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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT FAIRBANKS

In Re 2011 Redistricting Cases.	) **CONSOLIDATED CASE NO.:**) **4FA-11-2209-CI**) 4FA-11-2213 CI) 1JU-11-782 CI

DEFENDANT ALASKA REDISTRICTING BOARD'S OPPOSITION TO PLAINTIFFS GEORGE RILEY AND RONALD DEARBORN'S MOTION FOR PARTIAL SUMMARY JUDGMENT: COMPACTNESS

I. INTRODUCTION

Plaintiffs George Riley and Ronald Dearborn ("Riley Plaintiffs") ask this Court to find on summary judgment that House Districts 1, 2, and 37 are not compact and therefore violate Article VI, § 6 of the Alaska Constitution. Yet, the Riley Plaintiffs completely fail to identify the proper legal standard and measurement of compactness in Alaska and fail to provide even a shred of evidence as to why the Plaintiffs are entitled to summary judgment. As the Board Record and Proclamation Plan clearly show, each and every one of the challenged House districts is "relatively" compact, which is the proper legal standard in Alaska. The Board drew House Districts 1, 2, and 37 to accomplish the legitimate goals of redistricting – compliance with the Voting Rights Act, ideal district size, compactness, contiguity, and socio economic integration. There was no mischievous or nefarious political reason for the configurations. The Riley Plaintiffs' arguments to the contrary are nothing more than false and unfounded allegations. The evidence before the Court establishes that House Districts 1, 2, and 37 are all relatively compact and therefore constitutional. At a minimum, there are genuine issues of material fact that preclude this court from granting the Riley Plaintiffs' Motion.

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II.
LEGAL STANDARD

Rule 56 of the Alaska Rules of Civil Procedure provides that summary judgment should be granted if there is no genuine dispute as to material facts, and if the moving party is entitled to judgment as a matter of law. Alaska R. Civ. P. 56; *e.g., Reeves v. Alyeska Pipeline Serv. Co.*, 926 P.2d 1130, 1134 (Alaska 1996); *Zeman v. Lufthansa*, 699 P.2d 1274, 1280 (Alaska 1985). The moving party has the burden of showing that there are no genuine issues of material fact. *Id.*

Once the moving party has met this burden, the non-movant "is required, in order to prevent the entry of summary judgment, to set forth specific facts showing that [he] could produce admissible evidence reasonably tending to dispute or contradict the movant's evidence, and thus demonstrate that a material issue of fact exists." *Still v. Cunningham*, 94 P.3d 1104, 1108 (Alaska 2004) (internal quotation omitted). Any allegations of fact by the non-movant must be based on competent, admissible evidence. Alaska R. Civ. P. 56(c), (e); *Still*, 94 P.3d at 1104, 1108, 1110. The non-movant may not rest upon mere allegations or denials, but must show that there is sufficient evidence supporting the claimed factual dispute to require a fact-finder to resolve the parties' differing versions of the truth at trial. *Christensen v. NCH Corp.*, 956 P.2d 468, 474 (Alaska 1998) (*citing to Shade v. Anglo Alaska*, 901 P.2d 434, 437 (Alaska 1995)).

The Riley Plaintiffs have completely failed to meet their burden. Not only do they fail to identify the summary judgment standard, but they also fail to establish why they are entitled to summary judgment. Conversely, the Board, as established below, is able to show all three challenged House districts are relatively compact, or at a minimum, that there is a genuine issue of material fact as to whether they meet the constitutional standard of compactness. The Board

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Record explains the Board's reasons for the configurations of these districts and disputes and disproves the Riley Plaintiffs' baseless arguments.

III.
ARGUMENT

A. The Proper Standard for Determining Compactness in Alaska is a Visual Test, Not a Three-Step Review that Begins with a Single Mathematical Test.

The Riley Plaintiffs would have this Court believe a compactness review consists of three factors: a single mathematical test, a visual test, and a justification test. [Riley Memo. at 2.] Not surprisingly, the Riley Plaintiffs provide no legal authority for their "unique" three-step review. [*Id.*] The reason for this failure is simple – because no such three-step review process exists under Alaska law. In fact, every Alaska Supreme Court decision since *Carpenter v. Hammond* has used only one test – a visual one. *See In re 2001 Redistricting Cases*, 44 P.3d 141, 149-150 (Alaska 2002) (Carpeneti, J., dissenting) (finding House District 5 is relatively compact using a physical description of the area versus a quantitative measure); *Hickel v. Southeast Conference*, 846 P.2d 38, 45 (Alaska 1992) (holding "compactness inquiry thus looks to the shape of a district"); *Carpenter v. Hammond*, 667 P.2d 1204, 1218 (Alaska 1983) (Matthews, J., concurring) (using a visual test to find the challenged district was not compact, specifically holding, "the impossibility of considering District 2 to be relatively compact is evident merely from looking at the map.")

The Riley Plaintiffs also mischaracterize Alaska case law in their argument that the Alaska Supreme Court has rejected mathematical compactness tests that consider population, and that there is something called "Alaska's 'circle' factor." [Riley Memo. at 4.] The Alaska Supreme Court has never adopted a mathematical compactness test as the appropriate measure for compactness. In fact, it has only ever used a visual test, even in *Carpenter*. 667 P.2d at

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1219. The Alaska Supreme Court could not have rejected specific mathematical measures of compactness relating to population if it has never even recognized mathematical tests as the proper measurement of compactness.

Mathematical tests are simply ill-suited for Alaska, and do not take into consideration the uniqueness of Alaska. This state is made up of a very large, irregular, land mass, with vast areas that contain little to no population. The Alaska Supreme Court has recognized the difficulty that Alaska's geography poses for drawing compact districts. *See In re 2001*, 44 P.3d at 149-150 (Carpeneti, J., dissenting); *Hickel,* 846 P.2d at 45; *Carpenter*, 667 P.2d at 1218-1220 (Matthews, J., concurring). This is the very reason Alaska's legal standard is "relative" compactness; a standard which recognizes it is impossible to draw Alaska into circles. *Carpenter*, 667 P.2d at 1218 (Matthews, J., concurring).

The Reock Test, touted by the Riley Plaintiffs as the most "proper" mathematical measure of compactness, fails to take into consideration the uniqueness of Alaska and the fact that it is simply impossible to divide Alaska into circles. The fact that the Alaska Supreme Court has stated the obvious – that the most compact shape is a circle – does not by any means create some sort of "circle" factor, as the Riley Plaintiffs argue. This is yet another example of how the Riley Plaintiffs mischaracterize Alaska case law.

The Riley Plaintiffs' arguments rely heavily on incorrect interpretations of Alaska case law. Mathematical measures of compactness simply are not used by Alaska courts to determine the compactness of a district. As such, the Riley Plaintiffs' confusing and sometimes conflicting legal conclusions about each district's Reock Test score are irrelevant in determining whether the districts are compact. The Reock Test scores also highlight the many problems with using mathematical tests. House District 1 apparently has a Reock Test score of

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.45. [Riley Memo. at 9.] The Riley Plaintiffs concede that based on this score, House District 1 "may be considered relatively compact." [*Id.*] The Riley Plaintiffs then try to justify their overall conclusion that House District 1 is *not* compact by relying on a visual test. [*Id.*] These conflicting results are the reason mathematical tests are ill-suited for Alaska, as the tests do not accurately represent whether or not a district is "relatively" compact. The Riley Plaintiffs' attempt to substitute a rigid measurement of compactness for the flexible standard recognized by the Alaska Supreme Court is improper. It just does not work.

Under the proper legal standard for compactness, House Districts 1, 2, and 37 are relatively compact and are, as established below, constitutional. At the very least, the Board has reasonable and proper justifications for the configurations of House Districts 1, 2, and 37, thereby creating genuine issues of material fact that preclude this court from granting the Riley Plaintiffs' Motion.

B. Under the Proper Compactness Standards, The Evidence Establishes That House District 1, 2, and 37 are Relatively Compact and Therefore Constitutional.

The evidence before this Court establishes House District 1, 2, and 37 are relatively compact and are, therefore, constitutional. The Board had reasonable and legitimate justifications for shaping these districts the way they did. There is not a shred of evidence that the Board engaged in partisan gerrymandering. The Riley Plaintiffs' arguments to the contrary are nothing more than desperate and unfounded allegations.

Article VI, § 6 of the Alaska Constitution mandates that "[e]ach house district shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area." The purpose behind these requirements is to prevent gerrymandering, or intentional vote dilution. *Hickel,* 846 P.2d at 45. Compactness looks at the shape of a district. *Id.* "'Compact' districting should not yield 'bizarre designs.'" *Id.* (*quoting*

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Davenport v. Apportionment Comm'n of New Jersey, 302 A.2d 736, 743 (N.J. Super.Ct.App.Div. 1973). Due to Alaska's irregular geography and uneven population distribution, the Alaska Supreme Court has made clear that the Alaska Constitution requires only relative compactness. *E.g., In re 2001 Redistricting Cases*, 44 P.3d at 148 (Carpeneti, J., dissenting); *Kenai Peninsula Borough*, 743 P.2d at 1361 n. 13; *Carpenter v. Hammond*, 667 P.2d 1240, 1218 (Alaska 1983) (Matthews, J., concurring). "Absolute" or "ideal" compactness is not required. *Carpenter,* 667 P.2d at 1218 (Matthews, J., concurring). This standard takes into consideration the impossibility of drawing conventionally compact districts that neatly approximate regular shapes like squares and circles. *Id.* Departure from strict compactness in a given district is also allowable in order to accommodate all of the various constitutional and legal criteria for all of the districts in the state. *Id.*; *see also Hickel*, 846 P.2d at 2 n. 22.

When looking at the shape of a district, "odd-shaped districts" with "corridors" of land and strange "appendages" may raise concerns as to the compactness of a district. *Hickel*, 846 P.2d at 45-46. But "corridors" of land and "strange appendages" do not automatically mean a district is not compact. *Id.* Rather, such attributes simply *may* run afoul of or *may* violate the compactness requirement. *Id.* If the shape of a district is the natural result of Alaska's irregular geography or is necessitated by the need to create districts of equal population, then the district may be constitutional. *Id.* Courts look for "bizarre shapes" and "odd extensions" to an otherwise compact district because they may indicate that the configuration of an election district was due to partisan gerrymandering or intentional vote dilution, the very redistricting "ills" the compactness requirement is designed to prevent. *Id.* at 45.

Applying these proper standards to the three challenged House Districts establishes that either it is the Board who is entitled to summary judgment and/or that there are genuine issues

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of material fact that require the Riley Plaintiffs' Motion be denied.

1. *The Riley Plaintiffs Admit that House District 1 is Relatively Compact and thus the Board is Entitled to Summary Judgment on the Compactness of HD-1.*

Despite admitting that HD-1 is "relatively compact under the objective Reock Test," as well as "more compact than the alternative corresponding District in the Modified Rights Plan," the Riley Plaintiffs argue HD-1 is "non-compact when considering subjective factors" because they claim it contains a classical "appendage" that was intentionally created. [Riley Memo. at 9-10 & n.34.] They even go so far as to accuse the Board of changing the configuration of HD-1 from Board Option 1 and 2 for the sole reason to create this "offensive appendage." [*Id.* at 10.] But the most insulting, and completely baseless accusation is that there was "a possible political motivation for the appendage of both a personal and partisan nature." [*Id.* at 11.] Instead of actually looking at a map of HD-1 or reading the Board Record, the Riley Plaintiffs fabricate an elaborate conspiracy theory that Board member Jim Holm intentionally created this "offensive appendage" because he thought Representative Kawasaki lived there. [*Id.* at 11-14.]

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This somewhat confusing diatribe of alleged political gerrymandering and personal vendettas is simply ridiculous.[1]

The configuration of HD-1 was largely driven by equal population considerations and, ironically, compactness. Board member Holm actually went to great length, on the record, to explain why he drew House District 1 the way he did. [ARB00002989-ARB00003006; ARB00003029-ARB00003058.] The reasons had nothing to do with "revenge," but stemmed from the desire to create a district that was as near as practicable to the ideal district size. [ARB00003006.]

After the Board had drafted and adopted Board Option 1 and 2, and several third parties had submitted plans, Dr. Handley advised the effectiveness standard had changed for Alaska Native districts due to an increase in racially polarized voting. [ARB000013329-ARB000013369.] The Board was thus forced to redraw all of its Alaska Native districts, which in turn affected many of the urban district boundaries. [ARB00003842-ARB00003989; ARB00006356-ARB00011791; ARB00013329-ARB00013369; ARB00013475-ARB00013492.; Affidavit of Taylor Bickford at ¶ 2 ("Bickford Aff.").]

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[1] The Riley Plaintiffs' Complaint contains no allegation of "partisan gerrymander" or anything even remotely similar. [*See* Riley Plaintiffs' Complaint, *passim.*] Further, none of the other plaintiffs pleaded "partisan gerrymander" claims. [*See* FNSB Complaint, *passim*, Petersburg Plaintiffs' Complaint *passim*]. The claims asserted in the Riley Plaintiffs' Complaint include: (1) geographic proportionality arguments as to the residents of the City of Fairbanks and the Fairbanks North Star Borough [Riley Complaint at ¶¶ 16-19]; (2) Proclamation HD-38 does not consist of a relatively integrated socio-economic area [*Id.* at ¶ 20]; and (3) Proclamation HD-1, 2 & 5 are not compact. [*Id.* at ¶ 21.] Although they did not challenge HD-37 in any capacity, this Court has ruled the Riley Plaintiffs could rely upon the contiguity and compactness claims raised as to HD-37 by the FNSB. Since neither the Riley Plaintiffs nor the FNSB raised a claim for "partisan gerrymandering" in either of their complaints, the Riley Plaintiffs' partisan gerrymandering arguments are improper. *E.g. Redman v. Dept. of Ed.*, 519 P.2d 760, 772 (Alaska 1974); *Transamerica Title Ins. Co. v. Ramsey*, 507 P.2d 492, 499 (Alaska 1973). Accordingly, the Board objects to the Riley Plaintiffs' attempt to raise claims not in their complaint at this late date and request these inappropriate arguments not only be ignored, but stricken from the record.

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The configuration of HD-1 was also effected by the Board's decision that population from the Goldstream and Ester areas of the Fairbanks North Star Borough ("FNSB") needed to be added to House District 38 in order to comply with the federal Voting Rights Act. [ARB00002991-ARB00002993; ARB00004151-ARB00004156; ARB00002928.] As explained in both Dr. Handley's Report and the Board's Preclearance Submission, the 2010 census revealed that the rural Alaska Native districts, as a whole, were seriously under-populated. [ARB00006543; ARB00006544; ARB00006548; ARB00013350] The five rural Alaska Native districts (outside Southeast Alaska), were short a total of over 10,000 persons from the ideal district size. As a result, at least one of the five rural Alaska Native districts had to pick up substantial urban population not previously included within this set of Alaska Native Districts. [ARB00013358 at n. 22] This problem, caused by several factors, including the "out-migration" of Alaska natives and the generally slower growth rate in rural Alaska than urban Alaska, was complicated by the fact that there were virtually no substantial Alaska Native population concentrations adjacent to the existing rural Alaska Native districts from which to draw population, and the impossibility of creating an Alaska Native district in urban areas of the State. [ARB00006716; ARB00006734; ARB00006813-ARB00006824; Bickford Aff. at ¶ 3.] Accordingly, in order to find the population necessary to meet the federal equal protection requirement of one-person one-vote, population from more urban areas of the state was going to have to be added to at least one rural Alaska Native District. [ARB00013404-ARB00013406.]

The Board considered different options, including several plans presented by third parties, a number of which drew districts that took population out of various areas of Fairbanks. [Bickford Aff. at ¶ 5.] However, none of those alternatives provided viable solutions as all of

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them were retrogressive. [ARB00003550; ARB00004692-ARB00004693] In the end, the Board determined that the most reasonable alternative that allowed the Board to create a non-retrogressive plan was to add population from the Ester and Goldstream areas of the FNSB to Proclamation House District 38. [ARB00013407-ARB00013408]

A number of factors made the Ester/Goldstream areas of the FNSB the best area from which to draw population and add to rural Alaska Native Districts. First, the FNSB had excess population to give, just under half an ideal house seat, or approximately 8,700 people. [ARB00004156-ARB00004157; Bickford Aff. at ¶ 4.] Second, Fairbanks had some historical economic, cultural and social ties to rural Alaska. [ARB00013410.] Third, its geographic location made it relatively proximate to the rural districts. Fourth, the FNSB had areas which historically tended to vote Democratic. This was crucial because Dr. Handley advised the Board that if urban, non-Alaska Native population had to be added to rural Alaska Native districts, that urban non-Alaska Native population should be from areas that tend to vote Democratic. [ARB00004337; ARB000013358 at n. 22][2] Dr. Handley explained this was important because the Alaska Natives' preferred political party is the Democratic party and therefore adding Democratic-voting, non-Alaska Native population would enhance the effectiveness of that district not only because Alaska Natives tend to vote Democratic, but also

[2] The Riley Plaintiffs' Voting Rights Act expert, Dr. Arrington, agreed with Dr. Handley's analysis and advice at his deposition, testifying that (1) when adding urban population to a rural minority district "you would want to add Democrats" because adding Democrats potentially increases the effectiveness of the district [Exhibit A, Deposition of Theodore S. Arrington, Ph.D at 103:12-104:5 ("Arrington Depo."]; (2) Alaska Natives' political party of choice is the Democratic party and Alaska Natives vote overwhelmingly for Democrats [*Id.* at 90:2-5, 19-22; 92:15-16]; and (3) Democrats are more likely to support an Alaska Native-preferred candidate and Alaska Native-preferred candidates are more likely to be Democrats [*Id.* at 99:7-12].

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due to an expected increase in white cross-over vote. [*Id.*; Arrington Depo. at 90:2-5, 19-22; 92:15-16; 99:7-12; 103:12-104:5.]

The need to "export" some of the excess population out of the FNSB, into HD-38, meant there was less population in the Fairbanks area. [ARB00002928-ARB00002937.] The Board decided to move the Eielson population up to Fairbanks instead of combining it with population from the Mat-Su, which enabled Board member Holm to create five districts wholly within the Fairbanks North Star Borough boundaries. [ARB00002928-ARB00002929; ARB00002990; ARB00002998-ARB00002999.]

In creating his Fairbanks districts, Board Member Holm used natural boundaries to create districts that were as near as practicable to the ideal district size. [ARB00002991; ARB00002993; ARB00003006.] In fact, Mr. Holm used natural boundaries to draw HD-1 and HD-3 (which were House District 10 and House District 7, respectively, before the Board renumbered the final adopted plan.) [ARB00002993; Bickford Aff. at ¶ 6, 7.] A census block view of the boundary between HD-1 and HD-3 makes it obvious why the boundary of HD-1 comes slightly over to the right – to grab population from the only adjacent area within the boundaries of the City of Fairbanks.[3] [Bickford Aff. at 7.] Mr. Holm further explains why it made sense to draw the boundary this way:

> I mean, it's make sense to me to have like 9 [Proclamation HD-1], it makes sense to have it between the slough and all of downtown Fairbanks. And then it goes to the Tanana River. So it's the slough and - - to the Tanana river and it's all the way to the airport, it ties in with the airport there. And 10 [Proclamation HD-3]

[3] Attached hereto as Exhibit B are census block views of the boundary between HD-1 and HD-3. These maps clearly show HD-1 comes west to grab the population just north of the Noyes Slough, and not in HD-3. The boundary to the south follows the College Road west until Noyes Slough, at which point the boundary continues along the slough, encircling the census blocks. These maps also show Jim Holm had to go west instead of north because the land north of HD-1 has little to no population.

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> didn't have enough people on the right so we had to go past Wainwright and go over and take some people out of 11 because we had excess people in 11.

[ARB00002993.] Mr. Holm himself was not happy that he had to extend the boundary of HD-1, but he had to in order to get the population he needed. [ARB00003052; ARB00003055; Bickford Aff. at ¶ 7.] Thus, the Riley Plaintiffs' claim that there is nothing in the Board Record that explains why this "appendage" to HD-1 was necessary is just wrong. The Board Record clearly explains, at several different places, the reasons for the configuration of HD-1 – population and natural boundaries.

The Board Record also shows Riley Plaintiffs' convoluted political "conspiracy theories" are completely false. Contrary to their sweeping, unsupported allegations that Board Member Holm mistakenly thought Representative Kawasaki lived in the "appendage" to HD-1, Mr. Holm did in fact know where Representative Kawasaki lived when he drew the Fairbanks districts. [ARB00002989.] Board Member Holm actually identifies Proclamation House District 4 (which was House District 9 before the Board renumbered the final adopted plan) as "Kawasaki's district." [*Id.*] This proves Board Member Holm knew at that time that Representative Kawasaki lived in Proclamation House District 4 and *not* the alleged "appendage" to HD-1. The truth could not be clearer. The Riley Plaintiffs' argument is nothing more than rank nonsensical speculation of counsel not worthy of serious consideration.

In short, the Board Record, which is clearly admissible evidence, contradicts every one of the Riley Plaintiffs' allegations regarding HD-1. The Riley Plaintiffs admit that HD-1 is (1) mathematically "relatively compact"; and (2) more compact than the alternative corresponding District in their Demonstrative Plan. Thus, the Riley Plaintiffs' own "moving papers" establish that the Board is entitled to summary judgment on the compactness of HD-1 under Alaska R.

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Civ. P. 56(c). At a minimum, genuine issues of material fact exist which prohibit summary judgment in favor of the Riley Plaintiffs. Accordingly, the Riley Plaintiffs' Motion must be denied as to the compactness of HD-1.

2. *House District 2 is more Compact than the most Comparable District in the Demonstrative Plan and far more Compact Overall, and is Therefore Relatively Compact and Constitutional.*

The Riley Plaintiffs claim HD-2 is not compact under the ill-suited Reock Test or under a visual test because it follows the Richardson Highway corridor, and is therefore a "corridor" that is indicative of gerrymandering. [Riley Memo. at 14-17.] Once again, the Riley Plaintiffs fail to properly apply Alaska case law. The type of "corridors" Alaska courts are concerned with are "corridors" of land that extend to include a populated area but not the less populated area around it. *Hickel,* 846 P.2d at 45-46. Such is not the case with the configuration of HD-2. Moreover, there is not a single shred of evidence supporting the argument that the configuration of HD-2 is partisan in nature. Rather, the Board Record establishes that the configuration of HD-2 was designed to accomplish the legitimate goals of redistricting – equal population distribution and socio-economic integration. [ARB00003039-ARB00003056.]

Board Member Holm, who has lived his entire life in Fairbanks, drew this particular district based on his in-depth knowledge of this area and the people who live there. [ARB00003041.] HD-2 (which was identified as House District 11 before the Board renumbered the districts for the Proclamation Plan) largely consists of North Pole and Eielson Air Force Base. [ARB00003039; ARB00006035; Bickford Aff. at ¶ 6.] Mr. Holm included North Pole with Eielson Air Force Base because "many of the people that live in North Pole are retired military," and "there's a real close tie between Eielson Air Force Base and North Pole, that's where the people live that don't live on base." [ARB00003039-ARB00003040.] The

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reason for the rest of the configuration was for population deviations. [ARB00003040.] Mr. Holm did not include other areas, which to a lay person appear to be unpopulated land, because in fact that land is farmland, and Mr. Holm believed the farmers who own this land have more in common with the extensive farm population in HD-6 rather than the military population in HD-2. [ARB00003040-ARB00003043.] Moreover, it was not possible to stretch the boundary of HD-2 towards HD-4 because he needed the population for HD-4 (previously identified as House District 9.) [ARB00003045-ARB00003050; Bickford Aff. at ¶ 6.] Thus, the record before this Court establishes that the configuration of HD-2 was designed for population equality reasons and to combine areas that were more socio-economically integrated. The Riley Plaintiffs' arguments to the contrary are without merit.

The Riley Plaintiffs' attempt to claim HD-2 is not relatively compact because a more compact district was created under the Modified RIGHTS Plan ("MRP") [Riley Memo. at 14-15, 17] proves nothing, and is actually wrong. Virtually any district can be made more compact. The most compact district does not automatically trump another relatively compact district. There are other concerns to take into account, which is what the Board did in this case.

Moreover, in an attempt to quantify and justify their argument that HD-2 is not compact, the Riley Plaintiffs, like the Petersburg Plaintiffs before them, rely entirely on a single mathematical formula: the "Reock Test." [Riley Memo. at 14-15.] The Riley Plaintiffs' argument is misplaced for a number of reasons.

First, The Riley Plaintiffs' attempt to claim the Reock Test is the "definitive" mathematical compactness test has no basis in law as "[t]here is no single practical measure of compactness, in geometric terms, that is generally accepted by social scientists as definitive." *Matter of Legislative Redistricting*, 805 A.2d 292, 333 (Md. 2002).

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Second, the Riley Plaintiffs purposefully limited their analysis to this single test because they knew that other mathematical compactness tests indicate HD-2 is actually more compact than the most comparable Demonstrative Plan district. Mr. Lawson's compactness analysis report is the only evidence relied upon by the Riley Plaintiffs in support of their so-called "objective test" argument.[4] As part of that report, Mr. Lawson generated eight different computerized mathematical tests for all 40 of the districts in the Proclamation Plan and the MRP that he drafted. [Exhibit C.] Review of Mr. Lawson's "Measure of Compactness Reports" reveals the obvious reason for the Riley Plaintiffs' desperate attempt to convince this Court that only the Reock test should be considered: every other mathematical compactness test establish that Proclamation HD-2 is far more compact than MRP HD-5, and relatively comparable to MRP HD-6.

As illustrated below, seven of the eight mathematical compactness tests generated by Mr. Lawson for Proclamation HD-2 and MRP HD-5 establish that Proclamation HD-2 is mathematically more compact.

Compactness Test	**Proc. HD-2**	**MRP HD-5**
Schwartzberg (closest to 1 most compact)	2.03	2.19
Perimeter (smallest perimeter most compact)	76.51	1,601.91
Polsby-Popper (closest to 1 most compact)	0.18	0.15
Length-Width (lower number	1.64	10.36

[4] Attached hereto as Exhibit C are the "Measure of Compactness" Reports generated by Mr. Lawson for the Proclamation Plan and the Demonstrative Plan (referred to as the MRP), and the explanatory material provided regarding the different compactness tests.

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most compact)		
Population Polygon (closest to 1 most compact)	0.75	0.26
Population Circle (closest to 1 most compact)	0.70	0.04
Ehrenburg (closest to 1 most compact)	0.30	0.15

[Exhibit C.] Likewise, Proclamation HD-2 is more "mathematically compact" than MRP HD-6 under one of the compactness tests – the "Length-Width" test – and within the standard deviation of the Proclamation Plan in four others. [*Id.*]

In fact, the Proclamation Plan as a whole has better overall compactness numbers than the MRP. It has a lower "maximum deviation": 0.56 to 0.66. A lower "mean deviation": 0.37 to 0.40; and a lower "standard deviation": 0.13 to 0.14. [*Id.* at 1-2.] Likewise, the Proclamation Plan has a much lower total as a whole under the "Perimeter" Test then the MRP: 26,817.65 to 28,288.84. According to the information supplied by the Riley Plaintiffs' own witness:

> The Perimeter test computes the sum of the perimeters of all the districts. The Perimeter test computes one number for the whole plan. ***If you are comparing several plans, the plan with the smallest total perimeter is the most compact.***

[Exhibit C at 4 (emphasis added).] Simply put, the Board's Proclamation Plan is overall a much more compact plan than the MRP. Obviously, the Riley Plaintiffs selectively rely only on the Reock Test because that test most favors their position, while other mathematical compactness tests actually favor the Board. The Court should not be fooled by the Riley Plaintiffs' disingenuous argument.

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Third, the Riley Plaintiffs' argument simply ignores the fact that a plan must be considered as a whole because any slight shift in one area will have a domino effect on the rest of the state. The Proclamation Plan is the only plan that was not retrogressive and therefore complied with the federal Voting Rights Act. [ARB000013329-ARB00013369.] This includes the MRP, which is also the Riley Plaintiffs' Demonstrative Plan, referred to by the Riley Plaintiffs as the "Modified Rights Plan." Both the Board's Voting Rights Act expert Dr. Handley and the Plaintiffs' own expert, Dr. Arrington, reached this conclusion. [Arrington Depo. at 90:2-5, 19-22; 92:15-16; 99:7-12; 103:12-104:5; ARB00013353; ARB00013359.] Thus, the MRP is not a viable alternative to the Proclamation Plan.[5]

The Riley Plaintiffs' other arguments are equally irrelevant and ineffectual. First, as the Board explains in great detail above, there are numerous places in the Board Record that explain why the configuration of HD-2 was necessary. The Riley Plaintiffs conveniently ignore any references to the Board Record, and would have this Court do the same; perhaps because the Board Record contradicts every one of their arguments.

Second, the Riley Plaintiffs' attempt to somehow compare HD-2 to the district in *Shaw v. Reno* is just absurd. In *Shaw v. Reno*, the US Supreme Court struck down a district that was created for no other reason than to grab minority populations. 509 U.S. 630 (1993). The district stretched approximately 160 miles along Interstate 85, and was no wider than the I-85 corridor for a majority of the way. *Id.* at 630. The Court found there was no other explanation

[5] Moreover, the Demonstrative Plan also evidences an intent to discriminate against Alaska Natives because it (1) fails to retain at least one Alaska Native incumbent who is the Alaska Native preferred candidate of choice in the Alaska Native district in which that candidate has the best chance to win; (2) pairs several Alaska Native incumbents who are the Alaska Natives' preferred candidates of choice; and (3) systematically overpopulates the Alaska Native districts. [Arrington Depo. at 90:2-5, 19-22; 92:15-16; 99:7-12; 103:12-104:5, Bickford Aff. at ¶ 8.]

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