

266

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 4FA-13-2435 CI
---------------------------------	------------------	---

**DEFENDANT ALASKA REDISTRICTING BOARD'S
 MOTION FOR SUMMARY JUDGMENT RE: RILEY PLAINTIFFS'
 AND THE ALASKA DEMOCRATIC PARTY'S
GEOGRAPHIC PROPORTIONALITY CLAIMS**

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' and the Alaska Democratic Party's Geographic Proportionality Claims (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 the Board's 2013 Proclamation Plan does not fail to provide the voters in House District 9, 12, 32, or Senate Districts E and F, with fair and effective representation. The Board Record establishes that the Board had legitimate, non-discriminatory reasons for combining population from the Matanuska-Susitna Borough with other population to create House District 9 and 12, as it did for combining population from the Kenai Peninsula Borough with other populations to create House

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

C/M #			029810.0101		
DUE DATE		EVENT		CAL'D BY	
DISTRIBUTION:					
INT:		MDW - NAC			
EXT:		Torgerson (e) - Core (e)			
ORG:		TLC - ART			

District 32 – to accommodate excess population. The Alaska Supreme Court and this Court have already found “the need to accommodate excess population would be sufficient justification to depart from the anti-dilution rule.”¹ Therefore, the Plaintiffs’ claims fail as a matter of law.

Additionally, the Riley Plaintiffs’ and the Alaska Democratic Party’s claims regarding the geographic proportionality of House District 9 and House District 32 should be dismissed as untimely under Article VI, section 11 of the Alaska Constitution. House District 6 of the Board’s 2011 Proclamation Plan and the 2012 Amended Proclamation Plan is substantially similar to the current House District 9. House District 35 of the Board’s 2011 Proclamation Plan and the 2012 Amended Proclamation Plan is substantially similar as the current House District 32. Neither the Riley Plaintiffs nor the Alaska Democratic Party previously objected to these districts. Therefore, the Plaintiffs’ objections based on geographic proportionality concerning House District 9 and House District 32 should be barred as untimely under Article VI, section 11 of the Alaska Constitution and dismissed.

The Board is entitled to summary judgment on the Riley Plaintiffs’ and the Alaska Democratic Party’s geographic proportionality claims. Accordingly, the Board requests this Court:

1. dismiss the Riley Plaintiffs’ and Alaska Democratic Party’s claims regarding the geographic proportionality rights of the voters in House District 9 and

¹ *In re 2001 Redistricting Cases*, 44 P.3d 141, 144, n.7 (Alaska 2002); Memorandum Decision and Order Re: 2011 Proclamation Plan at pg. 108.

House District 32 as untimely, or alternatively, deny the claims and enter judgment for the Board; and

2. deny the Riley Plaintiffs' and Alaska Democratic Party's claims regarding the geographic proportionality rights of the voters in House District 12, Senate District E, and Senate District F, and enter judgment for the Board.

DATED at Anchorage, Alaska this 12th day of September, 2013.

PATTON BOGGS LLP
Counsel for Defendant
Alaska Redistricting Board

By: 

Michael D. White
Alaska Bar No. 8611144
Nicole A. Corr
Alaska Bar No. 0805022

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

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of September, 2013, a true and correct copy of the foregoing document was served on the following via:

Electronic Mail on:

Michael J. Walleri; walleri@gci.net;
mwalleri@fairbanksaklaw.com
Jason Gazewood; jason@fairbanksaklaw.com
Gazewood & Weiner PC
Attorneys for Riley/Dearborn
1008 16th Ave., Suite 200
Fairbanks, AK 99701

Thomas F. Klinkner; tklinkner@BHB.com
Birch, Horton, Bittner & Cherot
Attorney for Petersburg Plaintiffs
1127 W. 7th Avenue
Anchorage, AK 99501

Jill Dolan; jdolan@fnsb.us
Attorney for Fairbanks North Star Borough
P.O. Box 71267
Fairbanks, AK 99707

Carol Brown; cbrown@avcp.org
Association of Village Council Presidents
P.O. Box 219, 101A Main Street
Bethel, AK 99550

Thomas E. Schultz; tschulz235@gmail.com
Attorney for RIGHTS Coalition
715 Miller Ridge Road
Ketchikan, AK 99901

Supreme Court of the State of Alaska
jhotho@appellate.courts.state.ak.us
mmay@appellate.courts.state.ak.us

Joseph N. Levesque;
joe@levesquelawgroup.com; joe-wwa@ak.net
Levesque Law Group, LLC
Attorney for Aleutians East Borough
3380 C Street, Suite 202
Anchorage, AK 99503


Natalie A. Landreth; landreth@narf.org
Native American Rights Fund
Attorney for Bristol Bay Native Corporation
801 B Street, Suite 401
Anchorage, AK 99501

Marcia R. Davis; mdavis@calistacorp.com
Attorney for Calista Corporation
301 Calista Court
Anchorage, AK 99518

Scott A. Brandt-Erichsen; scottb@kgbak.us
Ketchikan Gateway Borough
1900 1st Avenue, Suite 215
Ketchikan, AK 99901

Joe McKinnon; jmckinn@gci.net
Attorney for Alaska Democratic Party
1434 Kinnikinnick Street
Anchorage, AK 99508

By: _____


Anita R. Tardugno, PLS
Legal Secretary
PATTON BOGGS LLP

4849-1691-0869.

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

DEFENDANT ALASKA REDISTRICTING BOARD'S MOTION FOR SUMMARY JUDGMENT
RE: RILEY PLAINTIFFS' AND THE ALASKA DEMOCRATIC PARTY'S GEOGRAPHIC
PROPORTIONALITY CLAIMS
In Re 2011 Redistricting Cases

Page 4 of 4

Consolidated Case No. 4FA-11-02209 CI

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
) 4FA-13-2435 CI

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
DEFENDANT ALASKA REDISTRICTING BOARD'S MOTION FOR
SUMMARY JUDGMENT RE: RILEY PLAINTIFFS' AND THE ALASKA
DEMOCRATIC PARTY'S GEOGRAPHIC PROPORTIONALITY CLAIMS**

**I.
INTRODUCTION**

Plaintiffs Riley and Dearborn (“Riley Plaintiffs”) and the Alaska Democratic Party (“ADP”) claim the Board failed to afford proportional representation to voters inside and outside the Matanuska-Susitna Borough (“Mat-Su Borough”) and the Kenai Peninsula Borough (“KPB”) by placing voters from the Mat-Su Borough with voters outside the Mat-Su Borough to create House District 9, House District 12, Senate District E, and Senate District F, and by placing voters from the KPB with voters who reside outside the KPB to create House District 32.¹ As the Board Record clearly shows, the Board did not intentionally discriminate – the legal standard for a proportional representation claim – against the voters of the Mat-Su Borough by placing them in House Districts 9 and 12, and Senate Districts E and F, or against the voters of

¹ See First Amended Renewed Application to Correct Errors in Alaska State Legislative Redistricting Plan After Remand at ¶¶ 21, 24 (August 15, 2013) (“First Amended Renewed Application”); Complaint and Application to Compel Correction of Errors in Proclamation of Redistricting at ¶¶ 14, 18 (August 15, 2013) (“ADP Complaint”).

the KPB by placing them in House District 32. The Board had a legitimate, non-discriminatory reason for doing so – to accommodate excess population. The Alaska courts, including this Court, have recognized on multiple occasions that the need to accommodate excess population is a valid, non-discriminatory reason to place voters within certain districts.² Thus, the Board is entitled to summary judgment on this issue as a matter of law.³

II. FACTUAL BACKGROUND

The Riley Plaintiffs assert in their First Amended Renewed Application that the Board’s 2013 Proclamation Plan “establishes six House Districts (i.e. House Districts 7 – 12) and three Senate Districts (i.e. Senate Districts D-F) containing voters residing within the Matanuska-Susitna Borough, and including populations outside the Matanuska-Borough in two of such house districts (HD 9 and 12) and two such senate districts (SD E and F).”⁴ They claim as a result, “the Third Final Plan fails to afford

² See Memorandum Decision and Order Re: 2011 Proclamation Plan at 42-43, 107-108 (February 3, 2012) (“McConahy Order”).

³ The Riley Plaintiffs appear to challenge the proportional representation rights of the voters in Senate Districts E and F. See First Amended Renewed Application at ¶¶ 19, 21. Senate District E is comprised of House Districts 9 and 10, while Senate District F is comprised of House Districts 11 and 12. ARB00017353. House Districts 10 and 11 are wholly contained within the Mat-Su Borough and therefore no geographic proportionality claim applies. To the extent the voters within House District 9, comprised of population from the Mat-Su Borough, the cities of Delta Junction, Valdez, Whittier, and communities along the Richardson Highway, including Glennallen, have a proportional representation claim, the arguments set forth below, which establish the Board did not violate their right to fair and effective representation, also applies to them as voters of Senate District E. The same rationale applies to Senate District F and the voters located within House District 12. The Board denies any and all allegations raised by the Riley Plaintiffs and the ADP not otherwise specifically addressed herein.

⁴ First Amended Renewed Application at ¶ 19.

proportional representation to the voters residing outside the Matanuska-Susitna Borough.”⁵ The ADP asserts a similar claim, arguing “according to the 2010 census, the Matanuska-Susitna Borough (Mat-Su Borough) has a population of 88,995. That population is equal to the ideal population of 5.01 house seats, enabling the Board to create five house seats entirely within the boundaries of the Borough without including population from outside the Borough and without including Borough residents in house districts outside Mat-Su Borough boundaries.”⁶ As a result, they argue “the Board’s third redistricting plan fails to afford proportional representation to voters residing both inside and outside the Mat-Su Borough.”⁷

The 2010 Census revealed a population of 88,995 in the Mat-Su Borough, equal to 5.01 ideal districts.⁸ In the 2013 Proclamation Plan, this population is split between six districts – House District 7, 8, 9, 10, 11, and 12.⁹ The population in House Districts 7, 8, 10, and 11 is 100% from the Mat-Su Borough.¹⁰ The Mat-Su Borough population in House District 9 is 45%, while 27% is from the Delta Junction area, 4% from the Copper Basin area, and 24% from the Valdez/Prince William Sound area, mainly

⁵ *Id.* at ¶ 21.

⁶ ADP Complaint at ¶ 11.

⁷ *Id.* at ¶ 14.

⁸ ARB00017357.

⁹ *Id.*

¹⁰ *Id.*

Valdez and Whittier.¹¹ The population in House District 12 is 56% Mat-Su Borough voters and 43% Municipality of Anchorage (“MOA”) voters.¹²

House District 9 is a result of the ripple effect caused by the Board’s decision to add the excess population from the MOA, which had enough population for 16.436 ideal House districts, to population from the Mat-Su Borough to create House District 12.¹³ House District 12 combines 56% population from an ideal Mat-Su Borough House district with 43% population from an ideal MOA House district.¹⁴ Since the Mat-Su Borough has enough population for 5.01 House districts, the extraction of 56% from one ideal district to combine with the MOA’s excess population left about 45% of an ideal district from Mat-Su residents that needed placement.¹⁵ To create House District 9, the Board chose this 45% from the east side of the Mat-Su Borough and combined it with similar communities along the Richardson Highway corridor to

¹¹ *Id.*; see also Exhibit A, a map created by the Board’s GIS specialist, Eric Sandberg, of House District 9 that illustrates the location of the population and the percentage of population from the various areas that create House District 9. See Affidavit of Eric Sandberg at ¶¶ 4, 5 (“Aff. of Sandberg”).

¹² ARB00017357.

¹³ ARB00017357; ARB00017348-17350.

¹⁴ ARB00017357; ARB00017348-17349.

¹⁵ ARB00017357.

Valdez, including Whittier, just as this Board had done in the 2011 and 2012 redistricting plans, and just as the Board did in 2002.¹⁶

The Board considered several options for accommodating the excess population in the MOA, none of them ideal, before choosing to combine it with Mat-Su population to create House District 12.¹⁷ The available options were: (1) spread the population evenly over the 16 other MOA districts, thereby increasing the deviations within the MOA; (2) push the population south to create a shared Anchorage/Kenai district, thereby breaching the Kenai Peninsula Borough a second time; (3) create a district which combined the excess population from Anchorage with Whittier, Valdez, and other communities along the Richardson Highway north to the Fort Greely area; or (4) push the population north to create a shared Anchorage/Mat-Su district.¹⁸ After much discussion and deliberation, the Board determined that the most reasonable way to accommodate the MOA excess population that best balanced all redistricting requirements was by creating House District 12, a shared Anchorage/Mat-Su district.¹⁹ House District 12 places 7,739 residents of the MOA, or 43% of an ideal district, with

¹⁶ ARB00016727-16728 at 56:3-58:15; *see also* Exhibit B, a comparison of the boundaries of House District 9 in the current 2013 Proclamation Plan against the boundaries of a similar district in the Board's original 2011 Proclamation Plan, the Board's 2012 Amended Proclamation Plan, and a very similar district in the final 2002 Amended Proclamation Plan upheld by the Alaska Supreme Court, created by Eric Sandberg. *See* Aff. of Sandberg at ¶ 6.

¹⁷ ARB00017349-17350.

¹⁸ ARB00017349.

¹⁹ *Id.*

9,932 people from the Mat-Su Borough.²⁰ The Mayor of the Mat-Su Borough submitted public comment and public testimony in favor of the Anchorage/Mat-Su combination, which has been a feature of both previous proclamation plans which no party objected to or challenged.²¹

The Mat-Su Borough Assembly submitted a letter in support of the Board's 2013 Proclamation Plan, including House District 9 and House District 12.²² The Mat-Su Borough Assembly specifically emphasized "the partial District on the northern end of the Municipality of Anchorage is an excellent fit with the Mat-Su population south of the Palmer & Wasilla core areas. These contiguous areas are highly integrated in socio-economic terms. These citizens share electric and telephone utilities as well as the Glenn Highway as their primary transportation link."²³ The Mat-Su Borough Assembly likewise supported the placement of 56% population from an ideal district within House District 12, thereby giving Mat-Su Borough voters control of a fifth House district.²⁴ The Assembly also favored the Senate pairings, especially the pairing of the historic Richardson Highway district, House District 9, with House District 10, a district

²⁰ ARB00017349; ARB00017357.

²¹ ARB00017350; ARB00017585; *see* ARB00006079, ARB00006568, ARB00015127, ARB00015103.

²² ARB00017854-17855.

²³ *Id.*

²⁴ *Id.*

containing 100% Mat-Su Borough population, and providing the Mat-Su Borough with a third Senator.²⁵

The Riley Plaintiffs also assert that the 2010 Census data for the KPB “establishes a total population of 55,400. The Third Final Plan establishes four House Districts (i.e. House Districts 29-32) containing voters residing within the Kenai Peninsula Borough, and needlessly includes populations outside the Kenai Peninsula in one such house district. (HD 32).”²⁶ The Riley Plaintiffs claim, as a result, “the Third Final Plan fails to afford proportional representation to the voters residing outside the Kenai Peninsula Borough.”²⁷ The ADP makes a similar allegation, arguing “the Board could have drawn three house seats entirely within the Kenai Peninsula Borough boundaries without including population from outside the Borough and without including Borough residents in house districts outside the Kenai Borough boundaries.”²⁸ The ADP takes issue with the Board’s decision to “separate[] the communities of Halibut Cove, Nanwalek, Port Graham, Seldovia, and Tyonek from the Kenai Peninsula Borough and include[] them in House District 32 with other communities” with which, the ADP argues, the KPB communities are not socio-economically integrated.²⁹ The

²⁵ *Id.*

²⁶ First Amended Renewed Application at ¶ 22.

²⁷ *Id.* at ¶ 24.

²⁸ ADP Complaint at ¶ 16.

²⁹ *Id.* at ¶ 17.

ADP claims the Board's 2013 Proclamation Plan therefore "fails to afford proportional representation to voters residing both inside and outside the Kenai Peninsula Borough."³⁰

The 2010 Census reported a population of 55,400 in the KPB, which is equal to 3.12 ideal districts.³¹ After discussion and deliberation on the record, the Board chose to take the excess population from the rural areas of KPB that are off the road system and add it to a single House district that contains Kodiak and other off the road, coastal communities to create House District 32.³² The population in the resulting district, House District 32, is 75.2% from the Kodiak Borough, 7.6% from the KPB, 13.5% from Cordova in the Prince William Sound area, and 3.7% from Yakutat.³³ House District 32 also closely resembles House District 35 in the Board's 2011 Proclamation Plan and 2012 Amended Proclamation Plan which included population from the KPB, specifically, Seldovia, Halibut Cove, Nanwalek, and Port Graham, with Kodiak, Cordova, and Yakutat.³⁴ No party, including the Riley Plaintiffs who challenged a

³⁰ *Id.* at ¶ 18.

³¹ ARB00017349-17350.

³² ARB00017351; *see also* ARB00017372, ARB00017425.

³³ Attached as Exhibit C is a map of House District 32, created by Eric Sandberg, that illustrates the location of the population and the percentage of population from the various areas that create House District 32. *See* Aff. of Sandberg at ¶¶ 4, 5.

³⁴ *See* Ex. B; ARB00006044-6045, ARB00006054.

number of aspects of the Board's 2011 Proclamation Plan and 2012 Amended Proclamation Plan, challenged House District 35's combined population.

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.³⁵ The moving party has the burden of showing that there are no genuine issues of material fact.³⁶

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."³⁷ Any allegations of fact by the non-movant must be based on competent, admissible evidence.³⁸ 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.³⁹

³⁵ 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).

³⁶ *Id.*

³⁷ *Still v. Cunningham*, 94 P.3d 1104, 1108 (Alaska 2004) (internal quotation omitted).

³⁸ Alaska R. Civ. P. 56(c), (e); *Still*, 94 P.3d at 1104, 1108, 1110.

³⁹ *Christensen v. NCH Corp.*, 956 P.2d 468, 474 (Alaska 1998) (citing to *Shade v. Anglo Alaska*, 901 P.2d 434, 437 (Alaska 1995)).

IV. ARGUMENT

The Riley Plaintiffs claim the Board's 2013 Proclamation Plan "fails to afford proportional representation to the voters residing *outside* the Matanuska-Susitna Borough"⁴⁰ and "to the voters residing *outside* the Kenai Peninsula Borough."⁴¹ The ADP claims the Board's plan "fails to afford proportional representation to voters residing both *inside and outside* the Mat-Su Borough"⁴² and "to voters residing both *inside and outside* the Kenai Peninsula Borough."⁴³ Significantly, neither Plaintiff can assert any facts, disputed or otherwise, that the Board discriminated against any politically salient class of voters in any of these districts because no such facts exist.

⁴⁰ First Amended Renewed Application at ¶ 21.

⁴¹ *Id.* at ¶ 24. The Riley Plaintiffs have failed to state a legally cognizable claim. None of the communities outside the Mat-Su Borough or outside the KPB in House District 12 or 32 have enough population to support their own House district. *See In re 2001 Redistricting Cases*, 44 P.3d 141, 145 (Alaska 2002). As such, they must be added to other populations. The Board did not split any of the political subdivisions in House District 9 or 32 other than the Mat-Su Borough and the KPB. While the Board did split the MOA and place the excess population in House District 12, the Board did so for the legitimate, non-discriminatory reason of accommodating excess population. The Board kept intact the organized cities of Delta Junction, Valdez, and Whittier, none of which are part of any borough, and placed their entire population in House District 9. The Board also kept intact the Kodiak Island Borough, the Yakutat Borough, and the incorporated city of Cordova, which is not part of any borough, and placed their entire population in House District 32. The Board has not disproportionately diluted any of the votes from these communities, which is required for there to even be a geographic proportionality claim. *See Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1371 (Alaska 1987). The only voters with a potential proportional representation claim are, therefore, those from the Mat-Su Borough placed in House District 9 and 12, and those from the KPB placed in House District 32. Irrespective of the fact that the Riley Plaintiffs have failed to plead a legally valid claim, the Board did not discriminate against any voters in House District 9, 12, or 32, and the Riley Plaintiffs' claims likewise fail on the merits.

⁴² ADP Complaint at ¶ 14 (August 13, 2013).

⁴³ *Id.* at ¶ 18.

The Board had legitimate, non-discriminatory reasons for combining population from the Mat-Su Borough with population from outside the Borough in House Districts 9 and 12, as it did for combining population from the KPB with other populations to create House District 32 – accommodation of excess population. The Alaska Supreme Court and this Court have already held that “the need to accommodate excess population would be sufficient justification to depart from the anti-dilution rule.”⁴⁴ The Plaintiffs’ claims fail as a matter of law.

There are two principles of equal protection in the context of voting rights in redistricting litigation: (1) one person, one vote (or the right to an equally weighted vote), and (2) fair and effective representation (or the right to group effectiveness or an equally powerful vote).⁴⁵ The first is quantitative in nature, or purely numerical, while the second is qualitative.⁴⁶ For there to be a violation of the second principle, fair and effective representation, a plaintiff must prove both intentional discrimination against a group and a discriminatory effect on that group.⁴⁷ Mere lack of proportional representation is insufficient.⁴⁸

⁴⁴ *In re 2001 Redistricting Cases*, 44 P.3d at 144, n.7; McConahy Order at pg. 108.

⁴⁵ *Kenai Peninsula Borough v. State*, 743 P.2d at 1366.

⁴⁶ *Id.*

⁴⁷ *Hickel v. Southeast Conference*, 846 P.2d 38, 49 (Alaska 1992).

⁴⁸ *Id.*

The Alaska Equal Protection Clause is more stringent than its federal counterpart, but the analysis in determining whether a violation has occurred is very similar.⁴⁹ First, the court determines what weight to afford the constitutional interest that is impaired by the challenged action.⁵⁰ Second, the court looks at the purposes served by the challenged action.⁵¹ Third, the court considers the state's interest in the particular means used to achieve those purposes.⁵²

The Alaska Supreme Court recognizes that although a voter's right to an equally geographically effective or powerful vote is not a fundamental right, it is a significant constitutional interest.⁵³ Thus, individual members of a geographic group or community have a significant constitutional interest in having their votes protected from disproportionate dilution by the votes of another geographic group or community.⁵⁴ The Alaska Redistricting Board ("Board") therefore "cannot *intentionally* discriminate against a borough or any other 'politically salient class' of voters by *invidiously* minimizing that class's right to an equally effective vote."⁵⁵ Political subdivisions and

⁴⁹ *Kenai Peninsula Borough v. State*, 743 P.2d at 1372.

⁵⁰ *Id.* at 1371; *see also Braun v. Denali Borough*, 193 P.3d 719, 731 (Alaska 2008).

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.* at 1371-72.

⁵⁴ *Id.* at 1371.

⁵⁵ *In re 2001 Redistricting Cases*, 44 P.3d at 144 (emphasis added).

groups of voters are not, however, entitled to control a particular number of seats based on populations, or proportional representation, absent invidious discrimination.⁵⁶

Alaska courts apply a neutral factor test in determining whether the Board had a legitimate purpose in designing challenged districts, unless of course, the Board's intent was discriminatory on its face.⁵⁷ The courts look at both the process followed by the Board in formulating its decision and to the substance of the Board's decision.⁵⁸ If the evidence shows, based on a totality of the circumstances, that the Board acted intentionally to discriminate against the voters of a particular geographic area, then the Board has the burden of proving any intentional discrimination will lead to more proportional representation.⁵⁹

Intentional discrimination can be inferred where a redistricting plan "unnecessarily divides a municipality in a way that dilutes the effective strength of municipal voters."⁶⁰ Indications of discrimination include the lack of adherence to established political subdivision boundaries, the failure to keep a borough's house

⁵⁶ *Id.* at 143-144, 146-147.

⁵⁷ *Kenai Peninsula Borough v. State*, 743 P.2d at 1372.

⁵⁸ *Id.*

⁵⁹ *Id.*; see also *Hickel v. Southeast Conference*, 846 P.2d at 49.

⁶⁰ *In re 2001 Redistricting Cases*, 44 P.3d at 144.