

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 RESPONSE TO
FAIRBANKS NORTH STAR BOROUGH'S AMICUS BRIEFS**

The Fairbanks North Star Borough, who did not challenge the Board's 2013 Proclamation Plan, filed three Briefs of Amicus Curiae ("Briefs") on Thursday, September 26, 2013, in response to the Alaska Redistricting Board's ("Board") Motion for Summary Judgment re: Compactness of House Districts 3 and 5, Motion for Summary Judgment re: Deviations of Senate Districts A, B, and C, and Motion for Summary Judgment re: Deviations of House Districts 1 through 5.¹ The FNSB Briefs essentially reword the Riley Plaintiffs' and ADP Plaintiff's arguments yet offer no additional substantive rationale or legal argument. Accordingly, as set forth in the Board's prior briefing on these issues, the FNSB's arguments must likewise be rejected.

¹ Per this Court's order, parties were to file all substantive motions on September 12; oppositions were due on September 23; and replies were due on September 26, 2013. The Board received the FNSB's oppositions to the Board's summary judgment motions on September 26, 2013 and hereby reply within the three business day time frame previously afforded for reply briefs.

1. The Board's 2013 Proclamation Plan is Constitutional in All Respects.

The FNSB claims the Board “departed from and disregarded the traditional redistricting principles” when it drafted districts involving FNSB residents.² Yet, despite the opportunity to challenge the Board’s plan, the FNSB chose not to object. The FNSB’s Briefs reveal a lack of understanding of the redistricting process and the court’s role therein.

This Court has previously concluded that its role in redistricting is to measure the Board’s final redistricting plan against applicable constitutional standards.³ The court cannot pick a plan it likes, or impose a plan it prefers.⁴ Rather, it is the Board who must choose among otherwise constitutional, alternative plans.⁵ On remand, following this Court’s direction, the Board reviewed a number of plans and configurations. In fact, according to some members of the public, the Board considered too many options. The Board does not deny there are other ways to draw the districts as acknowledged by Board member Brodie; however, the fact that there are alternatives to that which the Board chose does not mean the Board’s plan fails to meet the constitutional standards. Indeed, the alternatives for which the FNSB advocates had other deficiencies, such as higher deviations, less compact configurations, and they were disfavored by the Alaska

² Brief of Amicus Curiae FNSB Re: Compactness of House Districts 3 and 5 at pg. 1.

³ Trial Court Order at 46.

⁴ *Id.*

⁵ *Id.*

Native community. The Board, tasked with redistricting the state, weighed all these factors prior to making its final decisions.

Unlike the FNSB and the Plaintiffs, the Board does not have the luxury of piecemeal redistricting. The Board cannot redistrict a handful of districts while ignoring the effects those configurations will have on the surrounding areas. The FNSB and the Plaintiffs disregard the difficult process of redistricting and how moving one census block can, and does, have enormous effects on the other districts. A member of the public aptly referred to the process as “this domino game that we call redistricting.”⁶ The Board used its discretion to consider the various options, and chose the plan that as a whole, maximized the ultimate goal of redistricting – one person, one vote, while also meeting the constitutional requirements of relative compactness, contiguity, and as near as practicable socio-economic integration. The Board’s 2013 Proclamation Plan is that plan.

2. House Districts 3 and 5 are Relatively Compact.

The FNSB advances the same arguments as the Riley Plaintiffs regarding the compactness of House Districts 3 and 5, which the Board has addressed in prior briefing and is incorporated as though fully set forth herein. Although the FNSB raises no new arguments, it does assert incorrect facts in support of its arguments. First, the FNSB argues that the Board “unfairly compares” the boundaries of House District 5 from the Board’s 2011 Proclamation Plan with the boundaries of the current House District 5 in

⁶ ARB00016988 at 21:21-22.

the 2013 Proclamation Plan.⁷ A comparison of the boundaries, however, reveals they are nearly identical with only minimal differences. The original House District 5 excluded South Van Horn and included College.⁸ The current configuration of House District 5 does not include College but does include the South Van Horn area as well as a handful of census blocks further east, north of the Tanana River.⁹ Both configurations combine population north of the Tanana River and west of the City of Fairbanks with the Tanana Flats.

On remand, the Board put Ester and Goldstream into a House district with other communities in the northwest corner of the FNSB, such as College. While the FNSB undisputedly has excess population, the Board took the excess population from the eastside of the FNSB as requested by the Riley Plaintiffs and the Alaska Native community. The Riley Plaintiffs presented hours of trial testimony regarding the commonalities between Ester, Goldstream, and the surrounding FNSB communities. Thus, the Board created House District 4 that combines Ester, Goldstream, College, and the surrounding areas.¹⁰ The Board also created House District 1 wholly within the City of Fairbanks, and used the city boundaries as the boundaries of House District 1. The Board then created House District 2 with the remainder of the City of Fairbanks

⁷ See Brief of Amicus Curiae FNSB Re: Compactness of 3 and 5 at 2.

⁸ See Ex. D to Board's Global Opposition.

⁹ ARB00017398.

¹⁰ ARB00017397.

population not included in House District 1, and the population to the east, again using the City of Fairbanks boundaries. The Board then created House District 3, which honors the boundaries of the City of North Pole and is reflective of public testimony requesting the Board not shed population to the west in the Eielson area.

Finally, the Board combined the Tanana Flats with the population west of the City of Fairbanks and north of the Tanana River just as it had done in 2011, which this Court upheld. Because College was included in House District 4 with Ester and Goldstream, the Board needed population to create a district as near as practicable to the ideal district size. Thus, the Board included the South Van Horn area to the east and on the north side of the Tanana River, and a handful of census blocks not included in House District 2 or 3, and outside the City of North Pole, to create the current House District 5.

The FNSB ignores the fact that the current configuration is actually more compact than the original House District 5 previously sustained by this Court. While the current configuration does include population north of the Tanana River, it does so in two places, not just one. Oddly, the FNSB takes issue only with the inclusion of population adjacent to the City of North Pole in House District 5, but not the population from South Van Horn. The FNSB offers no explanation for its consent to the inclusion of the South Van Horn population north of the Tanana River, but not the population outside the City of North Pole. Regardless, the configuration as a whole is relatively compact and should be upheld.

Second, the FNSB asserts, “including vacant land that must go somewhere is in no way comparable to using the unpopulated area to connect two populated areas.”¹¹ This statement ignores this Court’s previous order upholding the configuration of the nearly identical House District 5 in the 2011 Proclamation Plan. The Tanana Flats must be placed into a House district. The Board did not use the Tanana Flats to connect two populated areas, but rather included it with communities in the FNSB to create a compact district as near as practicable to the ideal district in size. The FNSB’s argument is simply not an accurate reflection of the Board’s process.

Third, the FNSB argues that moving census blocks is an easy task. The FNSB claims the Board could “easily shift the population in the northern area of House District 3 into the other neighboring house districts,” and then add the census blocks now in House District 5 to House District 3.¹² The FNSB admits such changes will have a ripple effect on the surrounding House districts yet inexplicably argues that the Board’s reliance on the ripple effect is not legitimate. The FNSB overemphasizes Board member Brodie’s observation that other configurations were possible, and points to the Board’s Draft Plan D as an acceptable alternative, disregarding the fact that it is the Board’s role to choose between otherwise constitutional, alternative plans.

The FNSB’s claims underscore the FNSB’s oversimplification of the redistricting process. The Board could have reconfigured the House districts, but as the

¹¹ *Id.*

¹² Brief of Amicus Curiae FNSB at pg. 3.

FNSB acknowledges, this would have had a ripple effect on all of the House districts. Unlike the FNSB, the Board must consider all of these effects and whether the resulting configurations would still comply with all of the redistricting requirements. The Board determined alternate configurations would have higher deviations and less compact districts.¹³ Therefore, the Board chose the 2013 Proclamation Plan.

Finally, the FNSB also argues the Board “clearly placed deviations over compactness” in creating House Districts 3 and 5.¹⁴ Yet, in its briefing regarding deviations in House Districts 1 through 5 and Senate Districts A, B and C, the FNSB argues the Board did not sufficiently reduce the deviations. The FNSB contradictory arguments highlight the importance of the Board’s role in redistricting.

The Board must consider all of the redistricting requirements in all of the districts, and is vested with the discretion to review alternative plans and choose the plan that maximizes all of these requirements. The Board did not elevate one principle above another in one district only to elevate a different principle in the next district. That is not how the redistricting process works and, as reflected in the Board Record, it is not how the Board drew the 2013 Proclamation Plan.

¹³ See ARB00016814-16816 at 56:19-63:7.

¹⁴ Brief of Amicus Curiae FNSB Re: Compactness of 3 and 5 at pg. 3.

3. The Fairbanks Senate Districts and House Districts 1 through 5 Contain a Population as Near as Practicable to the Ideal District.

The overriding objective of redistricting is one person, one vote. As population moves, increasing in some places, decreasing in others, the voting districts no longer achieve this purpose and must be redrawn. In Alaska, the Board has been tasked with this responsibility. The law guides the Board as it carries out its duties, setting forth “priorities” to ensure the resulting map gives all the voters of Alaska an equal and effective vote. The first priority is the equal protection clause of the United States Constitution. One person, one vote is quantitative in nature, while fair and effective representation is qualitative. One person, one vote is mathematically achieved by dividing the total population of the state by the number of House districts. The Board is then required, “as near as practicable,” to achieve this number in each House district.

The law also recognizes the inherently political nature of redistricting. Thus, the law requires the resulting voting districts to reflect other considerations to ensure the plan objectively reaches the goal of one person, one vote without discriminating against any individual voter or group of voters for the advantage of another individual voter or group of voters. These parameters require the Board to create compact and contiguous House districts that are also relatively socio-economically integrated. If, for example, a House district is mathematically precise but is not relatively compact, contiguous, or as near as practicably socio-economically integrated, the Board must adjust the population to the extent necessary to achieve an appropriate equilibrium between all of the

requirements. These requirements allow for some flexibility given their often-times competing nature.

Despite contrary arguments in relation to House Districts' 3 and 5 deviations, the FNSB maintains the Board should have further reduced the deviations in House Districts 1 through 5, and Senate Districts A, B, and C. Notwithstanding the FNSB's claims, the Board Record reveals the effort expended by the Board to achieve low deviations while maintaining otherwise compact, contiguous and socio-economically integrated districts. Significantly, the Riley Plaintiffs acknowledge that the Board achieved low deviations in all of the Fairbanks House districts.¹⁵

The FNSB nonetheless claims the deviations are unnecessarily high because the Board did not create otherwise constitutional districts. The FNSB offers no supporting rationale for its position. Indeed, no one actually challenged the constitutionality of House Districts 1, 2, or 4, other than to simply suggest, without factual support, that the Board should have further reduced the deviations in these House districts. The only House districts actually challenged on compactness grounds are House Districts 3 and 5, which, as set forth in the Board's briefing, are in fact compact.

With respect to Senate Districts A, B, and C, the FNSB incorrectly argues the Board must justify the Senate pairings it chose.¹⁶ The only constitutional requirement applicable to Senate districts is that they be comprised of two contiguous House

¹⁵ Riley Plaintiffs' Opposition re: Compactness of House Districts 3 and 5.

¹⁶ Brief of Amicus Curiae FNSB Re: Senate District Deviations at pg. 2.

districts.¹⁷ No party has challenged any of the Senate districts on this basis because all of the Senate districts in the 2013 Proclamation Plan are indisputably comprised of two contiguous House districts. The Board does not have to justify its Senate pairings beyond this requirement.

CONCLUSION

For the reasons set forth above and in the Board's Motions and Memoranda for Summary Judgment, related Reply briefs and Global Opposition, the FNSB's arguments do not raise any genuine issues of material fact that would otherwise defeat the Board's motions for summary judgment. The Board is entitled to summary judgment as a matter of law and the Plaintiffs' claims should be dismissed.

DATED at Anchorage, Alaska this 30th day of September 2013.

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¹⁷ Alaska Const. art. VI, § 6.

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of September 2013, a true and correct copy of the foregoing document was served on the following via:

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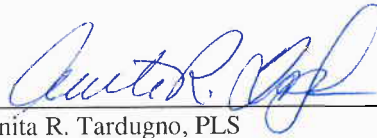
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