

ALASKA LEGISLATURE

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HOUSE and SENATE FINANCE COMMITTEE FILES, 1997-1998

4. In April 1992 the U.S. Department of Justice notified the State that it would not object to the Governor's plan.

5. Article VI, section 11 of the Alaska Constitution provides:

Enforcement. Any qualified voter may apply to the superior court to compel the governor, by mandamus or otherwise, to perform his reapportionment duties or to correct any error in redistricting or reapportionment. . . . Original jurisdiction in these matters is hereby vested in the superior court. On appeal, the cause shall be reviewed by the supreme court upon the law and the facts.

6. The five cases which were consolidated included: Alaska Democratic Party v. Hickel, Case No. 3AN-91-8539 Civil; Matanuska-Susitna Borough v. Hickel, Case No. 3AN-91-8520 Civil; Demientieff v. Hickel, Case No. 4FA-91-1730 Civil; Leavitt v. Hickel, Case No. 2BA-91-81 Civil; and Southeast Conference v. Hickel, Case No. 1JU-91-1608 Civil. All parties participated fully in the trial before Judge Weeks.

7. On June 11, 1992, we disapproved of Judge Weeks' instruction that wherever possible native influence districts must include a native population of at least 35%. See Appendix D.

8. These are attached as Appendices E and F, respectively.

9. Our order of June 25, 1992 is attached as Appendix G. The map which depicts the interim plan of apportionment approved by this court on June 25, 1992, is attached as Appendix H.

10. The requirement of relative socio-economic integration is given some flexibility by the constitution since districts need be integrated only "as nearly as practicable." Alaska Const. art. VI, 6. However, the flexibility that this clause provides should be used only to maximize the other constitutional requirements of contiguity and compactness. The governor is not permitted to diminish the degree of socio-economic integration in order to achieve other policy goals.

11. Black's Law Dictionary defines gerrymandering as:

A name given to the process of dividing a state or other territory into the authorized civil or political divisions, but with such a geographical arrangement as to accomplish an ulterior or unlawful purpose, as, for instance, to secure a majority for a given political party in districts where the result would be otherwise if they were divided according to obvious natural lines.

Black's Law Dictionary (6th ed. 1990).

We have previously stated: "Gerrymandering is 'the deliberate and arbitrary distortion of district boundaries and populations for partisan or personal political purposes. The term 'gerrymandering,' however, is also used loosely to describe the common practice of the party in power to choose the redistricting plan that gives it an advantage at the polls.'" Kenai Peninsula Borough, 743 P.2d at 1367 n.28 (quoting Davis v. Bandemer, 478 U.S. 109, 164 (1986)) (citations omitted).

The word "gerrymandering" has an unusual etymology. The word derives from "the fancied resemblance to a salamander (made famous by caricature) of the irregularly shaped outline of an election district in northeastern [Massachusetts] that had been formed for partisan purposes in 1812 during [Elbridge] Gerry's governorship." Webster's Third New International Dictionary (3d ed. 1969).

12. We did not decide whether these characteristics were specifically necessary to pass muster under article VI, section 5 of the Alaska Constitution. Instead we merely found that a rational state policy existed in effectuating the constitutional mandate of relative socio-economic intervention. Kenai Peninsula Borough, 743 P.2d at 1361.

13. The Alaska Equal Protection clause provides that "all persons are equal and entitled to equal rights, opportunities, and protection under the law" Alaska Const. art. I, 1.

14. The Federal Equal Protection clause provides that "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV, 1.

15. We also articulated this theory in Groh:

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. The state, however, has the burden of showing that deviations in excess of ten percent are "based on legitimate considerations incident to the effectuation of a rational state policy."

526 P.2d at 877 (quoting White v. Regester, 412 U.S. 755, 764 (1973)) (footnote omitted).

16. In Mahan v. Howell, the United States Supreme Court approved a deviation of 16.4 percent based on the preservation of political subdivision boundaries. 410 U.S. 315 (1973). That deviation has been seen by many as the outer limit which the Supreme Court will allow. See Travis v. King, 552 F. Supp. 554, 562 (D. Haw. 1982).

17. We recognized in Groh that it was reasonable to avoid combining two areas populated by residents who had a history of conflict. We rejected the suggestion that this factor

alone justified the underpopulation of the district comprised of one of these areas. We noted that no explanation had been offered "why other areas could not have been added to the district so as to create less of a variance." 526 P.2d at 878. Upon objection to the redistricting plan, however, we found sufficient justification for the Board's overrepresentation of District 16 (Bristol Bay):

It is now apparent that the only alternative to the Board's original districting of that area is to disregard an impassible mountain range, the natural barrier formed by Cook Inlet, the lack of direct transportation or communication links, the corporate boundaries of the Kenai Peninsula Borough, the cohesiveness of interests of residents of that Borough and the disparate interests of the population of the Bristol Bay area. We now find that legitimate considerations incident to the implementation of rational state policy justify the overrepresentation of House District No. 16 (Bristol Bay) as originally designated and override mathematical requirements.

Id. at 879. Given the lack of reasonable alternatives to the initial plan, as well as the Board's good faith effort in adding to the district, we reversed our initial order invalidating the plan.

18. In the context of discrimination against a political group, the intent requirement is probably minimal. As Justice White noted in *Bandemer*, "As long as redistricting is done by a legislature, it should not be very difficult to prove that the likely political consequences of the reapportionment were intended." 478 U.S. at 129. See Laurence H. Tribe, *American Constitutional Law* 13-9, at 1082 n.9 (2d ed. 1988).

The Supreme Court has also required a showing of discriminatory intent in the context of discrimination against a racial group. *Mobile v. Bolden*, 446 U.S. 55, 62, 66 (1980). However, Congress responded to the *Bolden* decision by amending section 2 of the Voting Rights Act so as to do away with the intent requirement. Voting Rights Act Amendments of 1982, Pub. L. No. 97-205, 3, 96 Stat. 134. See L. Tribe, *supra*, 13-8, 1078-80.

19. See page 2 of Appendix A.

20. Although a reapportionment plan may split boroughs in forming election districts, the division of a borough which otherwise has enough population to support an election district will be an indication of gerrymandering. There must be some legitimate justification for not preserving the government boundaries in such a case.

21. The city of Saxman urged the governor not to split Saxman from the rest of the Borough. The Ketchikan Indian Corporation, the Sealaska Corporation and the Grand Camp of

the Alaska Native Brotherhood all objected to the Governor's planned splitting of the Borough.

22. Our conclusion underscores the error in the Board's methodology in reconciling the requirements of the Voting Rights Act with the requirements of the Alaska Constitution. The Board was advised to expect that any challenges to the reapportionment plan would come under the newly amended section 2 of the Voting Rights Act. Consequently, the Board accorded minority voting strength priority above other factors, including the requirements of article VI, section 6 of the Alaska Constitution. This methodology resulted in proposed district 3, a district which does not comply with the requirements of the Alaska Constitution. However, proposed district 3 is not required by the Voting Rights Act, either.

Article IV of the United States Constitution provides that "This Constitution, and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land" This mandates that provisions of state law, including state constitutional law, are void if they conflict with federal law. To the extent that the requirements of article VI, section 6 of the Alaska Constitution are inconsistent with the Voting Rights Act, those requirements must give way. However, to the extent that those requirements are not inconsistent, they must be given effect. The Voting Rights Act need not be elevated in stature so that the requirements of the Alaska Constitution are unnecessarily compromised.

The Board must first design a reapportionment plan based on the requirements of the Alaska Constitution. That plan then must be tested against the Voting Rights Act. A reapportionment plan may minimize article VI, section 6 requirements when minimization is the only means available to satisfy Voting Rights Act requirements.

In our order of June 8, 1992, we directed that the superior court, in drafting an interim plan, give priority to the Voting Rights Act over the requirements of article VI, section 6 of the Alaska Constitution. In that context, expediency mandated that an interim plan be formulated in time for the 1992 elections, and that compliance with the Voting Rights Act be ensured. In drafting a permanent plan, however, the Board's design will not be compelled by expediency. The Board shall ensure that the requirements of article VI, section 6 of the Alaska Constitution are not unnecessarily compromised by the Voting Rights Act.

23. The Island District approved by this court as part of the 1992 interim plan excludes the urban areas of Ketchikan and Sitka and respects all local government boundaries in Southeastern Alaska. While it is not compact, non-compactness appears to be necessary in order to comply with the Voting Rights Act and it is, in any case, more compact than the proposed configuration of District 3. See Appendix H.

24. See page 3 of Appendix A.

25. Because of this corridor, District 28 became known as

and is referred to in briefing as the "Oosik District."

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.

27. See page 1 of Appendix A.

28. The district includes the Koyukuk River valley, much of the area drained by the Yukon River from a point upstream from Russian Mission to the Canadian border, and much of the Kuskokwim River drainage upstream from a point near Stony River.

29. See page 1 of Appendix A.

30. In our order of remand, we noted that the Aleutians must be joined together in one district unless their separation is mandated by federal law. Since federal law does not mandate their separation, the contiguous territory requirement of the Alaska Constitution controls.

31. The Board was advised that it would be extremely difficult to accurately identify the NRMP because the U.S. census allowed certain military personnel to allocate themselves to other states. Further, they were told that the United States Army and Air Force would no longer release residency information because of the Privacy Act and Civil Rights Act. The Board was also advised that it might face Department of Justice preclearance problems if the NRMP were included.

32. This need was recognized in light of the threat of "unbalanced representation" resulting from the inclusion of NRMP. Egan, 502 P.2d at 870. Thus the constitutional concern is one of equal protection. The reapportionment provisions favor the use of census data. "Alaska's constitution requires that the requisite population total be arrived at by use of the census data. It does not mandate a population base composed exclusively of registered voters, citizens who have previously voted in Alaska, or only those people living in Alaska with the intention of making Alaska their home." Id. at 861.

33. However, the estimation of the percentage of NRMP need not be any more precise than the approximation of other portions of the population base. See Egan, 502 P.2d at 869.

34. The evidence of these solicitations are personal phone conversations between Babcock and the solicited pollsters. There is no indication as to the reason the pollsters declined to conduct the survey.

35. These were the only alternatives considered at the March 4, 1991 meeting at which the initial "guidelines" were adopted. At this meeting the Board was presented with and accepted the argument that the census was the only feasible population base.

36. The Board also claims that the effect of inclusion was minimal due to the very low NRMP population. However, the Board did not produce any significant data supporting this assertion.

37. AS 44.62.310-.312.

38. AS 09.25.110-.140.

**HYUNDAI CONSTRUCTION CO., LTD., and
National Surety Corporation, Appellants,**

v.

**KALMBACH, INC., Appellee,
No. 1604.**

Supreme Court of Alaska.
Nov. 10, 1972.

Appeal from Superior Court, Third Judicial District; Edward V. Davis, Judge.

Richard B. Collins and Dañil Park, Anchorage, for appellants.

Kenneth D. Jensen, of Jensen & Harris, Anchorage, for appellee.

OPINION

Before RABINOWITZ, C. J., and CONNOR and BOOCHEVER, JJ.

PER CURIAM.

This appeal arises out of a contract awarded by the State of Alaska in December 1969 to Hyundai for construction of the Hurricane Gulch Bridge near Cantwell, Alaska. Hyundai, together with National Surety Corporation, furnished the State of Alaska with payment and performance bonds as required for public works construction by AS 36.25.010. Thereafter Hyundai subcontracted with Kalmbach for certain aspects of the bridge construction. Several months later Hyundai found Kalmbach's performance unsatisfactory and terminated its subcontract with Kalmbach.

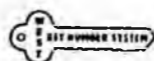
Pursuant to AS 36.25.020¹ Kalmbach filed suit against Hyundai and National Surety under the contractor's payment bond for the amount unpaid on the subcontract at the time of termination. Kalmbach also sued for damages for breach of the subcontract and for rentals of equipment which Hyundai was alleged to have rented after its termination of the subcontract. Hyundai counterclaimed asserting it was damaged

by Kalmbach's breach of the subcontract. After trial by jury Kalmbach was awarded \$141,020.96 for labor and materials supplied and \$100 for Hyundai's breach of contract. Additionally, the jury returned a verdict in Hyundai's favor in the amount of \$5,528 on its counterclaim.

In this appeal appellants have attempted to assert numerous specifications of errors. Our study of appellants' brief and the record in the case at bar has left us with the conclusion that appellants' assertions of error are without substance. In short we hold that the judgment entered below should be affirmed.

Affirmed.

EVANS, J., not participating.



**William A. EGAN, Governor of Alaska,
et al., Petitioners,**

v.

**Jay S. HAMMOND et al., Respondents,
No. 1711.**

Supreme Court of Alaska.
July 21, 1972.
Opinion Sept. 29, 1972.

Review from the Superior Court, Third Judicial District, Anchorage, Edward V. Davis, J., in reapportionment case. On objections to interim reapportionment plan, the Supreme Court, Rabinowitz, J., held that it is constitutionally impermissible to discriminate against class of individuals in legislative reapportionment plan merely because of nature of their employment. The Court, in later opinion of Boochever, J., held that legislative re-

¹ A contractor on a public works project may proceed against the payment bond in the name of the state.

apportionment plan was invalid, where there was no adequate justification for variances which ranged from plus 23.35 to minus 45.93% in house districts and from plus 26.14 to minus 7.2% in senate districts, but that some military personnel might be excluded as permissible device for limiting impact of transients and non-residents on legislative districting.

Objections overruled.

Decision of Superior Court affirmed in part and reversed in part and the case remanded with directions.

Boochever, J., dissented and filed opinion as to objections to interim plan.

1. States ⇨27

It is constitutionally impermissible to discriminate against a class of individuals in legislative reapportionment plan merely because of nature of their employment. Const. art. 6, § 3; U.S.C.A.Const. Amend. 14.

2. States ⇨27

Census data was required to be employed in determining total population base for purposes of formulating an interim reapportionment plan for legislative elections. Const. art. 6, § 3; U.S.C.A. Const. Amend. 14.

3. States ⇨27

In fashioning interim apportionment plan for legislative elections, military personnel or civilians who were living in Alaska and enumerated in most recent census but who did not at time possess intent of making Alaska their home would not be excluded from total population. Const. art. 6, § 3; U.S.C.A.Const. Amend. 14.

Opinion of Sept. 29, 1972

4. Constitutional Law ⇨225(1)

The equal protection clause requires that the states make an honest and good-faith effort to construct districts, in both houses of its legislature, as nearly of equal population as practicable. U.S.C.A.Const. Amend. 14.

5. States ⇨27

Two separate justifications for deviation from ideal population figures in the apportionment of state legislatures are: variance occurring because of uncontrollable factors, despite a good-faith effort to achieve mathematical precision, and factors incident to effectuation of a rational state policy, but the latter justification is greatly limited. U.S.C.A.Const. Amend. 14.

6. States ⇨27

Only after good-faith effort has been made to achieve precise mathematical equality in reapportionment of state legislatures may variances be permitted and then state has burden of justifying in detail each such variance. U.S.C.A.Const. Amend. 14.

7. States ⇨27

Need for numerical adjustment is very focus of mandate to reapportion state legislatures. U.S.C.A.Const. Amend. 14.

8. States ⇨27

Legislative reapportionment plan was invalid, where there was no adequate justification for variances which ranged from plus 23.35 to minus 45.93% in house districts and from plus 26.14 to minus 7.2% in senate districts. U.S.C.A.Const. Amend. 14.

9. Elections ⇨18 States ⇨27

Military personnel as a class cannot be deprived of right to vote and cannot be arbitrarily eliminated in population base used to design legislative apportionment scheme. U.S.C.A.Const. Amend. 14.

10. Constitutional Law ⇨225(1) States ⇨27

Alaska constitutional provision specifying that reapportionment shall be based upon civilian population within each election district violated Federal Constitution insofar as it sought to exclude military as a class. Const. art. 6, § 3; U.S.C.A.Const. Amend. 14.

11. States ⇨27

Although it is unconstitutional to exclude military as a class in reapportioning state legislature upon basis of popula-

¹ Alaska's statute is substantially similar to 40 U.S.C. § 270a et seq., the "Miller Act." The state version provides that persons supplying labor and material for

tion, some military personnel may be excluded as permissible device for limiting impact of transients and nonresidents on legislative districting. Const. art. 6, § 3; U.S.C.A.Const. Amend. 14.

12. States ⇨27

If even one person is disenfranchised on any irrational ground, legislative districting scheme rendering that result is invalid. U.S.C.A.Const. Amend. 14.

13. States ⇨27

With respect to legislative districting, attempt must be made to arrive at best approximation of population without losing sight of fact that right of equal representation is also an individual and personal right. U.S.C.A.Const. Amend. 14.

14. Constitutional Law ⇨225(1)

States ⇨27

Upon adequate notice and opportunity to register before use of master voter registration list for legislative reapportionment purposes, plan based upon current voter registration would be permissible under Federal Constitution in attempt to give accurate assessment of military population present in state with intent to make Alaska their home and also plans based on accurate data of state citizenship or state residency could meet standards of federal equal protection clause. U.S.C.A.Const. Amend. 14.

15. Constitutional Law ⇨49

Unconstitutional provisions of Alaska Constitution requiring that reapportionment be based upon civilian population within each election district as reported by the census is not severable; thus the entire provision is invalid. Const. art. 6, § 3; U.S.C.A.Const. Amend. 14.

16. Action ⇨6

Inasmuch as the apportionment plan was unconstitutional, question as to political affiliation of members composing advisory reapportionment board was moot and, since appointments to board were made many months before final plan was promulgated by governor and interested parties had ample time to appeal from mo-

ment appointments were made, judgment on the issue as to composition of board was not required. Const. art. 6, § 8.

17. States ⇨27

Inasmuch as governor in creating legislative reapportionment plan was not acting from political considerations and performed his function in good faith, any error in composition of advisory reapportionment board with respect to political affiliation of its members was rendered harmless error. Const. art. 6, § 8.

18. States ⇨27

Purpose of constitutional provision that appointment to advisory reapportionment board shall be made without regard to political affiliation is to prevent appointment of board whose efforts might result in politically motivated reapportionment plan. Const. art. 6, § 8.

19. States ⇨27

Constitutional requirement that appointments to advisory reapportionment board be made without regard to political affiliation was not equivalent of requiring a bipartisan board but, in reviewing validity of appointment, germane considerations include: the political affiliation of members of board, nature of their activities in partisan politics, particularly if from one political party only, and the expertise and general qualifications which members bring to the board. Const. art. 6, § 8.

20. States ⇨27

Creation of single-member legislative districts from multimember districts was within powers available to governor under constitutional provision authorizing him to redistrict by changing size and area of election districts. Const. art. 6, § 6.

21. States ⇨27

Governor's general power to reapportion legislature includes right to utilize tool of designated seats within multimember districts. Const. art. 6, § 6.

22. States ⇨27

A need to truncate terms of incumbents may arise when reapportionment results in permanent change in district lines which

either exclude substantial numbers of constituents previously represented by incumbent or include numerous other voters who did not have voice in selection of that incumbent. Const. art. 6, § 6.

23. States ⇨27

Governor has power to terminate state senate terms as incidental to his general reapportionment powers. Const. art. 6, § 6.

24. States ⇨27

Under Alaska Constitution, governor, with assistance of reapportionment board, has implied power to reapportion senate on interim basis. Const. art. 6, § 6.

John E. Havelock, Atty. Gen., Richard W. Garnett, III, Asst. Atty. Gen., Juneau, for petitioners.

Clifford J. Groh, of Groh, Benkert, Greene & Walter, Anchorage, for respondents.

OPINION IN RE OBJECTIONS TO INTERIM REAPPORTIONMENT PLAN

Before BONEY, C. J., and RABINOWITZ, CONNOR, ERWIN and BOOCH-EVER, JJ.

RABINOWITZ, Justice.

In our Decision and Order of May 26, 1972,¹ this court declared the reapportionment plan embodied in the December 30, 1971, Proclamation of Reapportionment and Redistricting unconstitutional under the equal protection and supremacy clauses of the Constitution of the United States of America. We reached this conclusion for the reason that the proposed plan in its overall reapportionment of the Senate and

House of Representatives would have established election districts which failed to encompass "as nearly equal population proportions as is practicable." To insure compliance with the equal protection requirements of *Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964), and its progeny, it was further determined that an interim reapportionment and redistricting plan, designed to meet the imminent 1972 elections, required formulation. In furtherance of this task, two Masters were appointed to assist the court in fashioning an appropriate interim reapportionment plan.

On May 26, 1972, the appointed Masters were given the following instructions in pertinent part:²

1. By use of the official Census of 1970, you should establish a population base for the State of Alaska. This population base should include military personnel who were enumerated in the 1970 Census.

2. You should make an inquiry to determine whether or not the number of nonresident military personnel included in the 1970 Census can be determined. If a determination can be made, then you should subtract the number from the total which you have arrived at in paragraph 1 above. You should also state the methods in detail by which you arrived at this determination.

After receipt of the Masters' Report,³ an "Order Establishing an Interim Reapportionment Plan for 1972 Legislative Elections" was entered on June 14, 1972.⁴ In its relevant part this order stated:

By use of the Official Census of 1970, the Court determines that the total population base for the State of Alaska shall

1. This document is attached hereto as part of an appendix to this opinion. Also included in the appendix are the References to Masters, Masters' Report, Order Establishing an Interim Reapportionment Plan, and Order Denying Objections to Interim Reapportionment Plan.

2. The complete letter of instructions to the masters is attached hereto as part of the appendix.

3. The Report is included in the appendix attached hereto.

4. This document is included in the appendix attached hereto.

he 302,361. This figure includes the military population residing in the State of Alaska at the time of the Official Census of April, 1970. In the time available to the Court for the preparation of the interim plan, the Court could find no feasible method of excluding some or all of the military personnel from the total population base. Moreover, computations revealed that changes in representation under the interim plan due to the inclusion of military personnel were minimal.

[1-3] Subsequent to the entry of this court's order establishing an interim reapportionment plan, petitioners filed objections thereto on the stated grounds:

The Court erred in instructing the masters that the population base should include all military personnel who were enumerated in the 1970 census and in allowing nonresident military personnel enumerated by the census to be counted for the purpose of determining the population size and shape of particular districts.

Petitioners contended that the effect of the inclusion of all enumerated military personnel was to give greater political power to those communities which adjoin major military installations. In arguing for preservation of the civilian population concept,⁵ petitioners state that Alaska's legislature established a presumption against residency of military personnel except on affirmation of intent by the person involved that he chooses to be an Alaska resident.⁶ In overruling petitioners' objection to the inclusion in the interim plan's population base of all military personnel who

were enumerated in the 1970 Census, in our order of June 20, 1972,⁷ we said in part:

[We] could find no feasible basis for the exclusion of part or all of the military population from the population base required for interim reapportionment. Under the Alaska Constitution this base must include all residents of the State of Alaska as enumerated in the decennial census. The base is not limited to voter population. Neither the 1971 reapportionment plan nor the materials relied upon by the petitioners provide a legal basis for identifying nonresident military personnel in order to eliminate them from the population base.

In the absence of reliable data, the elimination of the military from the population base as a class of persons would be a denial of equal protection of the law, prohibited by the Fourteenth Amendment to the United States Constitution. (Foot notes omitted.)

Davis v. Mann, 377 U.S. 678, 84 S.Ct. 1441, 12 L.Ed.2d 609, 617 (1964), instructs that it is constitutionally impermissible to discriminate against a class of individuals merely because of the nature of their employment. Given Davis v. Mann, this court is nevertheless under the duty, pursuant to article VI, section 3 of the Alaska constitution, to employ census data in determining the total population base for purposes of formulating an interim reapportionment plan.⁸ The census practice of enumeration is as follows:

In accordance with census practice dating back to 1790, each person enumerated in the 1970 census was counted as an in-

habitant of his usual place of residence, which is generally construed to mean the place where he lives and sleeps most of the time. This place is not necessarily the same as his legal residence, voting residence or domicile.⁹

In light of the unconstitutionality of the civilian-military distinction made in article VI, section 3 of the constitution of Alaska for purposes of determining the requisite population base and this provision's further requirement that Alaska's population base be computed from census data, we concluded that in fashioning an interim reapportionment plan no lawful requirement or reliable basis existed for isolation and exclusion from the total population base of those military or civilians who were living in Alaska and enumerated in the 1970 census but did not at the time possess the intent of making Alaska their home. Alaska's constitution requires that the requisite population total be arrived at by use of the census data. It does not mandate a population base composed exclusively of registered voters, citizens who have previously voted in Alaska, or only those people living in Alaska with the intention of making Alaska their home.¹⁰

It is for these reasons that this court decided that petitioners' objections to the inclusion of all military personnel, who were enumerated in the 1970 census in the total population base for purposes of determining an interim reapportionment plan should be overruled.¹¹

9. Census Report PC(1)-C3, Alaska, Appendix A, at App-1.

10. See note 6, *supra*.

11. The relative effect of eliminating all military personnel, of eliminating only military personnel housed in group quarters, or of including all military personnel in this court's interim reapportionment plan, would be to produce only a slight change in the base population figure and to necessitate some minor redrawing of district lines; it would not change the number of legislators in any given district. On the other hand, elimination of military personnel housed in group quar-

BOOCHEVER, Justice (dissenting).

I dissent from so much of the court's order as overrules petitioners' objection to inclusion, under the court's interim reapportionment plan, of all military personnel who were enumerated in the 1970 Census for the purpose of determining the population size and shape of particular districts.

I agree with the majority that it is impermissible to discriminate against a class of individuals because of the nature of their employment without more being shown, *Davis v. Mann*, 377 U.S. 678, 691, 84 S.Ct. 1441, 12 L.Ed.2d 609, 617 (1964), just as it is unconstitutional to deprive members of a class such as the military of their right to vote, *Carrington v. Rash*, 380 U.S. 89, 85 S.Ct. 775, 13 L.Ed.2d 675 (1965).

The United States Supreme Court, however, has recognized the problems created by including in population counts proportionately large numbers of military personnel (and other transients) having few ties with the state in which they are physically present. In *Burns v. Richardson*, 384 U.S. 73, 86 S.Ct. 1286, 16 L.Ed.2d 376 (1966), the Court affirmed the use of a registered voter base for Hawaii knowing that this system eliminated a much higher proportion of military than civilian persons. The Court indicated its approval of state citizen population as a permissible population base. *Id.* at 92-95, 86 S.Ct. at 1296-1298, 16 L.Ed.2d at 391-92.

The use in Alaska of the April 1970 Census figures for civilians in effect established a state citizen population base for

ters would result in substantially increased population variances among the election districts in comparison with the minimal variations present in the interim reapportionment plan as it now stands. For example, the variation in the Juneau district would shift from the present +4.3 to +10.2; in the Matanuska-Susitna district from +1.5 to +7.4; in the Aleutian district from +3.4 to -37.3; in the Yukon-Koyukuk-Kuskokwim district from +1.0 to -0.5; and in the Fairbanks district from +0.1 to -7.1. Excluding military personnel living in group quarters would correct the Ketchikan discrepancy from -22.5 to -18.0.

5. Alaska Const. art. VI, § 3 provides in part: "Reapportionment shall be based upon civilian population within each election district as reported by the census."

6. In support of this argument, petitioners cite AS 15.05.020. The 1971 Reapportionment Plan includes Const Guard Personnel, 3,752 resident aliens, and all military dependents. These persons cannot be classified as citizens of the State of Alaska under the test urged by petitioners.

7. This order is included in the appendix attached hereto.

8. See note 1, *supra*. In reaching the conclusion that census data must be employed, we do no more than hold that for purposes of fashioning an interim reapportionment plan the unconstitutional limitation in art. VI, § 3 of the Alaska constitution is severable.

other than military. The April date effectively eliminated the large number of summer tourists and transient construction and fishing employees, leaving to be counted with minimal exceptions those voluntarily living in the state with the intention of making Alaska their home.¹

While voting statistics are not synonymous with records of state citizenship, they do furnish a significant indication of a relatively definable military group's nexus with the state. Of the 9,818 census population of military personnel and civilian employees 18 years of age and over residing on the Elmendorf and Ft. Richardson bases, only 102 persons or approximately 1 percent voted as Alaskans in the November 3, 1970 election. At Eielson and Ft. Wainwright, 172 of 9,997 or 1.7 percent so voted. Slightly higher figures of 8.8 percent and 4 percent voted at Adak and Kodiak, while none of Shemya's 1,131 voted. Civilians were also present on most of the bases so that the percentage of military personnel voting on the bases was in all probability even more minuscule.² Approximately 52 percent of the remaining Alaskan population over 18 years of age residing off the bases voted in the same election. (Masters' Report, Table 9) Moreover, according to the files of the Alaska Command, there are only 190 Alaskan "residents of record" among Army and Air Force personnel stationed in Alaska.

In my opinion, some adjustment with reference to counting military personnel is necessary in order to accomplish the substantive purpose of establishing equal population districting "as nearly as practicable."³ If those physically in Alaska were to be counted in the middle of the

summer when tourists and transient workers are present in vast numbers, a distorted population base would result. The counting of all military personnel regardless of their actual state residency results in a similar distortion.

As indicated in footnote 2 above, of Adak's population of 4,995 officers, enlisted men and dependents, and 450 civilians (a total of 5,445) only 165 could be induced to register as Alaskan voters, even after an extensive registration campaign. Under the court's interim reapportionment plan the ideal number of people to be represented by one legislator was fixed at 7,559. In areas such as the district embodying Adak, a relatively small number of voters would be represented by one legislator. The inequity of counting all military personnel is further illustrated by the fact that a decision to place the Ft. Richardson total population of 10,751 in a new district including Eklutna, Birchwood, Eagle River and Chugiak, as opposed to the Anchorage Northeast District, would change the representation of each by one legislator while involving a shift of less than 102 voters based on the 1970 elections.⁴

Even for an interim plan I feel that a more equitable solution is both feasible and constitutional.

I would deduct from the population base to be used for apportionment those members of the military, unaccompanied by dependents, living in military barracks, on ships, etc. These constitute 51.9 percent of the total number of military personnel enumerated in the census. (Masters' Report, p. 886) The location of such military personnel is readily ascertainable and is set forth

fort only 165 were registered to vote as of June 1972.

3. Kirkpatrick v. Preisler, 304 U.S. 520, 528, 80 S.Ct. 1225, 22 L.Ed.2d 510, 523 (1960). Wesberry v. Sanders, 376 U.S. 1, 84 S.Ct. 526, 11 L.Ed.2d 481 (1964).

4. The court was petitioned to make such a change. The proposed change was not, however, adopted.

in Table 7 of the Masters' Report submitted to this court.⁵

Admittedly, there is no completely accurate means at our disposal for determining the number of both civilian and military persons enumerated in the census who are not Alaskan citizens. It is readily apparent, however, that the proportion of military who are not Alaskan citizens so far exceeds the proportion of nonresident civilians who may have been included in the April 1970 enumerations, that no discrimination to the military as a class will result from eliminating the military personnel unaccompanied by dependents who reside in barracks, on ships, etc. That portion of the military personnel who reside neither in their own homes nor in rented private quarters obviously have the fewest ties with the state. There are doubtlessly many other non-Alaskan citizens among the remaining off-base military personnel and their dependents so that the elimination of only the 51.9 percent constituting the personnel unaccompanied by dependents residing in barracks, on ships, etc. will actually result in the inclusion of a substantially higher number of military personnel than in all likelihood are Alaskan citizens.

The Alaska Constitution dictates that, to the extent permitted by the United States Constitution, military personnel should not be included in the population base. There can be no other reason for stating "[r]eapportionment shall be based upon *civilian* population within each election district as

reported by the census." (Emphasis mine.)⁶

While I agree with the majority that all military personnel may not be excluded from the population base, the interim plan should follow as closely as feasible the intent indicated by the Alaska Constitution. For that reason the portion of the military in group quarters should be excluded as representing the minimum number of military who are not Alaskan citizens. As stated in Burns v. Richardson, "The difference between exclusion of all military and military-related personnel, and exclusion of those not meeting, [sic] a State's residence requirements is a difference between an arbitrary and a constitutionally permissible classification." 384 U.S. at 92, 86 S.Ct. at 1297, 16 L.Ed.2d at 391 n. 21. I am convinced that this pointed statement by the United States Supreme Court provides a method for us to more closely follow our own Alaska Constitution without drifting from the course of the equal protection clause of the United States Constitution. Thus, I respectfully dissent from the decision to include all of the military in the population base.

OPINION SEPT. 29, 1972

Before RABINOWITZ, C. J., and CONNOR, ERWIN and BOOCHEVER, JJ.

BOOCHEVER, Justice.

This case arises out of the 1971 reapportionment of the Alaska legislature pur-

figures, I do not here reach the question of whether some other basis for determining population for reapportionment purposes may now be used in view of the unconstitutionality of a portion of the provision. I do not necessarily agree with the court's apparent conclusion that the elimination of the "civilian" requirement may be severed from the requirement of using the census as a basis for population. It may well be that the two provisions are not separable. Champlin Ref. Co. v. Corporation Comm'n, 208 U.S. 210, 234, 52 S.Ct. 550, 70 L.Ed. 1062, 1078 (1932); Dorchy v. Kansas, 204 U.S. 280, 280-290, 44 S.Ct. 323, 68 L.Ed. 689, 690-690 (1921).

5. If my colleagues had agreed to such a deduction, some slight changes would have had to be made in the districts as previously established in the interim plan. With the assistance of the Masters such alterations would not have been unduly difficult to accomplish and in my opinion would have resulted in further decreasing the population variances present in the interim reapportionment plan, especially with reference to the only substantial population variance, that of the Ketchikan District.

6. Alaska Const. art. VI, § 3. Since both the court's interim plan of reapportionment and the 1971 plan utilized census

1. A small number of aliens who would not be eligible for state citizenship are included in the census count. Military personnel also include some aliens.

2. In a memorandum submitted to the court the Lieutenant Governor of Alaska stated that the military population of Adak consisted of 4,995 officers, enlisted men and dependents, and 450 civilians. Despite an intensive voter registration ef-

suant to the mandate of article VI of the Alaska Constitution. The constitution provides for decennial reapportionment of the House of Representatives.¹ The authority to reapportion the House is vested in the Governor of the state, with the advice of a reapportionment board.² Since the adoption of the Alaska Constitution in 1956 the United States Supreme Court has ruled that both houses of a state legislature must be apportioned according to population.³

Because the Alaska Constitution made no provision for reapportionment of the Senate, we held in *Wade v. Nolan*⁴ that on an interim basis until amendment of the Alaska Constitution the Governor had the power to reapportion the Senate in the same manner as specified by the constitution for the reapportionment of the House.

In 1971, following the 1970 decennial census, no amendment having been made to the Alaska Constitution, the Governor reapportioned both houses of the Alaska legislature. Thirteen members of the Alaska legislature then challenged the validity of the 1971 plan.⁵ They urged that the percentage variations from the population norms for legislative districting violated the equal protection clauses of both the United States and the Alaska Constitutions; that the exclusion of the military from the population base was a denial of equal protection; that the Advisory Reapportionment Board was not constituted in the manner required by the Alaska Constitution; that the Governor lacked power to subdivide existing multi-member districts; that the Governor lacked power to create "designated seats" within multi-member districts; that the Governor was without authority to require incumbent Senators to stand for mid-term elections; and that the Governor exceeded his constitutional power by reapportioning the Senate.

The superior court held for the plaintiffs that the variances from population norms were so great as to render the plan invalid; that the Governor lacked the power to subdivide existing multi-member districts and to designate seats within such districts; and that the Governor could not prematurely terminate the terms of senators elected for four years.

The superior court held for the defendants that the military were properly excluded from the population base; that the Advisory Reapportionment Board was properly constituted; and that the Governor did possess the power to reapportion the Senate. The trial court directed that the matter of reapportionment of the Alaska State Legislature be sent back to the Governor and the Advisory Reapportionment Board for further consideration in accordance with the decision. Both the plaintiffs and the defendants below filed petitions for review from the superior court holdings adverse to their respective positions.

This court was mindful of the need for a speedy decision to enable election officials to prepare registration lists and ballots, to disseminate information and to afford time for election campaigns in the impending primary elections.⁶ The petitions for review were filed on April 26, 1972. The time for filing briefs was accelerated and oral arguments were heard on May 23, 1972. During the course of those oral arguments, counsel were requested to recommend to this court procedures to be followed in the event that the 1971 plan was found to be constitutionally defective. It was suggested that the court fashion its own interim plan, and the Attorney General further recommended that Masters be appointed by the court.

Having found in our Decision and Order of May 24, 1972,⁷ that the 1971 plan contained variances from population norms which could not meet the criteria set forth by the United States Supreme Court, we reluctantly concurred with the suggestion of counsel that the court fashion an interim plan of reapportionment for the forthcoming 1972 primary and general elections. The court appointed Masters to assist in the formulation of such a plan.

The Masters presented a written report and conferred with the court on June 13, 1972. The report was modified in accordance with determinations made by the court. After objections filed by the parties were considered by the court, an Order Establishing an Interim Reapportionment Plan for the 1972 Legislative Elections was issued on June 14 with the modified report of the Masters appended thereto.⁸ Because that plan is merely an interim plan, it is necessary to discuss and rule on each of the issues raised on appeal so that the Governor and his Advisory Reapportionment Board will have sufficient guidelines to devise a constitutionally acceptable permanent plan.

1. POPULATION VARIANCES

At the outset we recognize the difficulty of creating districts of equal population while also conforming to the Alaska constitutional mandate that the districts "be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area."⁹ In Alaska's geographical, climatological, 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. Surprisingly small changes in district boundaries create large percentage variances from the ideal population.¹⁰

Despite the possibility of belaboring this opinion we feel obliged to set forth a few of the facts which make it difficult to fit Alaska's reapportionment plan into standards established for the 48 contiguous states which preceded it into the Union. Alaska has a total land area of 586,000 square miles—as large as the entire Louisiana Purchase, and one-fifth the total area of the continental United States. Its boundaries embrace four time zones. The state contains the highest mountain on the North American continent, glaciers that exceed the size of the State of Rhode Island, and a coastline longer than the total coastline along the remainder of the continental United States. Mountain ranges which equal or exceed the length and height of the Rockies divide Alaska into five relatively isolated regions which in turn are subdivided by river systems and other geographic factors such as broad expanses of frozen tundra challenging the most advanced roadway engineering.

The 1970 Census reveals a population of 302,361 persons including members of the Armed Forces.¹¹ There is less population in the State of Alaska than in the cities of Omaha, Nebraska or Toledo, Ohio. The contrasting ethnic backgrounds, cultural interests and economic activities of this Alaska population are detailed in the Report of the Masters.¹²

When confronted with conditions so different from those of any other single state

so that a change of boundaries involving only 76 people would result in a one percent variation in the population ratio. (Masters' Report, Table A, p. 898)

11. Census Report PC(1)-C3, Alaska.

12. Appendix I, pp. 880-801.

7. The Order for an interim plan of reapportionment and the Report of the Masters are attached to this opinion as Appendix I.

8. Appendix I.

9. Alaska Const. art. VI, § 6.

10. Based on 1970 census figures, the population norm per representative is 7,550

1. Alaska Const. art. VI, § 3.

2. Alaska Const. art. VI, § 8.

3. *Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1302, 12 L.Ed.2d 500 (1964).

4. 114 P.2d 680 (Alaska 1946).

5. Alaska Const. art. VI, § 11.

6. The date of filing for candidates was May 31, 1972. It was extended by this court in accordance with its powers over reapportionment matters first to June 15, 1972 and then to June 30, 1972. *Cannon v. Johnson*, 402 U.S. 680, 91 S.Ct. 1700, 29 L.Ed.2d 208 (1971).

in the continental United States, it is readily apparent that it becomes well nigh impossible to achieve the mathematical precision of equal proportions which is feasible in those other states. The situation is more analogous to that of the State of Hawaii, whose unusual difficulties¹³ were recognized as potentially requiring special remedies by the United States Supreme Court in *Burns v. Richardson*.¹⁴

[4] Nevertheless, the initial standard to which a state legislative apportionment plan must be held is that set forth by the Supreme Court in *Reynolds v. Sims*:¹⁵

[T]he Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable.¹⁶

13. The unique circumstances surrounding reapportionment in Hawaii are ably described in the opinion of Judge Pence in *Burns v. Gill*, 310 F.Supp. 1285 (D. Hawaii 1970).

14. 384 U.S. 73, 80-181, 80 S.Ct. 1280, 16 L.Ed.2d 370, 390-93 (1966).

15. 377 U.S. 533, 577, 84 S.Ct. 1302, 1300, 12 L.Ed.2d 500, 530 (1964).

16. The procedure followed by Hawaii in reapportioning its legislature in 1968 is illustrative of such "honest and good faith effort". A committee of three Senators and eight Representatives held 30 hearings before submitting its recommendations to the entire Constitutional Convention. After 15 hours of debating over a three-day period the apportionment provisions were adopted. The committee heard testimony from over 53 witnesses—political scientists, statisticians, attorneys and others—reviewed judicial decisions, analyzed apportionment and districting provisions of other state constitutions and reviewed numerous publications on the subject. Then, utilizing all those resources, the Committee formulated and adopted districting criteria. The Committee engaged an independent team of computer programmers, a statistician, and appropriate staff members, and turned over to that team the primary work of formulating and analyzing districting plans. That team, using a computer upon data gleaned from the 1960 registered voter figures for election precincts, as well as

Although the 1971 plan represented a substantial improvement in the calculus of reapportionment,¹⁷ the new plan's variances still conflict with the guidelines set forth by the United States Supreme Court. We are, therefore, compelled to hold that the plan violates the United States constitutional guarantee of equal protection.

In the earlier reapportionment cases, the United States Supreme Court refused to articulate a strict test for what was required by the equal protection clause. In *Reynolds v. Sims*¹⁸ the Court noted that "[w]hat is marginally permissible in one State may be unsatisfactory in another, depending on the particular circumstances of the case." Hence the present guidelines for reapportionment evolved on a case-by-case basis. In *Swann v. Adams*,¹⁹ percentage variances in

corresponding census tracts, prepared various districting plans and maps according to the Committee's criteria. No member of the Committee or any other delegate was involved in any preparation of the various plans. That team developed 30 house districting plans covering the several islands

The foremost criterion, of course, was that the average number of registered voters per legislator shall be as nearly equal as possible. *Burns v. Gill*, 310 F.Supp. 1285, 1280 (D.Hawaii 1970) (Footnotes omitted).

17. The Alaska legislature was first reapportioned in 1965. The Governor's power to reapportion the Senate was challenged in the case of *Wade v. Nolan*, 414 P.2d 989 (Alaska 1966). In that case, however, the plaintiffs did not question the validity of the numerical variations among districts. By the time of the Governor's proposed plan six years later, the 1965 plan engendered population variances ranging from -104.67 to -65.49 percent in the House of Representatives and from -120.19 to -23.72 percent in the Senate. In the 1971 plan, population variations were reduced to a range of -123.75 to -45.03 percent in the House, and to a range of -120.14 to -17.22 percent in the Senate.

18. 377 U.S. 533, 577-578, 84 S.Ct. 1302, 1300, 12 L.Ed.2d 500, 537 (1964).

19. 385 U.S. 410, 443-444, 87 S.Ct. 549, 17 L.Ed.2d 501, 504 (1967).

the Florida Senate from +15.09 to -10.56 and in the Florida House of Representatives from +18.28 to -15.27 were held to be impermissible "for the failure of the State to present or the District Court to articulate acceptable reasons for the variations among the population of the various legislative districts" The degree of rigidity in the requirement of equality reached its zenith in *Kirkpatrick v. Preisler*²⁰ where population variances from +3.13 to -2.84 percent were held to be invalid. The Missouri Assembly had rejected a plan with smaller variances. The Court stated:

We reject Missouri's argument that there is a fixed numerical or percentage population variance small enough to be considered de minimis and to satisfy without question the "as nearly as practicable" standard. The whole thrust of the "as nearly as practicable" approach is inconsistent with adoption of fixed numerical standards which excuse population variances without regard to the circumstances of each particular case [T]he "as nearly as practicable" standard requires that the State make a good-faith effort to achieve precise mathematical equality. . . . Unless population variances among congressional districts are shown to have resulted despite such effort, the State must justify each variance, no matter how small.²¹

[5] Thus the present standard for reapportionment allows two separate justifications for deviation from the ideal population figures. The first is that variance occurring because of uncontrollable factors, despite a good faith effort to achieve mathematical precision. The second acceptable deviation is that which "the State must

justify" the implication being that while it was a controllable deviation, other factors "incident to the effectuation of a rational state policy"²² can be advanced in justification. However, as the Supreme Court cautioned at an early date in *Reynolds v. Sims*, acceptable state policies are greatly limited.

[N]either history alone, nor economic or other sorts of group interests, are permissible factors in attempting to justify disparities from population-based representation Modern developments and improvements in transportation and communications make rather hollow, in the mid-1960's, most claims that deviations from population-based representation can validly be based solely on geographical considerations. Arguments for allowing such deviations in order to insure effective representation for sparsely settled areas and to prevent legislative districts from becoming so large that the availability of access of citizens to their representatives is impaired are today, for the most part, unconvincing.

A consideration that appears to be of more substance in justifying some deviations from population-based representation in state legislatures is that of insuring some voice to political subdivisions, as political subdivisions.²³

[6] Only after a good-faith effort has been made to achieve precise mathematical equality may variances be permitted; and then the state has the burden of justifying in detail each such variance.²⁴

The Report of the Governor's Advisory Reapportionment Board offers some of the reasons which justify greater percentage variations in Alaska districts "in terms of

20. 304 U.S. 520, 80 S.Ct. 1225, 22 L.Ed.2d 519 (1960).

21. 304 U.S. at 530-531, 80 S.Ct. at 1228, 1229, 22 L.Ed.2d at 524-525 (citation omitted).

22. *Reynolds v. Sims*, 377 U.S. 533, 570, 84 S.Ct. 1302, 12 L.Ed.2d 500, 537 (1964).

23. *Id.* at 570-580, 84 S.Ct. at 1304, 12 L.Ed.2d at 537-538.

24. *Kirkpatrick v. Preisler*, 304 U.S. 526, 532, 80 S.Ct. 1225, 22 L.Ed.2d 519, 520 (1960); *Kilgartin v. Hill*, 380 U.S. 120, 122, 87 S.Ct. 820, 17 L.Ed.2d 771, 774 (1967); *Swann v. Adams*, 385 U.S. 410, 443-440, 87 S.Ct. 549, 17 L.Ed.2d 501, 504-500 (1967).

rational state policy forwarded as factors unique to Alaska." The report notes for example that in some isolated areas a local population would necessarily be divided between contiguous districts, achieving numerical precision at the grave expense of depriving that community of any political power or attention from campaigning candidates.

[7] For other districts, however, the Advisory Reapportionment Board offers little or no explanation for the percentage deviations which were created. For example, no explanations are given for the variations in the Yukon-Kuskokwim House District 15, the Nome House District 19, and the Yukon-Kuskokwim Senate District K which respectively were -9.2 percent, -16.7 percent and -17.29 percent from the population norm. Such disparities as exist in the Wade Hampton District 20 of -28.4 percent, and in the Bethel House District 21 of +4.9 percent cannot be justified simply because a combination of pre-existing districts or a readjustment of district lines does not produce any other "benefits" than a numerical adjustment. The need for numerical adjustment is the very focus of the mandate to reapportion. In too many districts we are forced to conclude that the disparities are without adequate

justification in terms of rational state policies to meet the stringent standards established by the United States Supreme Court.

[8] It is significant to note that in no case coming before the Supreme Court have population variances approaching those of the 1971 plan been upheld, while less substantial variances have been repeatedly rejected as unconstitutional.²⁵ Judged by the standards set out above, we are compelled to hold that the 1971 plan is invalid since there is no adequate justification offered for the variances which range from +23.35 to -45.93 percent in the House districts, and from +26.14 to -7.2 percent in the Senate districts.²⁶

II. MILITARY PERSONNEL

The Alaska Constitution specifies that "[r]eapportionment shall be based upon civilian population within each election district as reported by the census."²⁷ The validity of this provision was not questioned by the parties in *Wade v. Nolan*,²⁸ although the 1965 plan eliminated military personnel from the population base. The 1971 reapportionment plan similarly limited the population base to civilians.²⁹ The plaintiffs below have challenged the validity of this constitutional provision, contending that the

elimination of military personnel as a class violated the equal protection clauses of the United States and Alaska Constitutions.

In *Davis v. Mann*, 377 U.S. 678, 84 S.Ct. 1441, 12 L.Ed.2d 609 (1964), underrepresentation of certain districts was attempted to be justified by the state noting that a substantial number of military personnel resided in the deficient districts. In rejecting this argument, the Court stated:

Discrimination against a class of individuals, merely because of the nature of their employment, without more being shown, is constitutionally impermissible.³⁰

In *Carrington v. Rash*, 380 U.S. 89, 85 S.Ct. 775, 13 L.Ed.2d 675 (1965), a Texas attempt to deprive military personnel of the right to vote in a state election simply because of their military status was held unconstitutional.

[9-11] These cases make clear that military personnel as a class cannot be deprived of the right to vote, and that they cannot be arbitrarily eliminated in a population base used to design an apportionment scheme. But while the clause of the Alaska Constitution seeking to exclude military as a class is unconstitutional, that is not to say that some military cannot be excluded as a permissible device for limiting the impact of transients and nonresidents on legislative districting.

[12, 13] It is also necessary to distinguish the degree of precision required in dealing with representational rights as against the strict right to vote. *Carrington v. Rash* indicates that if even one person is disenfranchised on any irrational ground, the scheme rendering that result must be declared invalid. On the other hand, fixing equal population counts for each legislative district is a more ephemeral and elusive goal when the mathemat-

ical precision achieved one day is destroyed the next by Alaskan society's chronic mobility. Given the fact that dilution of a voter's influence is not completely avoidable, the challenge is to arrive at the best approximation of the population to be counted without losing sight of the fact that the right of equal representation is also an individual and personal right.³¹

In light of these considerations, it becomes important to evaluate the accuracy and recency of the information relied on by the Governor's Advisory Reapportionment Board. Their report to the Governor merely stated that

[u]niformed military personnel who are residents of Alaska and therefore, arguably not excludable under the United States Constitution were so few in number as to be negligible.

The only support for this statement offered in evidence at the trial below was a letter received from an officer of the Alaska Command at the time of the 1965 reapportionment, indicating that among the military stationed in Alaska there were only 111 "residents". There is no indication in the letter of the accuracy of the source for this information. The officer warned in his letter "that this cannot be considered an absolutely accurate figure, as military personnel records do not contain an entry showing what can be called a 'legal residence' for voting purposes. The record shows only the place the person prefers to consider as his permanent home."³² Without inquiring to update the 1965 figure, or obtaining other information on the military from any source, the Board excluded all military personnel from the population base. Hence we were forced to conclude in our Order Denying Objections to the Interim Reapportionment Plan, filed June 20, 1972, that

25. *E. g.*, *Kirkpatrick v. Preisler*, 304 U.S. 520, 80 S.Ct. 1225, 22 L.Ed.2d 510 (1960) (variations from -3.13 to -2.84 percent held unconstitutional); *Kilgarlin v. Hill*, 380 U.S. 120, 87 S.Ct. 820, 17 L.Ed.2d 771 (1967) (variations from -14.84 to -11.64 percent held unconstitutional); *Swann v. Adams*, 385 U.S. 440, 87 S.Ct. 560, 17 L.Ed.2d 501 (1967) (variations from -15.00 to -10.50 percent held unconstitutional). *Cf. Abate v. Mundt*, 403 U.S. 182, 91 S.Ct. 1004, 29 L.Ed.2d 309 (1971) (variations from -4.8 to -7.1 percent upheld).

26. With the single exception of the Ketchikan district, the range of variations in this court's interim plan is from +4.3 to -2.7 percent in the House, and from +4.3 to -2.3 percent in the Senate. The Ketchikan variation in both House and Senate is -22.5 percent. The reasons for the Ketchikan variance are explained in the Report of the Masters at p. 802. Due to the pressure of time in adopting

interim plans, the United States Supreme Court has been much more liberal in countenancing variations which might not otherwise be acceptable. *E. g.*, *Kilgarlin v. Hill*, 380 U.S. 120, 121, 87 S.Ct. 820, 17 L.Ed.2d 771, 774 (1967). *See also Burns v. Gill*, 310 F.Supp. 1285, 1288 (D. Hawaii 1970) saying, "[N]o one particular area of deviation or variance from the ideal of absolute equality of voting power, per se, invalidates an apportionment plan."

27. Alaska Const. art. VI, § 3.

28. 414 P.2d 680 (Alaska 1966).

29. With the exception of members of the United States Coast Guard, uniformed military personnel were eliminated. Military dependents were counted as part of the civilian base. Coast Guard personnel were counted as civilians because they operate under the control of the Department of Transportation.

30. 377 U.S. 678, (91), 84 S.Ct. 1441, 1448, 12 L.Ed.2d 600, 617 (1964).

31. *Reynolds v. Sims*, 377 U.S. 533, 541, 84 S.Ct. 1302, 12 L.Ed.2d 500, 527 (1964).

32. In the 1970 general elections there were 632 votes cast in precincts located solely on military installations. (Masters' Report, Table D) There are no available statistics as to what proportion of those, if any, were civilians.

[i]n the absence of reliable data, the elimination of the military from the population base as a class of persons would be a denial of equal protection of the law, prohibited by the Fourteenth Amendment to the United States Constitution.

In the short time available for devising an interim reapportionment plan, a majority of this court decided that it was not possible to compile sufficiently accurate data to provide a reasonable basis for excluding any number of military from the population base.³³ Thus we included all military personnel with an eye to the fact that our plan would only apply to this year's election, and that a more accurate assessment of the military vote can be achieved in the process of devising a permanent decennial apportionment scheme.³⁴

We recognize that the substantial military population present in the state because of military orders and without intention to make Alaska their home can easily give an unbalanced representation to areas abutting their bases. But we are also mindful of the need for a permanent plan which achieves a level of accuracy of their voting participation which is closer than either including or excluding all military as a class. Thus it is incumbent upon us to discuss alternative plans which may be available to handle the problem.³⁵

The United States Supreme Court in *Burns v. Richardson*, 384 U.S. 73, 86 S.Ct. 1286, 16 L.Ed.2d 376 (1966), permitted the use of a registered voter base for Hawaii, knowing that this system eliminated a much higher proportion of military than civilian

persons. Further, the Court indicated its approval of state citizen enumeration as a permissible population base.³⁶

[14] Alaska has a master voter registration list³⁷ and the court takes judicial notice that active efforts have been made to register all eligible voters. Upon adequate notice and opportunity to register before use of such a registration list for reapportionment purposes, it would appear that an apportionment plan based on current voter registration would be permissible under the federal constitution. Likewise plans based on accurate data of state citizenship or state residency could meet the standards of the federal equal protection clause.³⁸

Another problem, however, would be involved in the use of any but a census population base. As noted above the Alaska Constitution specifies that: "Reapportionment shall be based upon civilian population within each election district as reported by the census." (Emphasis added.) Since we have held that the provision is invalid insofar as it is based on "civilian population", a question is presented as to whether the balance of the provision is separable so as to continue to be effective, or in the alternative whether the entire provision should be stricken leaving some flexibility of choosing a population base for a new, permanent apportionment plan.

Similar problems have frequently arisen with reference to legislation. In *Dorchy v. Kansas*, 264 U.S. 286, 289-290, 44 S.Ct. 323, 324, 68 L.Ed. 686, 689-690 (1924), Justice Brandeis set forth the following

36. 384 U.S. at 81, 80 S.Ct. 1290, 16 L.Ed. 2d at 380.

37. AS 15.07.120.

38. In the *Burns* case the Court noted that: "The difference between exclusion of all military and military-related personnel, and exclusion of those not meeting, [sic] a State's residence requirements is a difference between an arbitrary and a constitutionally permissible classification."

384 U.S. at 92, 80 S.Ct. at 1297 fn. 21, 16 L.Ed.2d at 391, n. 21.

33. *But see* dissenting opinion of Justice Bockliver in *Egan v. Hammond*, Opn. No. 815 (Alaska, July 21, 1972).

34. This court's opinion in *Egan v. Hammond*, *supra* n. 33, discusses in greater detail the reasons for the inclusion of all military personnel in the court's interim plan of reapportionment.

35. The alternatives here discussed are not intended to be an all inclusive list, but are illustrative of constitutional means of treating the problem.

criteria for determining the effect on the remainder of a statute when part is found unconstitutional:

A statute had in part is not necessarily void in its entirety. Provisions within the legislative power may stand if separable from the bad But a provision, inherently unobjectionable, cannot be deemed separable unless it appears both that, standing alone, legal effect can be given to it and that the legislature intended the provision to stand, in case others included in the act and held bad should fall.

In *Champlin Refining Co. v. Corporation Comm'n*, 286 U.S. 210, 234, 52 S.Ct. 559, 565, 76 L.Ed. 1062, 1078 (1932) the standard was phrased as follows:

The unconstitutionality of a part of an act does not necessarily defeat or affect the validity of its remaining provisions. Unless it is evident that the Legislature would not have enacted those provisions which are within its power, independently of that which is not, the invalid part may be dropped if what is left is fully operative as a law.

These criteria would appear to apply equally to a state constitutional provision as to an act of the legislature. To enforce the balance of the section in question requiring exclusive use of the census, the court should be able to find that the constitutional provision would have been enacted independently of the void reference to "civilian population".³⁹

39. *Springfield Gas & Elec. Co. v. Springfield*, 202 Ill. 230, 120 N.E. 730 (Ill. 1920), *aff'd* 257 U.S. 60, 42 S.Ct. 24, 60 L.Ed. 131 (1921); *New Jersey Chapter, American Institute of Planners v. New Jersey State Bd. of Professional Planners*, 48 N.J. 581, 227 A.2d 313 (N.J.1967).

40. In reaching this conclusion we are mindful of the great danger that statistical data from different sources can inadvertently be corrupted or misconstrued in the process of assimilation. We trust that the Board and the Governor will

The members of the Constitutional Convention must have considered the fact that many military personnel present in Alaska do not regard this state as their home and do not actively participate in its affairs. Yet the large number of such personnel concentrated in small areas of the state is capable of distorting the representational base. Although the minutes of the Constitutional Convention are silent on the subject, it appears highly likely that this was the reason that the convention limited the reapportionment base to civilian population.

[15] If the requirement to use census figures were to be retained after striking the provision which limited the base to civilian population, this apparent intent might be frustrated. Only skeletal information of location and mobility characteristics of the military can be extrapolated from census data. Because the equal protection clause of the United States Constitution requires more specific factual justification for eliminating portions of the military from the population base, we conclude that the Board and the Governor should be permitted to use alternates to the census base.⁴⁰ We thus hold that the provisions of that portion of article VI, section 3, requiring that "reapportionment shall be based upon civilian population within each election district as reported by the census" is not severable. While we so hold, we remain hopeful that before a permanent plan is created, the legislature will initiate procedures to up-date the reapportionment provisions of the Alaska Constitution by an appropriate constitutional amendment.⁴¹

also be mindful of this possibility, and will include in the reapportionment process the statistical expertise which is necessary to ensure that no errors will not occur.

41. Suggested in *Wade v. Nolin*, 414 P.2d (80, 700-701) and by Justice Rabinowitz, concurring at 700. Counsel for plaintiffs stated in their briefs that a resolution initiating such an amendment would be enacted at the 1972 legislative session, but no such resolution was passed.

III. COMPOSITION OF THE ADVISORY REAPPORTIONMENT BOARD

[16] Plaintiffs have contended that the reapportionment board was not constituted as required by article VI, section 8, of the Alaska Constitution, which specifies in part: "Appointments shall be made without regard to political affiliation." There were no Republican members appointed to the reapportionment board. Since we have found that the 1971 reapportionment plan is unconstitutional, the question as to the composition of the board has become moot and we therefore do not reach that issue at this time.⁴²

[17,18] We also note that the parties stipulated that the Governor in creating the reapportionment plan was not acting from political considerations and that he did perform his function in good faith. Thus if there was error in the composition of the board such error was rendered harmless, as the obvious purpose of the constitutional provision was to prevent the appointment of

a board whose efforts might result in a politically motivated reapportionment plan.

[19] Under our decision it will be necessary to refer this matter to a reapportionment board for formulation of a permanent plan. Thus, although it is not necessary for us to rule at this time on the question of whether the 1971 reapportionment board was validly constituted, it is incumbent upon us to set forth some criteria which we determine applicable in deciding whether a board has been appointed "without regard to political affiliation", so as to withstand challenge.⁴³ At the outset, we recognize that this phrase is not the equivalent of requiring a "bi-partisan" board.⁴⁴ Nevertheless, in reviewing the validity of the appointment, some (although not necessarily all) of the following considerations would appear to be germane: The political affiliation of members of the board; the nature of their activities in partisan politics, particularly if from one political party only; and the expertise and general qualifications which members bring to the board.

42. *Cf. Doe v. State*, 487 P.2d 47, 53 (Alaska 1971). In that case we stated the general proposition that "we will refrain from deciding questions where the facts have rendered the legal issues moot" except "where the matter is one of grave public concern and is recurrent but is capable of evading review" We do not feel that the issue presently before us evinces the same elusiveness which would require our judgment at this time. Appointments to the Advisory Reapportionment Board are made many months before a final plan is promulgated by the Governor, and interested parties have ample time to appeal from the moment the appointments are made.

43. The defendants quite properly point out that the reapportionment board was convened on May 20, 1971, and that it conducted widely publicized hearings throughout the state during the summer of 1971. Hence the doctrine of inches might well further bar questioning the composition of the board after awaiting the outcome of its work involving the expenditure of substantial funds and the devotion of much time and effort. There was ample opportunity to bring a suit long before the completion of the board's functions. *McCracklin v. Fowler*, 285 F.

Supp. 41, 45 (E.D.Wis.1968) (alternate holding). *Accord*, *Gersten v. United States*, 304 F.2d 850, 852, 170 Ct.Cl. 633 (1960); *Nelson v. Lord*, 4 Alaska 174, 182-83 (1910).

44. At the Alaska Constitutional Convention, in the discussion of the original draft of section 8 which used the word "non-partisan" the following explanation was given:

ESSENTIAL: The word was chosen deliberately. Now an alternative and perhaps the one that the delegate has in mind would be "chosen from each of the major parties." That alternative was specifically rejected because [the committee] felt it placed emphasis upon political considerations on this board which as has been pointed out, it is hoped to keep as objective as possible. Now it is true and the Committee realized that "nonpartisan" doesn't mean that you cannot belong to a political party [On] the contrary to use the political language, would emphasize politics, and it is the whole purpose of this article to de-emphasize politics. (Emphasis added.)

Convention Minutes, p. 1058.

IV. CREATING SINGLE-MEMBER DISTRICTS FROM MULTI-MEMBER DISTRICTS

The Alaska Constitution specifically authorizes the Governor to redistrict "by changing the size and area of election districts . . ." ⁴⁵ subject to certain restrictions set forth in the constitution. It is thus clear that the Governor is authorized to redistrict by changing boundaries and areas. The creation of single-member districts from multi-member districts would appear to be a concomitant power under the authorization to redistrict. Furthermore, this authority is inherent in the general power to reapportion the legislature. Redistricting is inseparable from reapportionment and the Governor should be able to authorize any constitutional device to accomplish the task. The Oregon Supreme Court in its recent review of that state's reapportionment set forth the applicable principles as follows:

Apportionment is accomplished by changing legislative district lines and an integral part of apportionment is making a choice between fixing legislative district lines along a single-member district plan or a multi-member district plan. This is a decision that the legislature would have had to make if it had done the reapportioning. It must be made by the Secretary of State or whatever body makes the apportionment.⁴⁶

[20] Where the method or motive of districting rather than the mathematical precision of the apportionment is being challenged, the Supreme Court of the United States has consistently required that the challenger bear the burden of proving unconstitutionality.⁴⁷ The plaintiffs below failed to meet this burden of proof and we hold that the creation of single-member

districts from multi-member districts was within the powers available to the Governor.

V. DESIGNATION OF SEATS WITHIN MULTI-MEMBER DISTRICTS

The 1971 plan provided that each seat within the multi-member districts of Anchorage and Fairbanks should be designated alphabetically, and that each candidate for office within that district should indicate at the time of filing the particular lettered seat for which he seeks election. The plaintiffs challenged the authority of the Governor to designate seats within multi-member districts.

[21] The Governor's general power to reapportion includes the right to utilize the tool of designated seats. The reasoning set forth in *Hovet v. Myers*,⁴⁸ gives support to this position. An identical problem arose in the case of *Moss v. Burkhardt*,⁴⁹ wherein the court in redistricting the Oklahoma legislature authorized designated seats. If a court has such power under its general authority to reapportion, a Governor authorized specifically by a state constitution to reapportion should be held to have similar power.

VI. TERMINATING LEGISLATORS' TERMS

[22,23] The 1971 Reapportionment Plan provided for termination of all Senators' terms, with the exception of two Senators whose districts were not altered. Under the 1971 plan the areas to be represented by the remaining Senators were changed, and particularly the Anchorage senatorial districts had drastic changes in that the Senators no longer were to run at large. A need to truncate the terms of incumbents may arise when reapportionment

45. Alaska Const. art. VI, § 6.

46. *Hovet v. Myers*, 480 P.2d 684, 689 (Or.1971).

47. *E. g.*, *Whitecomb v. Chavis*, 403 U.S. 124, 144, 61 S.Ct. 1858, 20 L.Ed.2d 303, 370 (1971). *Cf. Kilgartin v. Hill*, 398

U.S. 120, 121, 87 S.Ct. 820, 17 L.Ed.2d 771, 774 (1967).

48. 480 P.2d 684, 689 (Or.1971).

49. 220 F.Supp. 140, 158 (W.D.Okla.1963), aff'd sub nom., *Williams v. Moss*, 378 U.S. 658, 84 S.Ct. 1907, 12 L.Ed.2d 1020 (1964).

results in a permanent change in district lines which either excludes substantial numbers of constituents previously represented by the incumbent or includes numerous other voters who did not have a voice in the selection of that incumbent. The discretionary authority to require mid-term elections when necessary is well established.⁵⁰ We accordingly hold that the Governor had the power to terminate Senate terms as incidental to his general reapportionment powers.⁵¹

VII. GOVERNOR'S AUTHORITY TO REAPPORTION

[24] The Governor's authority to reapportion the Senate was also challenged by the plaintiffs below. In *Wade v. Nolan* this question was discussed in detail, and we concluded that under the Alaska Constitution the Governor with the assistance of the reapportionment board had the implied power to reapportion the Senate on an interim basis.⁵² Since there has been no amendment to the constitution, our decision on that point remains unaltered.

Plaintiffs below indicated that the legislature was prepared to initiate a constitutional amendment pertaining to reapportionment. Since the constitution does not specifically provide for Senate reapportionment and impermissibly limits the reapportionment to civilian population, we

strongly urge that an appropriate amendment to the constitution be prepared and presented to the electorate.

The decision of the superior court is affirmed in part and reversed in part in accordance with the provisions of this opinion. The case is remanded to the superior court for the purpose of referring the matter of a permanent reapportionment plan to the Governor with the assistance of an advisory board to be appointed by him in accordance with the provisions of the Alaska Constitution.

APPENDIX I

1. Decision and Order of May 26, 1972.
2. Reference to Masters, May 26, 1972.
3. Masters' Report.
4. Order Establishing an Interim Reapportionment Plan.
5. Order Denying Objections to Interim Reapportionment Plan.

DECISION AND ORDER

This matter was heard by the court on May 24, 1972, upon petition for review and cross-petition for review. The court recognizes the extreme difficulty of the task confronted by the Governor and the Reapportionment Board in reapportioning the

geographical areas under the interim plan have not so materially changed the population base which elected each of the Senators as to prevent him from adequately representing his designated district. There is ample authority for permitting Senators to serve out their terms under an interim plan even when the boundaries of their districts have been changed. *Mann v. Davis*, 238 F.Supp. 458 (E.D.Va.1964), *aff'd*, 370 U.S. 604, 85 S.Ct. 713, 13 L.Ed.2d 608 (1965); *Moss v. Burkhardt*, 220 F.Supp. 140, 157 (W.D.Okla.1963), *aff'd sub nom.*, *Williams v. Moss*, 378 U.S. 558, 84 S.Ct. 1107, 12 L.Ed.2d 1020 (1964); *Sims v. Amos*, 338 F.Supp. 924, 940 (M.D.Ala.1972); *Butcher v. Bloom*, 420 P. 305, 210 A.2d 457, 459 (1969).

52. 414 P.2d 680, 700 (Alaska 1966).

State of Alaska because of its differing climates, topography, ethnic composition, socio-economic interests and distribution of its relatively sparse population. However, under the mandate of various decisions of the United States Supreme Court, we make the following determinations and order:

1. The reapportionment plan proposed by the Governor of Alaska in his Proclamation of Reapportionment and Redistricting of December 30, 1971, is unconstitutional in that its overall reapportionment of the Senate and House of Representatives results in proposed election districts that do not contain as nearly equal population proportions as is practicable. *Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed. 2d 506 (1964); *Wade v. Nolan*, 414 P.2d 689 (Alaska 1966). Under the Equal Protection and Supremacy Clause of the Constitution of the United States of America, the constitutional right to vote of every citizen of Alaska is protected against impermissible dilutions and impairments flowing from malapportionment of either the House of Representatives or the Senate. In order to effectuate this constitutionally protected right to vote, we are obliged to declare the reapportionment plan of December 30, 1971, invalid under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

2. To insure compliance with the Equal Protection Clause in regard to the forthcoming 1972 primary and general elections for the State Legislature this court must formulate an interim reapportionment and redistricting plan. *Scott v. Germano*, 381 U.S. 407, 85 S.Ct. 1525, 14 L.Ed.2d 477 (1965); *Maryland Comm. for Fair Representation v. Tawes*, 377 U.S. 656, 675-676, 84 S.Ct. 1429, 12 L.Ed.2d 595, 607 (1964). The Lieutenant Governor is to conduct the 1972 primary and general elections for the State Legislature pursuant to the interim reapportionment and redistricting plan which this court will adopt.

3. In order to fashion an interim plan this court will appoint one or more masters to assist it.

4. Upon receipt of the report of the master or masters, this court will consider the manner in which the House and Senate districts shall be reapportioned. This court will then proceed to adopt an interim plan of reapportionment which, as nearly as practicable, considering the allotted time, reflects the standards which have been made binding upon the states by the United States Supreme Court. *Ely v. Klahr*, 403 U.S. 108, 91 S.Ct. 1803, 29 L.Ed.2d 352 (1971); *Reynolds v. Sims*, 377 U.S. 533, 586, 84 S.Ct. 1362, 12 L.Ed.2d 506, 541 (1964).

5. In the event this court determines that the exigencies of the situation preclude the fashioning of an interim constitutional reapportionment plan by June 15, 1972, this court will enter a further order specifying the plan under which the Lieutenant Governor shall conduct the 1972 primary and general elections for the State Legislature, together with the dates that such elections will be held. *Connor v. Johnson*, 402 U.S. 690, 91 S.Ct. 1760, 29 L.Ed.2d 268 (1971).

6. A full opinion discussing and determining the issues which were raised in the petition and cross-petition will be filed in due course.

Dated at Juneau, Alaska, this 26th day of May, 1972.

Georg F. Boney

Chief Justice

Jay A. Rabinowitz

Associate Justice

Roger G. Connor

Associate Justice

Robert C. Erwin

Associate Justice

Robert Boochever

Associate Justice

50. *Mann v. Davis*, 238 F.Supp. 458 (E.D.Va.1964), *aff'd*, 370 U.S. 604, 85 S.Ct. 713, 13 L.Ed.2d 608 (1965); *Moss v. Burkhardt*, 220 F.Supp. 140, 157 (W.D.Okla.1963), *aff'd sub nom.*, *Williams v. Moss*, 378 U.S. 558, 84 S.Ct. 1107, 12 L.Ed.2d 1020 (1964); *Sims v. Amos*, 338 F.Supp. 924, 940 (M.D.Ala.1972); *Butcher v. Bloom*, 420 P. 305, 210 A.2d 457, 459 (1969).

51. In the interim plan promulgated by this court, Senate terms of incumbent Senators were not terminated. The interim plan did not contain the drastic reapportionment of the Anchorage Senatorial districts. We felt that it was preferable not to shorten the terms of Senators, particularly as this may become a necessity upon the formulation of a permanent plan. The additions or substitutions of

Clifford J. GROH et al., Appellants,
v.
William A. EGAN, Governor of Alaska,
et al., Appellees.
No. 2233.

Supreme Court of Alaska.
Sept. 13, 1974.

Action was brought challenging validity of plan for reapportionment of the Alaska legislature. The Superior Court, Third Judicial District, Anchorage District, James K. Singleton, J., dismissed and appeal was taken. The Supreme Court, Boochever, J., held that use of 1970 census data as basis for reapportionment plan adopted in 1973 was not unreasonable; that formula used to exclude transient military personnel from data base did not discriminate against military personnel; that State failed to demonstrate that individual variances from the mean in certain districts were based on legitimate considerations incident to the implementation of a rational state policy; that division of Greater Anchorage area into six election districts was not improper; and that it was within governor's discretionary authority to require mid-term elections in Greater Anchorage area following adoption of the plan, Fitzgerald, J., concurred in part, dissented in part and filed opinion.

Affirmed in part and reversed in part.

Erwin, J., dissented and filed opinion.

1. *States* ⇨27(3)

Supreme Court does not have constitutional authority to decide what is preferable between alternative rational plans for legislative reapportionment. Const. art. 6, §§ 3, 8, 11.

2. *States* ⇨27(2)

Constitutional authority to reapportion the legislature resides in the executive, not the courts. Const. art. 6, §§ 3, 8, 11.

3. *States* ⇨27(10)

Supreme Court views a legislative reapportionment plan promulgated under the constitutional authority of the governor in the same light as it would a regulation adopted under a delegation of authority from the legislature to an administrative agency to formulate policy and promulgate regulations. Const. art. 6, §§ 3, 8, 11.

4. *Administrative Law and Procedure* ⇨760

Supreme Court has authority to review constitutional validity of administrative action but may not substitute its judgment as to the sagacity of a regulation for that of the administrative agency; wisdom of a given regulation is not a subject for review.

5. *States* ⇨27(10)

On appeal from dismissal of action challenging validity of legislative reapportionment plan, Supreme Court would consider matter de novo upon record developed in the superior court. Const. art. 6, §§ 3, 8, 11.

6. *States* ⇨27(3)

Governor may select from among different available statistical compilations in preparing a legislative reapportionment plan. Const. art. 6, § 3.

7. *States* ⇨27(10)

Supreme Court's review of governor's use of 1970 census data for purposes of adopting legislative reapportionment plan in 1973 was restricted to determining whether governor's authority to choose census data as population base was exercised in a rational as opposed to an arbitrary manner. Const. art. 6, §§ 3, 8, 11.

8. *States* ⇨27(5)

Governor's use of 1970 census data for purposes of adopting legislative reapportionment plan in 1973 was not improper, despite contention that there were more accurate and current data available. Const. art. 6, § 3.

9. *States* ⇨27(5)

Elimination of portion of military personnel within the state from population base for purpose of legislative reapportionment plan did not constitute an unconstitu-

tional employment classification on theory that civilian transients were not treated equally, as civilian transients were not present in significant numbers at time census data were obtained, civilian transients were not included in census population though military were so included and special nature of military transients created reasonable basis to distinguish between military and civilian transients. U.S.C.A.Const. Amend. 14.

10. States ⇨27(5)

Formula for exclusion of transient military personnel from population base used for legislative reapportionment purposes whereby statewide ratio of those registered to vote in November 1970 election and number counted in April 1970 census was applied to those registered to vote in locations populated exclusively by the military and their dependents to determine nonresidency factor did not discriminate against the military as class or improperly exclude military personnel based on the nature of their employment. U.S.C.A.Const. Amend. 14.

11. States ⇨27(5)

In absence of showing that manner of reapportioning state legislature is improperly motivated or has an impermissible effect, deviations between legislative districts of up to 10% require no showing of justification; however, state has burden of showing that deviations in excess of 10% are based on legitimate considerations incident to the effectuation of a rational state policy. U.S.C.A.Const. Amend. 14.

12. Constitutional Law ⇨225(1)

States ⇨27(5)

State authorities failed to demonstrate that individual variances from the mean in certain legislative districts which were malapportioned in excess of a 10% maximum comparative variance were based on legitimate considerations incident to the implementation of a rational state policy and, therefore, such variance denied residents of underrepresented districts equal protection. U.S.C.A.Const. Amend. 14.

13. States ⇨27(5)

Underrepresentation of certain legislative districts created by legislative reapportionment plan could not be justified on theory that variance was caused by desire to preserve boundaries of regional corporations established under the Alaska Native Claims Settlement Act and to establish homogeneous groupings of native peoples where none of the districts had the boundaries of a native corporation and makeup of population to the north and east of area alleged to have unique native composition did not vary significantly from that of adjoining villages within the district. Alaska Native Claims Settlement Act, §§ 2 et seq., 3(b), 7, 43 U.S.C.A. §§ 1601 et seq., 1602(b), 1606.

14. States ⇨27(7)

Patterns of housing, income levels and minority residency within Greater Anchorage Borough lacked necessary significance to justify underrepresentation of three legislative districts in the Borough by 5.9, 6.5 and 8.6%.

15. States ⇨27(7)

Underrepresentation of Juneau legislative district by 14%, overrepresentation of Wrangell-Petersburg district by 9.3% and overrepresentation of Aleutian Chain district by 6.5%, which disparities would result from adoption of legislative reapportionment plan, were justified by valid historical and geographic considerations.

16. States ⇨27(7)

Constitutional requirement that legislative districts be formed from contiguous, compact, and relatively integrated socioeconomic areas does not prohibit smaller districts within such areas. Const. art. 6, § 6.

17. States ⇨27(7)

Division of Greater Anchorage area into six election districts was not improper, despite contention that area constituted a single integrated socioeconomic area which should not have been fragmented. Const. art. 6, § 6.

18. States ⇨27(3)

Where legislative reapportionment plan substantially altered senatorial districts in Greater Anchorage area so that districts from which four "hold-over" senators had been elected no longer existed and new districts had vastly changed boundaries, it was within governor's discretionary authority to require mid-term elections, thus truncating terms of four incumbents.

Kenneth P. Eggers, Clifford J. Groh, Groh, Benkert & Walter, Anchorage, for appellants.

James N. Reeves, Asst. Atty. Gen., Anchorage, Norman C. Gorsuch, Atty. Gen., Juneau, for appellees.

Ben T. Delahay, Borough Atty., Soldotna, as amicus curiae for Kenai Peninsula Borough.

Before RABINOWITZ, Chief Justice, and CONNOR, ERWIN, BOOCHEVER and FITZGERALD, Justices.

OPINION

BOOCHEVER, Justice.

For the third time, we are confronted with a challenge to the reapportionment of the Alaska legislature.¹ In *Egan v. Hammond*, we held that the 1971 reapportionment of the Alaska legislature, which was promulgated pursuant to the mandate of Art. VI of the Alaska Constitution, was unconstitutional under the equal protection and supremacy clauses of the United States Constitution. Due to the imminence of the 1972 elections we adopted an interim plan of reapportionment for the 1972 legislative elections. The case was thereafter remanded to the superior court which on January 13, 1973 issued an order, pursuant to our mandate, requesting the governor of

the State of Alaska, with the assistance of an advisory board appointed by him, to develop a permanent reapportionment plan for the Alaska legislature. The governor appointed an advisory board which, after conducting numerous public hearings, submitted a report and proposed plan of reapportionment² which was adopted by the governor on December 11, 1973.

Suit was commenced in the superior court challenging the validity of the plan. After trial of the case, Judge Singleton entered a judgment on May 14, 1974 dismissing the action on the merits. Appellants raise the following issues on appeal:

1. Population variance between districts was excessive.
2. The division of the Greater Anchorage area into six districts violated the Alaska constitutional requirement that districts be formed of contiguous and compact territories containing as nearly as practicable a relatively integrated socio-economic area.
3. There was no need to truncate the terms of four senators, and termination of their terms constituted a denial of equal protection.
4. The use of a formula establishing the number of military personnel to be included in the population base violates the due process and equal protection clauses of the United States and Alaska constitutions.
5. Failure to base the plan on the latest population data resulted in malapportionment.

Because of the imminence of the 1974 elections, we expedited briefing and heard arguments on June 4, 1974. On June 6, we entered an order approving all aspects of the plan except the composition of specified house and senate districts, which we found exceeded permissible constitutional

¹ See *Egan v. Hammond*, 502 P.2d 850 (Alaska 1972) and *Wade v. Nolan*, 414 P.2d 1080 (Alaska 1966).

² The report was unanimously approved by the five-member board, with the exception of the districting of the Anchorage area, to which portion of the report two members dissented.

limits regarding population variances without adequate justification.³

The case was remanded to enable the governor of the State of Alaska, if he desired, to resubmit the plan to the Advisory Reapportionment Board for the purpose of revising it and bringing the districts specified within constitutional standards.⁴ We stated in our order that a full opinion would follow.

STANDARD OF REVIEW

Besides determining whether the reapportionment plan meets constitutional requirements, we must settle upon an appropriate standard of review applicable in Alaska reapportionment cases. Article VI of the Alaska Constitution provides for reapportionment of the House of Representatives by the governor after each decennial census. Although no comparable provision governs reapportionment of the senate, we have held that the Senate, too, must be similarly reapportioned in order to conform to constitutional requirements imposed by the United States Supreme Court.⁵ Section 11 of Article VI confers original jurisdiction on the superior court to hear challenges to the reapportionment plan, and provides that "On appeal, the cause shall be reviewed by the supreme court upon the law and the facts."

[1,2] Appellants argue that this constitutional authority confers upon the supreme court the power to decide what is

preferable between alternative rational plans. We do not so construe our authority, for if that were the case, there would be little reason to provide for the governor to promulgate the reapportionment plan after receiving the recommendations of the Advisory Reapportionment Board.⁶ The constitutional authority to reapportion resides in the executive, not the courts. Jurisdiction is conferred on the courts only when an application is made to compel the governor, "[T]o perform his reapportionment duties or to correct any error in redistricting or reapportionment."⁷ It cannot be said that what we may deem to be an unwise choice of any particular provision of a reapportionment plan from among several reasonable and constitutional alternatives constitutes "error" which would invoke the jurisdiction of the courts.

[3,4] 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 that the agency has not exceeded the power delegated to it, and second to determine whether the regulation is reasonable and not arbitrary. Of course, additionally, we always have authority to review the constitutionality of the action taken, but we have stated that a court may not substitute its judgment as to the sagacity of a regulation

mandamus or otherwise, to perform his reapportionment duties or to correct any error in redistricting or reapportionment. Application to compel the governor to perform his reapportionment duties must be filed within thirty days of the expiration of either of the two ninety-day periods specified in this article. Application to compel correction of any error in redistricting or reapportionment must be filed within thirty days following the proclamation. Original jurisdiction in these matters is hereby vested in the superior court. On appeal, the cause shall be reviewed by the supreme court upon the law and the facts.

for that of the administrative agency, and that the wisdom of a given regulation is not a subject for review.⁸ The superior court indicated that it applied these criteria to its review of the reapportionment plan, and we shall apply like standards in our review of the law and facts raised by this appeal.

[5] One other aspect of our review function pertains to the weight to be given to the decision of the superior court. When the reapportionment article was first proposed at the constitutional convention, original jurisdiction for review was vested in the supreme court. After discussion, it was deemed more practical to have original jurisdiction in the superior court, but the delegates indicated a preference for the application by the supreme court of a standard other than the familiar "abuse of discretion" test in reviewing the decision of the superior court. The draft was amended to specify that "[o]n appeal, the cause shall be reviewed by the supreme court upon the law and the facts."⁹ The minutes of the Constitutional Convention indicate that the drafters of this provision

8. See *Klogery v. Chapple*, 504 P.2d 831, 834-835 (Alaska 1972); *Kelly v. Zamurello*, 480 P.2d 906, 911 (Alaska 1971).

9. Alaska Constitution art. VI, § 11.

10. The intent was best articulated by Delegate McLaughlin:

I believe, Mr. Johnson, in answer to you, there was one addition that Mr. Taylor desired. He desired not only a review on the law, but he wanted to make sure that the supreme court could review all the facts as presented in the superior court. He wanted in substance a trial de novo without any other evidence than the evidence presented in the superior court. That's why he insisted that the law and facts appear there.

Minutes, Constitution Convention 1947. Previously, the following exchange had taken place between Delegates Taylor and Hellenthal:

Taylor: . . . Why in this proposed article, did you confer upon the supreme court of the State of Alaska original jurisdiction to try disputes as to reapportioning?

Hellenthal: That language came identically from the language of the Hawaii Consti-

tuted that appellate review be in the nature of a de novo proceeding, but without additional evidence being presented.¹⁰ Accordingly, in reviewing the reapportionment plan we shall consider the matter de novo upon the record developed in the superior court.

II

USE OF THE 1970 CENSUS DATA

In determining the population base to be used for reapportionment, the Advisory Board relied upon the 1970 decennial census. Appellants contend that there were more accurate and current data available, and that it was improper not to utilize them.

Article VI, Section 3 of the Alaska Constitution provides that, "[R]eapportionment shall be based upon civilian population within each election district as reported by the census." In *Egan v. Hammond*, we held that the elimination of military personnel as a class was unconstitutional, and that the "civilian population" clause could not be severed from the requirement that

tution which was recently adopted, and we felt that the matter of such supreme importance as this should be conferred on the supreme court and that they should be given original jurisdiction. There might be a better court.

Taylor: Do you not believe that the superior court could be more available to any disgruntled voter . . . and allow the supreme court of Alaska to be the appellate court . . . ?

Hellenthal: Of course their review would be confined to review of legal matters and not facts. Perhaps it was thought that the supreme court was a bit more detached than a superior court.

Taylor: But if the district courts abuse their discretion, you can always raise that in the appellate court.

Hellenthal: But as you know and I know as lawyers, to raise the question of abusive [sic] discretion you have got to be awfully right.

Taylor: Could you not in your proposal put it that the superior court should have original jurisdiction and that the supreme court would be the appellate court and also could find as to the facts? (Minutes, pp. 1850-80).

3. A copy of the order of remand is appended hereto as Exhibit A.

4. The governor did resubmit the plan to the Board, which recommended changes in the various districts, and the governor has submitted the revised plan to this court.

5. See *Egan v. Hammond*, 502 P.2d 850, 871 (Alaska 1972); *Wade v. Nolan*, 414 P.2d 680, 700 (Alaska 1966).

6. Art. VI, §§ 3 and 8, Alaska Constitution.

7. Art. VI, § 11 of the Alaska Constitution provides:

Any qualified voter may apply to the superior court to compel the governor, by

reapportionment be based exclusively upon census data. We concluded that alternatives to the census base could be utilized.¹¹ Thus, there is no longer a specific constitutional mandate as to the population base to be utilized by the governor. On the other hand, it has never been held that the due process or equal protection clauses of the United States or Alaska constitutions dictate reapportionment upon some population base other than that of decennial census.¹² In fact, in *Reynolds v. Sims*, the United States Supreme Court stated:

In substance, we do not regard the Equal Protection Clause as requiring daily, monthly, annual or biennial reapportionment, so long as a State has a reasonably conceived plan for periodic readjustment of legislative representation. While we do not intend to indicate that decennial reapportionment is a constitutional requisite, compliance with such an approach would clearly meet the minimal requirements for maintaining a reasonably current scheme of legislative representation.¹³

[6] While *Reynolds* indicates that it is not necessary to reapportion more frequently than decennially, it does not really address itself to the question of what population data may be used. There can be little question but that the general principle of equalizing votes per persons can best be achieved by use of the most current accurate data reasonably available. We indicated in *Egan v. Hammond*, that in the absence of a constitutional amendment reestablishing specific guidelines, the governor has the power to select alternative bases for reapportionment purposes. We referred to the permissibility of a registered voter, state citizenship or state residency base.¹⁴ Similarly, the governor may

select from among different available statistical compilations.

[7,8] Since the governor's authority to choose census data as a population base is not limited by either the state or the federal constitution, our review is restricted to whether that authority has been exercised in a rational as opposed to an arbitrary manner. The report of the Reapportionment Advisory Board evidences thorough and exemplary exploration of the possibility of using more current statistics. Only after alternatives were carefully examined was the determination made to use the 1970 census data. As to the rationality of that decision, we agree with the findings of the superior court:

The Advisory Reapportionment Board examined the feasibility of such an update. Its statistical technician (who is otherwise the employee of the Research and Analysis Section who is responsible for preparing that office's annual estimates) and its counsel sought the advice of Dr. George Rogers on this matter and were informed that it would be impossible to update the 1970 data in a statistically meaningful way with the geographical specificity required for reapportionment. The Board also took this question up with Ronald Evans, federal census coordinator at the University of Alaska's Institute for Social, Economic and Government Research, who advised that updated population data was not available and that it would be possible to contract with the Census Bureau to obtain a special census for reapportionment purposes at a cost of about \$250,000. For these reasons, and in addition because the Annual Estimates represent population in July rather than in April and cannot effectively be extrapolated with geographic

States Supreme Court, however, implies that decennial census data is not constitutionally appropriate, and Justice Brennan did not address himself to the question of how current reapportionment data must be.

13. 377 U.S. 533, 543, 84 S.Ct. 1302, 1303, 12 L.Ed.2d 500, 540 (1964).

14. 502 P.2d at 870.

11. 502 P.2d at 870-871.

12. Justice Brennan in his dissent in *White v. Hegester*, 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314, 334 (1972), asserted that a reapportionment plan must be "grounded on the most accurate available data", and that unreliability of data may necessitate invalidation of a plan. No holding of the United

specificity, it was not unreasonable for the Board to conclude that it could not effectively update 1970 census data.

The use of the 1970 census data under those circumstances did not constitute error.

III

MILITARY PERSONNEL

The Advisory Board sought to eliminate from the data base, to the extent that reliable information could be developed on which to do so, all nonresidents who could be statistically identified. The Board found that approximately 26 percent of the census population consisted of military personnel and their dependents, substantial numbers of whom were not residents of the state.¹⁵ A complicated formula was established whereby 28,581 of the approximately 78,998 military and military dependents¹⁶ were eliminated from the population base. Appellants contend that the elimination of a portion of the military personnel from the population base constitutes an unconstitutional employment classification violative of due process and equal protection.¹⁷

15. The masters we appointed collected the following data regarding participation of military personnel in the 1970 general election: Elmendorf and Fort Richardson, 102 voters of 9,445 population over age 18; Eielson and Fort Wainwright, 172 voters of 10,270 population over age 18; Shemya Station, no voters among 1,085 population over age 18; Kollak Station, 78 voters of 1,717 population over age 18. In these six enumeration districts populated by military personnel and their dependents, there were thus only 352 voters from an adult population of 22,623 or less than 1.6 percent. Approximately 52 percent of non-military adults voted in the same election. *Egan v. Hammond*, 502 P.2d at 869, see 502 P.2d at 862 (Boochever, J., dissenting). If voting can be taken, as we believe, to be an indication of a person's desire to make a state his home, the desires of Alaska-based military personnel have been clearly expressed in the negative. Of all the military personnel in Alaska, only 100 claimed to be residents of record according to the Alaska Command at the time of *Egan v. Hammond*, *id.* at 862, and nothing in the record indicates that this figure has changed significantly.

In *Egan v. Hammond*, we wrestled with the thorny problem of accounting for military personnel in the Alaska population base. Since many of the considerations there discussed are still controlling on this issue, we shall summarize the basic rationale of that case.¹⁸ We held invalid the constitutional requirement that reapportionment shall be based upon civilian population within each election district as reported by the census for the reason that military personnel as a class could not be eliminated arbitrarily. We pointed out, however, that by holding such elimination unconstitutional we were not saying "that some military cannot be excluded as a permissible device for limiting the impact of transients and nonresidents on legislative districting." Reference was made to the possibility of using a registered voter base, which has been approved in *Burns v. Richardson*,¹⁹ or employing a state citizen or state residency basis. We expressed what has now proved to be a vain hope that the legislature would update the reapportionment provision of the Alaska Constitution with an appropriate constitutional amendment.

16. In April 1970, the census indicated that there were 32,113 uniformed military personnel in the state. Figures provided by the Alaska Command and other sources indicated approximately 148 military dependents for each uniformed military personnel in July 1973. Assuming the same ratio in 1970, there were 40,985 military dependents and personnel in 1970. Thus, military personnel and their dependents accounted for 78,998 of the state's 1970 population of 302,301. Although the Board originally sought to eliminate nonresident military and nonresident dependents, the exclusionary formula was finally applied only to uniformed personnel.

17. See *Davis v. Mann*, 37 U.S. 678, 691, 84 S.Ct. 1441, 1448, 12 L.Ed.2d 600, 617 (1964): Discrimination against a class of individuals, merely because of the nature of their employment, without more being shown, is constitutionally impermissible.

18. See 502 P.2d at 869-871.

19. 384 U.S. 73, 80 S.Ct. 1280, 16 L.Ed.2d 376 (1966).

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[9] In the absence of any constitutionally mandated population base, the Advisory Board sought information regarding Alaska's transient population. Military personnel were found to be the most prominent component, and on the basis of its data the Board found a certain proportion of the military to be excludable from the population base. The dissent finds error in the decision to exclude military transients from the apportionment population base primarily because the Board failed to treat civilian transients equally. For three reasons we find the Board's decision reasonable: (1) it was reasonable for the Board to conclude that civilian transients are not present in significant numbers in April, when the census data was obtained; (2) even if transients were present, they were not included in the Alaska census population, although all military stationed in Alaska were so included; (3) the special nature of military transience creates a reasonable basis to distinguish between military and civilian transients.

Initially we believe the Board was justified in concluding that civilian transients were not included in the 1970 Alaska census figures. The 1970 census data, upon which the exclusion was based, was obtained in April. The seasonality of tourism in Alaska is well known; although published data on tourist presence is not readily available, the absence of tourists in

the state during school months and before the spring thaw is common knowledge. The likelihood that any number of tourists could have been included in Alaska's census population is, therefore, minute. The seasonality of much of Alaska's employment market has been authoritatively documented over several decades.²⁰ Specific data bearing out the general trend in recent years, and the 1970 census year in particular, is available through the Alaska Workforce Estimates prepared on a monthly basis by the Research and Analysis Section of the Employment Security Division of the Alaska Department of Labor. A review of those documents for 1970 shows the presence in April 1970 of a total statewide labor pool of 109,972 employable civilians.²¹ That figure is but 7,000 more than the January ebb and over 17,000 less than the 127,144 peak in July.²² The actual number of persons employed showed a similar pattern of increase and decline; for instance, in the food processing industry, which is inextricably tied to the highly seasonal fishing industry,²³ total employment doubled from 6,700 in April to 13,600 in July.²⁴

Even if non-military transients were contacted by census takers in Alaska, it does not follow that they were included in Alaska's population. The census enumerates a person according to his "usual place of residence".²⁵ That clause is "generally

construed to mean the place where [a person] lives and sleeps most of the time."²⁶ Transient individuals in Alaska in April 1970 were not necessarily counted as Alaska residents. For example, the residence of tourists was attributed to their state of origin.²⁷ The same was true where a short-term worker was encountered in Alaska.²⁸ Those persons who were counted as residents of Alaska lived and slept here "most of the time", and it would be difficult to find a basis for excluding them from the population base.

Servicemen were treated very differently from civilians by the census, however:

Members of the Armed Forces living on military installations were counted, as in every previous census, as residents of the area in which the installation was located. Similarly, members of the Armed Forces not living on a military installation were counted as residents of the area in which they were living. Crews of U.S. Navy vessels were counted as residents of the home port to which the particular vessel was assigned.

26. *Id.*

27. *Id.* at vi.

28. *Id.* The rules followed by census enumerators to decide residence questions further support the understanding that civilian transients are not included in Alaska's census population in a significant number. Persons who maintained a permanent residence elsewhere than Alaska but were encountered in Alaska because of seasonal employment would have been classified as "Person who has more than one home and divides time between them", and the assigned residence would have been "Place where he spends largest part of calendar year." Bureau of the Census, United States Department of Commerce, Enumerator's Handbook Pub. D-507 [Rule 11] at 76. (The rules may also be found in other versions of the handbook, Publications D-500, D-520 and D-524.) Thus, the census included as Alaska residents only those transients who spent a majority of the year in Alaska. For the Board to seek to determine who among them actually considered themselves to be state citizens would be a Herculean task, if it could be accomplished at all. Persons who were in Alaska as seasonal laborers when their families were enumerated in other states would also have been referred back as residents of the locale of the

Thus the census fails to cull out the non-resident from the military census population, although it does so with respect to the civilian population.³⁰ In that distinction alone lies justification for the Board's excluding of nonresident military persons without also attempting to eliminate civilian nonresidents.

Finally, in concluding that the exclusion of the military cannot be reconciled with "the board's tolerance toward civilian transients" and comparing the exclusion of military personnel to a durational residency requirement, the dissent in our opinion ignores the fundamental reason for the exclusion of some military personnel—their want of any contact with the state beyond mere presence. Although some may volunteer for such duty, military personnel are ordered to report to the Alaska Command. Recognizing the involuntary nature of military assignment, common law courts, including the territorial district court,³¹ have long stated that a person who enters the military retains the residence and domicile he established before entering the

family household. *Id.* [Rule 1] at 75. Only homeless migrants could have been included as Alaska residents, had such persons been present in the state. The relevant rule assigns "Persons in places which have shifting populations composed mainly of persons with no fixed residence, such as convict camps, highway and other construction camps, and camps for migratory agricultural workers," a residence in the camp where they are found. *Id.* [Rule 16] at 77. The thought that any significant number of people could have been encountered in agricultural or construction camps in Alaska on April 1, 1970 defies experience.

29. Bureau of the Census *supra* note 25 at v.

30. The census does place college students where they attend school. The Board made an effort to determine the percentage of college students who were nonresidents. The number was found to be statistically insignificant.

31. *Wilson v. Wilson*, 10 Alaska 610, 621 (D.C. Anch. 1945). The legislature in enacting AS 00.55.100 rendered nugatory the portion of *Wilson* which held that a serviceman may not sue for divorce within the state of assignment. See *Lauterbach v. Lauterbach*, 302 P.2d 24 (Alaska 1964).

26. See Rogers, G. W. and Cooley, R. A., Alaska's Population and Economy, 127-30 (1962); Rogers, G. W., The Future of Alaska, 100-07 (1962); Rogers, G. W., Alaska, The Economy and the Labor Force, 78 Monthly Labor Rev. 1375 (1955); cf. Rogers, G. W., Alaska Regional Population and Employment, University of Alaska S.E.C. Report No. 15 at 30, 91 (1967). See generally Research and Analysis Section, Empl. Security Div., Alaska Dept. of Labor, Alaska Workforce Estimates by Industry and Area, 1965-72. The workforce estimates are prepared under mandate of the United States Department of Labor to the state to make available to the public, "accurate and timely area manpower and job market information for decision-making purposes." 141 United States Department of Labor, Employment Security Manual § 9020, implementing 20 C.F.R. § 602.0, implementing

20 U.S.C. § 301 *et seq.* We harbor no reluctance to take notice of such authoritative sources documenting a well known aspect of the Alaska economy. Civil Rule 43(a)(2) [c] and 43(a)(2)[d].

21. Research and Analysis Section, Empl. Security Div., Alaska Dept. of Labor, Revised 1970 Alaska Workforce Estimate (1972).

22. *Id.*

23. See generally authorities cited at note 20, *supra*.

24. Research and Analysis Section, Empl. Security Div., Alaska Dept. of Labor, Revised 1970 Alaska Workforce Estimate (1972).

25. Bureau of the Census, Social and Economic Statistics Administration, United States Department of Commerce, Characteristics of the Population, Part A at v. (1971).

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The Alaska Advisory Board ascertained that the ratio between those registered to vote in the November 1970 Alaska election and the number counted in the April 1970 census was 1 to 2.717. This ratio was applied to those registered to vote in six locations populated exclusively by the military and their dependents.³⁸ A total of 1,049 persons were registered to vote in those military areas, thereby indicating 2,850 state residents (1,049 x 2.717). The census population within the sample area was 41,659, of whom 25,231 were estimated to be adults. Utilizing only the adults in the sample area, the Board found that approximately 11 percent were estimated to be residents (2,850/25,231), and accordingly 89 percent were nonresidents. Applying the 89 percent nonresidency factor to each place in which military personnel were counted resulted in a deduction of 28,581 from the total uniformed military population and corresponding deductions in each census district.

[10] There are obviously certain assumptions which had to be made in evolving the formula used, and admittedly there are inaccuracies. Any error, however, is bound to have resulted in more military and their dependents being counted than are actually residents of the state. For instance, the exclusionary formula was applied only to uniformed military personnel and not their dependents. Dependents of military persons may be assumed, for the most part, to have the same residential characteristics as the uniformed personnel upon whom they are dependent. There was an approximate total of 78,998 military and dependents counted in the 1970

census. Since but 28,581 were deducted, the actual percentage counted as residents was approximately 65 percent. Based on all statistical information available, this percentage is in all likelihood much higher than the actual percentage of military and military dependents who are residents of the state.³⁹ While an exclusion of a larger percentage of military personnel and dependents may be justified, we have not been presented with an issue as to overrepresentation of the military. We conclude that there was no discrimination against all military as a class and no improper exclusion of military personnel based on the nature of their employment.

IV

POPULATION VARIANCES

The 1973 reapportionment plan contains a maximum deviation in the House of Representatives of 29 percent, the Juneau district being underrepresented by 14 percent and the Nome district overrepresented by 15 percent. In the Senate, the maximum deviation is 22.4 percent.⁴⁰ Of 40 house seats, 22 derive from districts where representation deviates by five percent or more from the mean, and of 20 senate seats, 11 are situated in districts characterized by similar deviations. Since the deviations in both the house and the senate were, of course, both below and above the mean, the total deviations between several pairs of districts were in excess of ten percent. Appellants contend that such variances in population dilute and impair the right to vote of Alaskans in the underrepresented districts, in violation of the equal protec-

tioned that 25 to 30 percent of military personnel and dependents in Alaska answered affirmatively to a census question whether their residence was the same in 1976 as it was in 1965. Assuming that pure duration creates voting residency, the 85 percent inclusion is more than double the allowance which could be argued for. See *Egan v. Hammond*, 502 P.2d at 880.

40. The Juneau senate district is underrepresented by 11 percent, and the Bethel district overrepresented by 5.4 percent.

tion clauses of the United States and Alaska constitutions.

In *Egan v. Hammond*, we discussed the then-applicable constitutional criteria, first delineating the unique problems involved in attempting to secure equal population districts in Alaska:

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. Surprisingly small changes in district boundaries create large percentage variances from the ideal population.⁴¹

We concluded:

Thus the present standard for reapportionment allows two separate justifications for deviation from the ideal population figures. The first is . . . variance occurring because of uncontrollable factors, despite a good faith effort to achieve mathematical precision. The second acceptable deviation is that which "the State must justify"—the implication being that while it was a controllable deviation, other factors "incident to the effectuation of a rational state policy" can be advanced in justification. However, as the Supreme Court cautioned at an early date in *Reynolds v. Sims*, acceptable state policies are greatly limited.⁴²

Since our opinion in *Egan v. Hammond*, there have been three United States Su-

preme Court opinions somewhat ameliorating the rigid standards previously applied. In the first of this trilogy, *Mahan v. Howell*,⁴³ a Virginia reapportionment plan involving a maximum variation of 16.1 percent⁴⁴ (one district was overrepresented by 6.8 percent and another underrepresented by 9.6 percent) was held to be justified by the state policy of following political subdivision boundary lines. The court recognized that the states had been accorded more latitude with respect to state legislative reapportionment than with respect to congressional redistricting.⁴⁵ While reaffirming the holding of *Reynolds v. Sims* that:

[T]he Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable.⁴⁶

the court in *Mahan* emphasized that:

So long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy, some deviations from the equal-population principle are constitutionally permissible with respect to the apportionment of seats in either or both of the two houses of a bicameral state legislature.⁴⁷

In *Gaffney v. Cummings*,⁴⁸ the Supreme Court upheld a reapportionment plan for the Connecticut General Assembly involving a maximum deviation of 7.83 percent although a proposed plan had been submitted involving a much smaller deviation. In establishing the reapportionment plan, the apportionment board had followed a policy

31 L.Ed.2d 68 (1972). See also *In re Opinion of Justices*, 111 N.H. 146, 270 A.2d 825 (1971), wherein the New Hampshire Supreme Court decided in an advisory opinion that excluding from the population base military personnel who have not met reasonable residence requirements was constitutionally permissible.

38. Approximately 60 percent of Alaska's military live in these six locations.

39. The largest claim to representation was detailed in our ministers' report, where it was

41. 502 P.2d at 805 (footnote omitted).

42. *Id.* at 807 (footnote omitted). See *Reynolds v. Sims*, 377 U.S. at 570-580, 81 S.Ct. at 1300-1301, 12 L.Ed.2d at 537-538.

43. 410 U.S. 315, 63 S.Ct. 979, 35 L.Ed.2d 320 (1973), modified, 411 U.S. 922, 63 S.Ct. 1475, 36 L.Ed.2d 316 (1973).

44. *But see* opinion of Brennan, J., dissenting, indicating that the maximum variation might well have been 23.6 percent. 410 U.S. at 330, 63 S.Ct. at 991, 35 L.Ed.2d at 337.

45. 410 U.S. at 322, 63 S.Ct. at 981, 35 L.Ed.2d at 320.

46. 410 U.S. at 324-325, 63 S.Ct. at 985, 35 L.Ed.2d at 330, quoting from *Reynolds v. Sims*, 377 U.S. at 577, 81 S.Ct. at 1300, 12 L.Ed.2d at 530.

47. *Id.*, quoting from *Reynolds v. Sims*, 377 U.S. at 579, 81 S.Ct. at 1301, 12 L.Ed.2d at 537.

48. 412 U.S. 735, 63 S.Ct. 2321, 37 L.Ed.2d 208 (1973).

of "political fairness" aimed at establishing "a rough scheme of proportional representation of the two major political parties."⁴⁹

The Supreme Court concluded:

We think that appellees' showing of numerical deviations from population equality among the Senate and House districts in this case failed to make out a prima facie violation of the Equal Protection Clause of the Fourteenth Amendment, whether those deviations are considered alone or in combination with the additional fact that another plan could be conceived with lower deviations among the State's legislative districts. Put another way, the allegations and proof of population deviations among the districts fail in size and quality to amount to an invidious discrimination under the Fourteenth Amendment which would entitle appellees to relief absent some countervailing showing by the State.⁵⁰

Although the Court found in its previous decisions the principle that, "[T]he larger variations from substantial equality are too great to be justified by any state interest so far suggested", nevertheless it also held that, "[M]inor deviations from mathematical equality among state legislative districts are insufficient to make out a prima facie case of invidious discrimination. . . ."⁵¹ The Court recognized that state reapportionment is the task of the organ of state government selected to perform it,⁵² and that even though a slightly better plan could be created, that fact did not establish an invidious discrimination under the fourteenth amendment.

[11] Finally, in *White v. Regester*,⁵³ a Texas reapportionment plan was upheld al-

though it contained a maximum population variance between the largest and smallest district of 9.9 percent. No acceptable state policy was advanced to support the deviations. However, only 23 districts were over or underrepresented by more than three percent, and only three of those districts by more than five percent. The Court held that it did not consider relatively minor population deviations among state districts to so dilute the franchise in underrepresented districts so that individuals in those districts were deprived of fair and effective representation:

Very likely, larger differences between districts would not be tolerable without justification "based on legitimate considerations incident to the effectuation of a rational state policy," *Reynolds v. Sims*, 377 U.S. at 579 84 S.Ct. at 1391, 12 L. Ed.2d 506; *Mahan v. Howell*, supra, 410 U.S. 315, 93 S.Ct. 979, 35 L.Ed.2d 320, but here we are confident that appellees failed to carry their burden of proof insofar as they sought to establish a violation of the Equal Protection Clause from population variations alone.⁵⁴

According to Justice Brennan, *White* established a rigid demarcation line:

[T]he Court today . . . reason[s] . . . that a showing of as much as 9.9% total deviation still does not establish a prima facie case under the Equal Protection Clause of the Fourteenth Amendment. Since the Court expresses no misgivings about our recent decision in *Abate v. Mundt*, 403 U.S. 182, 91 S. Ct. 1904, 29 L.Ed.2d 399 (1971), where we held that a total deviation of 11.9% must be justified by the State, one can reasonably surmise that a line has been

trials were equal or substantially equal in population as, for example, when multi-member districts are so established as to invidiously minimize the voting strength of racial or political groups.

53. 412 U.S. 755, 93 S.Ct. 2362, 37 L.Ed.2d 314.

54. *Id.* at 701, 93 S.Ct. at 2338, 37 L.Ed.2d at 323.

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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.⁵⁵

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.⁵⁶ The state, however, has the burden of showing that deviations in excess of ten percent are "based on legitimate considerations incident to the effectuation of a rational state policy".

[12] We thus must ascertain whether the state has met its burden of justification here. As indicated in our order of June 6, 1974, we find that House districts No. 22 (Nome), No. 16 (Bristol Bay), No. 12 (Anchorage West), No. 20 (Fairbanks), No. 11 (Anchorage South), No. 9 (Anchorage Spenard), and No. 17 (Bethel), and Senate districts J (Anchorage West), M (Bristol Bay-Bethel), O (Fairbanks), G (Anchorage Spenard) and I (Anchorage South) are malapportioned in excess of a 10 percent maximum comparative variance, and that the appellees failed to demonstrate that the individual variances from the mean in those districts were based on legitimate considerations incident to the implementation of a rational state policy.⁵⁷

[13] We find it necessary to discuss briefly the reasons advanced by the Advisory Board in attempting to justify the disparities in each of the districts referred to above. We are convinced that the Board made a good faith effort, but unfortunately

we find that the reasons advanced by the Board do not withstand close scrutiny under the standards enumerated by the United States Supreme Court. In many instances, one of the principal reasons advanced by the Board was the preservation of the boundaries of regional corporations established under the Alaska Native Claims Settlement Act. Under that Act, the state was divided into 12 regions, and separate corporations were established for each region. By the division it was sought to establish homogeneous groupings of Native⁵⁸ peoples having a common heritage and sharing common interests.⁵⁹ The use of such corporate boundaries in districting might constitute justification for some population deviation. Following corporate boundaries was stated as a reason for the composition of House districts 22 (Nome), which was 15 percent overrepresented, 16 (Bristol Bay), which was 10.9 percent overrepresented, and 17 (Bethel), which was 6.3 percent overrepresented. We find, however, that none of those districts has the boundaries of a Native corporation. Each included substantial portions of more than one corporate region.

Additionally, it was suggested that the Nome area had a unique Native composition. But the makeup of the population both to the north and east does not vary significantly from that of the adjoining villages within the Nome boundaries. The mining potential in the area and the need for a "common port facility" do not constitute considerations incident to the implementation of a rational state policy so as to justify a disparity of 15 percent overrepresentation.

Governor's Advisory Reapportionment Board. The testimony at the trial of this case produced little if any evidence to supplement the justifications set forth in the report.

58. "Native" is basically defined in the Act as a citizen of the United States who is 1/4th degree or more Alaska Indian, Eskimo or Aleut, or combination thereof. 43 U.S.C.A. § 1602(b).

59. 43 U.S.C.A. § 1600.

55. *Id.* at 770, 93 S.Ct. at 2345, 37 L.Ed.2d at 331 (Brennan, J., dissenting).

56. The challengers' briefs are silent on the issue of whether the governor's plan had the purpose or effect of discriminating impermissibly against any racial, ethnic or political group. At oral argument, counsel for the challengers, who is also a state senator from Anchorage, conceded that the record did not demonstrate any such discrimination.

57. The attempted justifications are to be found in the report and proposed plan of the

49. *Id.* at 734, 93 S.Ct. at 2324, 37 L.Ed.2d at 303.

50. *Id.* at 740, 93 S.Ct. at 2325, 37 L.Ed.2d at 304-305.

51. *Id.* at 745, 93 S.Ct. at 2327, 37 L.Ed.2d at 307.

52. *Id.* at 751, 93 S.Ct. at 2330, 37 L.Ed.2d at 311. The Court pointed out that constitutional violations could occur even though dis-

No valid reasons were advanced for the 10.9 percent overrepresentation with reference to House District 16 (Bristol Bay). We can agree with the Board's decision not to combine the Bristol Bay area with the Aleutian Chain because of conflicts between the residents of the two areas, but that does not explain why other areas could not have been added to the district so as to create less of a variance.

District 20 (Fairbanks) is a multi-member district electing six house members. It is 7.4 percent overrepresented, and no valid reasons were set forth as to why additional areas could not be included so as to reduce the variance.

The explanation advanced for District 17 (Bethel) having 6.3 percent overrepresentation was the inclusion of a portion of the Calista Native Corporation Region and utilization of one of the boundaries of that region. In view of the fractionation of Calista revealed by reference to the maps, the reason advanced cannot justify the discrepancy under the Supreme Court guidelines.

Finally, Anchorage districts 9, 11 and 12 were underrepresented respectively by 5.9, 6.5 and 8.6 percent. Having made the policy decision to divide Anchorage into six districts, the Advisory Board endeavored to identify like socio-economic areas, based on the cost of housing, the concentration of minorities, income levels, the need for transit systems and growth and development plans. It is clear from the testimony, however, that there are few if any homogeneous areas within the Anchorage Borough; the patterns of housing, income levels and minority residency criss-cross extensively.

The Board's apparent effort was directed at compliance with the Alaska constitutional mandate that districts contain "as nearly as practicable a relatively integrated socio-economic area."⁶⁰ Some guidance as

to the meaning of the term "socio-economic area" may be garnered from the minutes of the Constitutional Convention.

It appears that Delegate Hellenthal advocated the use of the term, describing it 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.⁶¹

It cannot be defined with mathematical precision, but it is a definite term, and is susceptible of a definite interpretation. What it means is 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. It has, as I say, no mathematically precise definition, but it has a definite meaning.

It is in common use among political scientists.

I think it is a political and economic term rather than a legal term.⁶²

It would appear from that discussion that a community such as the Greater Anchorage Borough might be considered as a socio-economic area, but that it becomes extremely difficult to fragment the area with geographic nicety according to the patterns endeavored to be followed by the Board. As was stated in The Report of the Masters, appended to the decision in *Egan v. Hammond*: "Close scrutiny of population characteristics in Anchorage do [sic] not reveal clearly delineated ethnic ghettos."⁶³ And at least as far as the election of legislators is concerned, Alaska does not seem to be afflicted with the racial miasma adversely affecting other sections of the United States.⁶⁴

[14] The testimony in the court below indicated that there are few if any homogeneous socio-economic areas within the Greater Anchorage Area Borough, and that patterns of housing, income levels and minority residency are difficult to delineate. 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. We hold that appellees have failed to meet the constitutional burden of justifying the discrepancies found in Districts 9, 11 and 12.

[15] On the other hand, we do find that the burden was met with reference to House districts 2 (Wrangell-Petersburg), 4 (Juneau), 14 (Kodiak), and 15 (Aleutian Chain). With reference to the Juneau and Wrangell-Petersburg areas, the Board was confronted with the difficult problem of juggling the more contiguous, compact, relatively integrated socio-economic areas of Southeast Alaska without extending a substantial distance into an unrelated area separated by immense natural barriers. Yakutat, the northwestern-most settlement in Southeast Alaska, which is itself separated by great distance from the other communities in the region, is 225 air miles from the nearest population center in the Southeastern region, Cordova. There are valid considerations both historically and geographically for not endeavoring to span

that gap. Within the Southeast area, Juneau is substantially underrepresented, exceeding the norm for a two-member district by 14 percent. The Board, however, presented a rational basis for not severing Skagway and Haines from the district, the only logical alternative which would reduce the underrepresentation. 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.

District 2 (Wrangell-Petersburg) is the other Southeastern district with a substantial deviation—9.3 percent overrepresentation. The Board stated valid considerations for this variation, which necessarily implemented the rational state policy, expressed in the Alaska Constitution, of achieving, as nearly as practicable, contiguous, compact territory containing a relatively integrated socio-economic area.⁶⁵

We likewise find adequate justification for the 6.5 percent overrepresentation in the vast and remote Aleutian Chain District. The district includes all of the area of the Aleut League Corporation. There appears to be no feasible means of adding additional areas of population to this district without worsening the imbalance al-

to the position of President of the Senate. Appellants point out that a black was elected to the House from a district with no insignificant minority population. [Hedlund Dep. 34]

65. As the Board explained:

The orientation of this entire district is fishing, fish processing, forest products, and tourism, and nearly all of its communities partake of all of these activities. They are integrated by the Southeast System of the Alaska Marine Highway and by numerous air taxi operators and a scheduled commercial airline. The population is a

mixture of natives and non-native Inuit. The only option for reducing the slight overrepresentation which the district may enjoy would be to reach into the Juneau district from the north or west, taking part of Douglas, Juneau, or Haines. Such a course would either effectively disenfranchise that part of Douglas or Juneau engrafted to the district or would require a bisection of the Haines Borough, further submerging its institutional voice in the legislature. Extending into Prince of Wales Island or the Sitka district would only magnify the slight numerical advantage already inevitable for those districts.

60. Art. VI, § 4 Alaska Const.

61. Minutes, Constitutional Convention 1836.

62. *Id.* at 1873.

63. 502 P.2d at 801.

64. Many Alaska Natives have been elected to the legislature, and two have been elevated

ready present in District 14 (Kodiak). By the same token, Kodiak, which is overrepresented by 5.7 percent, does not readily present an alternative, as it is surrounded by the Aleutian Chain District.

Since the senate districts combined house districts and utilized the same boundaries, the identical reasons for approving or disapproving the disparities are applicable. We thus find it necessary to hold that Senate Districts G (Anchorage Spenard), I (Anchorage South), J (Anchorage West), M (Bristol Bay-Bethel), and O (Fairbanks) exceed permissible constitutional limits as to population variances, and that appellees have failed to demonstrate that such variances are based on legitimate considerations incident to the implementation of a rational state policy.

V

DISTRICTING OF THE GREATER ANCHORAGE AREA

Appellants complain of the division of Anchorage into six election districts, contending that the area constitutes one integrated socio-economic area which should not be fragmented.

[16] We have previously upheld the authority of the governor to create single-member districts from multi-member districts.⁶⁶ The power to create such single-member districts applies to integrated socio-economic areas as well as to other areas. We do not construe the Alaska constitutional requirement that districts be formed from contiguous, compact, relatively integrated socio-economic areas to prohibit smaller districts within such areas. The smaller districts would still conform to the constitutional standard. It is conceivable, for example, that the population of Anchorage could vastly increase. It surely could not have been contemplated by the framers of the Constitution that a compact, contiguous, and socio-economically integrated metropolis of perhaps 500,000 persons could not be districted.

66. *Egan v. Hammond*, 502 P.2d at 873.

[17] The Advisory Board was confronted with competing policy considerations with reference to the desirability of keeping the ballot simple, encouraging qualified candidates to run for public office, and ensuring maximum voter participation, as opposed to avoiding undue fragmentation of the community. The majority of the Board found that:

At-large representation would produce an unwieldy primary ballot with well over 100 candidates. Two districts—each to elect eight representatives and four senators—would still produce a cumbersome total of candidates and would be a more complicated ballot than is presented to voters in any part of Alaska.

The governor adopted the plan advocated by a majority of the Board, whereby the city was divided into six districts. While substantial arguments have been advanced both for and in opposition to the Board's decision, we cannot say that it is not based on rational as opposed to arbitrary considerations. Therefore, under the standard of review which we have adopted, the decision of the Board must be upheld.

Arguments have also been advanced as to the manner of delineating the districts, aside from the population imbalances discussed previously. We do not find that the boundaries lack a rational basis. Since we are not free to impose our judgment as to the wisdom of the particular partitions, we cannot entertain the argument that Anchorage could have been divided more prudently.

The superior court did not err in upholding this portion of the reapportionment plan.

VI

THE TERMINATION OF SENATORIAL TERMS

Because the reapportionment plan substantially altered the senatorial districts in the Greater Anchorage area, the governor

ordered that new elections must be held in 1974 for all senate seats in these districts. Formerly, the area constituted one senatorial district from which eight senators were elected, four being selected to four-year terms at each biennial election. The four incumbents whose terms would otherwise have extended to 1976 thus had the balance of their terms of office truncated.

Appellants contend that there was no need to terminate senatorial terms. The principal argument advanced, however, is not directed to the authority of the governor to terminate the terms of incumbents under the Anchorage reapportionment plan establishing six new districts, but to the appellants' preference that members of the senate should represent "larger, broader, socio-economic constituencies and should be elected area wide." Reference is made to a Senate Resolution expressing similar sentiments.⁶⁷

[18] While the governor might have favorably considered the policies of having senators from Anchorage elected at large, there were valid reasons for him to exercise his discretion by dividing the area into six districts. In the previous section of this opinion, we stated our reasons for upholding the governor's decision to redistrict the Anchorage area. Once this portion of the reapportionment plan has been approved, appellants' principal argument evaporates. Since the district from which the four holdover senators were elected no longer exists and the new districts have vastly changed boundaries, it was within the governor's discretionary authority to require mid-term elections. When confronted with the same question in *Egan v. Hammond*, we stated:

A need to truncate the terms of incumbents may arise when reapportionment results in a permanent change in district lines which either excludes substantial numbers of constituents previously rep-

resented by the incumbent or includes numerous other voters who did not have a voice in the selection of that incumbent. The discretionary authority to require mid-term elections when necessary is well established.⁶⁸

Counsel refers to the decision of the Supreme Court of California in *Legislature v. Reinecke*.⁶⁹ There a masters-recommended reapportionment plan which provided for hold-over senators to continue to serve for the balance of their terms was upheld as having a rational basis. The court considered the desirability of continuing the orderly operation of the four-year staggered term system whereby half of the senators would hold over at each session. Although it recognized a "resulting inequality among electors", the court found that the mere two-year duration of such inequality was not sufficiently egregious to require truncation of terms.⁷⁰

If we had the original decision to make, we might well be persuaded by similar reasons to have the four senators continue to serve the balance of their terms. We conclude, however, that valid reasons were presented for truncating the terms and, accordingly, we affirm the trial court's decision upholding that portion of the reapportionment plan.

Affirmed in part and reversed in part.

ERWIN, J., with whom CONNOR, J., joins, dissenting.

ORDER

This case is before the Supreme Court of Alaska on appeal from a judgment entered by Superior Court Judge James K. Singleton in favor of appellees. Appellants below have raised a number of objections to the proclamation of reapportionment and redistricting issued by Governor William A. Egan on December 11, 1973, adopting a plan submitted by the Gover-

67. S.Rev. 1, 8th Legis.2d Sess. (1974).

68. 502 P.2d at 873-874 (footnote omitted).

69. 10 Cal.3d 300, 110 Cal.Rptr. 718, 510 P.2d 6 (1973).

70. *Id.* 110 Cal.Rptr. at 723-724, 510 P.2d at 11-12.

nor's Advisory Reapportionment Board. After considering the briefs of the parties and hearing oral argument, a majority of the Supreme Court affirms the decision of Judge Singleton on the following issues:

1. The use of the 1970 census data.
2. The use of the formula establishing the number of military personnel and dependents to be included in the population base.
3. The authority of the Governor to establish multiple senatorial districts within the greater Anchorage area.
4. The authority of the Governor to truncate senatorial terms when the districts from which the senators were elected have been substantially changed.

We hold, however, that the superior court's conclusion that all House and Senate districts have been properly apportioned is erroneous. Specifically, House districts No. 22 Nome, No. 16 Bristol Bay, No. 12 Anchorage—West, No. 20 Fairbanks, No. 11 Anchorage—South, No. 9 Anchorage—Spenard, and No. 17 Bethel and Senate districts J Anchorage—West, M Bristol Bay—Bethel, O Fairbanks, G Anchorage—Spenard, and I Anchorage—South exceed permissible constitutional limits as to population variances as delineated by decisions of the United States Supreme Court.¹ Appellees have failed to demonstrate that such variances in the plan are based on legitimate considerations incident to implementation of a rational state policy.

The case is remanded so as to enable the Governor of the State of Alaska, if he so desires, to re-submit the plan to the Advisory Reapportionment Board for the purpose of revising it to bring the districts

specified above within constitutional standards.

In revising the proposed plan the Board may alter any district to correct population imbalances. Every effort shall be made to insure that maximum variances in the districts set out above shall not exceed ten (10) per cent. There shall not be a spread exceeding ten (10) per cent in the population of any over-represented district and any under-represented district, excluding the districts of Southeast Alaska, District 14 Kodiak, and District 15 Aleutian Chain, unless such variance is based on legitimate considerations incident to a rational state policy with specific reasons in justification being stated. In assessing permissible population variances the Board may disregard deviations in districts located in Southeast Alaska, District 14 Kodiak, and District 15 Aleutian Chain because variances in those districts are based upon legitimate considerations incident to implementation of a rational state policy. Changes may be made in other districts as may be found necessary.

Unless a revised plan is returned to the court on or before June 20, 1974, the interim plan promulgated by this court by Order Establishing An Interim Reapportionment Plan For 1972 Legislative Elections, dated June 14, 1972,² shall be effective for the 1974 legislative elections. Objections to the June 20, 1974, deadline shall be filed on or before three (3) days from the date of this order, setting forth reasons why some date other than June 20, 1974, would be more appropriate. In the event an alternative plan is submitted by the Governor to this court, the court will receive written comments or objections from appellants if filed by 12:00 noon on June 24, 1974. In the event an alternative plan is submitted by the deadline, the court will

1. *White v. Regeater*, 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314 (1973); *Gaffney v. Cummings*, 412 U.S. 735, 93 S.Ct. 2321, 37 L.Ed.2d 298 (1973); *Mahan v. Howell*, 410

U.S. 315, 93 S.Ct. 970, 35 L.Ed.2d 320 (1973).

2. *Egan v. Hammond*, 502 P.2d 850, 927-929 (Alaska 1972).

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review it and take whatever action is appropriate.

A full opinion shall follow including dissents of individual justices on different points raised by this appeal.

Dated this 6th day of June, 1974.

ERWIN, Justice, with whom CONNOR, Justice, joins (dissenting).

I dissent from the majority opinion on the ground that the exclusion of all but a small percentage of the military from the reapportionment plan's population base violates the equal protection clauses of the United States and Alaska Constitutions.¹

In *Egan v. Hammond*,² this court recognized that military personnel as a class cannot be denied the right to vote in a state election or be arbitrarily eliminated from the population base in a reapportionment plan solely because of their military status, although some military may be excluded as a permissible device for limiting the impact of transients and non-residents. One plan suggested in *Egan* for achieving this goal was to limit the population base to state citizens by adopting a registered voter base, even though such a base inherently eliminates a much higher proportion of the military than civilians. But, as we were careful to point out, the equal protection clause of the United States Constitution, and presumably the Alaska Constitution, require specific factual justification for eliminating any portion of the military from the population base. When a particular class of the state's population—namely

the military—is singled out in a reapportionment plan for exclusion on the basis of the nature of their employment alone, the burden is squarely upon the proponents of the plan to demonstrate the reasonableness of that course of action, because such an exclusion is prima facie invalid. In the absence of sufficient justification, the military must receive the same treatment as their civilian counterparts.³

My examination of the record reveals that appellees clearly failed to justify application of any version of the Washington formula in Alaska. I thus cannot agree with the majority's assumption that the basic principle of the formula is as applicable to Alaska as it was to Washington. On the contrary, I find the majority's acceptance of the formula without sufficient proof of its validity in Alaska to be remarkable in itself, for in upholding many other aspects of the proposed reapportionment plan the majority has repeatedly emphasized Alaska's uniqueness.⁴

I also cannot accept the Board's tolerance of civilian transients while at the same time excluding apparent military transients from the population base. As we indicated in *Egan v. Hammond*, population bases grounded upon state citizenship are acceptable only when supported by accurate and statistically reliable data for discriminating between citizens and transients.⁵ In this case, the Board's assumption that military but not civilian transients would distort the population base is without foundation or justification in

1. I harbor further misgivings about whether some of the election districts in the reapportionment plan are "relatively integrated socio-economic areas," as required by article VI, section 6 of the Alaska Constitution. However, since a number of these districts have been found to have population deviations in excess of those allowed under federal constitutional standards and have been remanded to the Board for modification, I reserve judgment on this issue until I have had an opportunity to study the modified plan.

2. 502 P.2d 850, 869-870 (Alaska 1972).

3. See *Mahan v. Howell*, 410 U.S. 315, 330-332, 93 S.Ct. 970, 984-989, 35 L.Ed.2d 320,

333-334 (1973); *Burns v. Richardson*, 384 U.S. 73, 82 n. 21, 86 S.Ct. 1280, 1280 n. 21, 16 L.Ed.2d 376, 391 n. 21 (1966); *Carrington v. Rash*, 380 U.S. 89, 85-90, 85 S.Ct. 775, 779-780, 13 L.Ed.2d 675, 679-680 (1965); *Davis v. Mann*, 377 U.S. 878, 891, 84 S.Ct. 1441, 1448, 12 L.Ed.2d 800, 817 (1964); *Egan v. Hammond*, 502 P.2d 850, 860, 869 (Alaska 1972).

4. See the discussion in *Egan v. Hammond*, 502 P.2d 850, 865 (Alaska 1972), emphasizing Alaska's uniqueness.

5. 502 P.2d at 870-871.

the record. And the majority's effort to justify the Board's tolerance toward civilian transients with documentation on Alaska's employment patterns which is not part of the record is patently inconsistent with their earlier conclusion that the duty of this court is to exercise *de novo* jurisdiction based "upon the record developed in the superior court."⁶

In fact, the record is almost completely devoid of data on civilian transients. For example, there is little, if any, support for the majority's observation that at the time of year when the census was taken—April—most of the civilian transient elements were absent from the population base. Without concrete data it cannot be merely assumed that migrants and seasonal employees are not present in the state in significant numbers during the month of April, for it is common knowledge that an increasing number of transients are present in Alaska during the winter months. It also cannot be assumed that because the census counts a person at the place "he lives and sleeps most of the time" most of the civilian transients are necessarily excluded from Alaska's population base. As the majority itself points out, the census enumerates not only those migrants who claim ties to no other state but also those individuals who maintain a permanent residence elsewhere and spend a majority of their time in Alaska. Yet the record reveals that the Board made no effort to determine the impact of these transient groups upon the population base. Surely these transients have no greater contacts with the state

than military residents who live here on a year-around basis and whose children attend local schools.⁷

The majority attempts to justify the inclusion of these transient groups in the population base by concluding that it would be a "herculean task" to determine who among them actually consider themselves citizens of Alaska. Again the record fails to support the majority. The record reveals that Robert Sharp, City Manager of Anchorage, testified before the Board that it cost the City only \$40,000 in 1968 to conduct a door-to-door canvass of the entire Anchorage area, which has approximately 65 per cent of Alaska's population.⁸ Assuming this to be a fair measure of the cost of surveying the incidence of state citizenship among civilians, it becomes apparent that such a survey would hardly be a "herculean task." Even if it were, however, the greater difficulty of determining the incidence of state citizenship among the civilian population is a weak excuse for singling out the military for discriminatory treatment.⁹

The majority goes on to assert that the dissent "ignores the fundamental reason for the exclusion of military personnel—their want of any contact with the state." In support of this cold assertion they cite to a body of law which, in short, indicates only that the involuntary nature of military assignments points toward retention of the domicile established prior to entering the service. They also cite to a federal statute exempting servicemen from various forms of state taxation and then sum-

marily conclude that as a result of this law and the "economies of military life, a serviceman and his family may remain completely aloof from the state of his assignment"

This argument is unpersuasive for three basic reasons. One, it ignores the location of the burden of proof; two, it indicates a fundamental misunderstanding of the economic facts of military life; and three, it ignores the fact that the same argument can be made with regard to other classes of federal public servants who serve in Alaska for limited terms but were not excluded from the population base.

First, it is not disputed that a serviceman has an option to remain economically aloof from the state of his assignment, neither contributing to its treasury nor utilizing its services. But the burden nevertheless remains squarely upon the state to establish that each and every military person excluded from the population base in a reapportionment plan has in fact exercised this option. By silently condoning the state's failure to meet this burden, the majority is overruling our holding in *Egan v. Hammond* respecting the burden of proof on the military exclusion issue.

Second, no doubt the "economies of military life"—which presumably refers to the tax exempt status of servicemen and the bonuses offered nondomiciliaries stationed in Alaska—are largely responsible for the failure of many military personnel stationed in Alaska to publicly admit domicile by registering to vote. But what the majority fails to discern is that an unwillingness to register to vote is not conclusive of a serviceman's intentions or desire to become a state citizen. All that it demonstrates is a perfectly expectable reluctance,

even on the part of bona fide military residents, to risk losing significant economic advantages by registering to vote. The "economies of military life" indicate not that the military lack "any contact with the state beyond mere presence" but rather only that the military, both resident and nonresident, are subjected to unique economic pressures to which civilians are not exposed. Forcing military residents to withstand these pressures at the cost of surrendering their fundamental right to be included within the population base effectively penalizes them for exercising constitutional rights.¹⁰

Third, the same argument regarding minimum contacts with the state that the majority makes with respect to the military also applies to a body of federal public servants who serve for limited terms in Alaska and enjoy many of the same trappings and benefits as the military. Yet the majority ignores the fact that no attempt was made to exclude them from the population base. Certain employees of the federal Public Health Service and the Coast and Geodetic Survey, who enjoy military rank similar to Coast Guard rank, are assigned to Alaska for limited terms of duty, as are certain employees of the Federal Aviation Administration and the Army Corps of Engineers. Certainly these groups should be treated on a par with the military if the military are to be subjected to a state citizenship test.

The majority goes on to point out that the "largest claim" to representation of the military in the population base lies in the 25-30 per cent of military personnel and their dependents who at the time of the 1970 census had lived in the state for more than five years. They then note that the

state which accepts federal funds for the purpose of providing local services to military personnel should be required to assure an effective voice to the military in determining how these funds are to be spent. Counting a mere 11 per cent of the military in the population base falls far short of achieving this goal.

6. The majority has attempted to bring this material within the reviewable record by judicial notice under Civil Rule 43(a)(2) [c] and [d]. Since this material is reasonably subject to dispute and its accuracy cannot be determined by resort to sources of indisputable accuracy, I do not believe it to be an appropriate subject of judicial notice.

7. Even the state's 3,752 aliens who were enumerated in the 1970 census and consequently included in the population base, were not, like the military, subjected to a state citizenship test. *Egan v. Hammond*, 502 P.2d 850, 920 n. 2 (Alaska 1972).

8. Transcript of the June 20, 1973, hearing in Anchorage, at 24.

9. The Board did consider the effect of the state's transient college students. But even there, in deciding that their number was statistically insignificant, the Board rested its conclusion upon admittedly inconclusive data based upon durational residency requirements which have been specifically disapproved as criteria for determining voter eligibility. See *State v. Van Dort*, 502 P.2d 453 (Alaska 1972).

10. Another disturbing aspect of "military economies" which is ignored by the majority is that, despite the fact that all military personnel are counted for the purpose of obtaining federal revenue sharing, they are now effectively denied representation in the legislative body which sets the priorities controlling the expenditure of this revenue. Basic fairness would appear to require that a

present plan includes a far larger percentage—65 per cent—of the military and their dependents than the 25-30 per cent that would be included if a 5-year residency were taken to be conclusive of state citizenship. The majority then observes that the opponents of the military exclusion formula have failed to argue for a higher inclusion figure than 25-30 per cent and imply that the formula is valid because, while it does not provide statistical certainty, it is more than generous to the military.¹¹

Again the majority has lost focus of the location of the burden of proof. The burden is not upon the opponents of the plan to argue for a higher inclusion figure but upon the proponents to justify exclusion of any military. Even if it were to the contrary, however, the conclusion that the formula is valid because it resolves doubts in favor of increased military representation does not justify adoption of a formula which discriminates between military and civilian transients. The fact remains that the formula does not accurately reflect residency among the military. It is thus contrary to all notions of fairness and equal protection to utilize it in the reapportionment plan.

I also cannot accept the majority's assumption that voter registration can be taken as an indication of a person's state citizenship in Alaska. In the Hawaii reapportionment plan litigated in *Burns v. Richardson*,¹² the state's registered voters were accepted as a permissible population base only because this base purportedly produced a distribution of legislators not unlike that which would have resulted

from the use of a more conventional population base such as state citizenship or total population. This correlation was undoubtedly due in part to the fact that Hawaii exerted a monumental reapportionment and voter registration effort.¹³ The Court in *Burns* was quick to point out, however, that, even though it was accepting a voter registration base in Hawaii, it considered such a population base generally suspect:

Such a basis depends not only upon criteria such as govern state citizenship, but also upon the extent of political activity of those eligible to register and vote. Each is thus susceptible to improper influences by which those in political power might be able to perpetuate underrepresentation of groups constitutionally entitled to participate in the electoral process¹⁴

Thus, at the very least, a voter registration base must be shown to correlate with state citizenship, total population, or some other permissible reapportionment base.

The record amply demonstrates that no such showing has been made in this case. On the contrary, there is substantial evidence that voter registration does not correlate with state citizenship or total population. For example, Alaska alone among the northern states was singled out by the 1965 federal Voting Rights Act¹⁵ as a state that possibly abridges the rights of its citizens to vote because of the low percentage of votes cast by its eligible voters.¹⁶ Although Alaska has since rid itself of that dubious status by a declaratory judgment, that judgment remains reviewable.¹⁷

17. On August 17, 1968, Alaska was granted a declaratory judgment by the District Court for the District of Columbia in Civil No. 101-60 removing it from coverage under the Voting Rights Act. When portions of the state were again included under a 1970 amendment to the Act, Alaska again secured a declaratory judgment from the same court in Civil No. 21-22-71 removing those portions of the state from coverage under the Act. This latter judgment remains reviewable for a period of five years following entry. 42 U.S.C. § 1073a (1974).

Also, it is not uncommon for a particular segment of Alaska's citizens to exhibit a reluctance to register to vote. For example, statistics compiled from the 1970 census and the 1972 official primary and general election returns reveal that a very low percentage of Alaska's large aboriginal population registers to vote, although they are undeniably state citizens.¹⁸ Without a showing that the military do not exhibit a similar reluctance to register, even though they are citizens, voter registration behavior alone cannot be used to estimate the number of state citizens among the military.

Further, *Burns v. Richardson*,¹⁹ which recognized that if voter registration is indicative of state citizenship, it may be used as a reapportionment base, was decided before the United States Supreme Court and this court began to move toward de-emphasizing the role of state citizenship in the election process. The recent decisions of *Dunn v. Blumstein*²⁰ and *State v. Van Dort*,²¹ which disapprove of durational residency requirements conditioning the right of franchise, severely restrict the use of objective state citizenship tests in determining voter eligibility. And *State v. Adams*²² goes even further to suggest that no objective test for state citizenship which inherently infringes upon a fundamental right—*e. g.*, franchise—should be permitted to condition the exercise of that right. Even more importantly, however, these cases squarely place the burden upon the proponent of such a test to demonstrate a compelling justification for it. While I am not persuaded that the compelling state interest standard should be applied to reapportionment, I believe that these cases nevertheless place a heavy burden of persuasion upon the proponents of any reapportionment plan based upon a state citizen-

ship test to demonstrate that the test in fact excludes only non citizens from exercising their fundamental right of franchise. In this case the proponents have quite clearly failed to meet this burden for they have established no reliable correlation between voter registration and state citizenship. I would thus hold that voter registration has not been demonstrated to be a sufficiently reliable population base for a reapportionment plan in Alaska and remand the case to the Board to change the population base.

Both this case and *Egan v. Hammond* pointedly illustrate the perils of expedited litigation. Twice within the space of two years this court has been called upon at the eleventh hour to review reapportionment plans under the pressures of an imminent election. And twice these pressures have forced us to make decisions on the basis of records which, in my opinion, have been inadequate. I, for one, hesitate to reach a decision on an issue as far-reaching and important as reapportionment without an adequate record. Were it not for the fact that small numerical variations in the apportionment of people between the election districts are greatly magnified by Alaska's comparatively small population, I would not be so insistent that the record provide adequate justification for each attempt by the Board to depart from the constitutionally mandated goal of mathematical equality. But since a variation of only 68 people causes a one per cent variation in the population of each election district in Alaska, great care must be taken to assure that the exclusion of each and every person from the population base is constitutionally permitted. If any reapportionment case reaches us in the future with an inadequate record like the present one, I will vote to remand the case for further findings.

11. Note 20 of the majority opinion *supra*.

12. 384 U.S. 73, 92-93, 86 S.Ct. 1280, 1291-1297, 16 L.Ed.2d 376, 391 (1966).

13. See the discussion of this effort in *Burns v. Gibb*, 310 P.Supp. 1285, 1290 (D.Hawaii 1970), quoted in *Egan v. Hammond*, 502 P.2d 850, 860 n. 10 (Alaska 1972).

14. 384 U.S. at 92-93, 86 S.Ct. at 1297, 16 L.Ed.2d at 391.

15. 42 U.S.C. § 1073 et seq. (1970).

16. 1965 U.S.Code Cong. and Admin. News, p. 2445.

18. For example, in the 1972 general election only about 10 per cent of the total population in the predominantly aboriginal communities of Barrow and Bethel voted. Approximately 33 per cent of Alaska's total population voted in the same election.

19. 384 U.S. 73, 80 S.Ct. 1280, 16 L.Ed.2d 376 (1966).

20. 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972).

21. 502 P.2d 453 (Alaska 1972).

22. 522 P.2d 1125 (Alaska 1974).

OPINION

ON OBJECTION TO THE REVISED
REDISTRICTING PLAN PRO-
CLAIMED ON JUNE 14, 1974

BOOCHEVER, Justice.

On June 6, 1974, we remanded this case to enable the governor of the State of Alaska to resubmit the reapportionment plan to the Advisory Reapportionment Board for the purpose of revising it to bring the population of districts specified in our order within federal constitutional standards. In the event a revised plan was submitted on or before June 20, 1974, written comments or objections were to be filed by 12:00 noon on June 24, 1974. The Advisory Reapportionment Board submitted to the governor of the State of Alaska its Proposed Revised Plan of Reapportionment and Redistricting which the governor adopted by proclamation on June 14, 1974. Objections were filed by the appellants. In addition, a notice of objection and a motion for leave to intervene as a party or to file an amicus curiae brief was also filed by the Kenai Peninsula Borough. After denying the Kenai Peninsula Borough motion to intervene but granting the Borough the right to file a memorandum as amicus curiae, the court, upon request for oral argument on the objections, specially heard such arguments on June 26. Counsel for the Borough was permitted to participate in the oral arguments.

The objections filed by the appellants pertained to the redistricting of the Anchorage area, the termination of Anchorage senate terms and the exclusion of some military personnel from the population base. None of these objections was addressed to the revisions set forth in the re-

vised plan proclaimed by the governor on June 14, 1974.¹ The objections reiterated and amplified arguments previously advanced against the original reapportionment plan of December 11, 1973. We have again carefully considered those objections and find no reason to alter our opinion with reference to the issues raised.

The Kenai Peninsula Borough objected to the portion of the revised plan which severed the southern end of the Kenai Peninsula from the Borough, the peninsula and House District No. 13 (Kenai-Cook Inlet) and joined it to House District No. 16 (Bristol Bay) in order to achieve a less-than-five-percent deviation in House District No. 16. The area transferred to District No. 16 comprised about 680 residents or slightly more than ten percent of the entire population of District No. 16, most of which is located across sea and mountains from the Kenai Peninsula area. The Borough points out that the residents of the Kenai area so transferred had interests similar to those of other residents of the Kenai-Cook Inlet District No. 13 and little in common with the residents of House District No. 16 (Bristol Bay). The Borough argues that the residents of the severed portion of House District No. 13 would be disenfranchised because their influence would not be of sufficient weight to receive attention from Bristol Bay District Legislators.

We found in our order of June 6, 1974 that District No. 16 exceeded constitutionally permissible population variances as delineated by decisions of the United States Supreme Court, and that the state had failed to demonstrate that the variance was based on legitimate considerations incident to the implementation of rational state poli-

cies in our prior opinion. Appellants' counsel admitted at oral argument that the Anchorage area taken as a whole would be properly represented within federal constitutional standards by a 10-representative, 8-senator district. We need not further consider whether the current plan, which has the same numerical effect, unfairly represents the Anchorage area.

cy. We stated in our opinion partially rejecting the original plan:

No valid reasons were advanced for the 10.9 percent overrepresentation with reference to House District 16 (Bristol Bay). We can agree with the Board's decision not to combine the Bristol Bay area with the Aleutian Chain because of conflicts between the residents of the two areas, but that does not explain why other areas could not have been added to the district so as to create less of a variance.

The Reapportionment Board has made a good faith effort to correct the overrepresentation of House District No. 16 by adding to the district the southern end of the Kenai Peninsula. Considerations incident to the implementation of rational state policy have now been advanced to us justifying the original overrepresentation of District No. 16 (Bristol Bay). It is now apparent that the only alternative to the Board's original districting of that area is to disregard an impassible mountain range, the natural barrier formed by Cook Inlet, the lack of direct transportation or communication links, the corporate boundaries of the Kenai Peninsula Borough, the cohesiveness of interests of residents of that Borough and the disparate interests of the population of the Bristol Bay area. We now find that legitimate considerations incident to the implementation of rational state policy justify the overrepresentation of House District No. 16 (Bristol Bay) as originally designated and override mathematical requirements.² We accordingly have ordered that the severed portion of the Kenai Peninsula Borough, specifically the southern end thereof where the communities of Seldovia, Port Graham, English Bay, Portlock and Jakalof Bay are located, shall remain in House District No.

13 (Kenai-Cook Inlet) rather than in House District No. 16 (Bristol Bay).

We realize that reasonable arguments can be advanced to show that certain communities might be better represented by different districting. Our previous opinion in this case points out that it is not our function to develop apportionment schemes for the State of Alaska. We are limited in review to determining whether a plan adopted by the governor suffers state or federal constitutional defects alleged by the parties in the litigation before us. In our previous opinion we found no violation of those standards set forth in Art. VI of the Alaska Constitution which have not been made obsolete by decisions of the United States Supreme Court. Particularly where specific objections have not been presented to us, we do not believe it appropriate to substitute our judgment for that of the constitutionally empowered authority regarding the wisdom of delicate adjustments to be made in political boundaries. It is our duty to assure that the reapportionment plan complies with the requirement of substantial mathematical equality established by the United States Supreme Court, with the state carrying the burden to demonstrate that additional deviations are based upon legitimate considerations incident to implementation of a rational state policy. Where that burden was not met, we were compelled to require revision of the plan to conform to what has been described as "the tyranny of numbers". The Board having complied with our request, we accordingly have denied the objections to the revised plan, except where the revision demonstrated to us that the original district was properly formed in implementation of a rational state policy.

ERWIN, J., dissents.

order; in effect, it grants a rehearing based upon newly-discovered evidence, the evidence being the lack of reasonable alternatives to the initial plan. In granting the objection, we do not suggest that we will engage in wholesale redrafting upon request.

1. The Anchorage districts were somewhat altered in the revised plan, but appellants' objections again touched general concepts of dividing Anchorage into multiple senatorial districts, and the aggregate underrepresentation of the Anchorage area. No federal constitutional question regarding the propriety of the district lines in Anchorage was raised, and we disposed of the state constitutional

2. Under the revised plan as amended by our order, the Bristol Bay district is slightly smaller than in the original plan, due to the Board's inclusion of Eek in the revised House District No. 17 (Bethel) where it more properly belongs. Granting the Kenai Peninsula Borough's objection reverses our prior

FITZGERALD, J., concurs in part and dissents in part.

ERWIN, Justice (dissenting).

While I agree that the revised reapportionment plan meets federal constitutional standards, I am unable to agree with the majority's conclusion that it meets the requirements of Alaska's Constitution. In my opinion, the revised plan includes districts which do not comply with the mandate of article VI, section 6, of the Alaska Constitution.

Whatever the merits of the retreat from precise mathematical equality evident in recent reapportionment decisions of the United States Supreme Court, we 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 representation of those areas of the state having common interests.

If we were constrained solely by numbers, Alaska could obviously be divided into any given number of equally populated districts without regard to other considerations. Such a result would satisfy all federal constitutional requirements but would hardly be consistent with traditional notions of representative government, for it would inevitably lead to absurd combinations of historical, social, economic and geographical boundaries within the state. Fortunately, Alaska's Constitution commands that:

1. Alaska Const. art. VI, § 6.

2. The state conceded at oral argument that all the changes made in the revised plan were

Each new district so created shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area.¹ Thus, it only is within this framework that equally populated election districts may be constructed. If the search for equal representation is not undertaken within the limits of this constraint, then the underlying rationale for geographical election districts is destroyed.

In my view, the revised plan includes a number of house districts with respect to which the command of article VI, section 6, of the Alaska Constitution was sacrificed in the interest of numerical equality. For example, Fort Greely was included within the Fairbanks District, although it lies over 100 road miles from metropolitan Fairbanks and is located outside of the North Star Borough. Even more objectionable, however, is the fact that Big Delta and Delta Junction, which are five and ten miles respectively closer to Fairbanks along the only highway linking the two areas, were excluded. Many of the dependents of Fort Greely military personnel live, work, and attend school in these communities. If the Big Delta-Delta Junction-Fort Greely community is not a "relatively integrated socio-economic area," it is hard to imagine what is.

There is a similar problem with the addition to the Nome district of the communities of Selawik and Kiama, which are both located near Kotzebue. It is abundantly clear that the Board took this action solely to achieve equality of numbers,² for there are no ethnic or commercial ties between these communities and the Nome area and they are separated from Nome by mountains and Kotzebue Sound. In addition, both communities have transportation, economic, and ethnic ties with Kotzebue, not Nome; and, while Kotzebue is part of the same native corporation, Nome is not. In view of all these factors—which lie at the

made solely to meet numerical requirements of the United States Constitution

very heart of the concept of socio-economic integration—I fail to discern how such a combination could possibly satisfy article VI, section 6, of the Alaska Constitution.³

Yet another example of this failure to comply with the mandate of the Alaska Constitution lies in the Anchorage area. The Anchorage-West district comprising portions of the downtown area, Inlet View, the South Addition, Turnagain, International Airport, Sand Lake and Jewell Lake, includes a diversity of area residents which range from the most urban in Anchorage to the most rural.⁴ Further, the district includes no less than four separate service areas—the City of Anchorage, the Spenard Public Utility District, the Sand Lake Service Area, and the Greater Anchorage Area Borough. In my mind, such a district, which includes as many diverse elements as could conceivably be combined within the Anchorage area, is not a "relatively integrated socio-economic area."

These major miscombinations, along with the short-lived Seldovia-Bristol Bay marriage disapproved by the majority, demonstrate the real tyranny of numbers, for they are products of an effort to achieve mathematical equality by shifting about population centers without regard to socio-economic considerations. By making small numerical adjustments to satisfy federal constitutional standards, the board dismembered important socio-economic communities in violation of Alaska constitutional standards.

In my view, major readjustments on a statewide basis are required if the plan is to meet minimum state and federal constitutional standards. The revised plan demonstrates all too clearly that such adjustments cannot be made in a matter of days under pressure of preparations for an imminent election, for a hastily conceived

change correcting a minor deficiency in one district often causes major deficiencies in other districts. As a result, rather than improving the plan, such changes only serve to make it less likely to assure truly representative government.

I sympathize with the majority's desire to end this court's unsatisfactory and controversial intrusions into the political thickets of reapportionment. However, regardless of how reluctant we may be to confront this problem, it nevertheless remains our constitutional duty to the people of Alaska to assure a truly representative government. In my opinion, this goal cannot be achieved by making minor adjustments in the present plan. Because the interim plan had far smaller variances in population and unquestionably respected geographical and socio-economic considerations, I would have continued it in effect for the 1974 elections and remanded the revised plan back to the Board to comply with the mandate of the Alaska Constitution. It is better to err on the side of caution than to perpetuate mistakes for the balance of this decade.

FITZGERALD, Justice (concurring in part and dissenting in part). I would accept the governor's revised apportionment plan as submitted. I disagree with the majority that the southern end of the Kenai Peninsula should be separated from proposed House District 16 (Bristol Bay) and incorporated in House District 13 (Kenai-Cook Inlet). My disagreement with the majority is based on the procedural aspects of the Kenai separation issue.

Kenai Peninsula Borough was not a party to the reapportionment action, nor have we decided its standing to become a party. The Borough appeared before this court

the Selawik-Kiama area from the Nome area does not compel a similar conclusion.

4. The board made a point of its desire to avoid diluting the rural vote with the urban vote in the Fairbanks area. No rational reason has been shown for not following a similar course of action in the Anchorage area.

3. Separation by mountains and an expanse of water, lack of direct transportation and communication links, and borough boundaries were all factors which the majority cited as justifying severance of the Seldovia area from the Bristol Bay district. I cannot understand why the presence of the same factors dividing

only amicus curiae. The court accepted the Borough's memorandum two days before final argument without providing an opportunity for the litigants to respond. Moreover, the Borough was then given leave to appear before the court at oral argument. As the majority opinion states, reasonable arguments could be advanced on behalf of other communities that different districting would better represent their

interests.¹ To accede to the Kenai Borough's objections to the proposed plan may lead to questions of the right for other communities to raise similar arguments. In light of these circumstances I would accept the governor's revised reapportionment plan without the southern Kenai exclusion despite any reservations I may have about the merits of the particular district boundaries.

1. *Supra*, p. 5.

William Sidney GILBERT, Appellant,
v.

STATE of Alaska, and H. A. Boucher,
Lieutenant Governor, Appellees.
No 2290.

Supreme Court of Alaska.
Sept. 30, 1974.

Action for declaratory judgment by potential candidate for state senator, seeking declaration that requirement of three-year residency in state and one-year residency in election district for election to legislative office violated the candidate's equal protection rights. The Superior Court, Third Judicial District, Anchorage District, P. J. Kalamarides, J., denied the petition, awarded attorney's fees to the state, and candidate appealed. The Supreme Court, Erwin, J., held that the residency requirement served a compelling state interest and thus did not deny candidate equal protection; but that it was an abuse of discretion to award attorneys' fees against the candidate who had in good faith raised a question of genuine public interest before the courts.

Affirmed in part and reversed in part.

1. Constitutional Law §83(1), 211
Elections §21

Residency requirements for state legislative candidacy of three years in state and one year in election district serve compelling state interests, and thus neither violated potential candidate's rights to equal protection or to freedom of interstate travel, nor did they violate voters' rights to participate in elections. Const. art. 1, § 1; art. 2, § 2; AS 15.25.030; U.S.C.A.Const. Amend. 14.

2. Constitutional Law §209

Where statute challenged as violative of equal protection burdens fundamental or basic right, it can be sustained only upon showing that it promotes compelling governmental interest. U.S.C.A.Const. Amend. 14.

GILBERT v. STATE
Citation: Alaska, 524 P.2d 1131

Alaska 1131

3. Elections §7

Constitutional residency requirements for legislative candidates should be viewed with strict judicial scrutiny, i. e., whether they serve compelling state interest. Const. art. 2, § 2.

4. Costs §172

Award of attorney's fees to state against potential candidate for legislature who in good faith raised issue of constitutionality of residency requirements was abuse of discretion. Rules of Civil Procedure, rule 82.

5. Costs §172

It is not purpose of award of attorney's fees to penalize party for litigating good-faith claim but rather partially to compensate prevailing party where such compensation is justified. Rules of Civil Procedure, rule 82.

6. Costs §172

It is abuse of discretion to award attorney fees against losing party who has in good faith raised question of genuine public interest before courts. Rules of Civil Procedure, rule 82.

John W. Wood, Anchorage, for appellant.

Norman C. Gorsuch, Atty. Gen., Juneau, Timothy G. Middleton, Asst. Atty. Gen., Anchorage, for appellees.

Before RABINOWITZ, C. J., and CONNOR, ERWIN, BOOCHEVER, and FITZGERALD, JJ.

OPINION

ERWIN, Justice.

This appeal involves a challenge to the constitutionality of article 11, section 2 of the Alaska Constitution and AS 15.25.030, which collectively conditions eligibility for seeking legislative office upon three years residency in the state and one year in the election district.

Appellant is a citizen of the United States and has been a resident of Alaska

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Representative Joe Green

District 10

Sponsor Statement

HIR 36 - Single Member Districts

HJR 36 proposes to amend Article 6 and Article 14 of the Alaska Constitution.

Article 6 addresses legislative reapportionment. I am proposing changes to reflect rulings by the U.S. and Alaska Supreme Courts, and to enshrine single member legislative districts in the constitution. The U.S. Supreme Court rulings, *Baker v. Carr*, 396 U.S. 267, issued in 1962, and *Reynolds v. Sims*, 377 U.S. 567, issued in 1964, established the so-called "one person, one vote" apportionment rule. The result of these decisions is that all state legislative bodies in the United States are apportioned on the basis of population. The Alaska Constitution, as originally written, bases senate districts partly on population, and partly on geography. The Alaska Supreme Court rulings, *Wade v. Nolan*, Alaska 414 P.2d 689, in 1966, *Egan v. Hammond*, Alaska, 502 P.2d 856, in 1972, and *Groh v. Egan*, Alaska 526 P.2d 863, 1974 establish an equal basis for both civilian and military population.

Section 4 of HJR 36 establishes single member legislative (House) districts. This change essentially "constitutionalizes" the status quo. Single member districts have proven to work well here in Alaska, and in a number of other states. Along with Alaska, several other states have shifted from multi, to single member districts.

Finally, Section 9 of HJR 36 repeals Article 14 of the Alaska Constitution. Article 14 sets out the original reapportionment schedule, which is now obsolete.

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MEMORANDUM

January 28, 1998

SUBJECT: Legislative redistricting and reapportionment (CSHJR 36(JUD))

TO: Representative Joe Green

FROM: Richard A. Glover - *RAG*
Legislative Counsel

You have asked for clarification of the terms "redistrict" and "reapportionment" as they relate to HJR 36. You also asked which term would be appropriate to use in HJR 36.

In your memo of January 22, 1998, you made reference to testimony by Jack Chenoweth before the House Judiciary Committee on May 5, 1997. Mr. Chenoweth's distinction between the terms "reapportionment" and "redistricting" is correct. Taken independently, a "reapportionment" would be the taking of, or addition to, the representative seats in a political body without changing the number or designation of the people represented¹. A "redistricting" would be an abandonment of currently defined boundaries and the designated representation in favor of a newly established set of boundaries with new numbers of representative seats in the political body².

A redistricting power is broader than a reapportionment power, the latter being restricted to adding or subtracting representative seats only. In terms of the Alaska State Constitution as it is currently written, the difference may be moot. In 1972, the Alaska Supreme Court, speaking of the powers to reapportion the house of representatives, noted "[r]edistricting is inseparable from reapportionment and the Governor should be able to authorize any

¹This is also supported by the definition from Black's Law Dictionary for apportionment: "The process by which legislative seats are distributed among unit entitled to representation," or for reapportionment "A new apportionment of seats in the House of Representatives among States 'according to their respective numbers....' See Westberry v. Sanders, 376 U.S. 1, 84 S.Ct. 526, 11 L.Ed.2d 481."

²This too is supported by Black's: "'Districting' is the establishment of the precise geographical boundaries of such unit or constituency." Seaman v. Fedourich, 16 N.Y.2d 94, 262 N.Y.S.2d 444, 209 N.E.2d 778, 779".

constitutional device to accomplish the task.³" The court appears unconcerned by the use of one term or the other since implying the constitutional power of the governor to reapportion the senate (at least on an interim basis) in Wade v. Nolan⁴. The end result must be a population based system, allowing for equal representation in both houses. It was the decision in Wade that fixed the number of senate districts at 20 "for the 1966 primary and general elections and thereafter until the Alaska Constitution has been amended to provide a valid, permanent reapportionment plan for the Senate."⁵

HJR36 requires senate districts to be composed of two contiguous election districts, and criteria is provided for how to establish the geographic lines of each. Under the old text, the determination of how many seats would represent a particular district in the legislature was determined under Article VI, section 4, specifying the "method of equal proportions." Section 4 would no longer contain that phrase, but that power and directive would be included in the new language in section 3, "Redistricting shall be based upon resident population within each election and senate district as reported by the census." This eliminates the distinction between the terms, instructing the governor to draw the lines in a manner that is based upon the population and consistent with the requirements of the 14th amendment. In an improvement from the original text, the U.S. constitutional requirements of "based upon resident population" can change with court decisions,⁶ and no future amendment to the Alaska Constitution will be necessary. In the broader sense of the terms, by redistricting, the governor would be reapportioning, but court decisions have required this to be accomplished with the current redistricting power. There is no new power or requirement conferred by eliminating the term "reapportionment" from the constitution, and doing so avoids future confusion.

Historical notes:

The Constitution of the State of Alaska currently specifically authorizes the governor to redistrict by changing the size and area of election districts subject to certain restrictions set forth.⁷ Under the text of the Alaska Constitution, this power applied only to the election districts: the senate districts could only be "modified to reflect changes in election districts..."

³ Egan v. Hammond, 502 P. 2d 856 (Alaska 1972)

⁴ 414 P. 2d 689

⁵ Id. at 701

⁶ Although the framers may not have considered this loss of autonomy an "improvement."

⁷ Constitution of the State of Alaska, art. VI, section 6; See also, Egan v. Hammond, 502 P. 2d 856, 873.

and a senate district "although modified, shall retain its total number of senators and approximate perimeter."⁸ The original article XIV established 16 senate districts which were continued in the 1961 reapportionment. The subsequent rulings of the U.S. Supreme Court in Baker v. Carr⁹ and Reynolds v. Sims¹⁰, held the original area based apportionments of the senate in the Alaska Constitution unconstitutional as a violation of the equal protection clause of the 14th amendment, in that they do not require that the seats in both houses of a bicameral legislature be apportioned on a population basis. In Wade v. Nolan¹¹, the Alaska Supreme Court heard a challenge to the governor's September 3, 1965 proclamation. The 1965 proclamation established 20 senate districts, and left the election districts unchanged from the 1961 plan. The Wade court held the art. VI sections to mean "representation in the Senate is determined by area rather than population, with no specific provision made for changing this plan."¹² The court held that the governor had the implied authority to reapportion the senate, and upheld the 1965 proclamation for the 1966 election and "thereafter until the Alaska Constitution has been amended to provide a valid, permanent reapportionment plan for the Senate."¹³ Since the number of senate districts was now equal to the number of senators, the court order precludes any proclamation that alters the number of senators elected from any one district: the ratio is to remain one senator per senate district until the constitution is appropriately amended. It is true that the framers of the constitution used both terms, but at the time, they were doing so in an attempt to base the senate primarily on area and to prohibit the reapportioning of the number of senators elected from each senate district, a procedure that ultimately was held to be unconstitutional. This was, in the words of the Wade court, "entirely consistent with the existing national concept of fairness...."¹⁴

With this historical background, it is clear that the 20 senate districts are an accident of the 1965 reapportionment plan. Had the plan contained a different number, it is likely that number would be retained today. The Wade court gave the governor the implied authority to reapportion the senate to conform with Reynolds and Carr, and then fixed the apportionment (i.e. the number of senators per senate district) until a constitutional amendment provided for a constitutionally valid procedure to reapportion the senate. Both houses have the continuing requirement of conforming to the population based method of

⁸Constitution of the State of Alaska, art. VI, section 7.

⁹ 369 U.S. 186 (1962)

¹⁰ 377 U.S. 533 (1964)

¹¹ 414 P. 2d 689

¹² Id. at 692.

¹³ Id. at 700-701.

¹⁴ Id. at 700.

Representative Joe Green
January 28, 1998
Page 4

representation, and either process, redistricting or reapportionment, may be used to accomplish the goal.

If I may be of further assistance, please advise.

RAG:jdr
98-038.jdr

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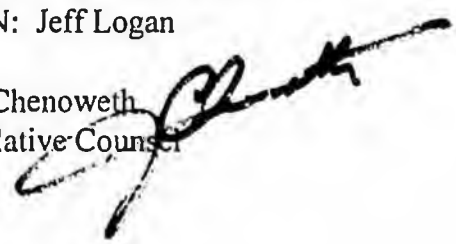
MEMORANDUM

April 21, 1997

SUBJECT: Redistricting constitutional amendment resolution (Work Order No. 0-LS0939\A)

TO: Representative Joe Green
ATTN: Jeff Logan

FROM: Jack Chenoweth
Legislative Counsel



Although popularly understood as "reapportionment," a term that is used in articles VI and XIV of the Constitution of the State of Alaska, the process of revising state legislative election and senate district lines to achieve equal population is properly styled "districting" or "redistricting."

"Apportionment" is the division of a given number of positions among established political subdivisions in accordance with an existing plan or formula. Every ten years, under article I, sec. 2, cl. 3 of the United States Constitution, the number of authorized members allowed to each of the 50 states in the House of Representatives is redetermined to reflect changes in the respective populations in the states as determined by the census. This redetermination or reallocation of seats among the political jurisdictions is an apportionment, or reapportionment, and the net gain or loss of House seats by each state is the product of that apportionment. Thereafter, within each state, the boundaries of the districts of the members of the House of Representatives are revised into new district boundaries to achieve equal population under a process of "districting" or "redistricting."

Historically, in the state legislatures--and this is true of the Alaska State Senate under the provisions of article VI of the state constitution--one house was often "apportioned" in the sense that members elected to that house were chosen within specific political subdivisions having fixed boundaries such as counties. Some counties or groups of counties elected one member, but more populous counties were assigned multiple members. But, at least since the decision in Reynolds v. Sims, 377 U.S. 533 (1964), holding that both houses of a bicameral state legislature are to be districted on a population basis, reliance on the fixed boundary lines set by counties and other political subdivisions to identify the basis of electing members of one house of the state legislature has been abandoned.

Representative Joe Green

April 21, 1997

Page 2

The terminology--the only terminology--properly applicable to the process to be revised within article VI, Constitution of the State of Alaska, is "districting" or "redistricting." I have amended the appropriate provisions of article VI to so provide.

*

If this memo or its attachment prompts questions, please contact me.

JBC:jdr

97-281.jdr

Attachment

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Copies of minutes listed below were originally included in this file. The minutes are available on the legislative computer database. In order to save space copies of minutes have not been left in the files.

Mary Pagenkopf

House Judiciary Standing Committee May 5, 1997 1:32 p.m.

2/3/98

02/03/98
15:19:33

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
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SCHEDULED FOR: 02/03/98 13:30 TO 15:30
PUBLIC HEARING HOUSE FINANCE

LTN1150
BY: JNU
FOR: ALL

LOCATION: DELTA JCT.

HB 53	MR.	ART	GRISWOLD	SUPPORTS	TESTIFY
HB 53	MS.	PATRICIA	GRISWOLD		TESTIFY
HB 53	MR.	MICHAEL	MCCOWAN	SUPPORTS	TESTIFY
HB 53	MS.	DONNA	GARDINO	SHOULD BE COMPETITIVE	TESTIFY
HB 53	MR.	KEVIN	KELLY	SUPPORTS	TESTIFY
HB 53	MR.	DAVID	WRIGHT	DOES NOT SUPPORT	TESTIFY
HB 53	MR.	BILL	JOHNSON	AGAINST	TESTIFY
HB 53	MS.	SHELLIE	MATHEWS	AGAINST (TOO FAST)	TESTIFY
HB 53	MR.	PATRICK	SCHLICHTING	AGAINST	TESTIFY
HB 53	MR.	PATRICK	DALTON	AGAINST	TESTIFY
HB 53	MR.	ROY	BOWDRE		TESTIFY
HB 53	MR.	ROBERT	BRADLEY	VOTED YES (WOULD LIKE A REVOTE)	TESTIFY
HB 53	MR.	DANIEL	LUCAS	AGAINST	TESTIFY
HB 53	MR.	DAN	BECK	(SCHOOL DIST.) SUPPORTS	TESTIFY
HB 53	MRS.	LORETTA	SCHOOLEY	(SCHOOL BUS CONTRACTOR) SUPPORTS EDITOR DELTA PAPER	TESTIFY

LOCATION: FAIRBANKS/

HB 53	MR.	HUGH	DOOGAN	AGAINST (OLD NUCLEAR SITE)	TESTIFY
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LOCATION: KENAI LIO

SAM DIGHTON AGAINST
SCHOOL IS TOO CLOSE TO PRISON

LOCATION: MATSU

T.C. EXTENDED TO 4:00

(1) Bob LE
private security
adviser

Printed
(4) Thom Livingston
Architect

Business - Logan / Anchorage

(5) Ed
Seattle
Security Consultant

(6) Janet "Michelle" Nelson
Retired Prison Superintendent Alaska
Security, Anchorage, Alaska



⑦ Bob LeReshe

House Finance Committee

SUBJECT OF MEETING

HB 53
HJR 36

DATE: Feb 3, 98

PLACE: Capital 519

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?
② K LESLIE KIRK	CONCERNED CITIZENS OF DELTA JUNCTION	PO BOX 261 DELTA JUNCTION, AK 99717	99737	(907) 895-4047		(Y) N /
Margie Vander	Dept of Law	AG				(Y) N ✓
②⑥ Bill Parker	DEPT CORRECTIONS	DOC				(Y) N ✓
②④ Gary Damon	PSC 1A 6th Div. Safety 130	P.O. BOX 772592 EAGLE RIVER, AK 99577				(Y) N H.
Forrest Browne	DOR	11th - SOB			465-3250	(Y) N H.
DUGAN PETTY	DEPT OF ADMIN	STATE OFFICE BLDG			465-5287	(Y) N H
⑦ Jim Carlos	Pris + Delta	Quality Coalit.				Y N
⑧ Glen Wright	Mayor Delta Junction					Y N
AVANA GALT	Telecom	Anchorage				Y N
Krista Kirk						Y N
③ Frank Pricatt	PRIS. ALBUST					Y N
		Le Janet Michaelson			ALBUST	Y N

④ Tom Livingston Architect Livingstone Arch in Anch

Bob LeReshe

⑤ ED ~~Schultz~~ ~~Albust~~ ~~Albust~~ BJS Architects
Schultz Olympia Corrections Architect

02/03/98 14:35:13 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
MESSAGE FROM: LIOCJEN IN ANCHORAGE

LTN1120
JNU

RE TCN: 80203 SCHEDULED FOR: 02/03/98 13:30 TO 15:30
SPONSOR: HOUSE FINANCE PURPOSE: PUBLIC HEARING

MESSAGE TEXT: DAVE ANDERSON FROM DELTA JUNCTION IS ON
LINE TO TESTIFY

COLN -

HJR

44

HFIN

FILE

adopted
3/3/98 as amended
pg 5

0-LS0528U
Glover
3/3/98

CS FOR HOUSE JOINT RESOLUTION NO. 44(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES PORTER AND MULDER, Dyson, Green

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to
2 redistricting and reapportionment of the legislature; repealing obsolete language
3 setting out the apportionment schedule used to elect members of the first state
4 legislature; and providing for an effective date.

5 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

6 * Section 1. Article VI, sec. 1, Constitution of the State of Alaska, is amended to read:

7 Section 1. House [ELECTION] Districts. Members of the house of
8 representatives shall be elected by the qualified voters of the respective house
9 [ELECTION] districts. The boundaries of the house districts shall be set under this
10 article after each decennial census of the United States [UNTIL
11 REAPPORTIONMENT, ELECTION DISTRICTS AND THE NUMBER OF
12 REPRESENTATIVES TO BE ELECTED FROM EACH DISTRICT SHALL BE
13 AS SET FORTH IN SECTION 1 OF ARTICLE XIV].

14 * Sec. 2. Article VI, sec. 2, Constitution of the State of Alaska, is amended to read:

15 Section 2. Senate Districts. Members of the senate shall be elected by the
16 qualified voters of the respective senate districts. The boundaries of the senate

1 districts shall be set under this article after each decennial census of the United
2 States [SENATE DISTRICTS SHALL BE AS SET FORTH IN SECTION 2 OF
3 ARTICLE XIV, SUBJECT TO CHANGES AUTHORIZED IN THIS ARTICLE].

4 * Sec. 3. Article VI, sec. 3, Constitution of State of Alaska, is amended to read:

5 Section 3. Reapportionment of House and Senate. The Redistricting Board
6 [GOVERNOR] shall reapportion the house of representatives and the senate
7 immediately following the official reporting of each decennial census of the United
8 States. Reapportionment shall be based upon the [CIVILIAN] population within each
9 house and senate [ELECTION] district as reported by the census.

10 * Sec. 4. Article VI, sec. 4, Constitution of the State of Alaska, is amended to read:

11 Section 4. Method of Redistricting. The Redistricting Board shall
12 establish forty house districts, with each house district to elect one member of the
13 house of representatives. The board shall establish twenty senate districts, each
14 composed of two house districts, with each senate district to elect one senator
15 [REAPPORTIONMENT SHALL BE BY THE METHOD OF EQUAL
16 PROPORTIONS, EXCEPT THAT EACH ELECTION DISTRICT HAVING THE
17 MAJOR FRACTION OF THE QUOTIENT OBTAINED BY DIVIDING TOTAL
18 CIVILIAN POPULATION BY FORTY SHALL HAVE ONE REPRESENTATIVE].

19 * Sec. 5. Article VI, sec. 6, Constitution of the State of Alaska, is amended to read:

20 Section 6. District Boundaries [REDISTRICTING]. The Redistricting
21 Board shall establish [GOVERNOR MAY FURTHER REDISTRIBUTE BY
22 CHANGING] the size and area of house [ELECTION] districts, subject to the
23 limitations of this article. Each house [NEW] district [SO CREATED] shall be formed
24 of contiguous and compact territory containing as nearly as practicable a relatively
25 integrated socio-economic area. Each shall contain a population as near as
26 practicable [AT LEAST EQUAL] to the quotient obtained by dividing the [TOTAL
27 CIVILIAN] population of the state by forty. Each senate district shall be composed
28 as near as practicable of two contiguous house districts. Consideration may be
29 given to local government boundaries. Drainage and other geographic features shall
30 be used in describing boundaries wherever possible.

31 * Sec. 6. Article VI, sec. 8, Constitution of the State of Alaska, is amended to read:

1 Section 8. Redistricting [REAPPORTIONMENT] Board. (a) The chief
2 justice of the supreme court [GOVERNOR] shall appoint a redistricting
3 [REAPPORTIONMENT] board, subject to the provisions of this section [TO ACT
4 IN AN ADVISORY CAPACITY TO HIM]. It shall consist of five members, all of
5 whom shall be residents of the state and none of whom may be public employees
6 or officials at the time of and during the tenure of appointment. Board members
7 shall be appointed as provided in (b) of this section [. AT LEAST ONE MEMBER
8 EACH SHALL BE APPOINTED FROM THE SOUTHEASTERN, SOUTH-CENTRAL,
9 CENTRAL, AND NORTHWESTERN SENATE DISTRICTS. APPOINTMENTS
10 SHALL BE MADE WITHOUT REGARD TO POLITICAL AFFILIATION]. Board
11 members shall be compensated.

12 (b) Members of the Redistricting Board shall be appointed between
13 January 1 and January 16 of the year following a decennial census. At least one
14 board member shall be appointed from each judicial district. Board members
15 serve until a final plan for redistricting and proclamation of redistricting has been
16 adopted and all challenges to it brought under Section 11 of this article have been
17 resolved after final remand or affirmation.

18 (c) A person who was a member of the Redistricting Board at any time
19 during the process leading to final adoption of a redistricting plan under Section
20 10 of this article may not be a candidate for the legislature in the general election
21 following the adoption of the final redistricting plan.

22 * Sec. 7. Article VI, sec. 9, Constitution of the State of Alaska, is amended to read:

23 Section 9. Board Actions [ORGANIZATION]. [THE BOARD SHALL
24 ELECT ONE OF ITS MEMBERS CHAIRMAN AND MAY EMPLOY TEMPORARY
25 ASSISTANTS.] Concurrence of three members of the Redistricting Board is
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27 number may conduct hearings [OR OTHERWISE ACT FOR THE BOARD]. The
28 board shall employ or contract for services of independent legal counsel.

29 * Sec. 8. Article VI, sec. 10, Constitution of the State of Alaska, is amended to read:

30 Section 10. Redistricting [REAPPORTIONMENT] Plan and Proclamation.
31 (a) Within thirty days after the release of the decennial census population data

1 or thirty days after being duly appointed, whichever occurs last, the board shall
2 adopt one or more proposed redistricting plans. The board shall hold public
3 hearings on the proposed plan, or, if no single proposed plan is agreed on, on all
4 plans proposed by the board. No later than ninety days after the board has been
5 appointed and the decennial census population data has been released, the board
6 shall adopt a final redistricting plan and [WITHIN NINETY DAYS FOLLOWING
7 THE OFFICIAL REPORTING OF EACH DECENNIAL CENSUS, THE BOARD
8 SHALL SUBMIT TO THE GOVERNOR A PLAN FOR REAPPORTIONMENT AND
9 REDISTRICTING AS PROVIDED IN THIS ARTICLE. WITHIN NINETY DAYS
10 AFTER RECEIPT OF THE PLAN, THE GOVERNOR SHALL] issue a proclamation
11 of [REAPPORTIONMENT AND] redistricting. [AN ACCOMPANYING
12 STATEMENT SHALL EXPLAIN ANY CHANGE FROM THE PLAN OF THE
13 BOARD.] The final plan shall set out boundaries of house and senate districts and
14 [REAPPORTIONMENT AND REDISTRICTING] shall be effective for the election
15 of members of the legislature until sixty days after adoption and final adjudication
16 of the succeeding redistricting plan and proclamation of redistricting.

17 (b) Adoption of a final redistricting plan shall require the affirmative
18 votes of three members of the Redistricting Board [UNTIL AFTER THE
19 OFFICIAL REPORTING OF THE NEXT DECENNIAL CENSUS].

20 * Sec. 9. Article VI, sec. 11, Constitution of the State of Alaska, is amended to read:

21 **Section 11. Enforcement.** Any qualified voter may apply to the superior
22 court to compel the Redistricting Board [GOVERNOR], by mandamus or otherwise,
23 to perform its [HIS REAPPORTIONMENT] duties under this article or to correct any
24 error in redistricting [OR REAPPORTIONMENT]. Application to compel the board
25 [THE GOVERNOR] to perform [HIS REAPPORTIONMENT DUTIES] must be filed
26 not later than [WITHIN] thirty days following [OF] the expiration of the ninety-day
27 period specified in [EXPIRATION OF EITHER OF THE TWO NINETY-DAY
28 PERIODS SPECIFIED IN] this article. Application to compel correction of any error
29 in redistricting [OR REAPPORTIONMENT] must be filed within thirty days following
30 the adoption of the final redistricting plan and proclamation by the board
31 [PROCLAMATION]. Original jurisdiction in these matters is [HEREBY] vested in

1 the superior court. On appeal from the superior court, the cause shall be reviewed
 2 by the supreme court on [UPON] the law and the facts. Notwithstanding Section 15
 3 of Article IV, all dispositions by the superior court and the supreme court under
 4 this section shall be expedited and shall have priority over all other matters
 5 pending before the respective court. Upon a final judicial decision that a plan is
 6 invalid, the matter shall be returned to the board for correction and development
 7 of a new plan.

8 * **Sec. 10.** Article XI, sec. 3, Constitution of the State of Alaska, is amended to read:

9 **Section 3. Petition.** After certification of the application, a petition containing
 10 a summary of the subject matter shall be prepared by the lieutenant governor for
 11 circulation by the sponsors. If signed by qualified voters, equal in number to ten per
 12 cent of those who voted in the preceding general election and resident in at least two-
 13 thirds of the house [ELECTION] districts of the State, it may be filed with the
 14 lieutenant governor.

15 * **Sec. 11.** Article XV, Constitution of the State of Alaska, is amended by adding a new
 16 section to read:

17 **Section 29. Effective Date and Applicability of Amendments Providing for**
 18 **Redistricting of the Legislature.** (a) The 1998 amendments relating to redistricting
 19 of the legislature (art. VI and art. XIV), and relating to filing of initiative petitions (art.
 20 XI, sec. 3) take effect January 1, 2001.

21 (b) Notwithstanding Section 10 of Article VI, the proclamation of redistricting
 22 in effect on December 31, 2000, is effective for election of members of the legislature
 23 until sixty days after adoption and final adjudication of the succeeding redistricting
 24 plan and proclamation of redistricting under Article VI.

25 * **Sec. 12.** Article VI, secs. 5 and 7, and Article XIV, Constitution of the State of Alaska,
 26 are repealed.

27 * **Sec. 13.** The amendments proposed by this resolution shall be placed before the voters
 28 of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
 29 State of Alaska, and the election laws of the state.

*delete
Sec 11*

Adopted
31~~st~~ 198

A

AMENDMENT 1

OFFERED IN THE HOUSE
TO: CSHJR 44(FIN)
0-LS0528V

Page 3, Line 3

After "section"

Insert "and as may be provided by law"

Adopted
no job

314198

AMENDMENT 2

OFFERED IN THE HOUSE
TO: CSHJR 44(FIN)
0-LS0528\I

Page 3, Lines 12-13

After "appointed"

Delete "between January 1 and January 16"

Insert "by September 1"

Page 3, Line 13

After "of the year"

Delete "following"

Insert "in which"

Page 3, Line 13

After "decennial census"

Insert "is taken"

AMENDMENT

3

Adopted
3/4/98

C

OFFERED IN THE HOUSE
TO: CSHJR 44(FIN)
0-LS0528I

Page 3, Line 14

After "shall be"

Delete "appointed"

Insert "a resident"

Page 3, Line 14

After "judicial district"

Insert "that existed on January 1, 1999"

AMENDMENT

\$4

w/d

OFFERED IN THE HOUSE

TO: CSHJR 44(FIN), Draft Version "I"

- 1 Page 5, line 20:
- 2 Delete "2001"
- 3 Insert "2000"

- 4 Page 5, lines 22 - 24:
- 5 Delete all material.
- 6 Insert "in effect on the date that the lieutenant governor certifies that a majority of the
- 7 voters voting on the question have approved the 1998 amendments to Article VI, remains in
- 8 effect for election of members of the legislature until sixty days after adoption and final
- 9 adjudication of the succeeding redistricting plan and proclamation of redistricting under
- 10 Article VI, as amended by the 1998 amendments."

- 11 Page 5, line 26, following "repealed":
- 12 Insert "January 1, 2000"

3/5/98

adopted N/D
AMENDMENT #6

#6

OFFERED IN THE HOUSE
TO: CSHJR 44(FIN)
0-LS0528\I

Page 4, Lines 15 - 19

After "legislature"

Delete "until sixty days after adoption and final adjudication of the succeeding redistricting plan and proclamation of redistricting."

Insert "until after the official reporting of the next decennial census."

Relocate subsection (b) to appropriate lines.

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: February 18, 1998

FURTHER REFERRALS:

Date of Committee Action: 3/5/98

The FINANCE Committee considered:

HJR 44

HOUSE JOINT RESOLUTION NO. 44

REAPPORTIONMENT BOARD & REDISTRICTING

Proposing amendments to the Constitution of the State of Alaska relating to redistricting of the legislature.

recommends it be replaced with the following committee substitute CS HJR 44 (FIN) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal note(s) _____

fiscal note(s) view 2/18/98

zero fiscal note(s) _____

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Gene Herrigault</i>	Therriault	X			
<i>Mark Hanley</i>	Hanley	X			
<i>Alan Mulder</i>	Mulder	X			
<i>George Martin</i>	Martin			X	
<i>Eric Kohring</i>	Kohring		X		
<i>John Davies</i>	J. Davies		X		
<i>Ben Grossindorf</i>	Grossindorf		X		
<i>John A. Davis</i>	A. Davis			X	
<i>Pete Kelly</i>	Kelly	✓			
<i>R. Foster</i>	Foster	X			

CHAIR'S SIGNATURE *Gene Herrigault* *Mark Hanley*
Therriault Hanley

FISCAL NOTE

No: 1

**STATE OF ALASKA
1998 LEGISLATIVE SESSION**

Bill version: CSHJR 44 (JUD)
(H) Publish Date: 2/18/98

Revision Date (Note if correction) _____	Dept. Affected _____ Office of the Governor
Title Const. Amend Relating to redistricting of the legislature	BRU Elective Operations
Sponsor Representatives Porter and Mulder	Component Elections
Requester House Judiciary Committee	Component Serial No. #21

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual	3.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	3.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF	3.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	3.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by \$56.0.

Prepared by <u>Gail Fenwick</u>	Phone <u>465-3935</u>
Division <u>Division of Elections</u>	Date <u>2/12/98</u>
Approved by C <u>Lt. Governor Fran Ulmer</u>	Date <u>2/12/98</u>
Agency <u>Office of the Lieutenant Governor</u>	

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FISCAL NOTE

Bill Version: CSHJR 44 (JUD)
 (H) Publish Date: 2/18/98

STATE OF ALASKA
 1998 LEGISLATIVE SESSION

Revision Date (Note if correction)	Dept Affected	Law
Title: Proposing amendments to the Constitution of the	BRU	Civil Division
State of Alaska relating to redistricting and reapportionment ...	Component	Governmental Affairs
Sponsor: Representative Porter	Component Serial No	2207
Requester: House Judiciary Committee		

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	20.1	9.4				
Travel	0.1	0.0				
Contractual	43.2	1.5				
Supplies	0.3	0.2				
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	63.7	11.1	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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Estimate of any current year (FY98) cost:

POSITIONS

Full-time					
Part-time					
Temporary					

ANALYSIS: (Attach a separate page if necessary)

CS HJR 44 (JUD), Workdraft M, would amend the Alaska Constitution to change the method of redistricting legislative election districts, and create a Reapportionment Board appointed by the legislature to do the redistricting.

Passage of the resolution itself would have no cost to the Department of Law. However, if the constitutional amendment were adopted by the people of the State of Alaska, the new law would require preclearance by the United States Department of Justice (DOJ) before implementation because it changes a voting law. The preclearance process would require the Department of Law to document and present the state's position to the DOJ. We anticipate that 3 months of in-house attorney time would be required for preclearance, 20 hours of paraprofessional time, and \$40,000 for expert opinions, assuming that the process remains an administrative one. Should the new law be challenged, and referred to a

Prepared by: Joan M. Kasson
 Division: Attorney General's Office
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: 465-5370
 Date: 2/13/98
 Date: 2/13/98

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COMMITTEE COPY

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Workdraft M
BILL NO. CSHJR 44 (JUD)

ANALYSIS CONTINUATION

three-judge panel in the District of Columbia Circuit, costs would increase dramatically. The department has not included those speculative costs in this fiscal note, and would request a supplemental appropriation should that eventuality occur.

In-house costs are based on the department's FY98/99 standard attorney cost schedule (\$92.72/hour per for attorney time and \$71.94/hour for paraprofessionals). The schedule includes clerical support, lease costs, communications, and other standard overhead costs. Expert fees and costs are added separately. If the resolution passes this session, preclearance would begin 30 days after certification of the 1998 election, the next general election. The department is assuming that most of the work can be completed in FY99, and has included two months of in-house costs, and all expert costs, during that year, with the remaining one month of in-house costs to be incurred in FY00.

COST SUMMARY

Attorney				
	FY99	\$92.72	240.0 hrs	\$22,253
	FY00	\$92.72	120.0 hrs	\$11,126
Paraprofessional				
	FY99	\$71.94	20.0 hrs	\$1,439
Expert Costs				
FY99				\$40,000
Total				
	FY99			\$63,692
	FY00			\$11,126

0-LS0528VI

Glover

3/3/98

CS FOR HOUSE JOINT RESOLUTION NO. 44(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES PORTER AND MULDER, Dyson, Green

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6 shall adopt a final redistricting plan and [WITHIN NINETY DAYS FOLLOWING
7 THE OFFICIAL REPORTING OF EACH DECENNIAL CENSUS, THE BOARD
8 SHALL SUBMIT TO THE GOVERNOR A PLAN FOR REAPPORTIONMENT AND
9 REDISTRICTING AS PROVIDED IN THIS ARTICLE. WITHIN NINETY DAYS
10 AFTER RECEIPT OF THE PLAN, THE GOVERNOR SHALL] issue a proclamation
11 of [REAPPORTIONMENT AND] redistricting. [AN ACCOMPANYING
12 STATEMENT SHALL EXPLAIN ANY CHANGE FROM THE PLAN OF THE
13 BOARD.] The final plan shall set out boundaries of house and senate districts and
14 [REAPPORTIONMENT AND REDISTRICTING] shall be effective for the election
15 of members of the legislature until sixty days after adoption and final adjudication
16 of the succeeding redistricting plan and proclamation of redistricting.

17 (b) Adoption of a final redistricting plan shall require the affirmative
18 votes of three members of the Redistricting Board [UNTIL AFTER THE
19 OFFICIAL REPORTING OF THE NEXT DECENNIAL CENSUS].

20 * Sec. 9. Article VI, sec. 11, Constitution of the State of Alaska, is amended to read:

21 Section 11. Enforcement. Any qualified voter may apply to the superior
22 court to compel the Redistricting Board [GOVERNOR], by mandamus or otherwise,
23 to perform its [HIS REAPPORTIONMENT] duties under this article or to correct any
24 error in redistricting [OR REAPPORTIONMENT]. Application to compel the board
25 [THE GOVERNOR] to perform [HIS REAPPORTIONMENT DUTIES] must be filed
26 not later than [WITHIN] thirty days following [OF] the expiration of the ninety-day
27 period specified in [EXPIRATION OF EITHER OF THE TWO NINETY-DAY
28 PERIODS SPECIFIED IN] this article. Application to compel correction of any error
29 in redistricting [OR REAPPORTIONMENT] must be filed within thirty days following
30 the adoption of the final redistricting plan and proclamation by the board
31 [PROCLAMATION]. Original jurisdiction in these matters is [HEREBY] vested in

1 the superior court. On appeal from the superior court, the cause shall be reviewed
 2 by the supreme court on [UPON] the law and the facts. Notwithstanding Section 15
 3 of Article IV, all dispositions by the superior court and the supreme court under
 4 this section shall be expedited and shall have priority over all other matters
 5 pending before the respective court. Upon a final judicial decision that a plan is
 6 invalid, the matter shall be returned to the board for correction and development
 7 of a new plan.

8 * **Sec. 10.** Article XI, sec. 3, Constitution of the State of Alaska, is amended to read:

9 **Section 3. Petition.** After certification of the application, a petition containing
 10 a summary of the subject matter shall be prepared by the lieutenant governor for
 11 circulation by the sponsors. If signed by qualified voters, equal in number to ten per
 12 cent of those who voted in the preceding general election and resident in at least two-
 13 thirds of the **house** [ELECTION] districts of the State, it may be filed with the
 14 lieutenant governor.

15 * **Sec. 11.** Article XV, Constitution of the State of Alaska, is amended by adding a new
 16 section to read:

17 **Section 29. Effective Date and Applicability of Amendments Providing for**
 18 **Redistricting of the Legislature.** (a) The 1998 amendments relating to redistricting
 19 of the legislature (art. VI and art. XIV), and relating to filing of initiative petitions (art.
 20 XI, sec. 3), take effect January 1, 2001. (2001)

21 (b) Notwithstanding Section 10 of Article VI, the proclamation of redistricting
 22 in effect on ^{the date this takes effect} December 31, 2000, is effective for election of members of the legislature
 23 until sixty days after adoption and final adjudication of the succeeding redistricting
 24 plan and proclamation of redistricting under Article VI.

25 * **Sec. 12.** Article VI, secs. 5 and 7, and Article XIV, Constitution of the State of Alaska,
 26 are repealed.

27 * **Sec. 13.** The amendments proposed by this resolution shall be placed before the voters
 28 of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
 29 State of Alaska, and the election laws of the state.

Amended

FEB-09-1998 18:06 FROM NAT'L CONF. OF ST. LEGIS. TO 819074654316-12200 P.02:15

For the very reason that intent proof is difficult and courts may tend now to be satisfied with any "quite equal" redistricting plan, no matter how badly gerrymandered in actual result, it becomes all the more important that equality of political opportunity (which also can be called fairness or neutrality) be considered in the process of constructing the plan. It may be the first and last chance. Of course Justice White did offer a provocative line in *Gaffney* on the intent issue when he said:

[A] politically mindless approach may produce, whether intended or not, the most grossly gerrymandered results; and, in any event, it is most unlikely that the political impact of such a plan would remain undiscovered by the time it was proposed or adopted, in which event the results would be both known and, if not changed, intended" (emphasis added).

We may well hear more of this warning in the litigation that will follow the 1980 census-induced redistrictings. But it would be unwise to place sole reliance on it as a safeguard for representative fairness.

Districting Standards

Contiguity

The contiguity requirement—that no part of one district be completely separated from any other part of the same district—has been universally accepted and poses no enforcement problem or serious challenge to districting flexibility in pursuit of other fair representation values.

Compactness

The requirement of compactness specifies that the boundaries of each district shall be as short as practicable. Although there is no federal constitutional requirement of compactness,²² such a requirement may present a certain restraint on gerrymandering and may seem innocuous on its face. Rigid adherence to a compactness, however phrased, should be avoided. A district pattern of symmetrical squares, although conceivable, well can operate to submerge a significant element of the electorate. As a practical matter, absolute compactness (districts forming perfect circles that are even shorter lines than squares) is an impossibility. Furthermore, a benign gerrymander, in the sense of some asymmetrical districts, may well be required to assure representation of submerged elements within a larger area. Shape requirements focus on form rather than the substance of effective political representation.

Lexington Books, 1982
ed. Bernard Grofman

Following Political Boundaries

The requirement of honoring political subdivision boundaries insofar as possible under the population equality requirements responds to a traditional and even instinctive sense of community as a significant basis for representation. It was mentioned by Chief Justice Warren in *Reynolds v. Sims*. The extent to which political subdivision boundaries may be honored is, of course, an inverse corollary of the degree of population stringency required. The Supreme Court's population equality stringency in *Kirkpatrick v. Preister* and *White v. Weiser* had the effect of badly trampling any political subdivision policy for congressional districting.

Population Deviation

A 2 percent maximum deviation rule leaves some room for following political subdivision lines, without any demonstrable cost to any principle of fair and effective representation of which I am aware. In *Weiser* in 1973 the court voided an official state plan with a maximum deviation of 2.43 percent, under the force of the *Kirkpatrick* rule. The alternative plaintiffs' plan adopted by the Court cut eighteen more county lines than did the rejected state plan. I have already noted above that three members of the *Weiser* Court said they were disenchanted with this extremely stringent rule and two additional members had at least opposed the rule at its inception in 1969.

Incumbent Protection

Various groups (most notably Common Cause, 1977b), have advocated a flat prohibition on the consideration of addresses of incumbents in the drawing of district lines. In practice this prohibition may be no more enforceable than Prohibition itself, but I will lay that aside. From the standpoint of constitutional law, the Supreme Court said in *Weiser*, as it had earlier, that: "The fact that district boundaries may have been drawn in a way that minimized the number of contests between present incumbents does not in and of itself establish invidiousness."²³ On the question whether the prohibition is sound policy, persons will differ. There are virtues in having some continuity in office for the sake of experience, stability, and relations with constituents. There also are virtues in turnover, which is probably far better achieved—if we are at all serious about it—by limiting legislators to a specified number of terms.

Congressional Redistricting: Comparative and Theoretical Perspectives

GLOSSARY

Additional Member System (AMS). The proportional system used in Germany. Half the members are elected by first-past-the-post voting in single-member constituencies. The other half are allocated to party lists in such a way that the seats in the full assembly are proportionate to the votes cast in the country as a whole (subject to certain threshold rules).

Affirmative action. A policy to ensure proportionate, or more than proportionate, representation for hitherto underrepresented minorities.

Aggregate fairness. The extent to which any local deviations from balanced redistricting cancel out so that, as a whole, no party or grouping is disadvantaged.

Alabama paradox. Under the formula used for the allocation of seats to states from 1910 to 1940 it was possible for a seat that gained in population to lose representation. This occurrence is known as the Alabama paradox.

Alternative vote (AV). Preferential voting within single-member constituencies. For the Australian lower house, for example, every elector is required to number all the candidates in order of preference; the candidate with fewest first preferences is eliminated and higher second preferences are counted instead; the process continues until one candidate has a clear majority.

Apportionment. The process of allocating congressional districts across states.

At-large. When one or several members are elected by the whole of a state or by the whole area of a local authority they are described as being elected at-large.

MacMillan Publishing Co.¹⁵⁶, 1992
David Butler and Bruce Cain

Bipartisanship. Occurs when the rival parties agree on the procedure and substance of redistricting. It is possible to have a "bipartisan gerrymander" when the parties mutually agree to preserve or increase the safety of the seats of incumbent representatives.

Blindfold redistricting. The drawing of boundaries by some general formula which has no regard to specific party or incumbent interests.

Building block. The basic minimum unit used in drawing up boundaries. It could be as large as a county but is now usually a census district or even a census tract.

Census block; Census tract. Areas designated by the Census for the collection and presentation of data.

Commission. A statutory and independent body charged with researching or implementing policy. Boundary commissions have been used widely in the English-speaking world so that constituencies can be delineated without direct political interference.

Community. A geographic grouping of the population with common interests dictated, for instance, by local government boundaries, transport or school facilities, ethnicity, language, or simply tradition.

Compactness. Having the minimum distance between all the parts of a constituency (a circle or a hexagon is the most compact district). Compactness is seen as one of the main defenses against gerrymandering.

Competitive seats. A seat where the margin of victory is small enough to make a change of control possible. See *Marginal seats*.

Constituency. The most common term for the geographic areas into which a country is divided for electoral purposes. A constituency may send one or several members to the legislature. Other terms include district (United States), riding (Canada), circonscription (France), electorate (Australia and New Zealand), and division (U.K.).

Contiguity. All parts of a district being connected at some point with the rest of the district.

All of this political and demographic information makes redistricting a highly quantitative exercise. A typical system in a large state stores this information on a tape or disk in a computer. Usually redistricters only work with a subset of the data—population, racial and ethnic percentages, and a few critical political measures. The rest of the information is retrieved and presented when requested by the courts, or incumbents, or the press. The most advanced systems are interactive. The redistricter signifies to the computer a desire to move a particular census unit or precinct out of one district and into another, and the computer instantaneously retabulates the summary of political and demographic information after the change. The computer system must also have the capacity to provide a detailed description of the districts in terms of tracts and blocks so that the proposal can be made into a law.

Maps and Measures of Compactness

A modern redistricting computer system will have a mapping capacity so that people can view what is happening under different proposals. There are two basic kinds of maps. One is a computerized map which shows the whole county down to the census block or precinct level. An innovation of the 1990 census has been the creation of the so-called TIGER file system which adds various prominent geographic features, such as roads and railroad tracks to the computer map. However, even with these additional features, most people find the computer-generated maps hard to read and too sparse. Often people will want very specific information about side streets, neighborhoods, and topography which require a finer grade of map.

The second type of map is the printed precinct or census maps providing extremely detailed information about streets and other features. The advantage of the first type of map is that the computer can automatically and instantaneously generate a new map with each proposal. The drawback, as we said before, is its sparseness. The advantage of the second type of map is the richness of the information it provides, but a very serious limitation is the difficulty

in generating them after even minor changes are made. When highly detailed maps are not on the computer, districts must be drawn in by hand, and in a large state with thousands of census tracts, delays and mistakes are inevitable.

Maps provide several essential pieces of information. For incumbents, they show in visual form the areas that have been lost and gained in a redistricting trade. Using the census and political information, a map can be colored or shaded to reflect the partisan strength or racial and ethnic composition of various areas within a proposed district. The maps are also important for displaying "holes"—parts of districts that are noncontiguous. In the mad rush to construct numerous proposals in a short period of time, it is easy to forget to assign a tract in the middle of the district or to mistakenly type in the wrong tract or block number. Mapping the districts shows these mistakes and allows for rapid correction.

Third use of maps is to assess the shapes of districts. For reasons we will discuss more fully in the next chapter, it may be important to measure the compactness of proposed districts and to compare the average compactness of districts in one proposal as opposed to the average in another. An element of compactness that has been mentioned already is contiguity—that all parts of a district must be connected at a point. Generally, it is further taken to mean connected at some point on dry land, but not always. Phil Burton claimed contiguity for a district in his 1981 California congressional plan that ran from Marin County across the waters of San Francisco Bay to the city of Vallejo. Another district in Los Angeles county followed the coastline and dock areas of Long Beach and San Pedro so narrowly that it was said of the district that it was contiguous at low tide only. Of course, some kinds of noncontiguity are unavoidable. An off-shore island, for instance, has to be attached to mainland districts by water unless it has, by itself, close to the ideal population for a district.

The other aspect of compactness is that districts should have relatively geometrical shapes, without many branches, dips, or jagged edges. A compactness requirement tries to limit oddly shaped districts, and a compactness measure provides a means for calibrating