



relative socio-economic integration. The Alaska Supreme Court has already ruled that the constitutional requirements of contiguity, compactness and socio-economic integration should not be compromised in order to attain mathematical equality. In *Hickel*, the court explained<sup>1</sup>:

District 28 also fails for its lack of compactness. The corridor which extends into the Mat-Su Borough was prompted by a desire to attain mathematical equality among legislative districts. However, we have previously noted that population deviations up to 10 percent require no justification and that the Board may use larger deviations in order to effectuate the requirements of article VI, section 6. *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1260 (Alaska 1987). The Board's failure to create a compact district is not justified by rigid adherence to mathematical equality.

Not only does adherence to mathematical equality not justify disregarding the compactness requirement, it is also clear that there is no "safe" deviation that alleviates the Board of its mandate to create districts as near as practicable to the ideal district:

The whole thrust of the 'as nearly as practicable' approach is inconsistent with adoption of fixed numerical standards which excuse population variances without regard to the circumstances of each particular case . . . . (T)he 'as nearly as practicable' standard requires that the State make a good-faith effort to achieve precise mathematical equality. . . . Unless population variances among congressional districts are shown to have resulted despite such effort, the State must justify each variance, no matter how small.<sup>2</sup>

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<sup>1</sup> *Hickel v. Southeast Conference*, 846 P.2d 38, 56 (Alaska 1992).

<sup>2</sup> *Egan v. Hammond*, 502 P.2d 856, 867 (Alaska 1972).

III. **It is not possible to determine whether the deviations are too high because there are districts within the Fairbanks North Star Borough that do not meet the constitutional standard of compactness.**

The essence of the Board's motion for summary judgment is that the overall deviation in House Districts 1 through 5 is less than one percent, and the overall deviation of the 2013 Proclamation Plan is 4.2%, the lowest in redistricting history. If fact, this is repeated so frequently in the motions that it is somewhat of a mantra for the Board. However, deviations among districts, and even among plans, are not judged on a comparative basis to other redistricting cycles. Instead, the Board is charged with the responsibility for creating compact, contiguous, relatively socio-economic districts as near as practicable to the ideal based upon conditions that exist in the current redistricting cycle; variations from the population of an ideal district must be justified, i.e., the practicability part of the analysis is that the population of a district may sometimes be slightly over or under the ideal in order to ensure that the other constitutional requirements can be achieved.

In its Written Findings in Support of ARB's 2013 Proclamation Plan, it claims, "The Board only increased deviations in order to maximize compliance with the Alaska constitutional requirements."<sup>3</sup> However, the exact opposite appears to be true with respect to the Fairbanks' house districts based upon the transcript of the Board's proceedings, and is inconsistent with the argument the Board makes in its brief with

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<sup>3</sup> ARB00017352 (Written Findings, p. 8 of 8, para. 20(e)).

respect to the Fairbanks' senate districts (arguing that higher deviations are "negligible" and "constitutionally insignificant").<sup>4</sup>

The Board discussion when drafting the Fairbanks' house districts centered around population deviations, and on July 6, 2013, Board member Holm, when presenting his draft plan, referenced this as a reason for his decisions (e.g. "The deviations here are, in 1 is minus 28 folks, which is pretty smooth."<sup>5</sup>; "...and I only had to cross Chena Hot Springs for the purpose of population a little bit."<sup>6</sup>; "I needed a few extra folks, so I went up in here and I picked up a few folks up in this area right here."<sup>7</sup>; "I put these folks in there for the deviations, so 5 right now is—let's look here, is plus 73 folks. I can take these folks out of here, but I think it makes us a real problem."<sup>8</sup>) The Board again discussed the issue of compactness the following day, July 7, 2013. Despite an admission that population could be shifted to create more compact districts,<sup>9</sup> the Board chose to move forward with the "anvil" in House District 5.<sup>10</sup>

There is no way to know whether the deviations in the Fairbanks' districts are too high because there are constitutionally infirm districts that are being analyzed. It is the Board that must justify any variance, and they have not even attempted to do so, instead

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<sup>4</sup> Memorandum of Points and Authorities in Support of Defendant Alaska Redistricting Board's Motion for Summary Judgment re: Riley Plaintiffs' Claim Senate Districts A, B, and C Have Unnecessarily Higher Deviations from the Ideal District, p. 9 of 12.

<sup>5</sup> 7/6/13 Transcript, p. 44, l. 8-9.

<sup>6</sup> 7/6/13 Transcript, p. 44, l. 14-16.

<sup>7</sup> 7/6/13 Transcript, p. 44, l. 22-24.

<sup>8</sup> 7/6/13 Transcript, p. 45, l. 9-12.

<sup>9</sup> ARB00016816, Tr. p. 62, l. 3-5: "You can do it, but like we said, you just have to rotate everything. 5 goes up to 4, and 4 goes over into 3, so it's not impossible."

<sup>10</sup> 7/7/13 Transcript, p. 56-63. (ARB 00016814-00016816.)

simply proclaiming that the deviations are low, therefore they must be valid. This is simply insufficient to meet their burden on summary judgment.

**IV. Conclusion.**

Based on the foregoing, it is respectfully submitted that the court should deny the Board's motion for summary judgment.

DATED at Fairbanks, Alaska this 20<sup>th</sup> day of September, 2013.

FAIRBANKS NORTH STAR BOROUGH



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