

1 determining whether the split was in fact the Board’s only option. Moreover, the
2 Supreme Court was concerned that – apparently based upon the advice of its expert
3 Lisa Handley – the Board began by complying with the VRA (that is drawing the
4 rural Native districts first), rather than beginning by focusing on the Alaska
5 Constitutional requirements. Order ¶ 6. Starting from this point meant there was
6 very little attention paid to Constitutional requirements. Based upon the statement
7 in *Hickel v. Southeast Conference* that “the Board must first design a
8 reapportionment plan based on the Alaska Constitution” and then test that against
9 the VRA, the Supreme Court directed the Board to focus first on Alaska
10 Constitutional requirements and then deviate where it was “the only means
11 available to satisfy Voting Rights Act requirements.” Order ¶ 7. The objective of
12 this approach is clearly to determine whether disfavored solutions (like splitting the
13 Aleutians) are in fact “the only means” of satisfying the VRA.
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17 Instead of complying with the intent and spirit of the mandate, the Board
18 took the directive literally. It purported to draw a “Hickel map” and then make
19 adjustments to the districts based on VRA considerations. Not only did they
20 themselves not to this (as described below) but also they then used this literal
21 interpretation and against all third parties who submitted plans so as to summarily
22 reject them (also as described below). The Supreme Court could not literally have
23 meant that the Board was to draw just one map and adjust each individual district as
24 necessary to comply with the VRA; such a task is impossible, as demonstrated by
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1 the fact that the Board itself could not and did not do this. As all witnesses to this
2 long process can attest, there are numerous ways to comply with the Alaska
3 Constitution but very few ways to comply with the VRA. As a result, trying to
4 comply with the VRA does not mean moving a few villages from one district to
5 another; it usually means starting to build the map from a different point, such as
6 starting from the Aleutians and moving North or starting from the North Slope and
7 moving South. (*See, e.g.* Ex. B, 3/26 48:24-25, 49:24-50:7) The Supreme Court
8 wants to know if the Board has chosen the plan that does the least violence to the
9 Alaska Constitution. Order ¶7. The most logical way to do that is to examine all
10 possible maps – those created by the Board and submitted by third parties – and
11 determine which complies with the VRA and also has the fewest or most tolerable
12 deviations from the Alaska Constitution. This way, the court can identify
13 specifically where and why each deviation from the Constitution is and weigh the
14 various plans accordingly.

18 Instead of weighing all the options, the Board took a literal approach and
19 purported to “create” one map it called Hickel 01 in response to the Supreme
20 Court’s mandate. The first defect in this process is that the Board did not in fact
21 create a new map but simply took the Proclamation Plan and “incorporate[d] any
22 aspects of the current plan where no Voting Rights Act justifications existed.” (Ex.
23 B, 3/26, 40:20-22) In so doing it left intact District 40 because they claimed it was
24 “not built on Voting Rights Act grounds” even though it was clearly identified
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1 throughout this process as a Native district for purposes of meeting the VRA
2 benchmark.² (Ex. B, 3/26, 41:25-42:5. Later keeping the North Slope Borough
3 totally intact is described only as “traditional,” Exc. B, 3/28, 29:7-10) Similarly,
4 the Board left intact the population groupings of the urban Fairbanks districts that
5 gave rise to this litigation in the first place. BBNC agrees with the objections of the
6 Calista Corporation that given that the superior court had already determined
7 District 38 was unconstitutional (December 23, 2011 order), it was incumbent upon
8 the Board to at least consider other options that would maximize the
9 constitutionality of those districts. (Calista Objections p. 2-4) It did not. Thus
10 the Board failed with the very first step of the “Hickel process” by starting with a
11 flawed map.

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14 Second, although the Board reiterated numerous times that its process was to
15 adjust the districts in the Hickel 01 plan, it did not in fact do that. It engaged in a
16 *pro-forma* process focused more on lip service than on substance in that it focused
17 on a purely Alaska Constitutional map that it *knew* did not comply with the VRA.
18 (Ex. B, 3/27, 36: 15-20) Then it took the unnecessary step of having its expert
19 review a map it already knew was noncompliant. After she confirmed what the
20 Board already knew (Ex. B 3/28, 8:13-16), the Board did not proceed to adjust
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25 2 This means that the one district in which the one rural Board member, Green, resides,
26 was left untouched and considered sacrosanct throughout the process. BBNC pointed this
27 out to the Board and received no response. (Landreth Decl. ¶ 2 and Ex. 10) Plans
28 submitted by Calista and others that altered this district were not considered.

1 Hickel 01 but threw it out and went back to a plan created in 2011 called the
2 “PAM-E” plan. (Ex. B, 3/28, 4:14-17, 22:7-13, 32:15-24, 33:10-14; Ex. B, 3/30,
3 27:14-16) This plan was of course formulated before the Board’s remand and
4 according to the expert’s now-discredited advice to begin creating a map based
5 upon VRA compliance first. The Board spent a great deal of time working from
6 the Pam-E map and for a short period was convinced it was the only alternative to
7 the Proclamation Plan. (Ex. B 3/28, 25:23-26:1 and 82:10-19). Thus not only did
8 the Board begin with a flawed map, but also it did not follow its own narrow and
9 literal interpretation of the process.
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12 Despite its own failings with regard to its own process, the Board
13 nonetheless threw out any maps submitted by third parties that did not start from
14 Hickel 01. For example, the Board disregarded a map submitted by the RIGHTS
15 coalition (discussed below) because it did not “start” from Hickel 01. (Ex. B, 3/29,
16 23:6-11) The RIGHTS coalition had instead argued that its map was
17 Constitutional (or at least contained the fewest possible deviations from the Alaska
18 Constitution) and complied with the VRA but because it did not use the *pro forma*
19 process of starting from a map that everyone already knew was noncompliant, the
20 Board threw it out. (Ex. B, 3/29, 23:17-22) The Board also disregarded the map
21 submitted by AFFR for the same reason, even though AFFR’s cover letter
22 specifically stated it began with the Board’s won Hickel 01 map. (Ex. B, 3/29,
23 56:20-25; *see also* McKinnon Decl. ¶ 11 and Exhibit 9) As BBNC argued at the
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1 outset, the most reasonable interpretation of the *Hickel* mandate is to compare all
2 options and settle upon a map that has the fewest deviations from the Alaska
3 Constitution while also being VRA compliant. The Board did not do this but
4 disregarded other options on the pretense of not following its interpretation of the
5 *Hickel* process. This is the third way in which the Board failed this process.
6

7 **B. The Board Did Not Produce the Most Constitutional Plan**

8 The goal of the *Hickel* process, that is looking first to Alaska Constitutional
9 concerns, is to end up with the plan that deviates the least from the Alaska
10 Constitution while also complying with the VRA. The Board knows this and
11 mentioned it almost every day. (Ex. B, 3/26, 9:11-15, 14:19-22, 70:3-11; Ex. B,
12 3/27, 14:18-15:2; Ex. B, 3/29, 36:20-23 and 37:3-9; Ex. B, 3/30, 52:17-22)
13 Because of its misinterpretation of the process, or its misuse of it, or both, the Board
14 did not end up with the most Constitutional plan possible. At the very least, there is
15 *considerable doubt* that the Board’s plan in fact does “the least violence” to the
16 Constitution.
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18
19 There were plans submitted by three other groups – AFFR, the RIGHTS
20 Coalition and the Calista Corporation – yet all were discarded by the Board and
21 none were reviewed by the Board’s expert. The process by which the Board
22 discarded each is worth noting. No third party was permitted to make a
23 presentation or respond to Board questions about its plan. Instead, each was
24 reviewed solely by the Board’s counsel who provided his own brief and subjective
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1 analysis as to why each one was less Constitutional than the Board's chosen plan.
2 Below are three options and non-exhaustive bullet points illustrating the ways in
3 which each is compliant and more Constitutional than the Board's Amended
4 Proclamation Plan.

5
6 *1. The AFFR Plan*

7 Because BBNC is a member of AFFR and has submitted comments to the
8 Board that it supported the AFFR plan above others, that plan will be reviewed first.
9 (Landreth Decl. ¶ 2 and Exhibit 10) Counsel to the Board, assisted in part by
10 Executive Director Mr. Bickford, identified numerous ways in which they felt the
11 AFFR plan was not Constitutional. BBNC will respond to these concerns briefly
12 here but ultimately the court – and not counsel to the Board – should be the one to
13 determine Constitutionality.
14

- 15
- 16 • Counsel alleges that the plan is retrogressive under the VRA. (Ex. B,
17 3/29, 57:13-24) This was correct on March 29 due to an error in
18 weighting the populations, but a corrected version called AFFR 06 (and
19 sometimes mistakenly referred to as AFFR 7th Adjusted) was in fact
20 submitted to the Board before it adopted its own plan. The Board did not
21 include the corrected plan in the record before this court. Copies of this
22 plan are attached to the declaration of Mr. Joe McKinnon, filed here with.
23 Mr. McKinnon also attests he submitted this corrected plan (including
24 shape files) to the Board on April 4, 2011 – the day before the Board
25

1 formally adopted its plan and proclamation. (McKinnon Decl. ¶ 11 and
2 Exhibits 1-2 and 9)

- 3 • Counsel alleges that the Native VAP in District 35 is too low even though
4 it is at 45.31%. (Ex. B, 3/29, 58:17-24) Because this district contains
5 much of the old (current) District 6 which has the highest degree of racial
6 polarization, counsel alleges this District should instead be closer to 50%
7 Native. However, As even Dr. Handley recognized, the polarization is
8 not current throughout District 6, but is concentrated in six communities
9 along the highway (Deltana, Dot Lake, Tok, Chistochina, Copper Center,
10 Gakona and Kenny Lake) and AFFR explained in its cover letter that
11 since it had removed these communities from its District 35 then the
12 polarization would be less and the Native VAP required would be lower.
13 (McKinnon Decl. ¶ 11 and Exhibits 7 and 9). Moreover, the Board
14 simply asked for analysis on this issue, which was never done. (Ex. B,
15 3/29, 58:22-24)

- 16 • AFFR's plan that removes the above six communities and places them in
17 highway district 29 with which they are clearly more socio-economically
18 integrated. (McKinnon Decl. ¶ 11 and Exhibit 1)

- 19 • AFFR's District 35 is now far more compact and socio-economically
20 integrated than the Board's horseshoe shaped District 39 which extends
21 from *Diomede to McCarthy*. (McKinnon Decl. ¶ 9, 11 and Exhibits 1,3

1 and 7) Other corporations besides BBNC sent letters to the Board listing
2 this as one of the reasons they supported AFFR's plan. (Landreth Decl. ¶
3 3 and Exhibit 11)

- 4 • AFFR's plan adds Eielson AFB to a rural district rather than Ester and
5 Goldstream as the Board has done. Counsel for the Board rejected this.
6 (Ex. B, 3/29, p. 58-59). However, as AFFR explained in their cover
7 letter, military turnout is far lower than the turnout in Ester and
8 Goldstream and therefore adding Eielson would have the impact of
9 increasing Native voting strength in District 38. (McKinnon Decl ¶ 11
10 and Exhibit 9) Furthermore, since Eielson is closing in 3-4 years, that
11 district will not lose its effectiveness over time as it might if it were
12 attached to Ester and Goldstream. *Id.* The Board's own expert
13 recognized the benefits of attaching Eielson to District 38 (*see* trial Log
14 Notes, Day 2, 12:31:50, 12:42:16-26 and the testimony of Bickford),
15 and even this court acknowledged in its findings that Dr. Handley "would
16 not be concerned about adding military population to the rural district
17 because it would not harm the effectiveness of the Native vote." (Order
18 Re: 2011 Proclamation Plan, 2/3/12 at 95). Yet the Board has
19 continually rejected this logical solution, presumably because, as this
20 court has already found on page 95 of its 2/3/12 order, Board member
21 Holm advocated "keeping as much military population in Republican
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1 areas of the FNSB districts, which he knew would have the effect of
2 enhancing the civilian Republican vote.”

- 3 • The Board alleges there are socio-economic integration problems with
4 District 35 (mistakenly referring to it as 39). (Ex. B, 3/29, 62:12-24)
5 AFFR had shifted four Inupiaq villages (Kobuk, Ambler, Shugnak and
6 Kiana) and placed them in 35 for population reasons, but the Board
7 seemed concerned about “mixing” Athabascans with Inupiaq, but this
8 argument rings hollow given that it pales in comparison to the way the
9 Amended Proclamation Plan created catch-all District 39 in which it
10 clearly “mixed” Inupiaq with Athabascans. (McKinnon Decl. ¶ 5,9 and
11 Exhibits 3 and 7)
- 12 • The Board alleges AFFR District 38 may not be socio-economically
13 integrated, compact or contiguous. (Ex. B, 3/29, 63:2-14) However
14 the Board’s own District 37 has more serious problems in this regard
15 (stretching from Mekoryuk to the tip of the Aleutians). Comparing
16 AFFR’s District 38 to the Board’s District 37 (McKinnon Decl. ¶ 8 and
17 Exhibit 6) shows just how nonsensical this allegation is. Moreover, their
18 District 35 is even worse – stretching from the Lake and Peninsula
19 Borough, jumping to Kodiak, jumping again to pick up Nanwalek and
20 Port Graham on the Kenai Peninsula (Ex. B, 3/30, 45:4-13) and then
21 jumping again around another district (29) to continue through Prince
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1 William Sound and Yakutat (Ex. A, p. 61).

- 2
- 3 • AFFR’s District 37 is also clearly more socio-economically integrated in
4 that it keeps the Bristol Bay fishing communities together and
5 importantly keeps the Native incumbent Rep. Edgmon, who lives in
6 Dillingham, with the communities he has represented for years.
7 (McKinnon Decl. ¶ 8 and Exhibit 6) The Board’s Amended
8 Proclamation Plan, on the other hand, cuts off Dillingham so as to place
9 Rep. Edgmon in an inland district (36) and conversely attaches all the
10 Bristol Bay fishing communities to Bethel; this bizarre configuration
11 essentially flips the Yup’ik constituency of Rep. Herron with the fishing
12 communities of Rep. Edgmon, seemingly placing each legislator in an
13 unfamiliar district that will be very difficult for him to win. (McKinnon
14 Decl. ¶ 6,8 and Exhibits 4 and 6). This deliberate targeting of Native
15 legislators contravenes the mandates of the VRA that BBNC and other
16 *Amici Curiae* brought to the attention of the Alaska Supreme Court.
17
 - 18 • The Board wondered whether AFFR’s district 38 had a high enough
19 Native VAP at 35% to make it effective, but it said it would “want further
20 analysis” to be sure; it never sent it out for any such analysis. (Ex. B,
21 3/29, 60:19-62:1). The Board had also noted throughout its proceedings
22 that there was in fact no “magic number” for Aleutians districts (Ex. B,
23 3/28, 13:9-17) and it was not sure if the non-polarized Aleutians District
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1 had to have 35, 36 or 37% Native VAP to be effective. (Ex. B, 3/29,
2 25:5-9 and 52:5-8) Therefore discarding this on this basis seems out of
3 line with its own standards.

4
5 *2. The RIGHTS Plan*

6 BBNC is not affiliated with the RIGHTS coalition, but there are several ways
7 in which the RIGHTS plan seems to be as Constitutional or more so than the
8 Amended Proclamation Plan. This list is non-exhaustive and BBNC notes here
9 only the most obvious:

- 10
- 11 • The Board claims that District 39 is non-compact and not
12 socio-economically integrated (Ex. B, 3/29, 27:6-13) but this
13 configuration is almost identical to District 39 in the Amended
14 Proclamation Plan. How it can be unconstitutional in the RIGHTS plan
15 but constitutional in the Board's plan is not clear (compare Ex. H p. 23 to
16 Ex. A p. 66)
 - 17 • The Board alleges that District 38 (which it mistakenly refers to as the
18 Bethel district even though it does not contain Bethel) is not
19 socio-economically integrated (Ex. B, 3/29, 28:13-15), yet its own plan
20 contains a very similar district in 36. (compare Ex. H p. 23 and Ex. A p.
21 62)
 - 22 • In a very odd exchange, the Board suggests that District 37 is not compact
23 (Ex. B, 3/29, 30:11-15), but again it is very similar to the Board's own
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1 District 37 (compare Ex. H p. 23 and Ex A p. 63)

- 2 • The Board raised compactness concerns over District 36 (Ex. B, 3/29,
3 31:6-10) but this district was apparently drawn to unite Yup'ik speaking
4 coastal villages and thus was geared toward socio-economic integration.
5 In any event, the Board knew this could be “argued either way.” (Ex. B,
6 3/29, 31:16-18)
- 7
- 8 • The Board is concerned that District 31 may not be socio-economically
9 integrated (Ex. B, 3/29, 31:19-21 and 32:9-10) but the Board’s own plan
10 contains a District 36 that unites similar parts of the Kenai Peninsula and
11 Prince William Sound. (compare Ex. H p. 23 and Ex. A p. 35)
- 12
- 13 • The Board suggests Districts 10 and 5 are not compact but both seem to
14 resemble districts we have now under the current benchmark, so it was
15 not clear how this defeated the entire plan.
16

17 *3. The Calista Plans*

18 Perhaps the most curious rejection of all the plans occurred with those
19 submitted by the Calista Corporation. Throughout the remand process, and even
20 after the Board adopted but had not finalized its Amended Proclamation Plan,
21 Calista submitted several alternatives, all aimed at making only minor changes to
22 the Board’s own districts but making a significant impact on Constitutionality and
23 VRA compliance at the same time. In other words, even if the Board was dead set
24 on keeping the majority of their own plan, there was no reasonable basis upon which
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1 to reject Calista's modifications. Quite simply, Calista's Plan 3 (also called the
2 4/10 settlement plan) raised the Native VAP from 45.72 % to 46.42% and, by
3 pairing it with a closing military base instead of a burgeoning suburban area, made it
4 more likely to remain an effective district over the long term. Calista Plan 3 is also
5 clearly more Constitutional in that it reduced the population deviations in the urban
6 Fairbanks districts from .6 to .4 and had only 2 districts that exceed +/- 5%. BBNC
7 supports Calista's Objections in this regard. Yes despite the fact that Calista Plan 3
8 is more Constitutional and would have ended this litigation by removing the
9 Plaintiffs from District 38, BBNC understands, upon information and belief, that the
10 Board refused to even consider it. At the very least, we know it was never sent to
11 Dr. Handley for analysis.

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14 *4. Summary of the Board's Rejection of Other Plans*

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16 Overall, the Board rejected: (1) the AFFR plans even though the Districts
17 were often more compact or socio-economically integrated; (2) rejected the
18 RIGHTS plan even though the districts bore a striking resemblance to the Amended
19 Proclamation Plan; and (3) rejected Calista's plans even though they (and especially
20 the 3rd) presented fewer (and lower) Constitutional deviations, more VRA
21 compliant Native VAP and would have ended this litigation. At the very least, this
22 raises serious concerns about whether the Board has in fact adopted the most
23 Constitutional plan, (that is, the one that "does the least violence" to the
24 Constitution) and there are also serious questions with respect to whether the
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1 Board's District 38 is even VRA compliant given that they have never asked their
2 expert to perform a reconstructed election analysis on this district to be sure. For
3 all these reasons, the court should not accept the Amended Proclamation Plan as
4 submitted.

5
6 C. The Board Violated Due Process by Failing to Meaningfully Consider
7 Any Third Party Plans.

8 BBNC would also like to bring to the court's attention the due process
9 violations committed on remand from the Supreme Court. BBNC also raised due
10 process concerns in the initial post-trial briefing with regard to the fact that the
11 Board's expert announced the benchmark very late in the process and even then was
12 wrong, so that the public has little to no opportunity to present compliant plans.³
13 That process, however, was a model of open government compared to the truncated
14 and stilted process offered this time around.
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16
17 First, the Board's approach to public involvement was that since it was a
18 public agency people could send emails at any time. (Ex. B, 3/28, 90:10-14 and
19 93:24-5) Trying to have it both ways, the Board wished to appear as though it had
20 a public process without actually providing the public any opportunity to participate.
21 The Board made it clear that the process it intended to follow was to draw a "Hickel
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23 _____
24 ³ See BBNC's Post-Trial Brief submitted on 1/23/12, *passim*. BBNC's concerns about
25 the first process were reaffirmed by Board Member Greene who, on the first day of the
26 remand meetings, asked: "Is she going to be available? We're not going to have the
challenges we had when we first started, are we, with her availability?" (Ex. B, 3/26,
13:14-16).

1 plan,” have its expert test that plan for VRA compliance, and then if it did not, to
2 change that plan until it did have one that complied with the VRA. (Ex. B, 3/26,
3 14:12-22) In other words, a plan was only truly considered if the Board’s expert
4 reviewed it for VRA compliance. However, the Board never intended to have the
5 expert review any third party plans:
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7 **Chairman Torgerson:** ... But part of our reason for asking for a
8 vacation of this was [the court] basically opened the entire process
9 back up again, even to interested individuals, besides the parties and
10 amicus, anybody could submit another plan. We were to act, in my
11 opinion, like a court, as to determine whether or not third-party plans
12 are constitutional, which is something the board, at least in my
13 opinion, does not want to get into. So we have had several inquiries
14 from different groups as to whether or not we would accept
15 third-party plans. And basically the response that was given was
16 we’re a public agency, so if you want to submit things, e-mail of plans
17 or whatever, you’re welcome to do that. But it wasn’t my intent that
18 the board would consider third-party plans.

15 (Ex. B, 3/26, 21:9-25) The message from the Board was therefore: you can send us
16 whatever you want but we have no intention of considering it. As a result of this,
17 no plans were submitted in the first part of the week. (Ex. B, 3/28, 89:20-21)
18 Then, on day 3, the Board discussed the fact that it had received plans from the
19 Calista Corporation and Board member Greene commented that she would like to
20 review what had been sent in. (Ex. B, 3/28, 26:9-23 and 85:9-11) Upon hearing
21 this, apparently AFFR and the RIGHTS Coalition hurriedly submitted their own
22 plans with the hope that they would be considered. (Ex. B, 3/29, 18:22-25) The
23 Chairman opposed “opening up” the process. (Ex. B, 3/28, 86:14-18, 88:5-10)
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1 And although the Board did do a perfunctory and subjective analysis as to why each
2 was unconstitutional (as described above), as it had promised the Board never sent
3 any third-party plans to its expert. (Ex. B, 3/30, 55:20-23) This ensured that no
4 third-party plans would be accepted, in whole or in part, regardless of their
5 compliance with state and federal law.
6

7 Second, the Board allowed only one week of meetings so as to accommodate
8 the absence of their counsel and then the vacation of their expert. On the first day,
9 March 26, the Board noted that its counsel had been unavailable for a week (Ex. B,
10 3/26, 18:23-24), and then in response to questions about whether its expert would be
11 as difficult to pin down as last time, Mr. Bickford responded: “[Lisa] is available
12 through the 31st. Then she has a vacation planned.” (Ex. B, 3/26, 13:18-19) Once
13 again, the public found itself, and Alaska’s entire redistricting process, hostage to
14 the personal schedule of Dr. Handley. Presumably because of this, no plans or
15 adjustments were considered after the 31st.⁴
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17

18 Third, although the Board noticed meetings for the week of the 26th, it never
19 notified the public what dates the public record opened or closed. It only
20 announced the timeline for its actions on March 29th. (Ex. B, 3/29, 7:10-20)
21 Moreover, it indicated during the meetings that it had or would notice meetings for
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23

24 4 Incidentally, the Board cannot use an excuse for this extremely short process the need to
25 secure preclearance before the June 1 candidate filing deadline since it knew it was already
26 too late to meet that deadline. (Ex. B, 3/28, 71:6-7) In addition, the Board knew it was
27 more than two weeks earlier in tis process than the Board was during the 2001 redistricting
28 process, and yet that was ultimately resolved. (Ex. B, 3/28, 63:10-18 and 80-19-20)

1 the following week, April 2. (Ex. B, 3/31, 62:22-235) Therefore it was not clear
2 to the public what the deadlines for comment were if any. Nevertheless, the Board
3 did not include within the record filed with this court any correspondence received
4 from the Native community nor even the final versions of the AFFR or Calista 3
5 plans. Perhaps it had a record closing date in mind of which the public was
6 unaware.
7

8 **II. Were the Board's Deviations from the Alaska Constitution Justified**
9 **by the Voting Rights Act?**
10

11 Because the Board misinterpreted the *Hickel* process and did not arrive at the
12 most Constitutional plan, it can hardly be said that its deviations were required by
13 the VRA. In fact, as described in detail above under section I(B), it rejected three
14 alternatives that were equally or even more Constitutional and thus its deviations are
15 in fact not required. The question for the court at this point is: which plan does the
16 least violence to the Alaska Constitution? The Board certainly did not identify all
17 the deficiencies in its own plan, which is clear given that it rejected similar or better
18 districts as unconstitutional as described above. To name but a few specific
19 deficiencies, the Amended Proclamation Plan's District 39 is not compact nor
20 socio-economically integrated; its Fairbanks districts have higher population
21 deviations than necessary, as described in the Objections of the Calista Corporation;
22 its District 38 may not be VRA compliant, and certainly has a lower Native VAP
23 than is necessary; and its District 35 appears neither contiguous, compact nor
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1 integrated. Thus it is hard to describe each of the Board's deviations as mandated
2 by the VRA when in fact it does not appear to have chosen the most Constitutional
3 plan available to it.

4 **III. Conclusion**

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6 Given these deficiencies, the court should consider whether: (1) the Board
7 correctly interpreted the Hickel process; (2) it then employed it correctly when it
8 started from a flawed map, then replaced that with PAM-E and then disregarded
9 other plans for failure to follow it; (3) whether the Board improperly rejected more
10 Constitutional plans; (4) whether the Board's refusal to consider any third party
11 plans and other scheduling constraints violated due process; and (5) given that they
12 did not choose the most Constitutional plan, whether their deviations were in fact
13 required by the VRA.
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16
17 Respectfully submitted this 16th day of April 2012 at Anchorage, Alaska.

18
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