

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

IN RE 2011 REDISTRICTING CASES

4FA-11-2209 CI

**ADP OPPOSITION TO ARB'S MOTION FOR SUMMARY
JUDGMENT RE GEOGRAPHIC PROPORTIONALITY CLAIMS**

Plaintiffs Alaska Democratic Party, Katie Hurley and Warren Keogh (collectively ADP) hereby enter their Opposition to the Alaska Redistricting Board's motion for summary judgment on plaintiffs' geographic proportionality claims regarding residents of the Matanuska-Susitna Borough (Mat_Su Borough) and the Kenai Peninsula Borough (KPB).¹

In its memorandum in support of its motion, the Board acknowledges that it has the burden of rebutting the inference of intentional discrimination raised by its splitting of the Mat-Su and Kenai boroughs.² It contends that it has done so. An examination of the Board record, however, demonstrates that the Board had no legitimate reason for splitting either borough and that doing so was completely unnecessary.

Mat-Su Borough: The Board contends that the splitting of the Mat-Su Borough was required to accommodate the excess population of the Municipality of Anchorage. The Board considered four options to deal with that excess population: (1) spread the excess population over the other 16 Anchorage districts; (2) move the excess population south and join

¹ In its complaint ADP asserted geographic proportionality claims for residents both inside and outside the Mat-Su and Kenai boroughs. ADP hereby waives its claims of geographic proportionality for residents outside the two boroughs at issue.

² *ARB's Memorandum in Support of MSJ re Geographic Proportionality Claims*, p. 15.

it with portions of the Kenai Peninsula Borough; (3) create a district that joined the excess Anchorage population with Valdez and communities along the Richardson Highway north to the Delta-Fort Greely area; or (4) create a shared Anchorage/Mat-Su district.³ The Board focused its deliberations on the last two options.

Two private plans that were presented to the Board which proposed a North Anchorage-Valdez-Richardson Highway district: the Calista Option 4 Plan and the McKinnon Plan. Either plan would have accommodated Anchorage's excess population without splitting the Mat-Su Borough.⁴ The Board held public meetings on July 5, 6, and 7, 2013 to finalize its proclamation plan and focused its deliberations on the Calista 4 plan as an alternative to splitting the Mat-Su. During these meetings there were extensive discussions on whether or not to create an Anchorage-Valdez Richardson Highway. What there wasn't at these meetings was the presentation of any evidence which could be used to make a rational decision on whether or not to do it.

Because the burden is on the Board to show that its splitting of borough boundaries is justified, it must point to evidence in the record supporting its contention that an Anchorage-Valdez-Richardson Highway district would not be socio-economically integrated. There is no such evidence. If anything, what little factual evidence there is in the record supports the socio-economic integration of an Anchorage-Valdez-Richardson Highway district.

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³ ARB 00017349-350.

⁴ Although the Calista 4 plan did split the Borough by including approximately 500 residents in its Anchorage-Valdez-Richardson Highway district, Calista consultant Tom Begich advised the Board that those 500 could be returned to the Mat-Su and made up elsewhere if the Board's objective was to not split the Borough. ARB00016720, 26:4-20. The McKinnon Plan did not split the Mat-Su Borough.

What evidence there is establishes that residents of the Richardson Highway area shop in Anchorage, that the highway system forms a strong connection with Anchorage and that the region's Native corporation has strong ties to Anchorage:

MR. TORGERSON: No. I'm mainly just walking through it in my mind. I probably shouldn't be talking, but I am. I'm not sure that -- I'm pretty sure that coming into Whittier and the lower end of South Anchorage you can make the case for some of that, because ferry system and some other things that go in and out of Whittier.

Most of the central spot, they use the Glenn to come down and shop in Anchorage.

MR. WHITE: That connects us with Ahtna and Anchorage.

MR. TORGERSON: Pardon me?

MR. WHITE: The connection is with the Ahtna Corporation in Anchorage. They have offices here. They run a lot of their businesses here. I understand what you're talking about in terms of as you push north, what does that mean?

MR. BRODIE: Mr. Chairman, it's a hard one to balance. Given the decision was many years ago, communication and transportation have changed a little bit, and we have taken urban people and moved them and connected them clear to coastal rural areas.

And these are all road-system people, so one would think that a socioeconomic argument that they are not compatible is pretty weak in today's climate, given that we have taken Fairbanks people and put them clear over to the rural Wade Hampton area, and we have done other things such as that. So one would think in today's environment that that would be kind of a weak argument that north Anchorage and the northern road district there wouldn't match up.

MR. TORGERSON: So you are saying they are socioeconomically integrated because of the road system primarily?

MR. BRODIE: I would think so.

MR. TORGERSON: You think so?

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MR. BRODIE: Yeah.⁵

Board member Jim Holm, a Fairbanks resident, informed the Board that even people in communities that are closer to Fairbanks also often have socio-economic connections to Anchorage: :⁶

MR. TORGERSON: Jim, what's your thoughts? I'm trying to get us to decide whether to divide the borough or go with this.

MR. HOLM: That was exactly my thought. My thought was we either have to make the choice of dividing the Mat-Su Borough or we have to assume we can go across the glacier and connect and we would be fine.

We have precedence, I think, in past cases where water is a connector, mountains can be connectors, as long as their socioeconomic viability, and it seems to me that it's pretty hard to - - I mean, they fly between Anchorage and Valdez constantly. Although this is north Anchorage, I think it's very close. It's within 200 miles.

If you put Tok close to Fairbanks, you're doing the same thing. Tok is a long way from Fairbanks, and yet it does have some socioeconomic connection because of where people get things from, but they also go to Anchorage almost as much as they do to Fairbanks, so it's kind of hard to make a blanket statement saying these things are not socioeconomically connected.

While Board members and counsel were able to cite specific factors supporting socio-economic integration in an Anchorage-Valdez-Richardson Highway district, their concerns that socio-economic integration might not exist were less detailed. They were more in the nature of vague concerns that an area closer to Fairbanks might not be sufficiently socio-economically integrated with Anchorage. However, there were no specific facts cited to support a conclusion that the area was not socio-economically integrated with Anchorage

⁵ ARB00016765

⁶ ARB000168-09-10

The primary concern of board members regarding the proposed district actually seems to have been the lack of a road connection entirely within the district. Under the proposed plans, the land connection between Anchorage and Valdez would take place across the Chugach mountains. Even though the Glenn Highway would still connect Anchorage and the rest of the district, bypassing the Mat-Su would leave a large portion of the Glenn outside the proposed district. This lack of a direct road connection, not socio-economic factors, seemed to sway Board member McConnochie:

MS. McCONNOCHIE: I guess I kind of have a problem with having that district going to South Anchorage. Granted, I think, from my perspective, Alaska is a huge state, but everything is connected somehow.

But I'm looking at Valdez and I'm looking at the majority of the small little towns, and I'm thinking that that's not -- that's not, in my mind, the right way to go. I would rather go north, split Mat-Su than connect over nothing from Valdez to Anchorage.

Board member Torgerson expressed his concerns several times that the lack of a road connection entirely within the district would be a factor in determining whether or not there was socio-economic integration.

MR. TORGERSON: Well, I'm having some concerns about reading this court ruling and looking at that Valdez district on whether or not it's going to pass the socioeconomic test, so we don't have to do it right now, but we're going to have to build the record a little bit.

I know the testimony was that it's the Glenn Highway corridor, but it doesn't pick up the Glenn Highway until Gunsight Mountain, past Lake Louise Lodge.

Other than that, it runs up the valley and glaciers and rivers. There is hardly anybody living in that neck of the woods. So in my mind, I don't know if I want to proceed with that district or if I want to go with the split the Mat-Su. And clearly, I think there

could be grounds if we believe that that's not socioeconomically integrated, that we split the Mat-Su is the only logical recourse.⁷

Ultimately, the lack of a road connection entirely within an Anchorage-Valdez-Richardson Highway district turned out to be the deciding factor for Mr. Torgerson who pictured residents hiking across glaciers to get from Glenallen to Anchorage instead of just driving the Glenn Highway:

MR. TORGERSON: Calista -- of course, Calista option four is the one that we're calling the Valdez or the Glennallen to north Anchorage, so that is -- they are not the same districts for that option, but Calista and AFFER did come together with a discussion on the option two revised, which is -- I don't want to characterize this, but my understanding is it wasn't Calista's best option, but if the board decided to divide Mat-Su, that that was the best way to divide it up was to go that way.

I think that's a fair characterization. I have struggled with this. I think they both work. I guess my deciding factor is more on actually connecting between Glennallen and Lake Louise or whatever to Anchorage. We're actually dividing the district in half. The population is pretty close to probably 60 percent outside and 40 percent within Anchorage, but that 40 percent is divided by the way the boundaries run over four or five glaciers and upper river valley and no road.

I actually had Eric look. It's 72 miles from the end of Knik Drive, which is two people there, but to the Copper River. And I keep thinking about it. I know that we connected by water before. I even look at District 32 that we have, which runs basically now Tyonek to Yakutat. That's a huge distance, but they are on the water and there is a lot of different things. None of them have to hike across glaciers.

This focus on the irrelevant was a hallmark of the Board's inquiry into socio-economic integration. The Board never looked into actual social or economic factors that might

⁷ ARB00016762

truly have an impact on whether the proposed Anchorage-Valdez-Richardson Highway district would be socio-economically integrated.

For example, the Board concludes that the area along the Richardson Highway pipeline corridor from south of the Fairbanks North Star Borough to Valdez is “the most strongly integrated economic corridor in the state.”⁸ Certainly, if pipeline activity is the unifying economic factor along the Richardson Highway, one would think the Board would have wanted to determine if Anchorage is integrated in any way into that activity. For example, who owns the pipeline and where are they based? Who manages the pipeline and where are they based? What port receives the equipment and supplies used to maintain the pipeline? What companies haul that equipment and supplies along the Richardson Highway corridor and where are they based? What companies maintain the pipeline infrastructure and where are they based? Unfortunately none of this information is in the record because the Board failed to ask these questions in its investigation into socio-economic integration.

Thus, while Board members’ decisions over the two options may have been personally difficult for members, their deliberations certainly were not the “hard look” alleged in the Board’s findings. There were simply no actual facts discovered or debated back and forth. In fact, as shown above, the only factual statements made were in support of Anchorage socio-economic integration and the only statements made against it were vague conclusory statements expressing concern that it might not exist.

The Board’s burden of justifying its decision to split the Mat-Su is essentially a burden to show that an Anchorage-Valdez-Richardson Highway district would not be socio-

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⁸ *ARB’s Memorandum in Support of MSJ re Geographic Proportionality Claims*, p. 17.

economically integrated. By leaving the record devoid of any evidence on that issue, the Board has failed to meet its burden.

The Board also cited compactness as a factor in rejecting the Anchorage-Valdez-Richardson Highway district. Its concern was that the district would have had a large appendage where it crosses over the Chugach Mountains to connect with the Anchorage part of the district.

The appendage, however, was caused in this instance by the necessity of following Mat-Su Borough boundaries to protect its residents' interest in not having their votes diluted. The southern end of an Anchorage-Valdez-Richardson Highway District by necessity has to curve around the Mat-Su in order to preserve its geographic proportionality. This appendage is no different than those in other areas that are created when boundaries are drawn to follow municipal boundaries. For example House District 1 in Fairbanks has a series of strange appendages that exist because of the Board chose to adhere to the boundaries of the City of Fairbanks when drawing it.

Even more relevant, House District 9, which the Board decided to create when it rejected an Anchorage-Valdez-Richardson Highway district, has its own large appendage on its northern border. The reason the Board decided to trade off one large appendage for another doesn't appear in the record. Perhaps the District 9 appendage was necessary to avoid splitting the Denali Borough since it curves that borough to reach population in the Delta area.

The Board's expressed concerns about appendages and compactness seem insincere. The Board used it as a justification to reject one solution to Anchorage's excess population and then adopted the same approach in the alternative district they created. If a large appendage is acceptable to the Board in District 9, it should not have been deemed unacceptable in an Anchorage-Valdez-Richardson Highway district.

The Board was presented with at least two options by private third parties that showed that a compact, contiguous and relatively socio-economically integrated district could be created by including Anchorage's excess population in a Valdez-Richardson Highway district. The Board failed to do so and instead chose to split the Mat-Su Borough with no justification. It's motion for summary judgment should be denied and ADP's Motion for Summary Judgment re Mat-Su and Kenai Boroughs should be granted with respect to ADP's claim on the Mat-Su Borough.

Kenai Peninsula Borough: Although the KPB's population does not match ideal district numbers as closely as the Mat-Su, Board has not articulated any reason for splitting it. The Kenai borough has an "excess" population of 2,135. However, that excess population may only be used elsewhere if necessary to satisfy a constitutional requirement such as equal protection, compactness, contiguity, and socio-economic integration.

There is no need to split the borough for equal protection purposes. The excess Kenai population can be spread over its three districts so that each would have a population approximately 4.0% over the ideal population. That level of deviation in the Kenai can easily be worked into a plan with an overall deviation of less than 10%, thereby satisfying equal protection requirements. That fact was demonstrated to the Board by the McKinnon Plan which creates three districts entirely within the boundaries of the KPB and has an overall deviation of 9.6%.

The Board cannot justify splitting the borough for socio-economic integration purposes. By law the borough is a socio-economically integrated area. Breaking its borders and transferring its population can only decrease socio-economic integration. The board did not make any assertions that splitting the borough's boundaries was necessary for compactness or

contiguity. If splitting the Kenai Peninsula Borough was not necessary to satisfy any constitutional requirement, the Board has not overcome the inference that it intentionally discriminated against the borough.

The Board's decision to split the KPB was unnecessary and violated its resident's interest in proportional representation. No constitutional principle would be violated by leaving KPB's entire population in three districts within its borders. Its motion for summary judgment should be denied and ADP's Motion for Summary Judgment re Mat-Su and Kenai Boroughs should be granted with respect to ADP's claim on the Kenai Peninsula Borough.

DATED: September 23, 2013.

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