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I. INTRODUCTION

Before the trial court, Calista Corporation, William Naneng, and Harley Sundown (collectively, “Calista Parties”) sought to protect the voting power of residents in the Calista Region of Western Alaska. Specifically, the Calista Parties argued (1) that the Alaska Redistricting Board (“Board”) made errors in redistricting by failing to keep Hooper Bay, Scammon Bay, and Chevak together in a region with Bethel despite their strong socio-economic integration; and (2) that the Board’s map violated the Alaska Constitution’s Equal Protection Clause by diluting the voting power of the Calista Region—which is defined by the Calista Corporation’s boundaries, established under the Alaska Native Claims Settlement Act of 1971 (“ANCSA”)¹—by needlessly fracturing it across three house districts and two senate districts.

Although the trial court technically ruled against the Calista Parties on their claims, its order contains legally correct rulings confirming two things: first, the strong socio-economic integration of the Calista Region, including the strong ties between Hooper Bay, Scammon Bay, Chevak, and Bethel; and second, that the Alaska Redistricting Board must make efforts to keep those villages and the region together. The trial court’s factual findings also established that Alaska Native Regional Corporations (“ANCs”) do in fact serve many of the same functions as local governments, and that their regional boundaries are indicative of socio-economic integration. The Calista Parties chose not to pursue a

¹ 43 U.S.C. §1601 *et seq.*

petition for review because these findings and rulings are significant for the Calista Parties' long-term interest in protecting the voting power of the Calista Region's residents, and the Calista Parties do not wish to see them disturbed by this Court.

The Calista Parties are therefore participating in the present Petition for Review process as respondents, not petitioners, so that they can counter the arguments regarding ANCs that the City of Valdez and Mark Deter (collectively, "Valdez") raised in their Petition for Review ("Valdez Petition"). The Calista Parties urge this Court to reject Valdez's argument that ANCSA boundaries should be ignored in the redistricting process, and ask it to rule instead that ANCSA regional boundaries should be given the same weight as local government boundaries—both because they function as *de facto* government entities, and because ANCSA regions are inherently socio-economically integrated.

II. QUESTION ADDRESSED

The Calista Parties address the following question in this response, which is at issue in the Valdez Petition:

Should the Alaska Redistricting Board, when drawing legislative districts pursuant to article VI, section 6 of the Alaska Constitution, consider Alaska Native Corporation regional boundaries to be equivalent or analogous to local government boundaries?

III. STATEMENT OF RELEVANT FACTS

Although this response addresses a legal question, the background facts of the Calista Parties' claims in the trial court provide relevant context.

The Calista Region is a socio-economically integrated area of 56 villages in southwest Alaska.² The borders of the region reflect the boundaries established for Calista Corporation ("Calista"), an ANC organized under ANCSA.³

The Calista Region is in an unorganized area of the state. Its population in the 2020 census was 27,034 people.⁴ Based on the 2021 ideal House district population of 18,335, the Calista Region population is equal to 1.474 Alaska House districts and .737 of an Senate district.⁵ At the conclusion of the 2021 redistricting process, the Board divided the Calista Region into three House Districts: 37, 38, and 39; and two Senate Districts S (comprised of D37 and D38) and T (comprised of D39 and D40),⁶ even though its population would have fit within two House districts and one Senate district.

² Exhibit 5000 [EXC-2226]; Guy Prefiled Direct Test. at 2–3 [EXC. 2104-3]; *see also* Binkley Dep. at 243:3–4 [EXC. 2130]; Bahnke Dep. at 56:6–18 [EXC. 2115]; Borromeo Dep. at 194:23–195:8 [EXC. 2118-19]; Trial tr. 941:8–14 (testimony of Ahtna President Michelle Anderson); Ruedrich Prefiled Direct Test. at 14–15 [EXC. 2144-45].

³ 43 U.S.C. § 1606.

⁴ Ruedrich Prefiled Direct Test. at 9 [EXC. 2139].

⁵ Guy Prefiled Direct Test. at 3 [EXC. 2105]; Ruedrich Prefiled Direct Test. at 9 [EXC. 2139].

⁶ ARB000012, 55–57 [EXC. 2099-2102] (proclamation maps).

The Board was able to do this in large part because there are no borough or other formally recognized government boundaries that encompass the entire Calista Region. The Calista Region is, however, undeniably socio-economically integrated *because* of its status as an ANCSA region. Calista shareholders make up approximately 77% of the region’s population.⁷

The villages of the Calista Region share the city of Bethel as a hub for commerce, economic development, transportation, social services, health services, and social and cultural life.⁸ Local governance and services throughout the region are provided by Calista, 56 federally recognized tribes, cities, and several large regional non-profit organizations including the Association of Village Council Presidents (“AVCP”), which provides a broad spectrum of social services; and the Yukon Kuskokwim Health Corporation (“YKHC”), which provides healthcare to the region.⁹ Calista is a significant economic driving force for the Calista Region, providing shareholder dividends, employment opportunities, and support for the regional non-profit corporations like AVCP.

⁷ Guy Prefiled Direct Test. at 2 [EXC. 2104] (roughly 60% of Calista’s 34,500 shareholders live in the Calista Region).

⁸ Leonard Prefiled Direct Test. at 2–3 [EXC. 2163-64]; Myron Naneng Prefiled Direct Test. at 3 [EXC 2178-80]; Sundown Prefiled Direct Test. at 2, 6–9 [EXC 2188, 2192-95]; Binkley Dep. at 224–25 [EXC. 2127-28]; Exhibit 5003.

⁹ Exhibit 5003 at 3.

The predominant Alaska native language in the Calista Region is Central Yup'ik, which is the first or only language of many Calista Region people.¹⁰ Many Calista Region elders are among those who speak only Central Yup'ik.¹¹ The Calista Region is perhaps the area of Alaska where the native language has been most strongly retained.¹² In addition, Calista Region communities often gather in Bethel for festivals and regional sports tournaments. One particular example is the Cama-i Festival, a large culture and dance festival held in Bethel annually to gather the Yukon-Kuskokwim villages each year.¹³

This socio-economically integrated area is contained within the borders of Calista's ANCSA boundaries; but because the Calista boundaries are not coextensive with any formal borough or other local government, the Board was not legally compelled to respect them.

Notably, the Calista Region was one of only two ANCSA regions in the entire state that the Board split into more districts than necessary based on population. The other ANC whose region was significantly divided (Chugach) did not participate in the redistricting process and the Board heard no testimony asking to keep its area together.¹⁴ All other ANCSA regional boundaries were preserved by the Board in its 2021

¹⁰ Exhibit 5001 [EXC. 2227]; Guy Prefiled Direct Test. at 6 [EXC. 2108].

¹¹ Bahnke Dep. at 175:18–24 [EXC. 2116].

¹² Bahnke Dep. at 175:18–24 [EXC. 2116].

¹³ Sundown Prefiled Direct Test. at 7–8 [EXC. 2193-94]; Leonard Prefiled Direct Test. at 10–11 [EXC. 2171].

¹⁴ Borromeo Dep. 247–49 [EXC. 2123-25].

Proclamation Plan and placed in as few districts as possible for their population.¹⁵ The record thus suggests that the Board felt free to pick and choose which ANCSA regions to keep together, and which to break apart.

In its decision, the trial court approved of the Board's use of ANCSA boundaries where it occurred, but did not go so far as to require it. When discussing the boundaries between District 36 and 39, it ruled that:

It is both logical and reasonable to use an ANCSA boundary to guide the drawing of district lines in this area of the state. Second, there is evidence that ANCSA boundaries are significant for non-Native residents too, particularly in rural areas. ANCSA regions coincide with the regions served by non-profit "sister organizations," which in many rural communities provide healthcare for Native and non-Native residents alike.¹⁶

These factual findings are helpful and proper; however, "logical and reasonable" are not the same as "legally required" or even "legally appropriate."

When discussing the Calista Parties' claims, the trial court acknowledged the socio-economic integration of the area and noted that "the Calista region is unique in the respect that it shares very few borough boundaries."¹⁷ It explained that, by contrast, "[m]any ANC regions also have overlapping borders with boroughs, such as NANA and the Northwest Arctic Borough, or Bristol Bay Native Corporation and the Lake and Peninsula Borough" and "[o]thers, such as Doyon Limited, are bordered by organized boroughs, such as the North Slope Borough." Ultimately, it concluded that there was no

¹⁵ Borrromeo Dep. at 244–49 [EXC. 2120-25].

¹⁶ Findings of Fact and Conclusions of Law at 95 [EXC. 2224].

¹⁷ *Id.* at 116 [EXC. 2225].

legal requirement that the Calista Region—as an ANCSA region—be kept together, and that the intactness of the other ANCSA regions in the Board’s final plan was “largely circumstantial.”¹⁸

The Calista Parties are thus participating in this review process to seek clarification of the role ANCSA boundaries should play in the redistricting process.

IV.DISCUSSION

The Calista Parties request that the Court issue a decision that speaks clearly to the appropriateness of considering ANCSA boundaries analogous to local government boundaries, especially in unorganized areas of the state where there are no boroughs, and where ANCs effectively serve the function of local government in uniting and serving the people within the region.

The Valdez Petition argues that “ANCSA regional corporation boundaries should not be afforded the same status as local government boundaries, which are specifically mentioned in article VI, section 6.”¹⁹ This is an oversimplification. Local government boundaries enter the redistricting analysis in two ways: first, as appropriate (but not required) boundaries to consider for both house and senate districts under the constitutional language cited by Valdez; and second, as integrated socio-economic units that should not be broken up in house districts without good reason. With regard to the

¹⁸ *Id.*

¹⁹ Valdez Pet. at 37.

first, article VI, section 6 does not actually define local government boundaries. Thus, the Constitution does not necessarily foreclose an interpretation of “local government boundary” that includes ANCSA boundaries and renders them appropriate for heftier consideration when drawing both house and senate districts.

With regard to the second—local governments as socio-economically integrated units—that is a creation of statute and case law. Boroughs are socio-economically integrated as a matter of law under AS 29.05.031.²⁰ This Court has accordingly advised that when the population of a borough will not divide evenly into one or more house districts, the Board should refrain from spreading the borough’s excess population across multiple house districts.²¹

The logic is twofold: First, because it is axiomatic that the population of a borough is socio-economically integrated, conserving a borough’s excess population in one house district will generally result in greater socio-economic integration in that district than would be evident if a socio-economically integrated group of persons from a single borough were to be dispersed across multiple districts;²² second, the guarantee of the right to proportional geographic representation under the state equal protection clause counsels in favor of conserving a regional population’s effective representation by placing that

²⁰ *Hickel v. Se. Conf.*, 846 P.2d 38, 51 (Alaska 1992), *as modified on reh'g* (Mar. 12, 1993) (quoting AS 29.05.031).

²¹ *Id.* at 52 , *as modified on reh'g* (Mar. 12, 1993).

²² *Id.*

population in as few districts as possible.²³

This Court has yet to extend that principle to unorganized areas of Alaska,²⁴ but the same logic mandates that the Board should not freely use the excess population of an ANCSA region to round out the populations of adjacent districts, as has historically been the case, and as has once again happened in the 2021 redistricting cycle. In adjudicating the present petitions for review, this Court should make clear that ANCSA regions are socio-economically integrated as a matter of law in a manner analogous, if not perfectly equivalent, to borough boundaries.

Such a ruling will bring needed clarity to a principle that has been only obliquely addressed in this Court’s prior precedents. As Valdez points out in its Petition, the Board’s counsel gave conflicting advice on this issue during the redistricting process.²⁵ The consequences of that ambiguity are evident in the Board’s 2021 Proclamation, which gave inconsistent deference to ANCSA boundaries across the state.²⁶

As explained below, ANCSA regions are socio-economically integrated as a matter of law and fact, and just as “a municipality’s excess population should go to one other district in order to maximize effective representation of the excess group,”²⁷ so

²³ *Id.*

²⁴ *In re 2001 Redistricting Cases*, 44 P.3d 141, 144–45 (Alaska 2002) (discussing that dividing an unorganized area such as Delta Junction does not require justification by the redistricting board).

²⁵ Valdez Pet. at 36-38.

²⁶ Calista’s Ex. 5002 [EXC. 2199] (demonstrating that certain ANCSA regions were preserved while others were fractionated).

²⁷ *Hickel v. Se. Conf.*, 846 P.2d 38, 52 (Alaska 1992), *as modified on reh’g* (Mar.

should an ANCSA region’s excess population be placed in one district in unorganized areas of the state where there are no borough boundaries to guide the redistricting process.

A. ANCSA Regions are Socio-Economically Integrated by Federal Statute.

ANCSA regions are socio-economically integrated as a matter of federal law. ANCSA’s purpose was to try and meet “the real economic and social needs of Natives” by settling aboriginal land claims.²⁸ Congress sought to accomplish this by dividing the State of Alaska “into twelve geographic regions, with each region composed as far as practicable of Natives having a common heritage and sharing common interests.”²⁹ Each region was represented by a regional ANC such as Calista. The regional ANCs thus—from the outset—were intended to be reflective of existing socio-economic units, and intended to serve the socio-economic needs of their region’s residents. There can be no real question, legal or factual, that ANCSA regions are socio-economically integrated.

12, 1993).

²⁸ 43 U.S.C. § 1601(a)-(b).

²⁹ 43 U.S.C. § 1606(a). The United States Supreme Court explained in *Yellen v. Confederated Tribes of Chehalis Rsrv.*, 141 S. Ct. 2434, 2439, 210 L. Ed. 2d 517 (2021) that “ANCs come in two varieties: regional ANCs and village ANCs. To form the regional ANCs, the Act directed the Secretary of the Interior to divide Alaska into 12 geographic regions. [85 Stat. 688, 43 U.S.C. § 1606(a)]. Within each region, Alaska Natives were instructed to ‘incorporate under the laws of Alaska a Regional Corporation to conduct business for profit.’ § 1606(d). To form the village ANCs, the Act identified approximately 200 Alaska ‘Native villages’ . . . For each Alaska Native village, ANCSA ordered the ‘Native residents’ to create an accompanying village corporation to ‘hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf’ of the village §§ 1602(j), 1607 (a). ANCSA then directed the Secretary to prepare a roll showing the region and, if applicable, village to which each living Alaska Native belonged. § 1604. Enrolled Alaska Natives then received shares in their respective ANCs. §§ 1606(g), 1607.”

This Court has not yet squarely made such a ruling, but doing so would be a natural extension of its analysis in *Groh v. Egan*, a 1974 opinion issued three years after ANCSA’s enactment.³⁰ *Groh* addressed whether population deviations greater than 10 percent were permissible in certain districts in Western and Northern Alaska.³¹ The redistricting board’s³² stated rationale for the deviations “was the preservation of the boundaries of regional corporations established under the Alaska Native Claims Settlement Act.”³³ The Court rejected the large deviations because the at-issue districts did not, in fact, preserve ANCSA regional boundaries. The Court explained:

Under [ANCSA], the state was divided into 12 regions, and separate corporations were established for each region. By the division it was sought to establish homogeneous groupings of Native peoples having a common heritage and sharing common interests.³⁴

The Court acknowledged that “[t]he use of [ANCSA boundaries] might constitute justification for some population deviation[.]” implicitly suggesting that ANCSA boundaries were a significant enough measure of socio-economic integration that they

³⁰ *Groh v. Egan*, 526 P.2d 863 (Alaska 1974).

³¹ *Id.*

³² At that time, the redistricting board was a special advisory board created by the governor at the direction of the Alaska Supreme Court, in contrast to the 2021 Board that was created pursuant to an amendment to the Alaska Constitution passed by referendum in 1998 regarding the redistricting process, but despite the different rules regarding the composition of the redistricting board that promulgated the map at issue in *Groh* and the 2021 Proclamation, the principles governing the redistricting process in article VI, section 6 remain the same as they were in 1974. *See Groh v. Egan*, 526 P.2d 863, 865 (Alaska 1974); Alaska Const. art. VI, § 3 (amended 1999).

³³ *Groh v. Egan*, 526 P.2d 863, 877 (Alaska 1974).

³⁴ *Groh v. Egan*, 526 P.2d 863, 877 (Alaska 1974).

could potentially trump the constitutional requirement of equal population. But the *Groh* court did not opine on the precise role of ANCSA boundaries in the redistricting process because they were not directly at issue in that case.

As noted, *Groh* was decided a mere three years after ANCSA’s passage. In the intervening decades, the role of ANCs and the socio-economically integrated nature of their regions—already well-established by federal law—have become only more clear. It is time for this Court to recognize ANCSA regions as socio-economically integrated units, akin to boroughs, in acknowledgment of ANCSA’s clear statement to this effect and the decades of subsequent history that support it.

B. ANCSA regions in Unorganized Areas of Alaska Are Functionally Equivalent to Boroughs.

Large portions of Alaska are unorganized, meaning they are not within any borough boundaries. This has historically disadvantaged them in the redistricting process, as has happened repeatedly to the Calista Region: because it has no borough overlay, its boundaries and socio-economic integration have not been respected. The Court should adopt a rule that allows ANCSA boundaries to be relied on in place of borough boundaries in unorganized areas of the state.

Valdez asserts that regional ANCs do not have the constitutional right to control a certain number of seats in the Alaska legislature.³⁵ The Calista Parties agree, but the

³⁵ See Valdez Petition for Review at 38 (“ANCSA corporations are private for-profit corporations and are not entitled to control a senate district under the proportionality doctrine or otherwise.”).

assertion itself is misguided. ANCs do not participate in the redistricting process to get votes for their corporations; they participate to get proper representation for the people within their regions, in furtherance of their congressional mandate to promote their region's social and economic needs. This is especially true in unorganized areas of the state, where there is no borough to intervene on behalf of its citizens, and where ANCs support and perform many of the functions that boroughs provide elsewhere.

All ANCSA regions are served by one or more non-profit corporations that provide essential services to the people of those regions.³⁶ For example, in the Doyon region, the Tanana Chiefs Conference provides health and social services;³⁷ in the Ahtna region, the Copper River Native Association provides the same;³⁸ in the Bering Straits region, Kawerak, Inc. provides social services, and Norton Sound Health Corporation provides healthcare;³⁹ in the Calista Region, AVCP provides social services, and YKHC provides

³⁶ See, e.g., Trial Tr. 952:10–25 [EXC. 2155] (testimony of Michelle Anderson that just as Ahtna partners with the Copper River Native Association, which provides health and social services to the Ahtna region, the other ANCSA regions are similarly served by non-profit entities that work alongside the ANCSA regional corporations to provide health and social services); Trial Tr. 975:24–976:2 [EXC. 2157-58] (testimony of Melanie Bahnke agreeing with the proposition that “when folks throughout the litigation talk about ANCSA regions, they’re also talking about the borders between those non-profits in the intertribal consortia, too”).

³⁷ See Trial Tr. 906:14–19 [EXC. 2153] (testimony of Vicki Ann Otte that the rural Interior villages in the Doyon region receive health and social services from Tanana Chiefs Conference).

³⁸ *Supra* note 36.

³⁹ See Bahnke Dep. at 13:4–23 [EXC. 2114] (testimony that the Bering Straits region receives healthcare from Norton Sound Health Corporation and social services from Kawerak, Inc.).

healthcare.⁴⁰

These non-profit organizations and their ANC corollaries create a quasi-governmental structure within ANCSA regions that render them at least as socio-economically integrated as boroughs—*more*, when one considers that these structures and legal entities reflect socio-economic patterns that predate ANCSA by many centuries.⁴¹ As discussed *supra*, ANCSA did not arbitrarily draw regional boundaries—it established them to be reflective of the diverse Alaska Native populations already in existence.⁴² The ANCSA regions are thus socio-economically integrated by history, design, functional governance, and law.

Despite this, populations within ANCSA regions in unorganized areas of the state are disadvantaged in the redistricting process and, in general, treated less seriously than boroughs. In effect, unorganized and socio-economically integrated regions of Alaska are

⁴⁰ Leonard Prefiled Direct Test. at 2–9 [EXC. 2163-2170]; Guy Prefiled Direct Test. at 5 [EXC. 2107]; Myron Naneng Prefiled Direct Test. at 2–4 [EXC. 2177-79]; Binkley Dep. at 226:8–13 [EXC. 2129].

⁴¹ See, e.g., Vance A. Sanders, *A Tribal Advocate's Critique of Proposed ANCSA Amendments: Perpetuating A Broken Corporate Assimilationist Policy*, 33 Alaska L. Rev. 303, 312–13 (2016) (“In response to comments that removal of the “Alaska exception” would be contrary to ANCSA, the Department stated ‘[i]t is important to remember that Alaska Native land and history did not commence with ANCSA, and that ANCSA did not terminate Alaska Native tribal governments...’ ” (alterations in original)).

⁴² See, e.g., Gigi Berardi, *The Alaska Native Claims Settlement Act (ANCSA)-Whose Settlement Was It? An Overview of Salient Issues*, 25 J. Land Resources & Env'tl. L. 131, 135 (2005) (“The intent of the corporate structure was to assist Alaska Natives in social and economic arenas by giving them control (as corporate shareholders) over their land and other natural resources, while avoiding the paternalism of the reservation system in the contiguous forty-eight states. (citation omitted)).

faced with an untenable choice to either organize into a borough and add unnecessary bureaucratic layers, or sacrifice proper representation because they lack a borough overlay to protect them in redistricting cycles.⁴³

There are exceptions to this, but they are not necessarily sanctioned by existing precedent. In the 2021 redistricting cycle, the Board understood—to some degree—the importance of maintaining the integrity of ANCSA regions when drawing house districts. For example, District 36 shows that preservation of the communities within the Doyon and Ahtna ANCSA regions was, in fact, prioritized over the application of traditional redistricting principles: the Board broke the Denali and Matanuska-Susitna Borough boundaries to create District 36 and ensure that the Doyon and Ahtna regions stayed together.⁴⁴ The Board determined that breaking the borough in District 36 was an acceptable cost of achieving the goal of pairing those regions.⁴⁵ Yet, the Board felt free

⁴³ In the case of the Calista region, it is not so much a *fair accompli* many times over. The fractionation of the Calista region into more districts than its population would naturally support has been evident after each redistricting cycle dating back to the 1970s. The issue is compounded by the fact that it is not clear that even if the Calista region were to incorporate there would be a sufficient tax base in the Calista region to support the bureaucracy concomitant with a borough level of government, which raises questions regarding whether the decreased political power associated with the fractionation of the Calista region into multiple house districts due to its lack of borough status is a political price for economic circumstances outside of the Calista region's control. *See, e.g.*, Trial Tr. 1342:13–1343:15 [EXC. 2160-61] (testimony of Andrew Guy, Chief Executive Officer of Calista, that the Calista region has been underrepresented since the 1980s due to the perpetual fractionation of the region into more districts than its population would naturally fit within).

⁴⁴ *See* Exhibit 5002 [EXC. 2199] (the Mat-Su and the Denali borough boundaries were broken to facilitate the placement of Cantwell with the other Ahtna villages in District 36).

⁴⁵ *See* Findings of Fact and Conclusions of Law at 90 n.518, 91 n.521 [EXC. 2222]

to disregard the Calista Region’s boundaries, even in the absence of a competing borough boundary. Having a clear rule of law that places ANCSA boundaries on par with borough boundaries for purposes of determining socio-economic integration would help ensure equal treatment in the redistricting process.

ANCSA regions in rural Alaska, such as the Calista Region, are socio-economically integrated in a way that highly heterogenous urban boroughs such as Anchorage are not—through commonalities of demographics, economic enterprise, culture, and the legal entities that serve their populations.⁴⁶ Yet ANCSA regions in unorganized areas receive lesser consideration in the redistricting process

Absent clear guidance from this Court, ANCSA regions in unorganized areas will continue to be treated dissimilarly, depending on the composition of the Board during future redistricting cycles. The Board should not be permitted to prioritize the sanctity of certain ANCSA regions over others; and it should not be necessary for an ANCSA region such as the Calista Region to incorporate into a borough, and add an additional layer of unnecessary bureaucracy, solely so that its population will be considered socio-economically integrated in the redistricting process.

(citing testimony regarding the socio-economic integration of District 36 in affirming the constitutionality of the district). The lack of clear precedent allowing ANCSA boundaries to be considered makes this determination susceptible to legal challenge, as the Valdez arguments against District 36 prove.

⁴⁶ See *Groh v. Egan*, 526 P.2d 863, 878 (Alaska 1974) (“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.”). Nonetheless, the Municipality of Anchorage is considered socio-economically integrated as a matter of law.

V. CONCLUSION

The Calista Parties request that the Court take this important issue into consideration in its decision on the pending petitions for review, and clarify a rule that gives ANCSA regions a recognized place in the redistricting process.

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