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PATTON BOGGS LLP

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

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IN RE: 2011 REDISTRICTING CASES: )  
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Case No. 4FA-11-2209CI

*Order on the Compactness of Districts 1, 2, and 37*

**A. Motion Practice Background**

The Riley/Dearborn Plaintiffs filed a motion for partial summary judgment on 5 December 2011 that House Districts 1, 2 and 37 are not compact under the Alaska Constitution. The Board opposed the motion on 13 December 2011. The Plaintiffs replied on 15 December 2011. Oral argument was held on 22 December 2011.

**B. Preliminary Comments on the Case**

The scope of this litigation has dwindled. The Fairbanks North Star Borough and Tim Beck voluntarily dismissed their claims. Petersburg moved for summary judgment focusing solely on compactness; summary judgment was granted adverse to Petersburg.<sup>1</sup> That leaves only the Riley/Dearborn plaintiffs. Since they are Fairbanks residents, the

<sup>1</sup> The time for reconsideration expired 12.16.11. By the terms of the order, it is effectively a final judgment under Alaska R. Civ. P. 54(b).

focus of their claims is Interior Districts.<sup>2</sup> This motion addresses compactness contentions regarding Districts 1, 2, and 37.<sup>3</sup> Districts 1 and 2 do not necessarily deal with the scope of land mass presented by Districts 32 and 37, but the analysis is the same.

Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.<sup>4</sup> In determining whether there is a genuine issue of material fact, all “reasonable inferences of fact from proffered materials must be drawn against the moving party ... and in favor of the non moving party.”<sup>5</sup> “Once the moving party has established a prima facie case, the non-movant is required, in order to prevent the entry of summary judgment, to set forth specific facts showing that he could produce admissible evidence reasonably tending to dispute or contradict the movant's evidence, and thus demonstrate that a

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<sup>2</sup> As a condition of dismissal of the FNSB claims the court allowed the Riley/Dearborn Plaintiffs to raise any claims asserted by FNSB, specifically any concerns regarding House District 37. That district is subject to a separate contiguity motion.

<sup>3</sup> The plaintiffs focus on several “appendages” or “corridors”. Unrelated to our litigation it does bear note that 67 years ago this month the German army made a large incursion into the Ardenne forest, surrounding the U.S 101<sup>st</sup> Airborne troops at Bastogne. General McAulliffe’s reply to the surrender demand was simple: “Nuts.” General Patton breached the Nazi line on 12.26.44 and opened a corridor to Bastogne. Now that is a corridor. Thanks to such service we can litigate in relatively comfort issues that represent the fundamentals of our democracy, an opportunity for one vote per one person.

<sup>4</sup> Alaska R. Civ. P. 56.

<sup>5</sup> *Kiester v. Humana Hosp. Alaska, Inc.*, 843 P.2d 1219, 1222 (Alaska 1992) (quoting *Sea Lion Corp. v. Air Logistics of Alaska*, 787 P.2d 109, 116 (Alaska 1990)).

material issue of fact exists.”<sup>6</sup> Mere assertions of fact in pleadings and memoranda cannot raise genuine issues of fact.<sup>7</sup>

The decision set forth below is based upon the evidence adduced by the parties in support of their respective positions as well as the extensive Board record required to be filed both with the trial and supreme court.<sup>8</sup>

### **C. General Arguments**

The Riley/Dearborn Plaintiffs contend that House Districts 1, 2, and 37 are not compact under the Alaska Constitution.<sup>9</sup> The Board argues that House Districts 1, 2, and 37 are compact and that the configuration of the districts was required by equal population requirements and the Voting Rights Act.

#### **House District 1**

House District 1 includes East Fairbanks City, a portion of Fort Wainwright north of the Tanana River, and portions of Badger, Steele Creek, and South Van Horn CDP.

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<sup>6</sup> *Philbin v. Matanuska-Susitna Borough*, 991 P.2d 1263, 1265–66 (Alaska 1999) (quotations omitted).

<sup>7</sup> *Lord v. Wilcox*, 813 P.2d 656, 658 n. 4 (Alaska 1991) (citing *State, Dep't of Highways v. Green*, 586 P.2d 595, 606 n. 32 (Alaska 1978)). Nor can unverified pleadings be relied on. See *Jennings v. State*, 566 P.2d 1304, 1309-10 (Alaska 1977).

<sup>8</sup> Alaska R. Civ. P. 90.8(d). A summary of the extensive Board Transcript will be incorporated into the post-trial findings.

<sup>9</sup> The Plaintiffs argue that the Board cannot use the Voting Rights Act as a justification because they did not file a cross motion seeking a ruling that the Voting Rights Act provides justification of any violation of Alaska's Constitutional compactness requirement. The court notes that the deadline for dispositive motions ended on 12.05.11 when the present motion for summary judgment was filed. The court later issued an order stating that cross motions would not be accepted. The Board was free to file a motion for summary judgment before the dispositive motion deadline, but did not. However, that does not preclude the Board from arguing the Voting Rights Act justified deviation from constitutional requirements. That issue will ultimately be for the trier of fact and the appellate court.

The Plaintiffs concede that House District 1 is relatively compact under the Reock test.<sup>10</sup> However, the Plaintiffs argue that House District 1 contains a classical appendage on its western side, which protrudes west from the New Steese Highway along the Slough.<sup>11</sup> The far western tip of the appendage contains a small portion of Aurora area south of College Road and north of Noyes Slough.

The Plaintiffs also argue that a more compact district can be drawn and that this is demonstrated by the versions of the Board's previous plans, entitled Board's Options 1 and 2. The Plaintiffs point out that Board Options 1 and 2 contain no such appendage and that South Cushman serves as a common boundary between the East and West Fairbanks City districts south of the Mitchell Expressway. The Plaintiffs argue that the appendage in House District 1 is made possible by swapping out the area south of the Chena River, north of the Mitchell expressway, east of Cushman Street and west of the New Steese Highway. Under Board Options 1 and 2, this area was in the East Fairbanks City District, while the area within the western appendage in House District 1 was in the West Fairbanks City District. The Plaintiffs argue that there is no question that the Board's change in the final plan exchanged these populations to make possible the offensive appendage contained in House District 1.

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<sup>10</sup> The Reock Test is one of eight mathematical tests to determine compactness. The Reock Test quantifies the compactness of a district by determining the ratio of the area of the district to the area of the smallest circle that contains the district. With the best score being 1.0, House District 1 scored a .45, which is more compact than the entire Proclamation Plan mean, which is .37.

<sup>11</sup> The Plaintiffs coined the appendage the "Kawasaki finger." They argue it is reminiscent of the "Oosik District" the *Hickel Court* found so offensive.

The Plaintiffs argue that there is no valid justification for this non-compactness and argue that circumstantial evidence exists to suggest a possible political motivation for the appendage. The Fairbanks Districts were drawn by Board member Jim Holm. Jim Holm is the former Republican State Representative from West Fairbanks City. In 2004 and 2006, Mr. Holm ran for re-election against Democrat Scott Kawasaki, with Mr. Holm winning in 2004 and Mr. Kawasaki winning in 2006. Mr. Kawasaki is the current representative of West Fairbanks. The Plaintiffs argue that the 2006 race was close and hotly contested.

The Plaintiffs allege that Mr. Holm drew the appendage in House District 1 in an effort to move Mr. Kawasaki from his current West Fairbanks District to East Fairbanks, where he would be forced to run for re-election in a district that was substantially different from his current district, and against a popular former City Mayor and Republican House Incumbent who would be running in a district that was substantially similar to his current district. The Plaintiffs argue that Mr. Holm believed that Mr. Kawasaki lived in what is in actuality his sister's home. The Plaintiffs base this argument on the following: Ms. Kawasaki (Mr. Kawasaki's sister) indicated her address as 224 Spruce when she signed in to attend a Board Hearing; Ms. Kawasaki is often mistaken as Mr. Kawasaki's wife; Ms. Kawasaki's home was located in the West Fairbanks City District under the Board Option Plans; and Ms. Kawasaki's home is now in the East Fairbanks City District under the Proclamation Plan when the district's western appendage was created.

The Plaintiffs also argue that after the Board's Proclamation Plan, Mr. Pruhs, the Republican Party District 10 Chair, filed a letter of intent to run for the legislature. Under the Board Option Plans Mr. Pruhs' home was in East Fairbanks City and under the Proclamation Plan, Mr. Pruhs' home is located in West Fairbanks. Under the Board Option Plans, Mr. Pruhs would have had to face the current incumbent for East Fairbanks City, Mr. Thompson, who is also Republican. Under the Proclamation Plan Mr. Pruhs will be running against Mr. Kawasaki. Also if Mr. Kawasaki lived where his sister's home is, Mr. Pruhs would be running in a district without an incumbent.

The Board argues that the configuration of House District 1 was largely driven by equal population and compactness concerns. The Board argues that after it had adopted Board Options 1 and 2, the Voting Rights Expert, Dr. Handley, advised that the effectiveness standard had changed for Alaska Native Districts.<sup>12</sup> The Board argues this forced it to redraw all of its Native Districts, which in turn affected many urban district boundaries. The Board points out that House District 1 was also affected by the Board's decision to add population from the Goldstream and Ester areas of the FNSB to House District 38 in order to comply with the Voting Rights Act.<sup>13</sup> The Board argues that they looked at other private party plans for alternative solutions, but they were all retrogressive.

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<sup>12</sup> Dr. Handley advised that the standard had changed due to racially polarized voting.

<sup>13</sup> The Board cites the following factors that made it particularly difficult to comply with the Voting Rights Act: (1) under-population of Benchmark Alaska Native Districts; (2) lack of Alaska Native population concentrations adjacent to the Benchmark Alaska Native Districts; and (3) the inability to create minority districts in urban Alaska.

The Board argues that the Ester/Goldstream areas of the FNSB was the best areas from which to draw population from to add to the rural Alaska Native Districts for the following reasons: (1) the FNSB had excess population to give, (just under half an ideal house district or approximately 8,700 people); (2) Fairbanks had some historical economic, cultural and social ties to rural Alaska; (3) its geographic location made it relatively proximate to the rural districts and; (4) the FNSB had areas which historically tended to vote for Democrats.<sup>14</sup>

Since the Board exported some of the excess population out of the FNSB into House District 38,<sup>15</sup> there was less population in the Fairbanks area, so the Board decided to move the Eielson population up to Fairbanks instead of combining it with population from the Mat-su which allowed the Board to create five districts wholly within the FNSB.

The Board argues that there is evidence in the Board record to explain the addition of the area. The Board argues that Board Member Holm used natural boundaries to create districts that were as near as practicable to the ideal district size. The Board argues that a census block view of the boundary between House District 1 and House

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<sup>14</sup> Dr. Handley advised the Board that if urban, non-Alaska Native population had to be added to rural Alaska Native districts, that urban non-Alaska Native population should be from areas that tend to vote Democratic. Dr. Handley explained this was important because the Alaska Natives' preferred political party is the Democratic party and therefore adding Democratic-voting, non-Alaska Native population would enhance the effectiveness of their district not only because Alaska Natives tend to vote Democratic, but also due to an expected increase in white cross-over vote.

<sup>15</sup> House District 38 must necessarily be adjusted if the Board has to redraw House Districts 1, 2, and 37.

District 3 shows that House District 1 comes slightly over to the right<sup>16</sup> to grab the population from the only adjacent area within the boundaries of the City of Fairbanks.<sup>17</sup>

The Board also argues that the Plaintiffs' conspiracy theory<sup>18</sup> that Board Member Hold mistakenly thought that Representative Kawasaki lived in the "appendage" is false. The Board contends that Mr. Holm did in fact know where Representative Kawasaki lived when he drew the Fairbanks Districts.<sup>19</sup>

The Board additionally argues the Plaintiffs admit that House District 1 is mathematically relatively compact and is more compact than the alternative corresponding district in the Modified RIGHTS Demonstrative Plan.

### **House District 2**

House District 2 is an elongated district that follows the Richardson Highway corridor from the Fairbanks City limits southeasterly to Badger Road, North Pole, Moose Creek, and Eielson AFB areas.

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<sup>16</sup> The Board corrected itself at oral argument and confirmed that it meant to say move to the left to grab population.

<sup>17</sup> Mr. Holm stated the following in discussions with the Board, "I mean it's makes sense to me to have like 9 [Proclamation House District 1], it makes sense to have it between the slough and all of downtown Fairbanks. And then it goes to the Tanana River. So it's the slough and - - to the Tanana River and it's all the way to the airport, it ties in with the airport there. And 10 [ Proclamation House District 3 didn't have enough people on the right so we had to go past Wainwright and go over and take some people out of 11 because we had excess people in 11.

<sup>18</sup> The Board objects to the Plaintiffs' arguments of gerrymandering and ask that they be stricken from the record as they were not raised in the complaint. The Plaintiffs argue that their arguments do not allege partisan gerrymandering per se. There is not evidence in the record to find that partisan gerrymandering has occurred. The Plaintiffs arguments are merely that: argument.

<sup>19</sup> The Board argues Board Member Holm identified Proclamation House District 4 (which was House District 9) as "Kawasaki's District", which proves Board Member Holm knew at the time that Representative Kawasaki did not live in the alleged "appendage."

The Plaintiffs argue House District 2 is not compact under the Reock Test.<sup>20</sup> The Plaintiffs also argue that House District 2 is one large corridor that connects three major population areas: Badger, North Pole, and Eielson/Salcha and at the same time divides these population areas among four districts (1, 2, 3 and 6).<sup>21</sup> The Plaintiffs argue that this is an odd shape, which the *Hickel Court* held to be indicative of gerrymandering. The Plaintiffs additionally argue that narrow highway corridor districts are indicative of gerrymandering and that the Richardson Highway Corridor District runs for 40 miles and is about 1/35<sup>th</sup> the population.<sup>22</sup> The Plaintiffs contend that there is no justification for this non-compactness.

The Board contends that House District 2 was designed to accomplish the legitimate goals of redistricting- that of equal population distribution and socio-economic integration. The Board argues that the type of corridor districts Alaska courts are concerned with are corridors of land that extend to include a populated area but not the less populated area around it.<sup>23</sup> The Board also argues that there is not a single shred of

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<sup>20</sup> House District 2 scored .19, which is less than the Proclamation Plan mean of .37. The Plaintiffs also argue that the Modified RIGHTS plan is more compact. The Modified RIGHTS Plan divides the area in question into two districts: House District 5 Eielson (scoring .32) and House District 6 North Pole Badger (scoring .53). The court notes the Modified RIGHTS Plan is one of many private plans submitted to the Board during the redistricting process. The court also notes that many of these plans went through several drafts. The court is aware that the Modified Rights Plan was altered to better compare it to the Board's Plan and that the modified version is entitled the Demonstrative Plan. The court refers to both versions of the plan as the Modified RIGHTS plan.

<sup>21</sup> The Board argued at oral argument that the population of the FNSB was socio-economically integrated by law and therefore, it did not have to worry about splitting communities with in it- such as Badger, North Pole, Eielson and Salcha.

<sup>22</sup> The Plaintiffs compare this to the North Carolina 12<sup>th</sup> Congressional District which followed the I-85 Highway corridor for 160 miles in *Shaw v. Reno*, 509 U.S. 630 (1993).

<sup>23</sup> *Hickel v. Southeast Conference*, 846 P.2d 38, 45-46 (Alaska, 1992).

evidence supporting the argument that the configuration of House District 2 is partisan in nature.

The Board argues that House District 2 largely consists of North Pole and Eielson Air Force Base because “many of the people that live in North Pole are retired military” and “there’s a real close tie between Eielson Air Force Base and North Pole, that’s where the people that don’t live on Base live.”<sup>24</sup> Mr. Holm did not include land that is farmland because he believed the farmers had more in common with the extensive population in House District 6<sup>25</sup> and it was not possible to stretch the boundary of House District 2 towards House District 4 because he needed the population for House District 4.<sup>26</sup>

The Plaintiffs argue that the shifting of farmers argument does not explain why the district slices through residential areas in the Persinger Drive, Nordale Road, Repp Road Maule Lane, and Nelson Road areas, which apportioned population between House Districts 1, 2 and 3 and had nothing to with House District 6.

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<sup>24</sup> ARB00003039-ARB00003040

<sup>25</sup> ARB00003040-ARB00003043.

<sup>26</sup> ARB00003045; ARB00003050; Bickford Aff at Para 6.

### **House District 37**

House District 37 includes Bethel, the Kuskokwim delta, Nunivak Island, Saint Matthew Island, the Pribilof Islands, and all the western Aleutian Islands.

The Plaintiffs argue House District 37 fails under the Reock Test, scoring a .00, meaning that House District 37 lacks any compactness whatsoever.<sup>27</sup>

The Plaintiffs argue that House District 37 is non-compact because it divides the geographic and cultural unity of the Aleutians by combing the western Aleutians with Bethel-area communities hundreds of miles north on the other side of House District 36. The Plaintiffs point out that House District 37 expanses nearly 800 miles over the Bering Sea between Nunivak Island and Attu and expanses 500 miles between the Kuskokwim delta and Unalaska.<sup>28</sup> The Plaintiffs also point out that this is not the first time the redistricting plan has looked to do strange things with the Aleutians to solve districting problems, as this approach was used in the 1990 redistricting process and found to have violated the Alaska Constitution due to lack of contiguity in *Hickel*.<sup>29</sup>

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<sup>27</sup> The Board points out that the Modified RIGHTS Plan House District 37 also scored a zero on the Reock Test. The Board also argues that of the eight mathematical tests, Proclamation House District 37 scored higher than the Modified RIGHTS Plan House District 37 in three of the tests- the Schwartzberg, Perimeter and Ehrenberg Tests. The districts also scored the exact same score in three of the tests- the Reock, the Population Polygon and Population Circle Tests.

<sup>28</sup> Absolute contiguity of land masses is impossible in Alaska, considering her numerous archipelagos. Accordingly, a contiguous district may contain some amount of open sea. However, the potential to include open sea in an election district is not without limits. If it were, then any part of coastal Alaska could be considered contiguous with any other part of the Pacific Rim. To avoid this result, the constitution provides the additional requirements of compactness and socio-economic integration. *Hickel v. Southeast Conference*, 846 P.2d 38, 45 (Alaska,1992).

<sup>29</sup> The Plaintiffs also filed a separate motion for partial summary judgment that House District 37 violates the contiguity requirement of the Alaska Constitution on 5 December 2011.

The Plaintiffs also argue that more compact alternatives are available as Board Options 1 and 2 of House District 37 are more compact. Plaintiffs argue Board Options 1 and 2 drew a district that was contiguous by land which includes all the Aleutians, the Alaska Peninsula and most of the Bristol Bay Region. The Plaintiffs also note that the Modified RIGHTS Plan followed a similar structure. The Plaintiffs argue that there is no justification for this non-compactness, including the Voting Rights Act.<sup>30</sup>

The Board argues that House District 37 is the extreme example of Alaska's unique and irregular geography. The Board contends this is exactly why the standard is "relative compactness" due to the Board's responsibility to comply with the often conflicting federal and state law. The Board argues that House District 37 contains the world's longest archipelago that stretches more than 1,000 miles so it is simply impossible to create a perfect circle due to this geographical anomaly.

The Board argues *Hickel* did not address the issue of compactness when discussing the split of the Aleutian Chain. The Board also argues that the word "corridors" refer to land and not "open sea" and the Alaska Supreme Court has only addressed "open sea" with respect to contiguity and not compactness. The Board argues that they were required to split the Aleutian Chain in order to comply with the Voting Rights Act. The Board argues the goal was to increase the Alaska Native VAP in House

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<sup>30</sup> Plaintiffs argue that there is no Voting Rights Act necessity that would require the splitting of the Aleutians. According to Dr. Handley, Benchmark House District 37, which encompasses the Aleutian Islands and portion of the Bristol Bay Region presents a specific analysis. Benchmark House District 37 has consistently elected minority-preferred candidates despite being less than 41% Alaska Native VAP because most of the election contests were not racially polarized. The Modified RIGHTS Plan House District 37 has a Native VAP of 46%.

District 36 so the Alaska Peninsula could be paired with Kodiak to form an effective Senate district. The Board also notes that other private plans also split the Aleutians.<sup>31</sup>

The mandate for redistricting of election districts is set forth in Article VI, Section 6 of the Alaska Constitution, which states:

The Redistricting Board shall establish the size and area of house districts, subject to the limitations of this article. Each house district shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area. Each shall contain a population as near as practicable to the quotient obtained by dividing the population of the state by forty. Each senate district shall be composed as near as practicable of two contiguous house districts. Consideration may be given to local government boundaries. Drainage and other geographic features shall be used in describing boundaries wherever possible.

Compactness in terms of redistricting has been defined by the Alaska Supreme Court as follows: “‘Compact’ in the sense used here means having a small perimeter in relation to the area encompassed.”<sup>32</sup> “‘Compact districting should not yield ‘bizarre designs’.”<sup>33</sup> The compactness inquiry looks to the shape of a district, “Odd-shaped districts may well be the natural result of Alaska’s irregular geometry. However, “corridor” 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 redistricting.”<sup>34</sup> The

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<sup>31</sup> Including the Modified RIGHTS Plan and the Fairbanks North Star Borough.

<sup>32</sup> *Carpenter v. Hammond*, 667 P.2d 1204, 1218 (Alaska, 1983). (Matthews, J., concurring).

<sup>33</sup> *Davenport v. Apportionment Comm'n of New Jersey*, 304 A.2d 736, 743 (N.J.Super.Ct.App.Div.1973), quoted in *Carpenter v. Hammond*, 667 P.2d 1204, 1218-19 (Alaska, 1983). (Matthews, J., concurring).

<sup>34</sup> *Hickel v. Southeast Conference*, 846 P.2d 38, 45-46 (Alaska, 1992). The Board argues the holding in the 2001 Redistricting Case minimizes the concern for an appendage in an urban area while maximizing the

court looks to the “relative compactness of proposed and possible districts in determining whether a district is sufficiently compact.”<sup>35</sup>

The court previously addressed a compactness issue in this case and again reviews some of the general arguments by the parties that had previously been addressed by the court.

#### **D. Mathematical Tests**

The court notes that there are eight possible tests to determine compactness. The Plaintiffs argue that the Reock Test is the best test for Alaska because it compares districts to circles and – quoting the Alaska Supreme Court - “The most compact shape is a circle.”<sup>36</sup> The Board argues that the appropriate test in Alaska is a visual one and points out that there are problems in using the eight compactness tests. The court noted in its previous order, “The court does not rule on whether a visual test or mathematical test is best for Alaska, as it is not necessary to decide under this plan. The court found Judge Rindner’s discussion on the two methods informative and notes that historically Alaska has relied on the visual test, but this is not to say that mathematical compactness tests could not be helpful in the future.”

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emphasis on minimal population deviation. The *2001 Redistricting Case* neither lessens the constitutional requirement of compactness, nor automatically justifies an appendage punitively based on population needs. The court thus closely scrutinizes the appendage.

<sup>35</sup> *Carpenter v. Hammond*, 667 P.2d 1204, 1218 (Alaska, 1983). (Matthews, J., concurring).

<sup>36</sup> *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1361 n. 13 (Alaska, 1987), quoting *Carpenter v. Hammond*, 667 P.2d 1204, 1218 (Alaska, 1983). (Matthews, J., concurring).

The court notes that there are problems in using the mathematical tests to determine compactness in the current districts in question. The Plaintiffs argue that House District 1 is compact under the Reock Test. With the best score being 1.0, House District 1 scored a .45, which is more compact than the entire Proclamation Plan mean, which is .37. House District 1 is also more mathematically compact than the corresponding district in the Modified RIGHTS Demonstrative Plan. Yet, the Plaintiffs still argue that House District 1 is still not compact due to an appendage.

The Plaintiffs argue House District 2 is not compact under the Reock Test, scoring .19, which is less than the Proclamation Plan mean of .37. The Plaintiffs also argue that the Modified RIGHTS plan<sup>37</sup> is more compact. The Modified RIGHTS Plan divides the area in question into two districts: House District 5 Eielson (scoring .32) and House District 6 North Pole Badger (scoring .53). The Board points out that the Proclamation Plan House District 2 scored higher in seven of the eight mathematical tests than Modified RIGHTS Plan House District 5. The Proclamation Plan House District 2 scored higher than the Modified RIGHTS Plan House District 6 in one test and scored within the standard deviation of the Proclamation Plan in 4 others.

The Riley/Dearborn Plaintiffs argue House District 37 fails under the Reock Test, scoring a .00, meaning that House District 37 lacks any compactness whatsoever. The Board points out that the Modified RIGHTS Plan House District 37 also scored a zero on

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<sup>37</sup> The Modified RIGHTS Plan is one of many private plans submitted to the Board during the redistricting process. The court notes that many of these plans went through several drafts. The court is aware that the Modified Rights Plan was altered to better compare it to the Board's Plan and that the modified version is entitled the Demonstrative Plan. The court refers to both versions of the plan as the Modified RIGHTS plan.

the Reock Test. The Board also argues that of the eight mathematical tests, Proclamation House District 37 scored higher than the Modified House District 37 in three of the tests, the Schwartzberg, Perimeter and Ehrenberg Test. The districts also scored the exact same score in three of the tests, the Reock, the Population Polygon and Population Circle Tests.

The court notes that it will consider the mathematical tests to the extent they are helpful to the court, but the above summary shows they are largely unhelpful. House District 1 scored relatively well under the Reock Test and better than the Modified RIGHTS Plan, yet the Plaintiffs argue that it is still not compact. House District 2 is being compared to two separate districts under the Modified RIGHTS Plan which creates comparative problems in the first place, with the Proclamation Plan scoring higher in 7 tests when compared to 1 district and better than 1 test and equal to four when compared to the other district. House District 37 scored a zero under the Reock Test, but so did the Modified RIGHTS Plan.

#### **E. Relative Compactness & Other Tests**

The parties have also made arguments about the standard of compactness. The court notes that the correct standard is relative compactness. “Since it is not possible to divide Alaska into circles, it is obvious that the constitution calls only for relative compactness.”<sup>38</sup> While it is appropriate to compare the Board’s districts to proposed and possible districts when determining compactness, the most compact district does not

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<sup>38</sup> *Carpenter v. Hammond*, 667 P.2d 1204, 1218 (Alaska, 1983). (Matthews, J., concurring).

automatically trump another relatively compact district. There are other concerns to take into account, particularly the Voting Rights Act.

#### **F. Voting Rights Act**

The Board uses the Voting Rights Act as a justification for the configuration of House District 1 and House District 37. The Plaintiffs argue this is absurd with regard to House District 1, as it is not an “effective” or “influence” district and the closest “effective district” is House District 38 which is separated by at least one other district. The Board argues that population from the Ester and Goldstream areas had to be added to House District 38 in order to increase the Alaska Native VAP, affecting House District 1.

The Plaintiffs argue that House District 37 can be drawn in a more compact manner, which will also increase the Native Voting Strength. They also point to the fact that Dr. Handley is unable to say what the minimum level of Alaska Native VAP that would be effective in that area. The Board argues the goal was to increase the Alaska Native VAP in House District 36 so the Alaska Peninsula could be paired with Kodiak to form an effective Senate district.<sup>39</sup>

#### **House District 1**

As the court noted earlier, it finds the allegations regarding Mr. Holm’s political motivation speculative and unpersuasive. That, however, does not end the matter. The debate over compactness, particularly compactness in an urban area, is difficult because sufficient population generally exists to meet quotidian requirements. In the *Hickel* era

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<sup>39</sup> Since the court ultimately holds that House Districts 1 and 37 are not compact, the burden is on the Board to show that they are justified by the Voting Rights Act.

the Alaska Supreme Court found the “Oosik appendage” offensive; that district was in the Wasilla area. More recently, in the 2001 redistricting case, the Alaska Supreme Court did focus on population deviation in the Anchorage bowl. However, as noted above, the 2001 redistricting case does not eliminate scrutiny of such appendages, much less minimize scrutiny. It is obvious that compact districts are more easily achieved in urban areas precisely because of the available population. So focus on an appendage, rather than an esoteric exercise of the relative values of homoousian versus homoiousian doctrines, is a real and practical analysis impacting voting districts.

The court finds that House District 1 is not compact. House District 1 does have an appendage on the far western tip. This appendage goes so far as to extend beyond the Fairbanks City limits. While the Board argues that it was drawn this way in order to achieve equal population, the court does not find this argument persuasive. Rather the court finds this finger is more akin to the dread “Oosik district.” The court notes that while it is acceptable that the district is different from Board Options 1 and 2, the court still concludes that western appendage makes House District 1 non-compact.

### **House District 2**

The court finds that Board member Holm’s effort to combine the Eielson Base with the North Pole resulted in an odd, non-compact shape. Although the “corridor” aspect of the district along the Richardson Highway may not have the same concerns of highway districts in the contiguous states, it is troubling. But perhaps most troubling is the large incursion into Proclamation House District 1 that the Board found necessary in order to join Eielson Air Force Base with North Pole, not for Voting Rights Act

requirements, but for socio-economic reasons. This is even more troublesome given the fact that areas traditionally part of urban Fairbanks are separated from Fairbanks and areas, such as around Badger Road, are separated from the rest of the North Pole community. Separating the Eielson farm projects from House District 2 magnifies the lack of compactness by creating a large U shape in House District 6 that engulfs the southern half of House District 2.

The court finds that House District 2 is not compact.

### **House District 37**

The court notes that House District 37 is not compact for many of the same reasons why it is not contiguous. House District 37 divides the geographic and cultural unity of the Aleutians by combing the western Aleutians with Bethel-area communities hundreds of miles north. House District 37 expanses nearly 800 miles over the Bering Sea between Nunivak Island and Attu and expanses 500 miles between the Kuskokwim delta and Unalaska.

The court finds that House District 37 is not compact.

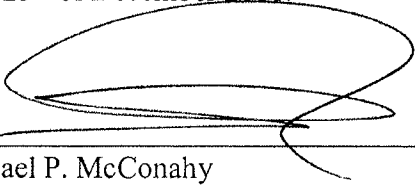
### **G. Conclusion**

Based on the foregoing facts and authorities the court finds as follows:

1. Proclamation House Districts 1, 2, and 37 are not compact under the Alaska Constitution.
2. No Voting Right Act justification for deviation from the compactness requirement has been asserted for House District 2.

3. The burden is on the Board to adduce evidence at trial to justify deviation from the constitutional requirement of compactness for House Districts 1 and 37.
4. A global order will issue next week summarizing the impact for trial of the orders on contiguity and compactness.

**DATED** at Fairbanks, Alaska, this 23<sup>rd</sup> of December 2011.



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Michael P. McConahy  
Superior Court Judge

***Notice Regarding Reconsideration***

Given the expedited process and the impending trial on the merits, timelines are necessary for reconsideration motions. Therefore any motion for reconsideration of this order must be filed and served no later than noon on 30 December 2011. Responses will be allowed without further order and must be filed and served no later than noon on 3 January 2012. If no order is issued by this court by the close of business on 6 January 2012 then any motion for reconsideration shall be deemed denied.

