

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

IN RE: 2011 REDISTRICTING CASES: )  
 )  
 )

Case No. 4FA-11-2209CI

**BRIEF OF AMICUS CURIAE FAIRBANKS NORTH STAR BOROUGH  
REGARDING MOTION FOR SUMMARY JUDGMENT REGARDING RILEY  
PLAINTIFFS' CLAIM SENATE DISTRICTS A, B, C HAVE UNNECESSARILY  
HIGHER DEVIATIONS FROM THE IDEAL DISTRICT**

**I. Introduction: Interest of the Fairbanks North Star Borough.**

The Fairbanks North Star Borough (FNSB) submits this brief as *amicus curiae* in support of the Plaintiffs in this matter. The Defendant Alaska Redistricting Board (Board) admits that it failed to pair house districts in the Fairbanks region in a manner that could have resulted in lower deviations and paired communities of interest, and does not offer a legitimate, nondiscriminatory justification for doing so.

**II. Legal Standards.**

Senate districts which meander and ignore political subdivision and communities of interest are suspect under Alaska's equal protection clause. Such evidence shifts the burden of proof to the Board to demonstrate that such discrimination will lead to more proportional representation.<sup>1</sup> The court does not consider any effect of disproportionality *de minimus* when determining the legitimacy of the Board's purpose.<sup>2</sup>

<sup>1</sup> *Kenai Peninsula Borough v. State*, 743 P.3d 1352, 1372 (Alaska 1987).

<sup>2</sup> *Id.*

**III. The Board could have easily paired house districts in the Fairbanks North Star Borough that resulted in lower deviations and united communities of interest.**

The Board could have easily paired Fairbanks house districts in a manner that resulted in lower deviations and kept communities of interest together. However, the Board argues it is within their discretion to pair districts as it sees fit, provided that they are contiguous. It offers no legitimate, nondiscriminatory justification for its actions, arguing instead that it rejected the option of pairings that resulted in lower deviations because “there was no legitimate, legal basis for switching the pairings.”<sup>3</sup> This is actually completely opposite of the standard to be used in reviewing the pairings. The burden is on the Board if they do not achieve an ideal district size; a justification is not needed if they comply with the “as near as practicable” standard. Instead of needing a justification to choose a pairing that resulted in a lower deviation, the Board needs a justification for the pairings it did choose. It has not offered one.

The Board admits that the deviations in Senate Districts B and C are lower if House District 3 and 6 and House Districts 4 and 5 are combined rather than House Districts 3 and 4 and House Districts 5 and 6. In fact, both Senate District B and C would be 21 people closer to the ideal in each of the respective districts if the pairings were

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<sup>3</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.

changed.<sup>4</sup> The house districts do not have to be redrawn; both 3 and 6 and 4 and 5 are contiguous in the 2013 Proclamation Plan. It is therefore impossible for the Board to argue that these senate districts contain “as near as practicable” a population equal to the ideal district.

Further, the pairings that were chosen split numerous communities of interest, as the Board acknowledges in its description of districts by community.<sup>5</sup> The district descriptions list communities as “part” Ester (split between House Districts 4 and 5, and Senate Districts B and C); part Fox (split between House Districts 4 and 6, and Senate Districts B and C); part College (split between House Districts 4 and 5, and Senate Districts B and C); and part Badger (split between House Districts 2 and 3, and Senate Districts A and B). A quick view of the map is all one needs to realize that communities of interest within the Borough can be kept together for senate districts if the pairings are changed.

The position of the Board that the deviations at issue are negligible and not constitutionally significant is at odds with its boasting of the lowest deviations in Alaska’s redistricting history. There has been no justification provided for the deviations in Senate Districts B and C, and therefore the Board is not entitled to summary judgment on this issue.

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<sup>4</sup> Pairing House Districts 3 and 4 results in a total population of 35,459, or 51 people short of the ideal. Pairing House Districts 3 and 6 results in a total population of 35, 480, or 30 people short of the ideal. Pairing House Districts 5 and 6 results in a total population of 35,644, or 134 over the ideal. Pairing House Districts 4 and 5 results in a total population of 35,623, or 113 people over the ideal. Switching these pairings therefore brings Senate Districts B and C each 21 people closer to the ideal district size of 35,510.

<sup>5</sup> ARB00017377.

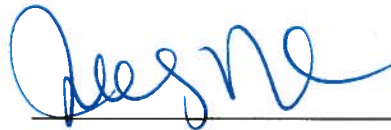
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IV. Conclusion.

Based on the foregoing, this Court should deny the Board's motion for summary judgment regarding the Riley Plaintiffs' claim Senate Districts A, B and C have unnecessarily higher deviations from the ideal district.

DATED at Fairbanks, Alaska this 26<sup>th</sup> day of September, 2013.

FAIRBANKS NORTH STAR BOROUGH



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## CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of September, 2013, a true and correct copy of the foregoing document was served upon each of the following by electronic mail:

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