

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 MOTIONS FOR SUMMARY JUDGMENT RE: COMPACTNESS
OF HOUSE DISTRICTS 3 AND 5**

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

The Fairbanks North Star Borough (FNSB) submits this brief as *amicus curiae* in partial support of the Plaintiffs in this matter. The Defendant Alaska Redistricting Board (Board) has again promulgated a redistricting plan that departed from and disregarded the traditional redistricting principles set forth in the Alaska Constitution when it drafted certain districts involving residents of the Fairbanks North Star Borough.

II. Legal Standards.

The compactness standard was defined by the *Hickel* court and as previously set forth by this court as follows¹:

“‘Compact’ in the sense used here means having a small perimeter in relation to the area encompassed.” *Carpenter*, 667 P.2d at 1218 (Matthews, J., concurring). Compact districting should not yield “bizarre designs.” *Davenport v. Apportionment Comm’n of New Jersey*, 124 N.J.Super. 30, 304 A.2d 736, 743 (N.J.Super.Ct.App.Div.1973), *quoted in Carpenter*, 667 P.2d at 1218–19 (Matthews, J., concurring). We will look to the relative compactness of proposed and possible districts in determining whether a district is sufficiently compact. *Carpenter*, 667 P.2d at 1218 (Matthews, J., concurring).

¹ *Hickel v. Southeast Conference*, 846 P.2d 38, 45-46 (Alaska 1992).

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The compactness inquiry thus looks to the shape of a district. Odd-shaped districts may well be the natural result of Alaska's irregular geometry. However, "corridors" of land that extend to include a populated area, but not the less-populated land around it, may run afoul of the compactness requirement. Likewise, appendages attached to otherwise compact areas may violate the requirement of compact districting.

III. The Board could easily have drafted compact districts within the boundaries of the Fairbanks North Star Borough.

House Districts 3 and 5 are not compact under the standards set forth in Alaska redistricting. House District 3 is a long, thin district that reaches up to the north to grab population, and there is a protrusion in the northwest corner of the district that allows it to be joined with House District 4. Adjoining House District 3 to the south is House District 5. House District 5 starts out on the western side of Districts 1 and 2, takes in the unpopulated Tanana Flats region, and reaches up to grab population just south of House District 3 (this portion has been dubbed the "anvil"). The inclusion of the Tanana Flats allows for the contiguous pairing with House District 6, and allows for an otherwise non-contiguous house district that includes population to the north of the Tanana River. The Board unfairly compares House District 5 in the 2013 Proclamation Plan with House District 5 from the 2011 Proclamation Plan; however, there is a significant difference in that the district now crosses the river to pick up a substantial amount of population. Including vacant land that must go somewhere is in no way comparable to using the unpopulated area to connect two populated areas.

One could easily shift the population in the northern area of House District 3 into the other neighboring house districts, allowing House District 3 to pick up the population

across the Tanana River that was included in House District 5. As acknowledged by Mr. Brodie on the record, “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.”²

The Board attempts in its motion for summary judgment to attribute the configuration of House District 3 to the “ripple effect caused by the boundaries of House Districts 1 and 2.”³ However, as this court saw in the redistricting trial, moving census blocks within the populated areas of the state *is* an easy task. In fact, the Board has actually already produced a plan that results in compact districts in the Fairbanks North Star Borough. Board Draft Option D managed to keep the city of Fairbanks together and the city of North Pole, and did not contain any bizarre appendages in order to do so.⁴

The Board does not acknowledge that House Districts 3 and 5 are not compact, nor does it attempt to provide a legitimate, nondiscriminatory justification for its failure to adhere to the compactness requirement. 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.”⁵ However, the exact opposite appears to be true with respect to the Fairbanks’ districts based upon the transcript of the Board’s proceedings; the Board clearly placed deviations over compactness.

² ARB00016816, Tr. p. 62, l. 3-5.

³ Alaska Redistricting Board’s Global Opposition to Riley et al Plaintiffs’ Motion for Summary Judgment and the Alaska Democratic Party’s Motions For Summary Judgment Re Districts 3 and 5 Compactness and re Mat-Su and Kenai Peninsula Boroughs.

⁴ ARB00017151.

⁵ ARB 00017352, Written Findings, p. 8 of 8, para. 20(e).

The Board's discussion when drafting the Fairbanks' districts centered around population deviations, and Boardmember 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."⁶; "...and I only had to cross Chena Hot Springs for the purpose of population a little bit."⁷; "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."⁸; "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."⁹

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:¹⁰

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.

The Board worked hard to achieve low deviations, as it states numerous times throughout the motions in this case. It was not, however, justified in doing so at the expense of the Article VI, section 6 requirements of compactness, contiguity and relative socio-

⁶ 7/6/13 Transcript, p. 44, l. 8-9.

⁷ 7/6/13 Transcript, p. 44, l. 14-16.

⁸ 7/6/13 Transcript, p. 44, l. 22-24.

⁹ 7/6/13 Transcript, p. 45, l. 9-12.

¹⁰ *Hickel* at 846 P.2d at 53.

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economic integration. The configurations of House Districts 3 and 5 cannot be justified on this basis.

IV. Conclusion.

Based on the foregoing, the Board's motion for summary judgment with respect to the compactness of House Districts 3 and 5 should be denied, and the Plaintiffs' respective motions should be granted.

DATED at Fairbanks, Alaska this 26th 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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