

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT FAIRBANKS

IN RE 2011 REDISTRICTING CASES)
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4FA-11-2209 CI

ADP REPLY TO ARB'S GLOBAL OPPOSITION

INTRODUCTION

The Alaska Redistricting Board still hasn't adjusted to life in the brave new world of *Shelby County v. Holder*.¹ The Board pretty quickly picked up on the fact that the *Holder* decision relieved it of one of its more problematic responsibilities: the development of a *Hickel* plan that would pass judicial review. Once it decided it was relieved of that obligation, however, the Board has been a little slower on the uptake with respect to how the *Holder* decision affects other aspects of Alaska redistricting.

A common theme in the Board's global opposition and in the summary judgment motions it has filed is that one district or another in its 2013 plan is drawn just like some other district that it or some other board has drawn in the past. Its argument is that because some districts of days-gone-by survived judicial scrutiny, similar districts in their plan must be constitutional or that plaintiffs are precluded from raising challenges to some districts because similar districts could have been challenged in the earlier phases of this case. That argument ignores the impact of the *Shelby County* decision.

¹ *Shelby County v. Holder*, 570 US ----- (2013)

Every redistricting plan drawn in Alaska since 1980 has been drawn under a regime that made Alaska constitutional requirements secondary to the Voting Rights Act. The primary objective of those prior plans was to prevent retrogression by creating Alaska Native majority or influence districts. The result was often the creation of districts that don't seem to make much sense in light of state constitutional principles. Because of the ripple effect, districts all throughout the state, with the possible exception of core urban areas, ended up having their borders altered to accommodate the VRA.

The Board's reliance on districts that were influenced by the machinations necessary to comply with the VRA ignores that fact that many were not in compliance with state constitutional principles. Those districts are largely irrelevant to the review of the 2013 post-*Shelby County* redistricting plan.

COMPACTNESS: DISTRICTS 3 AND 5

In its argument in support of the compactness of its 2013 version of District 5, the Board asserts that House District 5 in the 2013 Plan is nearly identical to the District 5 in the Board's 2011 plan and that this Court's prior ruling on the compactness of that district is somehow relevant here. However, the two districts are not identical and neither is the legal issue. In the 2011 plan, the controversy was over the Tanana flats not the North Pole anvil. There was no North Pole anvil in the 2011 plan so the Court's prior decision was not on point with respect to the arguments being made now.

The Board also compares its District 5 to private plans which it argues are less compact. Specifically, it compares Districts 3 and 5 to the comparable districts in both the

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Gazewood & Weiner Plan and to the McKinnon Plan.² While interesting, it is irrelevant to the argument that ADP made concerning compactness. ADP did not argue that the McKinnon Plan's Fairbanks districts were more compact than the Board's Districts 3 and 5 or that they should be used as a comparison for compactness purposes. Instead the Board submitted an affidavit from Leonard Lawson describing a different solution to the compactness problem created by the North Pole anvil. It was filed as ADP Exhibit No. 3. The Board simply ignored the ADP plan for Districts 3 and 5 and instead argued against a plan ADP neither proposed nor endorsed.

The Board criticizes ADP's proposed solution as "narrow-sighted redistricting" because it focused only on Districts 3 and 5 and didn't present a complete solution. The Board is correct that ADP did not present all the adjustments necessary to complete the solution to the anvil's compactness problem. However, it was not narrow-minded redistricting but rather an unfounded assumption that the remaining adjustments necessary to balance populations in Fairbanks would be apparent to those familiar with redistricting. The people removed from District 3 are moved into and through Districts 6 and 4 in a counter-clockwise fashion until they are put into District 5 to make up for the loss of the anvil population. The attached Third Affidavit of Leonard Lawson explains the process. ADP Exhibit 14 shows the resulting map.

GEOGRAPHIC PROPORTIONALITY

The Board insists in its global opposition that it took a "hard look" at alternatives to splitting the Mat-Su to deal with Anchorage's excess population. ADP hereby incorporates

² The McKinnon Plan is a plan that was proposed by ADP counsel as a private individual before he undertook representation of the three plaintiffs in this case. The Board's characterization of it as ADP's plan on page 21 of its global opposition is simply incorrect.

by reference the facts and arguments set forth in its Opposition to ARB Motion for Summary Judgment re Geographic Proportionality. That memorandum describes in detail the deliberations of the Board with respect to the only alternative it considered to splitting the Mat-Su Borough: an Anchorage-Valdez-Richardson Highway district. That record makes it clear that, in reality, the Board's hard look was really only a quick glance.

The Board admitted that there was socio-economic integration between Anchorage and much of the proposed district.³ Furthermore, there is absolutely no evidence in the record that Anchorage would not be socio-economically integrated with the Delta area which seemed to be the Board's concern. It would not have taken much of an effort by the Board to establish a record on that issue, but it failed to do so. The Board never truly considered whether there was socio-economic integration in an Anchorage-Valdez-Richardson Highway district and cannot show any meaningful evaluation of it in the record. Certainly, the Board's decision to split the Mat-Su should have involved more than a cursory discussion. The burden is on the Board to show that the splitting of the Mat-Su was necessary to accommodate the excess Anchorage population. The Board has not met its burden.

The Board also argues that its District 9 which splits the Mat-Su mirrors the "historic"⁴ Richardson Highway district which has been in effect over the last several redistrictings and has been upheld by the courts. As ADP has noted, *Shelby County* has largely eliminated the precedential value of prior redistrictings based on the VRA.

The Board also argues that concerns about the compactness of an Anchorage-Valdez-Richardson Highway district justify its decision to split the Mat-Su Borough. However, there is no record that the Board performed any compactness analysis of such a district before

³ ARB00016765

⁴ *ARB Memorandum in Support of MSJ re Proportionality Claim*, p. 6.

rejecting it for compactness concerns. Certainly, a hard look by the Board at compactness should have included some form of analysis..

In its global opposition, the Board includes a compactness analysis that offers a comparison of the Board's plan with the McKinnon Plan. The McKinnon Plan includes a proposed Anchorage-Valdez-Richardson Highway district as its means of accommodating Anchorage's excess population. On the Roeck test, McKinnon District 30 scores 46.1% compared to 40.6% for the Board's District 9. On the Schwatzberg test, McKinnon District 30 scores 70.8% compared to 77.0% for the Board's District 9.⁵ What this analysis does show is that the compactness of an Anchorage-Valdez-Richardson Highway district is comparable to that of the Board's District 9 which splits the Mat-Su Borough. Unfounded concerns over compactness was not a sufficient justification for splitting the Mat-Su.

DATED: September 26, 2013

By: 
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The above-signed hereby certifies that this document and the attached affidavit and exhibit were served by electronic mail on the following on the date indicated above:

Office of the Clerk, Fairbanks
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Michael Walleri
Jason Gazewood
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⁵ Board Exhibits A and C.

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THIRD AFFIDAVIT OF LEONARD LAWSON

I, Leonard Lawson, hereby affirm as following:

1. I was an expert witness during the trial of the above captioned matter in 2012 relating to the operation of GIS systems used in redistricting.

2. As indicated in my testimony during the trial in the above captioned matter, I am familiar with the various redistricting plans, including the Final Redistricting Plan adopted by the Alaska Redistricting Board on July 14, 2013.

3. On September 13, 2013 I prepared the Second Affidavit of Leonard Lawson which described a method of improving the compactness of House Districts 3 by transferring the 811 people residing in the North Pole anvil from House District 5 into House District 3 and then removing 732 people from District 3.

4. Because that affidavit only focused on the effect moving the population of the anvil would have on the compactness of District 3, I did not describe the other adjustments that would be necessary to distribute population throughout Fairbanks to bring all of the districts back into balance.

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5. The population adjustments necessary to eliminate the North Pole anvil and balance the Fairbanks districts requires moving 811 people from District 5 to District 3; 732 people from District 3 are moved into District 6; 708 people moved from District 6 into District 4 : and finally 736 people from District 4 into District 5.

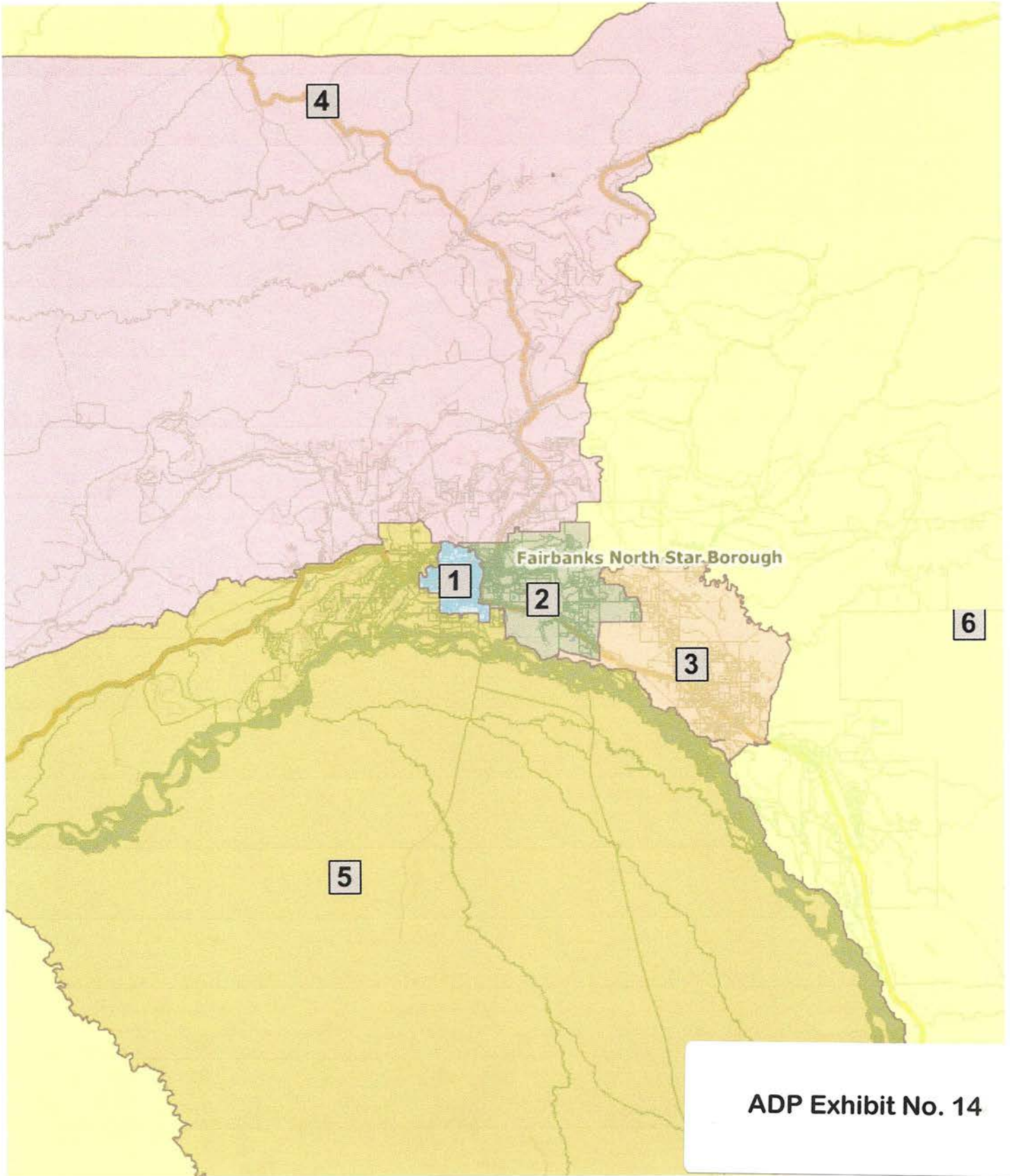
6. Attached to this affidavit as ADP Exhibit 14 is a map showing what the Board's Fairbanks districts would look like with the described population adjustments.

Leonard Lawson

Subscribed and Sworn to before me
this _____ day of _____, 2013

Notary Public for the State of Alaska.

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ADP Exhibit No. 14

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NOTICE OF FILING UNSIGNED AFFIDAVIT

The Third Affidavit of Leonard Lawson filed with ADP's Reply to ARB's Global Opposition is being filed unsigned. The signed and notarized affidavit will be filed on September 27, 2013.

DATED: September 26, 2013

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