

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT FAIRBANKS

In Re 2011 Redistricting Cases.

CONSOLIDATED CASE NO.:

) 4FA-11-2209-CI

) 4FA-11-2213 CI

) 1JU-11-782 CI

) 4FA-13-2435 CI

**ALASKA REDISTRICTING BOARD'S CONSOLIDATED REPLY TO RILEY
PLAINTIFFS' OPPOSITION TO BOARD MOTION FOR SUMMARY
JUDGMENT ON PROPORTIONALITY AND THE ALASKA DEMOCRATIC
PARTY'S OPPOSITION TO ARB'S MOTION FOR SUMMARY JUDGMENT
RE GEOGRAPHIC PROPORTIONALITY CLAIMS**

The Riley Plaintiffs and the Alaska Democratic Party (“ADP”) (collectively “Plaintiffs”) concede the Board had justification to split the Mat-Su Borough and the Kenai Peninsula Borough (“KPB”), yet argue the Board’s rationale is “simply inadequate.”¹ In this regard, the Board’s legal burden is to demonstrate it had legitimate, non-discriminatory reasons for splitting the Mat-Su Borough and the KPB. The Board has satisfied, indeed surpassed, this standard on the record, in its findings, and in its pleadings. That the Plaintiffs disagree with the Board’s ultimate decision or underlying rationale does not negate the Board’s achievement.

1. The Board Record Establishes the Board Took a “Hard Look” at the Excess Population Problems and Solutions.

The Riley Plaintiffs ignore the Board Record while the ADP dismisses the

¹ See Riley Plaintiffs’ Opposition to Board Motion for Summary Judgment on Proportionality at pg. 5; ADP Opposition to ARB’s Motion for Summary Judgment Re Geographic Proportionality Claims.

Board's reasoning on the record as insufficient.² The Riley Plaintiffs inexplicably claim there is nothing on the record explaining the Board's decision to split the Mat-Su Borough and the KPB.³ In fact, the Board had several thorough discussions regarding how to best accommodate the excess population of the Municipality of Anchorage ("MOA") and the KPB.⁴ Following the Board's unanimous adoption of a draft plan splitting the Mat-Su Borough to accommodate the MOA's excess population, board Chairman Torgerson specifically stated, "the board has adopted the Mat-Su split twice for all the reasons that we debated the last three days."⁵ The Plaintiffs' intentional disregard for the extensive Board Record regarding the discussion and analysis preceding the Board's decision diminishes the credibility of their arguments in opposition to the Board's 2013 Proclamation Plan.

All seven of the Board's adopted draft plans dealt with the excess population differently as did the third party plans submitted to the Board.⁶ Public testimony

² Riley Plaintiffs' Opposition at pg. 2; *see generally* ADP Opposition.

³ *Id.*

⁴ *See* ARB00016737-16738 at 95:5-100:16; 16762-16763 at 3:17-6:9; ARB00016763-16769 at 6:13-31:7; ARB00016769 at 32:3-10; ARB00016771-16772 at 38:4-42:25; ARB00016779 at 71:5-72:20; ARB00016779-16782 at 73:19-78:7, 80:21-83:14, 83:20-23; ARB00016805-16810 at 21:11-41:19.

⁵ ARB00016810 at 41:17-19.

⁶ *See* ARB00017121-17190; *see, e.g.*, ARB00017191-17230, ARB00017231-17294, ARB00017295-17304, ARB00017314-17322, ARB00017323-17331.

provided insight into the various options, including the pros and cons of each option.⁷ For example, the Mayor of Valdez testified that his community had much stronger ties with the Richardson Highway than with Anchorage and noted several socio-economic factors regarding which Anchorage and other Southcentral communities differed from Valdez.⁸ The Mayor of the Mat-Su Borough, on the other hand, testified to the many ways in which the Mat-Su Borough was socio-economically integrated with Anchorage.⁹ The Mat-Su Borough Mayor further testified the Mat-Su Borough preferred that the configuration of their districts in the 2012 Amended Proclamation Plan remain intact.¹⁰ Notably, the 2012 Amended Plan, which neither Plaintiff challenged, placed the population of the Mat-Su Borough into six House districts configured in almost exactly the same manner as the Board's 2013 Proclamation Plan.¹¹

2. The Board Used its Constitutional Discretion to Choose the Most Reasonable and Constitutional Solution.

The Board thoroughly considered all of the various options on the record,

⁷ See, e.g., ARB00017001-17002 at 71:25-74:15.

⁸ *Id.*

⁹ ARB00016988-16989 at 21:17-24:21.

¹⁰ *Id.*

¹¹ See Ex. B to Board's Motion for Summary Judgment Re: Geographic Proportionality; compare ARB00015127 with ARB00017405.

questioning representatives from both the AFFER and the Calista Corporation (“Calista”) regarding how they dealt with the excess population issues and their rationale for the resulting district configurations.¹² The Board struggled with whether to adopt a Valdez-Anchorage-Richardson Highway district or to split the Mat-Su Borough twice, as well as how to best accommodate the excess population of the KPB.¹³ Ultimately, the Board chose to split the Mat-Su Borough twice for all of the reasons stated on the record, including but not limited to (1) Mat-Su Borough Mayor support; (2) Valdez did not support a Valdez-Anchorage House district; (3) the resulting House districts were more compact than if the Board had created a Valdez-Anchorage House district; and (4) the resulting House districts were more socio-economically integrated than other proposed options. Without question, it is wholly within the Board’s discretion to choose among alternative plans that are otherwise constitutional.¹⁴ Accordingly, the Board’s motion for summary judgment should be granted.

With respect to accommodation of the excess KPB population, the Board created three House districts wholly within the KPB boundaries with minimal deviations of

¹² See, e.g., ARB00016719-16720 at 23:11-26:3; ARB00016727-16728 at 57:9-59:2

¹³ See ARB00016737-16738 at 95:5-100:16; 16762-16763 at 3:17-6:9; ARB00016763-16769 at 6:13-31:7; ARB00016769 at 32:3-10; ARB00016771-16772 at 38:4-42:25; ARB00016779 at 71:5-72:20; ARB00016779-16782 at 73:19-78:7, 80:21-83:14, 83:20-23; ARB00016805-16810 at 21:11-41:19.

¹⁴ Trial Court Order at 46.

1.53%, 1.50%, and 1.22%.¹⁵ The Board then took the remaining excess population from the KPB and placed it into a single House district that is compact, contiguous, and socio-economically integrated, all while maintaining a low deviation of 1.81%.¹⁶ Significantly, the Board's decision avoided overpopulation of the House districts within the KPB jeopardizing the one person, one vote requirement, which the Plaintiffs concede is the first priority of redistricting.

Contrary to the Riley Plaintiffs' allegations, the Board did, in fact, prioritize the one person, one vote requirement, maintaining as low as practicable deviations while ensuring the resulting House districts were also compact, contiguous, and socio-economically integrated. As detailed in the Board Record, the Board considered the effect that moving MOA and KPB voters would necessarily have on the deviations of the resulting districts. The Board also took into consideration whether the proposed population combinations created compact and contiguous House districts, with a relatively socio-economically integrated population. Justifiably, the Board used the flexibility inherent in all the redistricting requirements to balance these often-times conflicting requirements and maximized, as near as practicable, all of the constitutional requirements.

Neither the Riley Plaintiffs nor the ADP has presented any evidence disputing or

¹⁵ ARB00017353.

¹⁶ *Id.*; ARB00017357.

contradicting the Board's thorough presentation of its legitimate, non-discriminatory reasons for splitting the Mat-Su Borough and the KPB. Where, as here, the Board exercises its discretion to choose between otherwise constitutional alternative plans, the Board's decision must be upheld. Accordingly, the Board is entitled to summary judgment and the Riley Plaintiffs' and the ADP's geographic proportionality challenges must be dismissed.

DATED at Anchorage, Alaska this 26th day of September 2013.

PATTON BOGGS LLP
Counsel for Defendant
Alaska Redistricting Board

By: 

Michael D. White
Alaska Bar No. 8611144
Nicole A. Corr
Alaska Bar No. 0805022

PATTON BOGGS LLP
601 West Fifth Avenue
Suite 700
Anchorage, AK 99501
Phone: (907) 263-6300
Fax: (907) 263-6345

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 on the following via:

Electronic Mail on:

Michael J. Walleri; walleri@gci.net;
mwalleri@fairbanksaklaw.com

Jason Gazewood; jason@fairbanksaklaw.com
Gazewood & Weiner PC
Attorneys for Riley/Dearborn
1008 16th Ave., Suite 200
Fairbanks, AK 99701

Thomas F. Klinkner; tklinkner@BHB.com
Birch, Horton, Bittner & Cherot
Attorney for Petersburg Plaintiffs
1127 W. 7th Avenue
Anchorage, AK 99501

Jill Dolan; jdolan@fnsb.us
Attorney for Fairbanks North Star Borough
P.O. Box 71267
Fairbanks, AK 99707

Carol Brown; cbrown@avcp.org
Association of Village Council Presidents
P.O. Box 219, 101A Main Street
Bethel, AK 99550

Thomas E. Schultz; tschulz235@gmail.com
Attorney for RIGHTS Coalition
715 Miller Ridge Road
Ketchikan, AK 99901

Supreme Court of the State of Alaska
jhotho@appellate.courts.state.ak.us
mmay@appellate.courts.state.ak.us

Joseph N. Levesque;
joe@levesquelawgroup.com; joe-wwa@ak.net
Levesque Law Group, LLC
Attorney for Aleutians East Borough
3380 C Street, Suite 202
Anchorage, AK 99503


Natalie A. Landreth; landreth@narf.org
Native American Rights Fund
Attorney for Bristol Bay Native Corporation
801 B Street, Suite 401
Anchorage, AK 99501

Marcia R. Davis; mdavis@calistacorp.com
Attorney for Calista Corporation
301 Calista Court
Anchorage, AK 99518

Scott A. Brandt-Erichsen; scottb@kgbak.us
Ketchikan Gateway Borough
1900 1st Avenue, Suite 215
Ketchikan, AK 99901

Joe McKinnon; jmckinn@gci.net
Attorney for Alaska Democratic Party
1434 Kinnikinnick Street
Anchorage, AK 99508

By: _____



Anita R. Tardugno, PLS
Legal Secretary
PATTON BOGGS LLP

029810.0101\4829-2876-0854.

PATTON BOGGS LLP
601 West Fifth Avenue
Suite 700
Anchorage, AK 99501
Phone: (907) 263-6300
Fax: (907) 263-6345