED.

2. This case is REMANDED to the superior court with instructions to further remand it to the board for formulation of a final plan which complies with this order. Article VI, section 11 of the Alaska Constitution directs that this court expedite its redistricting decisions, "affording them priority over all other matters...." This order is made in compliance with this directive in lieu of this court's traditional but more lengthy and time-consuming opinion format.

3. Except insofar as they are inconsistent with this order, the orders of the superior court challenged by the petitioners are AFFIRMED.[1]

4. The stay entered by the superior court February 1, 2002 is VACATED.

[1] 5. House District 16 violates the compactness requirement of article VI, section 6 of the Alaska Constitution. House District 16 contains a bizarrely-shaped appendage in the southwestern portion of the district. The inclusion of this appendage is unnecessary to further any other requirement of article VI, section 6, and alternative plans considered by the board contained more compact and otherwise constitutional versions of House District 16.[2]

[2] 6. House District 5 is non-compact. The Craig plaintiffs acknowledge that a district including Cordova and extending as far south as Baranof Island would be compact.[3] But they argue that extending the district beyond Baranof Island to the southern boundary of the state violates the compactness requirement. Although we have in the past invalidated Southeast Alaska districts that included Cordova,[4] current population figures justify Cordova's inclusion in House District 5 to prevent substantial deviations in Southeast Alaska. But we agree with the Craig plaintiffs that House District 5 is substantially less compact than required by considerations of population equality and geography. In argument before this court, counsel for the board suggested that House District 5 must remain unchanged to comply with the federal Voting Rights Act. But the board did not make findings justifying the district on this basis. On remand, the board should either correct House District 5 or expressly find that the district's current configuration is required by the Voting Rights Act. Absent such a finding on remand, House District 5 will not be constitutionally compact.

[3, 4] 7. House Districts 12 and 32 must be reconsidered on remand because they are based on a mistaken legal premise that constrained the board's view of the permissible range of constitutional options for these ar-

1. We commend the superior court for giving prompt and thorough attention to the many issues raised below. Under extreme time pressures, the superior court ably dealt with pretrial and discovery issues, conducted a three-week trial, and issued a thoughtful and well-reasoned opinion of 121 pages.

We also thank all parties and amici and their attorneys for their helpful briefs, provided under an accelerated briefing schedule, and their flexibility in satisfying procedural requirements for submitting these cases to this court on an expedited basis.

2. In *Hickel v. Southeast Conference*, 846 P.2d 38 (Alaska 1992), we adopted and observed the following priorities relating to redistricting:

> Priority must be given first to the Federal Constitution, second to the federal voting rights act, and third to the requirements of article VI, section 6 of the Alaska Constitution. The requirements of article VI, section 6 shall receive priority *inter se* in the following order: (1) contiguousness and compactness, (2) relative socioeconomic integration, (3) consideration of local government boundaries, (4) use of drainage and other geographic features in describing boundaries.

Id. at 62. We adhere to these priorities in this order.

3. Board Plans 1 and 2 proposed such a district.

4. *Carpenter v. Hammond*, 667 P.2d 1204, 1215 (Alaska 1983) (holding that "inclusion of Cordova in House Election District 2" violated socioeconomic integration requirement, "[a]lthough the question [was] an extremely close one").

eas.[5] The board interpreted this court's decision in *Kenai Peninsula Borough v. State*[6] to preclude the board from pairing population from the Matanuska-Susitna Borough with the Municipality of Anchorage because both Anchorage and the borough had sufficient excess population to "control" an additional seat.[7] But *Kenai Peninsula Borough* does not entitle political subdivisions to control a particular number of seats based upon their populations. *Kenai Peninsula Borough* simply held that the board cannot intentionally discriminate against a borough or any other "politically salient class" of voters by invidiously minimizing that class's right to an equally effective vote.[8] *Kenai Peninsula Borough* recognizes that when a reapportionment plan unnecessarily divides a municipality in a way that dilutes the effective strength of municipal voters, the plan's provisions will raise an inference of intentional discrimination. But an inference of discriminatory intent may be negated by a demonstration that the challenged aspects of a plan resulted from legitimate nondiscriminatory policies such as the article VI, section 6 requirements of compactness, contiguity, and socio-economic integration.

Because the board was mistaken in its interpretation of the doctrine of proportionality, the board's range of choices was unduly limited. We therefore remand so the board can revisit the question of redistricting Southcentral Alaska unencumbered by this mistaken assumption.

[5] We do not direct the board to join parts of the Municipality of Anchorage and the Matanuska-Susitna Borough in a single district. We merely hold on the record before us that the doctrine of proportionality does not bar joinder. The board must take a hard look at options that it may have ignored based on its misinterpretation of the law.

[6] 8. The trial court correctly concluded that the Delta Junction area has no con-

5. *Cf. Interior Alaska Airboat Ass'n v. State, Bd. of Game*, 18 P.3d 686, 690 (Alaska 2001) ("[R]eview [of the reasonableness of a regulation] consists primarily of ensuring that the agency has taken a hard look at the salient problems and has genuinely engaged in reasoned decision making.").

6. 743 P.2d 1352 (Alaska 1987).

7. The Municipality of Anchorage has a population that would support 16.6 house seats. The Matanuska Susitna Borough's population would support 3.8 seats. Taken collectively, these municipalities—which by any measure meet article VI, section 6's relative socio-economic integration requirement—would support 20.4 seats. But under the board's interpretation of the doctrine of proportionality, the Municipality of Anchorage is entitled to control seventeen seats and the Matanuska-Susitna Borough is entitled to control four seats, for a collective total of twenty-one seats.

On remand it is likely that the board will consider whether to combine a portion of the excess population of these two municipalities to create a twentieth district. Doing so would leave a population excess of .4, and would raise the question what to do with that excess. One answer might be to overpopulate slightly each of the twenty districts, adding about 300 people to each district, a positive deviation from the ideal of about two percent. But this choice might be seen as undesirable, especially given the relatively high growth rate of the area, and if this choice is not taken, the question will be whether the .4 excess population can be combined with a neighboring area.

This would raise two issues. The first issue is whether this court's antidilution rule expressed in *Hickel*, 846 P.2d at 52, would permit such a combination. This rule holds that where possible the excess population of a municipality can only go to one other district. For example, in the scenario under discussion here (a joint Anchorage/Matanuska-Susitna district), the excess .4 populations of both municipalities would not fit into a single joint district, thus making it impossible to achieve literal compliance with the anti-dilution rule. We conclude, however, that this need to accommodate excess population would be sufficient justification to depart from the antidilution rule.

The second issue is whether any neighboring area that might be joined with the .4 excess population would be sufficiently integrated. Based on the briefs and oral arguments, it appears to us, under these circumstances, that any neighboring areas north, east, or south of the combined municipalities would meet the constitutional requirement of relative socio-economic integration.

8. *See Kenai Peninsula Borough*, 743 P.2d at 1370-73; *see also Karcher v. Daggett*, 462 U.S. 725, 754, 103 S.Ct. 2653, 77 L.Ed.2d 133 (1983) (Stevens, J., concurring) (explaining that group of voters must establish that it belongs to "politically salient class" as first element of claim of invidious discrimination); *Gaffney v. Cummings*, 412 U.S. 735, 754, 93 S.Ct. 2321, 37 L.Ed.2d 298 (1973) (recognizing potentially viable equal protection challenges "if racial or political groups have been fenced out of the political process and their voting strength invidiously minimized").

stitutional right to be placed in a single house district. Dividing the area does not violate the constitutional requirement that districts be socio-economically integrated so long as each portion is integrated, as nearly as practicable, with the district in which it is placed. Further, dividing an unorganized area such as the Delta Junction area does not, without more, constitute sufficient evidence of an equal protection violation such that the board must justify its action. Nevertheless, because this order requires reconsideration of the districts encompassing this area, on remand the board should take a hard look at alternatives, including constitutional alternatives that preserve socio-economically integrated areas.

[7] 9. Plaintiffs argue that dividing the Lake and Peninsula Borough among House Districts 36 and 37 denies the borough residents equal protection and results in House District 36 not being socio-economically integrated. Because the Kodiak Island Borough does not have enough population to support a house district, the board found it necessary to draw population from either the Lake and Peninsula Borough or the Kenai Peninsula Borough to form House District 36. The board's choice was permissible. The Upper Lakes region is as nearly as practicable socio-economically integrated with the Kodiak Island Borough through such links as their mutual membership in the Southwest Alaska Municipal Conference and their involvement in the commercial fishing industry. These areas have traditionally shared a senate district, and plaintiffs in this case requested that they continue to share a senate district due to the "close interaction and strong integration among all of the communities in Southwest Alaska."

Further, there is no equal protection violation. In *Hickel v. Southeast Conference*, we stated: "The division of a borough which otherwise has enough population to support an election district will be an indication of gerrymandering." [9] But this statement does not apply to this case because the Lake and Peninsula Borough falls far short of having enough population to support an election district. Moreover, the board offered an uncontroverted, non-discriminatory motivation for its action—it needed the population to complete District 36—and made a reasonable decision to favor dividing the Lake and Peninsula Borough over further fragmenting the Kenai Peninsula Borough.

[8] 10. Senate District S does not violate any group's equal protection rights. The board combined House Districts 37 and 38 to form Senate District S, and combined House Districts 35 and 36 to form Senate District R. This configuration split the historic Aleut/Alutiiq senate pairing and divided the Lake and Peninsula Borough into two senate districts. The board did this, in part, as a consequence of the board's decision to join House Districts 5 and 6 in Senate District C. This was necessary to preserve an effective Native senate district to comply with the Voting Rights Act. Although the board should not unnecessarily divide a borough between two senate districts, we conclude that the board offered acceptable reasons for doing so in this case.

[9] 11. The board failed to define Anchorage house districts that "contain a population as near as practicable to the quotient obtained by dividing the population of the state by forty." [10] Under the board's plan, the maximum population deviation in Anchorage—i.e., the sum of the absolute values of the two Anchorage districts with the greatest positive and negative deviations—is 9.5%.[11] Before article VI, section 6, was amended in 1998, maximum deviations below ten percent were insufficient, without more, to make out a prima facie case that a plan or part thereof was unconstitutional. Section 6 was amended in 1998 and the present constitutional

9. 846 P.2d 38, 51 n. 20 (Alaska 1992).

10. Alaska Const. art. VI, § 6. Under the federal equal protection clause, a state must make an "honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable." *Reynolds v. Sims*, 377 U.S. 533, 577, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964).

11. We further note that multiple combinations of Anchorage districts in the board's Proclamation Plan produce deviations ranging from 5.5% to 9.5%.

standard is equality of population "as near as practicable." Newly available technological advances will often make it practicable to achieve deviations substantially below the ten percent federal threshold, particularly in urban areas. Accordingly, article VI, section 6 will in many cases be stricter than the federal threshold. Here the board believed that deviations within ten percent in Anchorage automatically satisfied constitutional requirements; plaintiffs established that the board failed to make any attempt to further minimize the Anchorage deviations.

Because, as the board's counsel conceded at oral argument, the board made no effort to reduce deviations in Anchorage below ten percent, the burden shifted to the board to demonstrate that further minimizing the deviations would have been impracticable in light of competing requirements imposed under either federal or state law. We conclude that the board failed to offer an acceptable justification for the Anchorage deviations.

The board considered and rejected Anchorage plans with significantly lower maximum deviations, apparently because these plans did not respect the board's conception of neighborhood boundaries. But as we held in *Groh v. Egan*,[12] Anchorage neighborhood patterns cannot justify "substantial disparities" in population equality across Anchorage districts.[13] Anchorage is by definition socio-economically integrated, and its population is sufficiently dense and evenly spread to allow multiple combinations of compact, contiguous districts with minimal population deviations.[14] Accordingly, the Anchorage deviations are unconstitutional, and require the board on remand to make a good faith effort to further reduce the deviations.

[10] 12. The negative 6.9% deviation in House District 40 results in a 12% statewide maximum population deviation in house districts. The board has failed to justify this deviation. The board moved Pilot Station into House District 6 based upon the board's impression that House District 6 potentially needed a greater Native population to remain an effective Native district under the Voting Rights Act. The board then moved Shishmaref from House District 40 to House District 39 to make up the population shortfall resulting from the Pilot Station transfer. Thus, the House District 40 deviation was indirectly caused by the board's attempt to facilitate favorable review of its plan by the United States Department of Justice under section five of the Voting Rights Act.

But the Voting Rights Act does not require a state to avoid retrogression of minority voting strength if doing so would create a maximum population deviation exceeding ten percent.[15] The negative 6.9% deviation in House District 40 is therefore invalid and must be corrected.

[11] 13. The board did not violate the Matanuska Susitna Borough's geographic equal protection rights by failing to award it strictly proportional representation in the legislature. As explained above in paragraph seven, groups of voters are not constitutionally entitled to proportional representation absent invidious discrimination. Failure to keep a borough's house districts together when forming senate districts provides some evidence of discriminatory intent, just as failure to keep all of a borough's excess population in the same house district does.[16] But the board had a valid non-discriminatory jus-

12. 526 P.2d 863, 878–79 (Alaska 1974).

13. In *Groh*, we considered testimony concerning patterns of housing, income levels, and minority residency. We observed:

> While such patterns may form a basis for districting, they lack the necessary significance to justify the substantial disparities of 5.9, 6.5 and 8.6 percent. In an urban area such as Anchorage, more mathematical exactness can be achieved than in the sparsely settled portions of the state where pockets of culturally and economically divergent populations may be separated by geographic barriers.

526 P.2d at 879.

14. *See id.* at 878–79.

15. *See* Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act, 66 Fed. Reg. 5412, 5413 (Jan. 18, 2001). Counsel for the board conceded this at oral argument.

16. *See Hickel*, 846 P.2d at 52 ("[W]here possible, all of a municipality's excess population should go to one other district in order to maximize effective representation of the excess group.").

tification in this case for pairing one of the borough's house districts north with a Fairbanks district: the "fifth" Fairbanks district had to be paired south so that House District 5 could be paired with House District 6 to form an effective Native senate district to avoid retrogression under section five of the Voting Rights Act.

[12] 14. The board did not violate the equal protection rights of military personnel by creating House District 18. Neither military personnel nor members of any other group have any constitutional right to be divided among two or more districts to maximize their opportunity to influence multiple districts rather than control one.

[13] 15. Assuming that the trial court was correct in finding that some of the board members' e-mail exchanges violated the Open Meetings Act,[17] we agree with the trial court that no remedy is appropriate. We hold that the superior court properly concluded that, based on the factors set out in AS 44.62.310(f), "the public interest[ ] in requiring compliance with the Open Meetings Act does not outweigh the harm that would be caused to the public interest by voiding the entire Redistricting Plan on this basis." Because we hold that the superior court permissibly refused to grant any remedy for the particular e-mail exchanges it found to violate the Open Meetings Act, we need not address whether these e-mail exchanges actually violated the Act. We further conclude that the superior court did not err by failing to find additional violations of the Act.

16. We hold that plaintiffs' due process challenges to the board's development of the Proclamation Plan have no merit.

17. Redistricting in Alaska is a task of "Herculean proportions."[18] The challenge of creating a statewide plan that balances multiple and conflicting constitutional requirements is made even more difficult by the very short time-frame mandated by article VI, section 10 of the Alaska Constitution. But these great difficulties do not absolve this court of its duty to independently measure each district against constitutional standards.[19]

The board, at great personal and professional sacrifice to individual members and staff, made extraordinary efforts in discharging its duties. This court's invalidation of some aspects of the board's plan should not be read as a general criticism of the board's work. On the contrary, the board is to be commended for its diligent, conscientious efforts to achieve the basic goal of redistricting—"adequate and true representation by the people in their elected legislature; true, just, and fair representation."[20]

Entered at the direction of the court.

BRYNER, Justice, dissenting in part.

I dissent from one aspect of the court's order: its conclusion that House District 5 cannot pass constitutional muster without further justification.

Although the issue is admittedly close, I believe that the proclaimed version of House District 5 and the earlier version proposed in Board Plans 1 and 2 are both constitutionally permissible alternatives. On the one hand, as today's order correctly observes, the version proposed in Board Plans 1 and 2 is undeniably more compact than the Proclamation Plan's version; but on the other hand, the Proclamation Plan's version could reasonably be seen as offering relatively superior socio-economic integration throughout Southeast Alaska. In my view, article VI, section 6, of the Alaska Constitution gives compactness and socio-economic integration equiva-

17. The Open Meetings Act is set out in AS 44.62.310 and AS 44.62.312.

18. *Egan v. Hammond*, 502 P.2d 856, 865–66 (Alaska 1972), *quoted in Hickel*, 846 P.2d at 50; *Kenai Peninsula Borough*, 743 P.2d at 1359; *Groh*, 526 P.2d at 875 (recognizing difficulty of creating equipopulous districts which conform to all article VI, section 6 requirements).

19. Alaska Const. art. VI, § 11 (conferring appellate jurisdiction on supreme court to review redistricting challenges "on the law and the facts"); *Groh*, 526 P.2d at 867 (holding that this court reviews redistricting plans de novo upon record developed in superior court), *cited in Kenai Peninsula Borough*, 743 P.2d at 1358.

20. 3 Proceedings of the Alaska Constitutional Convention (PACC) 1835 (Jan. 11, 1956), *quoted in Hickel*, 846 P.2d at 44.

lent stature as redistricting criteria; it thus seems to me that neither version of House District 5 can claim *constitutional* superiority. Because the board has broad discretion to select the most desirable among constitutionally permissible alternatives, I would uphold House District 5 as proclaimed.

In all other respects, I join in the court's order.

CARPENETI, Justice, dissenting.

The court today strikes down—directly or indirectly—over two-thirds of the election districts fashioned by the board.[1] I disagree with several individual aspects of today's Order, and discuss those points in this dissent. Fundamentally, though, I disagree with the Order because it fails to truly consider the statewide responsibilities of the board and the need for the board, at the end of the day, to prepare a plan that works across the entire state.

Proclamation House District 5

The Order invalidates Proclamation[2] House District 5 on the ground that it is non-compact. But Alaska's constitution "calls only for relative compactness;"[3] this is because the state's geography and population distribution make it impossible to draw conventionally compact districts that neatly approximate regular shapes like squares and circles. We have frequently allowed some departure from strict compactness in a given district in order to accommodate all of the constitutional criteria for all of the districts in the state.[4] We have previously noted the difficulty of drawing districts in Alaska and emphasized the need for flexibility so that all constitutional requirements may be satisfied as nearly as practicable: "'When Alaska's geographical, climatical, ethnic, cultural, and socio-economic differences are contemplated the task assumes Herculean proportions commensurate with Alaska's enormous land area. The problems are multiplied by Alaska's sparse and widely scattered population and the relative inaccessibility of portions of the state.'"[5]

In the "Board Plans"[6] advocated by the Craig plaintiffs and impliedly accepted as "compact" by today's Order, the proposed "Islands District" encompassing Prince of Wales Island begins at the Canadian border on the south, includes a 300-mile section of the mainland, almost all of Prince of Wales Island, all of Kupreanof and Kuiu Islands, almost all of Admiralty Island, about half of Chichagof Island, and then returns to the mainland to include a long, thin section of the mainland which ends in a long, thin appendage slicing the Haines Borough in two and incorporating Klukwan but bypassing Haines

1. The Order explicitly strikes down House Districts 5, 12, 16, 32, and the Anchorage Districts 17–31. Furthermore, the Order instructs the board to make changes to House Districts 6, 39, and 40, thereby directly striking down a total of twenty-two of forty House districts. These districts necessarily implicate twelve of twenty Senate Districts: District C (House Districts 5 and 6), District F (House District 12), District H (House District 16), District T (House Districts 39 and 40), and the Anchorage Districts I–P (House Districts 17–32).

This Order will indirectly necessitate changes to other districts, as well. With a conservative estimate of at least one other contiguous district being affected for each district explicitly struck down (not including the Anchorage districts, with the exception of District 32), four additional House districts are affected (District 1, District 35, District 36, and District 38). These four additional House districts affect another three Senate districts (District A, District R, and District S). In total, today's Order directly or indirectly affects forty-one of sixty districts. If the Order necessitates changes in all of the districts contiguous with those explicitly struck down, forty-seven of sixty districts are directly or indirectly affected.

2. Districts finally adopted by the Redistricting Board are called "Proclamation" districts.

3. *Carpenter v. Hammond*, 667 P.2d 1204, 1218 (Alaska 1983) (Matthews, J., concurring) (adopted by the full court in *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1361 & n. 13 (Alaska 1987)).

4. *See, e.g., Hickel v. Southeast Conference*, 846 P.2d 38, 52 & n. 23 (Alaska 1993).

5. *Id.* at 50 (quoting *Egan v. Hammond*, 502 P.2d 856, 865–66 (Alaska 1972)), *quoted in Groh v. Egan*, 526 P.2d 863, 875 (Alaska 1974) and *Kenai Peninsula Borough*, 743 P.2d at 1359.

6. "Board Plans" 1 and 2, which were among the four plans originally promulgated by the board, were not ultimately adopted by the board. As noted above in note 2, districts finally adopted by the board are known as "Proclamation" districts.

on its way to Klukwan. Proclamation House District 5, extending west to include Cordova, is not "substantially less compact" than the "Islands District" in the plan advocated by the Craig plaintiffs. As the options before the board were all relatively compact, the board had the discretion to choose among the differing plans. As Judge Rindner found, the board's decision to keep smaller, rural communities together was a reasonable choice: Proclamation District 5 did not have the appendage problem of Board Plans 1 and 2 and public testimony from small communities urged the board to create a district that did not include them with larger, urban communities. Indeed, the board's plan enjoyed the distinction of being endorsed by every legislator—Republican and Democrat, urban and rural, Native and Caucasian—in all of Southeast Alaska.

Correctly viewing redistricting as a process that requires the board to constantly look beyond the borders of the district being fashioned, the board made a reasonable choice in drawing Proclamation House District 5. The district is substantially more compact than a number of districts in the state,[7] is easily as compact as Board Plans 1 and 2 because it avoids the Klukwan appendage problem that infects those alternative plans,[8] and is sufficiently socio-economically integrated. The superior court's affirmance of the board's action in creating Proclamation District 5 should be upheld.

Proclamation House Districts 12 and 32

Judge Rindner carefully analyzed the problems presented by the formation of Proclamation House Districts 12 and 32. He found that Proclamation District 12 could not survive close scrutiny because of insufficient socio-economic integration between the northern and southern halves of the district, separated as they were by the Alaska Range and long-established habits of economic and social activity. The evidence showed that the northern communities interacted with each other and the southern communities interacted with each other, with almost no interaction between the northern and southern halves of the district. Judge Rindner's similarly careful consideration of the evidence concerning Proclamation House District 32 led him to the opposite conclusion with regard to that district. He found that "[b]ased on all of the evidence, ... District 32 contains as nearly as practicable a relatively integrated socio-economic area." Applying the correct legal standard on review, he said, "It is clear that the Board gave careful consideration and extensive deliberation to this district and took a hard look at the factors both in favor and against such a pairing." He therefore struck down Proclamation District 12 and upheld Proclamation District 32. Because Judge Rindner correctly understood and applied the relevant law, I dissent from this court's holding that Proclamation House District 32 must be remanded for further consideration.

Under *Kenai Peninsula Borough v. State*,[9] strict proportionality is not a constitutional requirement.[10] However, "the interest of individual members of a geographic group or

7. For example, Proclamation House District 40 covers the entire North Slope of the state; Proclamation House District 37 comprises the entire Aleutian Chain as well as part of the mainland; and Proclamation House District 6, the largest single district, extends from the Canadian border just north of Yakutat (a point about 350 miles east of Anchorage), reaches as far north as the Brooks Range and Arctic Village, encompasses almost all of the Yukon River drainage and most of the Kuskokwim River drainage, and extends as far west as Marshall and Russian Mission (to a point about 400 miles west of Anchorage). This district appears to be slightly larger than the State of Texas, which may be fitting given its horseshoe shape.

8. Indeed, a comparison of Proclamation House District 16—which the Order properly strikes because of an appendage that rendered it non-compact—and the "Islands District" in Board Plans 1 and 2—which the Order finds to be compact despite a substantially more prominent appendage—illustrates the correctness of the board's rejection of Board Plans 1 and 2 as an alternative to Proclamation District 5.

9. 743 P.2d 1352 (Alaska 1987).

10. *Id.* at 1370 n. 33 (stating that "We note that article VI, section 6 alone identifies the criteria governing reapportionment; if the framers had intended to make proportionality a criterion for the establishment of new districts, they presumably would have included it in this section or written a sister provision.").

community in having their votes protected from disproportionate dilution by the votes of another geographic group or community" is a significant constitutional interest.[11] By definition, a borough is socio-economically integrated.[12] That integration, the contiguous, and often compact, nature of boroughs, and the significant constitutional interest in protecting the equally effective votes of residents of an organized geographic area requires the board to attempt to draw districts that allow communities to control the whole number of seats to which they are entitled. We have previously stated that "where possible, all of a municipality's excess population should go to one other district in order to maximize effective representation of the excess group."[13] This principle is even more compelling when the "excess" population could constitute the majority of a new district.

The board, therefore, was properly concerned about placing excess populations from Anchorage and the Mat–Su Borough—each of which was sufficient to constitute the majority of a district—into a single district. This legitimate concern resulted in the board's ultimate decision to create a plan that allowed Anchorage, with a population supporting 16.6 House seats, to have the excess population placed in a seventeenth district, and Mat–Su, with a population supporting 3.8 House seats, to have its excess population placed in a different district. Splitting either of these boroughs' excess population, members of a "politically salient class," would clearly have resulted in diluting the voting power of the "excess" voters of each borough. Such dilution would have constituted evidence that the individual voters' rights to geographic equal protection had been violated by the board, and predictably would have led to litigation.[14]

While the board's decision to attempt to draw districts that gave boroughs control over the whole number of seats to which they were entitled was reasonable, this consideration cannot be elevated over the constitutional mandates of one-person, one-vote, contiguity, compactness, and socio-economic integration. As Judge Rindner found, Proclamation House District 12 is not sufficiently socio-economically integrated. The board's decision to value proportionality does not justify the creation of a district that is not socio-economically integrated. Accordingly, I agree that this district is unconstitutional.

Proclamation House District 32, on the other hand, is sufficiently socioeconomically integrated. Judge Rindner found, and I agree, that "District 32 contains as nearly as practicable a relatively integrated socio-economic area. This integration is not minimal but significant." As Proclamation House District 32 is sufficiently socioeconomically integrated, the board's decision to create this district and thereby protect the effectiveness of the vote of the "excess population" involved, was rational. The board should not be required to reconsider Proclamation House District 32.

Anchorage House Districts

We have long held that population deviations under 10% are "minor deviations" that do not require further justification; they are presumptively constitutional.[15] The superior court found that the board's attempt to preserve neighborhood boundaries in Anchorage was not improperly motivated, a conclusion that this court accepts. Yet today's Order

11. *Id.* at 1371.

12. *Hickel v. Southeast Conference*, 846 P.2d 38, 52 (Alaska 1993).

13. *Id.*

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

15. *Id.* at 48; *see also Groh v. Egan*, 526 P.2d 863, 877 (Alaska 1974) ("[I]n the absence of a showing that the manner of reapportioning a state was improperly motivated or had an impermissible effect, deviations of up to ten percent require no showing of justification."). Indeed, the United States Supreme Court has upheld deviations over 16%, where such deviations were justified by legitimate considerations. *Mahan v. Howell*, 410 U.S. 315, 328–30, 93 S.Ct. 979, 35 L.Ed.2d 320 (1973).

invalidates sixteen house districts in Anchorage on the ground that the board did not make a sufficient effort to further reduce deviations that we have consistently said are minor and need no further justification.[16] The order attempts to justify this surprising result on two grounds. Neither survives scrutiny.

First, the Order suggests that the constitutional change adopted by the voters in 1999 justifies dramatically stricter standards in redistricting. But a simple comparison of the language of the former provision and the current provision shows that the change made the standard more *flexible*, not more strict. Article VI, section 6 previously provided: "Each area shall contain a population at least equal to the quotient obtained by dividing the total civilian population by forty." That provision literally required that each district contain the same number of civilians as every other district: Each had to be "at least equal" to every other; once any district contained an excess of population, another district would fail to have "at least" that many persons. Whatever might be said about the feasibility of meeting this standard, it is clear that the standard was very high. In 1998[17] the citizens of Alaska voted to adopt new language for article VI, section 6. The new language provides, "Each [house district] shall contain a population as near as practicable to the quotient obtained by dividing the population of the state by forty." Clearly, the new language—"as near as practicable"—created a more flexible standard than the language it replaced—"equal".[18]

Second, today's Order relies on *Groh v. Egan*[19] for the proposition that "Anchorage neighborhood patterns cannot justify deviations so close to the ten percent threshold." But in *Groh v. Egan* we were faced with a plan with a total deviation of *29%*.[20] We addressed three Anchorage districts, which respectively were underrepresented by 5.9%, 6.5%, and 8.6%,[21] in the context of a total deviation of 29%. In holding that neighborhood patterns cannot justify "substantial disparities," we were unmistakably referring to total deviations over 10%. By comparison,

16. The Order is particularly puzzling in that it squarely places the burden on the board to justify *de minimis* deviations. Order at 9, effectively but silently reversing longstanding precedent from this court. *Groh*, 526 P.2d at 877 (stating that in the absence of a showing of improper motive or impermissible effect, "deviations of up to ten percent require *no showing of justification*") (emphasis added). We relied on federal law in announcing this rule, citing both the Court's opinion in *White v. Regester*, 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314 (1973), and Justice Brennan's dissent in that case to the effect that "a line has been drawn at 10%—deviations in excess of that amount are apparently acceptable only on a showing of justification by the State; deviations less than that amount require *no justification whatsoever*." *Id.* at 776, 93 S.Ct. 2332 (Brennan, J., dissenting) (emphasis added).

17. The new constitutional provision took effect January 3, 1999. Committee Substitute for Senate Bill (C.S.S.B.) 44, 20th Leg. 1st Sess. (1999).

18. The legislative history of the provision tends to confirm this view. A section-by-section analysis of the proposed constitutional amendment, prepared for the House Judiciary Committee, commenting on section 4 (which was to become article VI, section 6) stated, with regard to the "as nearly as practicable" language, "Since Alaska Supreme Court and U.S. Supreme Court decisions make clear that minor deviations from an ideal one-fortieth reapportionment per district are permissible, the 'as nearly as practicable' language is added." Sectional Analysis for HJR 44 0-LS0528/C, Original Bill File, House Judiciary Comm. (Feb. 4, 1998).

Virtually identical language is found in the Sectional Analysis prepared for the Senate Judiciary Committee on the same provision. With regard to the "as nearly as practicable" language, the analysis reads: "Since U.S. Supreme Court and Alaska Supreme Court cases make clear that minor deviations from an ideal one-fortieth of the state's population are permissible for house and senate districts, the 'as nearly as practicable' language is added." Sectional Analysis for CS FOR HJR 44(RLS), Original Bill File, Senate Judiciary Comm. (April 6, 1978).

19. 526 P.2d 863 (Alaska 1974).

20. *Id.* at 874, 878–79.

21. The *Groh* opinion does not divulge the Anchorage district with the greatest *over*representation. Accordingly, we do not know the "maximum population deviation in Anchorage" in the redistricting plan that *Groh* addressed. It is therefore not possible to construct the figure that would be comparable to the 9.5% "maximum population deviation in Anchorage" that today's Order describes. But it is likely that the comparable figure would have been substantially higher in the *Groh* case, for no Anchorage district in the present plan exceeds 4.8% deviation.

the greatest Anchorage deviation struck down today is 4.8%, and the maximum statewide deviation—a deviation figure that Anchorage has nothing to do with[22]—is 12%. *Groh v. Egan* simply does not support the court's invalidation of sixteen Anchorage house districts.

Here, the board's stated purpose of trying to maintain neighborhood boundaries within Anchorage, once it had fully complied with the one person, one vote requirement, resulted in the board's decision not to attempt to further minimize deviations within Anchorage below what we have previously determined to be *de minimis*.[23] It did so in order to preserve neighborhoods,[24] a proper motive.[25] It had no impermissible effect. In sum, I believe that the board's approach was entirely proper and conformed to all constitutional requirements. This court should uphold Judge Rindner's affirmance of the board.

Proclamation House District 40

Today's Order invalidates Proclamation House District 40 on the ground that the board incorrectly believed that the 6.9% population deviation in that district was required by the Voting Rights Act. Because I do not believe that is an accurate description of the reason that the board fashioned District 40 as it did, I dissent.

To understand what occurred in regard to District 40, some background information is necessary. Proclamation House District 40 encompasses a very large area—approximately 133,000 square miles—that is sparsely inhabited. The board had only two options to obtain sufficient population: adjoining District 6 or adjoining District 39.

The board considered but rejected the option of taking population from District 6, because District 6 is a majority Athabaskan district, whereas District 40 is a majority Inupiaq district. In *Hickel v. Southeast Conference*,[26] we recognized that combining these disparate populations may be "the single worst combination that could be selected if a board were trying to maximize socio-economic integration in Alaska."[27] Clearly, the board's decision not to take population from District 6 was reasonable and fully justifiable.

The board's other option was to take population from District 39. The closest community in that district is Shishmaref. But if the board were to have done that, the deviation in District 39 would have been −7.8%, greater than District 40's −6.9%.

The board could have lowered the 7.8% deviation by moving Pilot Station from District 6 to District 39 (its former district), but such a move would have increased the deviation in District 6 to −8.2%, again, a greater deviation.[28] Accordingly, the board conclud-

22. In this redistricting plan, the most overrepresented district is House District 40 (the North Slope) with a −6.89% deviation. The most underrepresented district is House District 33 (Kenai Peninsula), with a +5.06% deviation. Accordingly, the plan's statewide "total deviation" is 11.95%, rounded to 12%.

23. *Groh*, 526 P.2d at 877 ("We conclude that in the absence of a showing that the manner of reapportioning a state was improperly motivated or had an impermissible effect, deviations of up to ten percent require no showing of justification.").

24. The Order does not appear to challenge the conclusion that the board's purpose was to preserve neighborhoods, a conclusion that was supported by the evidence. For example, the board heard substantial expert testimony about the socio-economic characteristics of Anchorage neighborhoods, and a majority of the Anchorage Assembly endorsed, as the plan that best kept neighborhoods intact, a package of districts that became most of the final Proclamation districts.

25. *Groh*, 526 P.2d at 879 ("[Patterns of housing, income levels, and minority residency] may form a basis for districting.").

26. 846 P.2d 38 (Alaska 1993).

27. *Id.* at 53 (internal quotation marks omitted).

28. Attempts to lower the deviation in District 6 to acceptable levels were not feasible. District 6 is contiguous with the other effective Native districts, Districts 5 and 37 40. However, these districts are already underpopulated. While District 6 is also contiguous with the districts that include the urban areas of Kenai, Anchorage, Mat Su, and Fairbanks, these areas have minimal, if any, socio-economic integration with the Interior Rivers area, District 6. Given the higher population deviations that would have resulted from trying to reduce District 40's underpopu-

ed that District 40's population shortfall was justified by the difficulty of obtaining offsetting population blocks without violating the board's policies of achieving socio-economic integration and preserving political and Native corporation boundaries. Thus, while the board's initial concerns involved the Voting Rights Act, Judge Rindner found that "[a]ll Board members joined in the decision to approve the boundaries of House District 40, *believing that this choice would result in the lowest population deviation.*" (Emphasis added.)

Judge Rindner found that the board's −6.9% deviation in Proclamation House District 40 was justified. As he concluded, "[b]oth the size and the unavailability of easily moved population blocks make this deviation acceptable [and] justified." Judge Rindner noted that the board moved Pilot Station out of District 39 into District 6 to increase the Native population in District 6. As a consequence, the resulting deviation of Proclamation House District 40 was the lowest possible deviation. Although Judge Rindner found that moving Pilot Station from District 6 to District 39 would have had Voting Rights Act implications—which in themselves would not have been enough to justify a total deviation in excess of 10%[29]—the reason for the move was *not* to satisfy the Voting Rights Act but to achieve the lowest population deviation consistent with other constitutional requirements, including socio-economic integration.

For these reasons, I believe today's Order misapprehends the impact of the Voting Rights Act on the board's actions. Even ignoring the federal act entirely, the board had few options and exercised one that is fully consistent with constitutional requirements. Finally, as a point of reference, the 12% total statewide deviation that the board's plan contained is the *lowest* deviation in any redistricting plan in Alaska's history. I would uphold Judge Rindner's affirmance of the board's Proclamation House District 40.

Conclusion

I fully agree with the Order's observations that redistricting presents formidable challenges to a citizen board that operates under extraordinary time pressures, and that this board should be "commended for its diligent, conscientious efforts to achieve the basic goal of redistricting." It is because the task is so difficult, the time so short, and the job on remand so remarkably heavy that this court should not strike down or otherwise throw into question two-thirds of the districts unless they are truly unconstitutional. Because I believe that only Proclamation Districts 12 and 16 fail to meet constitutional requirements, I dissent from those parts of today's Order that do not affirm the trial court. I would affirm the decision of Judge Rindner in all respects.

lation, the board's decision to keep Pilot Station in District 6, though originally for Voting Rights Act reasons that do not justify a deviation in excess of 10%, was reasonable. Additionally, it had the benefit of maintaining District 6, the only district in Alaska shown to have racially polarized bloc voting, as an effective Native district.

29. Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act, 42 U.S.C.1973c; Notice, 66 Fed.Reg. 5412, 5413 (Jan. 18, 2001) ("For state legislative and local redistricting, a plan that would require overall deviations greater than 10 percent is not considered a reasonable alternative.")

Timothy W. HUBBARD, Appellant,

v.

Amy L. HUBBARD, Appellee.

No. S–9562.

Supreme Court of Alaska.

March 29, 2002.

In divorce proceedings, husband sought to have his paternity of minor child disestablished. The Superior Court, Third Judicial District, Anchorage, John Reese, J., found husband was equitably estopped from dises-