

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.

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

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

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

.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*

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

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.]

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.”).]

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.

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 underpopulated. [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

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].

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.

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.

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

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).

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.

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 than 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.

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.]

for the bizarre district than to segregate voters into separate districts on the basis of race without sufficient justification. *Id.* at 639-652.

HD-2, on the other hand, was drawn to accomplish every redistricting principle except minority population. HD-2 is not a minority voting district drawn to comply with the federal Voting Rights Act. Mr. Holm was simply concerned with the total population number, not the race of that population, when he drew HD-2. [ARB00003045-ARB00003050.] HD-2 is also wider than the Richardson Highway in every area, unlike the district in *Shaw*. These two districts are not in any way comparable.⁶

As the Board Record makes clear, HD-2 joins similar areas with socio-economic ties and contains as nearly as practicable an ideal population size. The configuration is more than justified for legally acceptable reasons and compact enough to withstand constitutional challenge. For all these reasons, the Board, not the Riley Plaintiffs, is entitled to summary judgment on the compactness of HD-2. At the very least, these justifications raise genuine issues of material fact which require the Riley Plaintiffs' Motion be denied.

3. *House District 37 is Relatively Compact Given the Geographic Reality of Alaska and, in any Event, its Configuration was Necessary in Order to Avoid Retrogression and Obtain Preclearance Under Sections 5 of the Voting Rights Act.*

The Riley Plaintiffs claim HD-37 is not compact because it has a Reock Test of .00 and contains an 800 mile expanse over the Bering Sea, the equivalent of an unpopulated "corridor." What the Plaintiffs fail to realize, or simply choose to ignore, is HD-37 is the extreme example of Alaska's unique and irregular geography that prompted the Alaska Supreme Court to

⁶ Attached as Exhibit D is a map of the district struck down in *Shaw* for violating the Equal Protection Clause of the United States Constitution. Comparing that map to the configuration of HD-2 [ARB00006088] illustrates the ineptness of the Riley Plaintiffs' attempted comparison.

institute a flexible approach to compactness – “relative” compactness. The configuration of HD-37 is a result of the mandated responsibility of the Board to comply with the often times conflicting federal and state law, all while working with Alaska’s geographical anomalies.

a. The Geography of House District 37 Proves Why Mathematical Measures of Compactness are Ill-Suited for Alaska, and Why Alaska Employs a Visual Test Instead.

The Riley Plaintiffs’ discussion of the Reock Test further demonstrates why mathematical measures of compactness are ill-suited for Alaska. They claim HD-37 has a Reock Test score of .00, which “essentially means that District lacks any compactness whatsoever.” [Riley Memo. at 19.] But under a visual test, which is the proper compactness measure in Alaska, it is clear HD-37 is not close to the shape of a circle because of a forced configuration, but as a result of Alaska’s natural geography.

HD-37 contains the world’s longest archipelago that stretches more than 1,000 miles. It is simply impossible to create a perfect, circular district around this geographical anomaly. The Alaska Supreme Court has relaxed the compactness standard to accommodate these types of areas. *See, e.g., Carpenter*, 667 P.2d at 1218 (Matthews, J., concurring) (recognizing “it is not possible to divide Alaska into circles, [therefore] it is obvious that the constitution calls only for relative compactness.”)

The Riley Plaintiffs conveniently relegate to a passing comment in a footnote the fact that they (1) admit that Proclamation HD-37’s “failure under the Reock test has limited significance, and related to Alaska’s irregular geometry [sic]” and (2) their own Aleutian district, MRP HD-37 “also scores a zero compactness score” under the Reock test.”⁷ [Riley

⁷ The Aleutian district in the current “Benchmark” Plan, Benchmark HD-37, which passed constitutional muster in 2002 and has been in place for the past decade also scores a “0.05” under the Reock test. [Bickford Aff. at ¶ 9.]

Memo. at 20, n.68; *see also* Exhibit C at 1.] They completely fail to mention, for obvious reasons, the fact that of the eight mathematical compactness tests run by Mr. Lawson, Proclamation HD-37 is more compact than MRP HD-37 in three of the tests: the Schwartzberg, Perimeter and Ehrenburg tests. [Exhibit C at 2-3.] In three of the other tests – the Reock, Population Polygon and Population Circle tests – the two districts have the exact same mathematical compactness score. [*Id.*] Stronger evidence that the configuration of Proclamation HD-37 is geographically driven is hard to imagine. It also underscores why the compactness test in Alaska has always been a visual one.

A visual test of HD-37 takes into consideration the strange and linear geography of the area that creates HD-37. The areas are connected by open sea, and include Saint Paul and Saint George Island which are nearly halfway in between the Aleutian Islands to the south/southwest and the Bethel region, or Wade Hampton Census Area, to the north/northeast. Because the Board had to split the Aleutians in order to draft a non-retrogressive redistricting plan that complied with Section 5 of the federal Voting Rights Act, as explained below, HD-37 is relatively compact given these considerations and the irregular geography of this region. This is all the Alaska Constitution requires.

b. Although the Plaintiffs Fail to Make a Compactness Argument, House District 37 is Relatively Compact for the Same Reasons it is Contiguous.

Despite the Riley Plaintiffs' attempts to characterize their non-mathematical arguments as compactness arguments, they really only take issue with the contiguity of HD-37, which is the topic of one of the other six dispositive motions they have filed.⁸ The Riley Plaintiffs' 'compactness' arguments on HD-37 are also without merit.

⁸ *See* Riley et. al. Plaintiff's [sic] Motion for Partial Summary Judgment: Contiguity of HD 37.

First, the Plaintiffs incorrectly allege the court in *Hickel* “also addressed the main problem presented by Proc. HD 37 in the terms of compactness.” [Riley Memo. at 20.] Once again, the Riley Plaintiffs provide no actual authority for their allegation. Review of the *Hickel* case shows that the Court did not at any time address compactness – it only addressed the contiguity problems associated with splitting the Aleutian Islands. *Hickel*, 846 P.2d at 54.

Second, the Riley Plaintiffs’ comparison of the open sea in HD-37 to an unpopulated “corridor,” although creative, fails to consider the court’s definition of a “corridor.” The Alaska Supreme Court defines this particular design as a corridor of unpopulated *land*. *Id.* at 45-46. Until marine life is counted as people, “open sea” will always contain an unpopulated area. This is perhaps the reason why the only time the Alaska Supreme Court has addressed open sea is in the context of contiguity, not compactness. *Id.* at 45.

Third, the Riley Plaintiffs’ arguments here are basically mirror images of their arguments in their “Motion for Partial Summary Judgment: Contiguity of HD 37.” For the same reasons Proclamation HD-37 is contiguous, it is also compact.⁹

As the Board established in its Contiguity Opposition, the Board was required to split the Aleutian Islands in order to create a non-retrogressive plan. [ARB Contiguity Opp. at 4-12.] In short, in order to create a non-retrogressive plan, the Board separated the Aleutian Islands, from Akutan west, from the rest of the Aleutians and added it to the Bethel area. [ARB00003325; ARB00003339; ARB00003430.] The goal was to increase the voting age population (“VAP”) in House District 36 so the Alaska Peninsula could be paired with Kodiak to form an effective Senate district. [ARB00003326; ARB00003339; ARB00003430.] The

⁹ See Defendant Alaska Redistricting Board’s Opposition to Riley et. al. Plaintiff’s Motion for Partial Summary Judgment: Contiguity HD 37 at pg. 4-12 (“ARB Contiguity Opp.”)

best way to accomplish that goal was to separate the communities in the Aleutian Chain with large, non-Native populations from the Western Aleutians and add them to the Bethel region with its high concentration of Alaska Native voting age population. [ARB00003326; ARB00003339; ARB00003430, ARB00003433.] This configuration also avoided pairing Bethel and Kodiak in a Senate district, thereby pairing the most powerful Alaska Native incumbent in the Senate, Senator Hoffman, with the President of the Senate, Senator Stephens. [ARB00003328; ARB00003431.] Avoiding this pairing was very important to Alaska Native groups, who let the Board know of their concerns. [ARB00005855-ARB00005857; ARB00005969-ARB00005970; ARB00005977; ARB00005981-ARB00005982; ARB-00005984-ARB00005985; ARB00006009.]

The Riley Plaintiffs' claim that there "are more compact alternatives available" has no basis in fact or law. [Riley Memo. at 21-22.] Factually, the Riley Plaintiffs' argument is again related to contiguity, not compactness. The fact that the Aleutian districts in Board Option 1 and 2, as well as the MRP, are districts "contiguous by land which includes all the Aleutians, the Alaska Peninsula and most of the Bristol Bay region" has nothing to do with compactness. [Riley Memo. at 22.] The Riley Plaintiffs themselves admit that MRP HD-37 "scores a zero" under the Reock test, which they admit "means the District is simply not compact." [Riley Memo. at 20 & n.68.] Because the Riley Plaintiffs admit that the configuration of the Aleutian districts in Board Option 1 and 2 (also HD-37)¹⁰ follow a "similar structure" as MRP HD-37

¹⁰ See Map of Board Option 1 at ARB00006091 and Board Option 2 at ARB00006092. Compare to Riley Memorandum, Exhibit 11.

[Riley Memo. at 22], they also admit that HD-37 in Board Option 1 & 2 would also not be compact.¹¹

The Riley Plaintiffs' argument completely ignores the undisputed fact that none of these alternative plans complied with the federal Voting Rights Act. They are all retrogressive. [Arrington Depo. at 90:2-5, 19-22; 92:15-16; 99:7-12; 103:12-104:5; ARB00013353; ARB00013359.] The Board had to split the Aleutians in order to meet the benchmark and therefore obtain preclearance. Despite the complications the federal Voting Rights Act created and the irregular geography of the region, the Board still maintained a relatively compact area in HD-37. These are the precise reasons why the requirement is "relative" compactness and not the "most" compact.

The Riley Plaintiffs also fail to realize that while some of the other plans did not split the Aleutians, several plans did, including the Fairbanks North Star Borough and the RIGHTS Coalition. [See Exhibit E, Fairbanks North Star Borough, May 5, 2011; Exhibit F, the RIGHTS Coalition, May 6, 2011; Exhibit G, the RIGHTS Coalition, May 24, 2011.] Even the Board itself had drawn a draft plan that split the Aleutians. [ARB00004161-ARB00004174.] Although it wasn't the Board's first choice, the Board reasonably determined this configuration was the only way to comply with the federal Voting Rights Act. Both Dr. Handley and Dr. Arrington agree. [ARB00003341; ARB00003348; ARB00003440-ARB00003441; Arrington Depo. at 90:2-5, 19-22; 92:15-16; 99:7-12; 103:12-104:5; ARB00013359.]

¹¹ The Riley Plaintiffs' attempt to rely upon the quote from Dr. Arrington's Report regarding what "simple geographic logic would dictate" is also completely disingenuous. [Riley Memo. at 22.] The excerpt from Dr. Arrington's Report from which they cite (attached to their Memorandum as Exhibit 12, although the Riley Plaintiffs cite to Exhibit 11) clearly indicates it is in reference to "contiguity", not compactness. [Riley Memo., Exhibit 12 at pg. 2-4.] Accordingly, it is also irrelevant here.

Therefore, in order to meet the Benchmark Plan, avoid retrogression and provide the best opportunity for the Proclamation Plan to obtain preclearance, the Board determined that it was necessary to split the Aleutians. [ARB00003341; ARB00003348; ARB00003440-ARB00003441.] This configuration avoided pairing Senator Hoffman and Senator Stephens, and increased the Alaska Native VAP in House District 36 so it could be combined with House District 35 to create an effective Senate district.

The Riley Plaintiffs' argument that the Voting Rights Act did not require splitting the Aleutians is simply wrong. The Riley Plaintiffs' Alaska Native voting age population analysis is only relevant to House district percentages, and does not take into consideration the necessary Senate pairings. The Board had to split the Aleutians in order to create an effective Senate district, which Dr. Handley opined needed to be as high as possible. [ARB00003326; ARB00003339; ARB00003430; ARB00003433.] In order to accomplish this goal, the Board had to shed the non-Alaska Native population from HD-36, which included the Aleutian Islands west of Unimak Pass. [ARB00003325; ARB00003339; ARB00003430.] This increased the Alaska Native voting age population in HD-36 to 71.45%, which, when combined with HD-35, resulted in an Alaska Native voting age population of 43.75% in Senate District S. [ARB00006034.] Dr. Handley concluded this was high enough to create an effective Senate district and the Department of Justice obviously agreed. [ARB00006358; ARB00013329-ARB00013369] The Riley Plaintiffs' contention that the federal Voting Rights Act does not require the splitting of the Aleutian Islands is based on an incorrect analysis and is simply wrong.

The configuration of HD-37 is legally justified. HD-37 is "relatively compact" and to the extent the Board had to depart from strict adherence to the compactness requirements of

Article VI, Section 6, that departure is justified by its need to adopt a non-retrogressive plan that would obtain preclearance under Section 5 of the VRA. Despite the arduous nature of properly balancing all the competing legal and demographic issues, the Board was still able to draft a district that was relatively compact, contiguous, and as nearly as practicable socio-economically integrated. This is the nature of redistricting and the reason for flexible standards. The evidence before this Court establishes that the Board itself is entitled to summary judgment on the issue of the compactness of HD-37. At a minimum, the evidence establishes that there are genuine issues of material fact that require the Riley Plaintiffs' motion be denied.

IV. CONCLUSION

The Riley Plaintiffs' arguments on compactness would have this Court completely ignore the more than 14,000 pages that make up the Board Record. The Board Record, which is admissible evidence as supplemented above, contradicts every single argument made by the Riley Plaintiffs and establishes that there are reasonable and justifiable reasons for the configurations of House District 1, 2, and 37, thereby qualifying each district as "relatively" compact and constitutional. As such, the Board, not the Riley Plaintiffs, is entitled to summary judgment under Rule 56(c), which provides that summary judgment can be granted against the "moving party" without the need for a cross-motion "where appropriate." This is such an appropriate situation.

At a minimum, the record before the Court establishes there are genuine issues of material fact regarding the compactness of House Districts 1, 2 and 37 and therefore, the Riley Plaintiffs are not entitled to summary judgment and their Motion for Partial Summary Judgment must be denied in its entirety.

DATED at Anchorage, Alaska this 13th day of December 2011.

PATTON BOGGS LLP
Counsel for Defendant
Alaska Redistricting Board

By: 

Michael D. White
Alaska Bar No. 8611144
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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of December 2011, a true and correct copy of the foregoing document was served on the following via:

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EXHIBIT INDEX

- Exhibit A Arrington deposition excerpts
- Exhibit B Census block views of boundary between HD-1 and HD-3
- Exhibit C Measure of Compactness Report by Leonard Lawson
- Exhibit D Map of District at issue in *Shaw* case
- Exhibit E FNSB May 11, 2011 Map
- Exhibit F The RIGHTS Coalition May 6, 2011 Map
- Exhibit G The RIGHTS Coalition May 24, 2011 Map

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

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IN RE 2011 REDISTRICTING CASES)
_____)
Case No. 4FA-11-1935 CI

DEPOSITION OF THEODORE S. ARRINGTON, Ph.D.
Washington, D.C.
Wednesday, November 23, 2011

Reported by:
John L. Harmonson, RPR
Job No. 43927

1 T. ARRINGTON

2 A. Minorities vote overwhelmingly for
3 Democrats.

4 Q. Including Alaska Natives, right?

5 A. Including Alaska Natives. Although
6 there are some exceptions. Obviously, if you
7 look at the precincts in District 38, in
8 Proclamation 38 there are a few precincts that
9 have heavy Native population and also have heavy
10 Republican registration and voting. So you
11 obviously have some exceptions.

12 But overall, Natives in Alaska vote
13 Democratically. What I would call Anglos, but I
14 think in Alaska you simply call them whites,
15 typically vote Republican. So the voting is
16 typically polarized. And that's true for
17 minorities versus whites or Anglos throughout the
18 country.

19 Q. So you would agree with Dr. Handley's
20 conclusions that Alaska Natives, their party of
21 choice is Democrats?

22 A. Yes. With a few exceptions, some of
23 which are located in District 38, that is the
24 case.

25 Q. Where are those located in 38?

1

T. ARRINGTON

2

There will be other evidence presented which I do

3

not have the expertise on.

4

Do you want to take a moment?

5

Q. No. Go ahead, please continue.

6

A. But there are a couple of precincts in

7

the Native areas, in 38, that have more

8

substantial Republican vote. Forget about

9

registration for a second, but if you look, you

10

can see there is some vote there and those happen

11

to be areas where there are more Natives.

12

Now, the extent to which that's

13

important and plays a role is something that

14

other experts will opine about. All I'm saying

15

is that yes, she's right, overall Natives in

16

Alaska vote for Democrats.

17

There are a couple of local exceptions

18

to that. That's all I'm saying. Where exactly

19

those are, I couldn't tell you because I don't

20

know that much about the geography of Alaska.

21

And I may have indeed misspoke when I said

22

registration.

23

Q. Because I'm going to ask you to look

24

at that, because there is no registration data in

25

there.

1 T. ARRINGTON

2 the effectiveness of a district because you in
3 your expert opinion believe that they have little
4 or no probative value?

5 A. That is correct. I said that a second
6 ago.

7 Q. So are Democrats more likely to
8 support an Alaska Native-preferred candidate?

9 A. Yes.

10 Q. And conversely, are Native-preferred
11 candidates most likely to be Democrats?

12 A. Yes.

13 Q. You've done a lot of this talk
14 about -- and we were talking about the effects of
15 party and race on voting behavior.

16 And in fact partisan labels can have
17 an effect on minority voting patterns, can't
18 they?

19 A. Yes.

20 Q. And you've opined on that in other
21 cases?

22 A. Yes. I've even written an article
23 about that subject.

24 Q. And that is because I think roughly,
25 to use your term, most minorities vote Democratic

1 T. ARRINGTON

2 10 percent, I'll call it tolerance, overall range
3 in deviation, there is a presumption that it's
4 constitutional and if you are over, there is a
5 presumption that it's not constitutional. Would
6 that be --

7 A. That's another way to say it.
8 Semantically, I think that's another way of
9 saying the same thing.

10 Q. All right, we're saying the same
11 thing.

12 So back to this district now. You're
13 taking a district, you have to add population to
14 it in order to get within the legal tolerance.
15 It's a rural Alaska district. And you have to
16 add population from an urban area; there is no
17 other choice that you can do.

18 Does it make a difference who you add
19 to that district in terms of politically?

20 A. Yeah. You would want to add
21 Democrats.

22 Q. And that's for the reason we talked
23 about before, minorities vote Democratic, whites
24 generally vote Republican?

25 A. That's correct.

1 T. ARRINGTON

2 Q. If you add more Democrats to the
3 district, that's going to potentially increase
4 the effectiveness of that district?

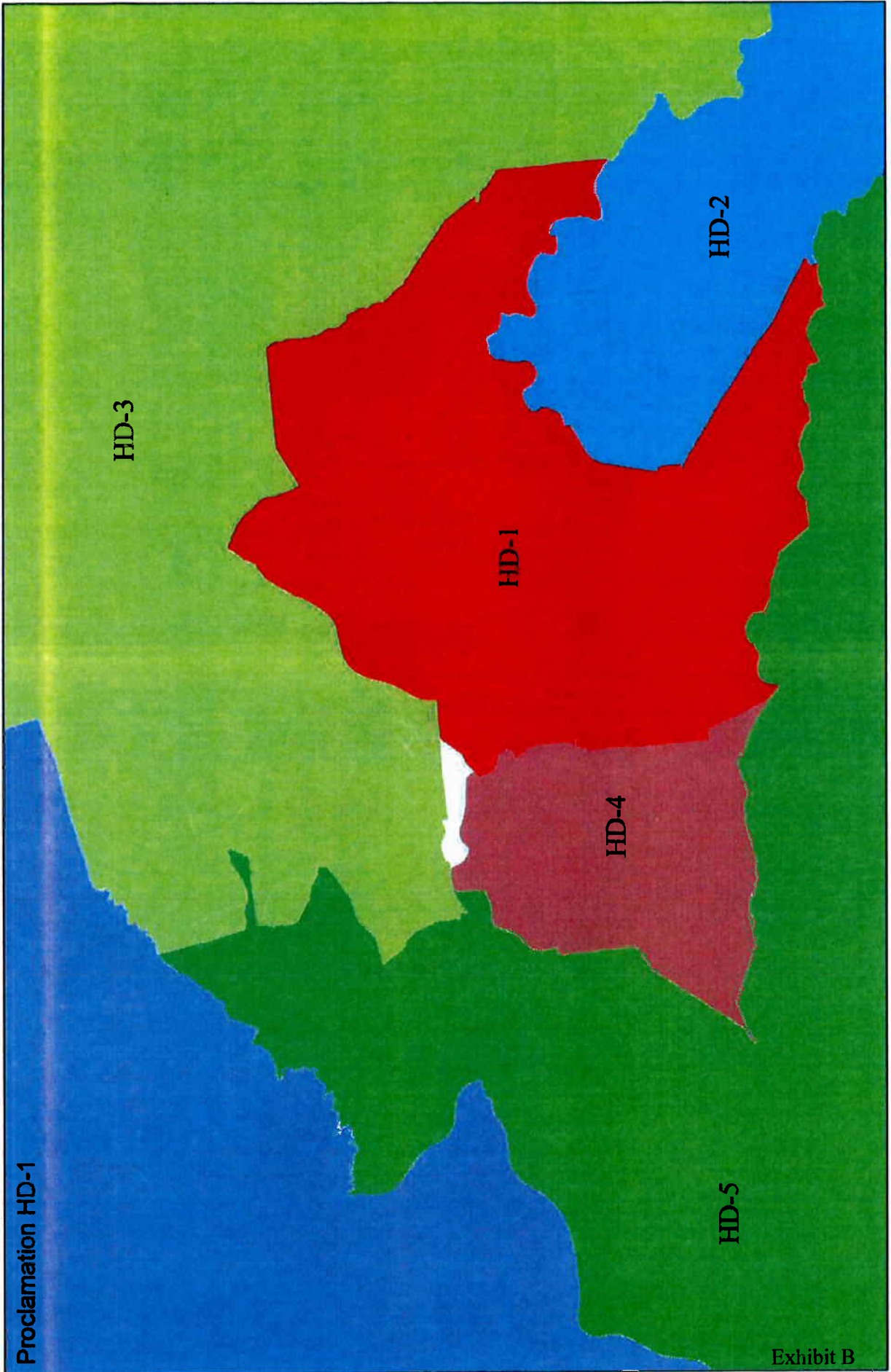
5 A. That's correct.

6 Q. If I could ask you to look back at
7 your report, Doc, and go to page 3 now,
8 Paragraph 8. That's where you talk about your
9 review of Dr. Handley's report and testimony.
10 And there is where you make the comment about
11 regression is a legal term and the semantics that
12 we talked about. I don't want to talk too much
13 about that.

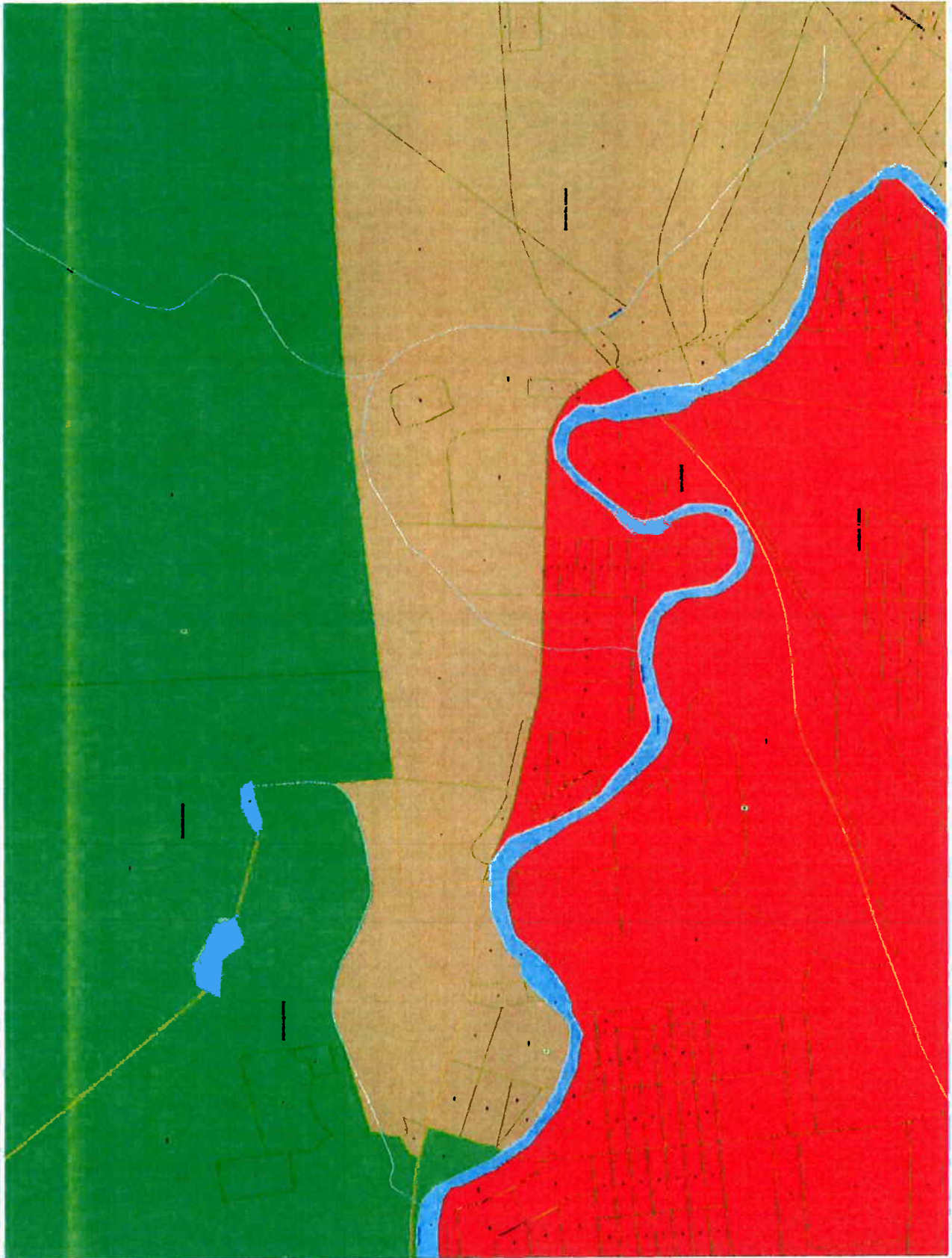
14 But what I want to ask you is this:
15 Given your opinion that you've stated here, you
16 cannot say, can you, whether or not DOJ would
17 consider the demonstrative plan to be
18 retrogressive?

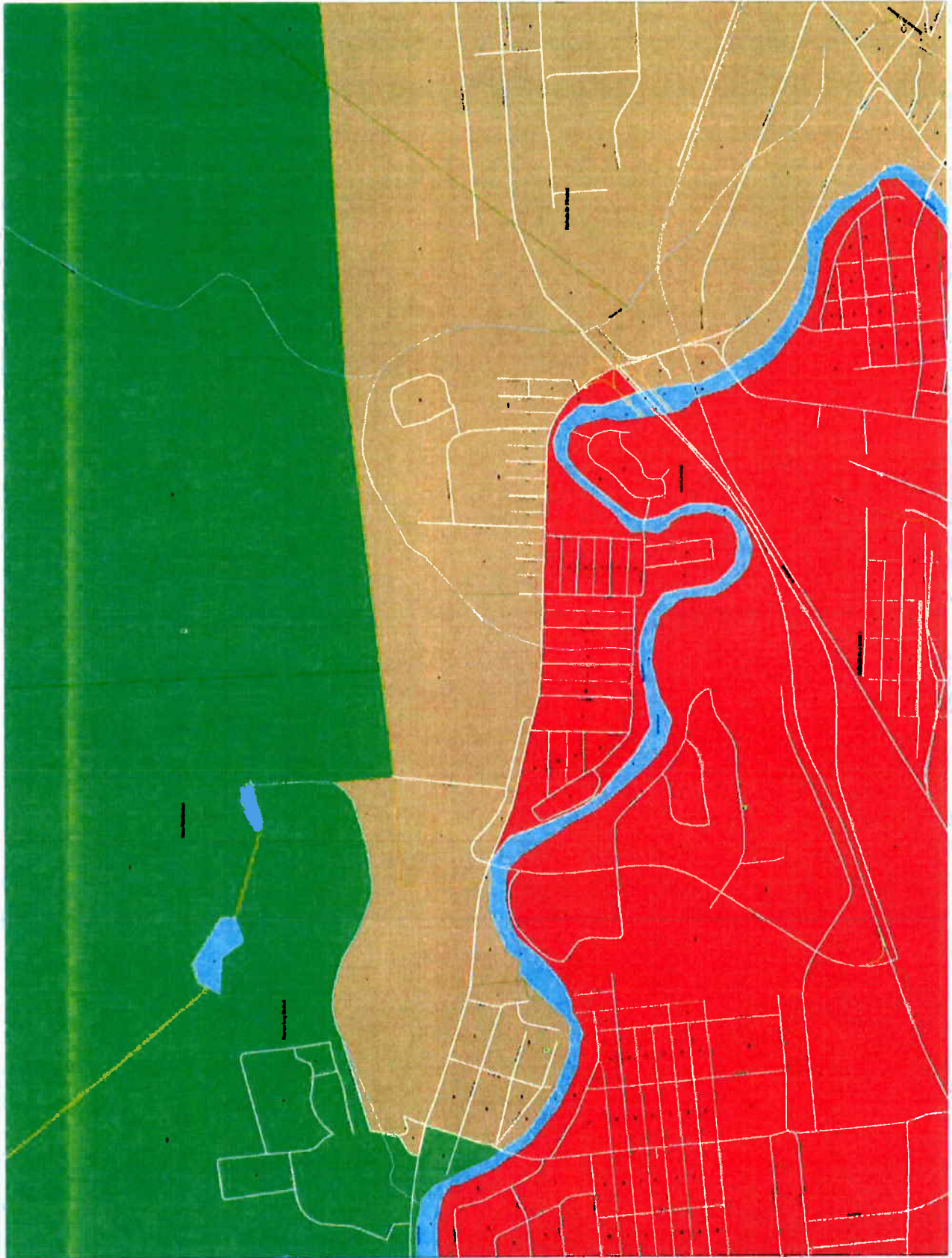
19 A. I can say that. Whether it has any
20 probative value or not depends on whether it's a
21 legal term or a semantic difference.

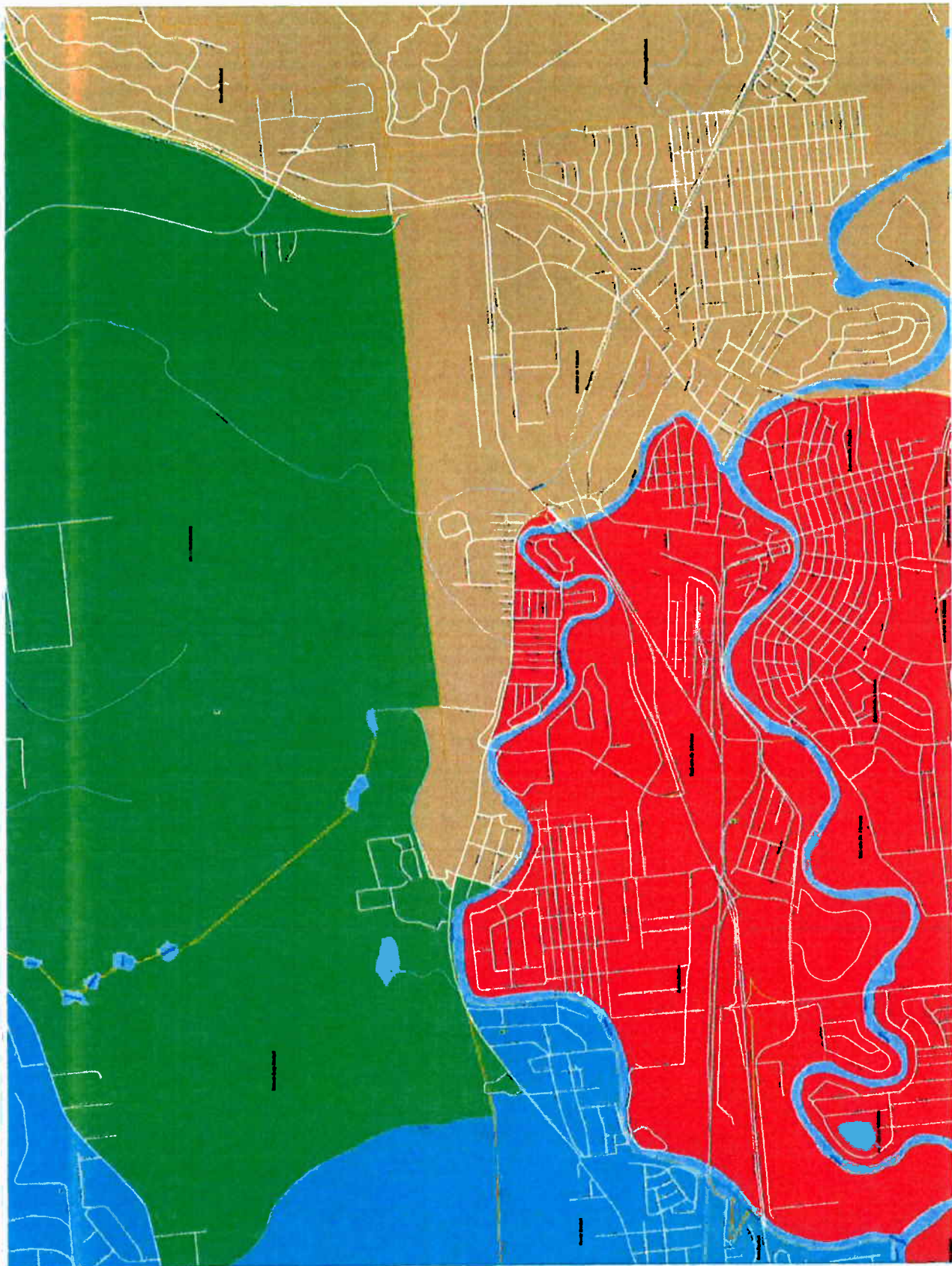
22 Q. I notice that nowhere in your report
23 do you say that you believe that this plan would
24 be precleared by the Department of Justice. By
25 "this plan," I mean the demonstrative plan.

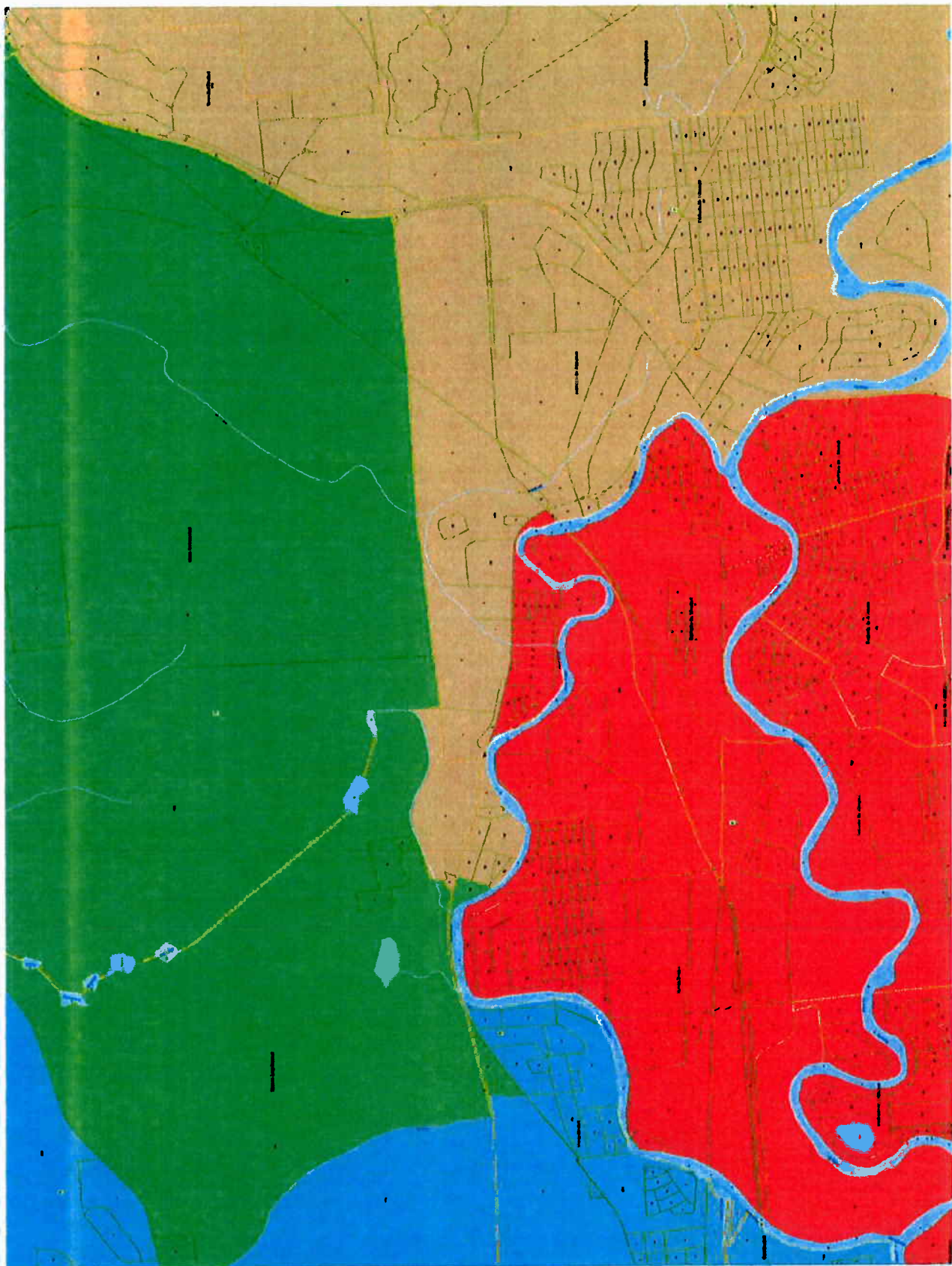


Proclamation HD-1









Measures of Compactness Reports

Maptitude for Redistricting computes seven measures of compactness: Reock, Schwartzberg, Perimeter, Polsby-Popper, Length-Width, Population Polygon, Population Circle, and Ehrenburg.

Plan Name:	Current Congress1		
Plan Type:	Congressional		
Date:	2/10/2010		
Time:	2:15:25PM		
Administrator:	Howard		
User:	J. Smith		
Measures of Compactness			
2/10/2010			
DISTRICT	Reock	Schwartzberg	Perimeter
1	0.26	2.54	141.04
2	0.49	1.56	237.96
3	0.57	1.58	1,424.02
4	0.40	1.59	1,163.12
5	0.44	2.25	562.98
6	0.33	2.65	206.04
Sum	N/A	N/A	3,735.16
Min	0.26	1.56	N/A
Max	0.57	2.65	N/A
Mean	0.42	2.03	N/A
Std Dev	0.11	0.51	N/A

The following references were used to develop these measures:

- Cox, E. P. A method of assigning numerical and percentage values to the degree of roundness of sand grains. *Journal of paleontology*, 1:179-183, 1927.
- Hofeller, T., and B. Grofman. Comparing the compactness of California congressional districts under three different plans: 1980, 1982 and 1984. In B. Grofmann, editor, *Toward Fair and Effective Representation*, pages 281-288, New York, 1990. Agathon.
- Niemi, R. G., B. Grofman, C. Carlucci, and T. Hofeller. Measuring compactness and the role of a compactness standard in a test for partisan and racial gerrymandering. *Journal of Politics*, 52(4):1155-1181, 1990.
- Polsby, D. D., and R. D. Popper. The third criterion: compactness as a procedural safeguard against partisan gerrymandering. *Yale Law and Policy Review*, 9:301-353, 1991.
- Reock, E. C., Jr. Measuring the compactness as a requirement of legislative apportionment. *Midwest Journal of Political Science*, 5:70-74, 1961.
- Schwartzberg, J. E. Reapportionment, gerrymanders, and the notion of compactness. *Minnesota Law Review*, 50:443-452, 1966.
- Young, H. P. Measuring the compactness of legislative districts. *Legislative Studies Quarterly*, 13(1):105-115, 1988.
- Ehrenburg 1892, see Frolov, Y. S., Measuring the shape of geographic phenomena: a history of the issue, *Soviet Geography* 16, 676-87, 1995.
- Iowa State Legislature Web Site:
[HTTP://WWW.LEGIS.STATE.IA.US/REDIST/JUNE2001REPORT.HTM](http://www.legis.state.ia.us/redist/june2001report.htm).

Reock Test

The Reock test is an area-based measure that compares each district to a circle, which is considered to be the most compact shape possible. 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. The measure is always between 0 and 1, with 1 being the most compact. The Reock test computes one number for each district and the minimum, maximum, mean and standard deviation for the plan.

See [Reock 1961] and [Young 1988].

Schwartzberg Test

The Schwartzberg test is a perimeter-based measure that compares a simplified version of each district to a circle, which is considered to be the most compact shape possible. This test requires the base layer that was used to create the districts. The base layer is used to simplify the district to exclude complicated coastlines.

For each district, the Schwartzberg test computes the ratio of the perimeter of the simplified version of the district to the perimeter of a circle with the same area as the original district. The district is simplified by only keeping those shape points where three or more areas in the base layer come together. Water features and a neighboring state also count as base layer areas. This measure is usually greater than or equal to 1, with 1 being the most compact. Unfortunately, the simplification procedure can result in a polygon that is substantially smaller than the original district, which can yield a ratio less than 1 (e.g., an island has a 0 ratio). The Schwartzberg test computes one number for each district and the minimum, maximum, mean and standard deviation for the plan.

See [Schwartzberg 1966] and [Young 1988].

Perimeter Test

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.

See [Young 1988].

Polsby-Popper Test

The Polsby-Popper test computes the ratio of the district area to the area of a circle with the same perimeter: $4\pi\text{Area}/(\text{Perimeter}^2)$. The measure is always between 0 and 1, with 1 being the most compact. The Polsby-Popper test computes one number for each district and the minimum, maximum, mean and standard deviation for the plan.

See [Cox 1929], [Polsby and Popper 1991], and [Niemi, Grofman, Carlucci, and Hofeller 1990].

Length-Width Test

The length-width test computes the absolute difference between the width (east-west) and the height (north-south) of each district. The bounding box of a district is computed in longitude-latitude space, and the height and width of the box through the center point are compared. The total is divided by the number of districts to create the average length-width compactness. A lower number indicates better length-width compactness. This measure of compactness is designed for contiguous districts, since the bounding box encloses the entire district.

See [HTTP://WWW.LEGIS.STATE.IA.US/REDIST/JUNE2001REPORT.HTM](http://www.legis.state.ia.us/redist/june2001report.htm).

Population Polygon Test

The population polygon test computes the ratio of the district population to the approximate population of the convex hull of the district (minimum convex polygon which completely contains the district). The population of the convex hull is approximated by overlaying it with a base layer, such as Census Blocks. The measure is always between 0 and 1, with 1 being the most compact. The Population Polygon test computes one number for each district and the minimum, maximum, mean and standard deviation for the plan.

See [Hofeller and Grofman 1990] and [Niemi, Grofman, Carlucci, and Hofeller 1990].

Population Circle Test

The population circle test computes the ratio of the district population to the approximate population of the minimum enclosing circle of the district. The population of the circle is approximated by overlaying it with a base layer, such as Census Blocks. The measure is always between 0 and 1, with 1 being the most compact. The Population Circle test computes one number for each district and the minimum, maximum, mean and standard deviation for the plan.

See [Hofeller and Grofman 1990] and [Niemi, Grofman, Carlucci, and Hofeller 1990].

Ehrenburg Test

The Ehrenburg test computes the ratio of the largest inscribed circle divided by the area of the district. The measure is always between 0 and 1, with 1 being the most compact. The Ehrenburg test computes one number for each district and the minimum, maximum, mean and standard deviation for the plan.

See [Frolov 1975].

How to Draw Redistricting Plans That Will Stand Up in Court

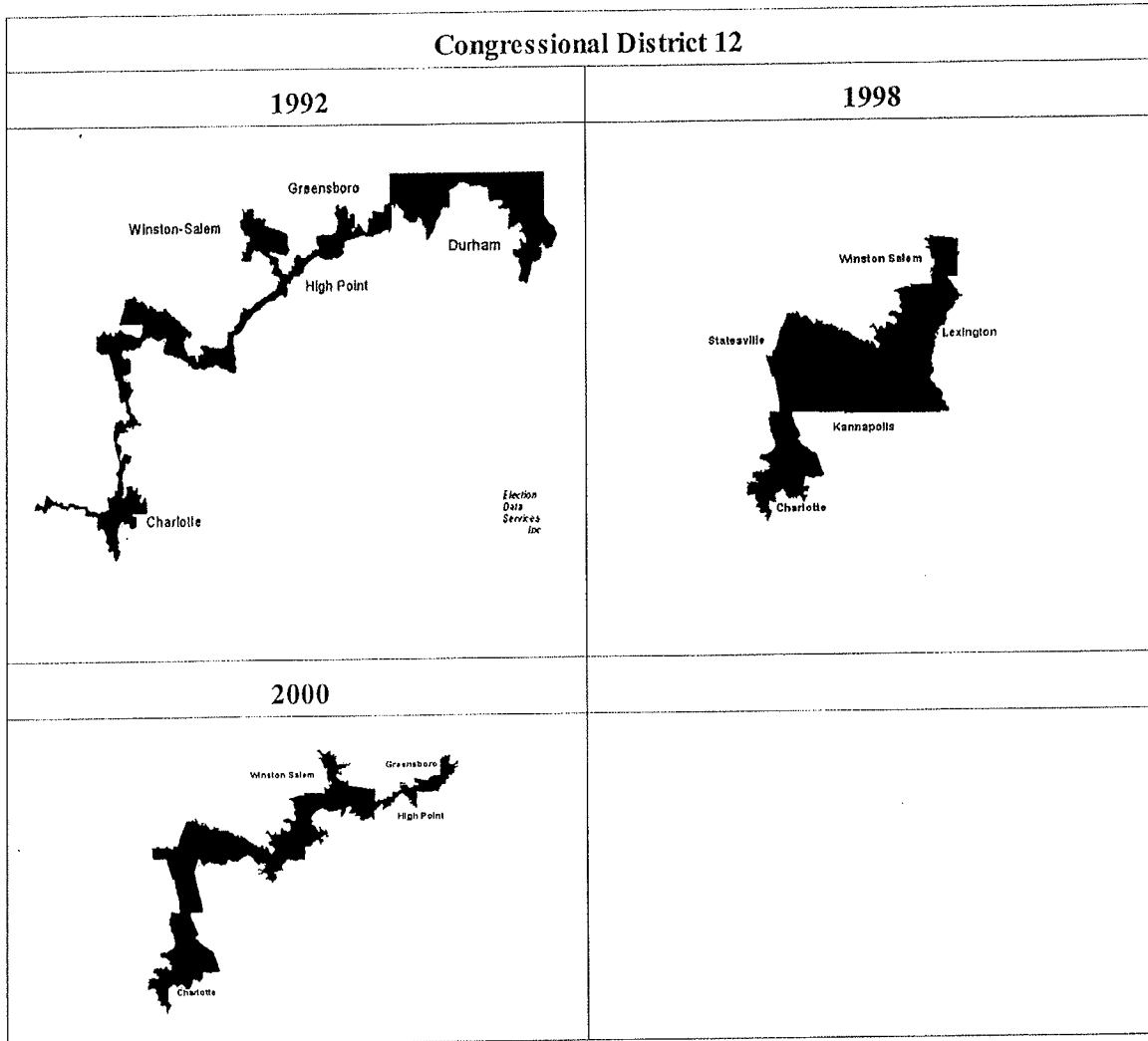
Peter S. Wattson
Senate Counsel
State of Minnesota

NATIONAL CONFERENCE OF STATE LEGISLATURES

NATIONAL REDISTRICTING SEMINAR

Providence, Rhode Island
September 26, 2010

North Carolina

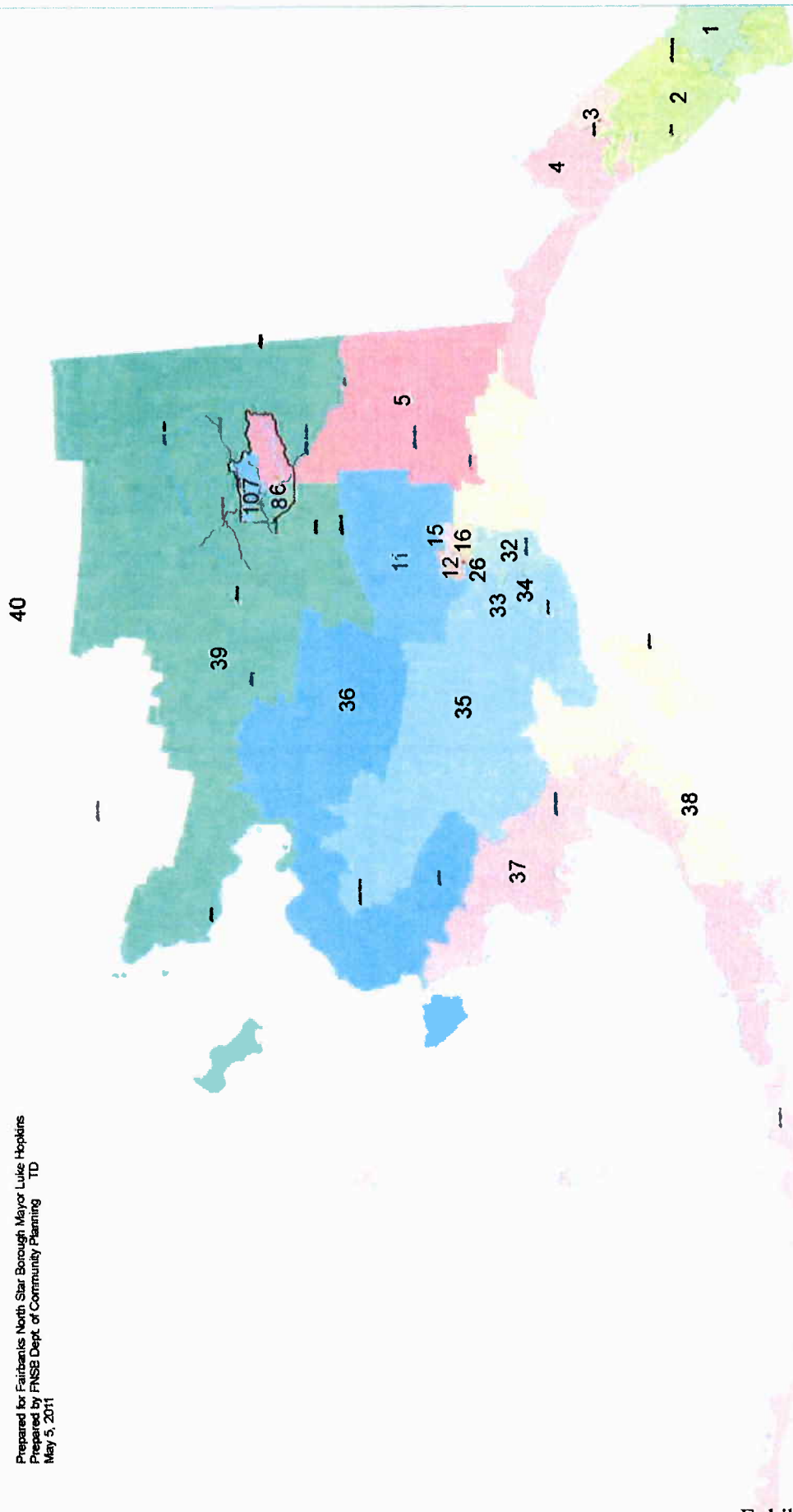


Compactness is not just a geometrical concept; it is also a political concept. Where the Texas Legislature created a Latino-majority district that ran 300 miles from McAllen on the Rio Grande to Austin in Central Texas, the Court found that the Latinos in the Rio Grande Valley and those in Central Texas were “disparate communities of interest” and thus not a compact population, so the district that encompassed them was not compact. *League of United Latin American Citizens v. Perry*, 548 U.S. 399, 432-33 (2006).

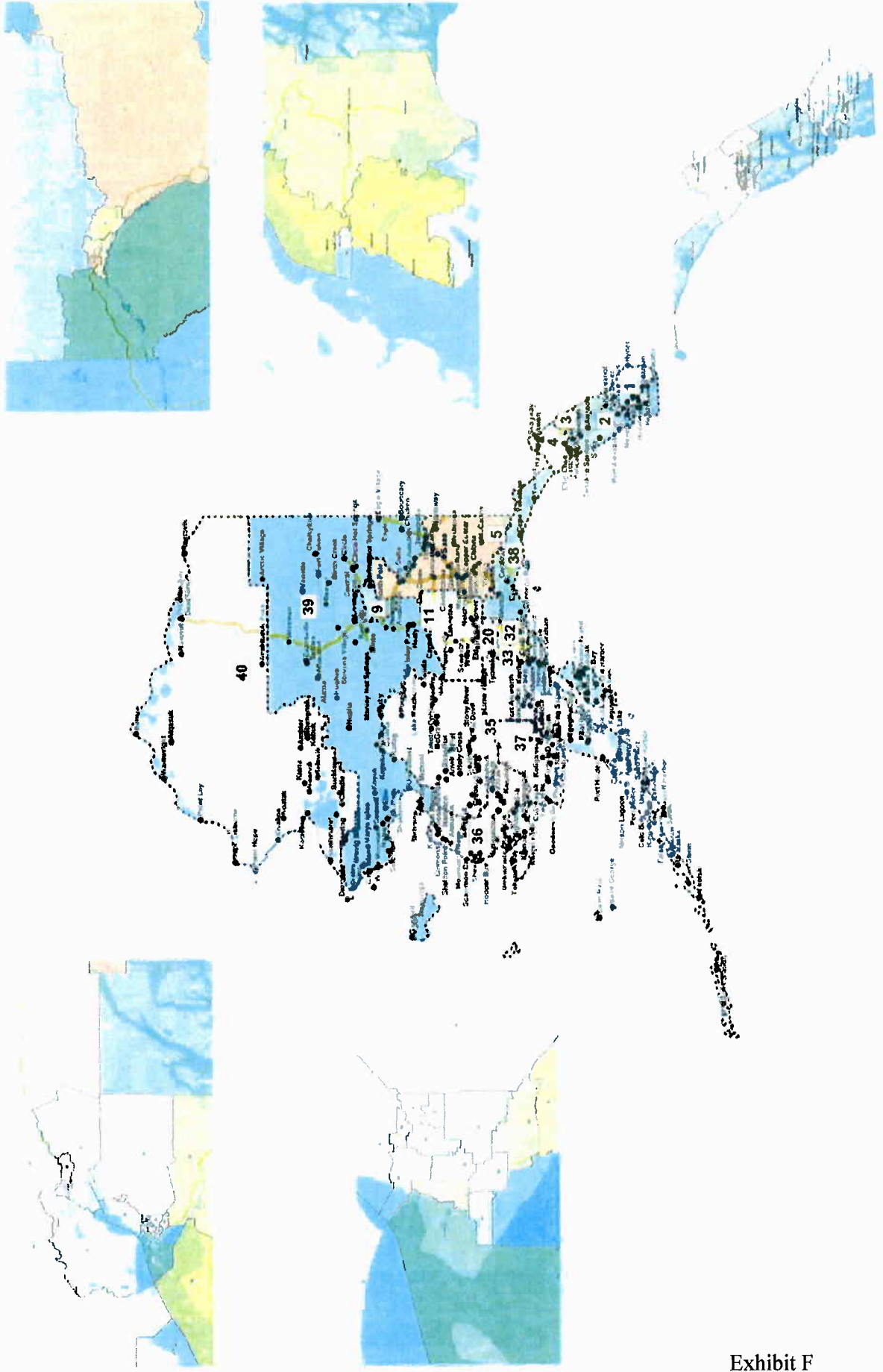
**FAIRBANKS NORTH STAR BOROUGH
PROPOSED LEGISLATIVE REDISTRICTING
BASED ON 2010 CENSUS**

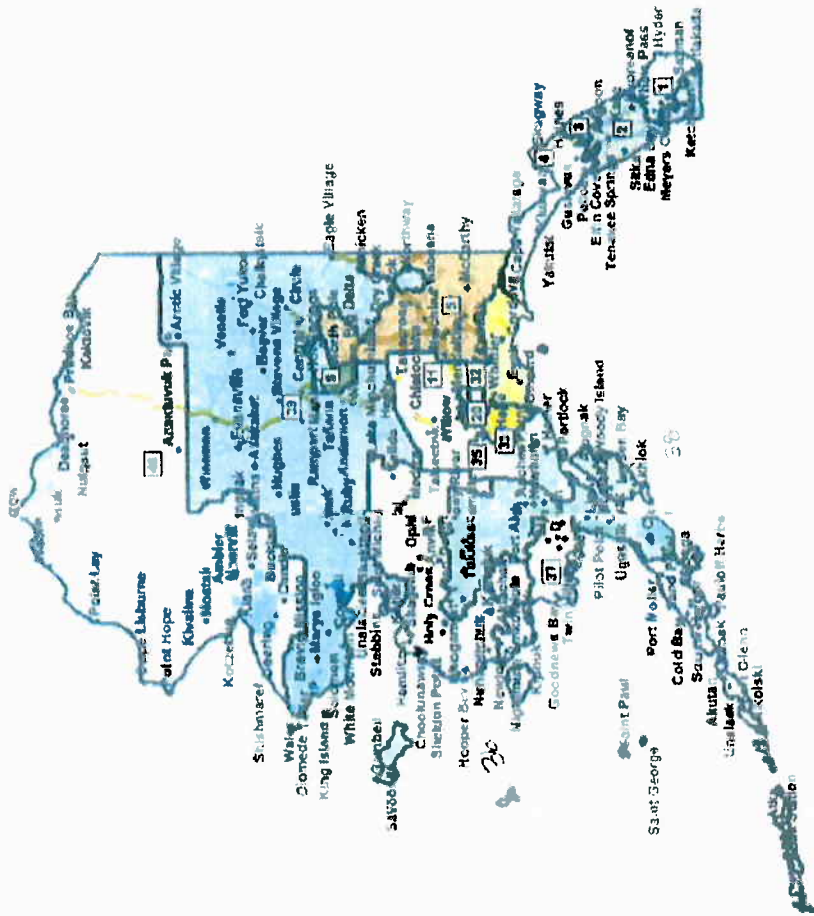
Statewide View

Prepared for Fairbanks North Star Borough Mayor Luke Hopkins
Prepared by FNSB Dept. of Community Planning TD
May 5, 2011



The RIGHTS Coalition Alternative 1





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

AFFIDAVIT OF TAYLOR R. BICKFORD

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, TAYLOR BICKFORD, being first duly sworn, depose and state as follows:

1. I am the Executive Director of Defendant the Alaska Redistricting Board (“the Board”) and have personal knowledge of and can testify to all of the facts set forth below.

2. 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. The Board was thus forced to redraw all of its Alaska Native districts, which in turn affected many of the urban district boundaries.

3. Outside of Southeast Alaska, the five rural Alaska Native districts were short a total of over 10,000 persons compared to the ideal population for those areas. This problem was caused by several factors, including “out-migration” of Alaska Natives and the generally slower growth rate in rural Alaska. As a result, at least one of these five districts had to pick up substantial urban population not previously included within this set of districts. This process was further complicated in that there are virtually no substantial Alaska Native population concentrated in areas adjacent to the existing rural Alaska Native districts and the fact it is impossible to create an Alaska Native district in any urban area of the state.

4. The Board determined the Ester/Goldstream areas of the FNSB were the best area from which to draw population and add to rural Alaska Native Districts. One factor the Board considered in making this determination was that the FNSB had excess population, just under half an ideal house seat, or approximately 8,700 people.

5. A number of third party plans also combined population from the Fairbanks area with population from rural, Alaska Native districts. All of the AFFR plans, for example, took population out of East Fairbanks while all of the AFFER plans took population out of West Fairbanks. Several Alaska Native groups also took population out of Fairbanks to add to a rural Alaska Native district. Calista Corporation took population out of Northwest Fairbanks and Bering Straits Native Corporation took a large swath starting in the Northwest corner, moving east, and grabbing a significant chunk out of Eastern Fairbanks. The Bush Caucus took population out of Fairbanks in a number of its plans, and Tom Begich took population out of East Fairbanks in both of his plans. A copy of all these plans, including maps and population data, can be found in the Board Record.

6. When drawing the Fairbanks districts, Jim Holm used a slightly different numbering system than the system ultimately adopted by the Board for the Proclamation Plan. The Proclamation districts correspond to the following district numbers used by Jim Holm: HD-1 in the Proclamation was identified as HD-10, HD-2 in the Proclamation was identified as HD-11, HD-3 in the Proclamation was identified as HD-7, HD-4 in the Proclamation was identified as HD-9, HD-5 in the Proclamation was identified as HD-8, and HD-6 in the Proclamation was identified as HD-12.

7. Natural boundaries were used to draw HD-1 and HD-3 before the Board renumbered the final adopted plan. A census block view of the boundary between HD-1 and

HD-3 demonstrates the HD-1 boundary veers slightly to the right to grab population from the only adjacent area within the boundaries of the City of Fairbanks. The "appendage" moves westward, following College Road and then follows Noyes Slough until the end of the neighborhood, grabbing census blocks. Without this "appendage," the population of HD-1 would be -681 people of the ideal district size, or a deviation of -3.83%.

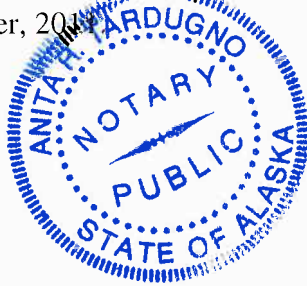
8. The Demonstration Plan pairs Alaska Native incumbents, who are the preferred candidates of choice by Alaska Natives, including Representative Bill Thomas in Southeast, Senator Kookesh, and Senator Stedman.


9. The Aleutian district HD-37 in the current Benchmark Plan, which met constitutional requirements in 2002, scores a "0.05" under the Reock test.

FURTHER YOUR AFFIANT SAYETH NAUGHT.


Taylor R. Bickford

SUBSCRIBED AND SWORN to before me at Anchorage, Alaska this 13TH day of December, 2011.




Notary Public in and for the State of Alaska
My Commission Expires: 1/1/2012

CERTIFICATE OF SERVICE

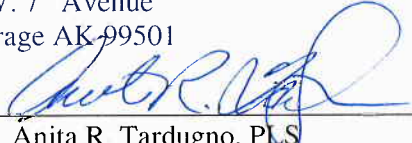
I hereby certify that on the 13th day of December 2011, a true and correct copy of the foregoing document was served on the following via:

Electronic Mail on:

Michael J. Walleri; walleri@pci.net
2518 Riverview Drive
Fairbanks, AK 99709

Thomas F. Klinkner; tklinkner@BHIB.com
Birch, Horton, Bittner & Cherot
1127 W. 7th Avenue
Anchorage AK 99501

By: _____


Anita R. Tardugno, PLS
Legal Secretary
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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

ORDER RE COMPACTNESS OF HOUSE DISTRICTS 1, 2 & 37

Upon careful consideration and review of Plaintiffs George Riley and Ronald Dearborn's Motion for Summary Judgment: Compactness, and Defendant Alaska Redistricting Board's Opposition thereto, and all other matter in the Record, the Court hereby finds and **ORDERS** as follows:

1. Proclamation House District 1 is relatively compact. The Board Record contains ample justifications for the configuration of House District 1. The Riley Plaintiffs' Motion is therefore **DENIED**. The record before this Court actually establishes that there are no genuine issues of material fact and that the non-moving party, the Alaska Redistricting Board is entitled to summary judgment as a matter of law. Accordingly, it is hereby **ORDERED** that House District 1 meets the compactness requirement of the Alaska Constitution and summary judgment is hereby **GRANTED** in favor of the Board under Alaska R. Civ. P. 56(c).

2. Proclamation House District 2 is relatively compact. The Board Record contains ample justifications for the configuration of House District 2. The Riley Plaintiffs' Motion is therefore **DENIED**. The record before this Court actually establishes that there are no genuine issues of material fact and that the non-moving party, the Alaska Redistricting Board is entitled to summary judgment as a matter of law. Accordingly, it is hereby **ORDERED** that House District 2 meets the compactness requirement of the Alaska

Constitution and therefore summary judgment is hereby **GRANTED** in favor of the Board under Alaska R. Civ. P. 56(c).

3. Proclamation House District 37 is relatively compact. The Board Record contains ample justifications for the configuration of House District 37 included that the Board was justified in the configuration of House District 37 by the need to comply with the federal Voting Rights Act by creating a plan that was not retrogressive and would be precleared by the Department of Justice under Section 5. The Riley Plaintiffs' Motion is therefore **DENIED**. The record before this Court actually establishes that there are no genuine issues of material fact and that the non-moving party, the Alaska Redistricting Board is entitled to summary judgment as a matter of law. Accordingly, it is hereby **ORDERED** that House District 37 is constitutional and justified by the need to comply with the federal Voting Rights Act and summary judgment is hereby **GRANTED** in favor of the Board under Alaska R. Civ. P. 56(c).

DATED at Fairbanks, Alaska this ____ day of December 2011.

MICHAEL P. McCONAHY
Superior Court Judge

PATTON BOGGS LLP
601 West Fifth Avenue
Suite 700
Anchorage, AK 99501
Phone: (907) 263-6300
Fax: (907) 263-6345

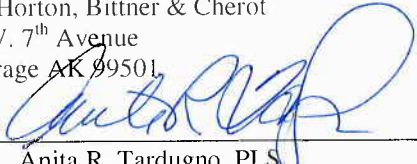
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By: 
Anita R. Tardugno, PLS
Legal Secretary
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

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

ORDER RE COMPACTNESS OF HOUSE DISTRICTS 1, 2 & 37
[ALTERNATIVE]

Upon careful consideration and review of Plaintiffs George Riley and Ronald Dearborn's Motion for Summary Judgment: Compactness, and Defendant Alaska Redistricting Board's Opposition thereto, and all other matter in the Record, the Court hereby finds and **ORDERS** as follows:

1. There are genuine issues of material fact regarding whether Proclamation House District 1 is relatively compact and therefore complies with Article VI, Section 6 of the Alaska Constitution. The Riley Plaintiffs' Motion on the compactness of House District 1 is therefore **DENIED**.

2. There are genuine issues of material fact regarding whether Proclamation House District 2 is relatively compact and therefore complies with Article VI, Section 6 of the Alaska Constitution. The Riley Plaintiffs' Motion on the compactness of House District 2 is therefore **DENIED**.

3. There are genuine issues of material fact regarding whether Proclamation House District 37 is (a) relatively compact and therefore complies with Article VI, Section 6 of the Alaska Constitution; and (b) whether the configuration of House District 37 was necessitated by the Board's obligation to create a redistricting plan that complied with the federal Voting Rights Act by creating a plan that was not retrogressive and would be precleared by the

Department of Justice under Section 5. The Riley Plaintiffs' Motion on the compactness of House District 37 is therefore **DENIED**.

DATED at Fairbanks, Alaska this ____ day of December 2011.

MICHAEL P. McCONAHY
Superior Court Judge

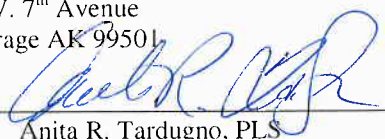
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