IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

IN RE 2011 REDISTRICTING CASES

**Case No. 4FA-11-02209 CI.**

**RILEY ET. AL. PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

The Riley Plaintiffs seek partial summary judgment on several issues related the third final redistricting plan adopted by the Proclamation of Redistricting, July 12, 2013 (herein referenced as Final Plan).[1] Specifically, they seek summary judgment on the issues of compactness of the House Districts 3,5,9,12, and 32; the unnecessary splits in the Mat-Su and Kenai Districts; the avoidable deviation variation in SD 5 and 6; and the Alaska Equal Protection claims related to the non-compact nature of SD B and the splitting of the University of Alaska (UAF) campus.

## I. SUMMARY JUDGMENT STANDARD

The law of this case respecting the standard of review was set out by this Court in its order of December 23, 2011,[2] and this Courts Memorandum Decision of February 1, 2012.[3] Specifically, this Court's review of the Board's action

GAZEWOOD & WEINER, PC
1008 16th Avenue
Suite 200
Fairbanks, Alaska 99701
Tel: (907) 452-5196
Fax: (907) 456-7058
info@fairbankslaw.com

1 ARB 00017436 The Court's scheduling order set out an abbreviated procedural history of this remand which shall not be repeated here. See Scheduling Order (Aug. 28, 2013), at 1.
2 Order on Contiguity of House District 37, at 4 (12/23/11)
3 *Memorandum Decision and Order Re: 2011 Proclamation Plan* (Feb. 1, 2012), at 45-47

utilizes a somewhat modified standard of review employed by the Court in reviewing administrative agency actions.[4] The Court has held that the standard of review is to ensure that the reapportionment plan under review is not unreasonable and is constitutional under Art. VI, § 6 of Alaska's Constitution.[5] Whether a plan or a portion of a plan is constitutional is a question of law subject to *de novo* review. As to whether a plan or a portion of a plan is unreasonable, the "Court must examine not policy but process and must ask whether the agency has not really taken a 'hard look' at the salient problems or has not generally engaged in reasoned decision making."[6]

---

4 Id. citing Alaska Airboat Assoc. v State,18 P.3d 686, 690 (Alaska, 2001)

5 *Memorandum Decision and Order Re: 2011 Proclamation Plan* (Feb. 1, 2012), at 45., citing *Carpenter v Hammond, 667 P.2d 1204, 1214 (Alaska, 1983) quoting Groh v Eagan,* 526 P. 2d 863, 866-67(Alaska, 1974); Also referencing *Kenai Peninsula Borough v State,* 743 P.2d 1352, 1275-58 (Alaska 1987); *Hickel v Southeast Conference,* 846 P.2d 38 (Alaska, 1992)

6 *Memorandum Decision and Order Re: 2011 Proclamation Plan* (Feb. 1, 2012), at 46. As the Court is aware, the Plaintiffs assert that the proper standard of review as to "unreasonableness" where there are disputed facts at issue also includes consideration as to whether the agency's decision is supported by the facts and has a reasonable basis in the law". *Gunderson v University of Alaska,* 922 P.2d 229, 233 (Alaska, 1996) quoting *Tesoro Alaska v Kenai Pipeline Co., 746 P.2d 896 (Alaska, 1987)* Under this test, "there must be substantial evidence in the record that supports the findings that are disputed." *City of Nome v Catholic Bishop of Northern Alaska,* 707 P.2d 870, 875 n. 2&3, and 876 (Alaska, 1985) Under such circumstances, the Board may not rely upon *post* hoc justifications involving evidence outside the record to support the Board's actions. Id. The Plaintiffs would request the Court to reconsider the applicable standard and reserves their objection to the Court previously articulated standard.

## II. COMPACTNESS CLAIMS

a) Introduction. The Plaintiffs Riley et. al.'s Amended Renewed Application challenges House Districts (HD) 3, 5, 9, 12, and 32 alleging that they are not relatively compact when compared to possible alternatives, and therefore violate Article VI, Section 6 of the Alaska Constitution.[7]

As the Court is aware, the Alaska Constitution requires that each legislative district be compact.[8] Compactness is the first priority among the constitutional standards applicable to redistricting.[9] As this Court has previously held, "compact" means having a small perimeter in relation to the area encompassed, which should not have irregular appendages.[10] Of particular relevance to the present question, this Court "**should 'look to the relative compactness of proposed and possible districts** in determining whether a district is sufficiently compact.' (emphasis added)[11]

---

7 First Amended Application To Correct Errors In Alaska State Legislative Redistricting Plan After Remand, para. 14, 20, & 23

8 AK CONST. Art. VI, Sec. 6 *Hickel v Southeast Conference,* 846 P.2d 38, 44 (Alaska, 1992); *Kenai Peninsula Borough v State,* 743 P.2d 1352, 1367 (Alaska, 1992) The Court is familiar with the standards purpose and goals, which need not be repeated here. Scheduling Order (Aug. 28, 2013), at 4.

9 "The requirements of Article VI, Sec. 6 (of the Alaska Constitution) shall receive priority *inter se* in the following order: (1) continuous and compactness....." *In re 2001 Redistricting Cases,* 44 P.3d 141, 143 n.2 (Alaska, 2002), quoting *Hickel v Southeast Conference,* 846 P.2d at, 62. The purpose of the compactness requirement is to prevent gerrymandering, which is the "dividing of an area into political units "in an unnatural way with the purpose of bestowing advantages on some and thus disadvantaging others."

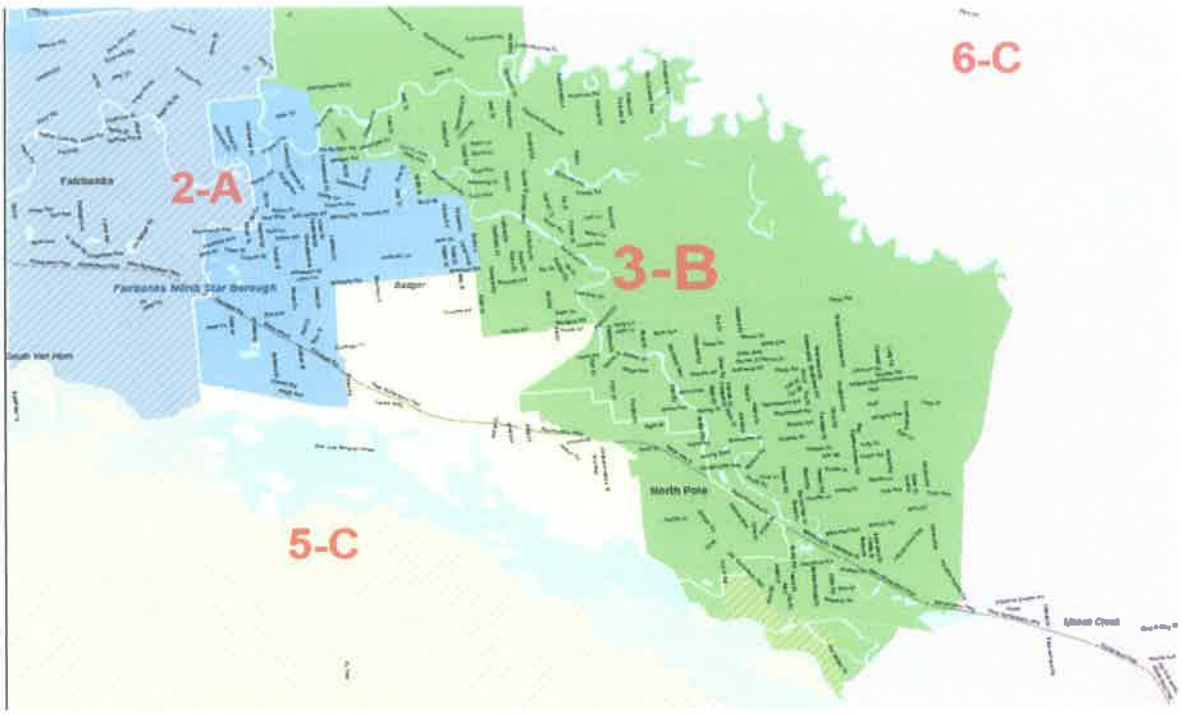
10 *Memorandum Decision and Order Re: 2011 Proclamation Plan* (Feb. 1, 2012), at 34 *citing Hickel, supra., at 45-46; Carpenter v Hammond,* 667 P.2d 1204, 1218 (Alaska, 1983)(Matthews, J., concurring), *Davenport v Apportionment Comm'n of New Jersey,* 304 A. 2d 736, 743 (N.J.Super. Ct. App. Div. 1973)

11 *Id.*

**b) House Districts 3 & 5.**[12] House Districts 3 and 5 are not relatively compact. HD 3 is an elongated district running in a northwest- southeast orientation on the eastern side of the Fairbanks North Star Borough. It includes a portion of Chena Hot Springs Road (Fabian Dr. to Nordale Road) on the northwestern border, and runs to Old Valdez Trail (south of North Pole). On the other hand, HD 5 is a large district whose population is concentrated on the western side of the FNSB, including Chena Ridge and Chena Pump Roads. The District jumps across the Chena River to include the Fort Wainwright Artillery Range, and back across the Chena River to pick up an anvil-shaped appendage containing a slice of the Richardson Highway (Rozack Rd to Holland Aviation Street) west of the City of North Pole that protrudes into HD 3 up to a portion of Bradway Road (Lakloey Dr to Benn Lane). The anvil-shaped appendage contains an estimated 811 people.[13] The irregular anvil-shaped appendage clearly juts into an area that is more closely associated with the adjacent areas in HD 2 or 3, however, the removal of the anvil-shaped appendage from HD 3 would require the elongation of HD 3 in either the south-eastern or northwestern direction.

12 First Amended Renewed application, para. 14
13 Exhibit 1 (Aff't of L. Lawson)

**HD 3 & 5 Final Plan (Snapshot)**[14]

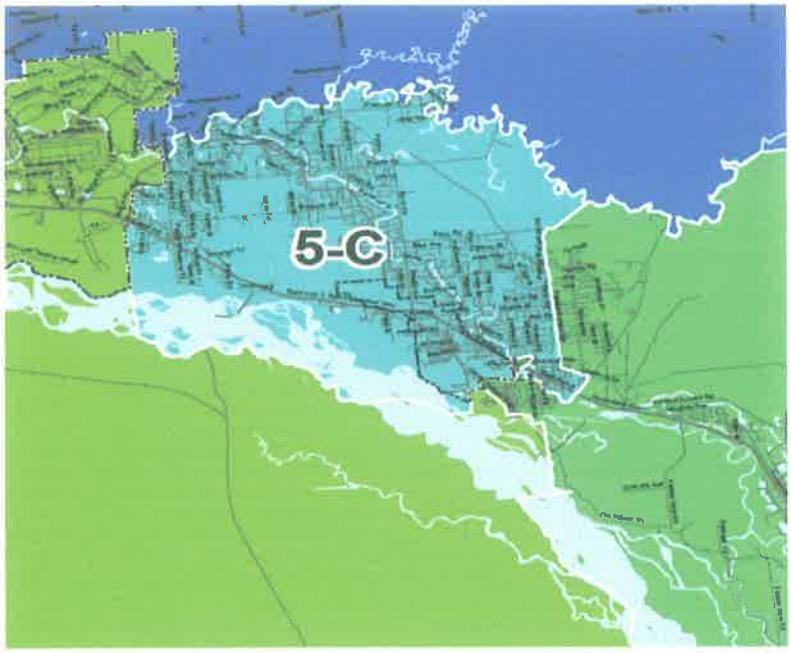



Comparing two draft configurations for the area --- Board Draft Plan D and Gazewood & Weiner (G&W) plans[15] -- clearly demonstrate that a more compact North Pole district could be configured. Both of these configurations were adopted as proposed plans by the Board on June 21, 2013[16] and posted on the Board's website on June 24, 2013.[17] Thus, the more compact alternative configurations for the area of HD 3 were not only possible but were actually Board adopted draft plans; one of the plans, (Draft D) was actually drawn by the Board, and is clearly the most compact of the above demonstrations.[18]

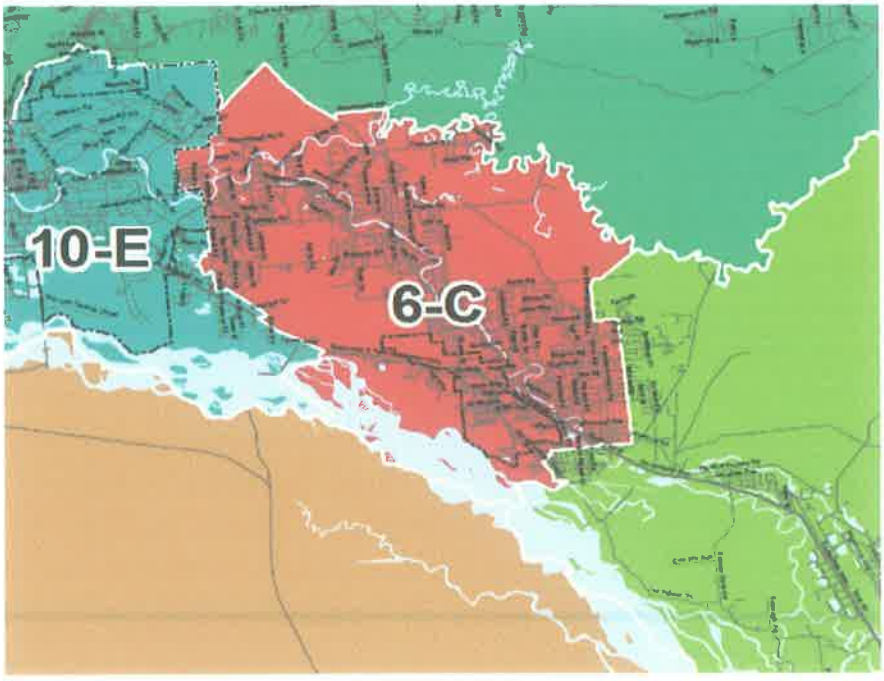
---

14 ARB 00017436
15 ARB 00017300
16 ARB 0001711-13, 16 (Tr.- June 21, 2013 Hearing , pp. 11-13, 16)
17 See http://www.akredistricting.org
18 ARB 0001711-13 The Riley Plaintiffs have not included mathematical measurements of the districts given the Court's prior observation that such mathematical measurements were unhelpful.

Board Draft Plan D (Snapshot)

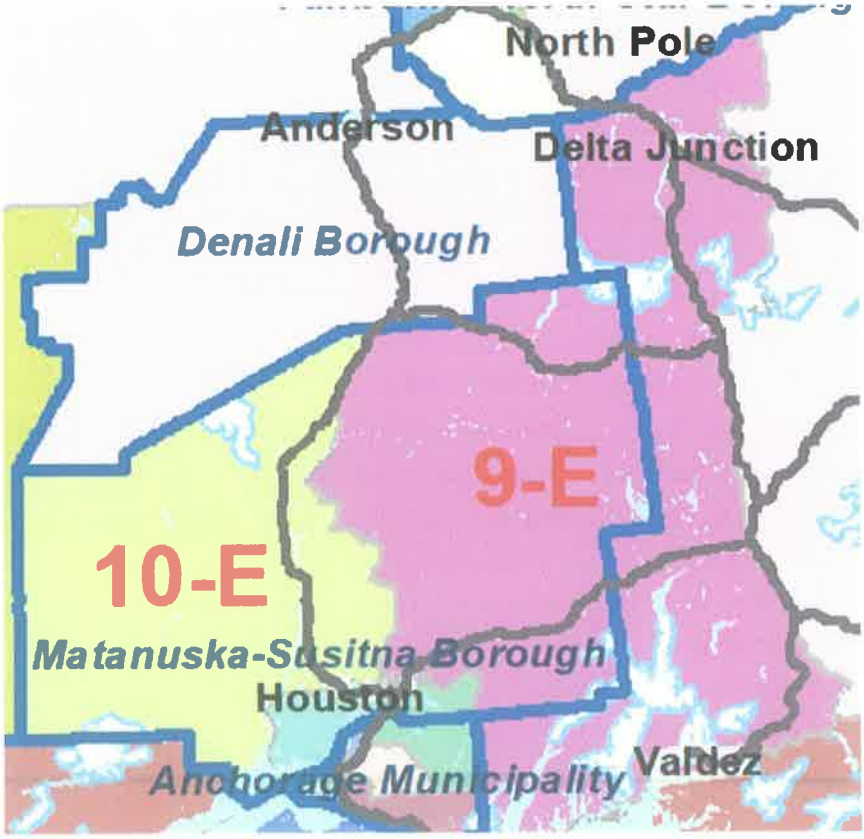



Gazewood & Weiner Draft Plan (Snapshot) (down)



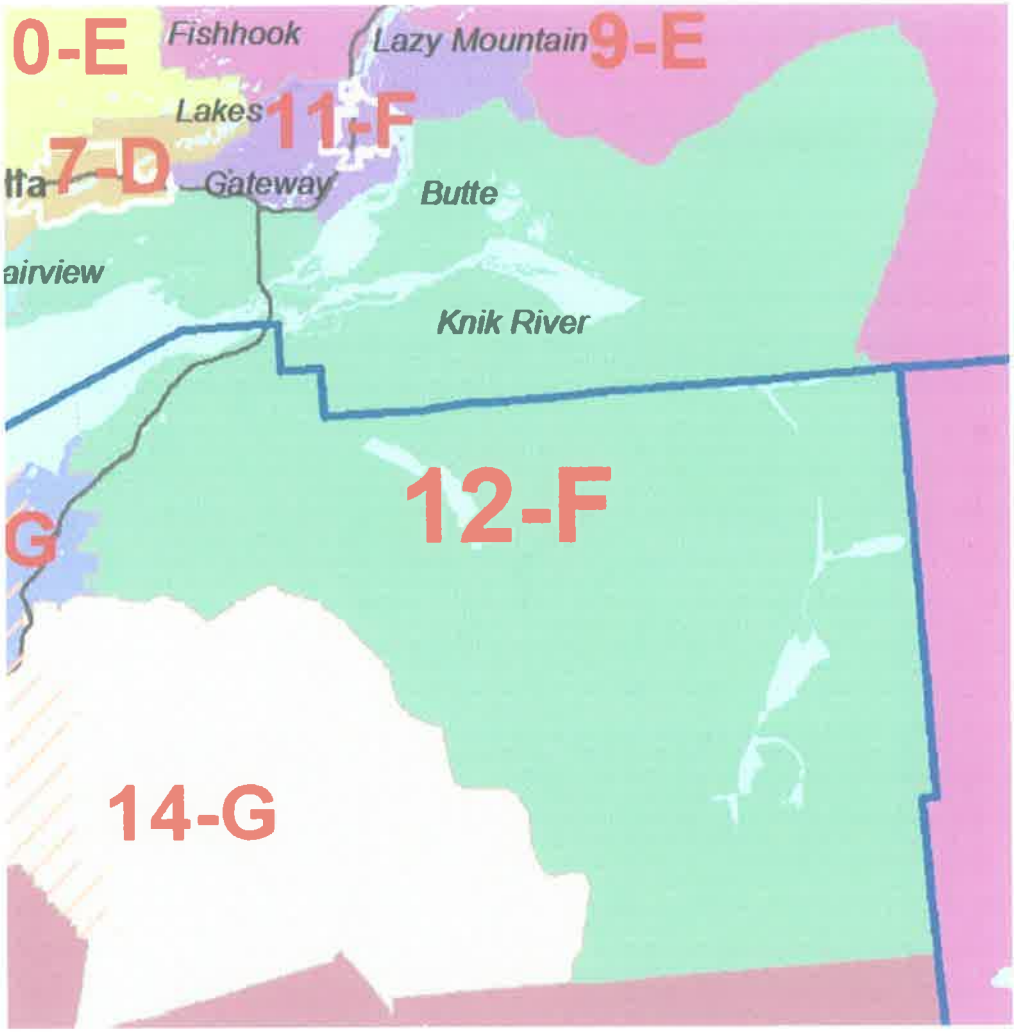
**b) HD 9 and 12.**[19] House Districts 9 and 12, located within and without the Matanuska-Susitna (Mat-Su) Borough, are not relatively compact. HD 9 comprising the eastern Mat-Suand areas east, northeast and southeast of the borough. The district straddles the eastern boundary of the Mat-Su Borough. The district has two appendages: one jutting north to pick up Delta Junction and its environs, and a second jutting to the south to pick up Valdez and the northern coast of Prince William Sound. This second appendage

**HD 9 & 12 Final Plan (Snapshot)**[20]




19 First Amended Renewed application, para. 20
20 ARB 00017436

**HD 12 Final Plan (Snapshot)**[21]




actually disects HD 32 destroying any sense of land-contiguity along the north shore of Prince William Sound in HD 32. On the other hand, HD 12 straddles the Mat-Su/Anchorage boundary, and has a rounded appendage jutting into HD 9 in a northeastern direction.

The Mat-Su borough, itself, is a compact semi-rectangular shape, and it is possible to construct five (5)

21 ARB 00017436

house districts completely within the borough's boundaries. However, under the Final Plan, there are six (6) districts (HD 7-12) containing Mat-Su residents.[22] This is only possible if two districts cross the Mat-Su borough boundaries to join populations to the Borough districts. Of course, joining one area outside the borough to a Mat-Su district, mathematically requires a second area outside the borough be joined to a second Mat-Su district to avoid underpopulation of that district.

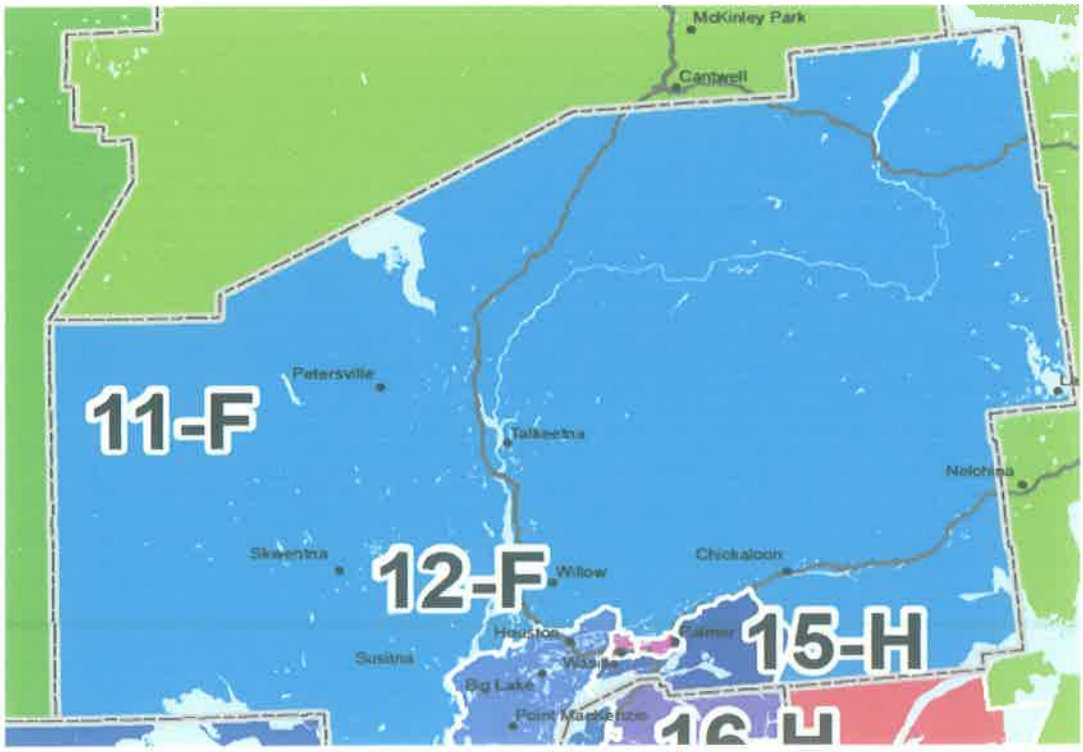
Remarkably, since the beginning of this redistricting cycle in 2011, the Board has known that a more compact plan for the Mat-Su is possible. On May 23, 2011, the RIGHTS Coalition submitted a plan[23] with compact Mat-Su district confined to the boundaries of the Mat-Su Borough. As clearly illustrated in the accompanying illustration,the RIGHTS Plan clearly demonstrated that five (5) compact districts might be drawn within the Mat-Su Borough. When compared to the Final Plan drawn two (2) years later, the Board simply ignored the clearly demonstrated ability to draw more compact districts in the Mat-Su.

22 Of course, this configuration raises serious over-representation and equal protection issues discussed below.

23 Trial Exhibit J 15. See accompanying report at Trial Exhibit J16

**RIGHTS COALITION PLAN (MAY 23, 2011)(Snapshot)**


**Gazewood & Weiner Draft Plan (Snapshot)**




The Board cannot argue that these possibilities were

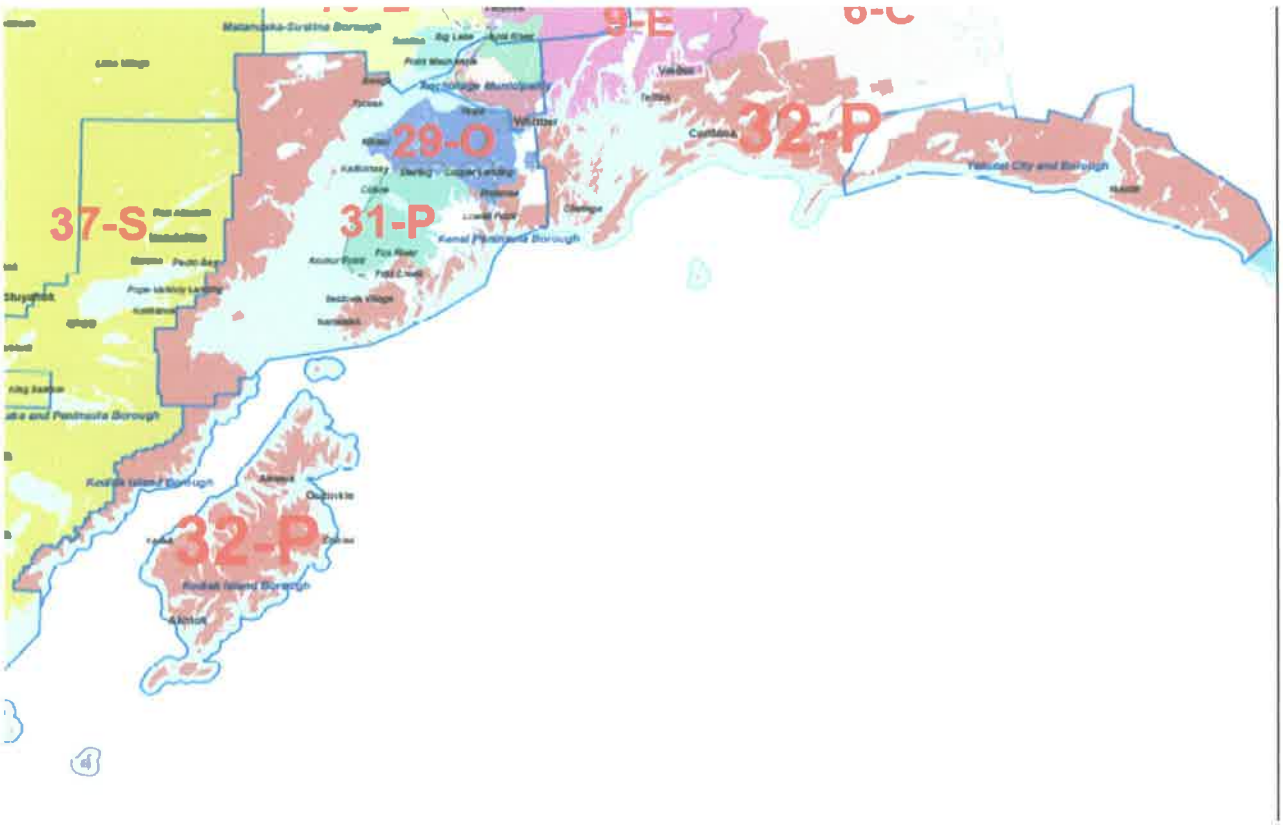
overlooked on the third remand to the Board. On July 1, 2013, the undersigned presented the G&W Plans to the Board.[24] The plans demonstrate that more compact Mat-Su districts could have been configured if the districts were confined to the Mat-Su borough boundaries. As demonstrated in the above snapshot, the G&W plan fit all the proposed HD 11-15 compactly into the Mat-Su Borough. Neither the RIGHTS nor the G&W plans contain districts with bizarre appendages, and no districts needlessly protrude out from the borough to capture non-borough populations.

Comparatively HD 9 of the Final Plan has the most egregious protrusions, which snake out of the borough to include Delta Junction, Valdez and Whittier with the Mat-Su districts. However, alternative configurations were not only possible, but were proposed and accepted as draft plans by the Board in the first round of planning as well as the third round of planning. Clearly, the RIGHTS and G&W Plans demonstrate a more compact configuration of Mat-Su was possible, considered by the Board and rejected. As a consequence, Final Plan HD 9 and 12 are not relatively compact.

24 ARB 00017010 et. seq.

c) **HD 32.**[25] House District 32, which stretches from western mainland shore of Cook Inlet within the Kodiak Borough, across the Gulf of Alaska to include the southern tip of the Kenai Borough, and includes portions of the north coast of Prince William Sound, Cordova and Yakutat City and Borough. The most noticeable lack of compactness in

**HD 32 Final Plan (Snapshot)**[26]




HD 32 is directly related to the lack of compactness in HD 9. Specifically, HD 9 drops down to include Whitter and Valdez, severing those communities from Prince William Sound, and destroying the coastline contiguity between the Eastern and Western Prince William Sound coastlines within HD 32.

25 First Amended Renewed application, para. 23
26 ARB 00017436

A more compact alternative can actually be found in the Board's First Final Plan (6/13/11). HD 32 is very similar to the First Final Plan HD 35, except that HD 32 includes Tyonek, the western coast of Cook Inlet in the Kenai Borough, Nanwalek, and Port Graham, but does not include Whittier. As a result, HD 32 is less compact than HD 35 found within the First Final Plan. Specifically, the addition of the western coast of Cook Inlet within the Kenai Borough (which includes Tyonek and Belgua) creates an unnecessary appendage jutting to the north.

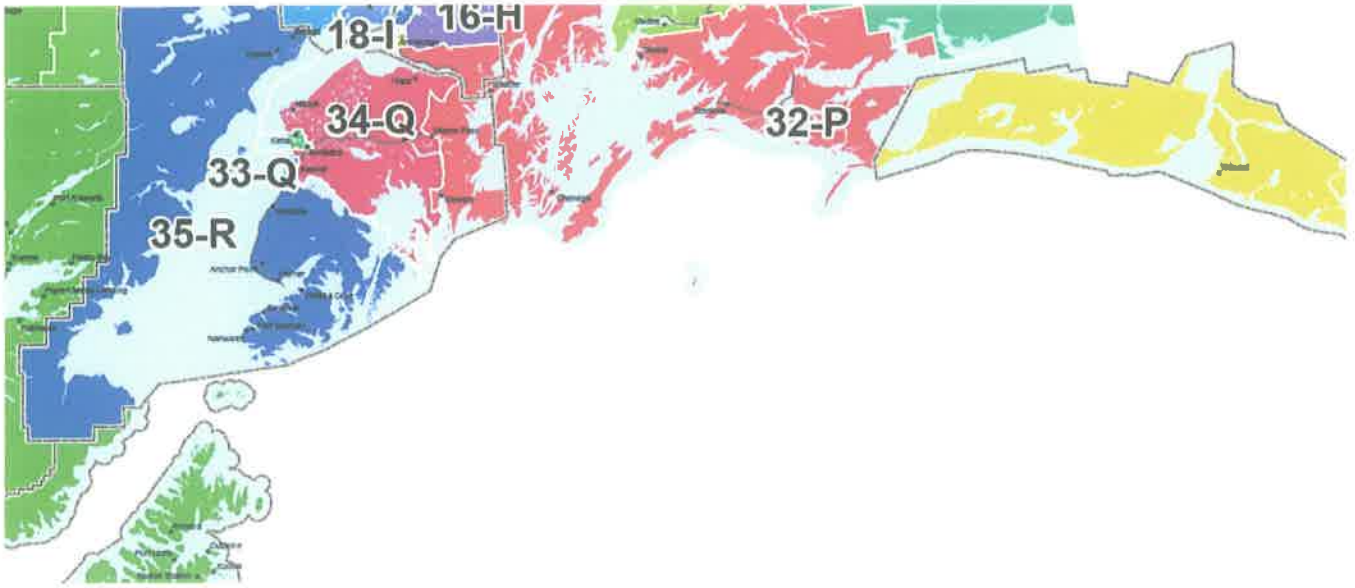
HD 35 First Final Plan (6/13/11) (Snapshot)


More compact alternatives for the area were proposed to the Board and ignored by the Board. For example, the G&W Draft plan presented an option that united Prince William Sound coastline with the exception of Valdez.[27] While this

27 This is achieved by including portions of south Anchorage, the eastern portion of which includes a portion of Prince William Sound. Valdez was excluded because of the comments by the City of Valdez which expressed a desire to be included within the Richardson Highway Corridor.

portion of Alaska presents serious challenges because of the irregular coastline around the relatively large Gulf of Alaska, configuring the area around Cook Inlet and Prince William Sound is more manageable and allows Kodiak to be associated with its adjacent coast line in Southwestern Alaska, configures the southern Kenai borough with other portions of the Kenai borough and allows Yakutat to be associated with the rest of Southeast Alaska.[28] The result is more compact districts.

**Gazewood & Weiner Draft Plan (Snapshot)**




**d) <u>Summary: Compactness.</u>** As demonstrated above, HD 3, 5, 9, 12, and 32 are not relatively compact when compared to possible alternatives. The Districts therefore violate

28 These advantages largely relate to the socio-economic integration standards in the Alaska Constitution, which necessarily involve disputed facts.

Article VI, Section 6 of the Alaska Constitution.

## III. UNNECESSARY SPLITTING IN THE MAT-SU AND KENAI DISTRICTS.

**a) Introduction** The Riley Plaintiffs contend that the configuration of Mat-Su and Kenai House Districts violate the equal protection requirements of the Alaska and federal constitution.[29] Previously in this case, the Courts primarily looked at splitting municipal populations to dilute voting strength of the City of Fairbanks[30] and portions of the Fairbanks North Star Borough.[31] The Plaintiffs claims vis-a-vis the Mat-Su and Kenai House Districts is that the Final Plan unnecessarily split municipal voters residing in these two boroughs.

**b) Splitting Municipal Boundaries- The Law of the Case.** Art. VI, § 6 of the Alaska Constitution allows but does not require the Board to consider municipal boundaries.[32] However, on March 16, 2011, the Board adopted Guidelines that it would use in the 2010 redistricting cycle.[33] The guidelines provide, "The Alaska Redistricting Board shall use the following criteria in order of priority listed when adopting a

---

29 First Amended Application To Correct Errors In Alaska State Legislative Redistricting Plan After Remand, para. 21 & 24

30 Supreme Court Order No. 77, at 6-7

31 Order Regarding the Law of the Case and the Splitting of the Excess Population of the Fairbanks North Star Borough, (Dec. 23, 2011). See also *Memorandum Decision and Order Re: 2011 Proclamation Plan* (Feb. 1, 2012), at 108-112

32 The section reads, "Consideration may be given to local government boundaries."

33 Exhibit 3. ( See ARB00000009)

Redistricting Plan for the State of Alaska."[34] Among State Constitutional Redistricting Principles, the Board listed as its sixth priority "Consideration to be given to local government boundaries where it is practical to do so".[35] Of course, practicality may be defined by whether a guideline with a higher priority necessitated a different result. Thus, to the extent that the Board employed a 'reasoned decision making process," that process was defined by the Board's self-imposed guidelines.

Notwithstanding independent self-imposed guidelines, local government boundaries implicate constitutional considerations. As this Court has previously held, "a redistricting board 'cannot intentionally discriminate against a borough or any other politically salient class of voters by invidiously minimizing that class's right to an equally effective vote.' Intentional discrimination can be inferred where a redistricting plan 'unnecessarily divides a municipality in a way that dilutes the effective strength of municipal voters."[36] "But an inference of discriminatory intent may be negated by a demonstration that the challenged aspects of a plan resulted from legitimate non-discriminatory policies such as the Article VI, section 6 requirements of compactness, contiguity and socio-economic integration."[37]

---

34 Id.
35 Id.
36 *Memorandum Decision and Order Re: 2011 Proclamation Plan* (Feb. 1, 2012), at 107-108
37 Id., at 108 n 159

The Alaska borough system is a unique system of local government, with the Unorganized Borough being the most unique aspect. The Unorganized Borough is a single borough established by State statute, and comprised of all areas of the state not within organized boroughs.[38]

**c) The Mat-Su Splits**

The Mat-Su Borough has a population of 88,955.[39] It is undisputed that the "ideal district population" is 17,755.[40] As a result, the Mat-Su Borough's population is equal to a near perfect five (i.e. 5.010) ideal districts. This fact is undisputed and was a finding made by the Board.[41] Thus, the surplus population within the Mat-Su Borough boundaries was largely *de minimus* being roughly 1% of an ideal district (roughly 177 people). It is a mathematical certainty that "spreading" these 177 people over the five ideal districts that might be constructed in the Mat-Su would only increase deviation by .2%. It is a mathematical likelihood that if any significant number of Mat-Su voters are located in a single district whose boundaries extend outside the Mat-Su borough boundaries, another district will have to be constructed in a manner that also transects the borough boundaries. And that is exactly what the Board did.

---

38 AS 29.03.010. The Unorganized Borough is authorized by AK CONST. X, section 6

39 Exhibit 4 (P.L. 94-171 Redistricting Data for Boroughs and Census Areas)

40 Supra. Re: compactness discussion of Mat-Su districts.

41 ARB00017350 [Written Findings In Support of ARB's 2013 Proclamation Plan]

The Board carved out six (6) districts that are either totally (HD 7,8,10 and 11) or partially (HD 9 & 12) within the Mat-Su borough.[42] Five of these districts (HD 7,8,10,11 & 12) contain a majority of Mat-Su borough voters.[43] The sixth district has less than a majority of Mat-Su Borough voters. As discussed above, HD 9 includes areas of the unorganized borough to the east, north and south of the Mat-Su borough eastern boundary; HD 12 straddles the common border of the Mat-Su Borough and the Municipality of Anchorage.[44]

There was no reason to split the Mat-Su. As noted above, the Rights Coalition Plan submitted at the beginning of this process (May 23, 2011) and the G&W plan submitted after the third remand, both demonstrate that it is completely feasible to draw five (5) districts within the Mat-Su Borough boundaries. By unnecessarily dividing the the Mat-Su borough this court may infer that the Board intentional discriminated against a politically salient class.[45] Moreover, by deviating from its guidelines by failing to consider municipal boundaries, the Board has deviated from its "reasoned decision-making." As a result, the law of this case provides that the Board has the burden of proof to demonstrate that it had a neutral non-

42 Id.; see Exhibit 7 (Community By District; ARB00017377-ARB00017387)
43 ARB00017351[Written Findings In Support of ARB's 2013 Proclamation Plan]
44 Supra. Re: compactness discussion of Mat-Su districts.
45 *Memorandum Decision and Order Re: 2011 Proclamation Plan* (Feb. 1, 2012), at 107-108

discriminatory purpose in twice splitting the Mat-Su borders,[46] and that the this purpose gave effect to a higher priority goal articulated in its guidelines. It cannot do so.

The Board seeks to justify its unnecessary division of the Mat-Su in light of the need to accommodate the excess population of Anchorage(MOA).[47] The population of Anchorage is 291,826, or 16.43 ideal districts.[48] The Board considered this one of the three major problems confronting the Board: i.e. the Rural Population Shortfall, the excess population of Anchorage and the excess population of Fairbanks.[49]

Clearly, the three presenting problems required "hard choices and a balancing of competing constitutional requirements." However,those choices and balancing were made more simple by the reasoned decision making set forth in priorities contained in the Board guidelines, which reflected the *Hickel* process. The Court in *Hickel and In re 2001 Redistricting Cases,* provided clear guidance as to the process the Board was to use in balancing competing constitutional requirements. That process set clear priorities as follows:

> Priority must be given first to the Federal Constitution, second to the federal voting rights act,

46 *In re 2001 Redistricting Cases,* 44 P.3d 141, 144 (Alaska, 2002),
47 ARB00017350 [Written Findings In Support of ARB's 2013 Proclamation Plan]
48 ARB00017349 [Written Findings In Support of ARB's 2013 Proclamation Plan]
49 ARB00017349 [Written Findings In Support of ARB's 2013 Proclamation Plan]

> and third to the requirements of article VI, section 6 of the Alaska Constitution. The requirements of article VI, section 6 shall receive priority *inter se* in the following order: (1) contiguousness and compactness, (2) relative socioeconomic integration, (3) consideration of local government boundaries, (4) use of drainage and other geographic features in describing boundaries.[50]

The Guidelines adopted by the Board reflect these priorities and set forth a clear measure of the "reasoned decision-making process" required of the Board. Unfortunately, the Board once again did not follow the *Hickel* process. There is nothing in the findings demonstrating that the Board considered the order of priority set forth in *Hickel* or the Board adopted Guidelines when they considered the competing constitutional standards.[51]

The *Hickel/2001 Redistricting* priority process clearly elevates contiguity and compactness as the fir1st priority in balancing article VI, section 6 constitutional standards. As noted above, there were plans presented to the Board which provided a more compact Mat-Su configuration; e.g. the Draft Plan D and G&W plans.[52] Those plans generally solved the Anchorage excess population problem by combining the excess populations from Anchorage and Kenai with Whitier-Valdez-

---

50 *In re 2001 Redistricting Cases*, 44 P.3d 141, 143 n.2 (Alaska, 2002), quoting *Hickel v Southeast Conference*, 846 P.2d at, 62

51 Interestingly, the Board's findings include the finding that the Board counsel advised the Board that it need not complete steps 2 and 3 of the *Hickel* process. ARB00017349 There is nothing in the Findings clarifying whether the Board counsel advised the Board that the ordered priority of constitutional standard was part of the *Hickel* process.

52 See discussion supra.

Cordova (Draft Plan D) or Whittier-Seward-Cordova (G&W Plan).[53] The question, therefore, is whether these plans were considered by the Board, and whether the Board found that constitutional standards with a higher priority to compactness required the configuration set forth in the Final Plan.

The Board findings indicate that it failed to take a hard look at either the Whitier/Valdez/Cordova configuration set out in its own Draft Plan D, or the Whittier/Seward/Cordova configuration set out in the G&W Plan. More importantly, the findings do not support a conclusion that the Board ever considered relative compactness as a priority in balancing the constitutional requirements implicated by the Anchorage excess population problem.[54]

The Board findings state that the Board considered four (4) options to solve the Anchorage excess population problem: i.e. 1) over-populating the Anchorage districts by spreading the excess population across the other 16 Anchorage districts; 2) creating a Anchorage-Kenai district; 3) creating an Anchorage-Valdez-Richardson Highway district, or 4) creating a larger Anchorage-Mat-Su district. However, the Board's justification for these choices were premised upon

53 See discussion relating to compactness of HD 32 supra.
54 See generally ARB00017349-350

factors other than compactness. Those factors had either a lower priority than compactness or had no priority at all.

i) The decision To Not Spread Anchorage Population Across The Other Anchorage Districts. Of course, the Board has always been reluctant to spread the excess population of Anchorage across the other 16 Anchorage-majority districts, and has cited a concern that such a plan would increase the deviations within the Anchorage districts by 2.72% "pushing the total deviation range within Anchorage over 4%.[55] This Court has expressed the view that the Board's approach to deviations in the past is "somewhat strict", but agreed that an error in favor of lowering deviations was clearly within the Board's discretion.[56] Thus, the Board clearly had the discretion to adopt a plan with lower deviation in Anchorage. However, the Board's argument is misleading because the Board failed to apply the proper standards and process in it's desire to maintain low deviations in the Anchorage bowl.

The concern respecting urban deviations arises out of the Court's holding in *In re 2001 Redistricting Cases*, which considered acceptable deviations in Anchorage. In that case, the Court struck down deviation within the Anchorage bowl ranging between 5.5% to 9.5%, because the Board had not

55 ARB00017349
56 *Memorandum Decision and Order Re: 2011 Proclamation Plan, supra,* at 109.

attempted to reduce deviations further.[57] In reaching this conclusion, however, the Court explained that it was applying previously established priorities between constitutional standards. The Court stated

> The board considered and rejected Anchorage plans with significantly lower maximum deviations, apparently because these plans did not respect the board's conception of neighborhood boundaries. But … Anchorage neighborhood patterns cannot justify "substantial disparities" in population equality across Anchorage districts. Anchorage is by definition socio-economically integrated, and its population is sufficiently dense and evenly spread to allow multiple combinations of compact, contiguous districts with minimal population deviations. Accordingly, the Anchorage deviations are unconstitutional, and require the board on remand to make a good faith effort to further reduce the deviations.[58] (emphasis added)

Thus, the test is not merely whether the Board plan reflects the smallest population deviation, but rather, the Court requires a process in which the Board must attempt to reduce deviations among districts that are compact and contiguous. Thus, in the consideration of priorities, reducing deviations in urban areas is an equal priority to maintaining compact and contiguous districts.

As noted above, the Board elevated reducing deviations in Anchorage without consideration of whether the alternatives resulted in more compact and contiguous districts. The resulting HD 9 and 12 are not relatively

57 *In re 2001 Redistricting Cases, 44 P. 3d, at 146 n 11.* The Court later declined to articulate any maximum deviation among districts within an urban area explaining that its prior decision merely meant that deviations "slightly under 10% (i.e. 9.5%) were unconstitutionally excessive. *In re 2001 Redistricting Cases, 47 P. 3d, at 146*

58 *In re 2001 Redistricting Cases, 44 P. 3d, at 146*

compact, which not only fails to comply with the process demands articulated in *Hickel* and *In re 2001 Redistricting Cases*, but misunderstands the substantive standard articulated by the court that requires districts with the lowest deviations also be compact and contiguous districts.[59]

ii) The decision To Not Create An Anchorage-Kenai District. The Board justified it's rejection of an Anchorage-Kenai district option, because it would split the Kenai Peninsula Borough boundary twice.[60] The justification is factually wrong and legally incorrect. As noted above, creating an Anchorage/Kenai/Valdez (Draft Plan D) or an Anchorage/Kenai/Seward (G&W Plan) configuration is clearly possible without splitting the Kenai Borough boundaries twice.[61] The Board's assertion that a second split of Kenai was necessary if Anchorage and Kenai were joined is simply factually incorrect and is disproved by one of the Boards own draft plans (Draft Plan D).

---

59 Id. The fact that the Board's effort to reduce deviations in Anchorage did not consider compactness issues is reflected in several Anchorage districts that suffer from symptoms reminiscence of Kawasaki's finger in Fairbanks. There are elongated districts (e.g. HD 16 and 27) and bizarre appendages (e.g. southeastern appendage to HD 15, northeastern appendage on HD 18; the northwestern appendage on HD 23; the western notched appendage on HD 27; the southeastern triangular wedge on HD20; the far western up-thrust finger of HD 24 jutting into HD 22). These observations are not made to assert new causes of action with respect to the Anchorage districts. Rather, the observations are made to illustrate the consequences of elevating a "somewhat strict" view about deviations without regard to compactness. The observation is further evidence that the Board did not consider compactness in its quest for low deviation as required in *In re 2001 Redistricting Cases*, and that its findings in this regard are either pre-textual or the Board simply did not understand the holding of the Court in that case.

60 ARB00017349-350

61 See discussion relating to compactness of HD 32 supra.

The Board's rationale also employes the wrong standard. Attempting to justify splitting the Mat-Su twice to avoid splitting the Kenai twice presents a false choice. As previously noted, respect for municipal boundaries is a lower priority than compactness. Hence the proper question the Board should have reviewed is not which municipal boundaries need to be split twice; rather what configuration would result in the more compact configurations. Again, the Anchorage/Kenai/Valdez (Draft Plan D) or an Anchorage/Kenai/Seward (G&W Plan) configuration clearly present more compact configurations. The Board failed to consider the balance of conflicting constitutional standards using the correct priorities, which were set out in the Board's guidelines and prior case law. Thus, the Board failed to use a reasoned decision-making process consistent with prior case law and its own guidelines.

iii) The Anchorage-Valdez-Richardson Highway Option. The Board rejected the idea of an Anchorage-Valdez-Richardson Highway option because it would likely not be considered socio-econmically integrated.[62] The Board's decision on this matter was probably correct, however, for a different reason than articulated in the findings. Frankly, a district that jutted out of Anchorage's eastern boundary, included Whittier, crossed Prince William Sound to pick up Valdez, and than up the Richardson Highway, would be a meandering thin

62 ARB00017350

district that would violate compactness and socioeconomic standards. The Board's only articulated reason was a lack of socioeconomic integration, which provides further confirmation that the Board was not using the priorities set out in the guidelines and prior court decisions, and was not using the reasoned decision-making process set out in *Hickel* and *In Re 2001 Redistricting Cases*.

iv) A Larger Anchorage-Mat-Su District. The findings do not indicate why the Board rejected a larger Anchorage-Mat-Su district. Indeed, there is little evidence in the record that the Board actually considered a larger Anchorage-Mat-Su district.

v) The Anchorage/Mat-Su District. The Board findings include six (6) articulated reasons in favor of an Anchorage/Mat-Su District that required the splitting of the Mat-Su boundaries twice. None are articulated in reference to compactness or a need to maintain low deviations, but relied upon lower priority standards to deviate from a more compact configurations. Additionally, the Board used one unconstitutional standard and two extra-constitutional standards that were not articulated in its guidelines, as well as lower priority constitutional standards.

One articulated reason is that the Mat-Su is a fast

growing area of the state. This factor actually violates the Alaska Constitution which requires that "Reapportionment shall be based upon the population within each house and senate district as reported by the official decennial census of the United States.[63] As board council advised the Board,[64] in the 1970's and 1980's, the redistricting process adjusted census population numbers to exclude non-resident military from the census population.[65] However, the 1998 constitutional amendment added language requiring the used of the official decennial census data.[66] In 1999, the Legislature enacted AS 15.10.200 which prohibits adjusting census numbers for use in redistricting. In this case, the Board's use of projected future growth rates amounts to a prohibited population measure, and was an improper factor for the board to consider.

Two of the reasons cited by the Board were political "extra-constitutional" standards. Specifically, the Board found that the Mat-Su Mayor supported the plan.[67] Additionally, the board noted that there were no objections or public comment against the option.[68] Assuming that the Board is correct, such political support as relied upon by the Board, does not outweigh constitutional standards.

63 AK CONST. ART. 6, § 3
64 Memorandum White to Miller (April 8, 2011) See http://www.akredistricting.org/Files/PrisonMemo.pdf
65 *Carpenter v Hammond, 667 P.2d 1204, 1210- 1214 (Alaska, 1983); Groh v Eagan,* 526 P. 2d 863, 869-874(Alaska, 1974)
66 AK CONST. ART. 6, § 3
67 ARB00017350
68 Id.

Finally, the Board cited three other reasons that have constitutional significance for splitting the Mat-Su twice: socioeconomic integration, need to accommodate excess population and maintenance of proportional representation of the Mat-Su population. None of these reasons justify the splitting of the Mat-Su borough boundaries twice, because other plans submitted to the Board would accomplish the same results without splitting the Mat-Su twice.

Specifically, the Board Draft Plan D and the G&W plans maintain socioeconomic integration,[69] accommodate Anchorage's excess population and reflects the same proportional representation for all the affected boroughs. In addition, the plans provide for a more compact configuration, which has a higher priority than the other constitutional standards upon which the Board relies. Thus, the articulated basis for the configuration splitting the Mat-Su twice is legally insufficient and does not reflect a reasoned decision-making process in accordance with the guidelines adopted by the Board and prior court decisions.

---

69 Under both plans, all Mat-Su districts and all Anchorage and Kenai districts except one (i.e. the Anchorage/Kenai/Cordova district) are within a common borough, so that these districts would be socio-economically integrated as a matter of law. *In re 2001 Redistricting Cases*, 44 P.3d, at 146. Generally, Cordova has been held to be socioeconomically integrated with other communities around Prince William Sound. The final 1994 Redistricting plan had a district including Cordova, Valdez and Seward, which was found to be socioeconomically integrated. See http://www.akredistricting.org/Files/1980%20Board%20Archive/Prince%20William%20Sound%20Election%20Districts%20(1984).pdf See *Kenai Peninsula Borough v State*, 743 P.2d 1352, 1362 (Alaska, 1992)

c) **The Kenai Split.** The Kenai Borough has a population of 55,400.[70] It is undisputed that the "ideal district population" is 17,755.[71] As a result, the Kenai Borough's population is equal to 3.12 ideal districts, which means that it has a surplus population of 2,130.[72] If this population was evenly spread over the three Kenai districts wholly within the borough, the deviation would below 4%. In the Anchorage situation, which is more urban than the Kenai, the Board didn't want to exceed 4% deviation, which suggests that the the surplus population in the Kenai could be spread over the other Kenai districts in a manner consistent with the benchmarks set by the Board. The Board split the Kenai borough into 3 districts wholly within the borough (i.e. HD 29, 30, and 31) and placed 1,382 residents in HD 32.[73] The Districts wholly within the borough are slightly over-populated having deviations of 1.53, 1.50 and 1.51. Consequently, the split of the Kenai was not necessary, which would require the Board to demonstrate a neutral non-discriminatory for such a split.[74]

The Board findings do not explain why the Board felt it was necessary to split the Kenai.[75] Consequently, it is impossible for the Court to review such reasons on the

---

70 Exhibit 4 (P.L. 94-171 Redistricting Data for Boroughs and Census Areas)
71 Supra. Re: compactness discussion of Mat-Su districts.
72 ARB00017350
73 ARB00017388- ARB00017493; Cf. Exhibit 4 and 6.
74 *In re 2001 Redistricting Cases*, 44 P.3d 141, 144 (Alaska, 2002),
75 See generally ARB0001745- ARB00017352

record.

Of course, the G&W plan also split the Kenai, however, there was a clear purpose in doing so: i.e. the need to deal with the surplus population of Anchorage. But the Final plan submerged the southern Kenai (i.e. Homer) in a long meandering district that starts in Tyonek, drops to Kodiak, back up to the southern Kenai, crosses the Gulf of Alaska skipping Valdez. The Final Plan does not use the surplus population of the Kenai borough to deal with any other surplus population nor to create a compact district. There is no articulated rationale for the split, and there is no observable rational reason for the split within the Board's Final Plan.

d) **Summary of Splits.** The Board's Final Plan unnecessarily splits the Mat-Su and Kenai House Districts. It is clearly possible to configure districts that retain the borough populations within the boundaries of their respective districts. The population of both boroughs were unnecessarily split municipal voters residing in these two boroughs. Intentional discrimination can be inferred where a redistricting plan 'unnecessarily divides a municipality"[76] "But an inference of discriminatory intent may be negated by a demonstration that the challenged aspects of a plan

76 *Memorandum Decision and Order Re: 2011 Proclamation Plan* (Feb. 1, 2012), at 107-108

resulted from legitimate non-discriminatory policies such as the Article VI, section 6 requirements of compactness, contiguity and socio-economic integration."[77] The Board bears the burden of proof on this point.[78]

As noted above, the Board cannot demonstrate on its record that it engaged in a reasoned decision-making process, guided by the priorities of constitutional standards articulated in its guidelines and prior Court decisions. On the contrary, the record contains optional plans that maintained the integrity of borough boundaries in compact and continuous districts. In fracturing the Kenai boundaries of these boroughs, the Board failed to explain its reasoning. In the case of the Mat-Su districts, the Board applied unconstitutional standards, and extra-constitutional standards. Where the Board cited constitutional standards in the case of the Mat-Su, it failed to engage in a proper reasoned decision-making process by failing to consider such standards in the order of priority prescribed by the Courts in *Hickel* and *In re 2001 Redistricting Cases*.

77 Id., at 108 n 159
78 Id.

## III. Avoidable Deviation Variance in SD 5 & 6.

a) **Introduction.** The Plaintiffs Riley et. al.'s Amended Renewed Application challenges the Fairbanks Senate District deviations.[79] In this context, "deviation" references the population of a district which is above or below the ideal district size based upon the official census data. As discussed below, the Board was under an obligation to minimize deviation between Senate districts. The record before the Board clearly indicates that the Board generally did not take a "hard look" at the deviation between Senate Districts in general. However, in considering a settlement offer from the Riley Plaintiffs, the Board was presented with an opportunity to reduce deviations in the Fairbanks Senate districts and failed to engage in the required "reasoned decision making process." Thus, the failure to reduce deviations between Fairbanks Senate districts was both unconstitutional and unreasonable.

**b) Relevant Facts.** Senate District B (SD B), comprised of HD 3 & 4)has a total population of 35,459. Senate District C (SD C), comprised of HD 5 & 6, has a total or 35,644. This results in a total deviation of -51 persons in SD B and +134 in SD C from an ideal senate district population.[80] On July 11, 2011 the Riley Plaintiffs, through

79 First Amended Application To Correct Errors In Alaska State Legislative Redistricting Plan After Remand, para. 16

80 Alaska House District is 17,755 and an ideal Senate District of 35,510. See Plt. Renewed Application & Board Answer (paragraph 9)

the undersigned counsel, made an offer to settle the present ligation if the Board would swap the Dist. 4-B to 4-C, and to change Dist. 6-C to Dist. 6-B in the proposed "Concept Plan" under consideration by the Board.[81] The change would change the populations of the Senate districts to 35,480 (SD B) and 35,623 (SD C) and reduce deviations between Senate districts to -30 and +113 respectively.[82]

The Board met on July 14, 2012 but did not go into executive session, nor did the Board's attorney advise the Board on the record about the offer.[83] Afterward, the undersigned called Board counsel and objected to the fact that the offer had not been communicated to the Board.[84] Board Counsel indicated that he had discussed the matter with the Board Chairman and that the Board Chairman had discussed the offer with each of the Boardmembers individually.[85] Board Counsel indicated that this was a normal and customary way that the Board transacted business.[86] The undersigned advised Board counsel that in his opinion, such a procedure --- often called daisy-chain communication --- violated the state Open Meeting Act, and that the Board should cure the violation by meeting and placing the matter on the record. Board counsel requested that the offer be made in writing, and on July 17,

81 Exhibit 2, (Aff't of Counsel, attached e-mail Walleri to White July 11, 2013)
82 See 00017764 - 00017765
83 ARB 00016854- 00016867
84 Exhibit 2 (Affidavit of Counsel)
85 Id.
86 Id.

2013, the undersigned provided the offer in writing, which was included in the Board record.[87] The letter explains that the relative deviation difference.

On July 18, 2013, the Board met to consider the offer,[88] and, after an executive session,[89] rejected the offer. In rejecting the offer, Mr. Brodie admitted that the Board never considered the deviations between Senate districts as a relevant factor.[90]

**c) The Board's Obligation To Reduce Deviations Between Senate Districts.** As this Court has previously noted, the Art. VI, § 6 requirements that requiring the lowest practicable deviations between districts applies to house districts, and not to senate districts.[91] However, this Court also noted that federal and state constitutional equal protection requirements mandate that "[A] State must make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable. Whatever the means of accomplishment, the overriding objective must be substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any

87 ARB 00016854- 00016867
88 Hrg. Tr. (July 18, 2013)
89 Id., at 5
90 Id., 7:19-24.
91 Memorandum Decision and Order Re: 2011 Proclamation Plan, supra, at 37-38

other citizens in the state."[92] Thus under the law of the case, the Board had an obligation to make a good faith effort to reduce the deviations between Senate districts under state and federal equal protection standards.

**d) The Fairbanks Senate Pairing Plan Violated State And Federal Constitutional Standards, The Board Failed To Take A Hard Look At Reducing Deviations Between Senate Districts In General, And Failed To Engage In Reasoned Decision Making Relative to Reducing Deviations Between Fairbanks Senate Districts.** As Boardmember Brodie admitted, the Board did not make a good faith effort relative to Senate districts; indeed, Mr. Brodie admitted that the Board never considered or otherwise attempted to reduce deviations between Senate Districts. The face of the record makes out a *prima facie* case that the Board simply failed to comply with this requirement in any fashion whatsoever. Thus, the record clearly establishes that the board failed to take a hard look at reducing deviations between senate districts in general.[93]

---

92 Id., at 38-39, citing, *Reynolds v Sims, 377 U.S. 533, 577 (1964), quoted in Kenai Peninsula Borough v State,* 743 P.2d 1352, 1358 (Alaska 1987); *and Hickel v Southeast Conference,* 846 P.2d 38, 47 (Alaska 1992).

93 The Board's emphatic refusal to consider deviations among Senate Districts is curiously at odds with the Board's prior stated position relative to deviations among Fairbanks House Districts. As this Court noted, the Board refused to "spread" the Fairbanks excess population among the Fairbanks districts because it would increase the deviation between Fairbanks house districts by 3.5%. This Court noted that the Board's definition of "as nearly as practicable" to be "somewhat strict", but agreed that an error in favor of lowering deviations was clearly within the Board's discretion. *Memorandum Decision and Order Re: 2011 Proclamation Plan, supra,* at 109. Taking an inconsistent position to not even consider deviations among Senate districts undermines any argument that the Board was engaged in a reasoned decision making process.

More specific to the present question, the Board record clearly establishes that in considering the Plaintiffs offer, the Board considered the relative deviations between SB B & C, and an alternative configuration with lower deviations. In such considerations, the Board selected the senate configuration with the higher deviation, which violates the Board's duty to make a good faith effort to reduce deviations between Senate districts.

More interestingly, Mr. Brodie urged his fellow board members to deny the lower deviation configuration on political grounds: i.e. to deny the Riley plaintiffs a perceived political advantage.[94] No other boardmember offered any other reason for selecting the senate configuration with the higher deviation, so that the only articulated reason in the record is a political (i.e. partisan) motivation. While the only articulated rationale for the decision was political, the Court need not involve itself in the partisan motivations of the Board. Rather, the law of the case is

94 Boardmember Bob Brodie indicated that "he (referencing the undersigned) just looked at the political makeup of the senate districts where his clients live and now he wants to change it to give them (Mr. Riley and Mr. Dearborn) the biggest advantage they possible can without any altruistic feelings of the state redistricting process. Hrg. Tr. (July 18, 2013) , at 8: 1-5 Of course, Dr. Handley identified the residents of Ester/Goldstream as Democratic leaning voters, and Board Counsel has often stated that the Riley Plaintiffs were stalking horses for the Democratic party. Of course, the Board denies any motivation to benefit the Republican party with the resulting district configuration, however, the statements by Mr. Brodie indicate that he believed that the senate pairing benefited the political interests of the political party that the Board associated with the Riley Plaintiffs, and an intention to ignore deviation considerations in furtherance of an intention to deny any such advantage to the Riley Plaintiffs and their Democratic associates. The motivations present factual issues in dispute that will require trial.

very clear that when confronted with the option to select a senate pairing plan that lower deviations, the Board has a duty to make a good faith effort to reduce deviations between senate districts. The failure to do so is clearly violative of state and federal equal protection requirements previously articulated by this court, rendering the Senate pairing plan for Fairbanks unconstitutional.

Additionally, it is clear that the Board did not take a "hard look" at its ability to reduce deviations in the Fairbanks Senate pairing. In articulating a political motivation to justify its failure to take this "hard look" the Board record clearly establishes that the Baord failed to engage in a reasoned decision-making process. Thus, the Fairbanks Senate pairing plan is both unconstitutional and unreasonable, and this Court should make such a finding.

**IV. TRUNCATION.**

**a) Prior Case Law On Truncation.** As a general matter, Senators are elected to four (4) year terms.[95] Senate terms are staggered so that one-half of the Senate is elected in each of the State's two year election cycle.[96] New redistricting plans necessarily produce districts that are substantially different districts, so that "a need to truncate the terms of incumbents may arise when

95 AK CONST. Art. II, II, §3
96 Id.

reapportionment results in a permanent change in district lines which either includes 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."[97] The power to truncate is a "discretionary power", and thus subject to review for abuse of discretion.[98] In *Groh v Eagan,* the Court held that the Governor had articulated valid reasons for shortening the terms of Senators in districts that had substantially changed by a permanent plan, although the Court did not explain what those reasons were.[99] In that redistricting round, the Court ordered interim redistricting plan did not require truncation of any Senate terms, because the Court "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."[100]

While the law respecting truncation of Senate terms in Alaska is sparse, it is sufficiently clear to discern that the Board has discretion to truncate Senate terms upon the adoption of a permanent redistricting plan for those incumbent Senators whose districts have substantially

97 *Eagan v Hammond, 502 P.2d 856, 873-874 (Alaska, 1972)*
98 Id. See also *Groh v Eagan, 526 P.2d 863, 881 (Alaska, 1974)* In these cases, the Court was discussing the Governor's power and discretion to truncate Senate terms, and held that the power was "incidental to his general reapportionment powers". *Eagan v Hammond, 502 P.2d, at 874* Given the Constitutional amendment that transferred those powers to the Redistricting Board, the power and discretion to truncate Senate terms would necessarily also transfer to the Board.
99 *Groh v Eagan, 526 P.2d at, 881*
100 *Eagan v Hammond, 502 P.2d, at 874 n 51*

changed. While the law defining "substantial change" is not clear, the Board's power in this regard is discretionary and subject to review for abuse of discretion. The "Court must examine not policy but process and must ask whether the agency has not really taken a 'hard look' at the salient problems or has not generally engaged in reasoned decision making."[101] Specifically in regard to truncation, the Board must articulate "valid reasons" for its decisions.

**b) The History of Truncation In This Redistricting Cycle.** Originally, in adopting its original plan two years ago, the Board required all Senate seats to stand for election in 2012, except in SD P, which had 86.8% of the previous Senate District population.[102] In discussing the matter, the Board adopted a recommendation from the Board council to truncate all seats that had over a 13% change (i.e. 87% the same).[103] As a result, all seats less than 85% of the population of the former district were truncated,

---

101 *Memorandum Decision and Order Re: 2011 Proclamation Plan* (Feb. 1, 2012), at 46. As the Court is aware, the Plaintiffs assert that the proper standard of review as to "unreasonableness" where there are disputed facts at issue also includes consideration as to whether the agency's decision is supported by the facts and has a reasonable basis in the law". *Gunderson v University of Alaska,* 922 P.2d 229, 233 (Alaska, 1996) quoting *Tesoro Alaska v Kenai Pipeline Co., 746 P.2d 896 (Alaska, 1987)* Under this test, "there must be substantial evidence in the record that supports the findings that are disputed." *City of Nome v Catholic Bishop of Northern Alaska,* 707 P.2d 870, 875 n. 2&3, and 876 (Alaska, 1985) Under such circumstances, the Board may not rely upon *post* hoc justifications involving evidence outside the record to support the Board's actions. Id. The Plaintiffs would request the Court to reconsider the applicable standard and reserves their objection to the Court previously articulated standard.

102 *Memorandum Decision and Order Re: 2011 Proclamation Plan* (Feb. 1, 2012), at 29. See Exhibit 8 (Senate Terms, First Final Plan, 6/13/11; ARB00000587)

103 ARB 000003534 (lines 13-17)

including two (2) seats over 75%: i.e. SD L (77.7%)SD T (78.1%).[104]

Of course, that plan was invalidated by the Courts, which was followed by an Amended Plan, which truncated all seats except SD P, which slightly changed and was not 86.7% the same. Oddly, the Board truncated SD B(City of Fairbanks) to allow only a two-year term in 2012 despite the fact that SD B had changed less than SD P (i.e. 86.9%).[105] Of course, this inconsistency begs the question as to whether, in considering the interim plan, the Board employed any standard based upon the percentage of change that might reflect a reasoned decision-making process.

On its third attempt to fashion a plan, the Board met on July 7, 2013 and once again altered course on truncation by changing its standard from the 13% change to a 25% change.[106] In making this decision, the Board clearly intended to affect only one district: i.e. SD B, which is the new North Pole/Ester district. Senator Coghill (R/North Pole) is the incumbent. The change allowed that Senator Coghill would not have to stand for election in 2014.

In the true Alaskan spirit that "There are strange

104Id.
105Exhibit 9 (Senate Terms Amended/Interim Plan). As the Court may remember, the Fairbanks City Senate seat was a primary issue of contention in the first round of litigation.
106ARB 000016914 (lines 11-24)

things done 'neath the midnight sun," the Board's July 7th meeting provides inferential evidence of overt partisan manipulations concerning the preservation of Senator Coghill's term of office. As the Board convened to consider truncation, it is clear that SD B was on the Boards mind and featured prominently in the discussions.[107] However, the conversation became very confused because the Board was re-lettering the Senate districts.[108] At this point, Mr. Randy Ruedrich, former head of the Alaska Republican party interrupted the Board discussion to interject the following:

> Mr. Ruedrich: I would suggest tht you allow us to either participate or take a recess so we can provide some clarity.
>
> Mr. Brodie: I wouldn't be opposed to that. We seem to be working ourselves into a corner.[109]

Mr. Ruedrich than goes into an explain that the problem under discussion is an "artifact" of the relettering of Districts in relation to the re-numbering of house districts.[110] Mr. Ruedrich offered specific examples of the problems focusing on specific districts. In addressing Mr. Coghill's district, he stated

> Ruedrich: You have the same problem in Fairbanks. If you change the the 2,3, the 1,2,3,4 locations, then A (City of Fairbanks) would be back to where it's suppose to be and B (Ester/North Pole) would be --- and I think all

---

107E.g. ARB 000016887 (lines 3-14);ARB 000016896 (lines 11-12);ARB 000016905 (lines 13)
108 See generally discussion at ARB 000016905-ARB 000016910.
109ARB 000016910 (lines 20-24)
110ARB 000016911

this conversation goes away, it becomes straightforward.[111]

Of course, Mr. Ruedrich's comments about how the districts were "suppose to be" strongly infers a shared pre-determination as to outcomes. The events that followed are consistent with such an inference.

Shortly thereafter, the Board discussed Sen. Stevens and whether he should have to run again.[112] Again confusion predominated. At this point, the Chairman announced that they should take a 15-minute so "We can all kind of get educated and look at this again"[113] The comment was an obvious reference to accepting Mr. Ruederich's offer to "educate" the board. After coming back on the record, Ms. McConnochie appeared to understand the situation better, and made a clear and concise motion to truncate districts if they were less than 75% the same people, and noted that it would only affect SD B, which, under the new standard, would not be truncated.[114] In substance, the Board went off record, conferred with the former chairman of the Republican party, and came back on the record to take the action.

---

111ARB 000016911 (lines 12-16)
112ARB 000016912-ARB 000016915
113ARB 000016914 (lines 3-5)
114ARB 000016914 (lines 11-19)

c) **The Truncation Plan Should Be Invalidated Because It Violated The Open Meeting Act.** Whether or not the Board complied with the Open Meetings Act,[115] AS 44.62.310, is a question of law.[116] Generally, the statute provides that all meetings should remain open to the general public.[117] Actions taken contrary to the Act are voidable.[118] Clearly going off the record to confer with the former head of the Republican Party as to which incumbent Senators should have to stand for election and for what terms constitutes a violation of the Opening Meetings Act.

In *Hickel,* the Court declined to enforce similar violations of the Open Meetings Act because the Court struck the plan down for other reasons.[119] Thus, if the Court doesn't invalidate the truncation plan on other grounds, the Court should invalidate the plan based on the open and flagrant violation of the Open Meetings Act.

**d) The Truncation Plan Should Be Invalidated Because It Was Irrational.** As noted above, the "Court must examine whether the agency has taken a 'hard look' at the salient problems or has not generally engaged in reasoned decision making."[120] Based on the clear record, it is obvious that the

115 AS 44.62.310
116 *Ben Lomond, Inc. v. Fairbanks North Star Borough, Bd. of Equalization,* 760 P.2d 508, 511 (Alaska 1988).
117 AS 44.62.310(a)
118 AS 44.62.310(f)
119 Hickel v Southeast Conference, 846 P.2d, at 56-57
120 *Memorandum Decision and Order Re: 2011 Proclamation Plan* (Feb. 1, 2012), at 46.

Boards actions were arbitrary and capricious to the extreme. When faced with truncation on three occasions, the Board applied at least two standards, and inconsistently applied its standards to the second interim truncation plan. More disturbing, however, is the fact that the record shows clear manipulation in the third instance with a single district in mind and to not require Sen. Coghill to stand for re-election. The Court should also consider the rather brazen and unusual involvement of Mr. Ruedrich interrupting the Board proceedings, and the board taking a break to get "educated" by him off the record. The Board's actions do not reflect a "reasoned decision-making process," but rather reflect a arbitrary, and result-oriented process contrived to change truncation standards for the benefit of one incumbent Senator.

**e) The Truncation Plan Should Be Invalidate Because It Compared The Wrong Plans.** As the Court indicated in *Eagan v Hammond,* and *Groh v Eagan,* truncation may occur when the State is changing from one permanent plan to another. In *Groh v Eagan,* the State was going from an interim plan to a permanent plan, and in determining whether districts had undergone substantial changes, the Board compared the prior permanent plan to the new permanent plan, and required all Senators to run on alternating staggered terms. The Board determined substantial change based using a comparison with

the interim plan and the new permanent plan. This was error.[121]

**f) Summary.** The Court should invalidate the Board's truncation plan because it was the product of 1) a violation of the Open Meetings Act, 2) an arbitrary and irrational process aimed at the protection of one incumbent Senator, and 3) to the extent that a standard for measuring substantial change may be discerned, such measurements were the product of comparing an interim plan and the new permanent plan rather than an old permanent plan and the new permanent plan.

## V. SENATE DISTRICT B AND UAF

**a) Summary of Claims.** The Riley Plaintiffs have challenged the compactness of SD B and the division of the UAF campus. These claims arise under the Alaska Equal Protection Clause.

**b) Alaska's Equal Protection Analysis & Senate Configuration.** "Senate districts which meander and ignore

121 The use of the Interim Plan as the benchmark to determine substantial change is more questionable in the current circumstance because the Interim Plan was identical to the Amended Proclamation Plan invalided by this Court as violative of the mandated *Hickel* process. In substance, the Interim plan was the product of a process that this Court held to be a violation of the Alaska Constitution. Using a flawed plan as the benchmark serves no rational purpose.

political subdivision boundaries and communities of interest will be suspect under the Alaska Equal Protection clause"[122] In applying Alaska's Equal Protection clause in the redistricting process, the Court in *Kenai Peninsula Borough* adopted a neutral factors test similar to that proposed by Justice Powell in his dissent in *Davis v Bandemer.*[123] As the Alaska Supreme Court explained,

> Under such a test we look both to the process followed by the Board in formulating its decision and to the substance of the Board's decision in order to ascertain whether the Board intentionally discriminated against a particular geographic area. .... District boundaries which meander and selectively ignore political subdivisions and communities of interest, and evidence of regional partisanship are also suggestive.... District boundaries which meander and selectively ignore political subdivisions and communities of interest, and evidence of regional partisanship are also suggestive.[124]

Evidence of such meandering boundaries shifts the burden of proof to the Board to "demonstrate that its acts (were) aimed to effectuate proportional representation." That is to say,

---

122*Kenai Peninsula Borough v State,* 743 P.2d 1352, 1365 n 21 (Alaska 1987);

123478 U.S. 109 (1986) The principle ruling in the case is that political gerrymandering is judicially cognizable, however, the opinion and its progeny has not been successful in developing a workable standard. Justice Powell's approach in his dissenting opinion would "test the constitutionality of an apportionment plan according to a number of neutral criteria." *Kenai Peninsula Borough v State,* 743 P.2d, at 1369. As the Court explained, the reason for the test was explained as follows: "exclusive or primary reliance on 'one person, one vote' can betray the constitutional promise of fair and effective representation by enabling a legislature to engage intentionally in clearly discriminatory gerrymandering." Id.

124Id.

"the Board will have the burden of proving that any intentional discrimination against voters of a particular area will lead to more proportional representation."[125]

**c) SB B's Odd & Bizzare Shape.** There is little question that SD B comprised of HD 3 (green) & 4 (blue) is an odd and


bizarre shape, and ignores communities of interest. As the above snapshot demonstrates, the district meanders from one end of the population center of the Fairbanks borough to the other starting in the wide expanses of the northwest FNSB running east in increasingly narrowing configuration. While both Ester and North Pole/Badger are within the same borough

125*Kenai Peninsula Borough v State,* 743 P.2d, at 1369

and are therefore socioeconomically integrated by operation of law,[126] Ester and North Pole are clearly differing communities of interest.

As the trial testimony of J. Holmes and Prof. Lisa Handley[127] noted Ester Goldstream is an identified stronghold of democratic voters. Indeed, the strong democratic voting tradition of the area was the reason that the Board placed Ester/Goldstream with the Wade Hampton area in the past redistricting cycle. Equally, the Board was aware that Badger/North Pole area was an area of strong conservative voting patterns, and the Board did not want to locate this area into Wade Hampton because if feared the inclination of Republican voters to not cross-over and vote for Native preferred candidates made the match inappropriate. As the Court is aware, this record demonstrates a clear inference that Ester/Goldstream was the focus of the Board's activities two years ago, and this focus was premised upon the

126*Hickel v Southeast Conference, supra., at 52.* The Plaintiffs conceed that SD B is socio-economically integrated and withdraw that element of their complaint.
127See generally, ARB 00013329-13474

democratic voting pattern of the area.

As noted in Mr. Bordie's comments at the July 17th hearing, the Board was fully aware that the configuration was adverse to the interest of the Ester/Goldstream area.[128] The totality of the evidence-- meandering bizarre shaped district, mixing different communities of interest, and a Board record that clearly demonstrates conflicting political inclinations --- demonstrates a strong inference of discrimination. Under Alaska's Equal Protection Clause, such evidence shifts the burden of proof to the Board to demonstrate that the configuration at issue provides greater proportionality.

**d) Division of UAF.** One of the more curious parts of the Final Plan is the division of UAF between HD 4 & 5 and SD B & C. The

128Id., 7:19-24.


division occurs along Koyukuk Drive located on the UAF campus. There is little question that the University of Alaska is a community of interest, and its division creates a clear inference under *Kenai Peninsula Borough* of discriminatory treatment. Under Alaska's Equal Protection Clause, such evidence shifts the burden of proof to the Board

to demonstrate that the configuration at issue provides greater proportionality.

**CONCLUSION.**

The Riley Plaintiffs request entry of summary judgment on the issues stated above for the reasons set forth herein.

Date: September 12, 2013

GAZEWOOD & WEINER, PC
Attorneys for Riley et.al. Plaintiffs

Michael J. Walleri ABA No. 7906060
Jason A. Gazewood ABA No. 0211060

Certificate of Service
I certify that a true and correct copy of the foregoing was served by e-mail on this ~~August 15, 2013~~ Sept. 12, 2013 to:

Mr. Michael D. White
Nicole A Corr
Patton Boggs, LLP
601 5th Ave., Suite 700
Anchorage, AK 99501
mwhite@pattonboggs.com
ncorr@pattonboggs.com

Mr. Thomas F. Klinker
Birch, Horton, Bittner & Cherot
1127 W. 7th Ave.
Anchorage, AK 99501
tklinkner@bhb.com

cc: (Amicus)

Ms. Jill Dolan
Legal Department
Fairbanks North Star Borough
P.O. Box 71267
Fairbanks, AK 99707
jdolan@co.fairbanks.ak.us

Ms. Marsha Davis
Calista Corporation
301 Calista Court
Anchorage, AK 99518
mdavis@calistacorp.com

Mr. Scott A Brandt-Ericksen
Borough Attorney
Ketchikan Gateway Borough
1900 First Ave., Suite 215
Ketchikan, Alaska 99901
scottb@kgbak.us

Ms Carol J. Brown
Association of Village Council Presidents
101A Main Street
Bethel AK 99550
cbrown@avcp.org

Mr. Joseph N. Levesque
Walker & Levesque
731 N Street
Anchorage, AK 99501
joe-wwa@ak.net

Ms Natalie Landreth
Native American Rights Fund
801 B Street, Suite 401
Anchorage, AK 99501
landreth@narf.org

Joe McKinnon
1434 Kinnikinnick Street
Anchorage, AK 99508-3015

By: Kristin Story