

RECEIVED

DEC 05 2011

db

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

PATTON BOGGS LLP

IN RE 2011 REDISTRICTING CASES

RILEY ET. AL. PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGMENT:
COMPACTNESS

Case No. 4FA-11-02209 CI.

COMES NOW, Plaintiffs George Riley and Ron Dearborn, by and through counsel, Michael J. Walleri, to move the Court for partial summary judgment that Districts 1, 2, and 37 of the 2011 Final Plan for the redistricting of Alaska's legislative districts adopted by the Alaska Redistricting Board, does not comprise a compact area within the meaning of Article VI, Section 6 of the Alaska Constitution. The motion is supported by the accompanying memorandum.

Date: December 5, 2011


Michael J. Walleri

Attorney for Plaintiffs
Alaska Bar No. 7906060

Certificate of Service

I certify that a true and correct copy of the foregoing was served by e-mail on this December 5, 2011 to:
Mr. Michael D. White Mr. Thomas F. Klinker
Patton Boggs, LLP Birch, Horton, Bittner, & Cherot
601 5th Ave., Suite 700 127 W. 7th Ave.
Anchorage, AK 99501 Anchorage, AK 99501


Michael J. Walleri

Motion: Sum Jud. Compactness
Riley, et. al. v Redistricting Board
Case No. 4FA-11-02209 Ci

Michael J. Walleri
2518 Riverview Dr.
Fairbanks, Alaska 99709
(907) 378-6555

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

IN RE 2011 REDISTRICTING CASES

RILEY ET. AL. PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGMENT:
COMPACTNESS

Case No. 4FA-11-02209 CI.

The Riley Plaintiffs¹ seek partial summary judgment that Proclamation House Districts 1, 2, and 37 are not compact and therefore violate Article VI, Section 6 of the Alaska Constitution.

I. THE COMPACTNESS REQUIREMENT.

The Alaska State Constitution states "Each house district shall be formed of contiguous and compact territory...."² Our Court has interpreted this provision to require compact house legislative districts,³ which is to be accorded priority importance in Alaska Constitutional analysis.⁴ The purpose of the compactness requirement is to prevent gerrymandering, which is the "dividing of an area into

¹ George Riley and Ron Dearborn

² AK CONST. Art. VI, Sec. 6

³ *Hickel v Southeast Conference*, 846 P.2d 38, 44 (Alaska, 1992); *Kenai Peninsula Borough v State*, 743 P.2d 38, 44 (Alaska, 1992) The compactness requirement does not apply to Senate districts, *Kenai Peninsula Borough, supra* at 1365, except when the Court must order an interim plan. *Hickel, supra*. At 65 n. 11-12 However, in considering Senate districts, similar anti-gerrymandering prophylactic restrictions are expressed in terms of equal protection analysis. *Kenai Peninsula Borough, supra* at 1365 n.21 (senate districts which meander and ignore political subdivision boundaries and communities of interest will be suspect under the Alaska equal protection clause.) See also, *Id.*, at 1370-1374

⁴ As previously noted in Petersburg's compactness motion, "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.

political units “in an unnatural way with the purpose of bestowing advantages on some and thus disadvantaging others.”⁵ In Alaska, compactness and contiguity are important for “good reason;” i.e. “The fear that politicians would attempt to carve out little pieces of geography and move them around the map for apportionment purposes.”⁶

As discussed below, Alaska's Courts consider three types of factors in evaluating the compactness of any particular district: i.e. objective, subjective and justifying factors. The first is a mathematical measurement (objective) factor. The second is a subjective review for “odd-shapes” like “corridors ” and “appendages.” Finally, such irregularities may be justified by “Alaska's irregular geography,” relative compactness, and legal standards with priority over compactness.

5 *Hickel v Southeast Conference*, 846 P.2d at, 44, quoting Proceedings of the Alaska Constitutional Convention (“[The requirements] prohibit[] gerrymandering which would have to take place were 40 districts arbitrarily set up by the governor.... [T]he Committee feels that gerrymandering is definitely prevented by these restrictive limits.”³ PACC 1846 [January 11, 1956])

6 *Hickel, supra*, at 71; As the Court noted, these concerns has caused 34 states to add requirements for compactness and contiguity to their constitutions.” See Daniel D. Polsby & Robert D. Popper, *The Third Criterion: Compactness as a Procedural Safeguard Against Partisan Gerrymandering*, 9 YALE L. & POL’Y REV. 301, (1991). While our Constitutional framers may have believed this to be true, the practical effectiveness of such standards to prevent gerrymandering has been put into serious question. See Harrison, *The Aftermath Of In Re 2001 Redistricting Cases: The Need For A New Constitutional Scheme For Legislative Redistricting In Alaska*, 23 ALASKA L. R. 51, 77 n 169 (2006) citing Grofman, *Criteria for Districting: A Social Science Perspective*, 33 UCLA L. REV. 77, 88 n 11 (1985). (“The commonly held view that reliance on formal criteria such as compactness or equal population can prevent gerrymandering is simply wrong.”)

A) MATHEMATICAL MEASUREMENT (“OBJECTIVE”) FACTOR.

Compact, at a minimum, “means having a small perimeter in relation to area encompassed. The most compact shape is a circle.”⁷ This factor merely examines a district to determine how close its shape is to a circle, which is principally a mathematical measurement. In particular, the so-called Reock Test, is the most relevant mathematical measurement because it is “an area-based measure that compares each district to a circle.... For each district, the Reock test computes the ratio of the area of the district to the area of the minimum enclosing circle for the district.”⁸ The Reock resulting measure clearly reflect the “closeness” to a circle in terms of shape as contemplated by the Alaska courts.

Of course, there are other measures of compactness that have led to confusion. As the Board has otherwise suggested, the Superior Court in *In Re 2001 Redistricting Cases*, opined, “A problem with such mathematical tests is that the commentators are unable to agree on an appropriate measure of compactness.”⁹ While the Referenced

7 *Carpenter v Hammond*, 667 P.2d 1204, 1218 (Alaska, 1983) (J. Matthews concurring) citing Black's Law Dictionary 351 (4th ed. 1968); *Subsequently cited in Kenai Peninsula Borough v State*, 743 P.2d 1352, 1361 (Alaska, 1987) and *Southeast Conference v Hickel*, 846 P.2d at 45 (Alaska, 1992)

8 Exhibit 1 (Lawson's Compactness Report)

9 See ARB's Memorandum in Support of Opposition to Motion for Partial Summary Judgment on Compactness and Cross Motion for Summary Judgment, (Nov. 4, 2011), at 13-14, incl. Exhibit B (hereinafter “ARB Memo: Compactness”)

Order has no precedent value,¹⁰ it is also irrelevant. While various “commentators” are useful and informative, the Alaska Supreme Court has offered more guidance in this area than suggested by the by the 2001 Superior Court's order.¹¹ As noted above, the Alaska Supreme Court has explained in three (3) redistricting rounds, that “The most compact shape is a circle”¹² There is nothing in the Court's opinion *In Re 2001 Redistricting Cases*-- at either the Superior or Supreme Court level-- overturning the precedent of the prior three (3) decisions.

The Board's argument ignores that some measurements commonly used in redistricting have simply been rejected in Alaska. For example, the Population Polygon and the Population Circle test consider the shape of populated areas within a district.¹³ Such compactness tests considering population, however, have been rejected by the Alaska courts.¹⁴ Alternatively, other commonly used mathematical measures in redistricting are less probative relative to Alaska's “circle” factor.¹⁵ Thus, the Reock

10 Appellant R. 214. In Alaska, “unpublished opinions are not precedent for purposes of *stare decisis*.” *McCoy v State*, 80 P.3d 757, 764 (Alaska App., 2002) “(T)he rule does not forbid judges and lawyers from relying on unpublished decisions for whatever persuasive power those decisions might have.” *Id.* See also *State v Doherty*, 167 P.3d 64, 73 n. 29 (Alaska, 2007)

11 As the ARB noted, Judge Ridner “hoped the Alaska Supreme Court will remedy this problem in its anticipated review of this ruling ...”. ARB Memo: Compactness, *supra*, at 13 n 5 The Supreme Court did not

12 Note 7 *supra*.

13 See Exhibit 1 (Lawson's Compactness Report)

14 *In re 2001 Redistricting Cases*, 47 P.3d 1089 (Alaska May 24, 2002) (“population distributions are largely irrelevant to the compactness inquiry.”)

15 For example, of the remaining tests, only two – the Polsby-Popper and the Schwartzberg ---tests measure a “closeness to

measurement is the closest measurement to Alaska's "circle" factor embraced by the Court in *Carpenter, Kenai and Hickel*.

B. ODD-SHAPED DISTRICTS ("SUBJECTIVE") FACTOR.

Our Court has further stated that compactness inquiry looks to the shape of a district, holding that

Odd-shaped districts may well be the natural result of Alaska's irregular geometry. However, "corridors" of land that extend to include a populated area, but not the less-populated land around it, may run afoul of the compactness requirement. Likewise, appendages attached to otherwise compact areas may violate the requirement of compact districting.¹⁶

In substance, this is a subjective "visual" test. The test as explained in *Hickel* contains clear guidelines, examples and parameters capable of replication with more than mere pragmatic intuition. Specifically, as the above quote notes, the Court held that "'corridors' and 'appendages' may be non-compact."¹⁷ Thus, the *Hickel* factors suggest specific geometric/geographic shapes that may violate the compactness requirement. While the compactness holding in *In re 2001 Redistricting Cases*¹⁸ has been

a circle, however, they contain adjustments, which respectively involve the perimeter and the "base" of the district shape. The Length-Width, Ehrenburg, and the Perimeter tests measure aspects of the district's geometric shape other than its "closeness" to a circle. See Exhibit 1

¹⁶ *Hickel*, 486 P.2d, at 455-46

¹⁷ For example see discussion of District 2 in *Carpenter, surpa at 1219 (Matthews concurring)*

¹⁸ 44 P.3d 141 (Alaska, 2002)

criticized as not involving much legal analysis,¹⁹ the Supreme Court actually closely focused upon the *Hickel* subjective factors respecting the presence of “appendages” in its analysis.²⁰

Of course, neither the objective nor the subjective factors are necessarily determinative of “compactness”. Rather, the objective and subjective factors merely suggest that a District may be non-compact. The Courts compactness analysis must also consider “relative” compactness and “justifying” factors.

C. RELATIVITY AND JUSTIFYING FACTORS.

In applying both the objective and subjective factors, our Supreme Court looks to relative compactness.²¹ “Where there are two or more districts in a given area they can be compared on compactness grounds with other possible districts encompassing the same area.”²² In looking at “relative compactness,” prior court decisions have looked at the proposed districts and compared them to what is possible. In this sense, irregularity only renders a district un-constitutionally non-compact where it is

19 Schulz, *Redistricting And The New Judicial Federalism: Reapportionment Litigation Under State Constitutions*, 37 Rutgers L. J. 1087, 1114 (2006)

20 44 P.3d, at 143. Compare J. Carpeneti's dissent, which also focused upon the existence of appendages. 44 P.3d, at 148-149 (Carpeneti dissenting). The term appendage appears in the opinion and dissent seven times.

21 *Hickel*, supra, at 46, citing *Carpenter*, 667 2d, at 1218 (*Matthews, J. concurring*)

22 *Carpenter*, supra at 1218

possible to draw the district in a more compact manner.²³

While the objective and subjective factors may lead a Court to question a district's compactness, irregularities may be justified by "Alaska's irregular geometry," relative compactness, and legal standards with priority over compactness. As the *Hickel* Court noted, "Odd-shaped districts may well be the natural result of Alaska's irregular geometry." However, while this is clearly stated as a justifying factor to permit an otherwise non-compact district, a review of Alaska Supreme Court redistricting case law failed to render an example where the Court held that an otherwise non-compact district was actually required by Alaska's "irregular geometry".

On the other hand, the Court has clearly held that there are considerations which have priority over compactness. Specifically, the Court has held that the requirements of the Federal Constitution and the Voting Rights Act have priority over

²³ In his dissent in *In Re 2001 Redistricting Cases*, J. Carpeneti commented

Alaska's constitution "calls only for relative compactness;" this is because the state's geography and population distribution make it impossible to draw conventionally compact districts that neatly approximate regular shapes like squares and circles. We have frequently allowed some departure from strict compactness in a given district in order to accommodate all of the constitutional criteria for all of the districts in the state. 44 P.3d, at 148

compactness.²⁴ In both *Hickel* and the *2001 Redistricting Cases*, an otherwise non-compact district was held to be justified by the necessity to comply with the Voting Rights Act.²⁵ However, where compliance with the VRA is possible with a relatively more compact district, the VRA does not justify the less compact district.²⁶

D. NON-FACTORS.

As a general matter, population,²⁷ size²⁸ and strict equality²⁹ in a district are not considered factors in Alaska's compactness analysis.

II. THE DISTRICTS

There are seven (7) Proclamation House Districts (Proc. HD) containing

24 In *re 2001 Redistricting Litigation*, 44 P. 3d at 134 the Court stated Priority must be given first to the Federal Constitution, second to the federal voting rights act, and third to the requirements of article VI, Section 6 of the Alaska Constitution. The requirements of article VI, Section 6 shall receive priority *inter se* in the following order: (1) contiguousness and compactness, (2) relative socioeconomic integration, (3) consideration of local government boundaries, (4) use of drainage and other geographic features in describing boundaries.

25 *Hickel*, 846 P 2d , at 52 n 23; In *re 2001 Redistricting Litigation*, 47 P. 3d, at 1092

26 In *Hickel*, the Court discussed the matter as follows: "The Board cited the Voting Rights Act as its justification in creating District 3. District 3 was meant to be a Native influence district. The proposed configuration of District 3 raised the Native percentage of the district two percentage points compared to the old "Islands District." However, such an awkward reapportionment of the Southeast Native population was not necessary for compliance with the Voting Rights Act. An "Island District" can be configured which satisfies the requirements of the Voting Rights Act and which is more compact and better integrated socially." *Hickel*, 846 P 2d , at 51-52

27 In *re 2001 Redistricting Cases*, 47 P.3d 1089 (Alaska May 24, 2002) ("population distributions are largely irrelevant to the compactness inquiry.")

28 *Id.* (neither size nor lack of direct road access made a district unconstitutionally non-compact)

29 *Hickel*, *supra*, at 53 (The Board's failure to create a compact district is not justified by rigid adherence to mathematical equality.)

residents of the Fairbanks North Star Borough.³⁰ Two (2) of these districts and the Bethal/Aleutians West District are drawn in a non-compact manner: i.e. Proc. HD 1, 2, and 37.

A. PROCLAMATION HOUSE DISTRICT 1

Proc. HD 1 is a district including East Fairbanks City, (including that portion of Fort Wainwright north of the Tanana River)³¹ and portions of Badger, Steele Creek, and South Van Horn CDP.³² The District may be considered relatively compact under the objective Reock Test: i.e. scoring .45.³³ While less than an absolute mean under the test, it is more compact than the Proclamation Plan mean (i.e. .37), and within the Proclamation Plan standard deviation (.13).³⁴

However, Proclamation HD 1 is clearly non-compact when considering subjective factors. Specifically, Proclamation HD 1 contains a classical “appendage” on its western side, which protrudes west from the New Steese Highway along the

30 See Exhibit 2 (Map of Fairbanks Districts) at ARB00006632

31 Ft. Wainwright is split between HD 1, 2 and 5, with the portion south of the Tanana River in the latter district. See *infra* regarding portion in HD 5. See Exhibit 3 & 4 regarding small portion of Ft. Wainwright located in HD 2 (i.e. the Badger Road Gate area).

32 See Exhibit 3 (Map of HD 1) at ARB00006588. See also ARB 00006563 (District Descriptions) and 00006580 (Census Designated Places CDPs by Proclamation District)

33 See Exhibit 1 at 6.

34 Id. It is also more compact than the alternative corresponding District in the Modified RIGHTS Plan. Id., at 5

Noyes Slough. The far-western tip of the appendage contains a small portion of Aurora area south of College Road and north of Noyes Slough.

The relative non-compactness of the District is most easily demonstrated by a comparison of the comparable district contained in Board Options 1 and 2, adopted by the Board on April 13, 2011.³⁵ Board Option HD 10 (the comparable East Fairbanks City District contained in both Options 1 and 2),³⁶ contains no such appendage. South Cushman serves as a common boundary between the East and West Fairbanks City districts south of the Mitchell Expressway in Options 1 and 2 and the Proclamation plans.³⁷ However, the appendage in Proc. HD 1 is made possible by swapping out the area south of the Chena River, north of the Mitchell Expressway, east of Cushman Street and west of the New Steese Highway. Under Options 1 and 2, this area was in the East Fairbanks City District, while the area within the western appendage in Proclamation HD 1 was in the West Fairbanks City District. There is no question that the Board's change in the Final plan exchanged these populations to make possible the offensive appendage contained in Proclamation HD 1.

35 Cf. Exhibit 4. The Board record relating to the adoption of Board Option 1 and 2 can be found at ARB0002645-2826 (Hrg. Transcript 4/13/11), Map of Board Option 1 at ARB00006097, and Map of Board Option 2 at ARB00006102.

36 There is no significant difference in HD 10 contained in Options 1 and 2.

37 Cf. Exhibits 3 & 4

There is no justification for this non-compactness. "Alaska's irregular geography," is clearly not relevant. There is no compelling geographic feature in downtown Fairbanks requiring the appendage. Equally, there is no legal consideration having priority over Alaska's constitutional requirement for compactness. The appendage does not implicate US Constitutional issues. Downtown Fairbanks is not a Native effective or influence district subject to VRA scrutiny, thus VRA considerations are irrelevant. There is nothing in the record that explains why this appendage was necessary.

Alternatively, circumstantial evidence does exist to suggest a possible political motivation for the appendage of both a personal and partisan nature. The Fairbanks Districts were drawn by Board-member Jim Holm,³⁸ who was the former Republican State Representative from West Fairbanks City.³⁹ In 2004 and 2006, Holm ran for re-election against Democrat Scott Kawasaki.⁴⁰ In 2004, Mr. Holm defeated Mr. Kawasaki.⁴¹ However, in 2006, Mr. Kawasaki defeated Mr. Holm,⁴² and Mr. Kawasaki is the incumbent State Representative from West Fairbanks.⁴³ That latter election was

38 Exhibit 5 (Holm Depo.) at 55: 18- 56:1

39 Id. at 12:22

40 Id. at 11:22- 12:5; Exhibit 6 (Afft of S. Kawasaki) at ----

41 Id., (Afft of S. Kawasaki)

42 Exhibit 5 (Holm Depo.) at 12:6-11

43 Id. (Afft of S. Kawasaki)

a close and hotly contested, and Mr. Holm felt that the campaign was unfairly critical of his tenure in the State Legislature.⁴⁴ Mr. Holm knew Mr. Kawasaki's family,⁴⁵ including the location of his parents old home, but was under the mistaken impression that Mr. Kawasaki lived in an Aurora-area house different from his parents old home.⁴⁶ In fact, Rep. Kawasaki lives in his parents old home in the Aurora area south of Noyes Slough. Rather, it is Rep. Kawasaki's sister, Sonja Kawasaki who lives in the Aurora area at house different from her parents old house, which is north of Noyes Slough.⁴⁷ While Ms. Kawasaki's address is not listed in the phone book, she did disclose her address to the ARB when she signed in to testify at the ARB's Fairbanks hearing on April 19, 2011, indicating her address as 224 Spruce.⁴⁸ She merely observed, and did not testify.⁴⁹ Ms. Kawasaki is often mistaken for Rep. Kawasaki's wife.⁵⁰ Ms. Kawasaki's home is in the farthest western tip of the appendage protruding from Proclamation HD 1.⁵¹ Thus, her home is located in the West Fairbanks City district under the Board Option plans (HD 9) but was moved to the East Fairbanks City district (Proclamation HD 1) under the Proclamation plan when the district's western

44 Exhibit 5 at 12:21- 14: 18 (Holm Depo.)

45 id., at 42: 17-19

46 Id. at 42:13-25

47 Exhibit 6 (Aff't of S. Kawasaki)

48 ARB 00011971

49 ARB 00012357-00012369

50 Exhibit 6 (Aff't of S. Kawasaki)

51 Id.

appendage was created. Thus, while there is no direct evidence, there is substantial circumstantial evidence that Board-member Jim Holm redrew the appendage in Proclamation HD 1 in a failed attempt to move Mr. Kawasaki from his current West Fairbanks district to East Fairbanks. That attempt was based upon Mr. Holm's admitted misunderstanding as to where Mr. Kawasaki actually lives.

Additionally, shortly after the Board's Proclamation, Mr. David Pruhs, the Republican Party District 10 Chair filed a letter of intent to run for the legislature.⁵² The current incumbent for District 10 (East Fairbanks City) is Mr. Steve Thompson, who is also a Republican. Mr. Pruhs lives in the the sliver of area south of the Chena River, north of the Mitchell Expressway, east of Cushman Street and west of the New Steese Highway that was originally in East Fairbanks City under the Board Option plan, but is now in West Fairbanks City under the Proclamation Plan.⁵³ If the Board had adopted the Board Option plan, Mr. Pruhs would have had to face an incumbent from his own party for election. But under the Proclamation Plan, Mr. Pruhs will run in West Fairbanks against Mr. Kawasaki. If Mr. Kawasaki lived in his sister's house as Mr. Holm believed, Mr. Kawasaki would have been forced to run for re-election in a

⁵² Exhibit 6 (Afft of S. Kawasaki)

⁵³ Id.

district that was substantially different than his current district, and against a popular former City Mayor and Republican House incumbent who would be running in a district that was substantially similar to his current district, while Mr. Pruhs would have been running in district without an incumbent.

B. PROCLAMATION HOUSE DISTRICT 2.

HD 2 is an elongated district that follows the Richardson Highway corridor from the Fairbanks City limits southeasterly to the Badger Road,⁵⁴ North Pole, Moose Creek, and Eielson AFB areas.⁵⁵ The District is not compact under the objective Reock Test: i.e. scoring .19.⁵⁶ While less than an absolute mean under the test, it is also less compact than the Proclamation Plan mean (i.e. .37), and outside the Proclamation Plan standard deviation (.13).⁵⁷ Nor is the district relatively compact in an objective sense. The Modified RIGHTS Plan (MRP)⁵⁸ divides the area in question into two Districts (i.e. MRP HD 5- Eielson and MRP HD 6 North Pole Badger) Both resulting

54 As noted above, HD 2 contains a small portion of Ft. Wainwright around the Badger Road Gate area. See discussion regarding HD 1 above and HD 5 below.

55 See Exhibit 7 (Map of HD 2) at ARB00006088. See also ARB 00006565 (District Descriptions) and 00006580 (Census Designated Places CDPs by Proclamation District)

56 See Exhibit 1

57 Id. It is also more compact than the alternative corresponding District in the Modified RIGHTS Plan. Id.

58 See Exhibit ----. The Modified RIGHTS Plan (MRP) was presented to the Court in the Petersburg Summary Judgment Motion on Compactness (10/18/11) See Attachment 2 to Aff't of Leonard Lawson accompanying the Petersburg Motion. As Mr. Lawson's Affidavit indicates, the Modified RIGHTS Plan is a modification of the final RIGHTS plan submitted to the Board., which was submitted after Dr. Handley's presentations and is not the RIGHTS plan contained in the Board Record. Cf. ARB 00006339 et. Seq.

districts are clearly more compact than Proc. HD 2. MRP HD 6 scores .53 in the Reock Test, which is more compact than the test's absolute mean, greater than the Modified RIGHTS Plan mean (.40) and within the that plan's standard deviation (.14).⁵⁹ MRP HD 5 scores .32⁶⁰ in the Reock Test, which is more compact than Proc. HD 2, although it is less than either the the test's absolute mean, or the Modified RIGHTS Plan mean (.40). It is, however, within the that plan's standard deviation (.14). From an objective perspective, the District is clearly not compact in an absolute sense nor in a relative sense.

Nor is Proclamation HD 2 compact from a subjective perspective. Proc HD 2 has three (3) major population areas strung along the Richardson Highway corridor: i.e. Badger, North Pole and Eielson/Salcha. As a result, Proc. HD 2 is simply one large "corridor" that connects these three (3) population centers and, at the same time, divides the three population areas among four Districts (1, 2, 3, and 6).⁶¹ For example, the Badger area is divided using the Chena Slough, with the Persinger Drive area located in HD 1 and the Nordale Road area divided between HD 1 and 3. The Repp

⁵⁹ Exhibit 1, at 5

⁶⁰ Id.

⁶¹ The Richardson Highway Corridor district is somewhat reminiscent, on a smaller scale, of the infamous North Carolina 12th Congressional District which followed the I-85 Highway corridor for 160 miles. In *Shaw v Reno*, 509 U.S. 630 (1993), the Court stated that the district's irregularities "provide strong indicia of a potential gerrymander". The Richardson Highway Corridor district is only 40 miles, but of course, contains only about 1/35th the population.

Road portion of the Badger area is located in HD 3. Of course these portions of the Badger area are connected by a system of bridges across Chena Slough on Persinger Drive, Nordale Road, Repp Road and Maule Lane. Closer to North Pole, HD 2 crosses the Chena Slough dividing the Maule Lane area, locating residents south of Maule Lane in HD 2 and residents north of Maule Lane in HD 3. Similarly, the Nelson Road area east of the City of North Pole is divided with half the area in HD 2 and the other half (Nelson Road portion of the area) in HD 3. Finally, the Eielson area is divided by HD 6 "wrapping around" the southern portion of HD2 to divide that portion of Salcha between the Tanana River and Eielson Air Base from the Eielson/Salcha area. major portions of the Moose Creek The residents of the segmented areas must all travel through District 2 to reach the Fairbanks core area. Thus, the entire District is a "corridor" district, which is one of the "odd shapes" that the Court in *Hickel* held to be indicative of gerrymandering.

Narrow highway corridor districts are generally indicia of gerrymandering. In particular, the Richardson Highway Corridor district is somewhat reminiscent, on a smaller scale, of the infamous North Carolina 12th Congressional District which followed the I-85 Highway corridor for 160 miles. In *Shaw v Reno*, 509 U.S. 630 (1993),

the Court stated that the highway corridor district's irregularities "provide strong indicia of a potential gerrymander". While the Richardson Highway Corridor district is only a quarter the length of the "I-85" Corridor questioned in *Reno v Shaw*, (approximately 40 miles) it contains only about 1/35th the population.

The relative non-compactness of Proc. HD 2 from a subjective perspective is also demonstrated by a comparison to the Modified RIGHTS Plan, which divides the area encompassed by Proc. HD 2 into two areas: i.e. MRP HD 5 and 6.⁶² This approach remedies the slicing and dicing of the Badger, North Pole and Eielson/ Salcha population centers caused by the "corridor" structure of the Proclamation District. The Modified RIGHTS Plan demonstrates that the area may be configured without the artifices of 'corridors', 'wrap around districts' or other odd-shapes, which the *Hickel* Court held to be indicative of gerrymandering.

There is no justification for the non-compactness manifested by the Proc. HD 2 Richardson Corridor District. As discussed above, the district actually conflicts with the the area's geography and population is relatively dense and more rationally

⁶² Supra.

accommodates a compact district shape. Proc. HD 2 is not required by “Alaska's irregular geography.” There is no legal consideration having priority over Alaska's constitutional requirement for compactness. The Richardson Corridor District does not implicate US Constitutional issues, and Proc. HD 2 is not a Native effective or influence district subject to VRA scrutiny. VRA considerations are simply irrelevant. There is nothing in the record that explains why this Richardson Corridor District was necessary.

E. PROCLAMATION HOUSE DISTRICT 37.⁶³

Proc. HD 37 is a district that includes Bethal, the Kuskokwim Delta, and crosses the Bering Sea to include Nunivak Island, Saint Matthew Island, the Pribilof Islands, and all the western Aleutian islands.⁶⁴ On its face, Proc. HD 37 violates any reasonable interpretation of compactness or contiguity, both by dividing the geographic and cultural unity of the Aleutians and by combining the western Aleutians with Bethel-area communities hundreds of miles north on the other side of

63 Dist. 37 was not contained in the Riley Plaintiffs complaint, but was challenged in the FNSB complaint. This Court has allowed the Riley Plaintiffs to assert claims that the FNSB could have raised under their complaint. See Order of Nov. 3, 2011. Of course, the implications of District 37 relative to Fairbanks are intriguing. Given the Senate pairing of Dist 37 and 38 under the Proclamation Plan as Senate District S, the residents of Goldstream and Ester face the rather bizarre potential that they are part of a Senate District that stretches to a comparable distance between Des Moines and Los Angeles. See Exhibit 9 Under this plan, Ester/Goldstream could have a Senator from Bethal and a Representative from Attu.

64 See Exhibit 8 (Map of HD 37) at ARB00006052. See also ARB00006046 (District Descriptions)

Proc. HD 36.

The Proclamation Plan divides the Western Aleutian Islands (in HD 37) from the Eastern Aleutian Islands (in HD 36). The plan divides Akutan (in HD 37) from the rest of the Aleutians East Borough (in HD 36). This is not the first time that a redistricting plan has looked to do strange things to the Aleutians to solve districting problems. This approach was used in the 1990 redistricting process, and found to have violated the Alaska constitution. In *Hickel*, splitting the Aleutians was found to violate of the contiguity standards set out in Alaska Constitution.⁶⁵ But the problem presented by Proclamation HD 37 is more complex than the lack of contiguity. It also violates the Alaska Constitutional standards respecting compactness.

Without question, the District fails the objective prong of compactness analysis. Applying the Reock Test to HD 37 results in a score of .00.⁶⁶ This score essentially means that District lacks any compactness whatsoever. This score is substantial

⁶⁵ This is the subject of a contemporaneously filed motion challenging the contiguity of HD 37. Specifically, the Court in *Hickel* held

The Board's plan divides the Aleutian Islands between two districts. The eastern Aleutians are in District 39, and the western Aleutians in District 37. On its face this severance violates the contiguous territory requirement of article VI, section six of the Alaska Constitution.[30] Although the parties did not raise this issue, the separation of the Aleutian Islands is so plainly erroneous that we address the issue *sua sponte*. Thus, in exercise of our authority under article IV, section two of the Alaska Constitution, we hold that the separation of the Aleutian Islands into two districts violates article VI, section six of the Alaska Constitution. *Hickel, supra at 54.*

⁶⁶ See Exhibit 1

outside the the Proclamation Plan's standard deviation (.13).⁶⁷ In an objective sense, a .00 score means the District is simply not compact.⁶⁸

But the "bizarreness" of Proclamation HD 37 is more evident considering subjective factors. While the Court in *Hickel* invalidated splitting the Aleutians principally upon contiguity grounds, the Court also addressed the main problem presented by Proc. HD 37 in terms of compactness. The most obvious aspect of HD 37 is the near 800 mile expanse over the Bering Sea between Nunivak Island and Attu., or the near 500 mile expanse over the Bering Sea between the Kuskokwim Delta and Unalaska. It is assumed that the Board will argue that contiguity within HD 37 is bridged by these open expanses of the Bering Sea. As the Court stated, "(A) contiguous district may contain some amount of open sea. However, the potential to include open sea in an election district is not without limits. If it were, then any part of coastal Alaska could be considered contiguous with any other part of the Pacific Rim. To avoid this result, the constitution provides the additional requirements of compactness and socio-economic integration."⁶⁹ HD 37 would seem to present an

67 Id. It is also more compact than the alternative corresponding District in the Modified RIGHTS Plan. Id.

68 The District's failure under the Reock tests has limited significance, and relates to Alaska's irregular geometry.

Specifically, the District crosses the International Date line, which may be largely responsible for the zero compactness measurement. Cf. The Modified Rights Plan, which also scores a zero compactness score.

69 *Hickel Hickel*, 846 P.2d at 45

