

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 CONSOLIDATED OPPOSITION TO ARB'S MOTIONS FOR
SUMMARY JUDGMENT RE: DEVIATIONS IN THE FAIRBANKS AND MAT-SU
HOUSE DISTRICTS**

In two separate motions, the Board seeks summary judgment on Riley et.al. claims that the Fairbanks house districts (HD 1-5) and two Mat-Su house districts (HD 9 & 12) violate the deviation provisions of Art. VI, Sec. 6 of the Alaska Constitution. The claim appears in Plaintiff's application.¹ The Board misconstrues the nature of the Riley Plaintiff's claims vis-a-vis the Fairbanks and Mat-Su districts, which is related to the claim that HD 3, 5, 9 & 12 are not compact.²

The Riley Plaintiffs acknowledge that the Fairbanks and Mat-Su House Districts have a low deviation, which ranges between +.46 (HD 5), -.46 (HD 3), -.09% (HD 9) and -.47% (HD 12). But the Alaska constitutional standards respecting deviations³ is not necessarily met by the lowest possible deviations. Population deviations between districts is not considered in the abstract without regard to the other requirements of the same section of the Constitution.

Specifically, the constitutional standard respecting deviations provides "Each (district) shall contain a population **as near as practicable** to the quotient obtained by dividing the population of the state by forty."⁴ (emphasis added) If the quotient is so low that it results in an

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- 1 Plt. First Amended Application, Para. 16 & 20
- 2 Id., at para 14 See Riley Memo SJ, at 4-6
- 3 AK CONST Art. VI, Sec. 6
- 4 *Id.*

impractical district, the district violates this standard. In the case of the Fairbanks and Mat-Su districts, the standard is violated because the configuration of these districts is “impracticable”.

As discussed in Riley et. al.'s motion for summary judgment, the Board must undertake a process whereby the Board takes a hard look at compact and contiguous districts in an effort to reduce deviations.⁵ In this process, the board only seeks to lower deviations for compact and contiguous districts. The Board should eliminate from consideration non-compact districts from its efforts to lower population deviations between districts, because non-compact districts are “impractical.” A plan exhibiting low deviations between non-compact districts is a deficient plan.⁶ Elevating low deviations over compactness violates the “practicability” requirement contained in Art. VI, Sec. 6 of the Alaska Constitution. In other words, the deviation standards contained in this section may be violated if lower deviations result in non-compact districts.

Nothing in the Board's record demonstrates that they actually considered the practicality of low deviations vis-a-vis the other Art. VI, Sec. 6 requirements of the Alaska Constitution. Indeed, it appears that the Board applied the wrong standard: i.e. low deviations without regard to the other Art. VI, Sec. 6 requirements.

The critical discussion of these issues happened at the Board's July 7th meeting, when the Board adopted its conceptual plan.⁷ During those discussions, the Board considered deviations seventeen times.⁸ In all but one case, Board indicated that it wanted to have deviations as low as possible without any regard to the need for compactness. The discussion of HD 9 in the Mat-

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5 Riley Plt. Memo Sum Jud., at 23 et. seq., citing *In re 2001 Redistricting Cases*, 44 P. 3d, 141, 146 (Alaska, 2002)

6 *Id.*

7 ARB 00016799-16853

8 *Id.* see Transcript pages/lines as follows: 21:5,8; 30:14; 32:22; 47:23; 48:1; 50:15,25; 52:5; 57:23; 61:10; 62:17; 66:3; 67:24; 68:3,19,22

Su/Cooper Valley particularly reflect a principle concern for low deviations without regard to whether the districts were compact.⁹

The Board mentioned compactness in only one context: i.e. the discussion of the “anvil” shaped appendage that juts out of HD 5 into the southern district of HD 3.¹⁰ Indeed, the term “anvil” was used by the Board in describing this appendage. Mr. Brodie noted that it was possible to remove the anvil-shaped appendage from the map, which would make the districts more compact.¹¹ However, the reason that the Board didn't do it, was because it wanted to “pack” (not divide) Ester/Goldstream.¹² Of course, the concern to pack Ester/Goldstream voters is not a constitutional standard contained in Art. VI, Sec. 6 of the Alaska Constitution. At the best, the Board's discussion could be construed as a desire to maintain a recognized community of interest, however, as discussed in the Riley's summary judgment motion, the Board did not consider communities of interest within boroughs. Compactness was only mentioned by the Board Counsel, who opined that it was possible to avoid the anvil shaped appendage, but sought to justify the “anvil” by suggesting that its removal might result in other anomalies respecting compactness given the Board's desire to minimize deviations.¹³ Of course, there were no alternatives presented or considered by the Board that demonstrated Board Counsel's concerns, leaving the conjecture by Board counsel as unsupported in the Board record.

As noted in Riley's Motion for Summary Judgment, HD 3, 5, 9 and 12 are clearly not compact: the first being an elongated district stretching along the Richardson Highway; the

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9 ARB 00016805 (Tr. 30:14)

10 The Board discussed the anvil appendage on pages ARB 00016813-16817 (Tr. pp. 57-66)

11 ARB 00016816 (Tr. 62:10- 63:2)

12 *Id.* (Tr. 62:6-10) “Packing” is the process whereby one political group lumps opposition voters into a district to waste votes that might affect control of other districts. See Cox & Holden, *Reconsidering Racial and Partisan Gerrymandering*, 78 U. Chicago L.R., 553, 557 (2011) available at <http://www.law.uchicago.edu/files/file/554-350-abc-gerrymandering.pdf>

13 ARB 00016816 (Tr. 62:10- 63:2)

second having an anvil-shaped appendage jutting into the southern boundary of the former,¹⁴ the third having elongated appendages reaching north to Delta, and south to Valdez, and the fourth with bulge shaped appendage reaching to the northeast.¹⁵ The Board record demonstrates that the Board was fully aware of the anvil appendage problem, but wanted to maintain the anvil-shaped appendage for political reasons that have no relationship to the constitutional standards. The record appears to confirm that the Board never considered compactness relative to the effort to obtain low deviations in the other districts.

Therefore, the Court should deny the Board's motion for summary judgment respecting deviation of Fairbanks and Mat-Su house districts, because the Board never considered the practicability of the low deviations relative to compactness and the other Art. VI, Sec. 6 standards.

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¹⁴ Riley Plt. Memo Sum Jud., at 23 et. seq.,
¹⁵ *Id.* at pp 7-11

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