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**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA**

**FOURTH JUDICIAL DISTRICT AT FAIRBANKS**

In Re 2011 Redistricting Cases.	) <b>CONSOLIDATED CASE NO.:</b> ) <b>4FA-11-2209-CI</b> ) 4FA-11-2213 CI ) 1JU-11-782 CI ) 4FA-13-2435 CI
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**DEFENDANT ALASKA REDISTRICTING BOARD'S  
 MOTION FOR SUMMARY JUDGMENT RE: RILEY PLAINTIFFS' CLAIM  
 SENATE DISTRICTS A, B, AND C HAVE UNNECESSARILY HIGHER  
DEVIATIONS FROM THE IDEAL DISTRICT**

COMES NOW, Defendant Alaska Redistricting Board ("Board"), by and through counsel Patton Boggs LLP, pursuant to Alaska Rule of Civil Procedure 56, and for the reasons set for in the Memorandum of Points and Authorities in Support of Defendant Alaska Redistricting Board's Motion for Summary Judgment re: Riley Plaintiffs' Claim Senate Districts A, B, and C have Unnecessarily Higher Deviations from the Ideal District (the "Memorandum") filed contemporaneously herewith, hereby moves this Court for entry of partial summary judgment.

As set forth more fully in the accompanying Memorandum, there is no genuine dispute as to any material fact that Senate Districts A, B, and C contain "a population as near as practicable" to the ideal district size in accordance with Article VI, section 6 of the Alaska Constitution. The Board Record establishes (1) Senate District A, comprised of House Districts 1 and 2, which contain the entire population of the City of Fairbanks, has 35,464 people and a deviation of -0.13% from the ideal Senate district size; (2) Senate District B, comprised of House Districts 3 and 4, has 35,459 people and a

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deviation of -0.14%; and (3) Senate District C, comprised of House Districts 5 and 6, has a population of 35,644 and a deviation of 0.38% from the ideal Senate district. All of the deviations are well under one-half of one percent, varying by only 46, 51, and 134 people, respectively, from the ideal Senate district size of 35,510. The Plaintiffs cannot put forth any evidence that would dispute or contradict this evidence. Therefore, the Riley Plaintiffs' claims fail as a matter of law.

Accordingly, the Board is entitled to summary judgment on Plaintiffs' claims alleging Senate Districts A, B, and C have unnecessarily higher deviations than the ideal district. The Board requests this Court deny the Plaintiffs' claims regarding unnecessarily higher deviations than the ideal district as to Senate Districts A, B, and C, and enter judgment for the Board.

DATED at Anchorage, Alaska this 12<sup>th</sup> day of September 2013.

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**CERTIFICATE OF SERVICE**

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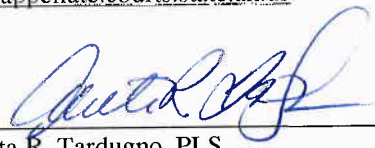
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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
DEFENDANT ALASKA REDISTRICTING BOARD'S MOTION FOR  
SUMMARY JUDGMENT RE: RILEY PLAINTIFFS' CLAIM SENATE  
DISTRICTS A, B, AND C HAVE UNNECESSARILY HIGHER  
DEVIATIONS FROM THE IDEAL DISTRICT**

**I.  
INTRODUCTION**

Plaintiffs Riley and Dearborn (“Riley Plaintiffs”) claim the Alaska Redistricting Board’s (“Board”) 2013 Proclamation Plan fails to comply with Article VI, section 8 of the Alaska Constitution because the Fairbanks Senate districts have “unnecessarily higher deviations from the ideal district population and violates equal protection of voters rights to an equally weighted vote and the right to fair and effective representation.”<sup>1</sup> The Riley Plaintiffs’ Renewed Application fails to identify which

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<sup>1</sup> First Amended Renewed Application to Correct Errors in Alaska State Legislative Redistricting Plan After Remand at ¶ 18 (“Riley Plaintiffs’ Renewed Application”). The Riley Plaintiffs incorrectly cite to Article VI, section 8 of the Alaska Constitution, which pertains to the creation of the redistricting board and how each member is appointed. *See* Alaska Const. art. VI, § 8. However, section 8 has nothing to do with the House and Senate district boundary requirements. Article VI, section 6, on the other hand, requires House districts “be conformed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area” and “contain a population as near as practicable to the quotient obtained by dividing the population of the state by forty.” Alaska Const. art. VI, § 6. The Board will presume for the sake of argument that the Riley Plaintiffs intended to cite to Article VI, section 6 despite their failure to correct the citation in their First Amended Renewed Application. As established herein, the Board’s 2013 Proclamation Plan complies in all respects with the requirements of Article VI, section 6.

districts they allege contain unnecessarily higher deviations. The Board presumes the Riley Plaintiffs are challenging the Fairbanks Senate Districts since paragraph 18 falls under the heading “Fairbanks Senate Districts.”<sup>2</sup> As is set forth in further detail below, none of the Senate districts which contain population from the Fairbanks North Star Borough (“FNSB”) have “unnecessarily higher deviations.” To the contrary, Senate Districts A, B, and C all contain “as near as practicable” a population equal to an ideal Senate district, which is 35,510 people.<sup>3</sup> The Board is entitled to summary judgment on this issue.

## II. FACTS

Senate District A, comprised of House Districts 1 and 2, which contain the entire population of the City of Fairbanks, has 35,464 people and a deviation of -0.13% from the ideal Senate district size.<sup>4</sup> Senate District B, comprised of House Districts 3 and 4, has 35,459 people and a deviation of -0.14%.<sup>5</sup> Senate District C, comprised of House Districts 5 and 6, has a population of 35,644 and a deviation of 0.38% from the ideal

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<sup>2</sup> See *id.* at pg. 3.

<sup>3</sup> Article VI, section 6 requires Senate districts be comprised of two contiguous House districts. Alaska Const. art. VI, § 6. The ideal House district is 17,755 when dividing the total population of the state of Alaska as reported by the 2010 Census, 710,231, by forty. *Id.*; ARB00006548. Thus, the ideal Senate district is 35,510.

<sup>4</sup> ARB00017353.

<sup>5</sup> *Id.*

Senate district. All of the deviations are well under one-half of one percent, varying only 46, 51, and 134 people respectively from the ideal Senate district size of 35,510.<sup>6</sup>

### III. 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.<sup>7</sup> The moving party has the burden of showing that there are no genuine issues of material fact.<sup>8</sup>

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.”<sup>9</sup> Any allegations of fact by the non-movant must be based on competent, admissible evidence.<sup>10</sup> The non-movant may not rest upon mere allegations or denials, but must

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<sup>6</sup> *Id.*

<sup>7</sup> 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).

<sup>8</sup> *Id.*

<sup>9</sup> *Still v. Cunningham*, 94 P.3d 1104, 1108 (Alaska 2004) (internal quotation omitted).

<sup>10</sup> Alaska R. Civ. P. 56(c), (e); *Still*, 94 P.3d at 1104, 1108, 1110.

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.<sup>11</sup>

There are no genuine issues of material fact that Senate Districts A, B, and C contain a population "as near as practicable" to the ideal Senate district. The deviations are extremely minimal, all less than one-half of one percent and varying only 46, 51, and 134 people from the ideal population of 35,510. These deviations are much smaller than those in the comparable Senate districts in the original 2011 Proclamation Plan, which the Riley Plaintiffs never challenged, as well as the Senate districts proposed by the Riley Plaintiffs' legal counsel.<sup>12</sup> The Board is entitled to summary judgment.

#### IV. ANALYSIS

The Alaska Constitution requires that Senate districts be comprised of two contiguous House districts.<sup>13</sup> To achieve the goal of one person, one vote, the Alaska Constitution requires each House district contain "a population as near as practicable to the quotient obtained by dividing the population of the state by forty."<sup>14</sup> The overriding objective is "substantial equality of population among the various districts,

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<sup>11</sup> *Christensen v. NCH Corp.*, 956 P.2d 468, 474 (Alaska 1998) (citing to *Shade v. Anglo Alaska*, 901 P.2d 434, 437 (Alaska 1995)).

<sup>12</sup> See Riley Plaintiffs' Application to Correct Errors in Redistricting (July 2011).

<sup>13</sup> Alaska Const. art. VI, § 6.

<sup>14</sup> *Id.*

so that the vote of any citizen is approximately equal in weight to that of any other citizen in the state.”<sup>15</sup>

The legislature recognized it is impossible to create 40 House districts each with an exact ideal population, and accordingly, included the language “as near as practicable.”<sup>16</sup> Although federal law permits a ten percent overall deviation from the ideal district, the “as near as practicable” language added to the Alaska Constitution in 1998 makes Article VI, section 6, in many cases, stricter than the federal threshold.<sup>17</sup> The Alaska Supreme Court acknowledged, however, that in urban areas in particular, the population is sufficiently dense and evenly spread to allow minimal population deviations, especially in light of the newly available technological advances.<sup>18</sup>

In the 2001 redistricting cases, the Alaska Supreme Court found the overall deviation of 9.5% in the Anchorage House districts unconstitutional.<sup>19</sup> The high court did not, however, reject deviations of up to 5% in the Fairbanks or Kenai Peninsula

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<sup>15</sup> *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1358 (Alaska 1987), quoting *Reynolds v. Sims*, 377 U.S. 533, 579 (1964).

<sup>16</sup> Alaska Const. art. VI, § 6.

<sup>17</sup> *In re 2001 Redistricting Cases*, 44 P. 3d 141, 145-146 (Alaska 2002).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*



districts.<sup>20</sup> The Supreme Court agreed with Judge Rindner that these population deviations in the amended plan did not violate the equal protection requirements of the Alaska Constitution.<sup>21</sup> The high Court also approved the amended Anchorage districts which brought the deviations all within 1.1% of an ideal district size, with an overall deviation in the Anchorage area of 1.35%.<sup>22</sup>

The 2010 Census reported the state of Alaska has 710,231 people.<sup>23</sup> Thus, the ideal House district would contain 17,755 people.<sup>24</sup> The ideal Senate district, comprised of two contiguous House districts, is therefore 35,510.<sup>25</sup> Senate District A has a deviation of -0.13% from the ideal Senate district, short only 46 people.<sup>26</sup> Senate District B has a deviation of -0.14%, short 51 people, and Senate District C has a

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<sup>20</sup> *In re 2001 Redistricting Cases*, 47 P.3d 1089, 1094-1095 (Alaska 2002) (agreeing with Judge Rindner's finding that since the Supreme Court did not require the Board to reduce the deviations in other areas as it did with Anchorage, all the other population deviations of the June 18, 2001 plan were affirmed). House Districts 7 through 11 in the Fairbanks area had deviations of 4.8%, 4.0%, 5.0%, 2.8%, and 5.0% respectively in the June 18, 2001 plan. *See* Exhibit A (2002 Proclamation Population Analysis and House Districts 7 through 11 Maps).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 1094.

<sup>23</sup> ARB00006548.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*; Alaska Const. art. VI, § 6.

<sup>26</sup> ARB00017353.

deviation of 0.38% with an excess of 134 people from the ideal Senate district population.<sup>27</sup>

These deviations are far less than those previously upheld by the Alaska Supreme Court in 2002, and less than the deviations in both the original 2011 Proclamation Plan and the Amended Proclamation Plan.<sup>28</sup> The three Senate districts which contained population from the FNSB in the original 2011 Proclamation Plan (Senate Districts A through C) had deviations of 1.5%, 2.0%, and 2.8% respectively.<sup>29</sup> The Riley Plaintiffs did not challenge any of these deviations as being unnecessarily high or failing to contain a population as near as practicable to the ideal district size in the original 2011 Proclamation Plan.<sup>30</sup>

In fact, the plan submitted by counsel for the Riley Plaintiffs on June 21, 2013, the Gazewood & Weiner Plan, had much higher deviations in the Fairbanks Senate districts than those they now challenge.<sup>31</sup> House Districts 6 through 10 in the Gazewood & Weiner Plan contain population from the FNSB, and the Senate districts comprised of these five House districts, Senate Districts C, D, and E, have deviations of

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<sup>27</sup> *Id.*

<sup>28</sup> *See* ARB00006583; *see also* ARB00015160.

<sup>29</sup> ARB00006583.

<sup>30</sup> *See* ARB00006452-6456.

<sup>31</sup> ARB00017295-17304.

2.19%, 3.39%, and 0.36% respectively.<sup>32</sup> As noted above, the Board's comparable Senate districts have deviations of 0.13%, 0.14%, and 0.38%, all substantially less than the majority of those proposed by the Riley Plaintiffs' legal counsel.<sup>33</sup> The overall deviation of the Gazewood & Weiner Plan is 9.9%, barely under the federal threshold of ten percent, while the overall deviation of the Board's 2013 Proclamation Plan is 4.2%, the lowest in redistricting history.

The Board anticipates the Riley Plaintiffs may argue the Board could have achieved a lower deviation had it accepted their "settlement proposal" and switched the pairings from House Districts 3 and 4, creating Senate District B, and House Districts 5 and 6, creating Senate District C, to pairing House Districts 3 and 6 to create a Senate district and pairing House Districts 4 and 5 to create a Senate district.<sup>34</sup> This proposed change would reduce the current deviations in the Senate districts by a negligible 0.06%, a mere 6/100<sup>th</sup> of one percent.<sup>35</sup> The Riley Plaintiffs, who requested the Board make their "settlement proposal" part of the Board Record, offered no legitimate reason

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<sup>32</sup> *Id.*

<sup>33</sup> ARB00017353.

<sup>34</sup> *See* ARB00017764-17765.

<sup>35</sup> A Senate district comprised of House Districts 3 and 6 would have a deviation of 0.08% from an ideal district, or 30 people less than an ideal district. *See* ARB00017353. A Senate district comprised of House Districts 4 and 5 would have a deviation of 0.32%, or 113 people more than the ideal Senate district. *Id.* The result is 0.06% difference between the 2013 Proclamation Plan Senate districts and the Riley Plaintiffs' proposed Senate districts in their "settlement proposal."

for the proposed switch in pairings, instead threatening to make more baseless allegations of partisan gerrymandering if the Board rejected their proposal.<sup>36</sup>

A thorough review of the Board Record establishes that the Board did not change any Senate pairings in Anchorage or elsewhere “for the articulated purpose of reducing deviations in Senate districts.”<sup>37</sup> The Board rejected the Riley Plaintiffs’ “settlement proposal” because there was no legitimate, legal basis for switching the Senate pairings. The difference in deviations is negligible and not constitutionally significant. The Senate districts in the 2013 Proclamation Plan meet all the applicable constitutional requirements, consisting of as near as practicable populations equal to the ideal Senate district comprised of two contiguous House districts.<sup>38</sup>

As this Court has recognized, “the choice among alternative plans that are otherwise constitutional is for the Board.”<sup>39</sup> The Board used this constitutionally authorized discretion in rejecting the Riley Plaintiffs’ “settlement proposal” and maintaining the Senate pairings as adopted.<sup>40</sup> The Riley Plaintiffs admit the only reason they are now challenging the population in Senate Districts A through C is because the

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<sup>36</sup> ARB00017764-17765.

<sup>37</sup> See ARB00016712-16867 (Board Meeting Transcripts July 5-7, 2013, and July 14, 2013).

<sup>38</sup> See Alaska Const. art. VI, § 6; ARB00017343-17433.

<sup>39</sup> Memorandum Decision and Order Re: 2011 Proclamation Plan at 46 (February 2, 2013).

<sup>40</sup> ARB00017772-17779.

Board rejected their “settlement proposal.”<sup>41</sup> They have no legitimate legal basis for their challenge, and instead attempt to punish the Board for exercising its discretion in choosing between alternative plans.

The deviations of Senate Districts A through C are as near as practicable equal to an ideal district size, and are lower than any previous redistricting plan, including the Riley Plaintiffs’ own proposed plan. The Board was able to achieve such low deviations by pairing contiguous House districts that not only had as near as practicable ideal populations, but are also compact, contiguous, and socio-economically integrated districts.

## V. CONCLUSION

Senate Districts A through C do not contain unnecessarily higher deviations from the ideal district size. These districts contain “as near as practicable” a population equal to the ideal district and therefore comply with Article VI, section 6 of the Alaska Constitution. The Board is entitled to summary judgment on this matter as a matter of law.

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<sup>41</sup> ARB00017764-17765.

DATED at Anchorage, Alaska this 12<sup>th</sup> day of September 2013.

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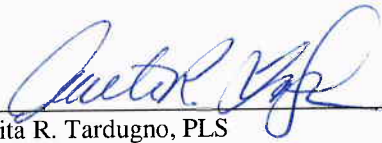
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