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

IN RE 2011 REDISTRICTING CASES

REPLY MEMORANDUM IN SUPPORT OF RILEY ET. AL. PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT: COMPACTNESS

Case No. 4FA-11-02209 CI.

The Board opposes the Riley Plaintiffs' partial summary judgment that Proclamation House Districts 1, 2, and 37 are not compact and therefore violate Article VI, Section 6 of the Alaska Constitution. The Board argues that 1) the Court should not consider any mathematical measurement of compactness, 2) "relative compactness" is not a comparison between proposed districts and possible districts, and 3) specific arguments respecting each of the three (3) districts in question. Additionally, the Board presents argument that exceeds the scope of the relevant motion by arguing that the VRA justifies all districts in the Proclamation Plan, but has filed no cross-motion seeking a ruling that the VRA provides a justification of any violation of Alaska's Constitutional compactness requirement.

I. **The Court Should Consider The Mathematical Evidence.** The Board urges the Court to divert its literary attention from Herman Melville to L. Frank Baum. Where Melville, as the Court has noted, sought to inform the world of new and wondrous things, Baum's *Wizard of Oz* urged that nobody look behind the curtain. In particular, the Board argues that the Court should not consider mathematical measures of compactness. The Court should reject the premise of such

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argument. Less knowledge is not better than more knowledge.

The Board's argues that the Alaska Supreme Court has not embraced the notion that "compactness, at a minimum means having a small perimeter in relation to area encompassed. The most compact shape is a circle." This argument is simply wrong. The Alaska Supreme Court has observed this fact in most of its redistricting decisions.[1] It is undisputed by the Board that the Reock test measures that the "circleness" of a district and was developed for redistricting purposes.

The observation that it is impossible to draw Alaska into circles[2] does not mean that the Court should not seek to be informed respecting the relevant mathematical measures. Rather, the caution is merely an acknowledgment of the juxtaposition between the ideal and realistic possibility. Again, the Board attempts a stawman argument. Nobody is suggesting that the Court rely exclusively upon the measures. Rather, the measures are merely an objective factor to aid the Court in its compactness analysis.

And finally the reference to other compactness measures is simply off base. As noted in the original supporting memorandum, Alaska has simply not considered the size of a districts perimeter nor its population size or distribution as relevant to its

1 *Carpenter v Hammond, 667 P.2d 1204, 1218 (Alaska, 1983)* (J. Matthews concurring); *Kenai Peninsula Borough v State,* 743 P.2d 1352, 1361 (Alaska, 1987)*; Southeast Conference v Hickel,* 846 P.2d 38, 45 (Alaska, 1992)

2 Def. Memo. At 4 citing *Carpenter,* 667 P. 2d, at 1218 (Matthews, J. dissenting)

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compactness analysis.[3] The compactness measurements to which the Board objects --- other than the Reock test --- consider these other factors. The Board offers no critical analysis to suggest that the Reock test considers anything other than the "circleness" of a district, which our Court has observed is the ideal of compactness. Consideration of the Reock test merely provides an objective measurement of that idea.

II. Relative Compactness Requires A Comparison Between The Proposed Districts and Possible Districts.

The Board correctly notes that "relative compactness" is the appropriate consideration under Alaska law.[4] This point, of course, was clearly made in the opening memorandum of this motion.[5] But "relative compactness" is not a talisman mantra that operates in a metaphysical ether without nexus to other possibilities. Rather, "relative compactness" clearly implies a process of comparison between what is being proposed and what is possible. While the Plaintiffs' prior argument undertakes such comparison between the challenged districts and alternatives considered by the Board or otherwise possible, the Board offers no such comparisons. Simply put, the Board urges the Court to ignore 'what is behind the curtain," including more compact alternatives that the Board actually considered or are otherwise possible. While the Board urges the Court to consider "relative

3 See Plt. Memo, at 3-4
4 Def. Memo, at 5
5 Plt. Memo. At 5 et. Seq.

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compactness", the Board simply fails to answer, or discounts Plaintiffs' observations that more compact alternatives are available.

III. **District Specific Concerns.**

1. **HD 1.** While the Board maligns the Reock test generally, its only argument supporting the compactness of HD 1 is that Reock analysis suggest that the District is more compact than other districts in the Proclamation plan. Oddly, the Board ignores the "Kawasaki finger" which protrudes out of east Fairbanks to west Fairbanks in a manner so reminiscent of the "Oosik District", which the Court in "*Hickel*" found so offensive.[6] The so called "Oosik District" was a classical '"narrow corridor" that protruded from the unincorporated areas of Gulkana and Copper River drainages into the Mat-Su Borough.[7] The "Kawasaki finger" is a similar odd shaped corridor or appendage. The Board's opposition resists the temptation to engage in a metaphorical debate as to the aesthetic quality of the appendage suggested by the protrusion in the north-west corner of Proc. HD 1. But the Board does not deny nor otherwise take issue that the protrusion is an "odd shaped appendage." Thus, in the absence of objection, let the protrusion be henceforth known for its intrinsic "odd shaped appendage" character, which fails to meet the Alaska Constitution's criteria for compactness and should be declared invalid.

Nor does the Board take issue with the assertion that the comparable districts

6 See *Hickel v Southeast Conference,* 846 P.2d at, 52 n 25.
7 Id.

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in Board Option 1 and 2 lacked any such odd shaped appendages, which clearly demonstrates that the appendage is avoidable. The comparison of the Proc. HD 1 and the comparable district in the Board Option 1 plan clearly demonstrate that the Board could have used short straight lines rather than long meanders. Compactness principles suggest that short straight lines are preferable to long meanders that assume the shape of appendages. Again, in the absence of any opposition by the Board demonstrating that the long meander giving rise to the appendage was unavoidable, and the fact that the Board Option 1 demonstrated that the appendage was avoidable, the Court should find HD 1 relatively non-compact and invalidate the District.

The majority of the Board's opposition "protests to much" about the motivation for such an odd-shaped appendage. It should be noted that the Riley Plaintiffs have not alleged partisan gerrymandering *per se*. Indeed, they need not do so in relation to their challenge for non-compactness. Rather, the existence of an avoidable odd shaped appendage suggests, in the words of the Alaska Supreme Court, gerrymandering.[8] Indeed, the US Supreme Court has held that such corridors "provide strong indicia of a potential gerrymander."[9]

Equally, the Board does not contest that the population shift from east Fairbanks

8 *Hickel,* supra at 45 ("The requirements of contiguity, compactness and socio-economic integration were incorporated by the framers of the reapportionment provisions to prevent gerrymandering.")

9 *Shaw v Reno, 509 U.S. 630 (1993)*

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to west Fairbanks allowed the Republican District Chair for east Fairbanks to run for the Legislature in opposition to a Democratic incumbent in west Fairbanks rather than the Republican incumbent in east Fairbanks. Such a shift may be coincidence. But the Court in *Hickel* clearly indicated that it could consider who files for a district after it is drawn as an indication of motivation.[10] The coincidences that Mr. Holm was defeated by Mr. Kawasaki in a bitter election, Mr. Holms understanding of Mr. Kawasaki's residence, the fact that the process was dominated by Republicans, and the population shift from the Board Option plans to the Proclamation plan enabled the Republican District Chair to run for the West Fairbanks seat, is clearly circumstantial evidence of motivation, which the Court may consider.

2. **H.D.. 2.** The Board again does not contest that HD 2 is one long corridor running down the Richardson Highway. Rather, the Board argues that it is more compact using mathematical measures other than the Reock test, which neither the Plaintiffs nor the Board claim should be considered. The Board admits that a more compact district could be formed, which is demonstrated in the "Demonstration Plan" submitted by the Plaintiffs.[11] Rather the Board argues that such a demonstration "proves nothing" since any district can be drawn in a more compact manner. [12] While that may be the case, the argument is a clear admission that HD 2 could be relatively more compact if the Board had attempted to do so.

10 See *Hickel, supra. At* 72 (Fact that Board chairman filed for vacant seat after plan announced considered by Court.)
11 Def. Memo, at 14
12 Id.

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For the first time, the Board suggests that the District was drawn that way because of "population equality reasons". [13] Specifically, the Board argues that it was trying to equalize population because Holm shifted some unknown quantity of farmers from HD 2 to HD 6. However, this does not explain why the district slices through residential areas in the Persinger Drive, Nordale Road, Repp Road Maule Lane, and Nelson Road areas, which apportioned population between HD, 1, 2 and 3, and had nothing to do with HD 6.[14] The need to place some Salcha farmers in HD 6 had nothing to do with creating the Richardson Highway Corridor District. The Board argues that the Record "contradicts every one of their (Riley) arguments," and criticizes the Plaintiffs for failing to demonstrate in the record why the Plaintiff's arguments were in error.[15] Unfortunately, in making this argument, the Board fails to cite to the Board record and identify where these contradictions appear in the record.[16]

3. HD 37. As in its response to the contiguity challenge, the Board ignores the fact that in *Hickel*, splitting the Aleutians was found to violate of the contiguity standards set out in Alaska Constitution.[17] And the Board largely ignores that there

13 Id.
14 See Plt. Memo, at 13-14
15 See Def. Memo. At 17.
16 Id.
17 This is the subject of a contemporaneously filed motion challenging the contiguity of HD 37. Specifically, the Court in *Hickel* held

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

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are hundreds of square miles of empty open sea in the center of HD 37. Equally, the Board ignores the relative non-compactness created by including the western Aleutians into the Bethal census district, which is the closest part of the district to western Aleutians. Even so, the closest part of HD 37 to the Western Aleutians is nearly 500 miles away: i.e. the expanse over the Bering Sea between the Kuskokwim Delta and Unalaska.[18] A minimum of 500 miles of separation does not make a compact district, even in Alaska.

Finally, the Board does not challenge the fact that the Board option and the Modified RIGHTS Plan both present plans with more compact configuration of the District using the "visual test".[19] Rather the Board offers the obviously conclusionary argument that placing western Aleutians with the eastern Aleutians has "nothing to do with compactness. The fact that the eastern and western Aleutians are separated by only tens of miles has obvious and self-evident compactness implications. While the Aleutians are a challenging geographic feature of Alaska redistricting, the relatively closer proximity of the western and eastern Aleutians results in a relatively more compact district, just as the relatively closer proximity of villages in the Kuskokwim and Yukon Delta results in a relatively more compact district for those communities.

II. **VRA.** As in all cases, the Board argues that the VRA made them violate

18 See Plt. Memo at 17
19 Def. Memo at 22

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the Alaska Constitution. The argument is absurd with regard to HD 1 and 2. The Board admits that HD 2 is not a Native effective or influence District. Equally, there is no assertion that HD 1 is a Native effective nor influence district. Indeed, the neither HD 1 or 2 share a common boundary district alleged to be a Native effective or influence district. In the response, the Board speaks only in general terms as to any VRA justification for HD 1 and 2, and offers no specific reason why the VRA would affect the configuration of either district. Indeed, the closest district alleged to be a Native influence or effective district is HD 38, which is separated from HD 1 and 2 by at least one other district. Simply stated, there is no nexus between the configuration of HD 1 and 2 and the requirements of the VRA.

The situation with HD 37 is somewhat more complex. As discussed in the initial motion, the Modified Rights Plan clearly demonstrates that HD 37 can be drawn in a more compact and manner, which will also increase Native voting strength. Moreover, as pointed out in the Plaintiffs reply memorandum on contiguity,Dr. Handley is unable to say what is the minimum level of Native VAP that would be effective in the area.[20] Simply stated, the Board has the burden of proof to show that the VRA mandates the configuration of a district that violates the Alaska Constitution, and is unable to do so. [21] At a minimum, the necessity of drawing HD 37 as done in the proclamation plan to comply with the VRA presents genuine issues of disputed fact, and should be reserved for trial.

20 Plt. Reply on Motion for Partial Summary Judgment: Contiguity HD 37, at 6-7
21 Id.

CONCLUSION

For the above reasons, the Court should grant Plaintiffs' motion for summary judgment and hold that Proclamation House Districts 1, 2, and 37 are not compact and therefore violate Article VI, Section 6 of the Alaska Constitution.

Date: December 15, 2011

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Certificate of Service
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