

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 FAIRBANKS SENATE DEVIATIONS**

The Board admits that the Senate pairings proposed by the Riley Plaintiffs would have lowered the deviation between Senate Districts within Fairbanks.¹ The Board argues that the lower deviation was “negligible”² and that there was “no legitimate reason” to switch the pairings.³ The Board contents itself with taking offense at the Riley's settlement proposal as being “baseless threats.”

Beyond the bluster; however, the Board acknowledges two interesting points. First, the Board acknowledges that it has a duty to reduce deviations between Senate Districts citing *Kenai Peninsula Borough v State*.⁴ (Of course, this is the same argument that is made by the Plaintiffs in their motion for summary judgment.⁵) Secondly, the Board confirms Mr. Brodie's assertions on the record that it never took a hard look at reducing deviations between Senate Districts in “Anchorage or elsewhere” in the plan.⁶

The two admissions present serious concerns that the Board is aware that it had an obligation to reduce deviations in Fairbanks, Anchorage, and “elsewhere” in the plan, but simply didn't do it. Once again, the Board is admitting that it understood the process and its obligations,

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1 ARB's Memo Sen. Deviations Sum. Jud., at 8

2 *Id.*

3 *Id.* at 8-9

4 743 P.2d 1352, 1358 (Alaska, 1987) cited at ARB's Memo Sen. Deviations Sum. Jud., at 5 n.15

5 Riley Plt. Memo Sum. Jud., at 35 n. 92

6 ARB's Memo Sen. Deviations Sum. Jud., at 9

but simply didn't follow the process which would require the Board to take a hard look at reducing deviations between Senate districts **anywhere in the plan**. The admission goes farther than the Plaintiffs' objection to the current Fairbanks Senate pairings. Rather, the admission suggests a major deficiency throughout the plan based upon the Board pattern of action to simply not take a hard look at Senate deviations. On this basis alone, the Court should deny the Board's motion because the Board simply didn't undertake the process required in *Kenai Peninsula Borough v State*.

It should also not escape notice that the Board offers no substantive reasons to justify its refusal to take a hard look at the Fairbanks Senate deviations other than a lack of appreciation for the Riley's counsel's apparent clumsy attempts to provide an incentive to end this interminable litigation. Noticeably, neither Mr. Brodie's rebuke on the record, nor the Board's considered Motion for Summary Judgment offers any reason to reject the proposed realignment based upon any standard set forth in the Constitution or in the Board's guidelines. Rather, the Board argues, in essence, that it simply didn't feel like it.

In contrast, the Board asserts that Riley et. al. did not offer any reason to support the proposal. The argument disingenuously ignores the actual letter,⁷ which suggests that the reason for the proposal was to reduce deviation between the Senate Districts in Fairbanks, which the Board's motion admits is an obligation under *Kenai Peninsula Borough v State*. There are none so deaf but he would not hear, which might suggest one of the two reasons for the Board's refusal that are apparent from the Board transcript⁸ and the Board's motion.

It is possible that one reason the Board didn't take a "hard look" at the possibility of reducing deviations between the Fairbanks Senate Districts was an expressed animus toward the

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7 ARB 00017764-65

8 ARB 00017772 et. seq.

Plaintiffs, and/or their attorney. While to the Board, this “gentleman is not in its book”, the claim is much ado about nothing, for favor of the board is neither light nor dark. Rather the question is whether the Board took a hard look at reducing the deviations among the Fairbanks senate districts? The proposal's submission to the Board reveals that it had not, and, to a larger degree, that the Board had not considered deviations between Senate districts in Anchorage or elsewhere. While such animus may be understandable given the extensive litigation, it merely diverts attention from the critical issue as to whether the Board took a “hard look” at the possibilities of reducing deviations between Senate districts, which the Board acknowledges to be an obligation under *Kenai Peninsula Borough v State*. The answer is that it did not.

Alternatively, Mr. Brodie's soliloquy suggests a political motivation for not taking a hard look at reducing deviations among the Fairbanks Senate districts: i.e. the desire to deny the Riley plaintiffs a perceived political advantage.⁹ The Board's brief suggests umbrage at the suggestions that the Board might consider the political advantage a redistricting map may have upon partisan fortunes; however, Mr. Brodie's stated goal to not provide the Riley plaintiffs with a political advantage was the consideration of an improper factor that the Board has long denied.

The Board is critical of the Riley Plaintiffs noting that their submitted plan (i.e. the so-called G&W plan) had greater deviations between Senate Districts. The Board failed; however, to explain how the existence of the G&W plan in the Board record excuses or justifies the Board's failure to take a hard look at the merits of the settlement proposal to reduce deviations within the Board's plan.

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9 Boardmember Bob Brodie indicated that “he (referencing the Riley's attorney) just looked at the political makeup of the senate districts where his clients live and now he wants to change it to give them (Mr. Riley and Mr. Dearborn) the biggest advantage they possible can without any altruistic feelings of the state redistricting process. ARB 00017774 (Hrg. Tr. (July 18, 2013) , at 8: 1-5)

In summary, the Board's motion argues more for its denial. While the Board agrees that it had a duty to take a hard look at reducing deviations between Senate districts, Riley's proposal presented the Board with that precise opportunity. In response, the Board declined to take a hard look at reducing deviations between Fairbanks Senate districts, and went further to affirmatively assert that it didn't take a hard look at reducing deviations between senate districts in Anchorage or elsewhere in its plan. In substance, the Board's argument urges the Court to deny its own motion for summary judgment, which is what the Court should do.

Date: September 23rd, 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 23rd, 2013 to:

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