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

IN RE 2011 REDISTRICTING CASES

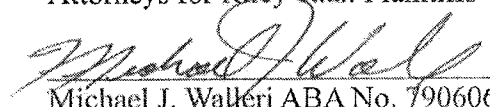
Case No. 4FA-11-02209 CI

RILEY ET. AL. PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

The Riley Plaintiffs seek partial summary judgment on several issues related to the third final redistricting plan adopted by the Proclamation of Redistricting, July 12, 2013 (herein reference as Final Plan). The reasons are set forth in the accompanying memorandum.

Date: September 12th, 2013

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

IN RE 2011 REDISTRICTING CASES

Case No. 4FA-11-02209 CI.

**RILEY ET. AL. PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

The Riley Plaintiffs seek partial summary judgment on several issues related the third final redistricting plan adopted by the Proclamation of Redistricting, July 12, 2013 (herein referenced as Final Plan).¹ Specifically, they seek summary judgment on the issues of compactness of the House Districts 3,5,9,12, and 32; the unnecessary splits in the Mat-Su and Kenai Districts; the avoidable deviation variation in SD 5 and 6; and the Alaska Equal Protection claims related to the non-compact nature of SD B and the splitting of the University of Alaska (UAF) campus.

I. SUMMARY JUDGMENT STANDARD

The law of this case respecting the standard of review was set out by this Court in its order of December 23, 2011,² and this Courts Memorandum Decision of February 1, 2012.³ Specifically, this Court's review of the Board's action

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- 1 ARB 00017436 The Court's scheduling order set out an abbreviated procedural history of this remand which shall not be repeated here. See Scheduling Order (Aug. 28, 2013), at 1.
- 2 Order on Contiguity of House District 37, at 4 (12/23/11)
- 3 *Memorandum Decision and Order Re: 2011 Proclamation Plan* (Feb. 1, 2012), at 45-47

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utilizes a somewhat modified standard of review employed by the Court in reviewing administrative agency actions.⁴ The Court has held that the standard of review is to ensure that the reapportionment plan under review is not unreasonable and is constitutional under Art. VI, § 6 of Alaska's Constitution.⁵ Whether a plan or a portion of a plan is constitutional is a question of law subject to *de novo* review. As to whether a plan or a portion of a plan is unreasonable, the "Court must examine not policy but process and must ask whether the agency has not really taken a 'hard look' at the salient problems or has not generally engaged in reasoned decision making."⁶

4 *Id.* citing *Alaska Airboat Assoc. v State*, 18 P.3d 686, 690 (Alaska, 2001)

5 *Memorandum Decision and Order Re: 2011 Proclamation Plan* (Feb. 1, 2012), at 45., citing *Carpenter v Hammond*, 667 P.2d 1204, 1214 (Alaska, 1983) quoting *Groh v Eagan*, 526 P. 2d 863, 866-67 (Alaska, 1974); Also referencing *Kenai Peninsula Borough v State*, 743 P.2d 1352, 1275-58 (Alaska 1987); *Hickel v Southeast Conference*, 846 P.2d 38 (Alaska, 1992)

6 *Memorandum Decision and Order Re: 2011 Proclamation Plan* (Feb. 1, 2012), at 46. As the Court is aware, the Plaintiffs assert that the proper standard of review as to "unreasonableness" where there are disputed facts at issue also includes consideration as to whether the agency's decision is supported by the facts and has a reasonable basis in the law". *Gunderson v University of Alaska*, 922 P.2d 229, 233 (Alaska, 1996) quoting *Tesoro Alaska v Kenai Pipeline Co.*, 746 P.2d 896 (Alaska, 1987) Under this test, "there must be substantial evidence in the record that supports the findings that are disputed." *City of Nome v Catholic Bishop of Northern Alaska*, 707 P.2d 870, 875 n. 2&3, and 876 (Alaska, 1985) Under such circumstances, the Board may not rely upon *post hoc* justifications involving evidence outside the record to support the Board's actions. *Id.* The Plaintiffs would request the Court to reconsider the applicable standard and reserves their objection to the Court previously articulated standard.

II. COMPACTNESS CLAIMS

a) Introduction. The Plaintiffs Riley et. al.'s Amended Renewed Application challenges House Districts (HD) 3, 5, 9, 12, and 32 alleging that they are not relatively compact when compared to possible alternatives, and therefore violate Article VI, Section 6 of the Alaska Constitution.⁷

As the Court is aware, the Alaska Constitution requires that each legislative district be compact.⁸ Compactness is the first priority among the constitutional standards applicable to redistricting.⁹ As this Court has previously held, "compact" means having a small perimeter in relation to the area encompassed, which should not have irregular appendages.¹⁰ Of particular relevance to the present question, this Court "should 'look to the relative compactness of proposed and possible districts in determining whether a district is sufficiently compact." (emphasis added)¹¹

⁷ First Amended Application To Correct Errors In Alaska State Legislative Redistricting Plan After Remand, para. 14, 20, & 23

⁸ AK CONST. Art. VI, Sec. 6 *Hickel v Southeast Conference*, 846 P.2d 38, 44 (Alaska, 1992); *Kenai Peninsula Borough v State*, 743 P.2d 1352, 1367 (Alaska, 1992) The Court is familiar with the standards purpose and goals, which need not be repeated here. Scheduling Order (Aug. 28, 2013), at 4.

⁹ "The requirements of Article VI, Sec. 6 (of the Alaska Constitution) shall receive priority *inter se* in the following order: (1) continuous and compactness....." *In re 2001 Redistricting Cases*, 44 P.3d 141, 143 n.2 (Alaska, 2002), quoting *Hickel v Southeast Conference*, 846 P.2d at 62. The purpose of the compactness requirement is to prevent gerrymandering, which is the "dividing of an area into political units "in an unnatural way with the purpose of bestowing advantages on some and thus disadvantaging others."

¹⁰ *Memorandum Decision and Order Re: 2011 Proclamation Plan* (Feb. 1, 2012), at 34 citing *Hickel*, *supra.*, at 45-46; *Carpenter v Hammond*, 667 P.2d 1204, 1218 (Alaska, 1983)(Matthews, J., concurring), *Davenport v Apportionment Comm'n of New Jersey*, 304 A. 2d 736, 743 (N.J. Super. Ct. App. Div. 1973)

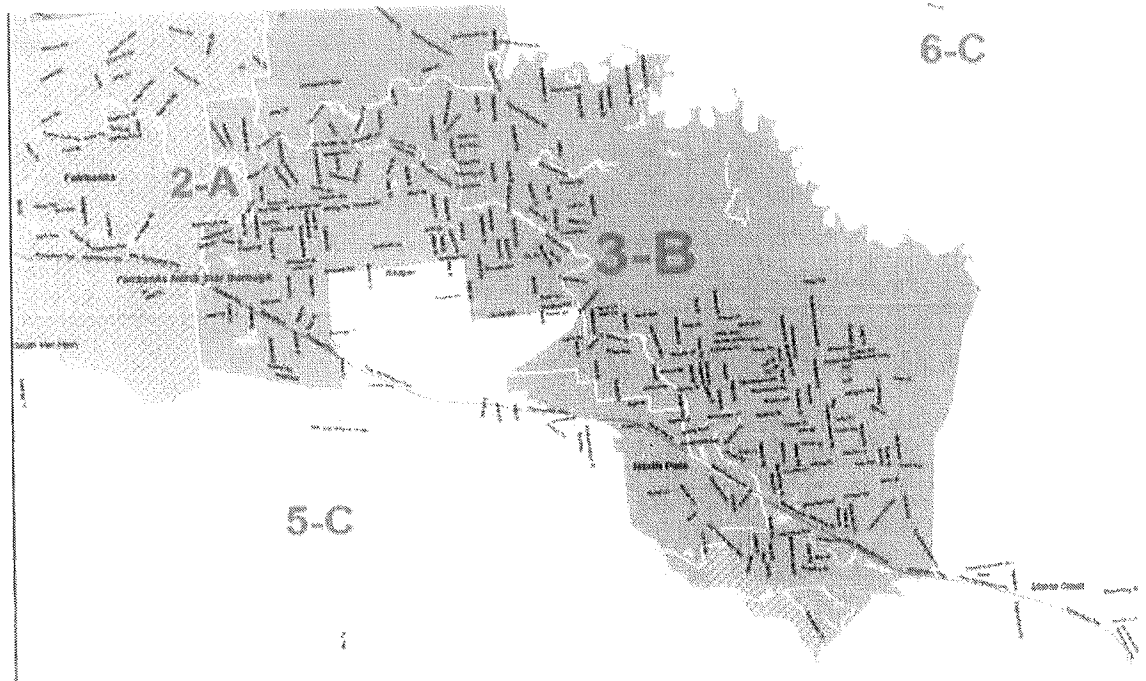
¹¹ *Id.*

b) House Districts 3 & 5.¹² House Districts 3 and 5 are not relatively compact. HD 3 is an elongated district running in a northwest- southeast orientation on the eastern side of the Fairbanks North Star Borough. It includes a portion of Chena Hot Springs Road (Fabian Dr. to Nordale Road) on the northwestern border, and runs to Old Valdez Trail (south of North Pole). On the other hand, HD 5 is a large district whose population is concentrated on the western side of the FNSB, including Chena Ridge and Chena Pump Roads. The District jumps across the Chena River to include the Fort Wainwright Artillery Range, and back across the Chena River to pick up an anvil-shaped appendage containing a slice of the Richardson Highway (Rozack Rd to Holland Aviation Street) west of the City of North Pole that protrudes into HD 3 up to a portion of Bradway Road (Lakloey Dr to Benn Lane). The anvil-shaped appendage contains an estimated 811 people.¹³ The irregular anvil-shaped appendage clearly juts into an area that is more closely associated with the adjacent areas in HD 2 or 3, however, the removal of the anvil-shaped appendage from HD 3 would require the elongation of HD 3 in either the south-eastern or northwestern direction.

¹² First Amended Renewed application, para. 14

¹³ Exhibit 1 (Aff't of L. Lawson)

HD 3 & 5 Final Plan (Snapshot)¹⁴



Comparing two draft configurations for the area --- Board Draft Plan D and Gazewood & Weiner (G&W) plans¹⁵ -- clearly demonstrate that a more compact North Pole district could be configured. Both of these configurations were adopted as proposed plans by the Board on June 21, 2013¹⁶ and posted on the Board's website on June 24, 2013.¹⁷ Thus, the more compact alternative configurations for the area of HD 3 were not only possible but were actually Board adopted draft plans; one of the plans, (Draft D) was actually drawn by the Board, and is clearly the most compact of the above demonstrations.¹⁸

14 ARB 00017436

15 ARB 00017300

16 ARB 0001711-13, 16 (Tr.- June 21, 2013 Hearing , pp. 11-13, 16)

17 See <http://www.akredistricting.org>

18 ARB 0001711-13 The Riley Plaintiffs have not included mathematical measurements of the districts given the Court's prior observation that such mathematical measurements were unhelpful.

