

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

IN RE 2011 REDISTRICTING CASES

Case No. 4FA-11-02209 CI

**RILEY PLAINTIFF'S OPPOSITION TO BOARD MOTION FOR SUMMARY  
JUDGMENT ON PROPORTIONALITY**

The Board seeks summary judgment on the “proportionality” claims raised by the Riley Plaintiffs. The claims at issue in the Board's motion relate to the fact that the Final Plan split the Mat-Su Borough boundary twice and the Kenai Borough boundary once, when the populations of the boroughs would allow the configuration of five districts wholly within the Mat-Su Borough and three districts wholly within the Kenai borough boundaries. In essence, the Board acknowledges that there is an inference of intentional discrimination because the plan unnecessarily divides the municipal boundaries of the boroughs, and seeks to offer justification.<sup>1</sup> Essentially, the Board argues that it had to make hard choices to deal with the surplus population within Anchorage.<sup>2</sup>

The Riley Plaintiffs address the claims in the Riley Motion for Summary Judgment in great detail.<sup>3</sup> The Board's motion is in the nature of a cross-motion, which this Court expressly prohibited in its scheduling order, but later allowed. The Riley Plaintiff's incorporate those prior arguments by reference to avoid unnecessary repetition; however, certain key points are appropriate to point out.

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1 ARB Memo, at 15

2 *Id.*

3 See Riley Plt. Memo, Sum. Jud., at 15-31

The Board does not address that on March 16, 2011, the Board adopted Guidelines that it would use in the 2010 redistricting cycle,<sup>4</sup> and those guidelines indicated that the Board would consider “local government boundaries where it is practical to do so”.<sup>5</sup> There is nothing in the record that would suggest that the Board actually seriously considered configuring districts wholly within the Mat-Su and the Kenai borough boundaries, nor does the record explain the “practicalities” that justify disregard of those boundaries.

It is undisputed that the record indicates that the Board considered the surplus population in Anchorage as a significant problem. In its memorandum; however, the Board admits that it engaged in a result oriented process, set out in the findings, that began with the decision to add Anchorage surplus population to the Mat-Su, which necessarily caused the ripple effect that mathematically required that a second district necessarily had to breach the Mat-Su Borough boundary. This is necessarily so because, as the Board admits, the Mat-Su has a population which is a near perfect five districts and does not have a 'surplus' population.

Of course, the decision to add the Anchorage surplus population necessarily denied that population from being used to pair with the Kenai surplus population, but the Board never seriously considered spreading the Kenai surplus population among the other Kenai districts.

In all cases, the Board's argument closely tracks the Board's findings discussed in the Riley's principle memorandum, but the Board's memorandum offers no greater insight into the process used by the Board to make what it characterizes as “hard choices.” Rather, in all cases, the Board argues that “After discussion and deliberation, the Board determined that the most reasonable way to accommodate the MOA excess population that best balanced all redistricting

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4 Exhibit 3. ( See ARB00000009)

5 *Id.*

requirements was by creating House district 12, a shared Anchorage/Mat-Su District.”<sup>6</sup> The argument was merely a summary statement that the Board made a decision and it does not identify what constitutional standards the Board considered and what priority the board gave to such standards when it made its decision.

At best, the Board's use of the term “balance” implies that the Board considered all relevant factors and standards equally, but such a “balanced” consideration is the wrong process outlined by the courts in prior case law, and inconsistent with the guidelines that the Board adopted at the beginning of the process.

The standards to be used by the Board were not created equally. As previously noted, the standards set out in Art. VI, Sec. 6 of the Alaska Constitution, and the Guidelines adopted by the Board, actually set forth a priority. Specifically, prior court decisions and the Guidelines adopted by the Board, provide that:

Priority must be given first to the Federal Constitution, second to the federal voting rights act, and third to the requirements of article VI, section 6 of the Alaska Constitution. The requirements of article VI, section 6 shall receive priority *inter se* in the following order: (1) contiguousness and compactness, (2) relative socioeconomic integration, (3) consideration of local government boundaries, (4) use of drainage and other geographic features in describing boundaries.<sup>7</sup>

In its motion, the Board admits that it approached the standards using a balancing test, which presumably gave equal weight to the standards. That process was an incorrect process, and once again underscores the fact that the Board did not understand the proper processes that must be followed in redistricting. Thus, to the extent that a “rational decision-making” process actually gives proper priority to the standards, the Board actively argues that it did not accord

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6 ARB Memo: Sum. Jud. Proportionality, at 23-24

7 *In re 2001 Redistricting Cases*, 44 P.3d 141, 143 n.2 (Alaska, 2002), quoting *Hickel v Southeast Conference*, 846 P.2d at 62.

proper priority to the standards and did not follow a 'rational decision-making process' as defined by prior Court decisions and its own guidelines.

Of course, compactness is the first priority among the Art. VI, Sec. 6 standards, and there is little question that the Mat-Su districts would be more compact if they were confined wholly within the Mat-Su borough boundaries.<sup>8</sup> The Board's arguments simply don't address the priority that compactness must be afforded in this process. Rather, the Board incorrectly argues that these various standards should be "balanced," which violates the process established by prior Court decisions and the Guidelines adopted by the Board.

The Board's argument that it used a "balancing test" is not entirely accurate relative to the Mat-Su districts. As previously pointed out, the record clearly establishes that the Board actually gave priority to factors other than compactness in making its decision.<sup>9</sup> In summary, the Board 1) gave priority to reducing deviations in Anchorage without consideration of whether the alternatives resulted in more compact and contiguous districts,<sup>10</sup> 2) elevated municipal boundaries over compactness in making the false choice to not split the Kenai borough boundaries twice,<sup>11</sup> 3) elevated socio-economic concerns over compactness in joining Delta and Valdez to the Mat-Su borough districts,<sup>12</sup> and 4) used one unconstitutional standard and two extra-constitutional standards that were not articulated in its guidelines, as well as lower priority constitutional standards in attempting to justify a Mat-Su/Anchorage pairing.<sup>13</sup>

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8 See Riley Plt. Memo, Sum. Jud., at 6-14.

9 See discussion at Riley Sum. Jud. Memo, at 22-

10 *Id.* at 22-24

11 *Id.* at 24-25

12 *Id.* at 25-26

13 *Id.* at 26-28

In summary, the Court should deny the Board's motion for summary judgment respecting proportionality because the split in the Mat-Su and Kenai borough boundaries infer discrimination and shift the burden of proof to the Board to justify its actions. The Board's stated justifications are simply inadequate. The Board's justification relied upon the use of the wrong process which "balanced" the constitutional standards as opposed to considering the constitutional standards using the ordered priority set out in prior case law and the Board's own guidelines. More importantly, there is little question that the districts at issue are not relatively compact. To the extent that the Board considered constitutional standards, it actually subordinated the compactness requirement to socio-economic and other constitutional standards, as well as certain unconstitutional and extra-constitutional factors. As a consequence, the Board did not engage in the proper "reasoned decision-making" process required by the Alaska Constitution.

Date: September 23<sup>rd</sup>, 2013

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Certificate of Service

I certify that a true and correct copy of the foregoing was served by e-mail on this September 23<sup>rd</sup>, 2013 to:

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