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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 SUMMARY JUDGMENT: INVALIDITY OF HD 38

I. INTRODUCTION

Plaintiffs George Riley and Ronald Dearborn ("Riley Plaintiffs") would have this Court conclude, without trial, that the federal Voting Rights Act did not require the configuration of House District 38 in the Proclamation Plan. In doing so, the Plaintiffs have chosen to ignore the more than 14,000 pages of Board Record and then claim "there is no serious Board discussion...." The Riley Plaintiffs' arguments are disingenuous at best.

Not only do the Riley Plaintiffs not fully understand the complexity of the federal Voting Rights Act and its requirements, but they simply ignore the Final Proclamation, Dr. Handley's Final Report, and the multiple pages of transcript that explain why the Voting Rights Act in fact required the configuration of House District 38. The fact that the Riley Plaintiffs choose to ignore the overwhelming evidence that contradicts their arguments does not mean it does not exist. As established below, the configuration of House District 38 was in fact necessary to comply with the federal Voting Rights Act, and the Alaska Redistricting Board ("Board") discussed and made appropriate findings to that effect. The Riley Plaintiffs have failed to meet their burden of establishing there are no genuine issues of material fact and that

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they are entitled to judgment as a matter of law. Accordingly, their motion regarding the invalidity of HD-38 must be denied.

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.* Moreover, Alaska R. Civ. P. 56(c) makes clear that "[s]ummary judgment, when appropriate, may be rendered against the moving party."[1]

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.*,

[1] While the dispositive motion deadline in this case has passed, under Rule 56(c) summary judgment can be granted against the "moving party" without the need for a cross-motion "where appropriate." The Board asserts this exact situation exists here.

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956 P.2d 468, 474 (Alaska 1998) (*citing to Shade v. Anglo Alaska*, 901 P.2d 434, 437 (Alaska 1995)).

In this motion, the Plaintiffs actually cite the proper legal standard for summary judgment. However, this does not cure their substantive deficiency – they have still failed to meet their burden of proving no genuine issue of material fact exists and are therefore not entitled to summary judgment. The Board, as explained below, did make appropriate and legal sufficient findings that the Voting Rights Act required the configuration of House District 38. The Board not only proclaimed House District 38 was necessary to comply with the Voting Rights Act in its Proclamation, but it also explained how in the Board Record and in the Report to Accompany the Proclamation, as well as adopted a separate resolution that declared the Voting Rights Act required the configuration of House District 38.

III.
ARGUMENT

A. The Board Made Sufficient Findings That House District 38 Was Necessary to Comply with the Federal Voting Rights Act.

The Riley Plaintiffs argue the Proclamation, which was formally adopted by the Board after a 5-0 vote as well as the resolution unanimously passed by the Board declaring House District 38 was required by the Voting Rights Act, are not "findings." They also ask this Court to simply reject the entire recognized and legally acceptable, and sometimes mandated, administrative process and procedure for adopting redistricting plans, without actually indicating what would suffice. Reduced to its essence, the Riley Plaintiffs inappropriately attempt to equate the Board with a court or adjudicatory administrative agency of record that is mandated by law to make formal findings of fact and conclusions of law, and then

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mischaracterize the actual evidence in the record to fit their incorrect standard. The Riley Plaintiffs' arguments are disingenuous at best.

1. *The Board Made Appropriate "Findings" That the Voting Rights Act Required the Configuration of House District 38.*

The Riley Plaintiffs dismiss the Board's formal adoption of the Proclamation Plan, including House District 38, and separate resolution that the federal Voting Rights Act did in fact require the configuration of House District 38, as "simply conclusionary [sic] and totally incapable of review...." [Riley Memo. at 5.] They even go so far as to conclude "these proclamations, resolves and declarations are not findings" and "the Board made no formal findings...[including] a failure to make any finding that the VRA compliance necessitates any particular configuration of District 38." [*Id.* at 4-5.] These conclusions are not only legally incorrect, but factually as well.

The Alaska legislature drafted several Constitutional amendments, statutes, and even a Civil Rule, in creating the Alaska Redistricting Board and delineating its authority to redistrict Alaska's House and Senate districts. *See* Article VI, § 3, 4, 6, 8, 9, 10, 11; AS 15.10.200, .220; Alaska R. Civ. P. 90.8; Alaska R. App. P. 216.5. Article VI, § 10 of the Alaska Constitution requires the Board to "adopt one or more proposed redistricting plans" within thirty days of receiving the census data, and "adopt a final redistricting plan and issue a proclamation of redistricting" within ninety days of receiving the census data. This same section mandates "the final plan shall set out boundaries of house and senate districts" and "adoption of a final redistricting plan shall require the affirmative votes of three members of the Redistricting Board." Alaska Const. art. VI, § 10 (a), (b). Beyond this section, there is no required procedure mandated by law that the Board must follow or adopt in order to accomplish its task. There is certainly no requirement that the Board make "formal findings."

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Indeed, as an entity akin to an administrative agency, the Board is free to adopt its own procedures "'capable of permitting them to discharge their multitudinous duties.'" *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Counsel, Inc.*, 534 U.S. 519, 543 (1978) (*quoting FCC v. Schreiber*, 381 U.S. 279, 290 (1965)). As noted by Judge Rindner in his 2001 decision:

> [w]hile the Board is free to adopt its own procedures, it is not afforded unfettered discretion. The Board must comply with the Open Meetings Act, the Public Records Act and Article VI, Section 10 of the Alaska Constitution. ***Beyond that, the Board has freedom to conduct its proceedings in a manner that it believes best facilitates the formulation of a final redistricting plan.***

[Exhibit A (emphasis added).][2]

The only Alaska redistricting case that even touches on the sufficiency of a redistricting Board's findings is *In re 2001 Redistricting Cases*. 44 P.3d 141, 143 (Alaska 2001). In that case, the Alaska Supreme did not specify how the Board must go about justifying its plan or documenting its reasons for its plan. *Id.* The Court simply remanded the plan with the instruction "the Board should either correct the configuration of House District 5 or expressly find that the district's current configuration is required by the Voting Rights Act." *Id.* The current Board has already met this requirement.

In *In re 2001 Redistricting Cases*, the 2001 Redistricting Board adopted a proclamation of redistricting on June 18, 2001, with a 3-2 vote. [Exhibit B, Proclamation of 2001 Redistricting Board.] The Board also drafted a report to accompany its proclamation that summarized the redistricting process and certain issues the Board faced in drawing the districts.

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[2] Attached hereto as Exhibit A for ease of reference are the relevant pages (pg. 43-44) from Judge Rindner's 2/1/2002 "Memorandum & Order" in the *2001 Redistricting Case* discussing the redistricting process.

[Exhibit C, Report to Accompany Proclamation of 2001 Redistricting Board.] No where in either its Proclamation or Report to Accompany the Redistricting Proclamation of June 18, 2001 does the 2001 Board state the Voting Rights Act required the configuration of House District 5. [Exhibit B, Exhibit C.] The only mention of the Voting Rights Act is in the report, which simply states, "[i]n order to avoid retrogression prohibited by the Act, the board needed to maintain effective representation by Alaska Natives in a certain number of house and senate districts." [Exhibit C at 7.]

The Supreme Court found, without specifically addressing the Proclamation or Report, that the Board had not made adequate findings that the federal Voting Rights Act required the configuration of House District 5. *In re 2001 Redistricting Cases*, 44 P.3d at 143. Upon remand, the Board met to discuss how to correct the errors the Court found in the original plan, and pass an amended plan that complied with the Court's order. [Exhibit D at 286:24-297:21.][3] In regard to House District 5, Board member Julian Mason moved "that the Board make a finding that District 5 in the proclamation plan is required by the Voting Rights Act." [*Id.* at 286:24-287:4.] The Board then discussed House District 5, and whether there was enough evidence in the record to support its original finding that House District 5 was necessary to comply with the Voting Rights Act. [*Id.* at 287:5-297:12.]

The Board's legal counsel, Phillip Volland, advised the Board there were several components justifying House District 5, including the information from consultants and lawyers about what the Voting Rights Act requires and what preclearance is. [*Id.* at 287:24-288:9.] The Board also had the benchmark plan, Dr. Handley's report and presentation on

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[3] Attached hereto as Exhibit D are true and correct copies of relevant excerpts from the transcript of the April 13, 2002 meeting of the 2001 Redistricting Board.

racial block voting, as well as her advice regarding retrogression and the Alaska Native voting age population needed to meet the benchmark. [*Id.* at 288:10-289:23.] The Board also had the various alternative plans submitted to the Board, none of which got the Board "anywhere close to what [Dr. Handley] thought was required for the Native voting age percentage for that projected district." [*Id.* at 289:24-290-12.] Mr. Volland advised all these different components enabled the Board to make a reasoned finding that the configuration of House District 5 was required by the Voting Rights Act, and he so strongly advised. [*Id.* at 291:25-292:1, 9-14.] The Board then voted by voice vote adopting Mr. Mason's motion as its finding. [*Id.* at 291:24-292:21.] The Board then moved and adopted its amended plan that included the exact same configuration of HD-5. [*Id.* at 292:24-297:22.]

On appeal, the Supreme Court found Mr. Mason's motion and discussion thereof were sufficient "findings" that the federal Voting Rights Act required the configuration of House District 5. *In re 2001 Redistricting Cases*, 47 P.3d 1089, 1090 (Alaska 2002) (affirming the Superior Court's order upholding the amended plan "because the board's Amended Final Plan (the plan) fully complies with our March 21 order and is not otherwise unconstitutional").

Here, the current Board followed the exact same process approved by the Supreme Court when it formally adopted the Proclamation Plan, which included House District 38. Unlike the 2001 Redistricting Board failed to do in its original Proclamation, the current Board specifically proclaimed, "the configuration of House Districts 34, 36, 37, 38 and 39 were necessary in order to avoid retrogression and comply with the requirements of the Federal Voting Rights Act...." [ARB00006017.]

In fact, the current Board went one step further as it drafted and "formally" adopted an actual resolution, "Board Resolution 2010-11-1," that specifically found that (1) Alaska as a

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covered jurisdiction had the burden of establishing that its proposed redistricting plan neither has the purpose or effect of denying Alaska Natives right to vote; (2) compliance with the requirements of Section 5 of the Federal Voting Rights Act may require a jurisdiction to depart from strict adherence to State legal standards; (3) that in order to comply with the VRA requirements, the Board was required in certain instances to depart from strict adherence to the State Constitutional redistricting requirements of contiguity, compactness and socio-economic integration in creating House districts; and (4) "the configuration of House Districts 4, 36, 37, **38**, and 39 in the Proclamation Plan was required in order to comply with the federal Voting Rights Act and avoid retrogression." [ARB00006033.] Such specific findings are more than adequate to meet the legal "finding" requirements imposed upon it by the Alaska Supreme Court. The Riley Plaintiffs' attempt to claim otherwise has no basis in law.

Despite the fact that the exact type of findings made by the Board here have already been found acceptable by our Supreme Court, the Riley Plaintiffs try to convince this Court that the case, *Faulk v. Board of Equalization,* 934 P.2d 750 (Alaska 1997), which has nothing to do with redistricting, should control. [Riley Memo. at 3, n.13.] *Faulk* is a case which analyzes the threshold finding requirements for an administrative appeal. *Faulk v. Board of Equalization*, 934 P.2d at 751. *Faulk* has nothing to do with redistricting, and is certainly not controlling authority on what suffices as an acceptable finding that a House district was necessary for compliance with the Voting Rights Act in a redistricting case.

Ironically, even though this case is completely distinguishable from a redistricting case, the Board's proclamation and resolution are sufficient findings, capable of meaningful judicial review, under *Faulk.* The Court in *Faulk* held the Board of Equalization had not made proper findings in rejecting a property owner's challenge to the tax assessment of his property. *Id.* at

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750-751. The Board simply approved a motion that the property owners "[had] not presented sufficient evidence to prove an unequal, excessive or improper valuation" without any discussion. *Id.* at 751. The Court found such a finding, without providing the Court with a starting point for evaluating the Board's decision-making process, left the Court to "only speculate about why the Board thought the [property owners'] evidence was insufficient." *Id.* at 752. The Court distinguished this scenario from another case where the Court found an administrative agency's findings were sufficient "when viewed in light of the entire record." *Id.* at 751.

In the case at bar, the Board not only made clear in its Proclamation, and the accompanying report, but even passed a formal resolution declaring the Voting Rights Act required the configuration of House District 38. [ARB00006017; ARB0006022-ARB00006025; ARB00006033.] As the Board will further establish below, the Board Record also clearly establishes why the configuration of House District 38 was necessary to comply with the Voting Rights Act. Indeed, there were multiple discussions by the Board, with the Board's legal counsel, and advice from the Board's Voting Rights Act expert, Dr. Handley, as to why the Voting Rights Act required the configuration House District 38. [ARB00004420-ARB00004422; ARB00004503-ARB00004508; ARB00004564-ARB00004566; ARB00004604-ARB00004606; ARB00004608-ARB00004612; ARB00004626-ARB00004630.] Under an analysis similar to *Faulk*, the Board's findings are sufficient when viewed in light of the entire record. However, the Court need not entertain the Riley Plaintiffs' irrelevant case law. For the Alaska Supreme Court, in the 2001 redistricting cases, established the threshold for sufficient findings by the Board, and the current Board has met that threshold. *In re 2001 Redistricting Cases II* at 1090.

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The Riley Plaintiffs' entire argument that a final proclamation, resolution, and all the other evidence on the Board Record are insufficient "findings" to justify House District 38 is incorrect as a matter of law. At the very least, the undisputed evidence before this Court raises a genuine issue of material fact making summary judgment improper.

2. *The Board Record Contains Sufficient Evidence of Why the Federal Voting Rights Act Required the Configuration of House District 38.*

Not only did the Board make sufficient "findings" when it adopted the Proclamation Plan, but the Board and its experts explained the reasons justifying the configuration of House District 38 several times in the record. When the 2001 Redistricting Board met to correct the errors in their final plan, their legal counsel identified several justifications that required the configuration of House District 5 in order to comply with the federal Voting Rights Act. [Exhibit D at 287:24-288:9; 288:10-289:23; 289:24-290-12; 291:25-292:1, 9-14.] These included information and advice the Board had received from lawyers and consultants about what the Voting Rights Act required, the benchmark plan and its realities, Dr. Handley's advice[4], and consideration of various alternative plans presented to the Board that did not comply with the Voting Rights Act. [*Id.*] The current Board Record contains these same justifications, despite the Riley Plaintiffs' claims to the contrary.

First, the Board's Voting Rights Act expert, Dr. Handley, and the Board's legal counsel both advised the Board that if they needed to add urban population to a rural, Alaska Native district for population, the Board should add population that tends to vote Democratic. [ARB00004332; ARB00004451; ARB00004519-ARB00004521; ARB00005220-ARB00005221; ARB00013358 at n.22.] The Plaintiffs' own Voting Rights Act expert, Dr.

[4] Dr. Handley was also the 2001 Board's Voting Rights Act expert.

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Arrington, agrees with this approach. [Exhibit E, Deposition of Theodore S. Arrington, PhD at 90:2-5, 19-22; 92:15-16; 99:7-12; 103:12-104:5 ("Arrington Depo.").]

Dr. Handley presented her advice to the Board on a number of occasions, including on the record at the Board's meetings of April 11 [ARB00002119-ARB00002476]; May 17 [ARB00003842-ARB00003989]; and May 24 [ARB00004186-ARB00004321]. Moreover, Dr. Handley was in constant contact with the Board's Executive Director and Board's legal counsel, continually answering questions and providing advice and counsel as the Board struggled to complete its leviathan-like task. [Exhibit F, Deposition of Taylor Bickford ("Bickford Depo.") at 40:4-11; 63:5-65:10; 68:17-75:3.][5] Dr. Handley's advice and conclusions were regularly passed along to both individual Board members off the record, as well as the whole Board on the record. [ARB00004420-ARB00004422; ARB00004503-ARB00004508; ARB00004564-ARB00004566; ARB00004604-ARB00004606; ARB00004608-ARB00004612; ARB00004626-ARB00004630.] Therefore, the Board was well aware of the Voting Rights Act and its requirements well in advance of the release of her final report, contrary to the Riley Plaintiffs' baseless accusations. [Riley Memo. at 6.]

Second, the benchmark plan showed a substantial loss of population in the rural, Alaska Native districts. [ARB00006543-ARB00006544; ARB00006024-00006025; ARB00013351; ARB00013358 at n.22.] The Board therefore needed to add urban population to rural areas in order to create districts that were as nearly as practicable an ideal size. [*Id.*] The Board looked at several options, including a number of third party plans that took the needed population from the Fairbanks area. [ARB00000745-ARB00000764; ARB00003990-ARB00004185;

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[5] Attached hereto as Exhibit F are true and correct copies of relevant excerpts from the transcript of the deposition of Taylor Bickford.

ARB00004186-ARB00004321; ARB00004410-ARB00004543; ARB00005186-ARB00005274; ARB00005324-ARB00005363.] However, none of the other plans provided a viable option as the Proclamation Plan was the only non-retrogressive plan. [Arrington Depo. at 90:2-5, 19-22; 92:15-16; 99:7-12; 103:12-104:5; ARB00013353; ARB00013359.] As stated by the Board in its "Report to Accompany Redistricting Proclamation" of June 13, 2011:

> Compliance with the federal Voting Rights Act had ripple effects across the state. Population from rural areas had to be combined with population from urban areas to allow for the creation of Alaska Native Districts. For example, in order to bring House District 38 to within constitutional one-person one vote standards, it had to pick up population form the more rural areas of the Fairbanks North Star Borough. As a result, the excess population in the Fairbanks North Star Borough had to be split across two districts rather than placed into a single district because District 38 could not absorb all of Fairbanks excess population and still maintain the necessary Alaska Native voting age population required the federal Voting Rights Act. The balance of the Fairbanks North Star Borough's remaining excess population was placed into House District 6, which closely resembles the configuration of current House District 12. Under the Proclamation Plan, the Fairbanks North Star Borough retains five House districts wholly within its boundaries.

[ARB00006024-ARB00006025.]

The Riley Plaintiffs' claim that the record before this Court is totally incapable of meaningful judicial review simply ignores reality. The Board's "findings" are a mirror image of the findings made by the 2001 Redistricting Board upon remand, which the Supreme Court found sufficient. The Board Record as a whole contains more than sufficient evidence

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justifying the need to draw House District 38 in order to comply with the Voting Rights Act.[6] At the very least, there are genuine issues of material fact that preclude summary judgment.

B. The Record Establishes That The Configuration of House District 38 was Necessary to Comply with the Federal Voting Rights Act or at a Minimum, Raises Genuine Issues of Material Fact.

The Riley Plaintiffs argue that since they claim there is no "serious discussion" or proper finding that the Voting Rights Act required the configuration of House District 38, then House District 38 must not be necessary to comply with the Voting Rights Act. [Riley Memo. at 7-11.] Besides the proven inaccuracies to their first conclusion, the Riley Plaintiffs never even attempt to explain just how or why the Voting Rights Act does not apply under the undisputed evidence presented by the Board. They simply make this assumption by either ignoring or mischaracterizing the evidence to the contrary, hoping the Court will turn a blind eye to the overwhelming evidence to the contrary.

The Riley Plaintiffs instead rely on misleading, and often times irrelevant, deposition excerpts of the Board members and Dr. Handley taken months after the Board adopted the Proclamation Plan. [Riley Memo. at 8-11.] The Riley Plaintiffs completely ignore the in-depth discussions and debates, identified below, as well as legal and expert advice, on the record that explained why House District 38 was in fact necessary to comply with the Voting Rights Act. Their reliance on answers to ill-crafted and argumentative questions posed several months after deliberations is further evidence of the Riley Plaintiffs' attempts to simply ignore the Board

[6] The Riley Plaintiffs' contention that the Board was required to make "formal" findings on such issues as "the presence of absence of racial block voting in the state or portions of the state" or "the number of native 'effective' districts needed to avoided retrogression" [Riley Memo. at 5-6], borders on the ludicrous. The Alaska Supreme Court has never required a redistricting Board to be such a slave to form. The Board is not an adjudicatory body. Not surprisingly, the Riley Plaintiffs offer no authority for their allegation. The Board received all the necessary VRA information from its Voting Rights Act expert [ARB00003842-ARB00003989; ARB00004186-ARB00004321], and justifiably relied upon it. Nothing further is required.

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Record because it contradicts every one of the Riley Plaintiffs' arguments. The Riley Plaintiffs are not only wrong that there is no justification for House District 38 in the record, they are also wrong in their baseless conclusion that the Voting Rights Act did not require the configuration of House District 38.

House District 38 is an Alaska Native "effective" House district. [ARB000013358-ARB000013359; Arrington Depo. at 95:20-96:7.] It is comprised of the Wade Hampton Census Area, a number of interior villages, the Denali Borough, and the communities of Ester and Goldstream. [ARB00006046.] The majority of this area, excluding Ester and Goldstream, experienced a dramatic decrease in population in the past ten years, as did all of the rural Alaska Native districts. [ARB00006024; ARB000013358 at n.22.] In fact, the five rural Alaska Native districts (outside Southeast Alaska), were short a total of over 10,000 persons from the ideal district size of 17,755 because of the "out-migration" of Alaska Natives and the generally slower growth rate in rural Alaska than urban Alaska. [ARB00013351; ARB00006639-ARB00006666; Exhibit G, Taylor Bickford Affidavit at ¶ 3 ("Taylor Aff.").][7]

This created several problems for the Board, including 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, as well as the impossibility of creating an Alaska Native district in urban areas of the State. [ARB00013351-ARB00013352; ARB00006552-ARB00006553; Exhibit G at ¶ 3.] Accordingly, in order to find the population necessary to meet the federal equal protection requirement of one-person one-vote, the Board

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[7] Attached as Exhibit G is a copy of the Affidavit of Taylor Bickford, previously filed on December 13, 2011, in support of the Board's Opposition to Plaintiffs George Riley and Ronald Dearborn's Motion for Partial Summary Judgment: Compactness.

had to add population from more urban areas of the State to at least one rural Alaska Native District. [ARB00006024; ARB00013358 at n. 22; Exhibit G at ¶ 3.]

The Board considered several different options, including plans presented by third parties, a number of which drew districts that took population out of various areas of Fairbanks.[8] However, none of those alternatives provided viable solutions as all of them were retrogressive. [ARB00003550; ARB00004692-ARB00004693; ARB00013353-ARB00013356.] In the end, the Board determined 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.]

The Board chose to pick up the population from the Goldstream and Ester areas of the FNSB for a number of reasons. First, the FNSB had excess population to give, just under half an ideal house seat, or approximately 8,700 people. [ARB00004156-ARB0004157; Exhibit G at ¶ 4.] Second, Fairbanks had some historical economic, cultural, and social ties to rural Native Alaska. [ARB00013410; Exhibit I, Responses to Requests for Admissions 22, 23, 24, 25, and 47.][9] Third, its geographic location made it relatively proximate to the rural districts.

[8] Attached as Exhibit H are examples of third party plans that added population from the Fairbanks North Star Borough ("FNSB") to rural, Alaska Native districts. The AFFER V.5_81 was submitted to the Board on May 24, 2011. It combines population from the western side of the FNSB with a rural, Alaska Native district. The AFFR Alternative to 3/31 Original Plan, also submitted to the Board on May 24, 2011, combines population from the eastern side of the FNSB with a rural, Alaska Native district. The Calista Corporation plan, submitted to the Board on May 24, 2011, combines population from the northwest side of the FNSB with population from a rural, Alaska Native district. The Bering Straits Native Corporation submitted several plans, and the one from May 24, 2011, combines population from the northwest, northeast, and southeast of the FNSB with a rural, Alaska Native district.

[9] Attached as Exhibit I are the Riley Plaintiffs' responses to the Board's Requests for Admissions received on October 27, 2011.

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Fourth, and most importantly, the FNSB had areas with historical Democratic voting patterns[10] which were crucial because Dr. Handley had advised the Board that if urban, non-Alaska Native population had to be added to rural Alaska Native districts, the urban non-Alaska Native population should be from areas that tend to vote Democratic. [ARB00004337; ARB00013358 at n.22.] This was important because the Alaska Native's preferred political party is the Democratic Party, and by adding Democratic-voting, non-Alaska Native population, the Board would enhance the effectiveness of that district not only because Alaska Natives tend to vote Democratic, but also due to the expected increased white cross-over vote. [*Id.*; Arrington Depo. at 90:2-5, 19-22; 92:15-16; 99:7-12; 103:12-104:5.] The Riley Plaintiffs' own Voting Rights Act expert, Dr. Arrington, agrees with Dr. Handley's analysis and advice. [Arrington Depo. at 90:2-5, 19-22; 92:15-16; 99:7-12; 103:12-104:5.]

This is exactly what the Board did – it added predominantly Democratic-voting, non-Alaska Native communities[11] to an otherwise rural, Alaska Native district without decreasing the effectiveness of the district. This was done on the advice of their Voting Rights Act expert and counsel that such was the only way to meet the Benchmark. The Riley Plaintiffs' argument that this was not necessary is simply wrong. The Proclamation Plan, which includes House

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[10] The Riley Plaintiffs admit that the areas within the FNSB added to HD-38, Ester, Goldstream and University Hills are areas which have historically voted democratic. [Exhibit I, Responses to Requests for Admissions 30, 31, and 32.] The Riley Plaintiffs attempt to infer some nefarious purpose by claiming that "Mr. Bickford's understanding of the rationale behind HD 38 was particularly partisan" [Riley Memo. at 9] is supercilious. The Plaintiffs' own Voting Rights Act Expert, Dr. Arrington, testified at his deposition 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 [Arrington Depo. at 103:12-104:5]; (2) the 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].

[11] Exhibit I, Responses to Requests for Admissions 30, 31, and 32.

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District 38, is the only plan that was not retrogressive and therefore could obtain preclearance under Section 5 of the Voting Rights Act. [Arrington Depo. at 90:2-5, 19-22; 92:15-16; 99:7-12; 103:12-104:5; ARB00013353; ARB00013359.] There is sufficient evidence in the Board Record justifying the Board's reasonable decision on why it was necessary to add population from Ester and Goldstream to House District 38. The Riley Plaintiffs' arguments are factually wrong, legally incorrect, and disingenuous at best. While it is the Board's position that the record more than justifies its decision, at a minimum there are genuine issues of material fact that preclude summary judgment on this issue. The Riley Plaintiffs' motion must therefore be denied.

IV.
CONCLUSION

The record before this Court establishes that the Riley Plaintiffs are not entitled to summary judgment. Their entire argument is based on their attempt to either ignore or discount the undisputed evidence found in the Board Record. The issue of whether or not House District 38 was required in order to comply with the federal Voting Rights Act is an issue best suited for trial, not for an ill-crafted summary judgment motion. The Riley Plaintiffs cannot ignore the evidence to the contrary, or mischaracterize it, to satisfy their burden. As the Board has shown above, there are several issues of material fact, most of which the Riley Plaintiffs were well aware of before they filed this motion. For all the reasons set forth above, the Riley Plaintiffs' motion is not well taken and must be denied.

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